

From Eastern Partnership to the Association.
A Legal and Political Analysis

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Edited by

Naděžda Šišková

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SCHOLARS**

P U B L I S H I N G

From Eastern Partnership to the Association.
A Legal and Political Analysis,
Edited by Naděžda Šišková
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PREFACE

ŠTEFAN FÜLE

COMMISSIONER FOR ENLARGEMENT AND EUROPEAN
NEIGHBOURHOOD POLICY

The way to secure a prosperous European neighbourhood in the East

I welcome very much the publication of this book, which is focused on legal and political aspects and current issues of the Eastern Partnership.

The Eastern Partnership is an ambitious initiative aimed at closer political association and economic integration between the European Union and six Eastern European countries. Launched in Prague in 2009 and marking its fifth anniversary in May, this unique and comprehensive element of the European Neighbourhood Policy has achieved remarkable progress.

The Eastern Partnership contributes to sustainable democracy and market-oriented reforms in the region, along with enhanced mobility for citizens. The overarching goal of the initiative is a secure a prosperous European neighbourhood with a shared commitment to democracy, the rule of law and fundamental freedoms. The European Union also strives to create the necessary conditions for long-term growth and enterprise. This is in the interest not only of the citizens of Eastern Partnership countries, but also of those of the European Union.

To achieve the ambitious goals of the Eastern Partnership, the European Union employs two parallel approaches: a bilateral track aimed at strengthening relations with the partner countries, and a multilateral track to address challenges common to all partners. The EU has taken significant steps to increase mobility and person-to-person contacts. Concrete cooperation in a wide range of sectors has likewise intensified.

Through the Eastern Partnership the European Union supports jointly agreed sector reforms to boost partner country economies. It provides financial assistance and provides know-how to ensure that aid brings about lasting change in the partner countries. For instance, support for local SMEs/business initiatives or reforms in vocational education and training

sectors brings about increased growth and jobs. Upgraded transport connections and common regulatory standards boost trade. Enhanced mobility means easier movement of people and goods through modernised border crossings. Greater energy efficiency and more renewable energy sources lead to a greener economy.

Eastern Partnership countries face significant challenges, and the European Union must shape its policy towards the region in a way that ensures continued momentum. It is important to be ambitious, creative and at the same time realistic about the future.

Differentiation, sustained political engagement and public diplomacy are key elements to take the process forward towards the next Eastern Partnership Summit which will be in Riga in 2015. We will have to tailor our approach with each Eastern Partner country, with options ranging from full political association and economic integration to unique relationships that take account of our partners' other regional integration commitments. At the same time, the European Union will continue to place respect for the common values of democracy, human rights and the rule of law at the heart of our relationship with each of our partners. Whatever the level of ambition our partners have in their relationship with the European Union, steps towards ensuring the independence and effectiveness of the judiciary, tackling corruption and improving the quality and accountability of public administration will be essential for the European Union and partners to get the most out of their relationships. Equally it is imperative that we maintain the inclusive nature of the partnership and build a sense of joint ownership. The increasing range of multilateral meetings under the Eastern Partnership, provide important opportunities in this respect.

But the Eastern Partnership is much more than government to government cooperation. Through the Eastern Partnership we are creating a dense network of contacts between the European Union and partners across society as a whole. From the Civil Society Forum with its National Platforms in each partner country, through the Euronest Parliamentary Assembly and the Conference of Local and Regional authorities (CORLEAP) to the Business and Youth Fora, we are building constituencies who can carry the transformation message to the citizens of our partner countries. We will continue to build these contacts in the years ahead which will be facilitated by the gradual process of visa liberalisation for our partner countries' citizens to be able to travel to the European Union.

The European Union respects the historical, cultural, economic and political links among all its neighbours. The market-oriented reforms will make Eastern European Partner countries more attractive for investment and trade, and will improve energy security and interconnections. Improved public

administration in Eastern European partner countries and a more effective judiciary are elements of better governance that benefit business as well as society as a whole.

I am strongly convinced that closer political Association and economic integration with the European Union will be of substantial benefit to Eastern European countries but also to the European Union. The Association Agreements (AAs) and Deep and Comprehensive Free Trade Area (DCFTA) currently on the table are not just about legal and regulatory convergence with European Union standards. They have been shaped by the European Union's own integration experience—one in which common rules have not only fostered trade links and laid the groundwork for increased prosperity but also demonstrated the capacity of states to work together in meeting the challenges of today's increasingly globalised world. In this sense, the Eastern Partnership will contribute to a more peaceful and prosperous European continent.

December 2013

INTRODUCTION

NADĚŽDA ŠIŠKOVÁ

The book entitled “From Eastern Partnership to the Association. A legal and Political Analysis” is published at the key moment of preparation of the historically first transition of one of the Eastern Partnership countries-Ukraine-into the association relationship. The dramatic development in Ukraine in connection with the delay of the signature of the EU-Ukraine Association Agreement shows that this contract instrument is considered to be much more than merely an agreement, but also as a powerful symbol of the future orientation of the Partnership state.

This coincidence, reflected in the text of the publication, still more underlines the significance of the covered material and the up-to-dateness of the chosen topic.

The monograph is dedicated to the legal and political dimension of the European Union’s policy towards the EU’s Eastern neighbours (Ukraine, Belarus, Moldova, Azerbaijan, Georgia and Armenia).

The relevant material is examined from a broader perspective and attention is paid to the analysis of the Eastern Partnership Agreements from the viewpoint of their place in the External Relations law of the EU, including the legal mechanisms of their operation.

Taking into account the fact that the Association Agreements with some of the Eastern Partnership were already prepared (Ukraine, Moldova, and Georgia), an analysis is performed concerning general issues of the association and their specific manifestation in the case of the mentioned states.

In this respect a comparison with the previous Association Agreements with the states of Central Europe is also made. The core lies in the analysis of the issues of human rights, the rule of law and legal approximation as the key elements of the acceptance of the duties of the Partnership and Association countries.

Attention is paid also to some important issues which are relevant in order to grasp the problems of coping with the obligations concerning the law of competition.

The monograph is prepared by a multi-national team consisting of leading scholars and experts from the old and new Member States as well as from the Partnership States. Namely, they are academics from Germany, Czech Republic, Slovak Republic, Estonia, Ukraine and Georgia and also prominent legal experts on EU matters from different institutions (who deal with the mentioned issues in practice), particularly the Court of Justice of the EU, Ministry of Foreign Affairs, Constitutional Court, Office for the Protection of Competition. The structure of the team involving academics and experts from practice representing the old and new Member States as well as the Partnership state enabled the analysis to be performed from various points of view and to reflect a diversity of approaches, including the fresh experiences of the Czech Republic, Slovakia and Estonia with the implementation of the Europe Association Agreements.

The last mentioned fact also holds a symbolic meaning since the strategy of the Eastern Partnership originates from the Summit held in Prague in May 2009, i.e. right in one of these new Member States. Also, the continuous efforts of Štefan Füle, the Czech Commissioner for Enlargement and the Eastern Partnership, in the form of his involvement into the process of European integration of those countries, including the emphasis put on the European values and the adoption of relevant legislation as reflected, *inter alia*, resulted in the so-called Štefan Füle plan, which gives a clearer picture of this symbolism.

Therefore, we hope that the “lessons learned in Central Europe” in the process of implementing the Association Agreements, the adoption of *acquis communautaire* and the preparation to access the EU, as reflected in this monograph, will be an inspiration to the states of the Eastern Partnership and for the new Association states, respectively.

Despite the fact that the book is prepared in the form of a collection of essays, it offers a coherent text thanks to its contentual connection between the topics and general conclusions at the end of the book, which embrace and summarize the whole material of the monograph.

The monograph presents the main output of the Jean Monnet Multilateral Research Project funded by the European Commission bearing the title “Eastern Partnership and its prospects with a view to legal approximation, the rule of law and human rights”, within which three conferences were held (in Slovakia, Ukraine and the Czech Republic). In particular, they were “EU Law and Human Rights in Education and the Civil Sector of the Partnership States”, which was organized by Comenius University and held in Bratislava, “Preparation for the Acceptance of the Duties of the Association Country in the Field of Human Rights, the

Approximation of Laws and Judicial and Administrative Capacity”, organized by Kiev-Mohyla University and held in Kiev, and “From the Eastern Partnership to the Association – the Great Debate” organized by Palacky University and the Czech Ministry of Foreign Affairs, which was held in Prague.

The monograph draws from the herein mentioned scientific forums and presents the content of the most important contributions and conclusions.

As the Partnership and Association Agreements create an important part of the External Relations law of the EU, the book is intended for pre-graduate and postgraduate students from the Faculties of Law, Political Sciences and International Relations, and it could be also recommended to academics, practical lawyers, diplomats, journalists and others who are interested in EU matters.

1 December 2013

PART I

EASTERN PARTNERSHIP AND ASSOCIATION AS A PART OF EUROPEAN EXTERNAL RELATIONS LAW

CHAPTER ONE

THE PLACE AND STATUS OF THE EASTERN PARTNERSHIP POLICY IN THE EUROPEAN EXTERNAL RELATIONS LAW

PETRA LUSTIGOVÁ

1.1 Introduction

This contribution will focus on the creation and development of the Eastern Partnership, which represents an important pivot in the European Union's relations with the countries in the post-soviet region and serves as a platform to foster good neighbourly relations, stability, security and economic cooperation in different areas of mutual interest. In the wider context of the European Neighbourhood Policy (hereinafter the "ENP"),¹ the Eastern Partnership is thus a sort of counterbalance to the well established southern dimension, which was initially called the 'Barcelona Process'² and which was then re-launched as the ambitious Union for the Mediterranean in 2008 (under the French Presidency of the Council).

¹ The ENP was established in the aftermath of the 'eastern' enlargement of the EU in 2004 and stems from two essential documents of the European Commission: *Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours* (COM [2003] 104 final of 11 March 2003) and *European Neighbourhood Policy – Strategy Paper* (COM [2004] 373 final of 12 May 2004). Another significant document, which outlined some of the security goals of the ENP, was the European Security Strategy approved by the European Council at its meeting in Brussels on 12 December 2003 (*A Secure Europe in a Better World – European Security Strategy*). The following countries are taking part in the ENP: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Morocco, Moldova, Palestinian Authority, Syria, Tunisia and Ukraine.

² The 'Barcelona process' was a designation for the Union's partnership with the Mediterranean countries, which dates back to the adoption of the 'Barcelona

We shall look at the context of the establishment of the Eastern Partnership, the role and contribution of individual EU Member States, as well as the involvement of the institutions of the Union, especially the European Commission (hereinafter the “Commission”). Further, we shall evaluate the multilateral and bilateral dimensions of the project and describe the political and legal instruments available for the attainment of its objectives. Finally, we shall discuss the preparations, expectations and possible outcomes of the forthcoming Eastern Partnership summit in Vilnius, taking place in November 2013, where the much expected and much delayed signature of the Association Agreement with Ukraine³ should take place, provided all the political conditionals are fulfilled.

1.2 A star is born? Establishment of the Eastern Partnership as part of the ENP

The Union has basically two strategies with regard to its neighbours: (i) the offer of a future membership, i.e. a dynamic Association process with candidate status; or (ii) attempts to stabilise the country (or its wider region) by offering cooperation, but without closer integration into the EU and without the membership prospect. The European Neighbourhood Policy essentially reflects the second approach, which, however, does not mean that some of the countries involved would not be interested in full membership. The very opposite is true and by way of illustration, one might recall the statement of Ukraine’s leaders on the country’s future membership in the EU, made in 2004, which took the Union’s representatives slightly by surprise and was met with moderate reactions.⁴

The concept of the ENP is a fairly ambitious project, which attempts to provide a coherent general framework for such different countries as e.g. Ukraine, Georgia, Israel or Tunisia.⁵ It faces multiple challenges, one of

Declaration’ at the first Euro-Mediterranean conference of Ministers of Foreign Affairs on 27-28 November 1995 in Barcelona. The original partner countries were Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, Palestinian Authority, Syria, Tunisia and Turkey. Libya received an observer status later in 1999.

³ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (hereinafter as the “AA with Ukraine”).

⁴ M. Koopmann, Ch. Lequesne (Eds.): *Partner oder Beitrittskandidaten? Die Nachbarschaftspolitik der Europäischen Union auf dem Prüfstand* (1st ed.), Nomos Publishing, Baden-Baden, 2006, p. 12.

⁵ The ENP was initially (prior to the Treaty of Lisbon) not founded on any particular legal basis and “took shape through an ad hoc interplay between the

them being the fact that for those countries not eligible for EU membership, it has to offer other tangible benefits than becoming a member of the Union. It must further set clear and attainable objectives and avoid creating false expectations that could lead to frustration in partner countries. Last but not least, the regional and multilateral elements should be strengthened and the bilateral cross-border projects should be integrated into the wider ENP framework. It is thus necessary to convince the partner countries that large scale structural reforms of their economic and political systems are necessary, even if the EU membership cannot be guaranteed, and that the harmonisation with *acquis communautaire* (especially in the internal market area), along with the removal of trade barriers and the increase in mutual trade, would bring concrete benefits for their economies and businesses. In this context, it might be useful to recall the ideas and theories of Karl Deutsch (1912-1992), who focused, in his research, on the relations between the integration of political elites and intensity of mutual communication. His theory of *transactionalism* was based on the assumption that the increase in the number of transactions (in the broad sense of the word) among the states leads to a deepening of the integration and elimination of the use of force in dealing with conflicts.⁶ This theoretical approach appears to be relevant also for the concept of the ENP and its objectives, namely the stability and security in the regions closest to the EU borders.

The difficulties briefly outlined above, as well as the shift of the EU borders further to the East after the enlargement in 2004, were among the reasons for creating the Eastern Partnership as a specific and enhanced Eastern dimension of the ENP for achieving stability, better governance and economic development at the Union's Eastern borders. The idea to intensify the EU's relations with the countries of Eastern Europe and Southern Caucasus materialised at the European Council meeting of 19 and 20 June 2008, which invited the Commission to prepare a proposal for an Eastern Partnership (EaP) and emphasised the need for a differentiated approach respecting the character of the ENP as a single and coherent policy framework. The Extraordinary European Council of 1 September 2008 requested that this work be accelerated, in response to the need for a

Commission (particularly DG External Relations) and the Council (including the High Representative [HR] for CFSP), with the blessing of the European Council." Ch. Hillion: *The EU's Neighbourhood Policy towards Eastern Europe*, In: A. Dashwood, M. Maresceau: *Law and Practice of EU External Relations*, Cambridge University Press, 2008, p. 315.

⁶ K. W. Deutsch: *The Analysis of International Relations*, Englewood Cliffs, N.Y.: Prentice-Hall, 1978, Chapters 14 and 17.

clearer signal of the Union's commitment following the conflict in Georgia and its broader repercussions.

The Commission duly complied with the requests of the European Council and prepared a Communication on the Eastern Partnership.⁷ The main objectives of this new project were stated in the following terms:

The EaP should bring a lasting political message of EU solidarity, alongside additional, tangible support for their democratic and market-oriented reforms and the consolidation of their statehood and territorial integrity. This serves the stability, security and prosperity of the EU, partners and indeed the entire continent. The Eastern Partnership will be pursued in parallel with the EU's strategic partnership with Russia.⁸

As to the essential elements of the Eastern Partnership, the Commission declared that "*The EaP will be based on mutual commitments to the rule of law, good governance, respect for human rights, respect for and protection of minorities, and the principles of the market economy and sustainable development.*"⁹

According to the Commission's outline, the goals of the Eastern Partnership should be achieved both on a bilateral and a multilateral track. The bilateral track should create a closer relationship between the EU and each of the partner countries to foster their stability and prosperity. This would include the upgrading of contractual relations towards Association Agreements (hereinafter as the "AAs"); the prospect of negotiations to put in place Deep and Comprehensive Free Trade Agreements (hereinafter as the "DCFTAs") with each country, leading to the establishment of a network of DCFTAs that can grow into a Neighbourhood Economic Community in the longer term; progressive visa liberalisation in a secure environment; deeper cooperation to enhance the energy security of the partners and the EU; and support for economic and social policies designed to reduce disparities within each partner country and across borders. Further, a new Comprehensive Institution-Building (CIB) programme would be needed to improve the institutional and administrative capacity of each partner to undertake the necessary reforms.

⁷ Communication from the Commission to the European Parliament and the Council: Eastern Partnership (COM [2008] 823 final of 3 December 2008). The Eastern Partnership covers the following six ENP countries: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.

⁸ *Ibid.*, p. 2.

⁹ *Ibid.*, p. 3.

The multilateral track would provide a new framework for addressing the common challenges in the whole region, including democracy, rule of law and energy security. To this end, four policy platforms were proposed on the following themes: (i) democracy, good governance and stability; (ii) economic integration and convergence with EU policies; (iii) energy security; and (iv) contacts between people. The multilateral track was also supposed to advance through a number of Flagship Initiatives supporting the aims of the Eastern Partnership, to be funded through multi-donor support, international financial institutions (IFIs)¹⁰ and the private sector.

The Commission's communication was accompanied by the Commission Staff Working Document,¹¹ which elaborated in more detail on (i) potential subjects for the work of the multilateral thematic platforms and panels; (ii) the indicative list of potential Flagship Initiatives (e.g. the Integrated Border Management Programme or the Southern energy corridor¹²); and (iii) the interface with other regional and international initiatives (e.g. the Black Sea Synergy).¹³ Both documents taken together thus give a good illustration of the content and structure of the proposal for the Eastern Partnership and provided the European Council with a basis for future action.

The Eastern Partnership was officially launched at the Heads of State (or Governments Summit) held in Prague in May 2009,¹⁴ in an effort by

¹⁰ The World Bank and the International Monetary Fund (IMF) are the main IFIs; the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD) represent the European Financial Institutions.

¹¹ Commission Staff Working Document accompanying the Communication from the Commission to the European Parliament and the Council: Eastern Partnership (SEC[2008] 2974/3).

¹² Since the EU and its ENP partners share an interest in enhancing energy security by diversifying energy transport routes and energy sources, the development of the strategic Southern energy corridor was one response to this issue and has been identified as one of the EU's most important energy security priorities.

¹³ The Black Sea Synergy is a regional cooperation initiative covering five ENP countries (Armenia, Azerbaijan, Georgia, Moldova and Ukraine), as well as the Russian Federation and Turkey. For more details, see e.g. Communication from the Commission to the Council and the European Parliament: Report on the First Year of Implementation of the Black Sea Synergy (COM [2008] 391 final of 19 June 2008).

¹⁴ The summit took place on 7 May 2009 during the Czech Presidency of the Council and was attended by the Heads of State or Government and representatives of the Republic of Armenia, the Republic of Azerbaijan, the Republic of Belarus, Georgia, the Republic of Moldova and Ukraine, the representatives of the European Union (President of the European Council, President of the European

the EU and its Eastern European partners to emphasise the importance of political and economic reforms and assist the countries of the region to move closer to the EU. The Czech Republic, as the then Presidency of the Council, was amongst the strong supporters of the Eastern Partnership and considered the Prague Summit as the actual crowning of its previous initiative, introduced in 2007.¹⁵

In the Joint Declaration of the Prague Eastern Partnership Summit¹⁶ the participants confirmed that the Eastern Partnership “*will be based on commitments to the principles of international law and to fundamental values, including democracy, the rule of law and the respect for human rights and fundamental freedoms, as well as to market economy, sustainable development and good governance.*”¹⁷ The main goal of the Eastern Partnership was “*to create the necessary conditions to accelerate political Association and further economic integration between the European Union and interested partner countries*” and it was considered to significantly strengthen the development of a specific Eastern dimension of the European Neighbourhood Policy.¹⁸

As to the bilateral dimension, the Joint Declaration stressed the new Association Agreements (including DCFTAs) with individual partner countries as an important legal instrument that “*will provide for the establishment or the objective of establishing deep and comprehensive free trade areas, where the positive effects of trade and investment liberalization will be strengthened by regulatory approximation leading to convergence with EU laws and standards.*”¹⁹ Further, the participants recalled the need for administrative capacity building, declared their support for the mobility of citizens and visa liberalisation in a secure environment, mentioning explicitly visa facilitation and re-admission

Commission, Secretary-General of the Council of the European Union/High Representative for the Common Foreign and Security Policy) and the Heads of State or Government and representatives of EU Member States. Also present was the President of the European Parliament, the representatives of the Committee of the Regions and the Economic and Social Committee, the President of the European Investment Bank and the President of the European Bank for Reconstruction and Development.

¹⁵ A Czech non-paper, drafted in collaboration with like-minded EU Member States, was entitled “*The European Neighbourhood Policy and the Eastern Neighbourhood: Time to Act*” and was followed by a joint Polish-Swedish Eastern Partnership initiative in 2008.

¹⁶ See Council document 8435/09 (Presse 78) of 7 May 2009.

¹⁷ *Ibid.*, p. 5, para. 1.

¹⁸ *Ibid.*, p. 6, para. 2.

¹⁹ *Ibid.*, p. 7, para. 5.

agreements. Last but not least, the Joint Declaration stressed the importance of energy security with regard to long-term stable and secure energy supply and transit and provided that “*provisions on energy interdependence could be included in the new Association Agreements or other bilateral arrangements between the EU and the partner countries.*”²⁰

The multilateral framework, which should complement the bilateral initiatives, would consist of the four thematic platforms, as originally proposed by the European Commission: (i) democracy, good governance and stability; (ii) economic integration and convergence with EU sectoral policies; (iii) energy security; and (iv) contacts between people. As to the institutional arrangements to oversee the “work in progress”, it was declared that meetings would be held at least twice a year at the level of senior officials engaged in the reform work in the relevant policy areas. The thematic platforms were then supposed to report to the annual meetings of Ministers of Foreign Affairs. At the highest level, the Meetings of Heads of State or Government of the Eastern Partnership would be held in principle every two years.²¹

The Eastern star was then born in Prague, with high expectations and an ambitious set of objectives to be achieved, as well as a number of challenges to be accommodated due to the difficult political and economic situation in some of the partner countries. The main goal of the Eastern Partnership was set to create the conditions to accelerate political Association and deepen economic integration between the EU and the Eastern European partner countries. We shall now look at the instruments available for the Union and its Member States to attain the objectives of the Eastern Partnership.

1.3 What’s in your toolbox? Union’s legal and political instruments

The development of relations with third countries in general is one of the objectives of the Union’s external actions, stipulated in Art. 21 of the Treaty on European Union (hereinafter as the “TEU”).²² However, there is a specific Art. 8 TEU concerning exclusively neighbouring countries,

²⁰ *Ibid.*, pp. 7-8, paras. 6-8.

²¹ *Ibid.*, pp. 8-9, paras. 10-12.

²² Art. 21 TEU provides that “*The Union shall seek to develop relations and build partnerships with third countries (...)*”.

which was introduced in the TEU by the Treaty of Lisbon²³ and confirms the importance of the Union's Neighbourhood Policy:

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 characterised 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 provision constitutes the general framework for the implementation of the ENP, as well as the Eastern Partnership. As for the concrete legal instruments to be used, Art. 8 (2) TEU explicitly mentions "*specific agreements*" that "*may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly.*" Therefore, the Association Agreements with partner countries, including provisions on DCFTA, should constitute one of the tools for fostering relations and cooperation. In addition, there are a number of political instruments such as Action Plans, Programmes and Flagship Initiatives, which complement the legal framework and are more flexible to address particular priorities and outline concrete steps to be gradually taken.

Association Agreements represent the main legal instrument to secure enhanced and deeper contractual relations between the EU and partner countries. They should also include Deep and Comprehensive Free Trade Areas (DCFTAs), where regulatory approximation can serve to strengthen the positive effects of trade and investment liberalisation, leading to convergence with EU laws and standards.²⁴ The standard legal basis for the AAs is Art. 217 TFEU, which stipulates as follows:

The Union may conclude with one or more third countries or international organisations agreements establishing an Association involving reciprocal rights and obligations, common action and special procedure.

²³ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed on 13 December 2007 (OJ C 306, 17.12.2007, p. 1).

²⁴ Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Eastern Partnership: A Roadmap to the autumn 2013 Summit (JOIN [2012] 13 final of 15 May 2012), p. 3.

This is the legal basis also used for all the "new generation" AAs with partner countries of the Eastern Partnership, which are currently being negotiated.²⁵ It is interesting to note in this context that the above mentioned (new) Art. 8 TEU is not used as a concrete legal basis, and the more general Art. 217 TFEU serves this purpose, despite the fact that Art. 8 (2) foresees the conclusion of "specific agreements". It can be well argued that Art. 8 TEU "*is essentially a framework provision and a declaration of intent*"²⁶ and thus not fit for this purpose. Indeed, it might be the case that Art. 8 TEU does not stretch to cover 'fully-fledged' AAs which could be perceived as a stepping stone to EU membership.²⁷ For these reasons, the partner countries might prefer the standard AAs with recourse to Art. 217 TFEU, which leaves the potential for future accessions at least open.²⁸ Given the fact that all AAs currently negotiated with Eastern partners refer to Art. 217 TFEU, it "*renders the original intention of art. 8 TEU virtually redundant.*"²⁹ However, it can still serve the purpose of the framework provision which enhances the political importance of good neighbourly relations for the EU.

As for the content of the AAs, they are usually designed as very comprehensive, covering all areas of mutual interest and also creating a

²⁵ Negotiations on the AA with Ukraine, including a DCFTA, have been finalised and the agreed text of the AA was already initialled on 30 March 2012 (DCFTA was initialled later on 19 July 2012). Negotiations of AAs have been launched with the Republic of Moldova, Georgia, Armenia and Azerbaijan, while the decision to launch negotiations on DCFTAs, as an integral part of the AAs with Georgia and Moldova, was taken in December 2011 and with Armenia in February 2012.

²⁶ P. Van Elswege, R. Petrov: *Article 8 TEU: Towards a New Generation of Agreements with the Neighbouring Countries of the European Union?* 36 E.L. Rev. (2011), pp. 688-703 (at p. 696).

²⁷ Since the objective of Art. 8 (1) TEU is to "*establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation*" (emphasis added), it seems that it does not encompass anything going beyond this objective, such as enlargement of the Union.

²⁸ Ch. Hillion gives two reasons why the standard AAs should be used: (i) the initial rationale of not offering to e.g. Moldova and Ukraine an AA in the 1990s, i.e. to distinguish them from other Central and Eastern Europe Countries bound for EU accession under the so called 'Europe Agreements', ceased to exist when these countries joined the EU in 2004; and (ii) since the current Euro-Mediterranean Agreements with the Southern ENP countries are AAs, for the sake of ENP coherence any downgrade of the legal instruments for Eastern Partnership countries below the level of AAs is hardly conceivable. Hillion, op. cit. in note 6 *supra*, p. 328.

²⁹ Van Elswege, Petrov, op. cit. in note 27 *supra*, p. 703.

specific institutional structure. They are based on shared values and principles, notably democracy and rule of law, respect for human rights and fundamental freedoms, good governance, market economy and sustainable development. The provisions on 'Political Dialogue' include enhanced cooperation in foreign and security policy, with the focus on regional issues, WMD (Weapons of Mass Destruction), non-proliferation and disarmament, conflict prevention and crisis management. The AAs also include a section on Justice, Freedom and Security, covering the rule of law, data protection, migration, movement of persons (including gradual steps in the visa policy based on the Visa Liberalisation Action Plans), the fight against money laundering and financing of terrorism, illicit drugs, the fight against organised crime and counter-terrorism.

The provisions of a DCFTA are then supposed to go much further than classic free trade areas, foreseeing not only the mutual opening of markets for most goods and services, but also binding provisions on gradual approximation with EU norms and standards in trade and trade-related areas (such as standards and conformity assessment rules, sanitary and phytosanitary rules, intellectual property rights, trade facilitation, public procurement, and competition). The DCFTA also covers energy policy (including nuclear issues if applicable), with particular focus on issues concerning security of supply, the gradual integration of energy markets, energy efficiency, renewable energy sources and nuclear safety. Further, the AAs contain provisions for enhanced cooperation in key sector policy areas, based on gradual approximation with EU *acquis* and, where relevant, also with international norms and standards. These areas include transport, the environment, cooperation on industrial and enterprise policy, public finance, macroeconomic stability, company law, banking, insurance and other financial services, the information society, information technology and telecommunications, tourism, agriculture and rural development, fisheries and maritime governance, mining, cooperation in science and technology, space cooperation, consumer protection, social cooperation, public health, education, training and youth, cooperation in the cultural and audio-visual field, civil society cooperation, cross-border and regional level cooperation.

To complement and implement the comprehensive and wide reaching scope of the legal framework, there are a number of non-binding, political measures and instruments, which nevertheless appear to be of great significance. To begin with, there are jointly agreed documents (by the EU and the partner country concerned) in the form of Association Agendas and ENP Action Plans. These political documents lay out strategic objectives for cooperation within a certain timeframe (three to five years,

subject to periodic review by the Commission) and include a list of priority areas and specific actions to be taken.³⁰

The achievement of objectives specified in Association Agendas and ENP Action Plans requires significant financial resources. They are provided within the framework of the European Neighbourhood and Partnership Instrument (ENPI),³¹ and the EU financial instruments supporting the implementation of the Neighbourhood Policy. The additional Eastern Partnership resources aim to support two particular initiatives in the bilateral track: the Comprehensive Institution Building programme (CIB) and the Pilot Regional Development Programmes (PRDPs). To implement these programmes, specific Memoranda of Understandings (MoUs) are signed with individual partner countries.

On the multilateral track, there are five regional Flagship Initiatives financed from ENPI, namely (i) the Integrated Border Management Flagship Initiative; (ii) the Support to Small and Medium Enterprises (SMEs) Flagship Initiative; (iii) the Regional Electricity Markets, Energy Efficiency and Renewable Energy Sources Flagship Initiative; (iv) the Prevention, Preparedness and Response to natural and man-made Disasters Flagship Initiative (PPRD-East); and (v) the Environmental Governance Flagship Initiative.

As regards to the enhanced mobility of persons, for the partner countries which have already concluded and implemented the visa facilitation and re-admission agreements (Moldova and Ukraine), Visa Liberalisation Action Plans are in place for future gradual loosening of visa requirements. Georgia has also concluded and implemented the visa facilitation and re-admission agreement and will start negotiations on the Visa Liberalisation Action Plan. For the rest of the partner countries, the Mobility Partnerships were arranged, and the negotiations on visa

³⁰ Even though not legally binding, these instruments are capable of reformulating the objectives of the Eastern Partnership, widening its scope and even revisiting some of the provisions of the existing legal framework with a view to give guidance and enhance compliance of the partner countries. See Ch. Hillion, *op. cit.* in note 6 *supra*, p. 321.

³¹ Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laid down general provisions establishing a European Neighbourhood and Partnership Instrument (OJ L 310, 9.11.2006, p. 1). As of 1 January 2014, the ENPI Regulation will be replaced by a new Regulation of the European Parliament and of the Council establishing a European Neighbourhood Instrument (proposal COM [2011] 839 final of 7 December 2011), with an increased budget of EUR 18.2 billion for the period 2014-2020, which is 40 per cent up on the amount available under the ENPI from 2007-2013.