



100 Ideas for Upgrading the Association Agreements and DCFTAs with Georgia, Moldova and Ukraine

Michael Emerson and Steven Blockmans

Abstract

There are now many ideas in circulation to enhance the Association Agreements (AA), which include the Deep and Comprehensive Free Trade Areas (DCFTA), stimulated in part by the ‘Structured Consultation’ on the future of the Eastern Partnership (EaP) initiated by the Commission in 2019. All three AA states made detailed submissions; the present note seeks to incorporate these and other ideas into the makings of a possible initiative to upgrade the agreements and give them renewed and politically significant momentum.

Contents

| | |
|---|---|
| Updating and upgrading..... | 2 |
| Upgrading of the AAs and the EaP | 2 |
| The main ideas for upgrading..... | 3 |
| Instruments of action, other than treaty change | 3 |
| Presentation of the whole..... | 4 |
| Annex: 100 Ideas for Upgrading..... | 6 |

Michael Emerson is CEPS Associate Senior Research Fellow and Steven Blockmans is Director *ad interim* at CEPS and Professor of EU External Relations Law and Governance at the University of Amsterdam. CEPS Policy Insights offer analyses of a wide range of key policy questions facing Europe. As an institution, CEPS takes no position on questions of European policy. Unless otherwise indicated, the views expressed are attributable only to the authors in a personal capacity and not to any institution with which they are associated.

978-94-6138-764-6

Available for free downloading from the CEPS website (www.ceps.eu) © CEPS 2020

It is already encouraging for the AA process that there are so many constructive ideas forthcoming from the three associated states – as the 100 examples selectively listed in the annex to this paper show.¹ The EU should be most satisfied by this. There is no other area of the EU's neighbourhood policy, East or South, that is currently receiving the same level of keen support from the partner states.

Yet more than a subject of satisfaction, the positive development of the AA process is a rare instance of EU foreign policy success. It illustrates how the EU's method of deploying a host of relatively technical soft power instruments can combine to produce results of strategic significance. '100 ideas' is therefore not just a headline, but of the essence. It contrasts with some of the grand rhetoric of the 'geopolitical Commission', which may raise expectations about an effective role in 'high politics' that the EU is less likely to meet. This example of successful 'low politics' should be built on, not stalled, or weakened by perceived indifference.

Updating and upgrading

To be clear about the key difference between these two terms.

Updating is a formal process provided for in the AAs to prevent the approximation of EU laws in the annexes to the agreements from becoming obsolete where new EU laws replace old ones.² This updating is to prevent a negative development, and is an ongoing process.

Upgrading is – for the time being – an informal term that may be used to cover positive initiatives to further build upon and enrich the AAs. If done well and on a sufficient scale it could amount to giving new momentum of political significance to the EU's relationship with the three associated states, which is clearly what the three associated states would like to see.

While the above distinction is clear in principle, there is some degree of overlap when updating decisions add new EU law to annexes that are relevant to the existing stock of laws, rather than replacing any of them. But this is just a detail in the overall upgrading process that can be envisaged.

Upgrading of the AAs and the EaP

The three AAs form part of the wider EaP of six states, in conformity with the accepted principle of differentiation. A large majority of the 100 ideas can only plausibly be taken by the AA states, given the political and economic regimes of other EaP states (with Armenia a partial exception). However, some of 100 ideas could be taken up by non-AA states, and where this is possible it should be welcomed, in line with the principle of inclusiveness. But the main body of possible

¹ The sources are a set on 'non-papers' from the three AA states submitted to the Commission, which have had a widespread circulation under the titles *'Future of the Eastern Partnership – contribution of [Georgia], [Moldova], [Ukraine] to the structured consultation process'*, October 2019.

² See Article 463.3 of the Ukraine AA, Article 415 for Georgia, and Article 450 for Moldova.

measures would apply to the AA states, and there should be no lowest common denominator factor to limit this.

The main ideas for upgrading

There is a strong priority on the part of the AA states to deepen cooperation in three sectors of strategic significance:

- Energy & climate. Progress has been made in regulatory approximation in energy policy ('unbundling', Energy Community) and the way ahead opens up for concrete market integration with investment in cross-border gas and electricity links. The EU's newly proposed Green Deal sets the framework for further climate-related steps.
- Digital single market and cyber security. These fast-advancing new domains open a vast area for ongoing and new developments. This ranges from domestic data protection policies through to cyber security, where the AA states experience special vulnerabilities but also have skills.
- Transport networks. Trans-European transport networks (TEN-T) are planned with important EIB/EBRD funding to complement regulatory approximation and Commission funding. Common civil aviation area agreements are to be completed, and road transport agreements are needed.

There are requests to complete the well-advanced process of trade liberalisation.

Some important policy areas are neglected in the AAs, notably gender, which deserves full development. And now the prevention of pandemics.

The plethora of proposals listed in the Annex is testament to the EU's soft power potential for the AA states and people to interact with the EU and its networks across a vast range of activities. While too numerous to be commented on individually, this fine grain of integration at the people-to-people level is of exceptional importance. Included are many ideas for bringing professional people into EU agencies or networks of peer institutions, and for educational and cultural initiatives. Many individual measures may seem to be small technicalities, but they add up to integration in depth at the personal level.

There are overarching ideas for a structured EU+3AAs process, for dialogue over many issues of policy, and for giving strategic directions for the future.

Instruments of action, other than treaty change

The AA texts cannot easily be changed, apart from updating the annexes, since changes to mixed agreements raise difficult issues of ratification among EU member states. The ratification is somewhat easier for economic and trade policy matters of exclusive EU competence (only the Council and Parliament suffice). For the many chapters of mixed competence, all EU member states must ratify, and it suffices to recall the great difficulty to secure ratification of

the Ukraine AA, when one member state (NL) held up the process to the point of endangering the entire project.

Actually, in 2019 there was one small instance of Treaty change, namely the addition of an extra line detailing poultry produce that would be subject to tariff quotas in the case of Ukraine. Ratification by the Council and Parliament sufficed. It can be done where there is political will, but one should not count on it for anything but the very exceptional.

However, this is not a real obstacle to upgrading actions, since there are other means of action such as Action Plans, Joint Declarations, and Memoranda of Understanding (MoU) agreed between the parties. Also, some actions may simply consist of unilateral action in support of the objectives of the AAs. There is also project funding by IFIs (EIB, EBRD) for investments in sectors, organised outside the AAs, but in practice supporting the implementation of the AAs' costly approximation commitments. There are also examples of sector-specific agreements having treaty status, in support of the objectives of the AAs, but lying outside the AA texts (Civil Aviation, Energy Community, etc.).

Conditionality and 'More for More'. The idea of a substantial upgrading of the AAs leads inevitably into complex issues of 'conditionality', and the 'more for more' principle. In practice conditionality is introduced at different levels. Macro-economic assistance is one obvious category, where the EU has been systematically cooperating with the IMF in extending conditional macroeconomic assistance to all three AA states. There have been other important examples, such as the conditioning of the introduction of visa-free travel on reforms in the judicial sector. At a finer level of detail, the openness of various EU agencies to cooperation with associate status is often conditional upon compliance with the corresponding sector of EU law (for example the environmental or civil aviation agencies).

An extensive upgrading of the AAs would fit with activation of the 'more for more' principle, subject to conditions related to overall performance of the partner state in relation to the objectives and commitments of the AAs. The overarching priorities here would be the quality of democratic processes and the rule of law. At the time of writing the new Ukrainian political regime would be the leading candidate for 'more for more'. Moldova is currently a more uncertain partner politically, whereas Georgia would have to bring its political regime better in line with accepted democratic principles on the occasion of its forthcoming parliamentary elections.

Presentation of the whole

One does not have to agree to all the 100 ideas to see that there is a potential critical mass of possibilities that could add up to more than the sum of the parts. Such a large number of possible actions should come as no surprise. The EU's original single market programme in the 1980/1990s had 300 items of legislative action, and the AA/DCFTAs had just as many. There would be a process under which the interested AA states would draw up programming documents with the EU. Conditionality would apply to the decision by both parties to go ahead.

The initiative would warrant a special political presentation. Might it be an 'AA+', or 'Enhanced AA', or 'Upgraded AA'?

The policy document would be adopted by the EU and partner state as an Action Plan, or a version of the 'Association Agenda' instrument, intended to serve as a strategic guideline for a medium-term number of years.

The EU institutions currently prepare their EaP policy for the future, beyond 2020, with a view to a mid-year EaP summit. They would surely be able to craft a duly upgraded proposition for the AA process into their overarching EaP proposal. An upgraded AA concept should be given due prominence in an overarching proposal, given the obvious political realities limiting the possibilities for the authoritarian regimes among other EaP states to follow objectives tied to political values or EU regulatory law. It is crucial not to discourage the European integration ambitions of the AA states by failing to do this with sufficient clarity.

The EU has an 'open door' opportunity to make an advance of strategic value in a wider European region otherwise afflicted by grave problems, over which it has little or no leverage. To neglect this opportunity would amount to scoring an 'own goal'.

Annex

100 Ideas for Upgrading

Macroeconomic and Monetary Policy

- EU+3 dialogue on current issues of macroeconomic policy and forecasts
- Accession to the Single European Payments Area (SEPA)
- EU+3 dialogue with monetary supervisory and regulatory authorities

Trade policy

- EU+3 DCFTA Ministerials, supported by expert groups
- Progressive reduction/elimination of tariff quotas for agri-food products
- Progressive elimination of exceptional tariffs for industrial products
- Agreements on Conformity Assessment and Acceptance (ACAA)
- Implementation of Pan-EuroMediterranean (PEM) rules of origin
- Implement/extend Authorised Economic Operators (AEO)
- Further simplification of customs procedures
- Joint border/customs services, MD-Romania, UA-PL/SK/H
- Implement Convention on Common Transit Procedure (TIR)
- Possible accession to the Central European Free Trade Area (CEFTA)

Market integration & regulatory approximation

- Gradual and full integration into the Single Market
- Associate participation in European Competition Network

Energy

- Increased asynchronous electricity connection Romania-MD
- Synchronous connections for UA & MD with ENTSO-E
- Complete gas inter-connector Romania-MD
- Gas reverse flow links UA-PL/SK; MD-TransBalkan pipeline
- Complete gas market integration
- Complete electricity market integration
- Trilateral Ukraine-EU-Russia gas supply & transit cooperation
- Inclusion in Energy Security Stress Tests
- Black Sea Undersea Electricity Transmission Line

Environment & climate

- Associate from the start with the new Green Deal
- Prepare for joining emissions trading scheme
- Special assistance for coal-dependent regions
- Participate in the European Environment Agency
- Increased funding for high cost environmental commitments
- Participate in the Natura 2000 protected areas network

Transport

- Accession to the Transport Community Treaty
- Entry into force of Common Aviation Area Agreement (Ukraine – MD & GE already)
- Negotiate EU-level road transport agreements (road haulage permits)
- Abolish bilateral (EU member state) road haulage permits
- Enhanced funding for TEN-T extended networks
- Extend TEN-T networks to inland waterways
- Develop Europe-Asia corridors, including rail

Infrastructures and finance

- Eastern Partnership investment platform
- More visible implementation of External Investment Plan
- Further cross-border projects under the 'Investment Plan for Europe'
- Special assistance under Multiannual Financial Framework for 2021-2027
- Increased structural funding based on 'more for more' principle

Education, scientific research, professional qualifications

- Integration with European Research Area
- Full participation in the next 'Horizon' framework programme
- Participate in the European Research Infrastructure Consortium (ERIC)
- Strategic partnerships with European universities
- Agreement on mutual recognition of professional qualifications
- Partnership in Creative Europe programmes
- Increased funding for Erasmus+ students
- Join Erasmus+VET (vocational education training) projects
- Join Music Moves Europe Dialogue
- Apply Multi-level VET governance Toolbox of European Training Foundation
- Internships for mid-level civil servants with EU institutions
- Participation in Interrail and Discover EU for over 18 years youth
- Increase number of places at College of Europe
- Participation in European Education Area
- Establish an EaP Academy for Public Administration
- Participate in next European Youth Dialogue

Gender

- Develop gender action plans
- Participate in European Institute for Gender Equality (EIGE)

Public health

- Pandemic prevention and protection, network to exchange best practice

Regional policies and actions

- Participate in European Destinations of Excellence (EDEN) for sustainable tourism
- Participate in EU Urban Agenda and CITIES Forum programmes
- Participate in cross-border Euroregions
- Participate in European Grouping of Territorial Cooperation (EGTC)

Justice and Home Affairs

- Observer status at European Network of Councils for the Judiciary
- Police Cooperation Network (similar to PCC SEE)
- Participation in Europol Joint Investigation Teams (JITS)
- Participate in European Multidisciplinary Platform against Criminal Threats
- Cooperate with European Border Surveillance System (EUROSUR)
- Cooperation with data bases of Schengen and Visa information systems (SIS,VIS)

Security, conflict & crisis management

- Participation in ESDP/PESCO missions and projects
- Enhanced East Stratcom Task Force
- EU+3 Joint Information Platform for countering disinformation
- Cooperation with EU Hybrid Fusion Cell and NATO Hybris Analysis Branch
- Cooperation with European Centre of Excellence for Countering Hybrid Threats
- Enhanced EU role in unresolved separatist conflicts
- Engagement without recognition in separatist regions

Digital/cyber domains

- Integration with the Digital Single Market
- Approximate Network Information Security (NIS) directive
- Cooperation with European Agency for Network and Information Security (ENISA)
- Cooperate with European Cybercrime Training and Education Group
- EaP Regional Roaming Agreement
- EaP Harmonise 700 MHz frequency for 5G
- Regional Cyber Partnership Centre of Excellence (proposed in Ukraine)
- Cooperation over Joint Response to Large Scale Cybersecurity Incidents and Crises
- Build on EU4Digital programme

Institutional relations

- A new forward-looking Strategy for the Associated partners
- Structured EU+3AAs process, EU+3 Association Council
- Selective participation in informal EU sectoral councils: trade, customs, energy, transport, justice and home affairs, digital, education, research.
- Senior officials, regular meetings with COEST
- Keep door open for any democratic European state to join the EU