

### Nothing ventured, nothing gained? The EU-Ukraine Association Agreement and the effectiveness of the European Neighbourhood Policy

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# **NOTHING VENTURED, NOTHING GAINED?**

## The EU-Ukraine Association Agreement and the Effectiveness of the European Neighbourhood Policy

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## **Abstract**

Relations between the European Union (EU) and Ukraine appear to be stuck at the verge of a new era. While a new Association Agreement providing for an unprecedented degree of political cooperation and economic integration is ready to enter into force, political developments in Ukraine prevent the EU from proceeding with its signature and ratification. This peculiar situation represents a crucial test case for the effectiveness of the European Neighbourhood Policy (ENP). Effectiveness in this case is defined by the objectives that guide the EU in its pursuit of the ENP, and by the degree to which the Union lives up to its capabilities to reach them. In the case of Ukraine, the policy turns out to be largely effective, considering that the EU's top priority is the avoidance of political and economic risks. However, this focus on risk avoidance severely limits the Union's leverage regarding the attainment of any other policy objectives, most importantly norm transfer and security cooperation. Consequently, even a largely effective ENP is unlikely to have a significant impact on the situation in Ukraine and elsewhere as long as the Union does not change its priorities.

# 1. Introduction

With the creation of the European Neighbourhood Policy (ENP) less than a decade ago, a new instrument entered the stage of European foreign policy. The ENP regulates a crucial aspect of the European Union's (EU) foreign relations, because geographic proximity raises the stakes of foreign policy-making: on the one hand, it creates potential for cooperation, on the other hand, it increases the potential consequences of conflict or instability. At the same time, the ENP is widely regarded as the successor of the enlargement process, which the EU itself calls its "most successful foreign policy".<sup>1</sup> Consequently, the question whether the new approach has proven successful is very important for the evaluation of the Union's role in global affairs.

At this point in time, the developments around the prospective Association Agreement between the EU and Ukraine present the most interesting test case for the ENP's success. This is due to three main factors: First, Ukraine is a neighbour of crucial importance for the EU. Being after Russia the European country with the largest surface area, Ukraine shares a land border with four EU Member States, has a population of more than 40 million and acts as an important transit corridor between the EU and Russia. Second, the Association Agreement between the EU and Ukraine, which is currently awaiting signature and ratification after more than five years of negotiations, represents the most advanced integrative stage of the ENP in its current form. Although the term itself is not new – the EU has concluded association agreements with numerous countries – the character of the Agreement in question is inherently different due to the significant degree of political cooperation, Common Market integration and *Acquis Communautaire* adoption it entails. A particularly important role in this context is played by the Deep and Comprehensive Free Trade Area (DCFTA) which the Agreement will create.

Among the instruments envisaged in the current ENP strategy documents, association agreements including a DCFTA are the tools that offer the widest and deepest integration perspective. Ukraine was the first country to start and the first country to finalize negotiations on an agreement of this kind, which makes it the most likely case to show the full potential of the ENP in its current form. Third, EU-Ukraine relations have proven to be highly dynamic in the recent past. The country has witnessed significant changes in its domestic political environment. As a consequence, signature and ratification of the Association Agreement are made subject to political conditions by the EU, although negotiations on the Agreement's content have been finalized. This peculiar situation has the potential to provide new insights into the implementation and impact of the ENP.

This paper will analyse the implications of the EU-Ukraine Association Agreement's negotiation and suspended implementation for the ENP's effectiveness. In the first section, a two-step approach based on goal consistency and the use of capabilities to facilitate goal achievement will be presented as a tool to assess effectiveness in the context of the ENP. After this, the following four sections will proceed to answer four guiding questions:

- Is the EU's strategy based on a consistent set of prioritized policy objectives?
- To what extent does the implementation of this strategy match the EU's capabilities to achieve these policy objectives?
- What are the implications of the findings from the Ukrainian context for the ENP as a whole?
- Which measures can the EU undertake in order to enhance the effectiveness of the ENP in Ukraine and elsewhere?

The analysis is based on academic literature, EU policy documents, Ukrainian media reports and a series of 14 interviews with western diplomats, Ukrainian officials and Ukrainian civil society experts conducted in Kiev in May and June 2012.

It will be argued that the ENP in relation to Ukraine can be considered largely effective, since policy objectives are consistently prioritized and the actions taken meet capabilities to

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<sup>1</sup> European Commission, "Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours," *Communication COM(2003) 104final*: 5, accessed April 23, 2012, [http://ec.europa.eu/world/enp/pdf/com03\\_104\\_en.pdf](http://ec.europa.eu/world/enp/pdf/com03_104_en.pdf).

a considerable extent. However, due to the dominance of risk avoidance as the EU's primary objective and systemic factors beyond the EU's control, the actual impact potential of the ENP is limited in Ukraine and elsewhere. At the same time, the policy as a whole turns out to be highly vulnerable to changes in its political environment. Consequently, the policy recommendations answering the last guiding question will illustrate that the EU is facing two options: it can either stick to its current priorities and focus on maximising the effectiveness of the ENP in its existing form, which means accepting its inherently limited impact potential; or it can attempt to increase the actual impact potential of the policy, which would require a shift of priorities.

## 2. Effectiveness and the ENP

In the field of political science analysis, effectiveness is generally defined along the line of purpose: an effective policy is a policy that achieves what it is supposed to achieve.<sup>2</sup> Through this definition, effectiveness becomes the ideal benchmark to measure the success of a policy.

However, in the case of the ENP, the question what exactly is to be achieved is more difficult to answer than it might seem at first sight. The purpose of the policy cannot simply be taken as a given. It first has to be extracted from a complex and ambiguous alignment of objectives. Complexity and ambiguity of the ENP's purpose result from the possibility that the objectives at the basis of the policy are not compatible but work in opposite directions. Progress towards the attainment of one objective might come at the cost of regress of another.

A good example for this is the constant conflict potential between the EU's normative aspirations

on the one hand, and its security interests on the other. Whenever an authoritarian regime is a reliable partner in fighting trans-border crime, preventing irregular migration or trading natural resources, the EU's foreign policy is facing a dilemma. By supporting democratic change, the Union puts its cooperation with the respective regime at risk and accepts the possibility that political transition might destabilize the country. However, by supporting the authoritarian regime, the EU clearly undermines its own normative agenda. What results is a forced trade-off between two EU foreign policy objectives, which can easily lead to incoherent and contradictory policy making. The criticism facing the EU in regard to its relations with the Middle East and North Africa prior to the Arab Spring illustrates this problem very well. An example relating to the eastern neighbourhood is provided by Giselle Bosse's work on EU-Belarus relations. She argues that "the EU's approach towards Belarus is clearly torn between idealist values of democracy promotion [...] on the one hand, and the realist objective to support 'state-stability' through strategic institution-building assistance on the other."<sup>3</sup>

Returning to the initial definition of effectiveness, it can be said that the ENP will be effective if it fulfils its purpose. In order to establish whether this is the case, two analytical steps are required.

- In a first step, it has to be established to what extent the policy has an identifiable purpose at all. The existence of such a purpose does not go without saying. A policy which gives equal priority to policy objectives that diametrically contradict each other cannot achieve what it is supposed to achieve, since every achievement in one dimension would simultaneously be a cause of failure in another. Consequently, a first test of the ENP's effectiveness is the way in which the EU deals with the conflict potential between the different policy objectives that it pursues through the ENP. Conflict potential can be minimized by means of prioritization.

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2 Cf. Christopher J. Bickerton, "Functionality in EU Foreign Policy: Towards a New Research Agenda?" *Journal of European Integration* 32 (2010): 213-227; Jon Hovi, Detlef F. Sprinz and Arild Underdal, "The Oslo-Potsdam Solution to Measuring Regime Effectiveness: Critique, Response, and the Road ahead," *Global Environmental Politics* 3 (2003): 74-96; Oran R. Young, *International Governance: Protecting the Environment in a Stateless Society* (Ithaca, NY: Cornell University Press, 1994), 142-151.

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3 Giselle Bosse, "Challenges for EU governance through Neighbourhood Policy and Eastern Partnership: the values/security nexus in EU-Belarus relations," *Contemporary Politics* 15 (2009): 224.



Wherever one policy objective is getting in the way of another, consistent give-way rules have to be established. This prioritization has the character of a precondition which enables the ENP to be effective.

- In a second step, the analysis has to focus on the actual core of effectiveness – the degree to which policy objectives are attained. Intuitively, goal attainment is often measured as the extent to which observable, graspable outcomes match ideals. However, such an approach omits a number of important considerations. It does not take into account that the results of certain political actions might be observable only after a considerable period of time has passed; that the situational constraints of a particular political setting might obstruct goal attainment and make anything but limited progress impossible; or that, in the face of certain circumstances, the prevention of regress might constitute an achievement comparable to what would be significant progress towards goal attainment in other situations.

For this reason, this paper goes beyond comparing developments in Ukraine with the EU's objectives. It measures the effectiveness of the ENP by looking at the extent to which the actions taken in order to attain policy objectives match the EU's capabilities. By doing so, this paper determines whether there is a gap between what the EU *can do* in order to achieve its objectives and what it *actually does*. The smaller this *capability-facilitation gap*, the more effective the ENP.<sup>4</sup>

### 3. Prioritizing Objectives

In the Ukrainian context, four main objectives of the ENP can be identified.

4 This concept is based on Christopher Hill's idea of a *Capability-Expectations Gap* in EU foreign policy. Cf. Christopher Hill, "The Capability-Expectations Gap, or Conceptualizing Europe's International Role," *Journal of Common Market Studies* 31 (1993): 305-328.

### 3.1 Avoiding Risks

The EU's most important policy objective is not explicitly outlined in any official statement or policy document. Regardless of this, it is deeply engrained in the nature of the ENP. Debates on the EU's *absorption capacity* and the final borders of enlargement, which have followed the policy from the very beginning, clearly illustrate a strong fear within the EU to enter into commitments that might push the Union to the limits of what it can politically and financially shoulder.

It was this fear that led to the creation of the ENP as a successor of the enlargement process in the first place. The offer of a membership perspective to an ENP country, or the creation of any automatism towards such an offer, was perceived as a risk that the Union was not prepared to take. Accordingly, the EU did not include any notion of a membership perspective into the ENP and has not shown any willingness to change the open-ended character of the policy up to today.

This unwillingness has become particularly obvious in the Ukrainian case. Already on the day negotiations were launched, External Relations Commissioner Benita Ferrero-Waldner announced that membership would not be on the agenda.<sup>5</sup> Similar statements by different representatives of the EU continued during the course of the negotiation process.<sup>6</sup> Although Ukraine issued strong demands for an EU membership perspective far into the final stages of the negotiations<sup>7</sup>, the

5 "Комиссар ЕС охладил пыл Украины [EU Commissioner cooled down Ukrainian passion]," *Ukrainskaya Pravda*, November 15, 2007, accessed September 8, 2012, <http://www.pravda.com.ua/rus/news/2007/11/15/4427459/>.

6 E.g. "Саркози не пообещал Украине членство [Sarkozy did not promise membership to Ukraine]," *Ukrainskaya Pravda*, September 1, 2008, accessed September 7, 2012, <http://www.pravda.com.ua/rus/news/2008/09/1/4449122/>;

"Европа не собирается обнадеживать Украину [Europe is not prepared to give hope to Ukraine]," *Ukrainskaya Pravda*, April 21, 2010, accessed September 7, 2012, <http://www.pravda.com.ua/rus/news/2010/04/21/4952775/>;

"Главные в Евросоюзе уже не обещают перспективы членства Украине [European leaders do no longer promise membership perspectives to Ukraine]," *Ukrainskaya Pravda*, July 1, 2011, accessed September 7, 2012, <http://www.pravda.com.ua/rus/news/2011/07/1/6349447/>.

7 E.g. "Азаров требует от ЕС перспективу: Украина – не невеста. [Azarov demands perspectives from the EU: Ukraine is not a bride]," *Ukrainskaya Pravda*, September 17, 2011, accessed September 7, 2012, <http://www.pravda.com.ua/rus/>



EU was not willing to compromise.

In spite of the Union's firm stance, the question of Ukraine's membership perspective was not uncontroversial within the EU. A fierce debate took place already in the aftermath of the Orange Revolution: one group of Member States, most notably Poland and Lithuania, supported a membership perspective for Ukraine, while a second group led by France was strongly opposed.<sup>8</sup> The differences between the viewpoints of these Member States persist until today.<sup>9</sup>

However, since movement in important questions like future enlargement requires unanimity, the status quo carries a considerable inertia that is practically impossible to overcome if defended by a reasonably strong and determined group of Member States. The proponents of a Ukrainian membership perspective simply do not have the leverage to unsettle the EU's general position which is based on the lowest common denominator – leaving the future open.

On the whole, this forced consensus has been stable. The EU has stood firm on the membership question throughout the course of the negotiation process, and the Ukrainian side has not been able to take advantage of divergences within the Union. Ukrainian officials perceive the EU as an actor which overall pursues a united approach in relation to the negotiation process. The existence of diverging opinions did not significantly weaken the EU in the present case, since the negotiating position of the Union as a whole was clear, due to the fact that it had to be based on the lowest common denominator.<sup>10</sup>

Apart from the enlargement question, risk aversion also manifests itself as an objective on the financial side of the ENP. Throughout the period from 2007 to 2011, the EU has spent an average of only about €1,75 billion per year

through the European Neighbourhood Policy Instrument (ENPI) on the implementation of the ENP.<sup>11</sup> If this sum is put into relation to the number of countries and people encompassed by the ENP on the one hand, and the size of EU funding for disadvantaged regions within the Union on the other, the financial effort that the EU undertakes for the benefit of the neighbourhood appears rather modest. This observation applies to Ukraine in particular. Considering the size of its population, Ukraine receives lower funding than numerous other ENP countries. Moreover, the funds received by Ukraine decreased in the two years after the launch of the Association Agreement negotiations. They were raised again in 2010 and 2011 but have not returned to the level of 2007.

What these observations indicate is reluctance on the side of the EU to take financial risks for the sake of the ENP. The amount of funds invested is kept small enough not to put a significant strain on the EU budget. Even in the case of a country that is perceived as a frontrunner and has just started to negotiate a new integrative step of considerable significance, no exception is made.

Finally, risk aversion has also been a strong motive in the more technical aspects of the DCFTA negotiations. The EU pursued a negotiation strategy with a strong focus on the prevention of possible disadvantages for the European economy. This resulted in drawn out bargaining processes on issues like import quotas on Ukrainian agricultural products, tariffs on European cars and second-hand clothing, market access for Ukrainian energy and transport services, transition periods for Ukrainian export duties, and rules relating to geographical product names.<sup>12</sup> The EU bargained

news/2011/09/17/6593790/;

“Грищенко: Украина хочет сигнал четство [Hryshchenko: Ukraine wants a membership signal],” *Ukrainskaya Pravda*, September 24, 2011, accessed September 7, 2012, <http://www.pravda.com.ua/rus/news/2011/09/24/6612982/>.

8 Mathias Roth, “EU-Ukraine Relations After the Orange Revolution: The Role of the New Member States,” *Perspectives on European Politics and Society* 8 (2007): 505-527.

9 Interviews with western diplomats in Kiev, May/June 2012.

10 Interviews with Ukrainian officials in Kiev, May/June 2012.

11 European Commission, “Implementation of the European Neighbourhood Policy in 2011. Statistical Annex,” *Joint Staff Working Document SWD(2012) 122final*: 35, accessed May 24, 2012, [http://ec.europa.eu/world/enp/docs/2012\\_enp\\_pack/statistical\\_annex\\_en.pdf](http://ec.europa.eu/world/enp/docs/2012_enp_pack/statistical_annex_en.pdf).

12 E.g. “Азаров пожаловался на жестокость ЕС [Azarov complained about the EU's brutality],” *Ukrainskaya Pravda*, October 26, 2010, accessed September 7, 2012, <http://www.pravda.com.ua/rus/news/2010/10/26/5515363/>; “Валерий Пятницкий: «Погибнут те, кто не хочет и не умеет работать. Выживут предпринимчивые» [Valery Pyatnytskiy: ‘Those who do not want to work or are not able to, will go down. Entrepreneurs will survive’],” *Zerkalo Nedeli No. 38*, October 16, 2010, accessed July 20, 2012, [http://zn.ua/POLITICS/valeriy\\_](http://zn.ua/POLITICS/valeriy_)

hard in spite of the fact that, due to the sheer size of the Union's internal market, the effect of free trade with Ukraine on the EU's economy is certain to be far smaller than the respective effect on the Ukrainian market. Nevertheless, the EU wanted to play safe and avoid even comparatively small risks for the economy of its Member States as well as the risk of setting a precedent for one-sided concessions under the ENP.

### 3.2 Exporting Norms

Especially proponents of the *external governance* approach to EU foreign policy analysis<sup>13</sup> argue that rule transfer is a policy objective of considerable significance in the context of the ENP. This argument is supported by the initial ENP strategy paper as well as the subsequent reviews of the policy.<sup>14</sup> The documents clearly state in many places that – through the ENP – the EU aims to engrain a significant part of the norms that govern its political, legal and economic system in the respective systems of the partner countries. Norms in this context include both the general ideational principles to which the EU ascribes universal significance – democracy, the rule of law and respect for human rights – and the voluminous collection of more technical rules and standards set by community legislation. The projection of the former kind is seen as a normative imperative and as an important precondition for a deepening of relations with neighbouring countries. The projection of the latter kind is seen as desirable and practical in order to facilitate cooperation and bring about mutual economic benefits.

However, the predominance of risk aversion in the EU's strategy constrains the EU's normative aspirations in Ukraine. Nevertheless, in the case

of Ukraine, the EU's commitment to norm transfer is more than just rhetoric and acts as constraint for security-related motives in turn.

### 3.3 Enhancing Security

The EU pursues a comprehensive security agenda in relation to the neighbourhood. As the relevant strategy papers outline, the EU aims to stabilize and strengthen neighbouring countries through the ENP, thereby reducing security threats that emanate from instability, armed conflict and lack of state control over territory. Threats of this kind include terrorism, trans-border crime, disruptions in resource supplies and uncontrollable migration flows. These concerns also play an important role in the context of the Union's relations with Ukraine: the long land border between Ukraine and the Schengen Area is a gateway for the smuggling of cigarettes, counterfeits and illegal drugs into the Union.<sup>15</sup> Other border-related security issues are irregular migration and human trafficking.<sup>16</sup> At the same time, Ukraine is an important transit corridor for natural resources. Indirectly, a significant share of the EU's gas supplies depends on the country. Furthermore, Ukraine is an important partner for conflict regulation in the Moldovan separatist region of Transnistria.<sup>17</sup>

Due to its comprehensiveness and legally binding character, the Association Agreement would provide the EU with an improved institutionalized basis for cooperation in fields important for EU security objectives. Negotiations on the Agreement have been finalized and Ukraine has clearly expressed its intention to let the Agreement enter into force at the earliest possible

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pyatnitskiy\_pogibnut\_te\_kto\_ne\_hochet\_i\_ne\_umeet\_rabotat\_vyzhivut\_predpriimchivye-61231.html;

“ЕС снял осаду. Украина сможет защитить внутренний рынок [EU has lifted the siege. Ukraine will be able to protect its internal market],” *Kommersant Ukraina*, October 24, 2011, accessed September 7, 2012, <http://www.kommersant.ua/doc/1801978>.

13 Cf. Sandra Lavenex and Frank Schimmelfennig, “EU rules beyond EU borders: theorizing external governance in European politics,” *Journal of European Public Policy* 16 (2009): 791-812.

14 All relevant strategy documents are accessible on [http://ec.europa.eu/world/enp/documents\\_en.html](http://ec.europa.eu/world/enp/documents_en.html).

15 Europol, “OCTA 2011. EU Organised Crime Threat Assessment,” *Europol* (2011), accessed August 19, 2012, <https://www.europol.europa.eu/sites/default/files/publications/octa2011.pdf>.

16 IOM, “IOM Ukraine: Who We Are and What We Do,” *International Organization for Migration* (2011), accessed August 19, 2012, [http://iom.org.ua/en/pdf/WaWeDo\\_eng\\_b5\\_Upd.pdf](http://iom.org.ua/en/pdf/WaWeDo_eng_b5_Upd.pdf).

17 Marco Siddi and Barbara Gaweda, “Bystander in its Neighbourhood? The European Union's involvement in protracted conflicts in the post-Soviet space,” *IEP Policy Papers on Eastern Europe and Central Asia* 1 (2012), accessed January 12, 2013, [http://www.iep-berlin.de/943.html?&no\\_cache=1&tx\\_ttnews\[tt\\_news\]=966](http://www.iep-berlin.de/943.html?&no_cache=1&tx_ttnews[tt_news]=966).

moment.<sup>18</sup> The EU, however, refuses to proceed with signature and ratification of the agreement in the absence of visible improvements in the fields of democracy, human rights and the rule of law.<sup>19</sup> By doing so, it ties the deepening of cooperation as a whole to compliance with norm transfer objectives. Thereby, the EU renders itself unable to make use of potential for deepened cooperation with Ukraine in security-related fields. Although Ukraine's willingness to cooperate might be higher in those fields than in the normative sphere, the EU has set its priorities differently and is subordinating the security objective to its normative agenda.

Considerations relating to the stability of Ukraine's political system lead to the same conclusion: the monopolization of power by the political-oligarchic clan around president Yanukovich after the presidential elections in January 2010 have led to a higher degree of stability and consistency within the structures of the Ukrainian state. If normative concerns – such as an increase in corruption, a blurring of the separation of powers, the questionable democratic legitimacy of government formation, and the growing frequency of civil rights violations<sup>20</sup> – are taken aside, the situation represents an improvement in comparison to the constant power struggle between different state institutions that characterized Ukrainian politics in the years

before. The EU's refusal to deepen ties by signing and ratifying the Association Agreement at the present time is working against this stability. It denies the current administration the success of having led the country to a new stage of European integration and enables other political forces to present themselves as a truly pro-European alternative to a regime that has turned the EU against Ukraine and isolated the country.

The EU seems firmly united in this approach. At the present time, no political force within the EU advocates to proceed with signature and ratification of the Association Agreement in spite of serious normative concerns solely for the sake of security cooperation or regime stability.<sup>21</sup>

### 3.4 Containing Russia

For obvious reasons, geopolitical objectives based on power and geostrategic influence are not explicitly spelt out in the official EU discourse on the purpose of the ENP. Nevertheless, numerous scholars argue that objectives of this kind are present in the EU's external relations.<sup>22</sup> The question whether great power competition between the EU and Russia represents a decisive motive in design and implementation of the ENP remains controversial. However, it is clear that the EU would have to aim at securing Ukraine for its own sphere of geostrategic influence if it were aiming at containing Russia as a great power competitor in the eastern neighbourhood. Currently, Russia is more than just Ukraine's most important trading partner. Due to the common Soviet legacy as well as cultural, political and language-related similarities, Russia has also remained a significant factor of influence in the

18 E.g. “Янукович не видит Европу без Украины; [Yanukovich does not see Europe without Ukraine],” *Ukrainskaya Pravda*, December 19, 2011, accessed September 7, 2012, <http://www.pravda.com.ua/rus/news/2011/12/19/6849757/>;

“Азаров: Техническое парафирование Соглашения о ЗСТ между Украиной и ЕС может состояться в ближайшие месяцы. [Azarov: Technical initialling of the Free Trade Agreement between Ukraine and the EU can take place over the next months],” *Interfax Ukraina*, February 10, 2012, accessed September 7, 2012, <http://www.interfax.com.ua/rus/main/94223/>.

19 E.g. Stefan Füle, “Speech on Ukraine in the Plenary Session of the European Parliament,” *Speech/12/944* (2010), December 12, 2012, accessed January 27, 2013, [http://europa.eu/rapid/press-release\\_SPEECH-12-944\\_en.htm?locale=en](http://europa.eu/rapid/press-release_SPEECH-12-944_en.htm?locale=en).

20 Amnesty International, “Annual Report 2012 – Ukraine,” *Amnesty International* (2012), accessed September 9, 2012, <http://www.amnesty.org/en/region/ukraine/report-2012>;  
David J. Kramer, Robert Nurick, Oleksandr Sushko, Viktoria Syumar, Damon Wilson and Matthew Schaaf, “Sounding the Alarm Round 2: Protecting Democracy in Ukraine. A Follow-up Freedom House Report,” *Freedom House* (2012), accessed September 9, 2012, <http://www.freedomhouse.org/report/special-reports/sounding-alarm-round-2-protecting-democracy-ukraine>.

21 Interviews with western diplomats in Kiev, May/June 2012.

22 Antoaneta Dimitrova and Rilka Dragneva, “Constraining external governance: interdependence with Russia and the CIS as limits to the EU's rule transfer in Ukraine,” *Journal of European Public Policy* 16 (2009): 853-872; Adrian Hyde-Price, “‘Normative’ power Europe: a realist critique,” *Journal of European Public Policy* 13 (2006): 217-234; Sten Rynning, “Realism and the Common Security and Defence Policy,” *Journal of Common Market Studies* 49 (2011): 23-42; Andrew Wilson and Nicu Popescu, “Russian and European neighbourhood policies compared,” *Southeast European and Black Sea Studies* 9 (2009): 317-331.

societal and political discourse on Ukrainian national identity and belonging.<sup>23</sup> Furthermore, after the inauguration of Victor Yanukovich as president in early 2010, Ukrainian foreign policy has again taken a more Russia friendly turn by dropping NATO membership aspirations and extending the agreement on the Russian naval base in Sevastopol.

Ukraine's current position can be seen as an important crossroads for the country. On the one hand, there is the European integration perspective which is currently deadlocked due to normative concerns on the side of the EU. On the other hand, Russia exerts pressure on Ukraine to join its customs union with Belarus and Kazakhstan and to participate in Vladimir Putin's proposal of a Eurasian Union. The two options are mutually exclusive.

However, the EU does not seem to pay significant attention to this question. Advocates of a geostrategic approach who give a high priority to anchoring Ukraine in the EU's sphere of influence just for the sake of keeping Russia at bay, constitute a minority among EU policy-makers and do not wield significant influence. According to the predominant approach, it is entirely up to Ukraine either to remain on the European path, or to follow the Belarusian example and isolate itself from Europe.<sup>24</sup> Accordingly, the containment of Russian influence can be considered least important among the EU's policy objectives in relation to the Association Agreement.

Overall, this ranking of objectives indicates that the EU pursues a largely united strategy based on a consistent prioritization of policy objectives. The primary objective is risk aversion followed by norm transfer, security considerations and geostrategic containment. Consequently, the ENP in relation to Ukraine follows a clear purpose – namely the pursuit of these four objectives according to their prioritization – and fulfils the necessary precondition for effectiveness. However, the most important component of this

purpose consists of an objective that is rarely acknowledged openly and explicitly by the EU, while the objectives which are most eagerly advertised are relegated to second and third place.

## 4. Reaching Goals

### 4.1 Capabilities...

After the existence of a clear purpose underlying the ENP has been confirmed, the analysis can proceed to the second guiding question asking whether the EU lives up to its capabilities in the Ukrainian context.

As far as the most dominant policy objective is concerned, the capabilities of the EU are considerable. If the Union considers that the offer of a membership perspective to Ukraine or the offer of immediate unrestricted market access for agricultural products constitute risks that must not be taken under any circumstances, there is hardly anything Ukraine can do to extort such concessions. However, by making use of this freedom to rule something out, the EU simultaneously rules out incentives and arguments that would have a positive impact on the Union's capabilities regarding the achievement of its other three policy objectives. In relation to these other objectives, incentives and arguments are important, since the EU cannot facilitate norm transfer, security cooperation and geostrategic containment on its own. It is not the EU but Ukraine that has to implement European norms, to agree to cooperate on security issues, and to choose the EU instead of Russia as a geostrategic reference point. All the EU can do is try to influence the behaviour of Ukraine in relation to these objectives. It can do so by using two instruments: First, the EU can apply conditionality by offering material incentives and rewards in exchange for behaviour that conforms to its objectives. Second, the EU can use socialization, which means engaging in dialogue and persuading relevant actors by argumentative means to adopt and pursue EU policy objectives.

23 Inna Melnykovska and Rainer Schweickert, "Balancing National Uncertainty and Foreign Orientation: Identity Building and the Role of Political Parties in Post-Orange Ukraine," *Europe-Asia Studies* 63 (2008): 1055-1072.

24 Interviews with western diplomats in Kiev, May/June 2012.



### 4.1.1 Conditionality

As a consequence of its strongly risk-averse agenda, the EU can apply conditionality in the context of the Association Agreement negotiations only to a very limited extent. In the absence of a membership perspective and without the prospect of a significant increase in financial assistance, few material incentives remain on the table.

Free trade is an incentive of considerable importance in this respect. On the long run, the Ukrainian economy could profit greatly from it. However, the effects of a free trade area are not entirely predictable and some branches of the Ukrainian economy might even suffer in the short-term. Moreover, trade liberalization in the shape of a mere abolition of quotas and tariffs would only have a moderate effect, since the remaining trade barriers of this kind do not carry great economic significance. In order to enjoy large-scale benefits, Ukraine has to facilitate free trade far beyond questions of quotas and tariffs. This includes the adoption of European product standards and sanitary norms as well as improvements in infrastructure, financial services and the investment climate.<sup>25</sup> The adoption of standards, however, is an effort that Ukraine has to undertake, and not an incentive that the EU is able to offer.

Visa facilitation provides a less ambiguous incentive, since the need to obtain a visa for every visit to western Europe considerably complicates

the life of many Ukrainians today. However, certain technical preconditions, such as the introduction of biometric passports, are crucial for the introduction of a visa free regime. Due to security concerns, the EU is not willing to compromise on these preconditions.<sup>26</sup> However, progress towards them is, again, a matter of Ukrainian politics. Consequently, the EU is not able to use the actual introduction of visa free travel as an incentive that it can offer at any time and under any condition. All it can offer is the further pursuit of the visa facilitation roadmap,<sup>27</sup> which currently can be suspended at any time since the document is not legally binding. Its status could be changed by the Association Agreement which contains a chapter on visa facilitation and provides a legally binding framework for the further implementation of the roadmap. At the same time, any further progress in the field of visa facilitation can be considered rather unlikely in the absence of the Agreement's signature and ratification.<sup>28</sup> Through the implicit threat of putting the whole process on hold, the EU turns any movement towards visa facilitation into an incentive and thus circumvents its inability to offer visa free travel straight away.

A last incentive that the EU has to offer in the present situation is the symbolic value of the Association Agreement. Name and scope of the Agreement, the drawn-out process of its negotiation, and the importance ascribed to it by Ukrainian politicians have endowed the Agreement with considerable political weight regardless of its actual content. Considering that the majority of Ukraine's population is still in favour of European integration, but, at the same time, not very well informed about its actual consequences and mechanisms,<sup>29</sup> the adoption of an Association Agreement with the EU as such has the potential to boost the political standing of

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25 Volkhart Vincentz, "The European Neighbourhood Policy: An Economic Perspective," in *European Neighbourhood Policy. Challenges for the EU-Policy Towards the New Neighbours*, eds. Johannes Varwick and Kai Olaf Lang (Opladen and Farmington Hills: Barbara Budrich Publishers, 2007), 117-128;

Michael Emerson, T. Huw Edwards, Ildar Gazizullin, Matthias Lücke, Daniel Müller-Jentsch, Vira Naniivska, Valeriy Pyatnytskiy, Andreas Schneider, Rainer Schweickert, Olexandr Shevtsov, Olga Shumylo, "The Prospect of Deep Free Trade between the European Union and Ukraine," *Brussels, Kiel and Kyiv: Centre for European Policy Studies, Institut für Weltwirtschaft and International Centre for Policy Studies* (2006), accessed May 8, 2012, <http://www.ceps.be/book/prospect-deep-free-trade-between-european-union-and-ukraine>;

Igor Burakovsky, Kateryna Kutsenko, Hanna Chukhai, Alla Kobylanska, Veronika Movchan, Yevgen Razdorozhny and Natalia Sysenko, "Costs and Benefits of FTA between Ukraine and the European Union," *Kiev: Institute for Economic Research and Policy Consulting* (2010), accessed September 6, 2012, <http://www.ier.com.ua/en/publications/books/?pid=2633>.

26 Interviews with western diplomats in Kiev, May/June 2012.

27 Council of the European Union, "EU-Ukraine Visa Dialogue. Action Plan on Visa Liberalization", *Council of the European Union* (2010), accessed May 10, 2012, <http://register.consilium.europa.eu/pdf/en/10/st17/st17883.en10.pdf>.

28 Interviews with western diplomats and Ukrainian officials in Kiev, May/June 2012.

29 Interview with Mikhail Pashkov. Co-director, Foreign Relations and International Security Programmes. Razumkov Centre. Kiev, June 15, 2012, 10:00 am.

the regime that facilitates it.

#### 4.1.2 Socialization

Ukraine provides rather favourable preconditions for socialization. Due to the negotiation of the Association Agreement, contacts between Ukrainian and EU officials have been frequent and intense on all political levels. Advocacy groups in favour of the adoption of European norms and standards have formed within certain parts of the state administration.<sup>30</sup> Furthermore, the EU receives considerable attention in the Ukrainian media, while a number of think tanks and NGOs – both of Ukrainian and EU origin – are promoting European integration within the country.

However, Ukraine's Soviet legacy and the development of the country in the years after gaining independence have engrained certain societal and political features that counteract EU socialization efforts. Ukraine's point of departure for Europeanization is a political system in which corruption is deeply rooted and that is dominated by oligarchic clan structures. These competing clan structures have virtually hijacked all institutional competences and democratic procedures in order to pursue their specific interests. In addition to this, the political system of Ukraine is suffering from mutual distrust between general society and political elites, systemic disrespect for the rule of law, the factual absence of ideology and political ideals, a dominance of short-term gains over sustainability, a strong position of the shadow economy, and a largely apathetic civil society. As far as these problems are concerned, the Orange Revolution did not represent the quantum leap of systemic transition as which it was perceived in the West. It rather represented a change of the ruling elite that led to a certain degree of superficial transformation but left the basic mechanisms of the system largely intact.<sup>31</sup>

30 Katarzyna Wolczuk, "Implementation without Coordination: The Impact of EU Conditionality on Ukraine under the European Neighbourhood Policy," *Europe-Asia Studies* 61 (2009): 187-211.

31 Ivan Katchanovski, "The Orange Revolution? The 'Orange Revolution' and Political Changes in Ukraine," *Post-Soviet Affairs* 24 (2008): 351-382; Paul Kubicek, "Problems of post-

Moreover, the limited transition brought about by the Orange Revolution was largely reversed in the aftermath of the 2010 presidential elections. The elected regime continues to pursue an approach to politics which is actually closer to the Russian authoritarian model than to EU standards. More than anything else, it is probably fear of international isolation or dependency on Russia that makes the current leadership pretend to adhere to the EU's norms and values which it in fact neither shares nor completely understands.<sup>32</sup>

These characteristics of Ukrainian politics and society represent systemic obstacles for EU socialization efforts. EU norms and standards are hardly in the interest of business networks based on short-term gains, nepotism and corruption. Assuming that at least some parts of these oligarchic networks are involved in illegal activities with trans-border character, EU security objectives might also have a number of influential opponents. In any case, norms and standards propagated by the EU have the potential to deprive Ukrainian political and economic elites of their means of existence. At the same time, a civil society afflicted by apathy and disillusionment paired with distrust towards politics in general also constitutes a rather difficult target for EU socialization efforts.

To a certain extent, the above description oversimplifies the political situation in the country. Reform-averse patterns of the described kind cannot be considered absolutes. Nevertheless, the structural features outlined make a strong case for rather strong limitations to the EU's socialization capabilities in relation to Ukraine.

Obviously, conditionality and socialization cannot be seen as strictly separated mechanisms, either. In the Ukrainian case, the limitations of both instruments reinforce each other. The modest

post-communism: Ukraine after the Orange Revolution," *Democratization* 16 (2009): 323-343; Taras Kuzio, "Political Culture and Democracy. Ukraine as an Immobile State," *East European Politics and Societies* 25 (2011): 88-113; Inna Melnykovska, Rainer Schweickert and Tetiana Kostiuhenko, "Balancing National Uncertainty and Foreign Orientation: Identity Building and the Role of Political Parties in Post-Orange Ukraine," *Europe-Asia Studies* 63 (2011): 1055-1072.

32 Interview with Volodymyr Fesenko, Chairman of the Board. Centre for political studies "PENTA". Kiev, June 8, 2012, 11:00am.

character of the incentives that the EU has to offer weakens argumentative persuasion efforts, while the structural factors which counteract socialization additionally reduce the impact of these incentives. In the face of two externalities – risk avoidance, which constitutes the Union’s dominating policy objective, and the nature of Ukrainian politics and society – the EU’s goal attainment capabilities in relation to its other policy objectives appear to be rather limited.

## 4.2 ... and Actions

As far as its predominant policy objective was concerned, the EU has not had any problems living up to its considerable capabilities. The EU was free not to take any risk it was not willing to take. By categorically refusing to offer Ukraine a membership perspective, by keeping financial assistance at a moderate level, and by bargaining hard on the technical details of the DCFTA, the EU acted according to this priority of risk avoidance.

Considering the limitations which this risk-averse behaviour imposed on the EU’s capabilities regarding the three remaining policy objectives, the finalization of the Association Agreement in its given form can already be considered a significant success. During the course of the negotiation process, the EU has made good use of its socialization capabilities in order to persuade the Ukrainian side to legally commit itself to the adoption of a significant share of the *Acquis Communautaire*. The Association Agreement envisages a degree of regulatory harmonization that goes beyond what was agreed in the so-called Europe Agreements concluded with the Central and Eastern European Countries in the 1990s.<sup>33</sup> Furthermore, the establishment of a DCFTA with the EU would prevent Ukraine from undertaking further steps of economic integration towards Russia. Despite the considerable scale of these commitments, immediate rewards were not offered in exchange for them – apart from the highly uncertain short-term impact of the envisaged DCFTA. In fact, all that Ukraine received in return for its commitments was the

argument that these commitments will yield considerable benefits on the long run if they are accompanied by continued reform efforts.

Moreover, after the negotiations on the Agreement’s content were finalized, the EU began to use it as an incentive in terms of conditionality. The Agreement’s content is clear and agreed upon. What is left is a dichotomous decision – either to let the Agreement enter into force or to leave it. Although the short-term impact of the Agreement appears uncertain, EU socialization efforts have drawn attention to the possible long-term benefits. Moreover, the Agreement has accumulated considerable symbolic significance over the years of its negotiation. Consequently, its entering into force appears at present as a crucial threshold for EU-Ukraine relations, which has to be passed in order for Ukraine to make any further progress towards European integration. In this situation, the EU has put signature and ratification of the Agreement on hold and is linking further progress to conditions. By using this threshold effect<sup>34</sup>, the EU makes maximum use of the limited incentives it has at its disposal to facilitate its policy goals by means of conditionality.

However, the application of threshold conditionality in relation to the Agreement could have been prepared by the EU in a more far-sighted way. First signs of a negative trend in regard to democratic standards, human rights and the rule of law in Ukraine could be observed already during the first months after president Yanukovich’s inauguration in February 2010.<sup>35</sup> The EU largely ignored these developments.

34 The concept of a threshold effect is based on Time Haughton, “When Does the EU Make a Difference? Conditionality and the Accession Process in Central and Eastern Europe,” *Political Studies Review* 5 (2007): 233-246 and Iryna Solonenko, “European Neighborhood Policy after Four Years: Has it Had any Impact on the Reform Process in Ukraine?” *International Issues & Slovak Foreign Policy Affairs* 17 (2008): 20-40.

35 Kyril Savin and Andreas Stein, “Einhundert Tage Präsidentschaft von Wiktor Janukowytch,” *Kiev: Heinrich Boell Foundation* (2010), accessed September 10, 2011, <http://www.boell.de/weltweit/europanordamerika/europa-nordamerika-regierungszeit-wiktor-janukowytch-9404.html>; Gerhard Simon, “Demokratie und Nation: Bleibt die Ukraine auf dem europäischen Weg?” in *Nationale Demokratie in der Ukraine*, ed. Jerzy Macków (Munich: Hanns-Seidel-Stiftung, 2011), 43-51, accessed November 4, 2011, [http://www.hss.de/uploads/tx\\_ddeventsbrowser/AMZ-75\\_Ukraine.pdf](http://www.hss.de/uploads/tx_ddeventsbrowser/AMZ-75_Ukraine.pdf).

33 Interviews with western diplomats in Kiev, May/June 2012.



Concern may have been voiced through diplomatic channels, but the EU failed to use the supportive power of public and media attention in order to issue an unambiguous early warning stating that the Association Agreement's fate was inseparably linked to Ukrainian adherence to the EU's core values. On the contrary, in March 2010, EU officials even gave advance approval to president Yanukovich's plan to install a new government by means of a procedure that was highly questionable in terms of democratic legitimacy.<sup>36</sup> Only towards the end of the year the EU intensified its socialization efforts with the aim of contravening the decline of its core values in Ukraine. This inconsistent behaviour was creating the impression on the Ukrainian side that the EU would conclude the Association Agreement regardless of normative concerns. More outspoken reactions on the side of the EU at an earlier point in time could have prevented this misconception.

Furthermore, from the very beginning of the negotiation process, the EU could have extended socialization efforts more actively beyond the closed doors of the negotiation venues. A more comprehensive effort could have been made by the EU to explain the nature and content of the proposed agreement in greater detail to the general public. The EU could have emphasized more strongly that the Agreement does not represent a European gift but a toolkit for change through domestic reform which bears considerable potential but requires continued political attention. A broadened socialization effort of this kind could have shifted expectations from the EU to the Ukrainian leadership and could have improved the general understanding of the ENP and its motives by the Ukrainian public. The latter is crucial for an agreement and a policy which largely rely on domestic political reform in Ukraine. Especially in the current situation it is extremely important that not only the Ukrainian political elite but also the public understands the reasons for which the EU refuses to proceed with signature and ratification

of the Agreement.

Beyond the sphere of purely rhetorical and explanatory means, the EU could have broadened its socialization agenda through more active cooperation with civil society organizations. Room for improvement in this area still exists. The EU still fails to use the full potential of Ukrainian civil society and focuses its cooperation efforts largely on government structures. Stronger ideational support of civil society organizations – for example through information exchange and cooperation in the evaluation of reform progress – as well as a rechanneling of financial flows away from budget support for government structures towards civil society organizations could increase the transformative leverage of the EU in Ukraine.<sup>37</sup>

## 5. The ENP in Ukraine – Constrained but Effective

According to the analytical framework applied, the effectiveness of the ENP depends on

- The existence of a consistent purpose underlying the policy
- The size of the gap between the EU's capabilities to facilitate the achievement of its policy objectives and the actions taken by the Union.

A clear purpose in the form of a consistent set of prioritized policy objectives has been identified in the case of Ukraine. The subsequent analysis of the *capability-facilitation* gap has revealed some shortcomings regarding the EU's communication strategy and the inclusion of Ukrainian civil society actors. However, these deficiencies are far from outweighing the successful finalization of the Agreement and its application as an instrument of threshold conditionality. Accordingly, the size of the gap has to be considered moderate, and the ENP in relation to the EU-Ukraine Association agreement is largely effective.

Naturally, this assessment is subject to change

36 Andreas Umland, "Is Europe Losing Ukraine?" *Foreign Policy Journal* (2010), accessed May 8, 2012, Available from: <http://www.foreignpolicyjournal.com/2010/04/12/is-europe-losing-ukraine/0/>.

37 Mariella Falkenhain and Iryna Solonenko, "The EU and Civil Society in Eastern Europe: Partners in the Pursuit of Policy Change?" in *Policy Change in the EU's Immediate Neighbourhood: Sectoral Approaches*, eds. Tanja A. Börzel and Katrin Böttger (Baden-Baden: Nomos, 2012), 56-76.

over time. If EU conditionality and socialization contribute to significant changes in Ukrainian politics, the Agreement will be able to enter into force in the near future. In this case, further socialization efforts will be required to facilitate the actual implementation of the Agreement's provisions. At the same time, visa facilitation will be left as the only remaining significant incentive that the EU has to offer, and calls for a membership perspective are likely to intensify with increasing reform progress in Ukraine. Different challenges will arise in case there is no decisive change: the EU will have to decide whether or not to withhold funding or put sanctions in place; it will have to decide whether or not to put a complete hold on the visa facilitation process; and it will have to decide whether or not to continue the dialogue with Ukraine's political leadership. In both cases, the EU will face the challenge of deciding what degree of political changes will be sufficient to allow for signature and ratification of the agreement. At this point in time, great emphasis is placed on democratic standards and on the selective criminal prosecution of opposition members. However, the exact criteria for democratic performance, and the exact actions required of the Ukrainian leadership to prove that it has put an end to selective justice are subject to debate.

These different challenges have the potential to redefine the policy objectives, the capabilities and the actions of the EU and its Member States. Therefore, the way in which the EU responds to them will have a decisive impact on the future assessment of the ENP's effectiveness.

## **6. The ENP as a Whole – The Wider Context**

The finding that the ENP is largely effective in the case of Ukraine means that an important benchmark for the policy's overall effectiveness has been met. It proves that the EU is able to define a consistent set of prioritized policy objectives and to pursue these objectives according to its capabilities in the Ukrainian context. This has been the case in spite of the fact that considerable potential for tensions between different policy objectives exists within

the EU. Hence the Union has proven to be able to overcome significant challenges in order to apply the ENP successfully to a neighbouring country of supreme importance.

In other countries, the effectiveness of the ENP probably depends on a set of policy objectives that is similar to the one present in the Ukrainian context. Being the EU's top-priority in the country that has advanced furthest within the ENP framework, risk avoidance is unlikely to have a less important status as a policy objective in other cases. The same assumption can be made regarding geostrategic containment as the objective with the lowest priority: Ukraine is the prime example of a country torn between two spheres of geostrategic influence and its integration represents a unique opportunity for the EU to contain Russian power. Nevertheless, the EU has turned down Ukraine's clear membership ambitions in favour of its other policy objectives. In the light of this observation, the realist objective of containing geostrategic competitors can be safely regarded as a policy goal that has been sidelined within the ENP framework as a whole.

Concerning the middleground of ENP objectives – norm transfer and security cooperation – the outcomes of comparative prioritization probably show a greater variety across different countries. Normative objectives enjoy a particularly high priority in the Ukrainian context for three reasons. First, the Orange Revolution and the strong European aspirations expressed by the Ukrainian leadership ever since have given the normative dimension a particular symbolic importance. Second, unlike the other countries in the ENP's eastern dimension, Ukraine is not directly involved in any separatist conflict. Third, in spite of Ukraine's general significance for EU security objectives, the country has not been at the centre of related concerns in recent years: energy supplies have been stable since the gas crisis in January 2009, Ukraine joined the European energy community in 2010, and new pipelines circumventing the country are either being planned or already in place. At present, Europol locates most of the EU's "crime hubs"

in regions not bordering Ukraine.<sup>38</sup> Migration pressure is far stronger at the EU's southern borders and Ukraine already ratified a readmission agreement with the EU in 2008.

In numerous other ENP countries, democratization hopes have not been raised as high as those pertaining to Ukraine. At the same time, the possibility of armed conflict exists in many of these countries, or other EU security concerns are more imminent than in Ukraine. In those countries, EU security objectives are likely to enjoy a higher priority which possibly outpaces norm transfer. The Union's approach to the ENP in the Middle East represents a situation of this kind, in which security and stability concerns are more important for the Union than normative considerations.<sup>39</sup> Similar circumstances characterize the ENP towards Azerbaijan where the country's importance as a source of natural resources limits the Union's leverage regarding norm transfer.<sup>40</sup> Another example is the history of EU-Libya cooperation on migration issues. The containment of refugee flows held a priority on the EU's agenda that was sufficiently high to force the Union into cooperation with Libya before the country had even accepted the ENP as a policy framework, not to speak of any adoption of EU norms.<sup>41</sup> Such swaps in priority between normative and security-related objectives do not necessarily lead to an ineffectiveness of the ENP in the respective case. However, the strong emphasis that the EU places on norms and values in almost all statements and documents released on the ENP has the potential to cause confusion and hamper the effectiveness of the policy if normative objectives are not only second but third in line, after both risk avoidance and security concerns. At the same time, any failure to live up to its normative rhetoric hampers the political

credibility of the Union both internally and worldwide.

Moreover, Ukraine's position as the ENP frontrunner draws attention to the general limitations of the policy's capabilities to influence developments in the partner countries. It has been outlined that these capabilities are severely limited by both the priority that the EU gives to risk avoidance and by systemic obstacles within Ukrainian politics and society. While risk avoidance probably constitutes the dominating policy objective for the ENP as a whole, systemic obstacles are far higher in countries which are geographically, culturally and historically further detached from Europe and have never shown accession aspirations. Consequently, EU capabilities will be even smaller in most other ENP countries. This does not necessarily render the ENP less effective, but reduces its factual impact in the partner countries. Georgia and Moldova represent exceptions in this respect. Both countries seem to have surpassed Ukraine in terms of reform ambitions and are trying hard to catch up with the actual association process.<sup>42</sup>

Finally, the case of Ukraine illustrates that the ENP is a fluid process. Its effectiveness is subject to external factors which change over time and which the EU cannot influence significantly. The policy's effectiveness in the Ukrainian context depended on two coinciding political processes – the negotiation of the Association Agreement, and a regime change in the country. A counterfactual sequence of events – for example signature and ratification of the Association Agreement before Viktor Yanukovich's victory in the presidential elections of 2010 – would have led to an entirely different situation.

Regardless of this coincidence, the new regime decided to change the course of the ENP's "flagship"<sup>43</sup> although the country's relations with the EU were approaching the threshold to a new stage. Up to today, even the EU's attempt to use the full weight of the Association Agreement, as the supposedly most far-reaching instrument

38 Europol, "OCTA 2011", 50.

39 Peter Seeberg, "European Neighbourhood Policy, Post-normativity, and Pragmatism," *European Foreign Affairs Review* 15 (2010): 663-679.

40 Anja Franke, Andrea Gawrich, Inna Melnykovska and Rainer Schweickert, "The European Union's Relations with Ukraine and Azerbaijan," *Post Soviet Affairs* 26 (2010): 149-283.

41 Sara Hamood, "EU-Libya Cooperation on Migration: A Raw Deal for Refugees and Migrants?" *Journal of Refugee Studies* 21 (2008): 19-42.

42 Interviews with western diplomats in Kiev, May/June 2012.

43 Iryna Solonenko, "European Neighborhood Policy after Four Years", 23.

available to the ENP, has not succeeded in bringing the flagship back on track, and it is highly uncertain whether the situation will change in the near future.

There is the clear possibility that Moldova and Georgia will overtake Ukraine on the track to both domestic reform and association with the EU. However, the Ukrainian example implies that a turnaround cannot be excluded in those cases, either. This leads to the conclusion that the changes which the ENP induces in neighbouring countries are fragile and easily revisable. They appear to lack ‘stickiness’ – while the only thing that seems to be extremely sticky in the context of the ENP is the EU’s reluctance to make commitments it considers risky.

## 7. Conclusion and Policy Recommendations

This policy paper has examined the effectiveness of the ENP in relation to Ukraine on the basis of a two-step approach. First, the existence of a consistent purpose underlying a policy has been defined as a precondition for effectiveness. This precondition is considered to be fulfilled if the EU manages to agree on a set of prioritized policy objectives which form the basis of a policy without undermining its purpose by exhibiting diametrically contradictory functions. Second, the actual degree of effectiveness is measured by the relation between the EU’s capabilities to achieve its policy objectives in a given context and the actions taken by the Union in order to facilitate this achievement. The smaller the size of this *capability-facilitation gap*, the more effective the policy.

The analysis was structured according to four guiding questions:

- Is the EU’s strategy based on a consistent set of prioritized policy objectives?
- To what extent does the implementation of this strategy match the EU’s capabilities to achieve these policy objectives?
- What are the implications of the findings from the Ukrainian context for the ENP as a whole?

- Which measures can the EU undertake in order to enhance the effectiveness of the ENP in Ukraine and elsewhere?

Regarding the first question, it has been found that a consistent set of prioritized policy objectives exists in the Ukrainian context. Risk avoidance constitutes the EU’s dominant policy objective, followed by norm transfer, security interests and the containment of Russian influence. In practice, this means that the EU’s dominant concern is the avoidance of perceived political and economic risks – namely the proposal of a membership perspective to Ukraine, the investment of significant financial resources, and the concession of significant one-sided advantages in bilateral trade relations. The avoidance of those risks is given priority over the objective to transfer EU norms to Ukraine. In turn, norm transfer holds a dominant position in relation to the security dimension as far as both objectives do not reinforce each other. Lastly, the objective to contain Russia and secure Ukraine for the EU’s sphere of geostrategic influence clearly plays a subordinated role and can be considered a side effect.

Due to the existence of this prioritized agenda and the absence of significant dissent within the EU, the ENP in relation to Ukraine fulfils the precondition for effectiveness.

Regarding the second question, the findings are twofold. On the one hand, the capabilities of the EU are limited in relation to the facilitation of all policy objectives other than risk avoidance. There are again two reasons for this. First, the dominance of risk aversion leaves EU conditionality with only two incentives of moderate attractiveness to facilitate the achievement of its other goals: a visa free regime, which, for technical reasons, Ukraine is not yet ready to introduce, and a DCFTA that has an uncertain short-term effect while its long-term benefits largely depend on domestic reform efforts. Second, systemic features of Ukrainian politics and society contravene EU socialization efforts. The prevalence of corruption and the domination of the political elite by oligarchic clan structures create interests within the Ukrainian leadership, which would be threatened by comprehensive Europeanization.

In sum, the EU has managed to mainly live up



to its limited capabilities. Without compromising on the dominance of risk aversion, the EU has succeeded in convincing the Ukrainian leadership to accept an Association Agreement that obliges the country to move towards the Union's policy objectives. Although the immediate returns of the Agreement are uncertain, it has gained considerable symbolic significance over the years, which helps the EU to turn its finalized version into a general threshold for further integration. Signature and ratification of this threshold are made subject to progress in relation to the EU's normative objectives. By this means, the EU strengthens the limited incentives at its disposal. Through a combination of threshold conditionality with continued socialization, the EU uses its capabilities in an optimal way.

However, some deficits were observed in relation to the communicational preparation of this approach. The EU could have practiced socialization more broadly and vigorously in previous years, and it still has not fully met its potential in terms of supporting civil society movements. Nevertheless, these deficits do not outweigh the EU's achievements. On the whole, the gap between the Union's capabilities and its actions is not overly large and, accordingly, the ENP in relation to Ukraine can be considered largely effective.

Regarding the third question, the case of Ukraine shows that even a largely effective ENP is not very powerful in terms of actual impact on developments in the partner country. While it cannot be said that the EU does not make any difference, it is far from certain that the EU's current approach will lead to a decisive change in Ukrainian politics – in spite of the fact that the EU is using virtually its full potential for influence in the current situation. At the same time, the observed effectiveness appears vulnerable in the face of new challenges which automatically will arise as circumstances evolve in one way or the other. Due to the ENP's limited impact, this involvement can take various unexpected turns. Consequently, it will not be easy for the EU to continue the pursuit of a united, consistent strategy that makes optimal use of the Union's capabilities in the face of unpredictable developments.

Although the ENP has the potential for a degree of effectiveness similar to the Ukrainian case in relation to other countries, the limitations identified by the case study are also likely to affect the policy as a whole. The dominance of risk aversion as a policy objective probably applies to the ENP in general. What is more, limited impact, limited stickiness and fragility over time are likely to be even stronger in other cases, taking into account that Ukraine was considered an ENP front-runner with clear European aspirations.

In the light of these findings, the policy recommendations which answer the last guiding question depend on the future priorities of the EU. On the basis of risk aversion, effectiveness is comparatively easily achieved, since an objective which does not require the ENP to have an actual impact on the neighbourhood becomes its most important determinant. On the contrary, the objective of risk avoidance requires the EU to restrain its engagement, which is not hard to do, but which, in turn, constrains the Union's impact potential. If a degree of effectiveness similar to the current state of the Ukrainian case can be ascribed to the ENP as a whole, this effectiveness will be based on a rather restrictive self-understanding of the EU as a foreign policy actor. It will be based on a kind of actorhood, which, for the sake of caution, deliberately limits its own impact and prefers passivity. Obviously, it is the EU's choice to set its priorities this way. However, in order to maximize the effectiveness of this approach in the Ukrainian context, the following additional steps would be advisable:

- The EU should openly acknowledge the primacy of risk avoidance over normative objectives in its political agenda and explicitly scale down its normative ambitions. It should be made clear both to the governments of neighbouring countries and to the general public that the Union welcomes the adoption of its norms and values by Ukraine but that the incentives it has to offer in return are highly limited.
- The EU should avoid the impression to make demands without offering anything in return by clearly presenting European integration according to the framework provided by the

Association Agreement as Ukraine's free choice and not as a political imperative for Ukraine or the EU.

- The EU should step up its financial and ideational support of Ukrainian civil society. At the same time, support for the public administration should be reduced to institutions and projects which have proven to be willing and able to advocate the EU's objectives.
- The EU should treat its few remaining incentives carefully. It should firmly link the ratification of the Association Agreement and further progress along the visa facilitation roadmap to fundamental changes in the Ukrainian political environment. Reforms have to be systemic, credible and difficult to reverse. By all means, the EU should avoid giving away its last incentives in exchange for lip service or symbolic concessions.

If the EU wants to play a more proactive role in the neighbourhood and increase the actual impact potential of the ENP, a shift of priorities away from risk avoidance will be inevitable. In this case, the following actions would be advisable in the Ukrainian context:

- The EU should offer Ukraine a membership perspective. This perspective should be made subject to rigorous conditions, part of which have to be the Copenhagen Criteria and the full implementation of the Association Agreement. While it has to be made clear that the accession process is open-ended and likely to be long and difficult, the EU should leave no doubts concerning its commitment to Ukrainian membership as the ultimate goal of its policy towards the country.
- The EU should proceed with signature and ratification of the Association Agreement as soon as first signs of an improvement regarding the situation of democracy, the rule of law and human rights in Ukraine become apparent. Visa facilitation should be pursued according to the roadmap regardless of the political situation in order to enable additional socialization measures through visa-free travel.
- The EU should significantly increase the funding for the ENP in relation to Ukraine

as soon as the Association Agreement enters into force. In order to make such additional financial resources available, the EU would need to consider a small reduction of EU expenditure in larger headings of the EU budget, for example the agricultural subsidies. A considerable part of these resources should be used to support the implementation of the Association Agreement with Ukraine and to provide additional financial support for Ukrainian civil society.

Considering the dominant political discourse within the EU, the challenges brought about by the public debt crisis, and the financial framework that the European Council has proposed for 2014-2020, it appears unlikely that the Union will be willing to change its overall approach to the ENP. In all probability, the EU will stick to its current prioritization of objectives for the foreseeable future, which means that the first set of recommendations applies. Nevertheless, the question remains whether a restrained foreign policy approach of this kind is appropriate for an EU that is facing the reality of a globalizing world. Not only does the international community expect the Union to play a leading role in global affairs, aspirations to be a strong foreign policy actor are also very present in the EU's own rhetoric. That the EU will be able to live up to these expectations and aspirations without shifting its priorities is highly doubtful. It rather seems that the Union prefers resignation and the acceptance of powerlessness in foreign affairs to a new challenge and to the acceptance of additional risks in already difficult times. Time will tell whether this is a wise decision.