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## The EU and its Neighbours

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### Central Issues

- This chapter examines the wide range of policies and means through which the EU engages with the countries in its neighbourhood. First, the EU's relations with the Western Balkan countries and Turkey, both formally involved in the EU's enlargement policy, will be addressed. Second, specific attention will be devoted to the European Neighbourhood Policy (ENP), launched in 2004 for those countries who are not eligible for membership either permanently or in the short to medium term. Third and finally, EU relations with neighbouring countries not taking part in the ENP or the enlargement process will be discussed.
- The *ENP* was formally launched in 2004, against the background of the fifth enlargement, and aims to create a special relationship with those neighbouring countries to the South and East that are not included in the enlargement process. From an instrumental perspective, this policy provides an excellent case study on the use of soft law in EU external relations law. From a methodological perspective, it illustrates how the EU has drawn on objectives and processes from EU enlargement policy and applied them in a non-accession context, with commensurate difficulties. As regards instruments it builds on binding bilateral frameworks and then utilises a plethora of soft legal documents to re-orientate them towards new neighbourhood objectives.
- The *Russian Federation* preferred not to take part in the ENP. Attempts to develop a 'Strategic Partnership', including an upgrade of the bilateral legal framework, faced significant legal and political hurdles. In particular, Russia's annexation of Crimea and the conflict in Eastern Ukraine seriously affected bilateral relations and resulted in the adoption of sanctions and the freezing of some policy dialogues and cooperation mechanisms.

- With the *countries of the European Free Trade Association (EFTA)*, the EU has attained a depth of integration that is so extensive that, should these countries wish, they could accede to the EU rather rapidly. However, for most of these countries there is no such desire and alternative legal structures are presently in place: the so-called ‘bilaterals’ with Switzerland, and the European Economic Area (EEA) with Iceland, Liechtenstein and Norway. These legal relationships present the Union with a specific challenge of ‘legal homogeneity’ in the application of the EU *acquis* beyond the EU legal space.

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## I. Neighbours with an Accession Perspective: Western Balkans and Turkey

Without analysing the procedural aspects of the EU’s enlargement policy, which is discussed in Chapter 14, it is clear that the perspective of membership is a significant tool in designing the EU’s relations with its (European) neighbours. Such a perspective is formally granted to the countries of the Western Balkans in the framework of the so-called Stabilisation and Association Process (SAP) and to Turkey, which is a long-standing associated country of the EU.

### A. The Stabilisation and Association Process in the Western Balkans

The EU’s policy towards the Western Balkans started in 1999 with the Stability Pact for South-Eastern Europe, launched in Cologne on 10 June 1999. Initiated in the context of the EU’s CFSP,<sup>1</sup> it was not an EU foreign policy instrument but rather a multilateral political declaration and framework agreement including alongside the EU and its Member States. The G-8 countries and a wide range of international organisations including the international financial institutions, as well as the UN, OSCE, OECD, NATO and others were involved. A crucial aspect of that initiative was that the Union provided an express accession perspective to the Western Balkan countries, applying the methodology which had been developed earlier in relation to the CEECs: the conclusion of bilateral Stabilisation and Association Agreements (SAAs) with a strong element of conditionality and exporting of the EU *acquis* as a means of preparing the associated countries for EU accession. Despite the considerable similarities with the old Europe Agreements, a distinct type of association was nevertheless deemed necessary to tackle the particular challenges regarding the Western Balkans.<sup>2</sup> The most significant

<sup>1</sup> Common Position 1999/345/CFSP concerning a Stability Pact for South-Eastern Europe [1999] OJ L133/1; S Blockmans, *Tough Love: The European Union’s Relations with the Western Balkans* (The Hague, TMC Asser Press, 2007) 248.

<sup>2</sup> D Phinnemore, ‘Stabilisation and Association Agreements: Europe Agreements for the Western Balkans?’ (2003) 8 *European Foreign Affairs Review* 77, 81.

difference was the focus on stabilisation on the basis of regional cooperation and good neighbourliness within the framework of the so-called Stabilisation and Association Process (SAP) covering Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Albania and the Federal Republic of Yugoslavia (which later became Montenegro, Serbia and Kosovo according to resolution 1244 of the United Nations Security Council).<sup>3</sup>

The central objective of the SAP is to foster a process of regional reconciliation and cooperation based on common political and economic goals. Of particular significance is the offer of a so-called ‘European perspective’, implying that the participating countries are recognised as potential candidates for EU membership. This is confirmed in so many words in the preamble of the bilateral SAAs, creating an explicit link between the successful implementation of the agreement and progress towards the objective of membership.

The latest SAA with Kosovo is a special case in the sense that it is concluded as an EU-only agreement and with the explicit proviso that this does not constitute recognition of Kosovo as an independent state.<sup>4</sup> This reality has some implications regarding the formulation of certain provisions and the scope of the agreement. For instance, the preamble to the SAA with Kosovo carefully avoids the words ‘potential candidate Member State’, which can be found in all other SAAs. Alternatively, it uses the more diplomatic formula that implementation of the SAA ‘will lead to progress in Kosovo’s European perspective and rapprochement with the EU, should objective circumstances so permit and Kosovo fulfil the criteria defined by the European Council in Copenhagen on 21–22 June 1993 and the aforementioned conditionalities’.<sup>5</sup> The abundant use of the caveat ‘should objective circumstances so permit’ in the preamble, but also in several provisions of the SAA, reveals the uncertainties regarding the development of EU-Kosovo relations and thus prompted some legal creativity.

**P Van Elsuwege, ‘Legal Creativity in EU External Relations: The Stabilisation and Association Agreement between the EU and Kosovo’ (2017) 22 *European Foreign Affairs Review* 393, 408**

The EU–Kosovo SAA cannot be disconnected from the broader political context, in particular the SAP for the Western Balkans and the process of reconciliation between Serbia and Kosovo. So far, the EU has been quite successful in brokering bilateral deals between Kosovo and Serbia. In return, both Kosovo and Serbia could make significant steps forward in their process

<sup>3</sup>On the principle of ‘good neighbourliness’ as a condition for EU membership, see further Chapter 2 and P Van Elsuwege, ‘Good Neighbourliness as a Condition for Accession to the European Union: Searching the Balance between Law and Politics’ in D Kochenov and E Basheska (eds) *Good Neighbourly Relations in the European Legal Context* (Leiden, Brill/Nijhoff, 2015) 217–34.

<sup>4</sup>Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part [2016] OJ L71/3, Art 2.

<sup>5</sup>Ibid, Preamble.

of rapprochement with the EU. The opening of accession negotiations with Serbia and the conclusion of the SAA with Kosovo are significant landmarks on the long and difficult journey towards stabilisation of the Western Balkans region. The EU used this opportunity to codify its leadership role in this process and to operationalise the principle of good neighbourliness as a key condition for further progress ... Be that as it may, the unresolved issue of Kosovo's international legal status implies that the EU-Kosovo SAA is an example of legal creativity. The EU stretched the limits of its competence to conclude an agreement that, to the extent possible, reflects the SAAs concluded with the other Western Balkan countries without recognising Kosovo as a sovereign state. Accordingly, the EU-Kosovo SAA is fully in line with the official policy of 'diversity on recognition but unity in engagement'. Nevertheless, this approach is not without consequences ... Despite the incorporation of Kosovo in the SAP and numerous declarations about its 'European vocation', it is no coincidence that the SAA carefully avoids the explicit qualification of Kosovo as a 'potential candidate for EU membership'. Concluding a bilateral agreement with a country with an asterisk is one thing but accepting a potential Member State with an asterisk is something completely different. In other words, the asterisk solution is an interesting tool to proceed with the development of EU-Kosovo relations in the short term, but it is not tenable in the middle to long term, at least as far as the granting of EU membership perspectives is concerned.

In February 2018, the Commission confirmed the accession perspective of the Western Balkan countries. Moreover, it linked the future of the EU's enlargement strategy to the general reform of the EU by 2025 and envisaged the possible membership for Serbia and Montenegro by this date.

**European Commission, A Credible Enlargement Perspective for an Enhanced EU Engagement with the Western Balkans, COM (2018) 65 final, 17**

The EU has long supported the European perspective of the Western Balkans. The future of the region as an integral part of the EU is in the *Union's very own political, security and economic interest*. The EU's enlargement policy is part and parcel of the larger strategy to strengthen the Union by 2025. With strong political will, delivery of real and sustained reforms, and definitive solutions to disputes with neighbours, Serbia and Montenegro *could potentially be ready for membership by this date*. Accession is and will remain a merit-based process fully dependent on the objective progress achieved by each country.

**B. Turkey: A Long-standing Associated Country**

The EEC and Turkey signed an association agreement in 1963.<sup>6</sup> An additional protocol, signed in 1970 and which entered into force in 1973, introduced more specific commitments regarding the gradual establishment of a customs union and the envisaged introduction of free movement of persons and services. For this purpose, the association council had to adopt the necessary implementing decisions. Even though the latter failed to take the measures required for the introduction of a free movement regime in the relations between the EU and Turkey, this institutional body played a crucial role in the deepening of the bilateral relations. It significantly strengthened the legal position of Turkish workers inside the Union<sup>7</sup> and provided for the establishment of the customs union with the adoption of Association Decision No 1/95 in December 1995.<sup>8</sup> The EU–Turkey association *acquis*, including the association agreement, the additional protocol and the association council decisions, has been the subject of multiple proceedings before the Court of Justice of the European Union (CJEU).<sup>9</sup> Despite this close relationship, Turkey’s bid for accession has thus far been unsuccessful (see Chapter 14).

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## II. The European Neighbourhood Policy

**A. Article 8 TEU: Competence or Objective?**

The Lisbon Treaty introduced a new legal basis for developing the EU’s relations with its neighbouring countries in Article 8 TEU. The first proposals for such a specific ‘neighbourhood clause’ were launched within the European Convention during the preparation of the Draft Treaty establishing a Constitution for Europe in 2002/03 and coincided with the emerging European Neighbourhood Policy (ENP).<sup>10</sup> In this way, the Treaty constitutionalises the special relationship with the neighbourhood that was considered politically expedient to avoid new dividing lines between those nations that were part of the fifth enlargement in 2004, and those that were not.

<sup>6</sup> Agreement establishing an association between the European Economic Community and Turkey [1977] OJ L361/1.

<sup>7</sup> In this respect, Association Council decisions 2/76, 1/80 and 3/83 turned out to be particularly important. For comments, see M Maresceau, ‘Turkey: A Candidate State Destined to Join the Union’ in N Niamh Shuibhne and L Gormley (eds) *From Single Market to Economic Union. Essays in Honour of John A Usher* (Oxford, Oxford University Press, 2012) 321–22.

<sup>8</sup> Decision No 1/95 of the EC-Turkey Association Council on implementing the final phase of the Customs Union [1996] OJ L35/1.

<sup>9</sup> For an analysis of this case law see, eg, K Groenendijk, ‘The Court of Justice and the Development of EEC-Turkey Association Law’ in D Thym and M Zoetewij-Turhan (eds) *Rights of Third-country Nationals under EU Association Agreements. Degrees of Free Movement and Citizenship* (Leiden, Brill/Nijhoff, 2015) 39–64.

<sup>10</sup> P Van Elsuwege and R Petrov, ‘Article 8 TEU: Towards a New Generation of Agreements with the Neighbouring Countries of the European Union?’ (2011) 36 *European Law Review* 688, 689.

**Article 8 TEU**

1. The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.
2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.

The first paragraph of Article 8 corresponds with Article 21 TEU in that it sets out an objective for the Union, specific to its neighbourhood. Importantly, however, the provision is strongly worded. First of all, the Union ‘shall’ develop special relations with the neighbours, meaning that the EU can therefore not choose not to have a neighbourhood policy.<sup>11</sup> Secondly, the policy aims at creating an ‘area of prosperity and good neighbourliness’ implying a multilateral dimension of the neighbourhood policy. Thirdly, the relationship must be based on the values of the Union, thereby referring back to Article 3(5) TEU and injecting the latter provision into the relationship with the neighbours.

The second paragraph of this provision pertains to the instrument through which to attain the objective set out in relation to the neighbourhood: ‘specific’ agreements with the neighbours. The striking similarity with the wording of Article 217 TFEU on association raises questions about the relationship between both provisions. Given the absence of specific procedural guidelines under Article 218 TFEU, Article 8(2) TEU may be viewed in a similar vein to Articles 3(5) and 21 TEU: stating an objective, but not providing a substantive legal basis. Article 8 TEU indicates the key features and objectives of EU engagement with its neighbours but does not confer new or distinct powers upon the Union. This is supported by the fact that the Commission proposal for the ENP funding Regulation from 2014 onwards views Article 8 TEU as ‘providing the general thrust and basis for the ENP’, but that the actual legal basis for the financing instrument would be Articles 209(1) and 212(2) TFEU.<sup>12</sup> Similarly, the association agreements with Ukraine, Moldova and Georgia do not include a single reference to Article 8 TEU and have been concluded on the substantive legal basis of Articles 37 TEU (CFSP) and 217 TFEU (association).<sup>13</sup>

<sup>11</sup> C Hillion, ‘Anatomy of EU Norm Export Towards the Neighbourhood. The Impact of Article 8 TEU’ in P Van Elsuwege and R Petrov (eds) *Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union. Towards a Common Regulatory Space?* (Abingdon, Routledge, 2014) 16.

<sup>12</sup> European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing a European Neighbourhood Instrument*, Brussels 7 December 2011, COM(2011) 839 final, 7.

<sup>13</sup> See eg Council Decision of 16 June 2014 on the signing, on behalf of the European Union, and provisional application of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part [2014] OJ L260/1.

**P Van Elsuwege and R Petrov, 'Legal Perspectives on the Study of the European Neighbourhood Policy' in T Schumacher, A Marchetti and T Demmelhuber (eds) *The Routledge Handbook on the European Neighbourhood Policy* (Abingdon, Routledge, 2018) 108**

Rather than providing a new type of integration arrangement, which stops short of accession but goes beyond existing forms of partnership and association, Article 8 TEU only institutionalises the ambiguity that also characterises the ENP. Apart from the uncertain procedural requirements for the application of this provision, it appears that most of the neighbouring countries are not interested in such a formula ... Moreover, the special relationship envisaged under Article 8 TEU lacks exclusivity. It is not at all clear what kind of specific benefits it offers to neighbouring countries in comparison to traditional association or even partnership agreements ... Finally, it remains to be seen to what extent the objective of creating 'reciprocal rights' would allow the neighbouring countries to contribute effectively to the development of the bilateral relationship. As a result, the neighbourhood clause may be regarded as a largely symbolic or 'utopian' provision which does not solve the complexities relating to the search of an appropriate legal basis for the conclusion of international agreements with neighbouring countries ...

## **B. Key Features of the European Neighbourhood Policy**

Before the formal launch of the ENP, the EU had already developed a framework for cooperation with its Southern Mediterranean neighbours through the 'Euro-Mediterranean Partnership' (EMP or Euromed). The latter, also known as the Barcelona process, started in 1995 and aimed to establish a regular dialogue on political and security matters; economic, trade and financial cooperation including the creation of a free trade area as well as cooperation on social, cultural and human affairs.<sup>14</sup> Within this context, the EU concluded bilateral Euro-Mediterranean Association Agreements (EMAAs) with seven countries of the Southern Mediterranean (Tunisia, Morocco, Israel, Jordan, Egypt, Algeria and Lebanon)<sup>15</sup> and a special 'Euro-Mediterranean Interim Association Agreement on trade and co-operation' with the Palestine Liberation Organisation (PLO).<sup>16</sup> With countries of the former Soviet

<sup>14</sup>See E Philippart and G Edwards, 'The Euro-Mediterranean Partnership: Fragmentation and Reconstruction' (1997) 4 *European Foreign Affairs Review* 465, 465-89.

<sup>15</sup>A Euro-Mediterranean Association Agreement with Syria was initialled in 2004 and, after a revision, in 2008 but it was never signed. Libya is the other country from the Southern Mediterranean which has no association agreement with the EU.

<sup>16</sup>See, on this particular agreement, E Lannon, 'L'accord d'association intérimaire: Communauté européenne-OLP: l'institutionnalisation progressive des relations euro-palestiniennes' (1997) 1 *Revue des affaires européennes* 169.

Union, a network of bilateral Partnership and Cooperation Agreements (PCAs) was concluded in the second half of the 1990s. In its famous Agenda 2000 Communication published in 1997, the European Commission already briefly reflected about the consequences of the EU's eastward enlargement for relations with countries such as Russia, Ukraine, Belarus and Moldova.<sup>17</sup> However, it was only with the 2002 reflection paper written by the, at that time, High Representative for the CFSP, Javier Solana and Commissioner for external relations, Chris Patten, that the debate about a new neighbourhood policy really kicked off.<sup>18</sup> The Solana-Patten Joint Letter sketched four key issues the Union would have to consider in designing the European neighbourhood policy and outlined some tentative answers:

- The geographic scope of policy: which neighbours to include and not to include?
- What would the EU hope to achieve with the new initiative: its interests, values and objectives?
- How to ensure there is no ambiguity on the (absence of) link with further enlargement?
- What method and instruments would be used to carry out the policy: full application of conditionality?

**Javier Solana and Chris Patten, *Joint Letter, Wider Europe*, 7 August 2002 (extracts – emphasis in original)**

1. What should be *the geographical coverage* of this exercise? The enlarged Union's neighbours fall into three main regional groupings: the Mediterranean (Barcelona Process); the Western Balkans (Stabilisation and Association Process); and Russia and the other eastern neighbours (Partnership and Co-operation Agreements) ... The imminent enlargement presents an opportunity to develop a more coherent and durable basis for relations with our immediate neighbours. The pace and scope of this process will have to be flexible – there can be no one-size-fits-all approach ... Looking to the medium and longer term, we could foresee a gradually evolving framework surrounding the Union, which would nevertheless stop short of full membership or creating shared institutions.
2. How do we want to *develop our relations* with present and future neighbours? The three main geographical groupings above can be distinguished by what we say about their prospect of accession to the EU. For the Balkans it is an explicit goal ... in the Mediterranean (apart from current candidates) membership is explicitly excluded ... our future eastern neighbours fall somewhat uncomfortably in between. Making their

<sup>17</sup> European Commission, *Agenda 2000: For a Stronger and Wider Union* [1997] COM(1997) 2000.

<sup>18</sup> J Solana and C Patten, *Joint Letter, Wider Europe*, 7 August 2002, on file with the author.



situation less ambivalent ... particularly for Ukraine which is most actively seeking more concrete recognition of her European aspirations is probably the most immediate challenge for our neighbourhood policy. This requires the delineation of an ambitious but workable policy framework for the next ten years or so, without closing any options for the more distant future.

3. *What are our interests* and what do we want to achieve? There are a number of overriding objectives for our neighbourhood policy? Stability, prosperity, shared values and rule of law ... failure in any of these will lead to increased risks of negative spill-over on the Union. ...
5. Do we need to create *new contractual arrangements such as Neighbourhood or Proximity Agreements*? There is already scope to upgrade relations within the existing agreements with the countries concerned and we must guard against cosmetic changes ... becoming a substitute for substantive measures. The debate needs careful handling to avoid unrealistic expectations over the prospects of future enlargement. On the other hand, if we decide to set out specific and qualitatively enhanced objectives for our policy, this could justify a relabeling of our relations. Moreover, the strong symbolism of a new label that marks a strengthened commitment of the Union could help to raise the profile of relations with the EU and thus unlock additional political will and administrative capacity.

On the basis of this joint letter, we can examine the key choices which were subsequently made in designing the ENP, in particular as far as the geographical scope, objectives and methodology are concerned. It is noteworthy that individual Member State foreign policy priorities, as well as third-country demands and external geopolitical events have progressively shaped the outlook of the ENP. Of particular relevance are two major revisions which took place against the background of significant geopolitical evolutions in the EU's neighbourhood: the Arab Spring (2011) and the conflict in Ukraine (2015).

### C. Geographic Scope: Confluence of Geopolitics and Member State Interests

In line with Agenda 2000 and the later Solana-Patten Joint Letter, the 'New Neighbours Initiative' discussed in the Council in October 2002 focused only on the Eastern Neighbours and was bilateral in nature: an upgrade in relations with Ukraine, Moldova and Belarus, as well as Russia.<sup>19</sup> However, in 2003, the Russian Federation refused to be treated on an equal basis with the other three countries, so the Union instead

<sup>19</sup>Conclusions of the General Affairs and External Relations Council, *New Neighbours Initiative*, 30 September 2002.

decided to create a bilateral ‘strategic partnership’ with that country. Subsequently, under pressure from Member States such as Italy, France and Spain who did not want to see the Southern nations receive less attention in EU external policy, the Mediterranean rim was also included in the ENP.<sup>20</sup> As the ‘Rose Revolution’ unfolded in Georgia in 2003, by 2005 the ENP also came to encompass the Southern Caucasus: the EU wished to reward that country for its return to democracy and also included Georgia’s neighbours Azerbaijan and Armenia. As a result, the ENP covered relations with Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Libya, Lebanon, Moldova, Morocco, Palestine Authority, Tunisia, Syria and Ukraine. Four countries (Algeria, Belarus, Libya and Syria) were not actively involved because legal and political reasons stood in the way of developing ‘standard’ ENP relations: the EU did not have an Association Agreement or, in the case of Belarus, a Partnership and Cooperation Agreement due to the absence of compliance with EU values on rule of law and democracy.

The single geographic scope was rather artificial, which was all the clearer when the French EU Presidency in 2008 strongly pushed for the launch of a ‘Union for the Mediterranean’ (UMed). Former President Sarkozy saw it as a distinct regional component separate from the ENP, but other Member States and the Commission strongly objected to France moving ahead with this proposal.<sup>21</sup> Thus, as a compromise this Southern dimension was ‘latched on’ to the ENP as a regional dimension to the ENP, named ‘Barcelona Process – Union for the Mediterranean’. However, a lack of enthusiasm from the EU institutions and Member States, and because of events in the Middle East in early 2009, the UMed broadly failed to deliver. Subsequently, the idea of carving out a clearer Eastern dimension to the ENP was floated in a Polish-Swedish non-paper of May 2008, partially in response to the French MedU proposal. On the basis of this initiative, the European Council of 19–20 June 2008 invited the Commission to prepare a proposal on the Eastern Partnership (EaP) and the Extraordinary European Council of 1 September 2008 asked this work to be accelerated in the wake of the Russian-Georgian war of August 2008.<sup>22</sup> The EaP, formally launched with the adoption of a Joint Declaration on the occasion of a special ‘Eastern Partnership Summit’ in Prague on 7 May 2009, combines the ambition of deeper bilateral engagement, including the prospect of association and visa liberalisation, with a regional framework for cooperation with the Eastern ENP countries. Hence, an increasing differentiation between the Eastern and Southern dimension of the ENP can be observed. Moreover, an increased differentiation within each geographical sub-group can be observed as a result of diverging ambitions among the partners countries. However, the term ENP remains in existence as a political umbrella: it encompasses all initiatives which share the neighbourhood as their geographic focus, and which have certain methodological and financial approaches in common.

<sup>20</sup> Conclusions of the General Affairs and External Relations Council, *European Neighbourhood Policy*, 14 June 2004.

<sup>21</sup> *Déclaration commune du sommet de Paris pour la Méditerranée*, Paris, 13 juillet 2008. Available at: [www.diplomatie.gouv.fr/IMG/pdf/Declaration\\_commune\\_UPM\\_bis.pdf](http://www.diplomatie.gouv.fr/IMG/pdf/Declaration_commune_UPM_bis.pdf).

<sup>22</sup> Communication from the Commission to the European Parliament and the Council, *Eastern Partnership* Brussels, 8 December 2008, COM(2008) 823/4, 2.

State of play ENP	South	East
<i>Regional/Multilateral dimension</i>	Union for the Mediterranean	Eastern Partnership
<i>Bilateral dimension</i>	Maghreb and Mashreq countries	Ukraine Moldova, Georgia, Armenia, Azerbaijan, Belarus

#### D. Objectives: A Stable and Prosperous Neighbourhood for a Secure Union

The Council has described the objectives of the ENP as sharing ‘the benefits of an enlarged EU with neighbouring countries in order to contribute to increased stability, security and prosperity of the European Union and its neighbours’.<sup>23</sup> This mirrored the Commission’s formulation which was ‘to avoid drawing new dividing lines in Europe and to promote stability and prosperity within and beyond the new borders of the Union’.<sup>24</sup> These formulations indicated the logic on which the ENP was constructed. In essence, the ENP was to be considered a security policy because, following the 2004 enlargement, the EU would have very different countries and challenges right outside its borders. Thus, with this policy, the EU wished to create stable and prosperous neighbours to ensure its own security. This approach is still valid, as can be derived from the 2016 Global Strategy.<sup>25</sup>

#### **Shared Vision, Common Action: A Stronger Europe – A Global Strategy for the European Union’s Foreign and Security Policy, Brussels, June 2016, 14 and 25**

Internal and external security are ever more intertwined: our security at home entails a parallel interest in peace in our neighbouring and surrounding regions. It implies a broader interest in preventing conflict, promoting human security, addressing the root causes of instability and working towards a safer world ...

State and societal resilience is our strategic priority in the neighbourhood. Many people within the scope of the European Neighbourhood Policy (ENP) both to the east and to the south wish to build closer relations with the Union. Our enduring power of attraction can spur transformation and is not aimed against any country.

<sup>23</sup> Conclusion of the GAER Council, 14 June 2004, 11–14.

<sup>24</sup> Communication from the Commission, *Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*, Brussels, 11 March 2003, COM(2003) 104 final, 4 (hereafter: Wider Europe Communication).

<sup>25</sup> The full text of the EU Global Strategy is available at: [https://eeas.europa.eu/archives/docs/top\\_stories/pdf/eugs\\_review\\_web.pdf](https://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf) (last consulted 20 January 2019). On the link between the security dimension of the ENP and the 2003 European Security Strategy, see the first edition of this book.

The fact that the ENP is a security policy should not be understood as meaning that this policy falls squarely within the remit of the Union's CFSP competence. Rather, the ENP and the Global Strategy reflect a broad consensus that security in the twenty-first century is 'comprehensive' and must bring together all the instruments, capabilities and policies of the EU and its Member States. This means that the ENP is very much an 'umbrella policy' which aims to coalesce all aspects of EU external relations in a coherent whole: CFSP, but also trade, migration, environment, energy and so on; encompassing both EU and Member State external policies.

**Joint Communication of the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy, Review of the European Neighbourhood Policy, Joint (2015) 50 final, 3–4**

The ENP is a long-term engagement with the EU's neighbours, but it also needs to take account of the most pressing needs. In the next three to five years, the most urgent challenge in many parts of the neighbourhood is stabilisation. The causes of instability often lie outside the security domain alone. The EU's approach will seek to comprehensively address sources of instability across sectors. Poverty, inequality, a perceived sense of injustice, corruption, weak economic and social development and lack of opportunity, particularly for young people, can be roots of instability, increasing vulnerability to radicalisation. The new ENP will make a determined effort to support economies and improve prospects for the local population. The policy should help make partner countries places where people want to build their future, and help tackle uncontrolled movement of people.

**E. Methodology: Inspiration from Enlargement**

The objectives of stability and prosperity are clearly inspired by the EU's pre-accession policy, but the parallels between the ENP and enlargement do not stop there. Both policies are horizontal in nature in the sense that they do not belong to any of the EU's specific competences. This explains why the soft law instruments developed within the enlargement context proved very useful tools that could be easily adopted and adapted without falling into the pitfalls of competence-related struggles. From a legal perspective, it therefore made sense to transplant the instruments and methodologies of what was perceived to be a very successful enlargement policy to the ENP.

**B Van Vooren, *EU External Relations Law and the European Neighbourhood Policy: A Paradigm for Coherence* (Abingdon, Routledge, 2012) 178**

The ENP was constructed in a focused effort to provide synergies between different policies towards the Southern and Eastern neighbourhood and sought

to upgrade Union action across the board in light of the security, stability and prosperity objectives. In constructing the ENP towards these ends, we can observe a skeleton of hard legal instruments co-existing with a plethora of soft (legal) instruments which are not specifically connected to competences or policy areas. ... the true innovation of the ENP's policy framework [is] its legal and political construction in comparison to other policies such as trade or development [ie] its use of 'soft law' to attain a coherent external policy for the European Union as a whole.

Mirroring the accession partnerships developed within the framework of the EU's enhanced pre-accession strategy, ENP Action Plans defining short and medium-term objectives for political, economic and legal reform constituted the key instrument of the ENP. Based upon Commission monitoring reports analysing the progress in meeting the defined priorities, the Council would then define the scope for new contractual arrangements with each ENP partner country.

The two revisions of the ENP gradually developed the ENP instruments and methodology. The first revision of 2011 introduced the 'more for more' principle, implying that additional reform efforts by partner countries were to be rewarded with additional financial and other support.

**European Commission, High Representative of the EU for Foreign Affairs and Security Policy, *A New Response to a Changing Neighbourhood*, COM (2011) 303 final, 28**

Increased EU support will depend on progress in building and consolidating democracy and respect for the rule of law. The more and the faster a country progresses in its internal reforms, the more support it will receive from the EU. This enhanced support will come in various forms, including increased funding for social and economic development, larger programmes for institution-building (CIB), greater market access, increased EIB financing in support of investments; and greater facilitation of mobility. These preferential commitments will be tailored to the needs of each country and to the regional context. They will recognise that meaningful reform comes with significant upfront costs. For countries where reform has not taken place, the EU will reconsider or even reduce funding.

The second revision of 2015 introduced additional changes, which reflect the growing flexibility and differentiation of the ENP with an increased focus on tailor-made approaches for each neighbour without however abandoning the overarching policy framework.

**Joint Communication of the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy, *Review of the European Neighbourhood Policy*, Joint (2015) 50 final, 5**

There will no longer be a single set of progress reports on all countries simultaneously. Instead the EU will seek to develop a new style of assessment, focusing specifically on meeting the goals agreed with partners. These reports will be timed to provide the basis for a political exchange of views in the relevant high-level meetings with partner countries, such as Association/Cooperation Councils. For those partners who prefer to focus on a more limited number of strategic priorities, the reporting framework will be adjusted to reflect the new focus. In addition to the country-specific reporting, regular reports will track developments in the neighbourhood. These reports will contain the elements required under the Regulation on the European Neighbourhood Instrument, including information on fundamental freedoms, the rule of law, gender equality and human rights issues.

The new ENP should be the focus for a more coherent effort by the EU and the Member States. The EU is more influential when united in a common approach and communicating a single message. It offers partners more when using its resources in a strategic and well-coordinated way. Therefore, alongside discussions with partners, there will be a greater role for the Council and Member States in identifying priorities and in supporting their implementation. This will include joint programming. Member States will be invited to play the role of lead partner for certain initiatives or to accompany certain reform efforts.

In the absence of an accession perspective, the upgrading of the bilateral legal relations was devised a major carrot for the ENP countries. The initial Commission documents referred to the prospect of new 'European Neighbourhood Agreements',<sup>26</sup> but it soon became clear that not all ENP partner countries were interested in the negotiation of such a new type of agreement. Ukraine, for instance, strongly opposed the use of the 'neighbourhood' label and insisted on a classical association agreement instead. The offer of association was explicitly included in the design of the EaP whereas, for the Southern neighbours, a modernisation of their existing EMAAs was put on the agenda.

The Association Agreements concluded with Ukraine, Georgia and Moldova within the framework of the EaP replace the old PCAs and provide for a significant upgrade of the bilateral relations with the countries concerned. They establish an enhanced institutional framework and include innovative provisions on regulatory and legislative approximation. Of particular significance is the ambition to establish

<sup>26</sup>Communication from the Commission, *European Neighbourhood Policy Strategy Paper*, COM (2004) 373 final, 12 May 2004.

Deep and Comprehensive Free Trade Areas (DCFTAs), leading to the associated countries' gradual (but partial) integration into the EU internal market. This implies a far-reaching liberalisation of trade in goods and services and the abolition of non-tariff barriers through regulatory convergence with regard to issues such as the protection of intellectual property rights, competition law, rules of origin, labour standards and environmental protection.

**G Van der Loo, P Van Elsuwege and R Petrov, 'The EU–Ukraine Association Agreement: Assessment of an Innovative Legal Instrument', *EUI Working Paper Law 2014/09*, 2–3**

[T]he EU–Ukraine AA is unique in many respects and, therefore, provides a new type of integration without membership. The agreement can be characterised by three specific features: *comprehensiveness*, *complexity* and *conditionality*.

First, the AA is a *comprehensive framework agreement* covering the entire spectrum of EU-Ukraine relations. Hence, it includes provisions dealing with the whole array of EU activities, including cooperation and convergence in the field of common foreign and security policy (CFSP) as well as cooperation in the area of freedom, security and justice (AFSJ). Moreover, due to the inclusion of provisions on nuclear energy and areas falling within Member State competences, the European Atomic Energy Community (Euratom) and all EU Member States are also contracting parties to the agreement ...

Second, the *complexity* of the AA is not only related to its comprehensive scope but also to its level of ambition, in particular the aim to achieve Ukraine's economic integration in the EU internal market through the establishment of a DCFTA. The objective of 'deep' integration requires extensive legislative and regulatory approximation including sophisticated mechanisms to secure the uniform interpretation and effective implementation of relevant EU legislation.

Last but not least, the EU-Ukraine AA is based on a strict *conditionality* approach. The preamble to the agreement explicitly states that 'political association and economic integration of Ukraine within the European Union will depend on progress in the implementation of the current agreement as well as *Ukraine's track record in ensuring respect for common values, and progress in achieving convergence with the EU in political, economic and legal areas.*' This link between the third country's performance and the deepening of the EU's engagement is a key characteristic of the European Neighbourhood Policy (ENP) and the Eastern Partnership (EaP). Whereas this principle has so-far been applied on the basis of soft-law instruments such as Action Plans and the Association Agenda, it is now encapsulated in a legally binding bilateral agreement.

It is noteworthy that Armenia decided not to conclude an association agreement with the EU in 2013 in light of the country's later accession to the Eurasian Economic Union.<sup>27</sup> Alternatively, a Comprehensive and Enhanced Partnership Agreement (CEPA) was signed in November 2017.<sup>28</sup> The latter does not aim at the gradual integration of the country in the EU internal market by setting up a DCFTA but rather seeks to establish enhanced trade cooperation and regulatory cooperation in compliance with the rights and obligations arising from WTO membership.

In the EU's southern neighbourhood, the ENP resulted in a further broadening and deepening of the EU's relations with certain southern neighbours. For instance, bilateral agreements on agricultural, processed agricultural and fisheries products have been concluded in the form of an exchange of letters and then added as protocols to the EMAAs with Israel, Egypt, Morocco and Jordan. In addition, new dispute settlement protocols have been concluded with Tunisia, Jordan, Egypt, Lebanon and Morocco. Negotiations on the further liberalisation of trade with a view to the establishment of a DCFTA have been launched with Tunisia and Morocco but did not yet result in a further amendment of the EMAAs.<sup>29</sup> With Morocco, the dispute concerning the right to self-determination of the Western Sahara further complicates the negotiations.<sup>30</sup>

**P Van Elsuwege and G Van der Loo, 'Continuity and Change in the Legal Relations between the EU and its Neighbours: A Result of Path Dependency and Spill-over Effects' in D Bouris and T Schumacher (eds) *The Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy* (London, Palgrave, 2017) 107–08**

Also the legal framework of the EU's (trade) relations with the Mediterranean ENP countries is under revision. The initial EMAAs provided only for a liberalisation of trade in goods over a transitional period of up to 12 years. More sensitive agricultural, fishery and processed agricultural products are

<sup>27</sup> On 1 January 2015, the Eurasian Economic Union (EAEU) started as a new international organisation with Russia, Belarus, Kazakhstan and Armenia as its Member States. Taking into account the fact that the EAEU forms a customs union, the elaboration of bilateral DCFTAs with the EU is excluded. This is one of the reasons why Armenia decided to terminate the preparations for the conclusion of an AA with the EU in the summer of 2013.

<sup>28</sup> Council Decision (EU) 2018/104 on the signing, on behalf of the Union, and provisional application of the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part [2018] OJ L 23/1.

<sup>29</sup> G Van der Loo, 'Mapping out the Scope and Contents of the DCFTAs with Tunisia and Morocco' (2016) 28 *EuroMesco Paper*. Available at: [www.ceps.eu/publications/mapping-out-scope-and-contents-dcftas-tunisia-and-morocco](http://www.ceps.eu/publications/mapping-out-scope-and-contents-dcftas-tunisia-and-morocco).

<sup>30</sup> In a series of judgments, the CJEU concluded that the EU-Morocco Association Agreement nor the EU's fisheries agreement with Morocco apply to the territory of the Western Sahara, which is a non-self-governing territory in accordance with Art 73 of the UN Charter. See Case C-104/16 *Council v Front Polisario*, ECLI:EU:C:2016:973 and Case C-266/16 *Western Sahara Campaign UK*, ECLI:EU:C:2018:118. For comments see, eg, P Van Elsuwege, 'The Principle of Self-determination between the EU and its Neighbours: between *Realpolitik* and Respect for International Law' (2018) 1 *Zeitschrift für öffentliches Recht*, 747, 747–65.



largely left outside the scope of these agreements and most EMAAs contain little services liberalisation. Also the EMAAs' provisions on TBT, SPS, IPR, public procurement, competition, transparency and movement of capital are limited or absent. However, already from the very outset (ie the 1995 Barcelona Declaration), the parties agreed to further broaden and deepen the EMAA FTAs and to gradually establish a free-trade area covering most goods and services by 2010. Although this deadline was missed, several bilateral EMAA FTAs were gradually updated and broadened to match with the revamped trade objectives of the ENP and the Union for the Mediterranean. Remarkably, DCFTAs were initially only offered to the EaP countries, and not to the Mediterranean ENP partners. Instead, the Commission stated that the existing EMAAs had to be 'deepened and expanded to include other regulatory areas such as ... SPS, IPR, public procurement, trade facilitation and competition'. In this view, additional bilateral agreements on agricultural products were concluded and added as a Protocol to the respective EMAAs with Morocco, Egypt, Jordan, Israel, the Palestinian Authority and supplementary agreements on dispute settlement have been concluded with Tunisia, Jordan, Egypt, Lebanon and Morocco. Negotiations were also launched with several partner countries to further liberalise trade in services. Nevertheless, even these 'broadened' EMAA FTAs are still a far cry from the three EaP DCFTAs.

It was only after the Arab Spring that DCFTAs were offered to the Mediterranean neighbours ... The Council adopted negotiating directives for DCFTAs with Morocco, Jordan, Egypt and Tunisia in December 2011 and the first negotiations were launched with Morocco in March 2013. Contrary to the EaP DCFTAs, the envisaged DCFTAs with these four Mediterranean countries will not be included as a separate title in a new framework (association) agreement. Instead, these DCFTAs will be added as a protocol to the existing EMAAs.

Evidently, in the light of the ENP's differentiation policy, the 'Mediterranean' DCFTAs will differ from the three EaP DCFTAs, depending on the economic situation and political will of the associated countries. In this view, the scope and the depth of trade liberalisation will vary. Nevertheless, the overall structure and objectives of the DCFTAs will most likely be similar. The Mediterranean DCFTAs are developed in the same ENP policy framework and have the same objective of 'progressive economic integration with the EU Internal Market ... through progressive approximation of EU rules and practices' (European Commission/High Representative, 2011). The Council even explicitly stated that certain aspects of the EU-Ukraine DCFTA 'can serve as a model for other ENP partners in the future' (Council, 2007). Although several elements of the EaP DCFTAs can be taken over in the Mediterranean DCFTAs, tailored to the needs and political will of the partner countries, it remains to be seen whether the Mediterranean partners, in the absence of EU membership ambitions, will accept the same explicit forms of market access conditionality and will commit themselves to similar far-reaching legislative approximation commitments.

### III. EU Relations with other Neighbouring Countries

The geographic scope of the ENP does not encompass the countries included in the EU's enlargement policy (see above), the Russian Federation or the so-called 'Western European Neighbours of the EU'. The latter group includes the EFTA countries (Iceland, Liechtenstein, Norway and Switzerland) and the micro-states (Andorra, San Marino, Monaco). Because of political expediency, economic differences, and diverse accession perspectives, the EU engages these countries through a different set of policies. With Russia, instead of the ENP, the EU aimed to set a strategic partnership which, however, largely failed to materialise as a result of (geo)political conflicts in the shared neighbourhood with the Russia-Georgia war of August 2008 and Russia's annexation of Crimea in 2014 as the most obvious examples. With Norway, Iceland and Liechtenstein, relations are conducted through the European Economic Area (EEA) and, with Switzerland, through a large number of bilateral agreements. Finally, the EU's relations with the micro-states Andorra, Monaco and San Marino are 'extended but fragmented'.<sup>31</sup> Therefore, the conclusion of one or several association agreements is on the agenda. In this final section it is difficult to do justice to the full scope of EU legal relations with these countries and regions and exigencies of space merely permit a limited overview of core legal and policy questions.

#### A. EU Relations with the Russian Federation

Relations between the European Union and Russia are still conducted on the basis of a PCA which was concluded in 1994 and entered into force in 1997 for a period of 10 years, with automatic annual renewal.<sup>32</sup> In May 2006, both parties agreed that a new framework agreement would be negotiated to replace the PCA.

However, due to political obstacles such as the Russia-Georgia conflict of August 2008, the launch of the negotiations was postponed and later suspended as part of the EU's sanctions adopted in the wake of Russia's annexation of Crimea and the destabilisation of eastern Ukraine. In addition, the EU gradually imposed other types of sanctions such as asset freezes and travel restrictions, targeted economic sanctions and restrictions on economic cooperation. On 14 March 2016, the EU Foreign Ministers and High Representative Mogherini agreed on 'five guiding principles of the EU's policy towards Russia', which are still the foundation of contemporary EU–Russia relations.<sup>33</sup>

<sup>31</sup> Council of the European Union, *Council Conclusions on EU Relations with EFTA Countries* (2010). Available at: [www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/118458.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/118458.pdf).

<sup>32</sup> Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part [1997] OJ L327/3.

<sup>33</sup> Council of the EU, Foreign Affairs Council, Meeting no 3457, Brussels, 14 March 2016.

**Remarks by High Representative/Vice-President Mogherini at the press conference following the Foreign Affairs Council, 14 March 2016**

Let me stress that we had, among the 28, unanimity on five guiding principles of the European Union's policy towards Russia:

The first of these guiding principles is the full implementation of the Minsk agreements as a key element for any substantial change in our relations ...

The second principle is strengthening relations with our Eastern Partners and other neighbours, in particular in Central Asia, and we had very good discussions on how to proceed in this respect.

Third, strengthening internal European Union resilience, in particular in view of energy security, hybrid threats and strategic communication, but not only.

The Fourth principle we all agreed on is the need for selective engagement with Russia, both on foreign policy issues – this is clear, when it comes to Iran or the Middle East Peace Process or Syria, but also DPRK, migration or counter-terrorism, climate change – but also in other areas where there is a clear European Union interest.

The fifth of our guiding principles is the willingness to support more and more the Russian civil society and engage and invest in people-to-people contacts and exchanges and policies that are related to that, with a particular view to the youth of Russia and the youth of the European Union because we see the future of our countries as something we need to invest into.

**B. EU Relations with Western European Neighbours**

On a two-yearly basis, the Council reviews the state of EU relations with its Western European neighbours. The following extract of the conclusions of December 2018 illustrates the EU's interest in developing close relations in a wide variety of areas. With respect to economic integration, ensuring the integrity and homogeneity of the internal market is a key concern.

**Council Conclusions on a Homogenous Extended Internal Market and EU Relations with non-EU Western European Countries, doc. 15561/18, Brussels, 13 December 2018**

The non-EU Western European countries are the EU's closest partners in building a stronger, safer, more competitive and prosperous Europe. The Council emphasises the weight and importance the EU attaches to relations with all these special, like-minded partners. Our long-standing cooperation is based on shared fundamental values and interests and underpinned by our common

heritage and history, as well as strong cultural and geographical ties. Economic integration within the framework of the extended EU internal market brings us together even more and frames the inter-dependency of our future prosperity and competitiveness. In the last two years, our close relations have been further enhanced by a number of initiatives across a wide range of strategic areas.

The Council reiterates that the strength of our economic integration depends on full respect for the four freedoms of the internal market. It is, therefore, the responsibility of all the States which already participate or wish to increase their level of participation in the extended internal market to ensure its integrity and homogeneity, as well as full respect for equal rights and obligations for both citizens and businesses.

The Council notes the excellent cooperation in areas of EU external action such as development aid, human rights and the rule of law, and the common foreign and security policy. The Council expresses its strong appreciation for the alignment of its closest Western European partners to the EU's foreign policy instruments and positions. The Council looks forward to the consolidation and strengthening of this alignment. Cooperation in international fora underpins the determination of the EU and its non-EU Western European partners to further strengthen multilateralism.

The EU's relations with the Western European countries can be further divided in several sub-categories. The most-far reaching relationship is based on the 1994 Agreement creating the European Economic Area (EEA).<sup>34</sup> The objective of this agreement is to extend the EU internal market and competition rules as well as a number of so-called 'flanking policies' such as research and development, the environment, education and social policy to the participating EFTA States (Norway, Iceland and Liechtenstein). For this purpose, the EEA involves a sophisticated institutional structure ensuring the homogenous interpretation and application of the shared legal rules.<sup>35</sup> Switzerland was originally meant to participate in the EEA, but in a 1992 referendum only 49.7% of the Swiss people voted in favour of that country's participation.<sup>36</sup> Instead of the EEA, in subsequent years the EU and Switzerland concluded a large number of bilateral agreements establishing cooperation between the partners in a large number of specific sectors. On several occasions, the EU criticised this approach of sectoral bilateralism since it creates legal uncertainty for citizens and businesses.

<sup>34</sup> Agreement on the European Economic Area [1994] OJ L1/3.

<sup>35</sup> C Baudenbacher, 'The Goal of Homogeneous Interpretation of the Law in the European Economic Area' (2008) 1 *The European Legal Forum* 22, 22–31.

<sup>36</sup> C Kaddous, 'The Relations between the EU and Switzerland' in A Dashwood and M Maresceau (eds) *Law and Practice of EU External Relations – Salient Features of a Changing Landscape* (Cambridge, Cambridge University Press, 2008) 228.

**Council Conclusions on EU Relations with the Swiss Confederation, doc. 6767/17, Brussels, 28 February 2017**

The Council takes note of the reconfirmation by Switzerland of its attachment to the sectoral approach. However, the Council recalls that a precondition for further developing the sectoral approach remains the establishment of a common institutional framework for existing and future agreements through which Switzerland participates in the EU's Single Market, in order to ensure homogeneity and legal certainty for citizens and businesses. The Council stresses the common understanding between the EU and Switzerland about the need to finalise the negotiations on the institutional framework agreement as soon as possible. Its conclusion will allow the EU-Swiss comprehensive partnership to develop to its full potential.

A draft institutional framework agreement was made public by the Swiss government in December 2018 as part of a broad internal consultation process. Hence, the fate of this agreement was highly uncertain when this Chapter was finalised. A similar remark can be made with respect to the post-Brexit relations between the EU and the UK. A political declaration adopted in the framework of the withdrawal negotiations only reveals that the new agreement, to be concluded after the UK is no longer a member of the EU, should be based on an overarching institutional framework that could take the form of an association agreement.<sup>37</sup> Finally, the EU is also reviewing its relations with three small-sized states (Andorra, San Marino and Monaco) in order to conclude one or several association agreement(s) providing for the participation of these countries in the single market and cooperation in other policy areas.<sup>38</sup>

#### IV. The Broader Picture of EU External Relations Law

The legal relations between the EU and its neighbours cannot be disconnected from the politics of European integration and the search for effective and coherent EU external policies covering the entire scope of EU and Member State competences.

First and foremost, notice the diverse roles of law in EU enlargement policy, the ENP and the differentiated approaches towards the other neighbours. In all these

<sup>37</sup> European Commission, Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom. Available at: [https://ec.europa.eu/commission/publications/political-declaration-setting-out-framework-future-relationship-between-european-union-and-united-kingdom\\_en](https://ec.europa.eu/commission/publications/political-declaration-setting-out-framework-future-relationship-between-european-union-and-united-kingdom_en) (last accessed 21 January 2019).

<sup>38</sup> Council of the EU, *Council Adopts Mandate to Negotiate Association Agreement(s) with Andorra, Monaco and San Marino* (2014) Press Release 659. The negotiations opened in March 2015 but were not finalised as this book went to press.

policies, a complex legal toolbox is used, tailor-made to the specific situation at issue. In all these legal relationships, an international agreement is the core framework used to establish relations with the EU: a Europe Agreement, a SAA, a PCA, a set of bilateral agreements or a multilateral legal framework such as the EEA. Surrounding this legal core, there is then a whole set of instruments and methodologies which are employed in diverse ways: soft legal accession partnerships, action plans, progress reports, communications, MoU's, among others. A constant methodological choice in all these policies is then the idea of law as an EU export product, in pursuit of certain objectives. The EU will work with third countries for them to adopt the EU *acquis*, for them to prepare for EU membership or to create a form of integration without membership. In this sense, law has a dual function: it organises EU external relations with its entire neighbourhood and it is also the substance itself of EU policies. Thus, the EU certainly lives up to the chapeau of Article 21 TEU (mirrored in Article 8 TEU) that its 'action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world'.

Second, there is the issue of coherence between all these policies. At their core, they follow a similar methodology and toolbox consisting of soft and hard legal instruments. However, their objectives are different and this raises questions as to the efficacy and applicability of certain methodologies with certain countries or regions. For instance, the ENP developed from a comprehensive framework based upon a methodology borrowed from enlargement policy into a more differentiated policy with distinct legal and political instruments for different types of neighbours as a reflection of their own ambitions and capacities.

Third, the evolution of the legal frameworks between the EU and its neighbours is largely determined by the broader political context. For instance, the EU's enlargement policy is essentially an instrument to ensure political stability in the fragile region of the Western Balkans; the differentiation in the EU's eastern neighbourhood and the largely frozen relations with Russia is the result of (geo)political frictions and conflicts. Last, but not least, the Brexit process implies a search for a new and innovative legal framework with a former Member State. Whereas the divergent political situations require tailor-made responses, key legal principles such as the autonomy of the EU legal order and the integrity of the internal market define the margins of the political debate.

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