

Background Paper on EU Policy Towards Ukraine

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Introduction

This paper aims to survey the development of EU policy towards Ukraine, from the end of the Cold War to the present. Focus will be on EU common policies and actions, with limited attention to bilateral relations between Ukraine and EU member states and relations between other organisations and institutions such as NATO, OSCE and IMF, and Ukraine.

The European Community and the Soviet Union

Formal relations between the European Community and the Soviet Union were not established until the late 1980s, to a large extent as a result of Gorbachev's „new thinking.”¹ Diplomatic recognition had been on the agenda for decades, but the Community was disinclined to establish links with the Council of Mutual Economic Assistance (CMEA), as opposed to bilaterally with the countries of the Soviet bloc, as the Soviet Union requested. Mutual diplomatic recognition was not established until June 1988, with the Luxembourg Joint Declaration. A Trade and Co-operation Agreement (TCA) between the EC and the Soviet Union was signed in December 1989, along the lines of agreements with Central and Eastern European countries. The TCA provided for most-favoured nation treatment (MFN) on tariffs and duties and political dialogue through a Joint Committee.²

A European Community assistance programme for economic reform and recovery for the former Soviet Union was also established, following decisions by the Dublin and Rome European Councils in 1990. Diplomatic missions were established in Moscow and Brussels in early 1991.³ One of the first act of the new EC head of delegation was to halt promised aid due to the Soviet reaction to the Lithuanian uprising in January 1991. The planned aid resumed in what eventually became known as the TACIS programme.⁴ That a special programme was created for the former Soviet Republics, rather than including them in the PHARE programme, was an early indication of the differentiation of EU policy towards the Central and Eastern European countries on the one hand, and the former Soviet Republics.⁵ Furthermore, the European Community was not given the central role of Western assistance to the former Soviet Union as that bestowed upon the Community institutions by the Group of Seven in Summer 1989 on co-ordinating aid to Central and Eastern Europe.⁶

The European Community (EC) was quick to recognise the independence of Ukraine (and the other former Soviet Republics). On December 8 1991, the Commonwealth of Independent States was proclaimed, and the EC adopted the guidelines on recognition of new states in

¹ See, for instance, Gower, p. 68.

² Agreement between the EEC and Euratom and the USSR on Trade and Commercial and Economic Co-operation, Official Journal L 68/1, 15 March 1990. See also K. Smith, p. 34 and 54, and Zielonka, p. 132.

³ Piening, p. 64.

⁴ Technical Assistance to the New Independent States and Mongolia.

⁵ See Gower, p. 72, and K. Smith

⁶ K. Smith, in particular pp. 66-70.

Eastern Europe on 16 December 1991. On December 2, the EC issued a Declaration on Ukraine, noting the democratic character of the referendum on independence.

With the collapse of the Soviet Union in late December 1991, the TCA became outdated. Following a visit by Commission Vice-President Andriessen in October 1991, the European Community (EC) in January 1992 offered Ukraine the prospect of bilateral contractual relations through a new type of agreement. In October 1992 the EU Council of Ministers agreed that partnership and co-operation agreements should be concluded with the former Soviet Republics.⁷ The former Soviet republics agreed to fulfil their obligations under the provisions of the TCA until such PCA's could be negotiated and enter into force.

Establishing EU-Ukraine relations

After the dissolution of the Soviet Union at the end of 1991, the goals of EC policy towards the former Soviet republics aimed primarily at maintaining strategic stability, and preventing the emergence of conflict such in Yugoslavia.⁸ Initially, the EC supported integration efforts in the new Commonwealth of Independent States (CIS) as a means by which instability could be prevented. But it soon became clear that the CIS was not going to become a strong integrated entity similar to the EC, as some of its supporters initially aimed for. EU policy thus quickly reverted to dealing with the countries of the former Soviet Union, or the new independent states (NIS), as they came to be labelled in the EU, on a bilateral basis.

Although conducted mainly bilaterally, the EU pursued an essentially undifferentiated policy towards the countries of the former Soviet Union (with the exception of the Baltic States) in the early 1990s. One economic assistance programme, Tacis, was established covering all the CIS countries (as well as Mongolia). Negotiations on a new type of bilateral agreement, Partnership and Co-operation Agreements, was opened with all countries of the CIS. However, a more differentiated approach soon emerged, as specific issues and concerns connected to particular countries requiring a special EU response. The specific Ukrainian issue was nuclear safety and the Chernobyl nuclear plant, which featured prominently among European concerns relating to the former Soviet Union in the early post-Cold War period.

The Partnership and Co-operation Agreement

The Commission asked for a mandate from the Council for negotiating partnership and co-operation agreements with the countries of the former Soviet Union in April 1992, and was given the green light the following October. The first EU-Ukraine top-level meeting took place in September 1992, when President Kravchuk met with Commission President Delors. Negotiations on a PCA between the European Community and Ukraine took place in three rounds between March and November 1993.⁹ The EC delegation in Kyiv was opened in October 1993, whereas the Ukrainian Mission to the EU was established in July 1995.

From the perspective of the EU, the PCA was regarded as being dependent on certain conditions that were not however directly related to the eventual substance of the agreement. Key among these were Ukraine's signing of the Non-Proliferation Treaty as a nuclear weapons-free state. With the January 1994 agreement between Russia, Ukraine and the US on the removal of all nuclear weapons from Ukrainian territory, an important political obstacle for the PCA was thus removed. The first meeting between Ukraine and the EC Troika at the

⁷ Cameron, p.2, Piening, p. 65, MacLeod et al., p. 287.

⁸ H. Smith, p. 232.

⁹ Van Ham.

level of Ministers for Foreign Affairs took place in March 1994. Concerns about the viability of Ukrainian democracy were allayed by the parliamentary and presidential elections in 1994, which were regarded as free and fair by international observers. However, and in particular in light of the tense situation on the Crimea during spring 1994, the EU continued to harbour fears of instability and concerns about the territorial integrity of Ukraine.¹⁰

In spite of this, and continued concerns about nuclear safety and the Chernobyl plant, the Partnership and Co-operation Agreement (PCA)¹¹ between the European Union and Ukraine was signed on 14 June 1994. This was the first among a series of such agreements between the EU and the countries of the Commonwealth of Independent States. As of late 2002, nine of the twelve members of the CIS have concluded such PCA's with the EU.¹²

The PCA's mainly focus on trade and economic co-operation, and represents a modest extension of the 1989 TCA, compared with the Europe Agreements between the EU and the countries of Central and Eastern Europe.¹³ Through the PCA, the EU and Ukraine grant each other most-favoured nation status for trade in goods. This was however already the case under the TCA, and the EU granted Ukraine lower duties on products falling under the GSP (General System of Preferences) in 1993. The PCA also prohibits the use of quotas on imports, with certain specified exceptions. On the EU side, this included quotas on textiles and steel, contained in special sectoral agreements that began operating in 1993 and 1995, respectively.¹⁴ The PCA envisages the removal of many of the specific exemptions granted by the agreement in stages, with 1998 and 2003 as key target dates.

The most ambitious objective stated in the PCA is the provision on the eventual establishment of a free trade area between the EU and Ukraine. The Agreement envisaged a rendez-vous in 1998 to discuss this further. The EU agreed in 1993 to include this provision only reluctantly.¹⁵

In addition to the provisions on trade liberalisation, 28 other areas of co-operation are included in the PCA, but with very limited legal commitments to push this co-operation forward. Perhaps more importantly, the PCA envisages a strong political dialogue between the EU and Ukraine. The typical set of institutions is established to manage the agreement, with a ministerial council assisted by a committee of senior officials and a number of expert working groups, and a consultative parliamentary committee (see Annex 2).

The 1994 PCA between the EU and Ukraine did not enter into force until March 1998. Until then, relations between the EU and Ukraine were governed by an Interim Agreement, which included important trade provisions.¹⁶ This agreement was initialled in June 1994, signed in June 1995 and entered into force on 1 February 1996, before which the parties abided by the

¹⁰ See Statement on Ukrainian elections of 19 April 1994.

¹¹ Agreement on Partnership and Co-operation between the European Community and Ukraine, Official Journal L 49/3, 19 February 1998. A summary can be found at the website of the EC delegation in Kyiv, reproduced as Appendix I in Lewis.

¹² The PCA with Russia was signed ten days later. The third PCA, with Moldova, was signed in November 1994. There are no PCAs in force with Belarus, Turkmenistan and Tadsjikistan.

¹³ Gower, p. 74.

¹⁴ Lewis, pp. 269-283.

¹⁵ In the case of Russia, this was reportedly agreed to in order to bolster Russian President Yeltsin's domestic position. See Gower, p. 74.

¹⁶ Cameron.

provisions of the earlier Trade and Co-operation Agreement. Bilateral Joint Committees between the EU and Ukraine (and with Russia, the three Caucasian Republics and Uzbekistan), were established to monitor implementation of these provisions. Already before the entry into force of the PCA, there were frequent complaints from the EU side on Ukrainian breaches of its commitments made under the PCA.¹⁷

Beyond the PCA

Although Ukraine was a marginal issue in EU external relations in the middle of the 1990s, the attention Ukraine did receive was mainly favourable. Thus, the accession of Ukraine to the Non-Proliferation Treaty in December 1994 was 'strongly welcomed' by the Council, as was the announcement by President Kuchma in spring 1996 that all nuclear weapons had been removed from Ukrainian territory. Progress on economic reforms was reciprocated, also in December 1994, by the granting of balance of payments aid.¹⁸ The introduction of a new Ukrainian currency, the hryvna, in 1996 was seen as an important indication that macroeconomic stability had finally been achieved, although Ukrainian economic output continued to decline.

Ukraine acceded to the Council of Europe in November 1995. The EU issued a statement applauding 'the meaningful progress Ukraine has made in consolidating its democracy,' expressing its 'appreciation for the active and constructive role played by Ukraine in favour of regional and European stability,' and 'its utmost satisfaction and appreciation at the great progress made by Ukraine in the field of arms control and non-proliferation.'¹⁹ Similar expressions of EU goodwill towards Ukraine were issued following the adoption of a new Ukrainian constitution in June 1996 and the conclusion of bilateral treaties with Romania and Russia in May 1997.

The main exception to the 'excellent state of their relations'²⁰ was the issue of nuclear safety, with persistent pressure from the EU on Ukraine to close the Chernobyl nuclear power station. Around the time of the signing of the PCA, the EU Council spearheaded international efforts to close Chernobyl. Agreement was reached at the G-7 meeting in Naples in July 1994 on an action plan for nuclear safety in Ukraine. This issue was to top the agenda of the EU and its relations with Ukraine in coming years, with continued pressure on Ukraine to live up to its commitment to decommission the Chernobyl plant by 2000 combined with the promise of 'generous and sui generis aid'²¹ from the EU. An example of this was the written undertaking by Ukraine to close down the plant by 2000 according to a precise time-table, which opened up for a decision by the EU to grant Ukraine a tranche of 100 million ECU in macro-financial assistance.²²

A Strategy towards Ukraine

The EU has been criticised for not having an Eastern Strategy in the early 1990s.²³ But from the middle of the 1990s, the EU set out an increasingly detailed strategy in a series of documents, culminating in the Common Strategy on Ukraine adopted in December 1999.

¹⁷ Cameron, and Pidluska p. 184.

¹⁸ See Presidency Conclusions of Essen European Council, December 1994.

¹⁹ Statement on Ukraine, 21 May 1996.

²⁰ Statement on Ukraine, 21 May 1996.

²¹ Statement by Presidency to European Parliament, 4 April 1995.

²² General Affairs Council conclusions, 12 June 1995.

²³ Zielonka.

This process was initiated by the Corfu European Council in June 1994, which tasked the EU institutions to develop an EU strategy towards Ukraine. A Common Position on the objectives and priorities of relations with Ukraine was adopted on 28 November 1994.²⁴ The Common Position lists three priorities for the EU in its relations with Ukraine: 1) to develop a strong political relationship with Ukraine and increase co-operation between Ukraine and the EU; 2) to support democratic development in Ukraine; 3) to support economic stabilisation and reform; and 4) to continue to provide assistance for the process of nuclear disarmament.

The Commission's Action Plan for Ukraine,²⁵ which was approved by the Council in December 1996, further elaborated on EU strategy towards Ukraine. It set out six priorities for EU policy towards Ukraine: 1) democratic reforms and development of civil society, 2) economic reform and development of trade, 3) strengthening political dialogue and support Ukraine's inclusion in Europe's security architecture, 4) regional co-operation, 5) deepening of contractual relationships, and 6) energy sector reform. One example of the fourth priority in practice was the agreement signed in June 1997 between Ukraine and the WEU aimed at establishing co-operation on long-range air transport in support of so-called Petersberg missions.

In spite of all this activity, it is clear that the EU as such played a limited role on most of the key issues in Western policy towards Ukraine in the early to mid- 1990s. On many of the important issues – agreements with Russia on withdrawal of troops, removal of nuclear weapons – the EU was a marginal actor. The EU's agenda was dominated by EMU and institutional reform, and when external relations did make it to the top of the agenda, attention was focused on other issues such as the Balkans and enlargement.²⁶ As far as developments with the former Soviet Union was concerned, priority was accorded to Russia, to some extent providing a model for other CIS countries. In 1996, the Action Plan on Russia was endorsed seven months before the Action Plan on Ukraine, in May and December respectively. Although the PCA with Ukraine was signed 10 days before the PCA with Russia, it entered into force four months after the Russian PCA, which did so on 1 December 1997.

The late 1990s: Partnership in practice

The PCA between the EU and Ukraine entered into force on 1 March 1998, three months after the first PCA (with Russia) became operational, and almost four years after it was signed. One of the reasons for the unusually long period between the signing and entry into force of the PCA was the accession of three new members after the PCA was signed. A protocol was thus necessary to include the three new members in the PCA, which was adopted in August 1997.

In addition to the increased intensity of relations due to the entry into force of the PCA, a shift in priorities in EU policy towards Ukraine is discernible towards the end of the 1990s. As it became increasingly evident to all that the dire predictions about Ukraine being a 'torn country'²⁷ doomed to internal conflict and division did not come true, so the EU's priorities in its policy towards Ukraine changed. Priorities moved away from more traditional Cold War concerns about military security and nuclear weapons, with the limited aim of rudimentary

²⁴ Official Journal L 3131, 6.12.1994, p.1.

²⁵ Communication on an Action Plan for Ukraine, Com (96) 0593 – C4-0103/97.

²⁶ Zielonka.

²⁷ A notion made famous by Huntington, see pp. 165-169. Huntington spells out three possible directions in which Ukraine could develop: 1) Conflict with Russia, 2) Division of Ukraine into two separate entities, and 3) United Ukraine in close co-operation with Russia. Interestingly, Ukraine's 'Western' option – joining the Western world and institutions such as NATO and the EU - was not considered by Huntington.

political and economic stability, towards promotion of democracy and establishing the rule of law.²⁸

One instance of this shift is the changes made in the Tacis programme for the period 2000-2006, which the EU agreed upon in 1998. The EU is the largest provider of international aid to Ukraine, and has since its independence provided more than 4 billion euros in economic assistance, through national budgets, international organisations and international financial institutions. EU economic assistance to Ukraine is channeled primarily through the TACIS programme. 460 million euros were allocated to Ukraine through the national Tacis programme in 1991- 1999, with additional funds from the Tacis Regional Programmes. In addition, Ukraine has received macro-economic and humanitarian assistance from the EU.

Until 1998, Tacis funds focused on specific sectors such as nuclear safety and environment, public administration, social services and education, restructuring state enterprises and private sector development, energy and agriculture.²⁹ The new Tacis regulation highlighted the need for a more focused approach, putting greater emphasis on institution and capacity building, with the promotion of democracy and the rule of law, and attracting investment as the major objectives. The focus of Tacis on technical assistance, with limited investment support, has been criticised, as much of the funding has ended up with private consultants from the EU. In the new Tacis programme, the ceiling on investment financing was increased from 10% to 20%.

With the entry into force of the PCA, the institutions set up by the agreement began functioning, and as of late 2002, five summits and five Co-operation Councils have taken place. The first meeting of the Co-operation Council took place in June 1998. Some of the items discussed had been on the bilateral agenda for years. In addition to broader objectives of democracy and reform, this included the Chernobyl question, with the EU reiterating the necessity of closing down the nuclear plant by 2000. Other issues that were raised in the Co-operation Council were to dominate EU-Ukraine relations in subsequent years. According to the statement issued after the meeting „[t]he Ukrainian side stressed the necessity to consider the conclusion of a Europe agreement as a long term objective of EU-Ukraine co-operation. The EU stressed that immediate attention should be given to the full implementation of the PCA.” The question of upgrading the relationship and the matter of PCA implementation have remained the principal issues of concern for Ukraine and the EU respectively since the entry into force of the PCA. Another recurring issue concerned co-operation in justice and home affairs, in particular to „develop forms of co-operation to tackle the growing problems posed by organised crime, drugs, corruption, and illegal immigration.”

The Russian financial and economic crisis beginning in August 1998 considerably hurt a Ukrainian economy still in decline, although Ukraine was able to avoid a default on its debt. At the first bilateral summit following the entry into force of the PCA in October 1998, the EU decided to grant Ukraine an additional balance of payment loan of 150 million ECU, as well as continuing the Tacis programme of technical assistance. The latter were to focus on institutional reform, economic reform and private sector development, energy and environment, border management, and the Ukrainian banking system.

²⁸ H. Smith, p. 232.

²⁹ H. Smith p. 237-238.

The crisis combined with new protectionist measures led to an increase in Ukraine's trade deficit vis-à-vis the EU, which had gradually been worsening throughout the 1990s.³⁰ These measures were also in violation of certain PCA provisions, relating primarily provisions on trade in goods. In spite of this, both sides reiterated their the commitment to study the possible establishment of a free trade area at the October 1998 summit, while emphasising that Ukraine's accession to the WTO³¹ was the main priority on trade.

The Chernobyl nuclear power plant was a prominent topic during the first summit. Ukraine reiterated its commitment to close the power plant by 2000, with the EU providing more than 200 million US\$, making it the largest provider of assistance. Bilateral agreements on nuclear safety and thermonuclear fusion were initialled during the summit. It was also decided to step up co-operation in fight against crime, in particular against drugs and money laundering, as envisaged in the PCA.

While the EU side increasingly focused on the more practical aspects of PCA implementation, Ukraine raised its official ambitions in relation with the EU. On June 11 1998, President Kuchma approved the Strategy of Integration of Ukraine to the European Union. According to this strategy, the ultimate aim is full EU membership for Ukraine, the preconditions for which should be fulfilled by 2007. The strategic goal of EU membership was reiterated in President Kuchma's inaugural address in November 1999. A Programme of Integration of Ukraine to the European Union to implement the Strategy was adopted in September 2000.³² Since then, the question of Ukraine's potential EU membership, and the EU's acknowledgements of this, has from the Ukrainian side become the perhaps most important issue of EU-Ukrainian relations.

The EU's Common Strategy on Ukraine

One of the innovations of EU policy ushered in by the 1997 Treaty of Amsterdam was the creation of the Common Strategy as a new instrument of the EU's Common Foreign and Security Policy (CFSP). The December 1998 Vienna Summit decided the order of the Common Strategies to be developed following the entry into force of the Amsterdam Treaty in May 1999. The first Common Strategy, on Russia, was adopted in June 1999. The second Common Strategy was devoted to Ukraine and was endorsed by the Helsinki European Council in December 1999.³³ The Common Strategies are internal EU documents, although Ukraine was consulted on its developments at the Co-operation Council and the summit in April and July 1999, respectively.

The Common Strategy on Ukraine describes the relationship as a 'strategic partnership,' and identifies three principal strategic goals for the EU with regard to Ukraine:

1. Support of the democratic and economic transition process in Ukraine;
2. Co-operation on ensuring European stability and security and in meeting common challenges on the European continent;
3. Increased economic, political and cultural co-operation, in particular in the context of EU enlargement and in Justice and Home Affairs.

One of the key novelties of EU policy in the Common Strategy is the inclusion of justice and home affairs and regional and cross-border co-operation among the main priorities of the EU

³⁰ Cameron.

³¹ Ukraine applied for WTO membership in December 1993.

³² Pidluska, p. 185-186.

³³ A third Common Strategy on the Mediterranean Region was adopted in June 2000.

in its relations with Ukraine. Co-operation in justice and home affairs will be dealt with below. Regional and cross-border co-operation was also included among the priority sectors in the new 2000-2003 Tacis regulation, in part as a growing realisation of the potentially negative impact of EU enlargement on direct neighbours such as Ukraine, and that this would be most strongly felt in regions of Ukraine bordering the enlarged EU.

In spite of strong Ukrainian requests, the EU did not acknowledge Ukraine's aspirations for EU membership in the Common Strategy. Instead, it states that „the EU acknowledges Ukraine's European aspirations and welcomes Ukraine's pro-European choice,” a formula copied in most subsequent official statements from the EU.

Ukraine was not however the only party dissatisfied with the Common Strategy. In late 2000, EU High Representative Solana and his planning staff produced a highly critical report on the Common Strategies. Although this was based largely on the experience with the first Common Strategy on Russia, the criticisms were primarily on the Common Strategies as an instrument of EU external action, and thus also targeted at the (second) Common Strategy on Ukraine. In the report, the Common Strategies are considered as too vague and their added value is questioned, since the strategies concerned countries with which co-operation mechanisms already existed. Although the countries targeted by Common Strategies appeared to appreciate the documents, this was more because they were interpreted as a sign of the importance attached to the relevant bilateral relationships, rather than the substance of the documents themselves. The latter had apparently created some uncertainty regarding the status of the PCA in relation to the document. Finally, the report claimed that the existence of these strategies had not improved the co-ordination, cohesion and impact of EU policy, one of the main goals of the Common Strategy instrument, with the limited impact of the EU on the second Chechnyan conflict from Autumn 1999 as the most prominent example.

While it is easy to agree on many of the specific criticisms, one should not neglect the (albeit limited) positive aspects of the Common Strategies. Ukrainian officials frequently complain that Ukraine does not receive the attention from the EU that it deserves. The requirement on each Presidency to develop work plans for the implementation of the Common Strategies entails that Ukraine figures more prominently on the Presidency work programmes than may otherwise have been the case had it not been for the Common Strategy on Ukraine.

Furthermore, some improvements have taken place since the first report on the Common Strategies in late 2000. In its annual review of the effectiveness of Common Strategies in January 2002, the EU Council noted improvements in the implementation of the three existing strategies (Russia, Ukraine and the Mediterranean region). A report submitted to the Council found that enhanced co-ordination of the work plans drawn up by successive presidencies had led to a greater consistency and continuity, although it was emphasised that many of the previously identified shortcomings remained. Preparatory work on a fundamental review of the best way to use common strategies in the light of experience was started under the Danish Presidency in the second half of 2002.

Towards greater engagement?

Another balance of payment loan of 150 million euro was granted at the second summit in July 1999 „in order to encourage the process of reform,” in spite of continued EU concerns about Ukrainian legislation in contradiction with provisions of the PCA and the requirements of WTO accession. The commitment to study the possible establishment of a free trade area

was reaffirmed, while awaiting the results of the joint study on the feasibility of a free trade area commissioned earlier.

The EU position regarding a possible FTA with Ukraine was set out following the joint study of November 1999. It emphasised that one clear precondition was the need for a committed and sustained policy of microeconomic and administrative reforms in Ukraine that would create an environment conducive to the establishment and expansion of business activities. This entails in particular functioning market institutions, ensuring the rule of law in the business area; a stable and non discriminatory legal framework; clearly defined property rights; the ability of the Ukrainian administration to administer a FTA regarding rules of origin; border management; judicial system performance and enforcement of property rights.

Although unwilling to acknowledge Ukraine as a potential member, the EU's readiness for deeper engagement with Ukraine emerged at the end of the 1990s. This was duly noted by the Cologne European Council in June 1999, and was undoubtedly boosted by the loss of the Communist candidate in presidential elections (rather than the victory of Kuchma), and the subsequent selection of liberal Victor Yushenko as prime minister at the end of 1999. PCA compliance improved considerably under the government of former Central Bank governor Yushenko, and an ambitious programme of economic reform was adopted.

The entry into force of the PCA spurred the process of further bilateral trade liberalisation, and the Ukrainian economy grew for the first time in nine years in 2000, as it recovered from the 1998 crisis. Agreement on the removal of textile quotas was reached in December 2000 and implemented in March 2001, and included also a commitment by Ukraine to apply for EU exports the same maximum tariffs as EU. An agreement on increasing steel quotas – which Ukrainian producers were initially unable to fill³⁴ - was initialled in late 2001, but has not yet entered into force.

The statement issued after the third Co-operation Council in May 2000, noted a 'qualitative shift' in EU-Ukrainian relations, with a 'number of concrete steps' taken since the PCA entered into force. The EU welcomed „the new willingness of the Ukrainian government to resolve outstanding trade disputes,” the recent reductions in tariffs on many products, and „the determination of the Ukrainian government to press ahead with an ambitious and far-reaching programme of economic reform.” At the third EU-Ukraine summit in Paris in September 2000, Ukraine was informed that the EU Council were to remove Ukraine from the list of non-market economies. This was to be applied on a case-by-case basis, allowing individual Ukrainian exports to request market economy treatment.

The closing of the Chernobyl nuclear reactors in December 2000 meant that one of the EU's biggest concerns vis-a-vis Ukraine had finally been resolved, having been on the top of the bilateral agenda for a decade. The EU's involvement continued, however, notably through the agreements on co-operation in the fields of nuclear safety and controlled thermonuclear fusion signed in July 1999. Following the pledging conference in July 2000, the EU has provided 430 million euros to the Chernobyl Shelter Fund, making it the largest provider of financial assistance to the project.

However, the question of Ukraine's prospects of eventual membership continued to dominate the debate, fuelled in March 1999 by the European Parliament resolution on the Common

³⁴ Lewis, p. 273, and Borakovsky, p. 224.

Strategy on Ukraine, which acknowledged the right of Ukraine to become a member. Although the EU was still unwilling to acknowledge Ukraine's as a potential candidate, some steps towards accommodating Ukraine's European aspirations were made. At the Gothenburg European Council in June 2001, Ukraine was invited to join the European Conference, a forum set up in late 1997, initially intended for the EU and candidate states, but later expanded to include EFTA and Western Balkans countries. Much attention has also been given to the fact that Ukraine was referred to under the section on Europe, and not the section on external relations, in the Gothenburg Presidency Conclusions.

After the end of the Yushchenko government in Spring 2001, earlier problems with PCA implementation have however reappeared. The EU's fear of this was evident already at the fourth meeting of the Co-operation Council in late June 2001, just after the appointment of a new Ukrainian government. The Co-operation Council emphasised the need to press ahead with PCA implementation, and identified six priority areas: energy, trade, JHA, legislative approximation, environment and transport. Cross-border co-operation was added to the list of priorities at the fifth Co-operation Council in March 2002. The loss of momentum in EU-Ukraine relations was in evidence also at the fourth EU-Ukraine summit in September 2001, with the only concrete step decided being to examine training and twinning programmes. Although the EU appreciated the numerous initiatives from Ukraine on strengthening relations, it was emphasised by the EU that this could not be pursued separately from political and economic reforms.³⁵

The ousting of Yushchenko was however just one among several events making the EU increasingly concerned about developments in Ukraine.³⁶ The less-than-transparent presidential elections in Autumn 1999; the legally dubious constitutional referendum in April 2000; the murder of Ukrainian journalist Georgy Gongadze in Autumn 2000, and the possible involvement of President Kuchma in it; the arrest of Deputy Prime Minister Yuliya Tymoshenko just before the end of the Yushchenko premiership; and the weapons sales to Macedonia in the first part of 2001, all received considerable attention and critique in the EU.

Broadening the Agenda

All of these developments in Ukraine contributed to a more active, albeit more critical, EU policy at the turn of the millennium. However, developments within the EU, and in particular the entry into force of the Treaty of Amsterdam were perhaps more important. In addition to introducing the Common Strategy instrument, the Amsterdam Treaty also enhanced co-operation in Justice and Home Affairs (JHA), including the Schengen agreement on border policy into the EU treaties. JHA falling within EU competences has considerable external aspects, which is reflected in the Common Strategy on Ukraine, where co-operation on JHA, in particular in relation to enlargement, emerges as one of the principal aims of EU policy. Although there are provisions concerning justice and home affairs in the PCA,³⁷ significant co-operation between the EU and Ukraine in this area only emerged following the entry into force of the Amsterdam Treaty in Spring 1999.

Integration in the domain of JHA has made great strides within the EU in recent years, and has become an increasingly important item on the EU-Ukraine agenda. One of the key novelties of the new Tacis regulation from 1998 was the inclusion of improvement of

³⁵ See the joint statement from the fifth Co-operation Council in March 2002.

³⁶ See Guicherd, in particular pp. 22-23.

³⁷ Such as Article 68 on money laundering and Article 79 on drugs.

Ukrainian border management as one of the priorities.³⁸ The first EU-Ukraine summit in October 1998 decided to step up co-operation on customs and the fight against crime, on the latter in particular on drugs and money laundering, as provided for by the PCA. However, justice and home affairs does not appear in the statement issued at the summit the following July (1999). The September 2000 summit examined co-operation in JHA, including Ukrainian proposals to widen co-operation in fields such as terrorism, drugs and arms trafficking and criminal law. The question of visas was also raised at the summit. As the EU enlargement process proceeded, there were rising concerns in Ukraine about the effects of the introduction of the Schengen visa regime in the new members on the movement of persons between Ukraine and countries like Poland, Slovakia and Romania. It seemed quite clear that the introduction of visas would introduce a considerable obstacle to the current flows across Ukraine's future EU border.

At the June 2001 Co-operation Council, justice and home affairs were identified as one of six priority areas for co-operation, with an Action Plan envisaged to be completed by the end of the year. At the following summit, in September that year, it was decided to co-operate more closely on illegal immigration, asylum, smuggling and trafficking of persons, between judicial and law enforcement agencies.

The EU Action Plan on Justice and Home Affairs in Ukraine was agreed by the EU-Ukraine Co-operation Committee in December 2001. The fifth Co-operation Council in March 2002 identified the negotiation of an EU-Ukraine readmission agreement, improved border management, immigration, judicial reform, the rule of law, organised crime and terrorism as the principal priorities. To ensure implementation, a scoreboard will be developed in consultation with Ukraine. The first meeting between the EU Troika and Ukraine discussing enhanced co-operation in JHA met in November 2002.

Foreign policy is another increasingly important area in EU-Ukraine relations. One sign of this is the growing role of international affairs in the statements issued from high-level meetings, reinforced no doubt by Ukraine's association with CFSP statements. Although this international dialogue is essentially limited to an exchange of views on topical international issues, these appear to be discussed in increasing detail, in particular countries and regions of particular common interest, such as the Black Sea region, Moldova, Belarus, Russia and the Western Balkans.

The development of a European Security and Defence Policy from late 1998 opened up for further EU-Ukraine co-operation on foreign policy. The fourth EU-Ukraine summit in September 2001 decided that exploratory talks on the use of Ukrainian transport planes in ESDP operations were to be held. The Seville European Council in June 2002 endorsed the invitation to Ukraine and other non-EU OSCE members currently contributing to the UN International Police Task Force (IPTF), to contribute to the planned EU Police Mission in Bosnia and Herzegovina (EUPM). Special arrangements for co-operation and consultation on crisis management were also endorsed, with similar arrangements agreed also for Russia and Canada. According to the arrangements, a Ukrainian contact person will be accredited to the EU Military Staff, with which two briefing meetings will be organised in each Presidency.

The New Neighbours Initiative

³⁸ See joint press release from EU-Ukraine summit, Vienna, 16 October 1998, para. 7.

In spite of the deepening and widening of EU-Ukraine co-operation at the turn of the century, the relationship is arguably less developed and shows less dynamism than the EU's relationships with its other neighbours. This is due to the EU's unwillingness to acknowledge Ukraine as a potential member and the considerable discrepancy between Ukraine's rhetoric of integration and the lack of progress of reforms.

One important example of EU-Ukrainian relations 'falling behind' the EU's relations with other neighbours is Russia. That the EU has pursued a 'Russia-first' strategy vis-à-vis the countries of the former Soviet Union has been a central element in criticisms of EU policy towards Ukraine.³⁹ It can be argued that this bias towards Russia has become more pronounced in recent years. Where EU policy towards Russia and Ukraine are similar, initiatives are aimed first at Russia, then at Ukraine. Russia was thus granted market economy status for individual exporters in 1998, a status granted to Ukraine more than two years later. The first Common Strategy was dedicated to Russia (June 1999), the second to Ukraine (December 1999). Market economy status to the economy as a whole was granted to Russia in November, but is at the end of 2002 still under consideration for Ukraine.

More notable perhaps of this difference in sequencing, which is of more symbolic importance, has in recent years been accompanied with a gradual divergence on substantial co-operation between the EU and Russia on the one hand and the EU and Ukraine on the other. Numerous bilateral EU-Russia initiatives have been made in the last few years. In 2000, the EU and Russia initiated an energy dialogue and enhanced CFSP co-operation. In 2001, there were initiatives to create a common European economic space and on bilateral EU-Russia co-operation on ESDP abolish This list includes the 1998 Northern Dimension initiative, in 2000, the energy dialogue and CFSP co-operation, in 2001 the initiative to establish, and most recently, discussions on a no visa regime from Autumn 2002.

In light of the EU's imminent enlargement to include Ukraine's western neighbours and thus making Ukraine a direct neighbour, and following proposal from the Swedish and British governments in early 2002, the EU decided in April 2002 to study how to strengthen relations between the EU and Ukraine, Belarus and Moldova. In November 2002, the EU decided to launch a New Neighbours Initiative, tasking the EU institutions to come up with proposals. The EU had cooled considerably to any significant strengthening of relations since the new neighbours idea had first been raised. Of particular importance was the so-called Kolchuga affair on possible sale of anti-aircraft systems to Iraq, which erupted in September 2002 as the EU Council was to discuss the New Neighbours Initiative. Autumn 2002 also saw huge anti-Kuchma demonstrations in Ukraine.

Ukraine and the 'EU's new Neighbourhood Policy

The European Commission unveiled its proposals in March 2003.⁴⁰ By then, the initiative had been expanded to include Russia and the Mediterranean partners, none of which aspire to EU membership. The communication makes a number of new proposals to what it calls a new EU Neighbourhood Policy.

The conclusion of new *Neighbourhood Agreements* is suggested. The scope of these are to be examined after existing agreements – i.e. the PCA in the case of Ukraine - are implemented, and it is emphasised that these should not override current agreements, and would supplement

³⁹ Sherr.

⁴⁰ European Commission, *Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern neighbours*, COM (2003) 104 final, 11 March 2003.

existing contractual relations. The Communication seems to imply that Ukraine is a likely early candidate for such an agreement, although this is not made explicit.

The communication also proposes the development of *Action Plans* setting out common objectives and a time-table for their achievement. These are to be agreed with the partner countries, given political endorsement by the EU and the partner(s), and reviewed annually within existing arrangements. It is suggested that the Action Plans should „supersede common strategies to become the Union’s main policy document for relations with these countries over the medium term.” From an EU perspective, this replacement of one of the main CFSP instruments – the common strategies – is the most significant proposal in the communication.

A new Neighbourhood Instruments for economic assistance is also proposed. While the details of this instrument is not elaborated at this early stage, increased focus on assistance for the approximation of legislation is suggested for the eastern neighbours. Furthermore, the communication also suggests extending EIB lending to Ukraine and other CIS countries. EIB operations in the CIS was first extended to Russia as part of the Northern Dimension initiative.

Although the proposals in the field of justice and home affairs are limited, a gradual liberalisation of the regime for the movement of persons is envisaged in the communication. The conclusion of a readmission agreement and a simplified visa regime for select groups such as participants in EU programmes and for diplomats, and perhaps facilitated cross-border traffic for people living in areas close to the EU external border. In the longer term, the „wider application of visa free regimes” is envisaged, though dependent on unspecified preconditions. Enhanced co-operation on foreign, security and defence policy is also suggested, but again with limited detail as far as Ukraine is concerned.

The long-term aim of the new Neighbourhood Policy is to establish close relations similar to those enjoyed by the EFTA states in the European Economic Area. However, the latter enjoys considerable participation in EU institutions in various ways, while the neighbours covered by the new Neighbourhood policy are not envisaged a role in the EU institutions. On the key issue of giving the prospect of membership, the communication states that these would not be given in the medium-term. On the other hand, it does not exclude such prospects in the long-run for Ukraine.

Relations with the new neighbours have also emerged in the Convention on the Future of the EU. In the draft EU Constitution, first presented in October 2002, a new type of privileged relationships are envisaged between the EU and its neighbours.⁴¹ This provision was further elaborated in early April 2003. Article 42 of the Constitution calls for a ‘special relationship with its neighbouring states’ (paragraph 1), calling for the conclusion ‘specific agreements.’ While taking association agreements as its point of departure, it is still unclear whether these new agreements will replace or be in addition to the provision for association agreements currently in place. Any new agreement with Ukraine, and indeed the new Neighbourhood Policy as such, is likely to depend on the eventual provisions in the EU constitution likely to be agreed in the intergovernmental conference starting after the end of the Convention in June 2003.

⁴¹ Title IX, Article 42 of the draft Constitution.

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Annex 1: The PCA – main headings

1. General principles (Articles 2- 5)
2. Political dialogue (Art. 6- 9)
3. Trade in goods (Art. 10- 23)
4. Provisions affecting business and investment (Art. 24- 47)
5. Current payments and capital (Art. 48)
6. Competition, intellectual, industrial and commercial property protection and legislative co-operation (Art. 49- 51)
7. Economic co-operation (Art. 52- 79)
8. Cultural co-operation (Art. 80)
9. Financial co-operation (Art. 81- 84)
10. Institutional, general and final provisions (Art. 85- 109)

The PCA contains five annexes and one protocol.

Annex 2: The PCA institutions

The EU-Ukraine summits determine the strategic directions of the bilateral relationship, and are the principal forum for political dialogue on other issues. The EU is represented by the ‘Troika’ consisting of the rotating Presidency of the Council of the EU, the President of the European Commission and the High Representative for the CFSP. The Troika is typically represented also by relevant Commissioners (External Relations, Trade etc). Ukraine is represented by its President, accompanied by relevant ministers (foreign affairs, deputy prime minister in charge of European affairs, trade, justice etc). Although the PCA does not specify the frequency of the summits, meetings have taken place once per year since the Agreement entered into force.

The Co-operation Council meets at the ministerial level once a year. It is responsible for the supervision of implementation of the PCA, and is, together with the summits, the key fora for political dialogue between the EU and Ukraine. It may make recommendations at the agreement of the two parties, and is responsible for setting up sub-committees or other bodies. Ukraine would typically be represented by its Foreign Minister, although the Ukrainian delegation has at times been headed by either the Prime Minister or the Deputy Prime Minister in charge of European Affairs. Other ministers participate on an ad hoc basis. The Council of the EU is typically represented by the foreign minister of the country holding the rotating Council Presidency and the Commission by the External Relations Commissioner, at times accompanied by other Commissioners.

The Co-operation Committee consists of senior civil servants of EU Council, Commission and government of Ukraine, and meets typically once a year. Assists the Co-operation Council, and prepares its meetings. **Sub-committees** consisting of experts and officials from EU and Ukraine. are set up by the Co-operation Committee in specified areas.

The Parliamentary Co-operation Committee consists of parliamentarians from the Ukrainian parliament and the European Parliament. It meets once per year and may request relevant information on implementation of the PCA, and may submit recommendations to the Co-operation Council.

Annex 3: The Common Strategy on Ukraine – main headings

Part 1: Vision of the EU and for its Partnership with Ukraine

Part 2: Principal objectives

- 1. *Support for the democratic and economic transition process in Ukraine***
 - The consolidation of democracy, the rule of law and public institutions in Ukraine
 - Support for the economic transition process in Ukraine
- 2. *Ensuring stability and security and meeting common challenges on the European continent***
 - Co-operation to strengthen stability and security in Europe
 - Co-operation in the field of environment, energy and nuclear safety
- 3. *Support for strengthened co-operation between the EU and Ukraine within the context of EU enlargement***
 - Support for Ukraine's integration into European and world economy
 - Co-operation in the field of justice and home affairs

Part 3: Specific initiatives

- The consolidation of democracy, the rule of law and public institutions in Ukraine
- Support for the economic transition process in Ukraine
- Co-operation to strengthen stability and security in Europe
- Co-operation in the field of environment, energy and nuclear safety
- Support for Ukraine's integration into European and world economy
- Co-operation in the field of justice and home affairs
- Regional and cross-border co-operation with neighbouring countries
- Co-operation in the field of culture, twinning and exchange programmes