LLM PAPER

EU-Ukraine Relations :

Towards an Enhanced Partnership with Accession Perspectives ?
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Introduction

At the time of writing (July-August 2012), Ukraine has been a recurrent topic in the news coverage during the last few months. Between the recent organization of the Euro 2012 championship (together with Poland), the ongoing negotiations of a forthcoming Association Agreement with the European Union, and the problems surrounding selective justice, mainly illustrated by the Tymoshenko case, the general feeling about this country could be described as mitigated.

As understandable, referring to the title of this study, the focus will be put on the relations between this former Soviet Republic and the European Union. One also will have to bear in mind those previously evoked data (especially the Association Agreement and selective justice) which have had or will have an impact on the topic.

The “enhanced partnership” is of course a reference to the future Association Agreement aiming at enhancing and deepening the relations with the European Union. This agreement is meant to form the new roots for further EU-Ukraine relations. But outside this framework (now assumed by the 1994 Partnership and Cooperation Agreement), these relations are also dealt with through different EU policies. In this regard, the European Neighbourhood Policy, the Eastern Partnership initiative or the Black Sea Synergy initiative have to be mentioned and will be examined further into details.

*Vis-à-vis* the “accession perspectives”, a lot of factors have to be taken into account. From the special relationship Ukraine entertains with Russia as a former Soviet Republic and member of the USSR, to the problem of democracy promotion in the country, as opposed to the strong desire from Ukrainian part to access EU membership, these perspectives have to be addressed thoroughly.

The structure of this study will follow a logical and chronological approach. But due to the intense interconnections between several issues (membership perspective, Russian influence, European Neighbourhood Policy, Eastern Partnership etc.), certain elements will be covered more than one time, trying to sneak into different aspects or contexts. This appraisal of EU-Ukraine relations will naturally start with the beginnings of the relationship (Chapter 1) ; moving on to the EU policies towards Eastern neighbours (Chapter 2) ; their reception in Ukraine (Chapter 3) ; and the future of EU-Ukraine relations enshrined in the forthcoming Association Agreement (Chapter 4).

All along our path towards an assessment of EU-Ukraine relations and their potential developments, attention will be paid to the most recent news and documents as the topic is in permanent evolution. But before going through the latest updates, an introduction to the Ukrainian historical background seems to be necessary.
The “official birth” of Ukraine took place on 24 August 1991 when the country’s independence was proclaimed, further confirmed by a referendum on 1st December 1991 and by the formal dissolution of the Soviet Union on 26 December of the same year. The opening of negotiations on a cooperation agreement with the EU started only a few months later in April 1992. The outcome of such negotiations was the first framework for EU-Ukraine relations, namely, the Partnership and Cooperation Agreement (PCA) which was signed on 14 June 1994 and entered into force four years later, on 1st March 1998. Ukraine’s membership aspirations, even though already expressed as from 1996, were then explicitly recognized on 11 June 1998 by the “Strategy of Ukraine’s integration to the EU” presidential decree.

Nonetheless, Ukraine’s future vis-à-vis the European Union had already been temporarily sealed in 1992. Indeed, Ukraine was put into the category of “New Independent States” (NIS), as opposed to the “Central and Eastern European Countries” (CEECs). The latter were offered so-called Europe Agreements opening their path towards EU membership with financial assistance under PHARE (Poland, Hungary Action Plan for Reform, as for the two first countries benefiting from it even if it was then extended to other CEECs), while the NIS were only offered PCAs under a specific programme of financial assistance: TACIS (Technical Assistance to the Commonwealth of Independent States). This turning point in EU-Ukraine relations has ‘largely determined the subsequent development of EU policy towards Ukraine and in a way shaped the course of Ukraine’s transformation’, and ‘contributed to shaping Ukraine’s ambiguous self-perception of itself as a country between the East and the West’.

The next highlight in Ukraine’s history was the year 2004. As pointed out by E. Korosteleva, ‘EU-Ukraine relations (…) were considerably accelerated by the events of the Orange Revolution, and the erection of a common border with the EU after the 2004 round of enlargement’. The November 2004 presidential election was considered by the EU to have fallen far short of international standards for democratic elections. The original run-off was annulled, and a revote was ordered by Ukraine’s Supreme Court. This “Orange Revolution” saw the rise of Viktor Yushchenko and Yulia Tymoshenko, pro-European leaders, and a new
opportunity for enhanced EU-Ukraine relations. The year 2004 was also marked by the launch of the European Neighbourhood Policy (ENP) and the adoption of the first Strategy Paper, to replace the former “EU Common Strategy on Ukraine” adopted at the Helsinki Summit in 1999. Again, it was a hard blow for Ukraine’s membership aspirations as the ENP was/is not about EU accession.

As for the most recent events, one should note the ongoing signature/ratification process of an Association Agreement (AA) with Ukraine. If Ukraine succeeds in resolving important internal problems, it should constitute the new framework for future EU-Ukraine relations. These internal problems will be assessed in the last chapter, after going on through the beginnings of EU-Ukraine relations and through the different policies having an impact on it.

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Chapter 1. Fragile beginnings : PCA and Common Strategy

This Chapter will be dedicated to the main characteristics of the current PCA and the beginnings of EU policy towards Ukraine through the so-called Common Strategy on Ukraine. The characteristics of the PCA will be detailed, taking into account the specific context in which the negotiations, signature, ratification, or entry into force took place. The subsequent Common Strategy, adopted in 1999 at the Helsinki European Council, was then supposed to further boost EU-Ukraine relations11.

Section 1. PCAs as basic framework for the NIS

The use of Partnership and Cooperation Agreements is generally associated to the so-called Newly Independent States (even though some Asian countries such as Vietnam or Philippines have recently signed comparable agreements12). As M. Maresceau points out, ‘PCAs reflect a particular moment and atmosphere in recent history and the concept of PCA itself is intimately connected with the phenomenon of disappearance of the USSR’13. There was thus a dividing line between Central and Eastern European Countries (CEECs) who were offered Europe Agreements, opening their path towards accession, while the former Soviet Republics (except the Baltic States) were only offered PCAs considered as less far-reaching agreements14. This dividing line was then reinforced by the adoption in June 1991 of a specific financial programme : TACIS (as opposed to PHARE dedicated to the CEECs)15. Besides the dividing line between CEECs and NIS as regards the types of agreement, another one is to find within the NIS themselves and the different PCAs that were signed. Indeed, PCAs concluded with Russia, Ukraine, Belarus and Moldova are more detailed than those concluded with the other NIS16. However, ‘all PCAs, whatever category they come in, provide for respect for democratic principles, human dignity and the principles of a market economy’17. That being said, let’s focus on the first category and especially on Ukraine.

11 Elena Korosteleva, (n 2) 84
13 Marc Maresceau, (n 4) 425
14 ibid 425 ff
15 Rosa Balfour, Human rights and democracy in EU foreign policy : the cases of Ukraine and Egypt (Routledge Advances in European Politics, Routledge, London, 2012) 51
16 Marc Maresceau, (n 4) 426
17 ibid 427
Ukraine was the first NIS to conclude a PCA with the then European Community, and its Member States (as it was a mixed agreement\textsuperscript{18}), on 14 June 1994. The first article can be read as follows:

**Article 1**

A partnership is hereby established between the Community and its Member States, of the one part, and Ukraine, of the other part. The **objectives** of this partnership are:

- to provide an appropriate framework for the **political dialogue** between the Parties allowing the development of close political relations,

- to promote trade and investment and harmonious **economic relations** between the Parties and so to foster their sustainable development,

- to provide a basis for **mutually advantageous** economic, social, financial, civil scientific technological and cultural cooperation,

- to support Ukrainian efforts to consolidate its **democracy** and to develop its economy and to complete the **transition into a market economy**.\textsuperscript{19}

Despite the appearance of dealing with a wide variety of areas, the PCA with Ukraine mainly emphasized the **economic and trade aspect**\textsuperscript{20}. It was indeed oriented towards a future integration of Ukraine into the World Trade Organization (WTO)\textsuperscript{21} and the granting of the “market economy status”, necessary to the establishment of a free trade area\textsuperscript{22}. In this regard, article 4 of the PCA contained ‘a so-called “evolutionary” clause through which the parties involved could decide to bring their economic cooperation onto a higher level through the creation of a Free Trade Area’\textsuperscript{23}. The Ukrainian accession to WTO was approved only in February 2008 and was directly followed by the launch of free trade agreement negotiations with the EU\textsuperscript{24}. The outcome of these negotiations will be part of the future AA.

Contrary to the economic and trade aspect, the **political dialogue** was not so developed in the PCA, as illustrated by the only four articles dedicated to it\textsuperscript{25}. As noted by R. Balfour, ‘despite the institutional meetings and summits (…), the political dialogue remained limited, especially in the field of human rights and democracy’\textsuperscript{26}.

\textsuperscript{18} Jérémy Fortier, ‘L’Ukraine après 20 ans de construction nationale, entre transformations internes et politiques de voisinage’ in Gilles Rouet and Peter Terem (eds), L’Ukraine, entre intégration et partenariat (Bruylant, 2010)

\textsuperscript{19} Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine [1998] OJ L 49/3, art 1

\textsuperscript{20} Jérémy Fortier, (n 18) 23

\textsuperscript{21} Rosa Balfour, (n 15) 52

\textsuperscript{22} PCA, art 4

\textsuperscript{23} Rosa Balfour, (n 15) 52


\textsuperscript{25} PCA, arts 6-9

\textsuperscript{26} Rosa Balfour, (n 15) 52
From a global point of view, several comments have to be made about this PCA. First, Ukraine was disappointed because its membership aspirations were not recognized by the agreement. The PCA was then interpreted as being an intermediate stage towards a more ambitious bilateral agreement. Secondly, Ukraine was afraid of a potential “Russia first” policy on the side of the EU which proved to be justified as, considering Ukrainian wish to become candidate to accession (contrary to Russia), the two countries were offered the same kind of agreement, Ukraine’s one even being ‘slightly less generous than the PCA negotiated with Russia’. Finally, the PCA entered into force only in 1998, four years after being signed. Such a long period for ratification illustrates the then ‘bulkiness and unhandiness of the institutional and legal mechanisms of the EU but also (...) absence of development of relations with the newly established state among national priorities in a number of Member States’.

The setting up of a Common Strategy on Ukraine was then meant to reinforce EU-Ukraine relations.

Section 2. The contribution of the Common Strategy

The Common Strategy on Ukraine was adopted at the European Council of Helsinki, in 1999. But during this same European Council, Turkey was recognized as a potential candidate to EU membership while Ukraine was set aside. Although the Common Strategy on Ukraine contained an explicit but short reference to support for strengthening cooperation between the EU and Ukraine “within the context of EU enlargement” (...), there was little (...) to indicate whether Ukraine’s European expectations had been considered seriously. According to J. Fortier, Ukraine’s European vocation was at least recognized, Ukraine being potentially eligible to candidacy.

At that time, this Common Strategy was a new instrument deriving from the Common and Foreign Security Policy. Despite being a “common” policy, the Member States did not reach any consensus on Ukraine’s importance and place in/as a foreign policy issue. The new document itself “was neither “common” nor “strategic”, sending out ambiguous signals and lacking concrete objectives and benchmarks”. Adopted five years after the signing of the PCA, it basically confirmed the options laid down in the latter, without any real added value. The fact is that the Baltic States had just submitted their applications for EU membership.

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27 Marc Maresceau, (n 4) 440
28 Rosa Balfour, (n 15) 51
29 ibid 51; Anatoliy Klugashov, ‘Ukraine’s Ticket to Europe : Who Sells, Where to Buy?’ in Gilles Rouet and Peter Terem (eds), L’Ukraine, entre intégration et partenariat (Bruylant, 2010) 341
30 Anatoliy Klugashov, (n 29) 340
31 Rosa Balfour, (n 15) 53
32 Marc Maresceau, (n 4) 439
33 Jérémy Fortier, (n 18) 24
34 ibid 24
35 Rosa Balfour, (n 15) 51-52
36 Elena Korosteleva, (n 2) 84
37 Marc Maresceau, (n 4) 439
thereby putting some pressure on the EU vis-à-vis Russia and slowing down the relations with Ukraine.\(^{38}\)

Obviously, the beginnings of EU-Ukraine relations can be described as fragile. This fragility can be explained by the international situation at the time. The collapse of the USSR raised new opportunities for the former Soviet Republics but the Russian influence was still strong and shaped this cautious approach of the EU. Combined with a total absence of recognition of Ukraine’s views towards Europe, it probably and partly explains the lack of concrete implementation by Ukrainian authorities.

\(^{38}\) Rosa Balfour, (n 15) 55
Chapter 2. **ENP and EaP: assessment of the leading policies in the East**

Besides the current PCA, Ukraine and EU neighbouring countries are targeted by several EU policies and initiatives. Three will be retained here: the European Neighbourhood Policy (ENP), the Eastern Partnership (EaP), and (to a lesser extent) the Black Sea Synergy (BSS). All these instruments are interconnected with the bilateral agreement concluded with Ukraine as the ENP ‘builds upon existing agreements between the EU and the partner in question: Partnership and Cooperation Agreements (PCA) or Association Agreements (AA)’\(^3^9\). But this interconnection is also reflected between those instruments themselves.

*The ENP, which is chiefly a bilateral policy between the EU and each partner country, is further enriched with regional and multilateral co-operation initiatives: the Eastern Partnership (launched in Prague in May 2009), the Union for the Mediterranean (the Euro-Mediterranean Partnership, formerly known as the Barcelona Process, re-launched in Paris in July 2008), and the Black Sea Synergy (launched in Kiev in February 2008).*\(^4^0\)

The purpose of this Chapter is to sketch out the aims, basic principles and coordination of these policies, from a general point of view. This global assessment will mainly focus on the ENP and EaP, reviewing key principles such as conditionality or differentiation. But the first step is to introduce these policies, their origins and goals.

### Section 1. Goals of the policies

During the last decade, the overall EU foreign policy experienced a fundamental evolution due to the enlargement process. In seek of new methods to deal with this context, the EU tried to diversify its instruments and policies. One of the key elements was the launch of the European Neighbourhood Policy, further complemented by more specific initiatives, including the Eastern Partnership.

The **first step**, the ENP, was meant to be an answer for the new EU neighbouring countries after the 2004 “big bang” enlargement that had ‘affected the EU’s way of thinking regarding its frontiers and role vis-à-vis its external environment’\(^4^1\). Its premises were first outlined in 2003 in the well-known Communication of the


\(^4^1\) Elena Korosteleva, (n 2) 1
Commission on a “Wider Europe”, followed by the first ENP Strategy Paper in 2004. As declared in the ENP Strategy Paper:

The objective of the ENP is to share the benefits of the EU’s 2004 enlargement with neighbouring countries in strengthening stability, security and well-being for all concerned. It is designed to prevent the emergence of new dividing lines between the enlarged EU and its neighbours and to offer them the chance to participate in various EU activities, through greater political, security, economic and cultural co-operation.

The ENP is a way to constitute a “ring of friends” around the EU by building partnerships around common values and interests, but its final goal remains ambiguous: is it a buffer zone between the EU and Russia? Is it a step towards accession? Or is it merely trying to achieve stability, security and prosperity through economic integration? Whatever the answer, the ENP is built upon shared values and joint ownership, prioritizing conditionality to foster the reforms and differentiating the partner countries by setting up “country-specific and “tailor-made” Action Plans” (establishing the priorities for each partner).

The second step was a kind of a logical one. As opposed to the Barcelona Process (now Union for the Mediterranean) covering Southern Mediterranean countries, the EaP was launched by the “Prague Joint Declaration” in May 2009 to cover Ukraine, Belarus, Moldova and countries from the Southern Caucasus (Georgia, Armenia and Azerbaijan). The objective of this regional differentiation (more specific policies for different groups of countries) was essentially to reinvigorate the ENP in the East.

E. Korosteleva briefly presents the EaP as follows:

The new initiative (...) offers the whole range of original projects, tools and resources. It has innovatively launched a dual-track approach to the region, which envisages both deepening EU’s bilateral relations with the interested parties, and also, through a multilateral dimension, developing new relations with those that hitherto lacked structured relations with the EU (...) and one another.

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44 Ibid 3
46 Elena Korosteleva, (n 2) 4-5
47 Peter Van Elsuwege, (n 5) 67
Deepening the existent bilateral relations, the added value of the EaP is obviously its multilateral track aiming at creating “a forum for consultation where the partners come together on a regular basis to discuss a number of issues of mutual interest”\(^{52}\). These issues of mutual interest are covered under four Thematic Platforms: democracy, good governance and stability; economic integration and convergence with EU policies; energy security; and contacts between people\(^ {53}\). Again, the importance of differentiation is emphasized as “in this context, the ENP further was developed into a “multi-layered” policy combining a common methodology for all neighbouring countries with more specific regional and sub-regional strategies\(^ {54}\). But in the end, does the EaP present a real added value? Except the innovative multilateral approach, the EaP is often described as ‘strikingly similar to the original ENP’, as an ‘ENP spin-off’ or, more poetically, as ‘new wine in old wineskins’\(^ {55}\).

Nonetheless, from the above descriptions, a few recurrent concepts emerged. “Partnership” build upon “shared values” and “joint ownership”, “conditionality” and “differentiation”, these principles are about to be explained further into details. The analyze will also entail a critical approach of them, as well as an assessment of the framework of EU policies towards the Eastern partners. The following developments will regularly pass from one policy to the other without specifying as they are closely interconnected (the EaP deepening the ENP in the East).

Section 2. Partnership based on Shared values and Joint ownership

What is offered to ENP and EaP partners is a “privileged relationship” to bring them closer to the European Union. This relationship is supposed to move beyond cooperation to a significant degree of integration, upgrading the scope and intensity of political cooperation, and encouraging reforms towards more convergence between the EU and partner countries in several areas\(^ {56}\). The principles of shared values and

\(^{52}\) Peter Van Elsuwege, ‘The Eastern Partnership: Characteristics and Challenges’ [2010] Studia Universitatis Petru Maior (Series Historia) 206
\(^{54}\) Erwan Lannon and Peter Van Elsuwege, (n 50) 288
\(^{55}\) Elena Korosteleva, (n 2) 8; Oleksander Stegniy, ‘Ukraine and the Eastern Partnership: “Lost in Translation”? in Elena Korosteleva (ed), Eastern Partnership Initiative: A New Opportunity for the Neighbours? (Routledge, 2012) 57; Elena Korosteleva, (n 51) 4
joint ownership are recurrent within the framework of the ENP and the EaP\(^{57}\) and essential to create the so-called “ring of friends” around the EU\(^{58}\).

As regards the issue of “shared values”, they are commonly known as respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights\(^{59}\). But a question arises from the assumption that the relations envisaged under the ENP and EaP are based on shared values\(^{60}\): whose values are they? The answer to that question seems obvious when reading ENP official documents: “The Union is founded on the values of (…)” or “These values are common to the Member States (…)”\(^{61}\). Such an optic has been confirmed by the institutionalization of the Union’s values by article 2 TEU introduced by the Lisbon Treaty. ENP partners therefore have to adopt or adapt to those European standards (it is not a prerequisite but rather a “by-product of a sustainable cooperation”\(^{62}\)). Noteworthy, the EU’s record in democracy promotion in Eastern partner countries is strongly mitigated\(^{63}\).

Concerning the “joint ownership”, it refers to the outcome and the actual process of building this privileged relationship\(^{64}\) in the sense that ‘the EU does not seek to impose priorities or conditions on its partners’\(^{65}\). The idea is thus to avoid unilateralism from one of the parties, imposing its desiderata to the other. This principle seems to be paradoxical though, since the EU needs a “carrot” to make its partners move forward in the costly reforms and implementations necessary to fulfil ENP objectives\(^{66}\). The assumption that the EU and ENP partners are “responsive to the needs and preferences of each other in an endeavour to achieve mutual goals”\(^{67}\) seems a bit paradoxical.

On the overall, the “partnership” appears more like a “negotiated compliance”. The “shared values” are indeed imposed by the EU, while the “joint ownership” is “held hostage” by conditionality.


\(^{58}\) Elena Korosteleva, (n 2) 29 ff


\(^{60}\) Elena Korosteleva, (n 2) 4


\(^{62}\) Elena Korosteleva, (n 2) 21


\(^{64}\) Elena Korosteleva, (n 2) 32


\(^{66}\) Elena Korosteleva, (n 2) 33

\(^{67}\) ibid 22
Section 3. Conditionality

The paradox between joint ownership and the EU’s “carrot” to foster the reforms in the partner countries has just been evoked. This “carrot” is better known under the concepts of conditionality and incentives. As stated by P. Van Elsuwege:

*The use of (pre-)conditions, incentives and other instruments to ensure that a third country’s political, economic and legal development converges with EU values and norms is a key characteristic feature of the EU’s external relations. Therefore, it is not surprising that the concept of conditionality is at the core of the ENP.*

But conditionality is also present in the EaP through different incentives. These are mainly proposed through the promotion of new framework agreements which, in themselves, are already an incentive as upgrading or deepening the relations with partner countries (the start of negotiations, the signature and the ratification can be useful levers for the EU as will be illustrated later in reference to the Ukrainian case). These new Association Agreements will: deepen economic integration with the EU by establishing Deep and Comprehensive Free Trade Areas (DCFTAs); promote mobility in a secure environment by offering ”Mobility and Security” pacts; strengthen the energy security of the EU and of the partners with regard to long-term energy supply and transit; and support economic and social development. The most powerful EU incentive has however been irreversibly removed from the agenda. Indeed, partner countries are deprived of any prospect of EU membership within the framework of the ENP and EaP.

*The incentive for reform created by the prospect of membership has proved to be strong (...) [but] the aim of the new Neighbourhood Policy is (...) to provide a framework for the development of a new relationship which would not, in the medium-term, include a perspective of membership or a role in the Union’s institutions.*

Since these policies lack accession perspective, the economic incentives are the best cards in EU’s hands. After all, economic integration is at the roots of the EU itself. These DCFTAs (to be further analyzed when dealing with Ukrainian AA) are often compared to the European Economic Area, negotiated in 1989-1993 with the EFTA countries, as, once established with the neighbouring countries, they will form a kind of “Neighbourhood Economic Community”. Besides the “economic carrot”

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68 Peter Van Elsuwege, (n 5) 63
presented by the ENP as a stake in the EU’s Internal Market, ‘the prospect of visa free travel (...) is [also] a particularly strong incentive’.73

On the overall, one element, not mentioned yet, is of the utmost importance. All these (titanic) reforms are of course fostered by abstract promises but they are also conducted under EU financial assistance. The previous TACIS programme has now been replaced by the European Neighbourhood and Partnership Instrument (ENPI)74, recently complemented by the Eastern Partnership Integration and Cooperation programme (EaPIC) adopted on 26 June 201275. This new instrument EaPIC ‘will focus on promoting democratic transformation and institution building, sustainable and inclusive growth, and increased confidence building measures’.76 But the funding preference still goes to Southern Mediterranean partners as illustrated by the implicit agreement allocating two thirds of the ENP budget to these countries while the remaining third is dedicated to the Eastern neighbours77. The explanation for such an allocation is that all Member States have their preference, e.g. France, Italy or Spain supporting a deeper involvement in the South while Poland and Finland are more interested in developing relations with the East.

Nonetheless, a general comment about the conditionality as key characteristic of the ENP and EaP is that these policies lack appropriate incentives to motivate the partners to action78. In addition, all ENP or EaP partners do not have the same expectations towards the EU but the latter turned this varied context into a strong incentive, into a tool serving conditionality.

*The perception of differentiation as an incentive is based on the assumption that competition between countries, which are part of a common policy framework, enhances the effectiveness of the EU’s conditionality.*79
Section 4. Differentiation

Differentiation, in the EU context, consists in taking into account the differences between the partners in order to shape the mutual relations with the EU. Differentiation criteria range from geographical location to legal or political context in each partner state. For instance, the creation of the EaP amounts to a use of differentiation since the Southern Mediterranean countries are not “European” countries while some EaP partners could apply for EU membership. And further, within EaP partners, ‘the six republics are interested in intensifying their relations with EU and benefitting from the political and financial support of EU, even if each of them has its own aims’.

This concept of differentiation is linked to conditionality since each partner can be offered different incentives or more financial aid according to the previously enounced criteria. One of the ENP principles is “more for more”. ‘The more a partner country makes progress, the more support it will receive from the EU.’ Such a way of thinking led the EU to negotiate enhanced AAs with “front-runners” while other EaP partners only are interested by certain incentives or simply wish to progress slower.

But even if differentiating between the partners, ‘a key weakness of the ENP seems the impossibility to offer an attractive perspective to countries that are not necessarily interested in closer relations with the EU’. Moreover, even if differentiation can be used as a powerful incentive, it can also have perverse effects outside the bilateral framework, especially as regards the coherence of the varied policies.

Section 5. Coherence and coordination

The first attempt to reinforce EU policies in the East was the Black Sea Synergy initiative (BSS), launched by a Joint Statement in February 2008, after the “Colour revolutions” and the 2007 enlargement. As pointed out by H. Duhot, the BSS ‘seeks both to increase the coherence of EU policies and to provide a complementary multilateral dimension to the European Neighbourhood Policy (ENP) in close

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80 ibid 64
84 Peter Van Elsuwege, (n 49) 142
association with Turkey and Russia. The EU was already involved in the Black Sea region through the ENP and bilateral agreements with several countries but it lacked a multilateral approach. The BSS was thus launched to provide further support for a continuous dialogue, focussed on energy security as it is an effervescent sector in this region. In the end, even if it was a first step towards more coherence of bilateral relations in the region under the ENP umbrella, the EU’s inability to define its clear ambition affected the BSS’ efficiency. This inefficiency was further enhanced by the superposition of the EaP.

The problem of these two initiatives is that they lack a coherent approach. Indeed, even if their aims, methods and geographical scales are different, they basically deal with similar problems and challenges. In other words, there is ‘an obvious overlap regarding the issues and sectors for regional cooperation and legal approximation’. The multiplication of initiatives towards the East, even if they were set up to complement the global ENP, is not necessarily the best solution. It could represent a risk for the ENP itself. So ‘it is crucial to avoid the ENP disintegrating into a bundle of competing policies, each supported by a small group of Member States’.

On the overall, EU policies towards Eastern neighbours have been reinforced during the last decade, contrasting with the fragile beginnings previously noticed as regards Ukraine but also as regards the recently “appointed” EaP partners. However, the multiplication of initiatives appears to lack coherence and coordination. Besides, many other obstacles or challenges need to be overtaken. The EU has to search for better incentives, what is closely linked to the call for deeper differentiation between the partners, especially the more ambitious ones. The latter challenge is of particular importance due to the strong expectations of neighbouring countries such as Ukraine, whose case is about to be further examined.

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87 Ana Maria Morgado Dos Santos, ‘How to Rebalance the EU-Russia Relationship : Potential and Limits’ [2010] European Foreign Affairs Review 313
88 Hubert Duhot, (n 86) 344
89 Erwan Lannon and Peter Van Elsuwege, (n 50) 314
90 Peter Van Elsuwege, (n 49) 142
Chapter 3. **Implementation in Ukraine**

This Chapter will be dedicated to one of the front-runners in the framework of the ENP/EaP. Ukraine and the EU have known fragile beginnings illustrated by the adoption of an “unambitious” PCA, further complemented by a cautious Common Strategy. The awakening of EU-Ukraine relations occurred with the so-called “Orange Revolution” in 2004, following the “big bang” enlargement. The shift of political orientation towards “EU-friendly” leaders (principally incarnated by Viktor Yushchenko and Yulia Tymoshenko) came right in time, coinciding with the launch of the ENP and raising mutual expectancies. But what is today’s state of play? Did the expected changes occur on both sides?

The first Section will go through the circumstances that prevailed between the EU and Ukraine after the ENP was launched, analyzing what turned to be right or wrong on both sides. The second Section will then examine if differentiation could have been a solution as regards Ukrainian situation at the time, apprehending additional internal (European aspirations and democratic situation) and external factors (Russian influence). Nevertheless, all concrete discussions about the forthcoming AA will be kept for the last Chapter, including detailed assessment of the agreement’s content etc.

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Section 1. A problem of incentives but not solely

*At first glance, developments in Ukraine, considered a test case of the ENP in the East, over the past years seems to suggest that the ENP has by and large failed.*

I. Solonenko’s affirmation is partially true because, even if the results are far from what was expected, important progress has been achieved in certain specific areas of cooperation. But, before going through these positive achievements, one should focus on the reasons of such a “failure”. Indeed, there seems to be a shared responsibility of the parties. It is noteworthy that the reasons mentioned hereafter are attributed to the EU or to Ukraine, but there is no such thing as an exclusive responsibility for one or the other.

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§ 1. On the EU’s side

One should retain four main problems on EU’s side: inadequate incentives; unilaterality; a lack of monitoring/benchmarking; the unclear ultimate goal of the ENP.

The incentives proposed to Ukraine in line with the ENP and the EaP probably constituted (and still constitute in a certain way) the major problem in EU-Ukraine relations. The obvious reason is because Ukraine’s accession aspirations have always been, if not neglected, at least stifled. Even the EaP which represented a new hope for Ukraine’s membership prospect turned out to be devoid of any concession on eventual accession, perpetuating the policy of “a door neither closed, nor open”\(^92\). Conditionality should work if the benefits of EU rewards exceed the domestic adoption costs\(^93\). Bearing in mind this principle, the other incentives that were offered have to be examined. The economic incentive of integration with the EU Internal Market is probably a strong one as EU is the main economic partner of Ukraine\(^94\). The prospect of visa-free travel is also a strong incentive but they were both offered to Ukraine before the launch of the EaP\(^95\), and they fall short of the Ukrainian expectations, given their already known EU aspirations\(^96\). Yet another recurrent criticism concerning conditionality was on the agenda. These incentives were too distant and too vague\(^97\). As pointed out by K. Wolczuk,

\[(...)\text{the pursuit of the Free Trade Area in the short-term, and inclusion in the EU’s single market in the longer term, does not seem to be able to sway the Ukrainian elite and society in the same way as the accession process in East-Central Europe and thereby overcome domestic barriers to reforms (...)}.\(^98\]

K. Wolczuk summarizes three important aspects in only one sentence: the lack of accession perspective; the mismatch between long-term incentives and short-term profits (pursued by Ukrainian political and economic elite); and the costs-benefits ratio of these incentives.

The second claim is about unilaterality. Already evoked as regards the principles of “joint ownership” and “shared values” enshrined in the ENP and EaP, this characteristic has been repeated in the specific framework of EU-Ukraine relations under these policies. The ENP was conceived as admitting no reciprocity, Ukraine transferring parts of the acquis, directed by the EU whose Internal Market remained closed while it was the best ENP incentive\(^99\). Even if the EaP was further seen as a way to boost the relations, the policy has been applied ‘unilaterally and

\(^{92}\)Rosa Balfour, (n 15) 60, 62
\(^{93}\)Frank Schimmelfennig and Ulrich Sedelmeier, ‘Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe’ [2004] Journal of European Public Policy 671
\(^{94}\)Teodor Lucian Moga and Alexandru Cristian Fotea, (n 71) 82
\(^{95}\)Iryna Solonenko, (n 83) 125; Oleksander Stegniy, (n 55) 57
\(^{97}\)Iryna Solonenko, (n 91) 351
\(^{98}\)Kataryna Wolczuk, (n 96) 106
\(^{99}\)Jérémy Fortier, (n 18) 32
without due consultations with Ukraine’, the latter ‘accepting as a fait accompli all the initiatives proposed by the EU’ since the Orange Revolution. Once more, it reflects the Euro-centric vision of the partnership.

Thirdly, there is a noticeable lack of monitoring/benchmarking. The Action Plan launched under the ENP established several requirements which remained ‘poorly understood and known’. In other words, Ukrainian authorities were wondering what was expected from them for the implementation of these priorities. Furthermore the Action Plan, besides listing very vague objectives, was not even providing any prioritization or reference to a timeframe for their achievement. In addition, the monitoring of this instrument was neither sufficiently detailed nor critical, and its results were not enough echoed in Ukraine. Combined with the unpopularity of the ENP in Ukraine, the ENP progress reports ‘are not taken seriously by the government, political parties, and the press, and as a result, citizens do not take them seriously either’. This latter problem is further examined under Ukrainian “weak socialization”.

Finally, the unclear ultimate goal of the ENP played its role in the bad record of Ukrainian implementation. Initially conceived as a means to enhance stagnating relations under the PCA, the final goal of the ENP became gradually more and more obscure. ‘The prospect of access to the market at a future time and to an unspecified extent cast doubts on the credibility of the EU’. While some perceives the ENP’s final aim as the creation of a buffer zone of security or “ring of friends”, Ukraine does not know what is really planned for further stages.

§ 2. On the Ukrainian side

One should retain five issues respecting Ukrainian lack of implementation: disappointment; political instability; multi-vectored external policy; weak socialization; institutional incapacity.

The first reason for such a record is not complicated: disappointment. ‘It is difficult for the pro-European reformers to sell the ENP within Ukraine in the light of their own disappointment with the policy’. Ukraine had high expectations regarding the ENP and EaP but the frustration was at the rendez-vous in both cases as none of these policies entailed real added value. Indeed, as regards the latter,

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100 Oleksander Stegniy, (n 55) 56, 59
101 Laure Delcour and Elsa Tulmets, ‘Pioneer Europe? The ENP as a test case for EU’s Foreign Policy’ [2009] European Foreign Affairs Review 517
102 Kataryna Wolczuk, (n 96) 110
103 Iryna Solonenko, (n 3) 72
104 ibid 72
106 Kataryna Wolczuk, (n 96) 110
107 Oleksander Stegniy, (n 55) 65
108 Kataryna Wolczuk, (n 96) 106
‘some elements of the EaP’s bilateral dimension are largely modelled on Ukraine-EU relations’, the only plus being the multilateral track\textsuperscript{109}.

Secondly, the political instability inside Ukraine played an evident role. After the Orange Revolution, political leaders started playing “musical chairs”. Between pro-Russian (led by Viktor Yanukovych) and pro-European (represented by Viktor Yushchenko and Yulia Tymoshenko), the presidency and the key executive posts regularly changed hands. These constant shifts of powers resulted in the inability to “unite the political forces declaring their adherence to the European course”\textsuperscript{110}.

Thirdly, since the return of Viktor Yanukovych at the presidency, this wild political arena has to be combined with his “multi-vector external policy”. Considered as a pro-Russian, Yanukovych declared that European integration remained a priority on Ukraine’s foreign policy agenda\textsuperscript{111}. Nonetheless, E. Korosteleva states that ‘under the new leadership, Ukraine has now moved on to adopt a more pragmatic and balanced approach to its great neighbours, (…) pursuing a course of “declaratory Europeanization” and prioritizing short-term strategic alliances over the long-term principled allegiances’\textsuperscript{112}.

Fourthly, the “weak socialization” surrounding the ENP and EaP in Ukraine was also of importance. As described by I. Solonenko, “socialization, in the long term results in the penetration of EU norms and values”\textsuperscript{113}. She further adds that ‘such “social learning” implies that domestic actors perceive EU rules and norms as legitimate and appropriate’. With respect to the Ukrainian situation A. Klugashov highlights a “flagrant lack of efforts, of a dedicated information policy aimed at creation of clear perception of the Ukrainian citizens on the advantages and challenges related to the preparation of the country to accession to the EU”\textsuperscript{114}. But EU shares responsibility in this issue\textsuperscript{115}, even if the situation has been developed under the EaP fourth Platform of the multilateral track, focussing on contacts between people\textsuperscript{116}.

Finally, one should mention the Ukrainian institutional incapacity. The Ukrainian institutional framework for dealing with EU related matters is “more” than one could describe as decentralised\textsuperscript{117}. ‘Structures responsible for European integration have been created in all branches and at all levels, without any appropriate coordination scheme’ and Ukraine ‘failed to identify a lead institution in the approximation process’\textsuperscript{118}.

\textsuperscript{109} Oleksander Stegni, (n55) 57
\textsuperscript{110} Anatoliy Klugashov, (n 29) 359
\textsuperscript{111} Simion Costea, (n 81) 264
\textsuperscript{112} Elena Korosteleva, (n 2) 102
\textsuperscript{113} Iryna Solonenko, (n 3) 73
\textsuperscript{114} Anatoliy Klugashov, (n 29) 348
\textsuperscript{115} Iryna Solonenko, (n 3) 74
\textsuperscript{116} Simion Costea, (n 81) 276
\textsuperscript{117} Kataryna Wolczuk, (n 96) 110
\textsuperscript{118} Laure Delcour and Elsa Tulmets, (n 101) 517
§ 3. Positive achievements

The EaP countries with European aspirations, including Ukraine or Moldova, are usually described as frontrunners in the implementation process, although their results are still open to criticism. As for Ukraine, it is from far the most advanced state with respect to the new generation of AAs (the negotiations have been concluded, the signature being suspended for reasons developed in the last Chapter). To start the negotiations on the DCFTA, Ukraine has been granted the “market economy status” in 2005, followed by its accession to the WTO in 2008. Ukraine is by far the largest beneficiary of the ENPI and will also benefit from the new Comprehensive Institution Building programme (CIB) meant to support the countries to meet AA commitments. But even before that, Ukraine has been ‘a flagship country of the ENP since the very beginning’, having ‘the longest record of cooperation with the EU in the field of FSJ [Freedom, Security and Justice], dating back to 2002 when the first EU-Ukraine Action Plan was adopted’. A lot was also achieved in the field of visa-free regime (visa facilitation, readmission agreements, Action Plan on Visa Liberalization) or energy (Ukraine amended its gas market legislation in order to become a member of the European Energy Community). Ukraine was offered instruments such as TAIEX (Technical Assistance and Information Exchange instrument) or Twinning (technical assistance programme to develop modern and efficient administrations) as early as 2005 although they were previously used only for accession countries.

Here are thus some of the greatest achievements of the EU-Ukraine relations. However, as stated above, the picture is far from idyllic. A lot still needs to be done. Applying the “more for more” principle, or rather its “less for less” perspective, ‘the EU’s assistance to Ukraine seems to have retreated, putting more conditionality in place to ensure Ukraine’s progress in the implementation of its commitments’. Now facing this lack of implementation and the several supposed reasons for it, previously mentioned, one question arises: would the situation be better today if EU had applied stronger differentiation to its relations with Ukraine?

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119 Iryna Solonenko and Natalia Shapovalova, (n 73) 3
120 Kristi Raik, (n 72) 3
122 Rosa Balfour, (n 15) 60
123 Iryna Solonenko, (n 83) 121
124 Iryna Solonenko and Natalia Shapovalova, (n 73) 4
125 Iryna Solonenko, (n 83) 121
126 Elena Korosteleva, (n 2) 94
Section 2. More differentiation as a solution?

Speaking about differentiation, it was previously pointed out that ‘a key weakness of the ENP seems the impossibility to offer an attractive perspective to countries that are not necessarily interested in closer relations with the EU’\(^{127}\). The sentence could be reformulated taking into account the point of view of partner states such as Ukraine or Moldova: a key weakness of the ENP is its impossibility to offer an attractive perspective for those countries that have European aspirations. Indeed, the problem is that the ENP ‘lacks diversification, since all neighbouring countries are placed in the same “basket”’, the same comment being valid for the EaP as well, as ‘it groups together Eastern countries of varied levels of development, of progress in adopting European standards and of ambitions regarding the EU’\(^{128}\).

Focussing on Ukraine’s situation and bearing in mind the reasons for its bad record in implementing EU policies, which factors should or do have an impact on differentiation? Three are being analyzed hereafter.

§ 1. Ukraine’s membership aspirations

Within the ENP/EaP, a country’s European aspirations is one of the key factors that should have an impact on differentiation. Nevertheless, the prospect of membership was irreversibly removed from the ENP agenda in 2004\(^{129}\). Ukraine had already started the negotiations on the AA before the launch of the EaP, thinking it was doing a symbolic step towards a future accession. But the EaP kind of neutralized this hope as AAs were about to be offered to all EaP partners, whatever their ambitions towards the EU\(^{130}\). There are ‘no guarantees regarding the future political orientation of the AAs to be concluded with the EU’s Eastern partners’, and the ‘changing (geo-)political circumstances will determine whether those agreements could develop into a kind of pre-accession instruments or, rather, remain alternatives for accession’\(^{131}\). E. Lannon and P. Van Elsuwege thereby present this factor as a challenge or an opportunity for the EaP\(^{132}\). Undoubtedly a challenge if the EU persists on this path, but an opportunity if it wants to boost these countries, enforcing the differentiation principle.

\(^{127}\) Peter Van Elsuwege, (n 49) 142
\(^{128}\) Oleksander Stegniy, (n 55) 64
\(^{129}\) Elena Korosteleva, (n 2) 4
\(^{130}\) Anatoliy Klugashov, (n 29) 360
\(^{131}\) Erwan Lannon and Peter Van Elsuwege, (n 50) 319
\(^{132}\) Erwan Lannon and Peter Van Elsuwege, (n 50) 310 ff
§ 2. EU, Ukraine and Russia: a tricky triangle

It was previously highlighted that Ukraine has often practiced a multi-vectored foreign policy. The goal of such a policy is to maintain a balance between EU and Russia, while extracting as many benefits as possible from both sides. Although the current president, Viktor Yanukovych, declared that closer integration with the EU was still Ukraine’s priority, the situation has changed. Russian influence has been increasing in the past few years, so that

Russia’s pragmatic politics of short-term benefits and threats, reinforced further by its traditional presence and growing leverage over the country, evidently outmanoeuvres the EU’s ambiguous framework of partnership premised on long-term diffuse reciprocity and limited benefits for the immediate future.

Speaking of the “traditional presence” of Russia in Ukraine, a few words need to be said about it. Former Soviet Republics as Ukraine are sometimes considered as “Russia’s backyard”. Indeed, Russia has always tried to keep them in its sphere of influence, first launching the Commonwealth of Independent States. But Ukraine implicitly rejected the Russian orientation, determined to deepen its relations with the West. Later, in the years 2000s, Russia became more and more assertive, after the rise of Vladimir Putin who used Ukrainian energy dependence to restore Russia’s influence in the country. The project of a Single Economic Space settled by Russia was further seen as a real obstacle on Ukraine’s way towards European integration.

Then, the “big bang” enlargement and the Orange Revolution placed the EU back on the track, Russia again using economic pressure and political threats to maintain its influence in the “deviant” states (Ukraine and Georgia). The enlargement brought EU at the door of Russia and therefore complexified their relations. The subsequent EU policies (ENP and EaP) were then perceived as an attempt to counteract Russia’s special relations with the CIS countries. But the EU tried to diminish their impact, sending “more or less clear signals depriving Ukraine of a membership perspective”. At the time, not all the Member States shared the aim of keeping Ukraine outside Russia’s orbit, France and Germany leading. Those two countries saw their dependence on Russian energy as a

133 Elena Korosteleva, (n 2) 95
134 ibid 100
136 Rosa Balfour, (n 15) 56
138 Sabine Fischer, (n 135) 135
139 Natalia Zaslavskaja, ‘The EU’s Eastern Enlargement and the Prospects of Political Cooperation with Russia’ in Gilles Rouet and Peter Terem (eds), Elargissement et Politique européenne de voisinage (Bruylant, 2008) 133
140 Hannes Adomett, ‘Russia, ENP Competitor’ in Erwan Lannon (ed), The European Neighbourhood Policy’s Challenges (P.I.E. Peter Lang, New York, 2012) 395
141 Sabine Fischer, (n 135) 133
142 Rosa Balfour,(n 15) 137 ; Simion Costea, (n 81) 269
strong argument for not interfering with Russia’s sensitivities. EU and Member States’ global attitude towards Russia-Ukraine relations should thus be qualified as cautious, ‘prefer[ring] not to provoke Russia in its perceived sphere of influence in order not to jeopardize other aspects of their relationship to the Russian Federation, such as economic matters’. The EU thereby insisted on Ukraine’s “right” not to choose between the two giants.

The conclusion seems to be that, trying to develop its relations with Ukraine, the EU always keeps an eye on Russia. In other words, the EU is often perceived as ‘viewing Kiev through the prism of its relations with Russia’. This factor has obviously an impact on discussions about an eventual increased differentiation towards Ukraine.

§ 3. Internal situation

What will be here the focus about the internal Ukrainian situation is the apparent problem of democracy. After the Orange Revolution, all eyes were looking at Ukraine with hope, after the EU strongly supported the internal struggle for a democratic election. The recently appointed Member States were pushing for rewarding Ukraine’s democratic achievement with a membership perspective, also advocated by the European Parliament. Unfortunately, this “democratic euphoria” did not last long. The ENP and EaP, trying to promote democracy and European values in general, faced systematic concern in the recent years as regards free and fair elections or free and pluralist media. Developing economic and political relations in the framework of the ENP/EaP, the EU uses the principle of conditionality, as stated above. In this context, the principle entails for the EU the need to defend its credibility by taking sanctions if those “shared values” are not respected. That is what is currently happening with the suspension of the AA’s adoption process (this particular situation will be examined in the last Chapter). But on the overall, what is to retain here is that the internal democratic situation in Ukraine has to be taken into account when envisaging more differentiation.

143 Rosa Balfour, (n 15) 61
144 Susan Stewart, ‘The interplay of domestic contexts and external democracy promotion: lessons from Eastern Europe and the South Caucasus’ in Susan Stewart (ed), Democracy promotion and the ‘Colour revolutions’ (Routledge, 2012) 169
147 Natalia Shapovalova, (n 105) 62 ; Susan Stewart, (n 63) 611
149 Susan Stewart, (n 63) 611
150 Tamara Gella, ‘The Relations of Russia with the European Union and the CIS Countries and the European Neighbourhood Policy’ in Gilles Rouet and Peter Terem (eds), Elargissement et Politique européenne de voisinage (Bruylant, 2008) 137
Section 3. Accession perspectives: missed opportunities?

Ukraine has for long declared its aspirations towards the EU. The steps taken in this sense from the very beginning and the EU correspondent answers leave a bitter taste in Ukrainian mouths. On several occasions, the EU could have foster Ukrainian efforts on the path for integration by increasing differentiation and especially by recognizing Ukrainian hopes for accession. But can we speak of missed opportunities? Or was it merely cold realism? Should have the Union dangle the carrot of membership prospect? Or should have Ukraine made some more efforts to earn such a reward? Two specific events could be mentioned as missed opportunities.

The first one is the separation between Central and Eastern European Countries (CEECs) and New Independent States (NIS) in EU policies after the collapse of the USSR. As already said, this decision shaped the course of Ukraine’s transformation, contributing to its ambiguous self-perception as caught between two giants (EU and Russia) and probably to its recent multi-vectored foreign policy. However, taking into account the perspective of what was to be called the “big bang” enlargement, the EU had to make sure whether it had geopolitical ambitions supported by an adequate ability to proceed with enlargement. Engaging towards unexpected consequences, and bearing in mind the Russian factor, the EU probably preferred to limit the impact by setting up a new dividing line, isolating the NIS. From this decision, ‘the 1990s saw the deepening of the divergence between the two groups of countries in terms of political and economic transformation’.

The second is of course the so-called Orange Revolution that saw the rise of pro-European leaders and the hope for change in Ukraine. This event also coincided with the 2004 enlargement and with the hope for more consideration from the EU, as its borders were now reaching Ukraine. This democratic revolution retained EU’s attention but the outcome was disappointing for Ukraine. The ENP had been launched in 2004, in times of electoral troubles and poor democracy, already removing the membership prospect from EU’s policy towards its new neighbours. But the ENP Action Plan, approved in February 2005, once the new government was in place, deepened Ukrainians’ disappointment as it had not been renegotiated and was lacking the necessary incentives to support the country’s efforts. Once again, the Russian factor probably played a role in this EU decision and after having made a step forward, Ukraine made two steps backward, falling back in political instability, endangering democracy and lost between its powerful neighbours. According to I. Solonenko,

\[\text{\textit{\ldots the failure of the EU to propose a sense of direction to the country (by offering membership prospect) following the Orange Revolution has contributed to the current state of affairs as well. Indeed, the membership prospect could have helped Ukraine to finally make a choice in favour of European (rather than post-}}\]

151 Iryna Solonenko, (n 3) 68
152 Sergiy Glebov, (n 137) 332
153 Iryna Solonenko, (n 3) 69
154 Rosa Balfour, (n 15) 59
Soviet) identity and could have stimulated the consolidation of reform-minded actors.155

So, cold realism on EU’s side? Insufficient efforts from Ukraine’s part? Bad timing? A popular joke says: “When will Turkey become a member of the EU? Never. When will Ukraine become a member of the EU? Right after Turkey.”156 This comparison could effectively raise some interesting points in the debate.

Turkey’s accession aspirations have been recognized as early as the signing of its Association Agreement with the EU, in 1963. The AA was indeed intended to facilitate the accession of Turkey to the then European Community.157 Nonetheless, nearly 50 years later, Turkey is not yet a Member State, although the formal accession negotiations began on 3 October 2005.158 Turkey’s situation illustrates the fact that, even if the membership prospect was granted, there was still a long and rocky road towards EU integration. And as pointed out by M. Maresceau:

Today, more than forty years later, it seems particularly astonishing that at the time the Ankara Agreement was signed, there was little in-depth discussion on the far-reaching political and legal implications of the incorporation of the integration and accession principles in the Agreement.159

Such an affirmation illustrates the current prudence on EU’s side when coming to Ukrainian accession aspirations. The membership carrot should not be dangled if the partner’s situation is not suitable for such a substantial commitment. But what would be a reasonable threshold? Could there be a predefined one? Of course not, lot of factors have to be taken into account in a global appraisal, factors such as Russian influence, internal political/economic situation, democracy etc. So, whatever the fostering power of such a carrot, Ukraine should bear in mind what a full integration means. According to S. Glebov,

This reveals that Ukraine is able to secure its independence, sovereignty and integrity, as well as to build its own democracy and market economy with a satisfactory level of living, in order to prevent and escape from permanent social crises and to guarantee personal and collective security measures.160

In this perspective, the ENP and the EaP are useful instruments to further deepen Ukraine’s integration with the EU towards the fulfilment of the Copenhagen accession criteria. ‘The prospects of Ukrainian-EU relations depend on the extent of Ukraine’s progress in promoting its own interests, as well as its adoption and adaptation of EU rules and norms for practical purposes’161. So, ‘should Ukraine significantly progress (…) on the way of European integration, the EU could no longer elude the issue of its

155 Iryna Solonenko, (n 3) 75
156 Sergiy Glebov, (n 137) 346
157 Marc Maresceau, (n 4) 326; Katharina Eisele, ‘The Movement Regime of Turkish Citizens Based on the Ankara Association – an Ever-Growing Mosaic of Rights?’ in Haluk Kabaalioglu, Andrea Ott and Alan Tatham (eds) EU and Turkey: Bridging the Differences (Economic Development Foundation, 2011) 32
158 Kirstyn Inglis, ‘Pre-Accession and Accession Treaty Legal Practice: Insights and Lessons for the Future’ in Haluk Kabaalioglu, Andrea Ott and Alan Tatham (eds) EU and Turkey: Bridging the Differences (Economic Development Foundation, 2011) 4
159 Marc Maresceau, (n 4) 327
160 Sergiy Glebov, (n 137) 332
161 Oleksander Stegni, (n 55) 70
candidacy.162 Due to the fact that “losing” the EU would probably constitute a major loss for Ukrainian economy163, also losing the prospective advantages of membership, it should not wait for the carrot to be dangled but rather take its responsibilities to move forward despite EU’s attitude. It should make all the efforts to earn such an incentive instead of arguing while the Ukrainian internal situation does not seem to fit with EU’s expectations. Indeed, comparing the many criticisms towards EU policies with the Ukrainian record in implementing them, one could understand EU’s reluctance. The fact that the accession perspective is not envisaged now does not preclude a future reversal on EU’s side. As stated by O. Stegniy, ‘Ukraine is not wasting time but waiting for a more appropriate opportunity to become a full member of the EU’.164

As a conclusion, the reception of EU policies (ENP and EaP) in Ukraine is generally described as a “declaratory Europeanization”.165 Indeed, Ukrainian authorities mainly entertain a continuous flow of rhetorical statements, commitments or promises, but without concrete implementation. Thus the question of giving Ukraine a prospect of membership, in any form whatsoever has to be thoroughly assessed.

162 Laure Delcour and Elsa Tulmets, (n 101) 518
163 Anatoliy Klugashov, (n 29) 344; Teodor Lucian Moga and Alexandru Cristian Fotea, (n 71) 82
164 Oleksander Stegniy, (n 55) 70
165 Elena Korosteleva, (n 2) 102
Chapter 4. What impact for the forthcoming AA?

Ukraine and the EU are about to make an important step in the enhancement of their relations. The forthcoming AA will indeed establish new roots for further cooperation between the parties and will certainly shape EU-Ukraine future relations. The question is then: to what extent?

The final content of the agreement is still not public. However, substantive parts are already known and will be dealt with in the first Section. Then, the second Section will be the place for an assessment of today’s state of play in the adoption process of this new AA. Finally, the issue of a membership prospect, that has been recurrent all along EU-Ukraine’s history (as highlighted in the previous Chapters), will be reassessed, one more time, in the light of the future framework of EU-Ukraine relations.

Section 1. Content of the AA

The conclusion of Association Agreements is clearly envisaged under the Eastern Partnership, as confirmed by a communication of the Commission dating back to December 2008\(^{166}\). Such agreements were also mentioned in the early 2000s under the terms of “Neighbourhood or Proximity Agreements” as the 2004 enlargement was imminent, and as a prelude to the future ENP\(^{167}\). Such enhancement of current agreements with neighbouring countries can also be found in the new article 8 TEU, the so-called ‘Neighbourhood Clause’\(^{168}\). What will be the focus of this section is the substance of this new generation of framework agreements, especially vis-à-vis Ukraine.


§ 1. Content of the agreement

The main feature of these new AAs is undeniably the establishment of Deep and Comprehensive Free Trade Areas (DCFTAs) as part of the gradual integration of the targeted countries in the EU internal market. Thus, as compared to the current PCAs, ‘an Association Agreement is more than a mere document strengthening cooperation of the parties at political level; it also requires adopting certain EU legal norms and standards necessary for establishing a free trade area’\(^{169}\). First, the substance of a DCFTA is to reduce or to eliminate tariff and non-tariff barriers to trade (Deep) and liberalize substantially all trades in goods and services (Comprehensive), together with the expansion to the targeted countries of a considerable degree of institutional harmonization based on the EU internal market acquis\(^{170}\).

As a core element of the Association Agreement, it will create business opportunities in Ukraine and will promote real economic modernization and integration with the EU. Higher standards, better services to citizens, and above all Ukraine’s readiness to compete effectively in international markets should be the result of this process. Such a DCFTA, linked to the broader process of legislative approximation, will contribute to further economic integration with the EU Internal Market.\(^ {171}\)

Secondly, as regards the necessary conditions for concluding a DCFTA, the partner state has to be member of the WTO and ‘sufficiently advanced in the preparations to negotiate, implement and sustain the effects of far-reaching liberalization’\(^{172}\). Finally, the long-term goal pursued by the European Commission in establishing DCFTAs is ‘to create a network of bilateral agreements between the partners and establish a kind of specific economic community in the neighbourhood of the EU with close economic ties to the EU’\(^{173}\). Some authors compare such a network to the European Economic Area negotiated by the EU with the EFTA countries in the 1990s\(^{174}\).

Beyond this economic and trade component, the AA with Ukraine will also have an impact in different areas. The political dialogue is to be extended, together with an important part of the agreement promoting civil society development and empowering its actors\(^{175}\). A wide range of sectoral parts will deal *inter alia* with transport, energy or migration\(^{176}\).

\(^{169}\) Petra Kuchynkova, (n 72) 13
\(^{170}\) Erwan Lannon and Peter Van Elsuwege, (n 50) 293 ; Teodor Lucian Moga and Alexandru Cristian Fotea, (n 71) 80
\(^{172}\) Sieglinde Gstöhl, Erwan Lannon and Peter Van Elsuwege, (n 45) 424 ; Petra Kuchynkova, (n 72) 13
\(^{173}\) Petra Kuchynkova, (n 72) 14
\(^{174}\) Kristi Raik, (n 72) 4 ; Teodor Lucian Moga and Alexandru Cristian Fotea, (n 71) 80
\(^{175}\) Natalia Shapovalova, (n 105) 69 ff
\(^{176}\) Kristi Raik, (n 72) 4
§ 2. Legal basis and tools of implementation

Beyond the content, two questions remain: what will be the legal basis of such an enhanced agreement? And how will the EU be able to ensure the implementation of the agreement by Ukrainian authorities, and what are the tools at its disposal?

With respect to the **legal basis**, it seems clear that the EU has opted for AAs. The adequate legal basis is thus article 217 TFEU. This type of agreement was previously used for the CEECs, now members of the EU, and therefore constitutes a symbolic breakthrough on the way towards accession\(^\text{177}\). But, as pointed out by P. Van Elsuwege, ‘the frequent use of the association instrument in recent periods, which has resulted in a certain inflation of associated countries, potentially explains the inclusion of a specific clause for the Union’s neighbours’\(^\text{178}\). This “Neighbourhood Clause” as D. Hanf calls it\(^\text{179}\), can be read as follows:

**Article 8**

1. The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterized by close and peaceful relations based on cooperation.

2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.

This “special relationship” is not defined. Therefore, there is no predetermined substance for these “Neighbourhood Agreements”, what allows for sufficient differentiation between the partner states (the relationship established through such document could then vary from mere trade relations to kind of pre-accession agreements)\(^\text{180}\). Thereby, article 8 TEU could generate a “special neighbourhood relationship” constituting a preparation for accession\(^\text{181}\). However, as these neighbouring countries probably take part in the ENP, and as illustrated by the negotiations with Ukraine (which is the most advanced country in the negotiations for an AA), the accession perspective is not on the agenda. Moreover, ‘the procedure for the conclusion of European Neighbourhood Agreements is not very clear’\(^\text{182}\), and as Ukraine is usually presented as the front-runner, its path will probably constitute a blueprint or an important precedent for next AAs.

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177 Anatoliy Klugashov, (n 29) 360
178 Peter Van Elsuwege, (n 5) 72
179 Dominik Hanf, (n 168)
180 Peter Van Elsuwege, (n 5) 72 ; Dominik Hanf, (n 168) 113
181 Dominik Hanf, (n 168) 116
182 Peter Van Elsuwege, (n 5) 72
Now coming to the tools for ensuring the implementation, two tracks have to be distinguished: fully or partly in the hands of the parties. The first track sends back to the institutional framework that will be set up by the AA. As for Turkey and its AA, Ukraine and the EU should be represented in an Association Council which could normally adopt legally binding decisions with a potential direct effect (which is not the case under the PCA, through the Cooperation Council).\(^{183}\) Besides the future Association Council, a new policy tool was launched by the EU and Ukraine in 2009: the Association Agenda.\(^{184}\) It outlines jointly agreed reform priorities to prepare and facilitate the entry into force of the Association Agreement. Such priorities, together with improved monitoring and evaluation mechanisms in the AA’s institutional arrangements, should strengthen EU leverage over Ukraine.\(^{185}\) But actually, as noted by K. Raik, ‘the practical value of the Agenda seems to be limited: Ukraine has made disappointingly slow progress on the reform therein and, in any case, the same measures could have been taken without negotiating a new document’.\(^{186}\) However, this Agenda has an impact on the second category of tools, the one that are partly in hands of the parties. This category entails all the ways by which the civil society and the mediators can put pressure on the relevant authorities to ensure that they implement the fixed priorities and then, the agreement itself, as the AA will contain a chapter on civil society development.\(^{187}\) This tool was previously referred to as “socialization”, entailing different social channels to diffuse EU rules and norms in Ukrainian elites and society.\(^{188}\)

§ 3. Assessment of the agreement

Finally, to make a quick global assessment of this forthcoming AA, a few comments need to be done. First, the DCFTA is probably the best incentive offered by the EU in this new generation of framework agreements, and is also the only part of the agreement having a legally binding character.\(^{189}\) Other parts are mainly enumerating goals and commitments which are not legally binding. The question is whether it is sufficient to engage Ukraine on the way of reforms. Secondly, even though the AA could be considered as going ‘much further in substance than the Europe Agreements of the 1990s’,\(^{190}\) compared to the recent Stabilization and Association Agreements concluded with the Western Balkan countries, it lacks an important element which is certainly the best incentive: the accession perspective. In this sense, the AA seems to inherit the ENP’s ambiguity.

\(^{183}\) ibid 71; Case C-192/89, Sevince [1990] ECR I-3461; Case C-262/96, Sema Sürül [1999] ECR I-2686
\(^{185}\) Natalia Shapovalova, (n 105) 70
\(^{186}\) Kristi Raik, (n 72) 4
\(^{187}\) ibid 4
\(^{188}\) Iryna Solonenko, (n 3) 73
\(^{189}\) Kristi Raik, (n 72) 4
\(^{190}\) Natalia Shapovalova, (n 105) 71
in terms of final goal of integration. Yet, this track will be examined in the second and third sections, together with the democracy promotion issues (especially selective justice) and other important factors to take into account as regards Ukraine.

Section 2. State of play and differentiation impact

The negotiations of the new enhanced agreement started on 5 March 2007, further deepened by the opening of negotiations on the DCFTA on 18 February 2008, before the EU-Ukraine Summit on 9 September 2008 where it was decided that it would take the form of an Association Agreement. The negotiations rounds were concluded in November 2011 and the text of the agreement was initialled on 30 March 2012. Both sides are now committed not to re-open the text, the agreement being technically ready to be signed. Nonetheless, the signature and ratification process is stagnating for a few months. Indeed the EU decided to suspend the signature of the agreement due to the recent events occurring in Ukraine, primarily the conviction of Yulia Tymoshenko, former Ukrainian Prime Minister, for abuse of office. This period of uncertainty in EU-Ukraine relations also sees a resurgence of Russian attempts to deviate Ukraine from its path towards European integration. These elements illustrate the ongoing competition of the two “giants” within the post-Soviet space and raises concerns on EU’s side. Indeed, Russia’s increasing assertiveness perhaps calls for a new appraisal of EU’s ambitions in the region.

§ 1. Tymoshenko and democracy issues as a stumbling block

On 11 October 2011, former Ukrainian Prime Minister Yulia Tymoshenko (icon of the Orange Revolution) was sentenced to seven years imprisonment for abuse of office in the negotiation of a gas deal with Russia in 2009, during her mandate. This conviction was immediately followed by a statement of EU’s High Representative for Foreign Affairs and Security Policy, Catherine Ashton, condemning the verdict issued by the Ukrainian tribunal and its political motivations. Miss Tymoshenko was then further charged for tax evasion and

191 Simion Costea, (n 81) 272
193 Kristi Raik, (n 72) 6
attempted theft with respect to her activities as the head of a major gas trading company in the 1990s. In addition, she has recently been charged for the murder in 1996 of a Ukrainian businessman. All these events casted a gloom over Ukrainian democracy, the Tymoshenko case not being the only example of politically driven prosecutions and selective justice. Indeed, a recent decision of the European Court of Human Rights ruled against Ukraine in the prosecution of former Minister of Interior Yuriy Lutsenko, also suspected to be politically driven. But as pointed out by S. Stewart:

(…) the Tymoshenko case is only one issue in a much broader context of difficulties with rule of law and democracy in Ukraine, as well as of inadequate reforms and a culture of decision-making based on private interests of a small circle of influential politicians and businesspeople.

Since the return of V. Yanukovych as president, democracy seems to be constantly retreating. All these circumstances are the direct causes for the suspension of the signature process. The EU thereby set up ‘an important precedent and a high standard of political preconditions for other similar agreements’. Facing the classical dilemma of ‘interests vs values’, the EU chose to preserve its credibility, ceasing the opportunity to insist on the “values gap” and its implications for Ukrainian domestic and foreign policy. However, such a position does not seem to have an impact on Ukraine where it could be interpreted as a ‘tactical move aimed at pressuring Ukraine to make concessions during the final negotiations of the Association Agreement – or worse, as an excuse to avoid entering into the Agreement at all’. Also, Ukraine’s self-confidence about its geostrategic importance and Yanukovych’s apparent absence of interest in democratic changes perhaps illustrate the lack of attractiveness of EU integration for Ukraine. Nevertheless, unless a political turnabout occurs in Ukraine, the ratification of the AA will probably be delayed until after the October 2012 parliamentary elections. And as pointed out by the Parliamentary Assembly of the Council of Europe, these elections are likely to fall short of the international standards if the situation of the members of the former government is not settled until then, as they would not be able to run for the elections. But this imbroglio could have more severe consequences on EU-Ukraine relations due to the increasing assertiveness of Russia.

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198 Lutsenko v Ukraine App no 6492/11(ECHR, 3 July 2012)
199 Susan Stewart, (n 10) 1
200 Amanda Paul and Vasyl Belmega, (n 146) 3
201 Kristi Raik, (n 72) 3; Petra Kuchynkova, (n 72) 14
202 ibid 3
203 Susan Stewart, (n 10) 1; Kristi Raik, (n 72) 3
204 Susan Stewart, (n 10) 2
205 Susan Stewart, (n 10) 2; Kristi Raik, (n 72) 6
206 Amanda Paul and Vasyl Belmega, (n 146) 4
§ 2. EU vs Russia: a battle of attractiveness

EU and Russia are often seen as competitors in their shared neighbourhood. These neighbours generally see the EU as a counterbalance to Russian efforts to regain a dominant role in the region after the collapse of the USSR, illustrated *inter alia* by the launch of the Commonwealth of Independent States. In this rivalry between the two giants, Ukraine is perhaps the main battlefield. This rivalry is even intensifying since EU-Ukraine relations are experiencing a sensitive test as regards EU democratic conditionality. A few months ago, S. Stewart assessed the situation by emphasizing the fact that ‘the EU should not be overly concerned that prolonging, or even suspending the Association Agreement process would be tantamount to pushing Ukraine into Russia’s embrace’. But the situation has changed and EU should probably worry about its “rival”. Indeed, ever since the ENP and the EaP were launched, Russia has done nothing but condemning EU’s implication in its neighbourhood. Russia has carried on a real campaign, lobbying in Ukraine against the AA and DCFTA, depicting these instruments as a largely loss-making initiative for Ukraine. It even threatened Ukraine and introduced anti-dumping measures for popular Ukrainian goods.

But what is proposed by Russia to counter the EU? Russia is offering the so-called Eurasian Customs Union (ECU), as a step towards a future Eurasian Economic Union, the problem (from EU’s side) being that this Customs Union is not compatible with the DCFTAs. Concretely, Russia, Belarus and Kazakhstan are the only members of this Customs Union. But even if it still presents outstanding problems, the ECU relies on a strong institutional basis and it was developed in accordance with WTO principles. In addition, it seems that the old paternalist Russian approach was thrown away for a more “EU-like” one. ‘The ECU is not promoted in terms of restoring disrupted economic links, or of preserving historical, cultural and linguistic commonalities’. Russia’s policy is not anymore exclusively relying ‘on “soft” power, energy conditionality and military strength, but also on an institutional, rule-based regime’, inspired by the EU.

Russia’s alternative presents what could be an advantage for some and an lacuna for others: it focuses on economic aspects, while the EU’s offer entail democratic conditionality. It could be seen as an advantage since the relations with the EU are blocked for democratic reasons and since EU membership is also subordinated to democratic principles which are absent of the ECU merely.

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208 Hannes Adomett, (n 140) ; Kristi Raik, (n 72) 8
209 Kristi Raik, (n 72) 8 ; Sabine Fischer, (n 135) 133
210 Rilka Dragneva and Kataryna Wolczuk, ‘Russia, the Eurasian Customs Union and the EU: Cooperation, Stagnation or Rivalry?’ (Briefing paper, Chatham House, August 2012) 8 <http://www.chathamhouse.org/publications/papers/view/185165> accessed 11 August 2012
211 ibid 13
212 Susan Stewart, (n 10) 2
213 Rilka Dragneva and Kataryna Wolczuk, (n 210) 12-13
214 ibid 13
215 Amanda Paul and Vasyl Belmega, (n 146) 3
216 Kristi Raik, (n 72) 8
217 Rilka Dragneva and Kataryna Wolczuk, (n 210) 10
218 ibid 9
economic perspectives. Yet, ‘the Russian efforts to press ahead with its regional integration project expose fundamental differences between the political and economic models of the EU and Russia and force the CIS countries to choose one or the other’\footnote{Kristi Raik, (n 72) 9}. Ukraine seems well engaged on its path towards European integration, even if considering the current “troubles”, and according to K. Raik, the EU is still the option that is likely to offer more sustainable economic development and a stronger degree of political self-determination\footnote{ibid 9}.

 Nonetheless, Russia is back in the game (if it ever left it) and this rivalry will probably continue even if the AA is concluded\footnote{Rilka Dragneva and Kataryna Wolczuk, (n 210) 14}. Indeed, despite the incompatibility of the ECU and DCFTAs, Russia’s new policy represents a challenge for the EU’s strategy in this shared neighbourhood and will thereby have a significant impact on EU-Russia relations. Besides, the potential ratification of the AA does not preclude Ukraine pursuing its weak implementation “policy”. As pointed out by S. Stewart, ‘for many in Ukraine, the Association Agreement is less the beginning of a process of reforms leading to adoption of EU standards and a more competitive business sector, and more a toll to demonstrate to Russia that Ukraine has a political and economic alternative’\footnote{Susan Stewart, (n 10) 3}. She even considers the EU’s approach towards Ukraine as overly ambitious, preferring a more sectoral one. However, although the EU is still considered as more attractive than Russia, it has to take that Russian factor into account to better shape its future policies.

§ 3. Recurrent call for more differentiation

In theory, differentiation implies that the EU does not make identical offers to all the partner countries but rather assesses the progress and the efforts to develop and reform in each one to propose adequate rewards\footnote{Simion Costea, (n 81) 260}. Once more, differentiation is about to play an important role in reshaping EU policies to take into account the renewed Russian factor.

The EU-Ukraine relations proved that the EU’s incentives (AA, DCFTA, visa liberalisation etc.) were not sufficient leverages to make the partner countries move forward in the reforms. Although the democratic problems in Ukraine are blocking the signature and ratification process, Yanukovych does not seem to be willing to change the situation, showing in a sense that the EU is not that attractive. From this point of view, S. Stewart advocates for giving more consideration to ‘discarding the current overly ambitious EU approach to Ukraine and replacing it with a more realistic collection of “building blocks” better adapted to Ukrainian political, economic and social conditions’, in other words, ‘without
placing constant pressure on the EU to promise more than it is ready to commit, while also taking into account the problematic realities of contemporary Ukraine.\footnote{Susan Stewart, (n 10) 1-4}

The case of Ukraine has been covered so far but beyond it, I. Solonenko points out the fact that ‘the EU needs to provide stronger reform incentives by better adapting rewards to the preferences and needs of the partner countries and offering closer guidance during the reform process’.\footnote{Iryna Solonenko, I 6} K. Raik goes in the same way, considering that ‘the EU’s current approach to the new agreements with its Eastern neighbours contradicts the idea of “more for more”, and [that] it also fails to take the principle of differentiation seriously’, offering to little for some countries and too much for others.\footnote{Kristi Raik, (n 72) 9} She even envisages reconsidering the insertion of a prospect of membership for the next AAs to be concluded with Moldova and Georgia. ‘By the autumn of 2013, negotiations on Association Agreements with the Republic of Moldova, Georgia, Armenia and Azerbaijan should be well advanced, if not finalised’.\footnote{European Commission, ‘Eastern Partnership : A Roadmap to the autumn 2013 Summit’ (Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions) JOIN(2012) 13 final <http://ec.europa.eu/world/enp/docs/2012_enp_pack/e_pship_roadmap_en.pdf> accessed 11 August 2012} The EU should then envisage more adequate incentives so that a situation such as the current one occurring with Ukraine does not repeat itself with these countries.

Section 3. « Possibility of an agreement eventually envisaging the opening of discussions about a potential future candidature to someday join the EU … ? »

The call for more differentiation between those Eastern partners cannot be tackled without mentioning the membership aspirations of countries like Ukraine, Georgia or Moldova. These aspirations constitute a real challenge for the EU.\footnote{Erwan Lannon and Peter Van Elsuwege, (n 50) 310 ff} Accession has been clearly set aside from EU policies such as the ENP and the EaP, thus excluding membership perspective for ENP and EaP partners, at least in the short term. In the short term because, although decoupled from current policies, EU accession is open under article 49 TEU to ‘any European State which respects the values referred to in Article 2 and is committed to promoting them’. Ukraine is generally considered as a European country.\footnote{Amanda Paul and Vasyl Belmega, (n 146) 1 ; Sergiy Glebov, (n 137) 329}

Some EaP countries attach great importance to their 

\textbf{European identity} and the development of closer relations with the EU enjoys strong public support. The \textit{values} on which the European Union is built (...) are also \textit{at the heart of the}}
process of political association and economic integration which the Eastern Partnership offers. These are the same values that are enshrined in article 2 of the European Union Treaty and on which articles 8 and 49 are based.\textsuperscript{230}

 Nonetheless, E. Lannon and P. Van Elsuwege insist on the fact that such a reference to article 49 TEU in the context of the EaP is remarkable but will probably have no consequence on EU’s approach\textsuperscript{231}. But still, as supported previously, EU policies do not preclude a future accession, in the long term.

 Granting Ukraine the “possibility of an agreement eventually envisaging the opening of discussions about a potential future candidature to someday join the EU” would however entail the settlement of certain issues. As recurrently acknowledged, Russia is to play an important role in the EU-Ukraine-Russia triangle. But beside this external factor, EU should first take a look at its own capacity and will to integrate new members.

 § 1. Russian shadow : a necessary blessing

 \textit{The Russian government cannot legitimately object to the Ukrainian reformist camp’s advocacy of a replacement of the ENP Action Plans and the EaP by an Association Agreement with a membership perspective and ultimately entry into the EU.}\textsuperscript{232}

 Nonetheless, such an outcome is unlikely to occur. The most reasonable and realistic solution would be sort of a trilateral agreement, or ‘joint rapprochement’ as described by S. Fischer\textsuperscript{233}. Indeed, as was the case with the 2004 “big bang” enlargement, ‘even though Russia was out of the enlargement process, it still had to deal with it and its consequences’\textsuperscript{234}, \textit{inter alia} transit issues with the Russian enclave of Kaliningrad. EU-Russia then suffered a complexification due to these new common borders, the launch of the ENP and EaP, perceived as an interference with “Russia’s orbit”, and also because of the influence of the new Member States \textit{vis-à-vis} Russia\textsuperscript{235}. But, ‘losing three Baltic States has caused almost no serious harm to Russian interests compared to what Russia might lose when the Ukraine integrates the EU\textsuperscript{236}. Indeed, Russia has several interests in maintaining relations with Ukraine such as Russian minorities in Ukraine, or the Black Sea Fleet.

\textsuperscript{231} Erwan Lannon and Peter Van Elsuwege, (n 50) 318
\textsuperscript{232} Hannes Adomett, (n 140) 398
\textsuperscript{233} Sabine Fischer, (n 135) 120
\textsuperscript{234} Natalia Zaslavskajia, (n 139) 122
\textsuperscript{235} ibid 124
\textsuperscript{236} Sergiy Glebov, (n 137) 331
deployed at the Ukrainian port of Sevastopol. On the other hand, breaking up with Russia would have the most severe consequences on Ukrainian economy 237.

Besides, these three actors are interconnected on several issues of importance and a joint rapprochement, as advocated by S. Fischer, would probably be the only option allowing for a reduction of tensions in the region 238. Two of these main issues are frozen conflicts and energy. The triangle EU-Ukraine-Russia needs to maintain a certain amount of cooperation in order to shape a successful security policy in the shared neighbourhood, especially as regards the Transnistrian conflict on the Moldovan-Ukrainian border 239. Now coming to energy, Russia as a supplier and Ukraine as an important transit country are of the utmost importance for the EU 240. Energy security is already pursued under the EaP as a consequence inter alia of the Russia-Ukraine gas crisis in 2006 which affected the gas supplying of certain EU Member States 241. In addition, article 122 TFEU now provides for ‘measures to be taken by the EU (…) to provide assistance to Member States affected by an energy-supply shortage, thus reducing Russian leverage’ 242.

Finally, Ukrainian ability to convince Russia in the future about importance and usefulness of Ukrainian accession to the EU will play an important role 243. Indeed, as pointed out by G. Rouet, the keys of Ukrainian membership are not in Kiev but in Brussels and Moscow 244.

§ 2. EU’s absorption capacity: trick or reality?

The EU’s absorption capacity is not a new issue. Although its visibility was quiet low in the first rounds of enlargement, it came to the fore after the successive enlargement rounds of 2004 and 2007 245.

When taking a look at the Ukrainian case, the evolution of the European Parliament’s communications is of explicit relevance. In 2005, advocating for rewarding Ukraine’s Orange Revolution with a prospect of membership to be

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237 Sabine Fischer, (n 135) 122
238 ibid 120
239 Sieglinde Gstöhl, Erwan Lannon and Peter Van Elsuwege, (n 45) 418
241 Rafael Leal-Arcas, ‘The EU and Russia as Energy Trading Partners: Friends or Foes?’ [2009] European Foreign Affairs Review 353 ff
242 Ana Maria Morgado Dos Santos, (n 87) 315
243 Igor Kosir, ‘Ukraine and European Integration Process’ in Gilles Rouet and Peter Terem (eds), L’Ukraine, entre intégration et partenariat (Bruylant, 2010) 122
244 Gilles Rouet, ‘Espoirs et triangulaires politiques’ in Gilles Rouet and Peter Terem (eds), L’Ukraine, entre intégration et partenariat (Bruylant, 2010) 5
245 Kirstyn Inglis, (n 158) 8
included in the AA, it further insisted, in 2008, on the “integration capacity” of the EU as an indispensable condition for enlargement.\textsuperscript{246}

But moving back to the 2004 enlargement, its necessity and the EU’s capacity to manage its consequences already raised discussions within the EU.\textsuperscript{247} Some Member States expressed their concerns about its timeliness, also worrying about their own capacity to compete with the new members or about a potential shift of the balance of interests and influence for the benefits in their favour.\textsuperscript{248} Such concerns are to be evaluated with the constitutional crisis of 2004 that conditioned the debates on policy towards enlargement, including the specific case of Ukraine.\textsuperscript{249}

Since the enlargement, the Lisbon Treaty has brought new institutional changes but its ratification by all the Member States proved once more ‘how difficult it is for the EU 27 to meet the challenges of its new development level, of the geopolitical and geo-economic claims corresponding to it’.\textsuperscript{250} In the meantime, the EU had thus decided to deepen its relations with third countries like Ukraine before any new enlargement.\textsuperscript{251}

Now, the so-called enlargement fatigue and the ‘reluctance to sacrifice today interests for the benefit of possible but not so obvious profits of tomorrow’ are easily observable. Combined with ‘the EU’s current social and economic situations (…) negatively affected by the global financial and monetary crises, and also by the EU’s disproportionate development after the rounds of enlargement of 2004 and 2007 (…), these conditions evidently impinge on the accession prospects of new countries into the EU and may hinder the development of formal relations of the EU with its neighbours.’\textsuperscript{253}

Beyond this historical or contextual background, the question of EU’s ambitions is also of the utmost importance. As previously mentioned, K. Raik advocates for more differentiation within the EaP even considering the insertion of a membership prospect.\textsuperscript{254} Nevertheless, one should bear in mind that:

*For the EU, it is necessary to check whether it has geopolitical ambitions supported by an adequate ability to proceed with the enlargement to cover the whole CIS space and to guarantee a solid lifelong undisturbed living status in accordance with the Copenhagen criteria.*\textsuperscript{255}


\textsuperscript{247} Sergiy Glebov, (n 137) 329

\textsuperscript{248} Anatoliy Klugashov, (n 29) 337-338


\textsuperscript{250} Anatoliy Klugashov, (n 29) 337

\textsuperscript{251} Gilles Rouet, (n 244) 3

\textsuperscript{252} Anatoliy Klugashov, (n 29) 339

\textsuperscript{253} Oleksander Stegniy, (n 55) 58

\textsuperscript{254} Kristi Raik, (n 72) 9

\textsuperscript{255} Sergiy Glebov, (n 137) 332
The forthcoming Association Agreement, when finally signed and ratified, will constitute the framework for an enhanced partnership between the EU and Ukraine. Its main accomplishment is obviously the establishment of a DCFTA which, once concluded with all the other EaP partners, will be the stepping stone for a ‘Neighbourhood Economic Community’\textsuperscript{256}. But the process is actually stagnating due to the outcry provoked by the recurrent democratic problems, culminating in the recent politically driven prosecuting of former Prime Minister Yulia Tymoshenko. Still, the non-settlement of this situation may illustrate the low impact of the EU and its policies towards Ukraine, balancing its relations with Russia now back on track with its Eurasian Customs Union. The EU probably needs to increase differentiation between its partners so as to offer adequate incentives for them to go on with reforms. Granting a membership prospect could be a solution but it implies to take several factors into account such as the Russia’s role in Ukraine and in the region. But primarily, the EU has to make sure it has the capacity to go further with the enlargement process in itself, and especially in its Eastern neighbourhood, when Turkey and the Western Balkan countries have already knocked at the door.

\textsuperscript{256} Erwan Lannon and Peter Van Elsuwege, (n 50) 292
Conclusion

“Towards an enhanced partnership”, well it seems that such a statement is verified by the negotiations leading to a new framework agreement for EU-Ukraine relations. Nonetheless, the current situation in Ukraine raises concerns and is blocking the signature and ratification process of the AA. These now sensitive relations illustrate several factors analyzed all along this study.

The unilaterality of the negotiations, whereas the new relation was supposed to be build on shared values and joint ownership; the disappointment as regards the proposed incentives, apparently not attractive enough to move forward in the internal necessary reforms; the lack of differentiation, the EU offering to all EaP partners advantages that were already promised to Ukraine before the launch of this initiative. These are recurrent criticisms about EU’s approach towards Ukraine. But the latter is not totally “innocent” in the slow progress of EU-Ukraine rapprochement. Indeed, several internal factors have had a serious impact: the political instability, combined with politicians’ multi-vectorized foreign policy; institutional incapacity; inefficient communication about EU policies. Those are multiple examples of what goes wrong in the EU-Ukraine relations. Combined with the important external factor of Russia’s influence, the only word to describe the current situation is “tricky”.

Nevertheless, the hope for EU-Ukraine relations to get better will obviously depend on the two concerned parties. On the one hand, the EU needs to adopt clear goals towards Ukraine and to shape its policies in a balanced way so that its expectations match Ukraine’s ability to take the necessary reforms. It certainly includes taking differentiation more seriously. On the other hand, Ukraine should more than commit to EU integration by concretely implementing EU policies, bearing in mind that the path towards the EU will be long and strewn with obstacles.

“Accession perspectives” would probably be a satisfying reward for Ukraine to go through the costly reforms needed to reach a certain convergence with the EU. But multiple factors have to be taken into account and, once more, the current situation in Ukraine does clearly not play in its favour. The democratic conditionality pursued by the EU is of course a stumbling block for even proposing a hypothetical membership prospect to Ukraine, whether it is in the forthcoming AA, in the years to come or in a foreseeable future. The ongoing enlargement process with Turkey and Western Balkan countries, combined with a necessary reshaping of EU-Russia relations for taking such a step, and the so-called enlargement fatigue are not propitious elements for such a move. Nonetheless, Ukraine’s accession to the EU, even if not envisaged by the short or medium term EU agenda, is not definitely set aside. Article 49 TEU remains a solid ground for Ukraine to apply for EU membership as a European country. And even if the ENP and EaP are disconnected from any accession perspectives, these policies clearly prepare Ukraine to fulfill the Copenhagen accession criteria by implementing reforms and approximating its legislations.

In their long-standing relations, the EU and Ukraine both faced disillusion. Such an outcome is likely to happen again, even if the current situation is settled. But rather than talking about missed opportunities or deadlocks of ambitions, both parties should review their expectations in order to provoke new opportunities for closer relations, potentially leading to Ukraine becoming a Member State.
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