Chapter 10
Where Do We Go from Here? EU Relations with the Eastern Partnership
Avant Garde

A. Łazowski

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Abstract This chapter looks at the relations between the European Union and the Eastern Partnership avant garde, that is Ukraine, Georgia, Moldova. In the course of the last ten years these three countries negotiated and signed very ambitious Association Agreements, which promise enhanced bilateral relations but without an explicit offer of EU membership on the horizon. At the same time, the signals coming from Kyiv, Tbilisi and (occasionally) Chișinău indicate that the choice of a pro-EU trajectory is there to stay. With this in mind the analysis looks at the heart of the Association Agreements, that is, law approximation and, in broader terms, the way in which the association is developing. The author argues that the EU is reaching a point when, as in any close relationship, it will have to make its future intentions clear. Towards the end of the chapter a few suggestions as to the next steps forward are made. The easiest, and the most do-able option is to regularly update the lists of the EU acquis pencilled in for approximation. Furthermore, the relations could be upgraded by a reformed institutional framework, potentially modelled on the draft EU-Swiss Institutional Agreement and the EU-UK Withdrawal Agreement. The parties may also wish to explore additional areas of co-operation, going beyond the current parameters of the Association Agreements. The EU also needs to be prepared that at some point in the future applications for membership may arrive.

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10.1 Introduction

Over recent years the European Union has concluded a number of very ambitious and comprehensive free trade agreements with countries around the world.\(^1\) This includes a set of Association Agreements aiming at the creation of Deep and Comprehensive Free Trade Areas (DCFTAs) with three Eastern Partnership (EaP) countries: Ukraine,\(^2\) Georgia\(^3\) and Moldova.\(^4\) In 2020 all three Agreements came fully into force and, despite a not very favourable political and economic environment, they are being gradually implemented by the respective associated countries.\(^5\) Sectoral integration is also pursued \textit{qua} the Energy Community\(^6\) and, in the case of Moldova and Georgia, by respective Civil Aviation Agreements.\(^7\) However, quite inevitably, questions are being asked as to the next steps in the \textit{rapprochement} of the three associated countries with the European Union. There is no denying that in many EU capitals there is no political climate even to mention the prospect of a membership offer to be sent to Kyiv, Tbilisi or Chișinău.\(^8\) At the same time, there is general consensus on

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\(^1\) Melo Araujo 2016.
\(^2\) Association Agreement between the European Union and the European Atomic Energy Community and its Member States, of the one part, and Ukraine, of the other part, opened for signature 21 March 2014, OJ L 161/3–2137 (entered into force 1 September 2017) (EU-Ukraine AA). See further Emerson and Movchan 2018; Van Der Loo 2016.
\(^3\) Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, opened for signature 27 June 2014, OJ L 261/4 (entered into force 1 July 2016) (EU-Georgia AA). See further Emerson and Kovziridze 2018.
\(^4\) 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, opened for signature 27 June 2014, OJ L 260/4 (entered into force 1 July 2016), (EU-Moldova AA). See further Emerson and Cenușa 2018.
\(^5\) See, \textit{inter alia}, European Commission, Association Implementation Report on Ukraine, SWD (2019) 433 final; European Commission, Association Implementation Report on Georgia, SWD (2020) 30 final; European Commission, Association Implementation Report on Moldova, SWD (2019) 325 final.
\(^6\) See Buschle and Talus 2015; Buschle 2016; Buschle and Karova 2019; Blockmans and Van Vooren 2012.
\(^7\) Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova, opened for signature 26 June 2012, OJ L 292/3 (entered into force (provisionally) 26 June 2012); Common Aviation Area Agreement between the European Union and its Member States, of the one part, and Georgia, of the other part, opened for signature 2 December 2010, OJ L 321/3 (entered into force 18 June 2019).
\(^8\) See Łazowski 2021a.
the European credentials of the EaP avant garde\textsuperscript{9} and the pro-EU trajectory Ukraine, Georgia and Moldova opted for when signing the Association Agreements.\textsuperscript{10} Hence, the challenge is how to take their association with the EU to the next levels. One ought to remember that standing still is not part of the European integration DNA; it needs goalposts. The EU is certainly getting closer to the point where the major next steps will have to be determined as the three associated countries are starting to make their voices heard more loudly. Alas, the most recent policy paper on the future of Eastern Partnership, published by the European Commission and the High Representative, offers disappointingly little and, together with preceding consultations, it is likely to come down in history as a wasted opportunity for a proper overhaul of the policy in question.\textsuperscript{11} Thus, the time is right to ask a fundamental question: \textit{quo vadis}?

The aim of this chapter is to provide some food for thought. The starting point is a stock-taking exercise aimed at identification of the experience gained thus far and at pinpointing the challenges that lie ahead. While the centre of gravity is on the legal matters, excursions into the worlds of politics and international relations are inevitable (Sect. 10.2). The section that follows focuses on the implementation of the political conditionality employed \textit{vis-à-vis} the EaP countries \textit{qua} jointly developed European Agendas. As elaborated in Sect. 10.3 of the present chapter, they are a rather tricky affair with the EU’s legitimacy to pursue the rule of law desiderata seriously undermined by the cases of constitutional vandalism courtesy of the Polish and Hungarian authorities. The last part of the chapter offers ideas on how the Association Agreements could be upgraded to offer the next steps in the \textit{rapprochement} with Ukraine, Georgia and Moldova (Sect. 10.4).

\section{10.2 Association Agreements: Ambitious and Demanding}

\subsection{10.2.1 The Big Picture}

As well documented in the academic literature, the Association Agreements with Ukraine, Georgia and Moldova made history even before they entered into force.\textsuperscript{12} In simple terms, the pro-EU orientation of respective EaP countries has not been
welcomed with open arms by the political elites in the Kremlin. *Au contraire*, Russia has engaged in numerous activities broadly aimed at blocking the *rapprochement* on the Euro-Atlantic trajectory that some of the former Soviet Union countries opted for. This policy bore fruit in relation to Armenia, which—at the last minute—decided to do a reverse ferret and join the Eurasian Union instead.\(^{13}\) The same tactic pursued by Russia proved to be futile in the cases of Georgia, Moldova and Ukraine, even though in the case of the latter it led to the *Maidan* revolution, the ousting of the pro-Russian administration in Kyiv and prompting the Russian invasion of Donbas and Crimea. Consequentially, all three EaP countries have entered the association with the European Union with quite a number of commonalities, past and present. Not only for decades were they forcefully part of the Soviet Union but they have also had—in the past decades—their territories sliced by the very much not welcome Russian, or Russian-sponsored, forces.\(^{14}\) One needs to bear in mind that such factors not only have political consequences, but they also make a long-lasting impact on the economies and the political climate, which—in turn—may affect the implementation of the Association Agreements. On top of this, the infamous referendum on the Ukrainian Association Agreement, held in the Netherlands, had a great potential to serve as the straw that broke the camel’s back. After all, it only delayed the ratification of the Agreement in question, but—at the same—it put the EU’s credibility at risk when, in the wake of Russia’s illegal activities, a unified stance was most desired.\(^{15}\) Thanks to political and legal acrobatics, the Agreement was eventually ratified by the EU and all its Member States, yet the entire ordeal sent a worrying signal and left a rather bitter aftertaste among the political elites in the EU’s pro-European eastern vicinity.

### 10.2.2 Implementation of the Association Agreements

Association Agreements with Ukraine, Georgia and Moldova are frequently referred to as ‘very ambitious and comprehensive agreements’.\(^{16}\) They envisage the creation of DCFTAs and a widespread *rapprochement* in many areas. Approximation of legislation of the associated countries with the EU *acquis* constitutes the backbone of this process. In this respect, the methodology employed by the drafters resembles the foundations of the European Economic Area (EEA), with lengthy lists of EU

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\(^{13}\) See Emerson and Kostanyan 2013; Vilpišauskas 2016. It is notable that Armenia eventually signed a pruned agreement with the EU. See 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, opened for signature 20 November 2017, OJ L 23/4 (entered into force (provisionally) 20 November 2017).

\(^{14}\) For a comparative analysis of frozen conflicts in this region and troubles in the Western Balkans, see Brškoska Bazerkoska 2016.

\(^{15}\) This was amplified by the shenanigans associated with ratification of the CETA. See further Wessel and Van der Loo 2017.

\(^{16}\) Van der Loo 2019, p. 115.
secondary legislation destined for the approximation exercise. It should be noted, however, that the EU acquis does not have to be approximated lock, stock and barrel; the system designed by the Association Agreements is much more nuanced. The lists of relevant EU legislation, as well as deadlines for compliance, were negotiated either before the entry into force of the Agreements or, in several sectors, at later stages. This stands in stark contrast to the Stabilisation and Association Agreements concluded with potentially future members of the EU from the Western Balkans. In the latter case, no such exhaustive lists are available. Only vague and general law approximation clauses are expected to suffice. One may genuinely argue for hours over the advantages or drawbacks of either methodology. The incontestable fact is, though, that the model opted for the new generation of association agreements with the EaP avant garde makes the basic parameters clear, and by the same token, it gives more clarity and enhances transparency. It allows for relatively easy identification of obligations resting on the shoulders of the Kyiv, Tbilisi or Chisinau authorities and, in general terms, it facilitates verification of the levels of implementation of the respective Association Agreements. At the same time, it leaves the associated countries rather exposed and may potentially undermine their EU membership aspirations. To put it differently, delays in meeting the deadlines for approximation laid

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17 Agreement on the European Economic Area, opened for signature 2 May 1992, OJ L 1/3–522 (entered into force 1 January 1994). See further Arnesen et al. 2018; Baudenbacher 2015.

18 The Association Agreements contain a plethora of law approximation clauses. See, for instance, EU-Georgia AA, above n. 3, Article 47 (approximation with technical regulations), Article 55 (gradual with sanitary and phytosanitary, animal welfare and other legislative measures), Article 75 (approximation with customs acquis), Article 103 (gradual approximation with services legislation), Article 113 (approximation with acquis on electronic communication), Article 122 (approximation in the area of financial services), Article 126 (approximation with transport legislation), Articles 141(2), 145–146 (approximation with EU public procurement legislation), Articles 417–419 (dynamic approximation).

19 This applies to SPS, where the lists of acquis pencilled in for approximation have been developed in tailor-made action plans.

20 Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Former Yugoslav Republic of Macedonia, of the other part, opened for signature 9 April 2001, OJ L 84/1 (entered into force 1 April 2004); Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part, opened for signature 12 June 2006, OJ L 107/116 (entered into force 1 April 2009); Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part, opened for signature 15 October 2007, OJ L 108/3 (entered into force 1 May 2010); Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, opened for signature 29 April 2008, OJ L 278/14 (entered into force 1 September 2013); Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, opened for signature 16 June 2008, OJ L 164/2 (entered into force 1 June 2015); Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo*, of the other part, opened for signature 27 October 2015, OJ L 71/3 (entered into force 1 April 2016). See further on this family of association agreements Phinnemore 2003.

21 Łazowski and Blockmans 2014.
down in the Association Agreements may undermine the credibility of—for now hypothetical—EU accession bids and, at the same time, they may give the European Commission ammunition to deliver negative opinions on potential applications for EU membership.\textsuperscript{22} 

When compared to the vague approximation clauses known from other association agreements, the listing methodology brings an additional challenge: keeping the lists up to date. The EU legal order, just like national legal systems, is prone to constant development. Both legislative and non-legislative acts are regularly subject to minor revisions, codification exercises or even major overhauls. In the past decade, EU law has also been subjected to a comprehensive decluttering exercise, resulting in the repeal of redundant legislation.\textsuperscript{23} Hence, when the Association Agreements with the EaP avant garde were being negotiated, it was clear that a \textit{modus operandi} for regular updates of annexes would have to be developed. Accordingly, the Agreements provide for a number of procedures, either tailor-made for the DCFTA parts\textsuperscript{24} or of a horizontal nature, applicable to all other non-DCFTA parts of the Agreements.\textsuperscript{25} The system, although sometimes referred to as dynamic approximation is, however, dynamic in name only. Procedurally, it sits oceans apart from the dynamism of the European Economic Area, where annexes to the EEA Agreement are updated almost on a monthly basis.\textsuperscript{26} In the case of Association Agreements with EaP countries, the existing \textit{modi operandi} for updates are not utilised frequently. The end result is that the Agreements in question are now considerably outdated with plentiful references to the EU \textit{acquis} that is either no longer applicable in the European Union or will soon lose force.\textsuperscript{27} This has considerable implications, which are elaborated in turn.

Firstly, it creates uncertainty as to the best options to proceed, which inevitably is a challenge for the Ukrainian, Georgian and Moldovan authorities. A fundamental question is whether to follow old EU legislation, as listed in the Association Agreements, or—in the alternative—opt for newly adopted EU \textit{acquis}. To ease the pain, it would be tempting to develop a standard uniform approach. Alas, such a \textit{modus operandi} would be counterproductive and potentially detrimental. To put it differently, it would be rather unwise to approximate by default only with old EU legislation or automatically follow the newly adopted \textit{acquis}. A one-size-fits-all approach should not be on the menu, as in some cases the legislation appearing on the lists in the Agreements may prove to be more beneficial (or less detrimental) for the

\textsuperscript{22}As the first step of the EU accession process the European Commission presents so called \textit{avis}—an opinion on candidates’ compliance with the EU entry criteria. As the cases of Turkey and Albania prove, it is not a \textit{fait accompli}. See Commission of the European Communities. Commission opinion on Turkey’s request for accession to the Community, SEC (89) 2290 final; Commission Opinion on Albania’s application for membership of the European Union, SEC (2010) 1335.

\textsuperscript{23}See further Refit EU 2018.

\textsuperscript{24}See, for instance, EU-Georgia AA, above n. 3, Article 274(1), EU-Moldova AA, above n. 4, Article 410(1).

\textsuperscript{25}EU-Ukraine AA, above n. 2, Article 463(3): EU-Georgia AA, above n. 3, Article 418; EU-Moldova AA, above n. 4, Article 449.

\textsuperscript{26}Wernø Holter 2017.

\textsuperscript{27}Van der Loo and Akhvlediani 2020.
associated country than recent EU legal acts. It may perfectly well be the other way around. Directive 90/314 on package holidays may serve as a very good example to demonstrate the dilemmas of the associated countries.28 While it is listed in all three Agreements, it is no longer in force in the European Union as it has been replaced by Directive 2015/2302.29 The new legal regime is not a mere facelift of the previous legislation but rather a completely new framework, taking the consumer protection standards to new levels. Hence, addressing the conundrum ‘new or old’ is a major policy choice. On the one hand, enhancing consumer rights is traditionally a crowd pleaser. On the other hand, imposing even more requirements on the business community at the time of economic woes exacerbated by the Covid-19 pandemic may not be the preferred choice.

One needs to remember that the one-size-fits-all approach to new/old EU legislation is also not advisable for other reasons. For instance, not all changes to EU law carry the same weight. New legal acts codifying or recasting the existing acquis usually provide little substantive change to the legal framework. Many a time the raison d’être behind their adoption is more improving the clarity of the legislation than setting new legal standards. With this in mind such legislation seems to be perfectly fit for dynamic approximation, even on a voluntary basis without a formal revision of the Association Agreements. Obviously, major overhauls of EU secondary legislation are a different kettle of fish. Each and every legal act should be put by the associated countries under a microscope to determine the best way forward.

Another vital aspect of law approximation, although frequently forgotten, is the role of case-law of the Court of Justice of the European Union (CJEU). The position of the Court and importance of its jurisprudence for the everyday application of EU law is well-rehearsed and documented in the academic literature.30 However, its impact on the shaping of the legislation of third countries and its role in the practice of national courts is of lesser interest among the academic community.31 For the purposes of the present contribution a few points merit attention. To begin with, with very few exceptions, the associated countries are not under an obligation to take into account the jurisprudence of the CJEU.32 Hence, if they do so, that would be largely on a voluntary basis. As compilations of relevant judgments prove, this is of particular importance in such areas as employment, equality, VAT or consumer protection, where the jurisprudence of the Court at Kirchberg is particularly prolific.33 With this

28 Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours [1990] OJ L 158/59. 
29 Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC [2015] OJ L 326/1. 
30 See, inter alia, Saurugger and Terpan 2016; Sindbjerg and Martinsen 2015; Rosas et al. 2013. 
31 See, however, Rodin and Perišin 2015; Łazowski 2020; Petrov and Kalinichenko 2011. 
32 See EU-Ukraine AA, above n. 2, Articles 153, 264; EU-Georgia AA, above n. 3, Article 146; EU-Moldova AA, above n. 4, Articles 273, 340. 
33 See, inter alia, a manual on the jurisprudence of the Court of Justice relevant for the Ukrainian authorities: Association4U 2018.
in mind it is hard to imagine that law approximation would be limited merely to copy-pasting listed EU regulations or EU directives into Ukrainian, Georgian and Moldovan laws. Yet, at the same time, while such a desideratum is plausible for legal purists, it fails to take into account the reality on the ground. One needs to be aware of the pressures faced by the law drafters in the associated countries and the simple fact that frequently they operate in an environment which is not fertile ground for such a generous approach to law approximation. With ever-pressing deadlines for the domestication of EU laws, an opportunity to venture into the case law of the Court to make sure that the approximation effort is properly done is simply an intellectual luxury that only a few can afford.

Above all, law approximation is a tedious and fairly bureaucratic endeavour. A matter often overlooked in the academic literature is the technical side of this exercise. Be it as it may, the properly organised implementation of law approximation obligations laid down in the Association Agreements requires proper institutional set-ups, with clear-cut procedures and allocation of roles between different actors as well as robust planning combined with comprehensive monitoring.34 Furthermore, a good degree of cooperation between the executive and the legislature is a conditio sine qua non. From the political perspective, law approximation and partisan politics are not bedfellows by any stretch of the imagination. Alas, not always are these requirements met by the associated countries in question. This is further exacerbated by the economic and political price tag that implementation of the Association Agreements may come with.35 Many of the required law approximation efforts may bring positive results only in the long-term perspective. At the same time, the authorities regularly face a difficult challenge of persuading the business community to invest into endeavours with no clear mercantile benefits on the horizon. This is exacerbated by the lack of a clearly spelled out EU membership perspective, which traditionally serves the power of persuasion. A cliché as it may be, the mid-term prospect of benefits coming from accession overshadows the short-term pain. The trepidation among enterprises may be further aggravated by inevitable economic struggles in the wake of the Covid-19 pandemic. The governments of Ukraine, Georgia and Moldova may soon face the unenviable task of balancing between keeping the economies afloat and meeting their respective obligations under the Association Agreements. One should not be surprised if requests for re-negotiation of law approximation deadlines follow in the coming months.

34See further Khvorostankina 2014; Petrov 2014; Gabrichidze 2014. In this respect, the procedures and institutions share similarities with institutional set-ups for accession to the European Union. See, for instance, Łazowski and Vlašić Feketića 2014.
35See further Franco 2016.
10.3 European Agendas and Other Policy Tools

By limiting the present analysis only to law approximation, one would risk not seeing the wood for the trees. When it comes to implementation of the Association Agreements with Ukraine, Georgia and Moldova it is of paramount importance to see the big picture, that is, the policy context in which all three agreements developed. In broad terms, their genesis goes back to the early 2000s, when the foundations of the European Neighbourhood Policy (ENP) were laid down by the European Commission.36 As well-known and documented in the academic literature, the initial effort focused on development of policy instruments, that is, the jointly agreed action plans, supplemented by a fairly modest financial envelope.37 At the early stages of the ENP, the legal foundations remained untouched: the existing Association Agreements with the Mediterranean countries38 and rather basic Partnership and Co-operation Agreements with the former Soviet Union countries.39 The three Association Agreements discussed in the present chapter, when seen through this lens, prove to be major steps forward, even though, when it comes to their enforceability in the EU Member

36 Communication from the Commission to the Council and the European Parliament, Wider Europe—Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours, COM (2003) 104 final.
37 Van Vooren 2012; Gstöhl 2016b; Whitmans and Wolf 2010.
38 Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, opened for signature 26 February 1996, OJ L 70/2 (entered into force 1 March 2000); Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the Republic of Lebanon, of the other part, opened for signature 17 June 2002, OJ L 143/2 (entered into force 1 April 2006); Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People’s Democratic Republic of Algeria, of the other part, opened for signature 22 April 2002, OJ L 265/2 (entered into force 1 September 2005); Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part, opened for signature 25 June 2001, OJ L 304/39 (entered into force 1 June 2004); Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part, opened for signature 24 November 1997, OJ L 129/3 (entered into force 1 May 2002); Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part, opened for signature 24 February 1997, OJ L 187/3 (entered into force 1 July 1997); Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, opened for signature 20 November 1995, OJ L 147/3 (entered into force 1 June 2000); Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, opened for signature 17 May 1995, OJ L 97/2 (entered into force 1 March 1998).
39 Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States and the Russian Federation, opened for signature 24 June 1994, OJ L 327/3 (entered into force 1 December 1997); Partnership and Cooperation Agreement between the European Communities and their Member States and the Republic of Moldova, opened
States, their lack of direct effect is anything but an upgrade. In the meantime the policy framework has also developed, with—in the case of the Eastern Partnership avant garde—the association agendas taking the lead in relation to Georgia and Moldova. From the formal point of view, they are adopted as recommendations of the respective Association Councils. The Association Agendas lay down the priorities for three-year periods, frequently venturing into areas of political conditionality where the EU’s formal competences to legislate internally are rather limited. It all falls into export of the EU values agenda, underpinned by heavy conditionality.

For instance, in the case of Moldova the key priorities outlined in the Association Agenda extend to, inter alia, political dialogue, good governance, strengthening of domestic institutions, respect for human rights, freedom of expression, children’s rights, trade unions and labour law standards as well as foreign and security policy and co-operation in the area of freedom, security and justice. A similar approach has been taken in the Association Agenda for Georgia. For the time being, this policy tool is not being employed in relation to Ukraine.

The implementation of Eastern Partnership objectives is further strengthened by a wide suite of initiatives undertaken by the European Commission focusing on key priority areas. They include support for businesses, investment in people, export of EU values focusing on the usual mantra of combating corruption, judicial reforms, public administration reform. Many of them are outlined in the already

for signature 28 November 1994, OJ L 181/3 (entered into force 1 July 1998); Partnership and Cooperation Agreement between the European Communities and their Member States and the Republic of Georgia, opened for signature 22 April 1996, OJ L 205/3 (entered into force 1 July 1999); Partnership and Cooperation Agreement between the European Communities and their Member States and Ukraine, opened for signature 14 June 1994, OJ L 49/3 (entered into force 1 March 1998); Partnership and Cooperation Agreement between the European Communities and their Member States and the Republic of Kazakhstan, opened for signature 23 January 1995, OJ 196/3 (entered into force 1 July 1999); Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part, opened for signature 22 April 1996, OJ L 246/3 (entered into force 1 July 1999); Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Kyrgyz Republic, of the other part, opened for signature 9 February 1995, OJ L 196/48 (entered into force 1 July 1999); Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Uzbekistan, of the other part, opened for signature 21 June 1996, OJ L 229/3 (entered into force 1 July 1999); Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Tajikistan, of the other part, opened for signature 11 October 2004, OJ L 350/3 (entered into force 1 January 2010). Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, opened for signature 22 April 1996, OJ L 293/3 (entered into force 1 July 1999).

40See further Ghazaryan 2018.
41See further, inter alia, Poli 2016; Ghazaryan 2014.
42See further Şemşit 2016.
43Recommendation No 1/2017 of the EU-Republic of Moldova Association Council of 4 August 2017 on the EU-Republic of Moldova Association Agenda [2017] OJ L 215/3.
44Recommendation No 1/2007 of the EU-Georgia Association Council on the EU-Georgia Association Agenda [2017] L 344/65.
mentioned recent EaP Strategic Paper published in March 2020. It is also notable that the EU has been offering financial assistance to the EaP countries,\textsuperscript{45} including—most recently—tailor-made macro-economic financial assistance in the wake of the Covid-19 pandemic.\textsuperscript{46} All these initiatives are a useful and complementary addition to the Association Agreements themselves and, consequentially, they expand the EU’s offering to the neighbouring countries. The trouble is, however, that many of them are fairly modest endeavours suffering from the lack of a long-term strategic vision. Furthermore, the EU’s legitimacy to pursue rule-of-law-based conditionality is currently under a serious threat from within. A fundamental challenge is how to marry the desiderata anchored in independence of the judiciary and the prerequisite of democratic governance with acts of political and constitutional vandalism courtesy of Kaczyński, Orban \textit{et consortes}.\textsuperscript{47} The mere fact that the EU has on board states breaching fundamental democratic principles, combined with its inherent weakness to effectively prosecute behaviour undermining the values laid down in Article 2 TEU, keeps on eroding its credibility.

\section*{10.4 \textit{Quo Vadis}?}

\subsection*{10.4.1 Introduction}

As alluded to in the introduction to the present chapter, standing still is not part of the EU’s DNA. This argument applies in equal measure to the domestic dimension of the European Union and to the external face of the European integration endeavour. Hence, a genuine question emerges as to the next steps of the European Neighbourhood Policy, its eastern dimension (Eastern Partnership) and the discussed Association Agreements. In this respect one can concur with Blockmans, who persuasively argues that the ENP is coming to the end of the road.\textsuperscript{48} At the same time, for a host of reasons, the ENP may be kept on life support for quite a while. In the meantime, however, the European Union will in the future have to address calls for an upgrade of the existing legal framework laid down in the Association Agreements. The EaP \textit{avant garde} is becoming rather vocal about the drive to deeper integration. It is enough to mention here a recent Joint Statement on the Future of Eastern Partnership, which not only calls for expansion of the substantive scope of respective Association Agreements but also openly refers to applications for EU

\begin{footnotesize}
\footnotesize\textsuperscript{45}In the current EU Financial Framework the funds are available \textit{qua} the European Neighbourhood Instrument. See Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument [2014] OJ L 77/27.

\footnotesize\textsuperscript{46}Decision (EU) 2020/701 of the European Parliament and of the Council of 25 May 2020 on providing macro-financial assistance to enlargement and neighbourhood partners in the context of the COVID-19 pandemic [2020] OJ L 165/31.

\footnotesize\textsuperscript{47}See Sadurski 2019.

\footnotesize\textsuperscript{48}See Blockmans 2017.
\end{footnotesize}
membership, when the time comes.\textsuperscript{49} In this vein, the Georgian Government in 2019 adopted the RoadMap2EU: a strategic document outlining future steps \textit{en route} to EU accession.\textsuperscript{50}

### 10.4.2 Upgrades to the Association Agreements

There is no denying that the painfully negotiated and concluded Association Agreements with Ukraine, Georgia and Moldova will be here to stay for quite a while. Their lifespan is likely to exceed the one experienced by the Europe Agreements concluded by the then European Communities with the countries of Central and Eastern Europe.\textsuperscript{51} At the same time, they may not reach the stage of a long-term engagement akin to the Ankara Agreement, which for over five decades has remained

\textsuperscript{49}Joint Statement by the Ministers of Foreign Affairs of Georgia, the Republic of Moldova and Ukraine on the Future of Eastern Partnership (5 December 2019, Bratislava), available at: https://3dcftas.eu/library/documents/joint-statement-by-the-ministers-of-foreign-affairs-of-georgia,-the-republic-of-moldova-and-ukraine-on-the-future-of-eastern-partnership.

\textsuperscript{50}Ministry of Foreign Affairs of Georgia 2019.

\textsuperscript{51}Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, opened for signature 16 December 1991, OJ L 348/2 (entered into force 1 February 1994); Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, opened for signature 16 December 1991, OJ L 347/2 (entered into force 1 February 1994); Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, opened for signature 4 October 1993, OJ L 360/2 (entered into force 1 February 1995); Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, opened for signature 4 October 1993, OJ L 359/2 (entered into force 1 February 1995); Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Romania, of the other part, 1 February 1993, OJ L 357/2 (entered into force 1 February 1995); Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, opened for signature 8 March 1993, OJ L 358/3 (entered into force 1 February 1995); Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Lithuania, of the other part, opened for signature 12 June 1995, OJ L 51/3 (entered into force 1 February 1998); Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Latvia, of the other part, opened for signature 12 June 1995, OJ L 26/3 (entered into force 1 February 1998); Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part, opened for signature 12 June 1995, OJ L 68/3 (entered into force 1 February 1998); Europe Agreement establishing an association between the European Communities and their Member States, acting within the framework of the European Union, of the one part, and the Republic of Slovenia, of the other part, opened for signature 10 June 1996, OJ L 51/3 (entered into force 1 February 1999). See further Ott and Inglis 2002.
a foundation for association between the EU and Turkey.\textsuperscript{52} So, the question which for now remains unanswered is whether the three Association Agreements are ends in themselves or whether, possibly, they may evolve into vehicles for EU membership.\textsuperscript{53} In the short term, however, it is rather obvious that the EU and the associated countries ought to focus their efforts on updating the lists of \textit{acquis} provided in the Association Agreements. This, as argued in the academic literature, is a two-edged sword. On the one hand, there is no doubt that the pieces of \textit{acquis} listed therein may be replaced by newly adopted EU legislation by means of decisions of joint bodies established under the Association Agreements. On the other hand, it is doubtful if the lists in question may be expanded by way of the kitchen door even further to cover the areas not listed before.\textsuperscript{54} Such a manoeuvre may in fact require a fully-fledged revision of the Association Agreements, translating into ratification by all EU Member States as well as the associated countries. Should that happen, it would be worth taking the association—in more general terms—to new levels. At least two strands of reforms could be put under consideration.

A deepening of economic integration could amount to an expansion of lists of EU \textit{acquis} to areas not ventured into before or, at least, the obligation to approximate could go down to the level of implementing and delegated acts, which—as things stand today—are largely not included in the current parameters of a \textit{rapprochement}. Furthermore, the politics of association in the present form dictate enhancement of institutional relations between the EU and its neighbours. It is striking that only the EU-Ukraine Association Agreement envisages regular joint high level summits. \textit{Au contraire}, such options are not on the menu in the Association Agreements with Georgia and Moldova. Furthermore, a new paradigm for the institutional framework has recently emerged in relations with Switzerland\textsuperscript{55} as well as the United Kingdom (as far as the Withdrawal Agreement is concerned).\textsuperscript{56} Some elements could surely be borrowed to shape upgraded institutional frameworks with Ukraine, Georgia and Moldova.\textsuperscript{57} This could include, for instance, enhanced access to the EU agencies and working groups prevalent in the early stages of the EU decision-making process.

\textsuperscript{52}Agreement Creating an Association between the European Economic Community and Turkey, opened for signature 12 September 1963, OJ L 361/29 (entered into force 1 December 1964). See further Rogers 2000; Szigetvári 2016; Terzi 2019.

\textsuperscript{53}As was the case with European Agreements with Central and Eastern European countries. See Inglis 2000.

\textsuperscript{54}Van der Loo and Akhvlediani 2020, pp. 9–10.

\textsuperscript{55}Kaddous 2019; Łazowski 2021b.

\textsuperscript{56}Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, opened for signature 24 January 2020, OJ C 384I (entered into force 1 February 2020); See further Dougan 2020; Łazowski 2021c.

\textsuperscript{57}On the current institutional set-up, see Van Der Loo 2019.
10.4.3 Beyond the Association Agreements

In the long term one could entertain some ideas, which have been floating around for quite a while, but so far, have failed to bear fruit. For instance, perhaps the time has come—drawing from the experience gained in the EEA—to return to the concept of joint economic space between the EU and EaP countries. As an alternative, it would surely be intellectually tempting to contemplate the potential accession of Ukraine, Georgia and Moldova to the European Economic Area (either as an end in itself, or a steppingstone towards EU membership). This, however, would not only require prior membership of EFTA but also a fair degree of political will in the three EEA-EFTA countries and the EU Member States. Alas, such good will is—at least for now—in short supply. The question also remains how Brexit will change the dynamics within the European Union and the multispeed trajectory it has found itself in. The time may be right to reconsider the option of partial membership that could be on offer for some of the neighbouring countries, which are expressing no desire to join, or fall short of meeting the accession criteria. The latter option would surely require a treaty revision that, in the current political climate, does not seem to be the preferred way forward.

10.5 Conclusions

Analysis of the experience gained with the Association Agreements with Ukraine, Georgia and Moldova offers a mixed bag. On the one hand, they serve as platforms for association with the European Union and the creation of DCFTAs. Combined with a heavy rule-of-law component, based on political conditionality, they offer a broad framework for co-operation. For some, they are the epitome of the EU operating as a normative power. For others, they may be proof of the EU acting as a hegemon. The most recent post-Brexit debacles show yet another phenomenon. Such models for a rapprochement, when looked at from Kyiv, Tbilisi and Chişinău, are tools for a decisive policy shift and a way to escape from the Soviet past. Seen from Westminster, they are vicious devices imposing shackles on third countries. In the great scheme of things, this cacophony is hardly surprising. Ukraine, Georgia and Moldova have been, for years now, forced to stand up to existential threats coming from Moscow and the

58 See Frommelt 2016.
59 This was mentioned en passant by the European Commission in one of its ENP Strategy Papers, however this idea failed to take off properly and skipped in the subsequent ENP papers. See Communication from the Commission to the Council and the European Parliament on Strengthening of the European Neighbourhood Policy, COM (2006) 726 final, p. 5.
60 See Baur 2016.
61 See De Witte et al. 2017.
62 On the mechanics of treaty revisions see, inter alia, De Witte 2011.
63 Manners 2010.
economic/social fallout from the Soviet days, while the authorities in London keep on operating in a comfort zone, indulging in an intellectual extravaganza of (long gone) imperial power. When the UK was leaving the European Union, risking an economic calamity, the EaP *avant garde* was hoping for an even closer *rapprochement*. Alas, with no explicit EU membership promise in sight, the EU is at risk of undermining the implementation of the Association Agreements as the authorities in the associated countries may feel less inclined to pursue reforms, which at times deliver benefits with considerable delay. As this chapter argues, many steps have been taken to fulfil the potential of the Association Agreements. Yet, much more effort is still required, on both sides, to make sure that the Agreements live up to their potential. In the short term, the European Union should roll up its sleeves and pursue upgrades of the Association Agreements in a more dynamic fashion, including long overdue updates of lists of *acquis* pencilled in for law approximation. At the same time, the Ukrainian, Georgian and Moldovan authorities should—in their own interest—approach the changing legal environment with a degree of caution. Self-interest should prevail, especially in the light of the economic havoc caused by the Covid-19 pandemic. In the mid- and long-term perspective, the association should be upgraded to the next levels. Which form they will take is—at this stage—unclear. However, it would be advisable for the European Union to do its homework. The most recent EaP revision lacks a strategic vision and does not live up to its expectations. At the same time, the recent recommendation of the European Parliament brings some hope. With this in mind one should remember the words of ancient Demosthenes: all speech is vain and empty unless it be accompanied by action. The grand objectives behind the ENP/EaP are still to reach their potential, or risk demise.

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\[64\] See Report on a European Parliament recommendation to the Council, the Commission and the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy on the Eastern Partnership, in the run-up to the June 2020 Summit, A9-0112/2020.
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