

## **The European Constitution and the European Neighbourhood Policy**

### **The EU's emerging new foreign policy in regard to her neighbours - European Neighbourhood Policy**

von Sascha Müller-Kraenner

#### *Preamble of the EU Constitution on VALUES*

*“DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law,(...)”*

#### The Commission on the European Neighbourhood Policy's OBJECTIVES:

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

**Foreign policy is at the centre of the new European Constitution which still has to be ratified by the Member States. The Constitution mandates a common foreign and security policy that covers all areas of foreign policy and foresees a progressive development of a common defense policy. A number of institutional innovations, most prominently a European Foreign Minister, are being introduced. The European Security Strategy (ESS) that was conceived in 2003, identifies the Union's role and in the world and its geo-strategic interests. The European Neighbourhood Policy (ENP) proposes a system of graduated cooperation and association agreements with all neighbouring countries. The ESS and the ENP try to promote the Constitution's objective to create a common space of security, stability and sustainable economic development in the “Wider Europe”, as well as to establish a “ring of friends” around the EU's borders.**

### **1. Constitutional Framework of the EU Common Foreign and Security Policy**

A hallmark of the European Union Constitution is the creation of a common foreign and security policy, including the framing of a future common defence policy, which Member States must support in a spirit of loyalty and mutual solidarity.<sup>1</sup> To this end, Titles I (“Definition and Objectives of the Union”) and V (“The Union's External Action”) of the EU Constitution formalizes a structure to oversee the common foreign and security policy. The Constitution calls for the creation of a Union Minister for Foreign Affairs, chiefly responsible for executing the foreign and security policy of the EU.<sup>2</sup> He will chair the Foreign Affairs Council, designed to ensure implementation of European Council and Council of Ministers decisions, and will be assisted by a European External Action Service, a foreign policy apparatus which will work in cooperation with the diplomatic services of the Member States and whose organization and functioning shall be established by the Council of Ministers.<sup>3</sup>

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<sup>1</sup> Treaty Establishing a Constitution for Europe. Brussels, October 13, 2004. Articles I-16; III-294.

<sup>2</sup> Article I-28(2).

<sup>3</sup> Article III-296(3).

The Foreign Affairs Minister will share external representation of the Union with the President of the European Council and will coordinate activities with the European Council.<sup>4</sup>

Both the European Council and the Council of Ministers will play central roles in defining as well as formulating the common foreign and security policy. The European Council shall help define the guidelines of these policies and the European decisions formulating these policies will be approved by a unanimous vote by the Council of Ministers.<sup>5</sup> The Council of Ministers will also serve as an oversight body in which Member States, the Foreign Affairs Minister or EU Ministers may refer questions relating to these policies.<sup>6</sup> Finally, the EU Parliament will play a limited and more observatory role. The Foreign Affairs Ministry shall consult and inform the EU Parliament and the views and questions of the Parliament will be taken into consideration.<sup>7</sup>

When the EU Constitution is ratified it will have to reconcile preexisting foreign policies of individual Member States as well as preexisting European Union policies. One such policy is the EU's treatment of neighboring countries through the European Neighbourhood Policy (ENP). Designed to prevent the emergence of new dividing lines between the enlarged EU and its neighbours, the objective of the ENP is to strengthen political, security, economic and cultural ties through cooperation and financial support.<sup>8</sup>

Title VIII of the EU Constitution ("The Union and its Neighbours") enshrines the good neighbor principles of the ENP within the Constitution. The EU may develop special relationships with neighboring countries and may conclude specific agreements containing reciprocal rights and obligations, including undertaking joint activities.<sup>9</sup> Title VIII presents several distinctions from the ENP, however. Title VIII does not mention which neighbours may be subject to special relationships. Furthermore, it does not discriminate between countries that are currently seeking EU membership and those that are not. Finally, it is also argued that the Constitution creates a new legal basis for conducting a new type of agreement, namely "neighborliness agreements."<sup>10</sup> It is unclear, however, how this new legal basis would be interpreted in providing certain neighbours exceptional treatment in contrast to treaties affording special treatment to non-EU neighbours.

The Constitution also provides for development cooperation and humanitarian aid programs with EU neighbours and third-party countries, also core principles to the ENP. According to the Constitution, development cooperation and humanitarian aid involving developing countries are competencies of the EU although these competencies will not prevent Member States from exercising in this area or coordinating with the EU itself.<sup>11</sup> Notwithstanding cooperation and aid programs to developing countries, the Union also has shared competencies with Member States to carry out economic, financial and technical cooperation measures with third-party countries but such measures should be consistent with the overarching development policy of the Union.<sup>12</sup> In addition to foreign cooperation and aid programs, the Constitution provides the Council of Ministers the ability to adopt restrictive

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<sup>4</sup> Article I-22(2).

<sup>5</sup> Articles III-295; III-300(1).

<sup>6</sup> Article III-299(1).

<sup>7</sup> Article III-304.

<sup>8</sup> "European Neighbourhood Policy" at [http://europa.eu.int/comm/world/enp/policy\\_en.htm](http://europa.eu.int/comm/world/enp/policy_en.htm).

<sup>9</sup> Article I-57(1).

<sup>10</sup> "The Policies of the Union: External Action." European Union website at [http://europa.eu.int/scadplus/constitution/external\\_en.htm](http://europa.eu.int/scadplus/constitution/external_en.htm).

<sup>11</sup> Articles I-14(2); III-318(1).

<sup>12</sup> Article III-319(1).

measures such as economic sanctions not only against states but also against natural or legal persons, groups or non-State entities.<sup>13</sup>

An additional goal of the ENP is to support the signing and ratification of regional and international agreements and to assure their implementation. The Constitution provides the EU power to conclude international agreements.<sup>14</sup> In particular, the Constitution gives power to the Council of Ministers to authorize negotiations and the Commission or the Foreign Minister to carry them out. Consent or consultation with the European Parliament may also be applicable.<sup>15</sup> However, it is unclear how the treaty-making power of the EU will ultimately affect the powers of the Member States in this field. It is conceivable that Member States' ability to conclude international agreements will be progressively limited as the EU concludes more and more international agreements which Member States are required to unabashedly support.

The incorporation of Europe's new security strategy and the creation of a coherent defense policy represent one of the boldest aspects of the EU Constitution. Strengthened cooperation may be based on realizations that first, a less coherent foreign and security policy amongst EU members in the 1990's failed to prevent violent outbreaks in such places as the Balkans and Rwanda, and second, increased divisions exist today between EU and American foreign policy objectives as well as agreement on how to carry those objectives out. While NATO membership and a strong role in the UN remain important aspects of EU common security and defense policy, to meet 21<sup>st</sup> century threats such as organized criminal networks, terrorism, the proliferation of weapons of mass destruction, regional conflicts and state failures, the EU must find its own footing.<sup>16</sup>

Article I-41 sets forth provisions relating to carrying out the EU's common security and defence policy. The Constitution provides for permanent structured cooperation amongst Member States in the field of security and defence. It provides the EU with an operational capacity drawing on Member States' civil and military assets for a variety of missions coordinated by the Foreign Affairs Minister such as joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks and crisis management, including peace-keeping and post-conflict stabilization.<sup>17</sup> These missions will be adopted by the Council of Ministers acting unanimously on a proposal from the Foreign Affairs Minister or from a Member State.<sup>18</sup> The Constitution also provides for greater defence integration through the European Defence Agency which is designed to assist the Council in evaluating the improvement of military capabilities, consolidate issues such as procurement and conscription as well as further research, development and acquisition of defence capabilities.<sup>19</sup>

Despite efforts at greater defense integration, executing common security and defense goals remain very much reliant on Member States. Member states are encouraged to seek enhanced cooperation amongst themselves, making use of the EU's institutions.<sup>20</sup> Additionally, Member States which establish multinational forces may make those forces available to the

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<sup>13</sup> Article III-322(1).

<sup>14</sup> Article III-323(1).

<sup>15</sup> Article III-325(5).

<sup>16</sup> "A Secure Europe in a Better World: European Security Strategy." Javier Solana, High Commissioner for Common Foreign Policy and Security Strategy. Brussels, 12 December 2003.

<sup>17</sup> Article III-309(1).

<sup>18</sup> Article I-41(4).

<sup>19</sup> Article III-311(1).

<sup>20</sup> Article I-44(1).

common security and defense policy.<sup>21</sup> Member States which have made binding commitments to one another may also establish “permanent structured cooperation” within the framework of the EU with a view to completing more demanding missions.<sup>22</sup>

The Constitution also includes two articles applicable if EU Member States are victims of armed aggression, the object of a terrorist attack or the victim of a natural or man-made disaster. If a Member State is a victim of armed aggression on its territory, Member States will be obliged under the mutual defense clause to render assistance in accordance with Article 51 of the UN Charter.<sup>23</sup> If a member state is the “object of a terrorist attack,” the EU shall mobilize all of its military resources pursuant to the Solidarity Clause to “prevent the terrorist threat in the territory of the Member State; protect democratic institutions from the civilian population from any terrorist attack; [and] assist a member state in its territory.”<sup>24</sup> Under the Solidarity Clause, assistance will also be rendered in the event of a natural or man-made disaster.<sup>25</sup>

It is noteworthy that terrorist attacks receive special reference under the Solidarity Clause rather than being included along with coverage of armed aggression more generally under the mutual defense clause. Terrorism is a timely concern and considering that this Constitution was drafted with the post-September 11 specter of terrorism in mind, it is understandable that terrorism received separate attention. Even more notable is the drafting of the Solidarity Clause. Member states which are objects of terrorist attacks may utilize other Member States’ military resources from preventing the attack from occurring. This is in contrast to when a Member State becomes the victim of armed aggression of another type. Then, Member states have an obligation of aid and assistance once that attack has taken place. While no state should remain idle while waiting to become the victim of a terrorist attack, the drafting of the Solidarity Clause in this manner may signal changing the standards set by public international law from a “preemptive action” (against an imminent threat) to a “preventive action” (against a perceived but not imminent threat) regime.<sup>26</sup> Preemptive action as an act of self-defense is permitted by Article 51 of the UN Charter where only the UN Security Council has the legal standing to authorize preventive action.<sup>27</sup> Without guidelines of military force such as seriousness of threat, proper purpose, last resort, proportional means and balance of consequences, the Solidarity Clause threatens to run afoul of current standards of public international law.

## **2. What is the European Neighbourhood Policy?**

With the European Neighbourhood Policy (ENP)<sup>28</sup> the EU is redefining its geopolitical interests as well as the relationship toward its new neighbours. Through its communication “A Larger Europe – Neighbourhood” the European Commission created a new framework for EU relationships with its Eastern and Southern neighbours. The strategic goals of the ENP were defined by the Commission via a Communication on May 12<sup>th</sup> 2004. The entry of eight

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<sup>21</sup> Article I-41(3).

<sup>22</sup> Article I-41(6), III-312(1).

<sup>23</sup> Article I-41(7).

<sup>24</sup> Article I-43(1); Article III-329(1).

<sup>25</sup> *Id.*

<sup>26</sup> “Facing the Threats of the 21<sup>st</sup> Century: The Report on Reforming the UN.” Ulrike Leis and Marc Berthold, Heinrich Böll Foundation North America.

<sup>27</sup> *Id.*

<sup>28</sup> Please find all important documents: the European Commission’s Website „European Neighbourhood Policy “[www.europa.eu.int/comm/world/enp/index\\_en.htm](http://www.europa.eu.int/comm/world/enp/index_en.htm).”

Central and Eastern European countries together with Cyprus and Malta into the European Union signifies major changes in relation to the EU external borders and to EU external relations. The European Neighbourhood Policy will restructure and refocus EU relations with the neighboring countries to the East (Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine) and to the South, the Euro-Mediterranean Partnership countries (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, Syria and Tunisia) as well as Libya.

The European Neighbourhood Policy seeks to create a system of graduated co-operation and association contracts. Intrinsic within the already existing framework there are however, some contradictions: should European and non-European neighbours be treated equally? Can the EU cooperate on equal terms with democratic as well as with authoritarian regimes? Is Russia just another neighbour among many or should it receive an exceptional position within the framework of a strategic partnership? The crux of the ENP is economic integration within the EU-single market. Cooperation should also be strengthened in the political arena as well, tackling such issues as a common security policy and environmental protection and energy strategies.

To draw the NC in an increasingly close relationship with the EU, the ENP will use as its main operational tool jointly agreed Action Plans (AP) based on common values and a set of priorities. The AP will cover action in specific key areas: political dialogue and reform; trade and measures preparing partners for gradually obtaining a stake in the EU's Internal Market, justice and home affairs, energy, transport, information society, environment, research and innovation, social policy and people-to-people contacts.

All neighbours of the EU<sup>29</sup> who do not have immediate prospects of EU accession should be included within the framework of a common Action Plan<sup>30</sup> in order to facilitate participation within the different activities and programmes of the EU as well as to profit from certain financial instruments. In this regard, the EU strives to treat each of the neighbouring countries independently in order to continue to develop relationships based on equality, mutual consent, and on individual political, economic and social state of development.

Action Plans have been adopted for some countries (e.g. Morocco, Tunisia, Ukraine and Moldova) and are under negotiation for others. The proposed regulation on the new Neighbourhood Instrument is under discussion by the European Commission, the Council and the Parliament.

The EU is not seeking a common Action Plan with Belarus and its authoritarian regime at this time. The EU has no contractual relationship with Libya. Since the political isolation of Libya ended, the EU is striving to include it into the Barcelona Process and in the medium term to begin negotiations on an association and neighbourhood agreement.

Regional clustering, which could be a common approach for the states of Eastern Europe and the Near East, is not intended. However, in practical terms, issues relating to regional balance and equality will continue to play an important role. This applies, for example, to the

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<sup>29</sup> Southern Europe and Turkey do not fall into the category ENP, since the EU has opened accession talks with them. The following states remain: Belarus, Moldavia, Ukraine, Russia, Algeria, Egypt, Israel, Palestine, Jordan, Lebanon, Libya, Morocco, Syria and Tunisia. In June of 2004, the following countries were affiliated with the ENP: Armenia, Azerbaijan, and Georgia.

<sup>30</sup> Hitherto there have been action plans worked out with: Moldavia, Ukraine, Morocco, Jordan, Tunisia, and Palestine. Still pending is the approval by the European Council. The Action Plan with Israel is in great part finalized.

comparison between the Ukraine and Moldavia but also to the socio-economically different but politically joined countries such as Israel and Palestine.

Regional cooperation continues to exist within the Barcelona Accords, the European Council, as well as other initiatives such as the Baltic Sea Council, the Central European Initiative and the Black Sea Economic Cooperation and should serve to complement the already existing bilateral neighbourhood agreements. Both regional security cooperation and the environment play leading roles in the Barcelona Accords (EUROMED); the Mediterranean Action Plan (MAP) of 1975 and the Environment Programme of the United Nations (UNEP) complement EUROMED.<sup>31</sup>

Implied, but not explicitly stated is that further applications for membership by these neighbours will, for the moment, be unsuccessful. However, by implementing these Action Plans, there is a clear signal toward the Eastern European neighbours, that they can greatly improve their prospects of EU accession. Even though these Action Plans will vary greatly from country to country in principle, contained within them are all the elements needed for accession. These Action Plans and in part the already existing agreements to cooperate could be used as a base for future partnerships.

Within the Barcelona Accords, the states of the Near and Middle East and Northern Africa are already working together with the EU. The original agreements, based mainly on economic cooperation were expanded upon in the last years in order to allow for more collaboration with regards to security, border control and migration. The Barcelona Process is Europe's main contribution offered to the G8 initiative for the transformation of the "Greater Middle East" toward democracy, development and common security. The Barcelona Process is officially supported through the MEDA programme.

There are already partnership, cooperation and association agreements with the majority of the Eastern European states. Common projects as well as third party projects in the region are being supported through TACIS.

From 2007 the new Neighbourhood Instrument (NI) will support cross border co-operation, regional co-operation involving both EU member states and NCs, and both regional and cross-border co-operation among partner countries. The Commission has proposed significant funding increase to approximately €15 billion for the period 2007-2013. These funds will certainly act as an incentive for economic and political reform within the partner countries. Until the new medium term financial planning of the EU for 2007 becomes official, a neighbourhood instrument should be created based on already existing support such as TACIS for the Eastern Europe and MEDA for the Mediterranean region. To what extent these neighbourhood instruments complement or integrate already existing programmes remains to be seen. Until then, the so called Neighbourhood Programmes should be coordinated with each other.

Why draw a link between the EU Constitution and the ENP:

- They were both created at approximately the same time.
- Both are strong political statements.

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<sup>31</sup> Very well described in "Joining Forces in the Mediterranean-Options for a Co-operation between MAP and EUROMED", Ecologic Briefs; [www.ecologic.de/publications/briefs](http://www.ecologic.de/publications/briefs).

- Both define an institutional structure: the EU Constitution defines the rules by which the EU is to function internally and clarifies responsibilities and duties. The ENP defines the structure vis-à-vis the EU's neighbours.
- Both aim to promote and sustain the same values.
- One has a strong impact on the other: i.e., a ratified EU Constitution would streamline procedures for ENP and would give Europeans more international clout on the world stage.
- Attention has to be paid to consistency. One should not undermine the other.

### **3. The Finality Debate: Europe of the 35 or Privileged Partnerships?**

The Finality Debate requires a prior debate on the definition of 'the *European State*' and of the boundaries of Europe, be it geographic, historical, cultural, or religious. As the debate about the accession of Turkey shows, this will be one of the more difficult tasks to master. Various possible options of further enlargement and integration are still being considered: full integration, concentric circles, variable geometry, multi-speed, Europe a la Carte, etc. Thus, it would be unwise, or indeed impossible, to already depict a final scenario of the EU, since it is as yet unclear how priorities and inter-state relationships will develop. The possible depth of integration is not yet defined. The depth EU members are willing to commit to can have a direct effect on the ability of aspiring joiners to catch up and integrate. It is as yet unclear how the Union will be able to finance further enlargement waves.

The mutual political and economic dependency between the EU and its neighbours is a reality. Even if more states were to join the Union, it is already clear that the instruments of EU accession as an all purpose weapon to be used in crisis management and economic integration have reached their limits. Other gradual forms of integration and cooperation must be put into place to supplement enlargement.

With Euro-Mediterranean collaboration as well as countless cooperation and association programmes with Eastern European States, a heterogeneous system of cooperation between Europe's neighbours is already in existence. The new European Neighbourhood Policy strives to harmonise this system of institutional regulations, political cooperation instruments and financial mechanisms.

In doing so, the following questions arise:

a) Are the neighbourhood policy instruments a preliminary step toward integration until complete membership is reached?

b) Is there such thing as partial membership? That is, is an institutional framework (for example, in terms of the single European market, economic membership and monetary union as well as the common foreign and security policies) just below the threshold of full membership conceivable?

c) Currently, below this EU membership threshold, the concept of privileged partnership is being discussed in connexion with Israel and Turkey. Under this caption, the CDU/CSU want to offer participation in the European single market, GASP, and cooperation in domestic and judiciary affairs, that is, membership minus political union. For Israel, Commissioner Verheugen brought a privileged partnership based on these four freedoms to the table.

The EU would like to develop a strategic partnership with Russia which, depending on the development of the Russian economy and democracy, could contain numerous elements of a privileged partnership.

The European Economic Community (EEC) cooperates with some of the EU's old neighbours (Norway, Iceland, Liechtenstein<sup>32</sup>) who do not desire membership. The EEC is an expanded domestic market where numerous consumer protection and environmental regulations were agreed upon in the EEC-Aquis.

Through its enlargement toward the East, NATO has put itself chronologically ahead of the EU. Currently the Ukraine and Georgia have stated their interest in joining NATO. Compared to the complex EU Aquis Communautaire, membership in NATO is much easier to attain and can be seen as a preliminary step or an alternative to full EU membership.

Even membership in the Council of Europe could be suitable for some states, e.g. for the North African neighbours of the EU. This is the case with the Southern Caucasus and is a medium term solution just below the threshold of full EU membership.

#### **4. Neighbourhood Policies and European Security Strategy**

The common security strategy approved by The European Council on December 12<sup>th</sup> 2003 concentrates principally on a series of threats that loom in the EU's immediate neighbourhood as well as on collaborative partnerships in order to manage any security crisis.

The importance of a neighbourhood policy is highlighted in the European Security Strategy, endorsed at the European Council of December 2003, which states that the EU's task is to *"...make a particular contribution to stability and good governance in our immediate neighbourhood [and] to promote a ring of well governed countries to the East of the European Union and on the borders of the Mediterranean with whom we can enjoy close and cooperative relations."*

The strategy also states that: *"Even in times of globalisation, geographic aspects still play an important role. It is in Europe's interest, that the neighbouring countries are being governed responsibly. Neighbouring countries, which are ensnared in violent conflict, weak states in which organised crime finds fertile ground, war torn societies or states with an uncontrolled population explosion in the neighbouring regions are always a problem for Europe."*

In Europe's neighbourhood there are unresolved security conflicts.

When Romania joins the EU in 2007/2008, the unresolved conflict between the Republic of Moldavia and Transdniestria - an independent province backed by Russia - will move closer to Europe. Already today, one million inhabitants of Moldavia are in possession of Romanian citizenship. The population of Moldavia will therefore join the EU economically. As yet, it remains totally unclear what this fact means for the security of Europe's outer borders. However, it remains a fact that today's Transdniestria harbours smugglers and criminal networks including organised arms traders. Policing the common borders to Transdniestria is one of the foreign policy expectations that the EU has towards the new Ukrainian government.

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<sup>32</sup> Switzerland has signed the EEC (European Economic Community) contract but it's ratification was rejected via referendum

The solution to these numerous territorial, ethnic and political conflicts in the Caucasus is not only the main challenge of the EU in its dealings with three republics of the Southern Caucasus, but it will also further influence the relationship between Russia and the EU. The Caucasus, and above all the conflict in Chechnya, is a barometer - irrespective of the security issues - of the state of development of Russian democracy and the effect this has on its neighbours. It is due to Russian sovereignty over the North Caucasus that there is as yet no EU Caucasus policy. Nonetheless, the EU has named a special commissary for the South Caucasus who so far has been operating only from Brussels.

Concerning the Israeli-Palestinian/Arab conflict, the ESS explains: "The solution of the Israeli-Arab conflict is a strategic priority for Europe." For a very long time the EU has been the supporter of a two state solution in order to put an end to the conflict. Furthermore, the EU is actively involved, as part of the *Barcelona Process*, in more regional cooperation between all the Mediterranean countries and this includes the neighbouring countries of Israel.

Parallel to the ENP, the proximity of the neighbours to NATO plays an important role. The Ukraine and Georgia both seek membership in NATO. The cooperation of NATO with countries of the Near East, North Africa as well as the Gulf Cooperation Council will boost its efforts to bring the Near and Middle East closer to the West. Here, it is important to coordinate common foreign and security policies with those of NATO.

## **5. Some Neighbours**

### Russia

The Russian government rejected negotiations with the EU to work out a common Action Plan within the framework of the ENP. Instead, at their Summit in 2003 in St. Petersburg, the EU and Russia decided to further develop four political areas within the scope of their "strategic partnership". This "common ground" comprises: economy/energy; foreign and security policy; domestic security/judiciary; education/culture. This cooperation is similar to the original structure as seen by the Commission for the partnerships within the ENP. Even the financial structure can be used. The term strategic partnership obviously has more symbolic value and puts Russia in a more important position compared to its smaller neighbours. Furthermore, Russia has no ambitions to join the EU, which is not the case with its smaller neighbours. Together with this commonly planned economic area, Russia carries out its own economic policies within the NIS zone. Belarus and the Ukraine are important constituent parts of this project. The question that arises for the EU and also for the Ukraine and other neighbours interested in accession is: Can such a system of overlapping integration zones work in the long term?

For the EU, central to cooperation with Russia is solving regional conflicts within and at its borders, stabilising Europe's security structure and the sustainable use of Russia's energy resources. The development of Russia into a state governed by the rule of law and the appropriate inclusion of civil society in the shaping of Russian democracy is a condition under which Russia would not only be a good neighbour, but also a strategic partner of the EU in working on common tasks and problems.

### Ukraine

Regarding Ukraine and its changed political realities the following questions have to be asked: Is the ENP still an appropriate strategy to achieve the EU's objectives to further security, stability and economic development in its immediate neighbourhood? Does the current Partnership and Cooperation Agreement provide the necessary framework and how should it be replaced by 2008? Should the EU offer a roadmap for Ukraine's EU accession or wait whether the new government carries out the necessary political and economic reforms? Ukraine has declared that it strives for EU accession in the medium term. Poland and Slovakia, two recent EU members neighbouring the Ukraine support this wish.

Some of the new Ukrainian government's foreign policy challenges that would show a new orientation towards the goals of regional cooperation and multilateral cooperation are:

- Redefine Ukraine's relations towards Russia;
- Create the legal and administrative preconditions for foreign investment, and WTO accession;
- Resolve outstanding border conflicts with Ukraine's immediate neighbours
- Contribute to a solution to the Transdnistria conflict by policing Ukraine's borders to this breakaway republic more effectively as well as by using Ukraine's economic and diplomatic influence;

The Ukrainian elections have already changed the mechanics of the EU's foreign policy. Poland's President Kwasniewski and Lithuania's President Adamkus took the lead in shaping the EU's position towards the manipulated presidential elections. France, Germany, and other traditional foreign policy leaders followed suit. The EU's policy towards Ukraine proved to be successful and the Union gained respect and additional stature in the region. It remains to be seen whether the Franco-German couple draws the right conclusions from that experience and increases foreign policy coordination with Poland and other new Member States.

Ukraine's recent political transformation was supported by significant sectors of the country's economy. Even today, the EU has bypassed Russia as Ukraine's major partner in trade. The EU could offer Ukraine market economy status as well as its support with accession to the World Trade Organisation (WTO). WTO accession is the precondition for negotiating any future free trade agreement with the EU. From the EU's point of view, Russia should join the WTO at the same time to create a pan-European free trade zone.

The Russian government, on the other hand, has offered Ukraine and others the creation of a Common Economic Space (CES), as well as negotiations for a Customs, Economic and Monetary Union. As well as economic cooperation with Russia is limited to free trade and compatible with both countries aspirations to join the WTO, there is no contradiction with the EU's Single European Market. President Juschtschenko has already announced that integration with the EU's internal market has priority over the CES project. As a first step towards economic integration of Ukraine into the Internal Market, the EU should offer market economy status to Ukraine. The Neighbourhood Action Plan describes some necessary steps on that road.

The 2004 presidential elections in Ukraine have indicated that there is a vibrant civil society in Ukraine. Elections have seen the new momentum being achieved through self-organization of citizens, development of youth and student movement, association of journalists standing for freedom of expression and independent media and active stance of professional unions against using administrative means to create pressure on employees. It is the task now for

both the Ukraine and the European Union to maintain this momentum and foster further development of civil society in Ukraine.

This is what the EU could do on a practical level, and without devising new policy or financial instruments, to support the development of a democratic civil society in Ukraine:

- improve financial and technical support from existing programs such as TACIS; include civil society support and involvement into the EU-Ukraine Action Plan;
- encourage Ukrainian authorities to more actively involve civil society representatives into the policy process in Ukraine. This will help the new government to attain legitimacy in the eyes of the citizens divided in the course of the election campaign;
- support the development of a diverse party system in the lead up to regional and parliamentary elections in 2006;
- ease visa procedures, specifically for people to people exchange.

### South Caucasus

The three states of the South Caucasus were accepted into the ENP strategy by the European Commission only in retrospect. In the South Caucasus the strategic interests of the super powers Russia and the US come up against those of the EU. In addition to this, the region finds itself in the immediate neighbourhood of the Near and Middle East and serves as a bridge both politically and culturally. The problems of the South Caucasus can obviously not be solved in separation from the political conditions in the North Caucasus. As yet, the EU has no strategic concept for the entire region. Nonetheless, it is questionable if a neighbourhood strategy that views all three states in the South Caucasus as separate from one another would be an adequate reflection of the security and political interests of the EU in this region. For this reason, future Action Plans must describe and take into consideration the role of third parties, their neighbours and Russia. Preconditions for further rapprochement of the South Caucasus states to the EU and a “European election” by the political elites of the region include solving the territorial conflicts and improving cross border cooperation between the states themselves. Non-governmental organisations and other civil society actors play a key role in breaking up and discussing national taboos and differences. The EU must formulate a more consistent and longer term policy for this region and emphatically place more political conditions on economic reforms as well as arbitrate more between the states of the South Caucasus and its big neighbour Russia. For this reason, the special emissary for the South Caucasus should become more involved and receive his own infrastructure in the region.<sup>33</sup>

### Israel

The outgoing EU Commissioner for Enlargement, Günther Verheugen, spoke about Israel receiving privileged partnership status with the European Union. This relationship would comprise full participation within the single European market and the so called “four freedoms” (free circulation of goods, services, capital and persons). Through its democratic and economic development, Israel differs from all of the other nations neighbouring the EU. Advocates of the privileged partnership see a promise of more influence on the Israeli position in the Near-East Peace Process because of the negotiations that take place before a privileged position is granted. Sceptics fear that a privileged position for Israel could lead to a loss in credibility for the EU in the region and discredit the neighbourhood concept. A series

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<sup>33</sup> See also: „Caucasian Preconditions for the Development of an Integrated European Policy Towards the South Caucasus“; Documentation of the Conference of the Heinrich Böll Foundation; Tbilisi, 1-2 June 2004; [www.boell.org](http://www.boell.org)

of security relevant procedures (amongst others admission of ethnic Arab citizens of the Member States into Israel; export of arms) must be met prior granting of the four freedoms.

### Morocco

Morocco is the only neighbour whose accession application was rejected by the EU. This rejection was justified by citing a regulation in the EU Treaty which was interpreted as stating that “only European states” can apply to become members of the EU. With the possible commencement of accession negotiations with Turkey, this argument loses plausibility. A setting where Morocco democratises its social system and modernises its economy is conceivable for example, in the year 2030. At this time the ethnic “face” of Europe will be more “North African” than it is today. Under these circumstances, it will be difficult to justify why a dictatorship in Belarus or an authoritarian regime such as the one in the Ukraine has the prospect of joining the EU while a socially modernised country in the Southern part of the Mediterranean does not.

A new debate must be started within the EU if membership in the EU-Europe should be based on geographic, social and cultural aspects or if it should take into account social, economic and geo-strategic criteria as well.

Sascha Müller-Kraenner, Director Europe / North America Department, Heinrich Böll Foundation  
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