



# Scenarios for a Wider Europe

Michael Emerson

## Abstract

This paper makes the case for enhancing the economic and political integration of the entire wider European space with the EU, involving all those neighbouring states willing to subscribe to EU standards while at the same time facilitating the EU's further enlargement in due course. This would also amount to a consolidation of Europe's values, and act as a strategic marker to rebut Russia's efforts to undermine those values.

More specifically, the author advocates:

- Upgrading the EU's Association Agreements (AA) with East European states (Georgia, Moldova, Ukraine), with further content branded 'AA+';
- Replacing the European Neighbourhood Policy with a Wider Europe policy concept;
- Continuing the development of a multi-speed Europe which, with other EU reforms, could facilitate further enlargement of the EU when the conditions are met.

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## 1. Introduction

After some years of implementation of their AA/DCFTAs (Deep and Comprehensive Free Trade Agreements), Georgia, Moldova and Ukraine are looking for ways to inject renewed momentum into their aspirations to integrate with the EU. The EU's refusal to extend membership perspectives to these three states is a disappointment to them, but leads to the search for other more open paths that might be useful for the time being.

For the EU there is the need to clarify the strategic and geopolitical ambiguity it has created through its refusal to extend membership perspectives to these three states, given that Russia uses every opportunity to undermine their European orientations. Russia readily uses the argument 'the EU does not really want you, but you would be entirely welcome to join the Eurasia Economic Union instead'.

Both the EU's enlargement strategy and neighbourhood policy are in disarray. Enlargement for the Balkan states advances so slowly, if at all, that its credibility as an incentive is eroded. The European Neighbourhood Policy, for its part, has fallen apart in both its southern and eastern branches, with the three AA/DCFTAs having emerged as its main positive legacy.

Any further development of the AA/DCFTAs needs to take into account the changing context in the rest of the EU's neighbourhood; namely the growing family of association agreements that have many common elements, including the European Economic Area (EEA), Switzerland, the Balkans, Turkey, Brexit-UK, etc.

*The renewal of the European Commission and Parliament in 2019 is a propitious time to consider new policy ideas.*

Discussion within the EU around its further possible enlargements also links into longer-term ideas about a multi-speed or multi-tier Europe.

The renewal of the European Commission and Parliament in mid- to end-2019 is a propitious time to consider new policy ideas and specific proposals that the EU might take up from 2020 onwards.

## 2. How history has moved on

The original European Neighbourhood Policy (ENP) dates back 15 years to 2003, when a Commission Communication<sup>1</sup> proposed that:

... the EU should aim to develop a zone of prosperity and a friendly neighbourhood – a 'ring of friends' - with whom the EU enjoys close, peaceful and co-operative relations.

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<sup>1</sup> "Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours", COM(2003)104 final, 11 March.

In return for concrete progress demonstrating shared values and effective implementation of political, economic and institutional reforms, including in aligning legislation with the *acquis*, the EU's neighbourhood should benefit from the prospect of closer economic integration with the EU. To this end, Russia, the countries of the Western NIS and the Southern Mediterranean should be offered the prospect of a stake in the EU's Internal Market and further integration and liberalisation to promote the free movement of – persons, goods, services and capital (four freedoms).

... the EU will examine the scope for new Neighbourhood Agreements to build on existing contractual relations. ... If, however, the Neighbourhood Agreements contain provisions going beyond those of the Euro-Mediterranean Association Agreements, similar arrangements could be offered, on equivalent terms, to the Mediterranean partners.

These quotations remind us how far developments have moved on over this period and serve as a hint that the years ahead might see further changes of comparable extent. For some commentators, the “ring of friends” has become more like a ‘ring of fire’.

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As for the geography of the neighbourhood, Russia declined the invitation to join the European Neighbourhood Policy and instead proceeded to shape its own neighbourhood policy with the Eurasian Economic Union. Russia's invasion of Georgia in 2008 led to the South Caucasus states being invited to join the ENP, and the Eastern Partnership initiative of 2008 embraced six post-Soviet states, without Russia.

This was alongside a poorly conceived Union for the Mediterranean (which unsurprisingly failed to take off). To the south, realities diverged even further from the original idea, with the ‘Arab spring’ of 2011, sparked in Tunisia but spreading strongly to Libya, Egypt, and Syria, where the ensuing civil war eventually mutated into international war with the ISIS offensive. Only in Morocco and Tunisia did there emerge any prospect of following the AA/DCFTA model, but in neither case has this matured into new agreements.

The ENP has thus disintegrated, a fact that the official doctrine of ‘differentiation’ can barely disguise. Its most positive legacy is the AA/DCFTA process established with Georgia, Moldova and Ukraine, which however suffers from strategic ambiguity; while all three countries seek full membership of the EU as their objective, the EU refuses to acknowledge this as a prospect even for the long term.

The AA/DCFTA process also forms part of another ongoing and constructive process in the wider European neighbourhood, in which multiple EU policy instruments are being opened to participation by the large and growing set of associated states (EEA/EFTA, the Balkans, three

microstates,<sup>2</sup> AA/DCFTAs, Turkey and potentially Brexit-UK). These instruments can deliver a degree of integration with the EU that increasingly approaches full membership in all respects bar political representation – to which we return below.

### 3. What next for the AA/DCFTAs?

#### 3.1 Deepening sectoral policy collaboration

The EU, with Ukraine, Moldova and Georgia could review how to deepen the integration content of the AA/DCFTAs on a sector by sector basis, to pinpoint policy domains where:

- there is provision only for vague cooperation that could be raised to an operationally significant level; or
- detailed legal approximation commitments provide the basis for complementary operational activities that have been absent so far.

To some degree this might correct the perception that the AA/DCFTAs are excessively focused on complex regulatory legislation, without delivering concrete results that are visible to the population.

Ukraine has been advocating steps along these lines, initially with the intention to accede to several of the EU's sectoral 'unions' – the customs union, energy union, digital union, and justice and home affairs. These ideas have been discussed but so far without concrete proposals.<sup>3</sup>

The following are some examples of sectors that could see a deepening of operational collaboration.

**Customs cooperation.** Ukraine has advanced the idea of acceding to the EU's Customs Union. This could in principle further facilitate trade with seamless movement of goods across the border with the EU, and enhance investment in supply-chain linkages, as was seen with the EU's enlargement into Central Europe. Tempting as this might sound as an evolutionary step beyond the DCFTAs, the idea encounters two key disadvantages. First, the acceding country would have to scrap any free trade agreements it has that the EU does not (for example for the AA/DCFTA states CIS free trade agreements with Eurasian Economic Union states). Second, the acceding state would have to apply the EU's tariff preferences to its imports, without any legal assurance that the third countries would grant their counterpart tariff preferences to the new customs union participant. However, there is an important agenda for other ways to deepen customs cooperation with the EU, as indicated in Table 1, below (i.e. regarding preferential rules of origin, the EU's customs code, authorised economic operators, etc.).

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<sup>2</sup> Andorra, Monaco and San Marino.

<sup>3</sup> They are all implicitly referred to in the joint press statement following the EU-Ukraine Association Council meeting on 17 December 2018, without however new commitments or recourse to 'Union' ideas.

**Energy Union.** The EU's Energy Union programme focuses on boosting energy security, creating a fully integrated internal energy market, improving energy efficiency, decarbonising the economy, not least by using more renewable energy with EU funding to build a modern, interconnected energy grid across Europe, and further objectives for energy efficiency and renewable energies.<sup>4</sup> Ukraine has taken a lead position in seeking to join the Energy Union, and discussions are ongoing. This could go way beyond the content of the AA/DCFTA, which concentrates on commitments to adopt EU energy law, as already covered through accession to the Energy Community treaty. An example of a new initiative from the EU side in September 2017 is the Central and South-Eastern Europe Gas Connectivity (CESEC) programme, whose geographical scope was extended to cover the entire Western Balkans region, with focus on building an interconnected market for electricity and boosting investment in renewables and energy efficiency. This programme could be further extended to the AA/DCFTA states. The EU is already extending increased grant aid to support energy efficiency projects in Ukraine, alongside EBRD investments. There is already the plan to link the Ukrainian electricity grid to the European Network of Transmission System Operators for Electricity (ENTSOE).

**Transport Community.** The AA/DCFTAs already have extensive commitments to adopt the EU's transport regulatory rules for road, rail, and waterways, with provision also for Civil Aviation Agreements. Under the Eastern Partnership work is also underway to define priority corridors that can serve as extensions of the TEN-T networks.<sup>5</sup>

For the Balkans, in 2017 the EU went further towards establishing a European Transport Community. This combines i) commitments to adopting the EU's regulatory *acquis* in the transport field in a manner analogous to the Energy Community Treaty, with ii) detailed provisions for funding investment in transport infrastructures that extend the TEN-T network. The EU's funding of its own transport networks is very substantial, with €26 billion worth of grants allocated under the budget for 2014-20. Recalling that the three EAA/DCFTA states acceded to the Energy Community treaty several years after it had been initiated in southeast Europe, one could envisage a similar accession to the European Transport treaty, given that the legislative approximation content of the AA/DCFTAs already go a long way towards fulfilling these requirements for the Transport Community (the Balkan states have many detailed transitional provisions before reaching full *acquis* compliance). The TEN-T action plan is mostly imprecise over financial commitments, which need to be finalised.

**Digital Single Market.** In recent years the Commission has made the Digital Single Market a priority, and there are many fundamental developments underway. By comparison the content of the AA/DCFTA is thin, referring only to telecommunications legislation for approximation. How far and fast to follow through with what the EU is currently doing is therefore an issue for the AA/DCFTA process. A landmark legal act is the EU's General Data Protection Regulation (GDPR), which came into force only in May 2018 but seems to have become a new global

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<sup>4</sup> See the Commission's latest progress report: "Third report on the State of the Energy Union", November 2017.

<sup>5</sup> European Commission/Eastern Partnership, "Indicative TEN-T Investment Action Plan", 2018.

standard. The question is whether the AA/DCFTA states will follow through on this. In addition, there is a far more extensive agenda to consider, for example the setting of a centralised spectrum policy for 5G as well as 4G; net neutrality rules; the free flow of data; intellectual property protection; the digitisation of public administrations; and an e-Privacy directive, etc. This is and will remain a fast-moving field, and the AA/DCFTA states may find it advantageous to connect with the EU's comprehensive policy development already.

**Disinformation and cyber war.** This topic has risen to the top of the EU's security agenda, as a result of Russia's self-proclaimed 'information war' aimed at the whole of Europe, including the EU and its member states, with Ukraine as the major frontline target. The EU is developing plans for its own cyber defence – the subject of wide public debate. A recent CEPS Task Force has reviewed possible options,<sup>6</sup> which include setting up a cyber defence coordination mechanism and later a Cyber Defence Agency. The AA devotes only one short Article 7 to dialogue in the field of foreign and security cooperation; the information war and cyber defences are not even mentioned. Given the gravity and novelty of this security challenge, and the fact that Ukraine is Europe's frontline in the face of Russian aggression, there is every reason for the EU's development of new capabilities in this field to be undertaken in explicit collaboration with Ukraine.

**Criminal justice and police cooperation.** The AA in Article 22 declares that the parties will "cooperate in combatting crime and illegal activities...", but fails to say how this might be done in concrete terms. Ideas along these lines may be found in analyses of how the UK, post-Brexit, might cooperate with the EU in this field.<sup>7</sup> Such ideas include cooperation with the European Arrest Warrant, the European Investigation Order and mutual recognition for freezing and confiscation orders. Also discussed are cooperation with the Europol and Eurojust agencies, and the European Public Prosecutor's Office, and information-sharing tools with regard to EU databases. While the conceivable possibilities are thus quite substantial, such ideas are crucially dependent on establishing a high level of trust over the integrity and professionalism of partnering law enforcement agencies.

**Visa-free travel, asylum and safe countries of origin.** All EEA/EFTA, Balkan and AA/DCFTA states now have visa-free travel possibilities in the Schengen area. This marks a great advance for the most recent beneficiaries of visa-free travel, but it is accompanied by some unwelcome increases in unjustified requests for asylum from Balkan and AA/DCFTA states, whose respect for human rights and the rule of law is in principle of a good standard. Asylum is virtually non-existent, as between EU member states, the Lisbon Treaty having recognised (in Protocol 24) member states as "safe countries of origin", in which asylum requests might only be declared admissible in the most exceptional and narrow of circumstances. In 2015 the Commission proposed extending this principle to Balkan states, but this proposal is still pending. However,

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<sup>6</sup> Jaap de Hoop Scheffer et al., "Strengthening the EU's Cyber Defence Capabilities", CEPS, 2018.

<sup>7</sup> Sergio Carrera et al., "Criminal Justice and Police Cooperation between the EU and the UK after Brexit. Towards a principled and trust-based partnership", CEPS, 2018.

as and when it is adopted it could also be extended at some point to the AA/DCFTA states. ‘Yes’ to visa-free travel combined with ‘no’ to asylum would be a fair system, given that visa-free travel is only agreed by the EU subject to serious rule of law conditions.

### 3.2 Deepening institutional relationships

The institutional setup under the AA/DCFTAs is well developed, with Association Councils and subordinate committees and working groups, and in the case of Ukraine provision for regular summits. The question is whether these arrangements could be further enhanced in the direction of deeper institutional integration.

**Government-to-Commission meetings.** In a new move, *seven* cabinet ministers from Georgia accompanied the prime minister to meet with the plenary college of the European Commission. As well as attending a plenary session, the ministers divided into three clusters of topics, for further sessions with their counterparts in the European Commission.

The most recent EU-Ukraine Association Council on 17 December 2018 saw a variant of this innovation. The Ukrainian side was headed by the prime minister, accompanied by several ministers. The joint statement commented explicitly on all the four sectoral headings advocated by Ukraine (see above), although the texts themselves barely go beyond advocating full implementation of the commitments already made in the AA/DCFTAs. However, the text also announced several complementary agreements on EU funding for energy-efficiency measures, people-to-people contacts and actions by the European Investment Bank. Quite an impressive illustration of actions to supplement the AA/DCFTAs.

**Three government-to-Commission meetings.** A further variant could see the three AA/DCFTA states together meeting with the Commission. This might be done occasionally at summit level, or along the lines of the Georgian model, or a less complicated arrangement for individual sectoral policies (e.g. trade, energy, etc.) to be the subject of dialogue sessions between the relevant ministers and commissioners.

**Joining in informal meetings of the EU Council.** At the level of the Council there is now a well-established practice between the EU and the three states of the European Economic Area (Norway, Iceland, Liechtenstein), whereby for ‘informal’ meetings (i.e. non-legislative sessions devoted to policy debate) of the sectoral Councils of the EU the EEA, states may ask to participate in certain sessions. This happens with some regularity for Councils dealing with internal market, energy, competitiveness, environment, transport, defence, justice and home affairs, etc. The three AA/DCFTA states could conceivably build on this precedent, and together seek to join selected Council meetings where the agenda warranted it.

**European Parliament.** The three AA/DCFTA states already have well-established relations with the European Parliament, which has ‘delegations’ to each. The Parliament also organises a South Caucasus delegation with all three states together. An alternative or additional initiative could be to organise a delegation for the three AA/DCFTA states together, since the common

ground between these three states now makes for a substantial agenda of policy issues, including the question of how the AA/DCFTA process should be further developed.

**Acceding to other institutional arrangements.** A further quite different approach might see the AA/DCFTA states acceding to other European integration arrangements outside the EU, while remaining closely connected to it. There are two candidates for consideration here, as follows.

**Central European Free Trade Area (CEFTA).** This is basically a multilateral free trade area of all the Balkan states that are not yet in the EU, plus, interestingly for this paper, Moldova. CEFTA is a relatively simple free trade area, scrapping most tariffs and quantitative restrictions. It will soon conform to the revised Pan-Euro-Mediterranean rules of origin, which will permit a diagonal cumulation of value added to meet requirements for tariff-free preferences.

For Moldova this has the advantage of a simple single agreement to establish free trade relations with the whole of the Balkans, rather than the much more laborious process of making bilateral agreement with each member state. It may also be viewed as having the political quality of bringing Moldova more deeply into European integration, since all the Balkan states have the perspective of full EU membership. However, this quality is eroded by the EU itself, since in various technical CEFTA activities funded under pre-accession facilities, it has insisted that Moldova be excluded because it has not been granted a membership perspective. This restriction could easily be lifted if the EU chose to do so.

Ukraine and Georgia could conceivably apply to accede to CEFTA with a view to obtaining the same advantages as Moldova, which would require the unanimity of CEFTA member states. As of now Ukraine has free trade agreements only with Macedonia and Montenegro among the CEFTA states, while Georgia has none.

If Ukraine were to apply there would be concerns that this relatively large state, with a population more than twice all of CEFTA states together, could have an undue impact on the smooth workings of CEFTA. This possible objection would not apply to Georgia, whose population is around the size of the Balkan average. For Ukraine one might think of a different model, namely to make a multilateral free trade agreement between CEFTA and Ukraine as a non-CEFTA state.

**European Economic Area (EEA) and European Free Trade Area (EFTA).** The AA/DCFTA states already have free trade agreements with EFTA, and the main direct consequence of acceding to EFTA itself (without the EEA) would be the obligation to apply EFTA's existing set of free trade agreements with third countries. A more significant factor is that accession to EFTA is a legal prerequisite for accession to the EEA, which would be a far more consequential move for an AA/DCFTA state.

The technical prerequisite for accession to the EEA would be a good implementation of all the legal approximation commitments made in the AA/DCFTA and other single market legislation not covered in the AA/DCFTA. The standards required, both in technical terms for the single market and in terms of good political practice, would be equivalent to that required for acceding as a full member state to the EU. The interest for the acceding state is that it would

be getting far closer to full EU membership, without being stopped by the absence of a membership perspective. It would position such a state well for full accession to the EU as soon as the political will on the part of the EU allowed it. Accession would still require the unanimity of all EU and EFTA/EEA states.

Debate around the idea of the UK acceding to the EEA as a Brexit option revealed considerable hesitation on the part of Norwegian leaders about whether they would agree to this, with concern that the present stable functioning and reputation of the EEA might be undermined.

**Political and economic conditionality for AA+.** From the above it is evident that there is much potential room to enhance the present AA/DCFTAs, allowing for supplements to the present texts that could be called AA+ for short and representing a step change for deeper integration with the EU. If the idea gained support one could envisage the EU setting out conditions for embarking upon a negotiation process to identify the operational content. Experience shows that ‘conditionality’ is not an easy instrument to use effectively.

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It depends on a sound matching of interests and incentives. In recent years the conditionality attached to agreeing visa-free travel into the Schengen area, for example, seems to have been quite effective. For an AA+ a plausible scenario would be to check that all major commitments under the AA/DCFTA are being respected.

**To summarise .... for AA+.** These upgraded agreements could be simpler legally, based on joint political declarations rather than treaties calling for ratification. If the broad idea were to be viewed favourably by the three AA/DCFTA states they could be well advised to develop such a position collectively, aiming at results with a consistent structure and content, but allowing for differences of detail or in transitional periods, where need be. The specific economic actions would have the most formal and operational content, while the political developments would be more informal. There are also some formal (but more problematic) institutional ideas, about possible accession to CEFTA or the EEA/EFTA.

#### 4. Replacing the European Neighbourhood Policy with a Wider Europe policy

The geographic coherence of the original ENP has disintegrated and thus become obsolete.<sup>8</sup> The question is thus how the pieces might be reassembled in some other more plausible way, given that the current ‘differentiation’ discourse is hardly a persuasive solution.

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A key to answering this question may be found in the fact that just as the ENP was falling apart, the EU was enlarging the number of policy instruments that are made available to

<sup>8</sup> See Steven Blockmans, *The Obsolescence of the European Neighbourhood Policy*, CEPS and Rowman and Littlefield, 2017.

most or all European non-member states, despite their differentiated political groupings. In fact, there are ongoing negotiations between the EU and its European neighbours, including EU-Switzerland negotiations over a new institutional framework; EU-Andorra/Monaco/San Marino negotiations over a new association agreement that would include the single market and customs union; EU-Turkish intentions to undertake ‘modernisation’ of the Customs Union; and the Brexit-UK. While the Balkan states are all actual or potential accession candidates, the content of their Stabilisation and Association Agreements with the EU now lags behind that of the AA/DCFTAs.

The key point here is that despite the political heterogeneity of these various neighbouring states and groups thereof, the EU’s abiding concern is to retain coherence in the content of its external relations, especially in its close neighbourhood. This preference is revealed in the very substantial list of economic policy instruments that are open to participation by associated neighbouring states (as listed in Table 1 with appendices 1 and 2 detailing the agencies and programmes of the EU open to non-member states).

*Table 1. Instruments of EU economic policy available for neighbouring European states*

<ul style="list-style-type: none"> <li>• Deep FTAs – various forms, EEA, SAA, DCFTA, Customs Union,</li> <li>• Technical standards <ul style="list-style-type: none"> <li>- European Standards Organisations (CEN, CENELEC, ETSI)</li> <li>- Sanitary and PhytoSanitary Regulations (SPS)</li> <li>- European Accreditation, Multilateral Agreements (EA-MLA)</li> <li>- Agreements for Conformity Assessment and Analysis (ACAA)</li> <li>- European Association of National Metrology Institutes (Euramet)</li> </ul> </li> <li>• Customs cooperation <ul style="list-style-type: none"> <li>- Union Customs Code (UCC)</li> <li>- Pan Euro-Med Convention for Preferential Rules of Origin and Diagonal Cumulation (PEM)</li> <li>- Common Transit Convention</li> <li>- New Computerised Transit System (NCTS)</li> <li>- Authorised Economic Operators (AEO)</li> <li>- Shared Border Crossing Points</li> </ul> </li> <li>• Energy policy <ul style="list-style-type: none"> <li>- Energy Community Treaty</li> <li>- Central and South Eastern European Connectivity network (CESEC)</li> <li>- European Network of transmission System Operators for Electricity (ENTSOE)</li> </ul> </li> <li>• Transport policies <ul style="list-style-type: none"> <li>- Transport Community Treaty</li> <li>- Pan-European Corridors</li> <li>- Trans-European Transport network (TEN-T)</li> <li>- European Civil Aviation Agreement (ECAA)</li> <li>- Civil Aviation Agreements (CAA)</li> </ul> </li> <li>• Agencies of the EU – e.g. European Environmental Agency (see Annex 1)</li> <li>• Programmes of the EU – e.g. Horizon 2020, Erasmus+ (see Annex 2)</li> </ul>
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- Visa-free travel
- EU Budget grants
- European Investment Bank (EIB)
- European Bank for Reconstruction and Development (EBRD)

This impressive list can be viewed as the basis of a de facto ‘wider European space’ in the making, even if no name is given to this development by the EU itself since its current doctrine adheres more to the political differentiation of the various groups. Nevertheless, there is a case for giving a more visible structure and name to this important reality, given both the demise of the ENP as originally conceived, and the strategic imperative for the EU to organise its wider neighbourhood more credibly and effectively in the face of Russian aggression. One might call this simply ‘Wider Europe’.

To pursue this idea, a number of critical issues would need to be confronted.

First, there is the question of whether such a Wider Europe initiative should be given an institutional and legal basis, and if so whether the existing groups of neighbouring states would want to share membership of it. Any formal institutionalisation of a Wider Europe would pose formidable legal issues, given the various legal bases that exist to the many operational instruments that would be in play. These are reasons why a hard institutionalisation of a Wider Europe would not be plausible. Furthermore, the EEA states would not want their privileged position as close and trusted partners of the EU to be diluted or destabilised in a wider grouping.

Second, there is the issue of how far the instruments actually or potentially to be deployed in Wider Europe (such as in Table 1) should be harmonised in their application to all, or even formally multilateralised. In practice there is a range of types so far: only one case of formal and geographically comprehensive multilateralisation (PEM regime for rules of origin, with links to free trade agreements), some limited regional multilateralisation (Energy and Transport communities), and many more instances of bilateral accession or association in relation to specific instruments that have a standard EU basis. These practices provide a basis for the EU to review how far further to harmonise or generalise the external deployment of its relevant instruments, and also to maximise synergies with the operations of the European Investment Bank and EBRD. This would be a more plausible foundation for a Wider Europe.

Third is the issue of regional integration. EU doctrine has so far advocated regional integration of groups of its neighbouring states rather than the much more ambitious integration of the entire EU-Wider Europe space. As regards the limited regional integration so far favoured, it is most plausible for the Balkans, given that they already share the CEFTA free trade area, and their existing Regional Cooperation Council is an active body. However, the idea of regional economic integration of the three AA/DCFTA states is not especially interesting: the big Ukraine has EU and global interests, Moldova is already party to CEFTA, and Georgia has wider ambitions as a hub and bridge between Europe and Asia. Prospects for regional integration in the South Mediterranean are even more remote, since the most progressive states have no

common land border. By contrast, regional economic integration of the entire EU-Wider Europe space could be the big prize.

There is one instance where the Commission/EEAS has been considering a highly dubious move. It has proposed to integrate multiple existing financial instruments into a new Neighbourhood, Development, International Cooperation Instrument (NDICI). This would put the budgetary instrument for the AA/DCFTAs into a new global funding instrument that would predominantly serve programmes in Africa and other developing countries, whereas the Balkans would retain their separate pre-accession funding instrument. A decision on this point has been reserved for the new Commission. There are two reasons why this would be ill-

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advised. First, the AA/DCFTA states already regard this proposal as a negative political signal, which would only be interpreted as underlining the ambiguity of the EU's commitments to them. Second, functionally it would be incoherent. The context for the AA/DCFTA states is about the post-communist transition and European integration of states with good general levels of human capital; for Africa it is about basic development needs, as for developing countries in other continents. For the aid donor agency these are totally different challenges, and demand

different operational concepts and methods. The management of aid to the AA/DCFTA states needs to be kept close to those responsible for policies for these countries, rather than placed as a small part of a much larger operation than is predominantly addressing the needs of African, Caribbean and Pacific developing countries.

**Eastern Partnership.** The split between the AA/DDCFTA states and those joining the Eurasian Economic Union has of course made the task of giving significant profile to the Eastern Partnership more difficult. Ambitious objectives were nonetheless laid out in 2016 in a “20 Deliverables for 2020” document, building on the elaborate structure of 4 multilateral platforms, and 12 panels. Next year, 2020, could be a better time to take stock in light of this experience, rather than the arbitrary 10<sup>th</sup> anniversary year, 2019. The Eastern Partnership retains the objective for the EU of developing the best possible relations with the three ‘other’ states, and of using the AA/DCFTA experience as something the ‘others’ may compare with the Eurasian Economic Union.

‘People’ mechanisms such as education, culture and civil society activities are surely worthwhile and possible. The ‘Indicative TEN-T Investment Action Plan’ referred to above seeks to extend the EU’s internal transport networks to all six Eastern neighbours. The three specific bilateral relationships are important but different: with Armenia in the light of the new Enhanced Cooperation and Partnership Agreement; Azerbaijan in the light of ongoing negotiations for a new agreement; and Belarus in the context of Lukashenko’s continuing game of partially using the EU to sustain some independence from Russia.

**Eurasian Economic Union (EAEU).** The ‘Lisbon to Vladivostok’ economic space continues to feature in President Putin’s speeches, alongside suggestions that the EU and EAEU should make some kind of cooperation agreement. This idea could be attractive to the EU on economic grounds in the shape of a basic free trade agreement (leaving aside difficult political considerations) but is in practice excluded by Russia, given the priority it attaches to maintaining its deeply protectionist industrial policies. China has been willing to make a ‘non-preferential’ agreement with the EAEU, i.e. excluding free trade, as a political gesture, but that is hardly a precedent for the EU to follow.

**The South Mediterranean.** The original conception of the European Neighbourhood Policy included the idea that whatever might be offered to Eastern European states would also be offered to Southern Mediterranean neighbours. Realities since then have driven East and South into very different categories. To the South the so-called Arab spring that started in December 2010 has led on into a landscape dominated by war in the broader Middle East and, more broadly, crisis conditions around the nexus of Islamic radicalisation, migration and asylum involving much of Africa as well. These are hugely important issues, and have logically to involve the Gulf as well as the Mediterranean, or the entire Arab world; but this extends beyond the scope of the present paper, or of the Wider Europe concept. Only in the cases of Morocco and Tunisia are there negotiations around the idea of AA/DCFTAs, but in neither case do these seem to progress. Nevertheless, the door must remain open to exploring close future relationships with these countries.

**The Western Balkans.** The not-yet members of the EU in the Balkans (Albania, Bosnia, Macedonia, Montenegro, Serbia, and – with its still uncertain status – Kosovo), all have in principle the prospect of acceding to the EU, albeit with differences in how far along the pre-accession process they have travelled. Serbia and Montenegro are ranked as frontrunners by Brussels, with the possibility that they may soon be joined by Macedonia, now that its name dispute with Greece has finally been resolved. The Balkan states for their part would not support any initiative that could be interpreted as undermining their full membership perspectives; it would be understood that their pre-accession negotiations would continue, each on its own merits. Their realistic prospects for accession would be enhanced in the scenario for a multi-speed Europe (see the next section).

**To summarise,** the existing European Neighbourhood Policy is obsolete, and could be replaced by a Wider Europe policy. This would aim at the maximum feasible economic and political integration, short of EU membership, of the entire region consisting of the EU itself with all European states willing to adopt EU technical standards and market regulatory policies, and to support European political values. Individual accession procedures for states concerned would also continue, and would be entirely consistent with the content of the Wider Europe policy. Cooperative policies on a more modest scale would also be sustained with other neighbouring states in Eastern Europe and North Africa.

## 5. Multi-speed Europe and enlargement policy

For many years there has been debate about a ‘multi-speed’, or ‘multi-tier’, or ‘variable geometry’ Europe with ‘differentiated integration’. Such ideas express the interest of countries that have the will to integrate deeper and faster than others, leaving the latter to follow whenever they might be ready and willing to do so. The most prominent early proposal was that of Schaeuble and Lamers in 1994.<sup>9</sup> For an early academic account of the proliferation of terms seeking to capture the same broad idea, see Alexander Stubb’s paper of 1996.<sup>10</sup> The semantic proliferation is itself testimony to the inherent difficulties in formulating an operational proposition along these lines in the practical context of EU institutions and law.

While the motivation is usually to favour deeper top-level integration, there can also be the opposite case for favouring wider lower-level integration, i.e. facilitating enlargement of a basic EU. Both motives and tendencies can coexist, and this approach would be the most relevant for the purposes of the present paper. The dual approach might thus see a simultaneous process of a deepening top-level integration and widening at a more basic lower level.

Proposals are sometimes given a clear constitutional focus, for example under the heading of a federal Europe. This idea has a long lineage from Richard Coudenhove-Kalergi’s text of 1926,<sup>11</sup> to the early post-war European federalists such as Altiero Spinelli, whose name also inspired the more recent informal ‘Spinelli Group’ that was initiated in 2010 to promote federal ideas.

It has to be said that the federal idea as a general constitutional proposition is no longer favoured in many member states, and even some of the founding member states rule it out (e.g. the Netherlands and more recently Italy). Some advocates of the federal idea would see this as a top-level Europe above a lower-level basic Union, but how the two might be organised in terms of competences has never been clear, and indeed is certainly problematic.

Notwithstanding these difficulties, there are actual tendencies at work that could be heading towards the dual deepening and widening approach.

*...there are actual tendencies at work that could be heading towards the dual deepening and widening approach.*

There is a real movement towards deepened integration with limited member state participation in the important euro and Schengen areas, as well as emerging proposals for foreign policy and defence cooperation – see Box 1 for details. These are ad hoc, sector-specific initiatives, driven

by concrete needs and possibilities in each case, rather than a broader systemic or constitutional design. Yet all three sectors are of strategic political significance. They result in complex legal and institutional relationships within or alongside EU law and institutions.

<sup>9</sup> Wolfgang Schaeuble and Karl Lamers, “Reflections on European Policy”, CDU/CSU Group at the Bundestag, 1994.

<sup>10</sup> Alexander Stubb, “A categorization of Differentiated Integration”, *Journal of Common Market Studies*, Vol. 4, No. 2, June 1996. The author, then a student, has since become prime minister of Finland and is now a candidate for the presidency of the Commission.

<sup>11</sup> Richard Coudenhove-Kalergi, *Pan-Europe*, New York: Alfred A. Knopf, 1926.

Nonetheless, in all three cases legal and institutional arrangements have been found to enable these sectoral policies to advance without wrecking the basic EU, which increasingly revolves around a broad single market and regulatory space, coupled to commitment to democratic political values. However, the three restricted membership activities all have somewhat different membership maps; 19 countries for the euro area; 26 for the Schengen area (of which 22 are EU member states and 4 are the EFTA non-member states); and 25 for the PESCO (Permanent Structured Cooperation) defence mechanism. The member states that are present in all these three restricted clubs may be viewed as a de facto core top-tier Europe.

*Box 1. Deepening developments in the European monetary, Schengen and defence sectors*

**Deepening the euro area system.** The euro area currently includes 19 EU member states. The 2008 financial crisis has led to progressive development and use of the euro area's financial mechanisms. The most clear-cut examples are the Banking Union, resulting in the creation of stronger regulatory instruments, notably the Single Supervisory Mechanism (SSM), and Single Resolution Fund (SRF). In addition, the euro area's means of raising capital to support principally the euro area member states has been built up with the European Stability Mechanism (ESM). There is a proposal for a European Deposit Scheme (EDIS), which has encountered opposition. More promising is the proposal for a euro area budget line to protect against economic shocks. This was proposed by President Macron, and after some months of debate has been accepted in principle by euro area leaders. There are complex relationships between these instruments and the EU institutions, and the ESM in particular is managed outside the Commission but on the basis of EU law and open to any member state, while the proposed euro area budget is planned to form part of the EU budget but to benefit euro area states only.

**Deepening Schengen area cooperation.** The Schengen area (26 countries) for movement across frontiers without controls has a complex differentiated geography, with the island member states (UK, Ireland and Cyprus) opting out, and the most recently acceding states not yet admitted (Romania, Bulgaria, Croatia), while the four EFTA states are included (Norway, Iceland, Liechtenstein, Switzerland). The criteria for accession to Schengen are exacting with regard to the rule of law and border security. In addition, the migration and terrorism crises of recent years have led to major legislative and policy developments of the Schengen area in the fields of migration and asylum, with related issues of refugees, legal and illegal entry, readmission, criminal and justice cooperation that are sometimes specific to the Schengen area sometimes applying to the whole EU.<sup>12</sup> The Commission tries to keep this whole policy landscape anchored in EU law and institutions, but there is a complex mix of Schengen-only activity, core EU activity, and ad hoc intergovernmental agreements in play.

**Deepening defence activity.** Proposals to enhance the EU's embryonic defence capabilities must constantly face the question of whether they are to be applied by all EU member states, given that some are not NATO members. Some espouse various graduations of neutrality, and many have very minor military capabilities.<sup>13</sup> While some initiatives, such as defence procurement, may be developed at the

<sup>12</sup> For a detailed account see Sergio Carrera, "An Appraisal of the European Commission of Crisis – Has the Juncker Commission delivered a new start for EU Justice and Home affairs?", CEPS, 2018.

<sup>13</sup> For a detailed account see Steven Blockmans, "The EU's Modular Approach to Defence Integration: an inclusive, ambitious and legally-binding PESCO?", *Common Market Law Review*, Vol. 55, pp. 1785-1826, 2018.

full EU level, when it comes to mechanisms for actual military operations there will be more limited participation. The most recent initiative for PESCO, launched in 2017, which will involve “willing Member States whose military capabilities fulfil higher criteria, and which have made more binding commitments to one another in this area with a view to the most demanding missions” (Article 42 (6) TFEU). It was decided in November 2017 that 25 member states would be party to PESCO.

The idea of merging these three sectors and possibly other initiatives into a legally and institutionally unified ‘top-tier Europe’, on top of a basic European Union for other competences, meets major objections, however. First, the membership maps of the three restricted sectors (euro, Schengen, defence) are all different. Second, not even all the founding six member states, long presumed to be the core, would respond positively (as pointed out above regarding the Netherlands and today’s Italy). Third, many of the states acceding in or since 2005, and older member states not currently in any or all of the three restricted sectors, would not want to be relegated to a second tier in any systematic way. The multi-speed idea is much more palatable than the multi-tier idea: the former being open to all in due course, whereas the latter sounds like permanent discrimination.

Nonetheless, the current momentum in favour of pragmatic and selective deepening of the three sectors is itself an impressive systemic development, which has managed to get around the problems listed above that would impede a more formalised and unified top tier. This links to statements by President Macron to the effect that before any future enlargement of the EU there should first be institutional reform of the EU itself. The nature of such reforms is not yet evident. However, some well-known ideas could fit in here, such as a reduction of the number of Commissioners (as envisaged for what became the Lisbon Treaty, but jettisoned in order to secure Ireland’s ratification), and further extension of qualified majority voting. Taxation and foreign policy are two domains discussed, if hardly a matter of consensus at present, for the possible extension of QMV. The Lisbon Treaty included, in Article 16, a reform of the QMV

*...the current momentum in favour of pragmatic and selective deepening of the three sectors is itself an impressive systemic development.*

voting formula that could help to ease problems associated with the expansion of the number of small member states, namely its inclusion of a population weight.<sup>14</sup> The Lisbon Treaty also includes the so-called ‘passarelle’ Article 48, which allows for a simplified treaty revision procedure in some areas.

Taken together with the ongoing deepening of the three sectors, such reforms could be seen as easing the way towards further enlargement for those states that want membership and will have already progressed in adopting EU single market regulatory policies and also of course in respecting EU political values. In other words, one could envisage a basic EU based on the single market and the institutions whose membership may be widened, without impeding deeper development of the three strategic sectors with limited membership for the time being, these

<sup>14</sup> A qualified majority requires 55% majority of countries: 55% (comprising at least 16 of them), or 72% if acting on a proposal from neither the Commission nor the High Representative, and a 65% majority of the population.

sectors still being anchored on EU law. This is a greatly simplifying schema, since there are in practice many detailed legal provisions and instruments that blur the boundaries in the three sectors between restricted and EU plenary activity. Yet here there is a broad idea for enabling deepening and widening in parallel.

**To summarise**, there are important ongoing systemic developments in three sectors of a multi-speed Europe which, taken together with some institutional reforms of the basic EU, could facilitate its further enlargement in the longer term.

*...such reforms could be seen as easing the way towards further enlargement.*

## Conclusions

Of the several categories of hypothetical action discussed, the first and most limited would concern the AA/DCFTA states, and see a deepening of sectoral policy collaboration, complementing and building on the existing provisions of the AA/DCFTAs, and complemented by a deepening, also of institutional relationships. Together these developments might be dubbed AA+, and would be set out first in a consultative document by the Commission/EEAS for dialogue with the partner states, leading to a series of AA+ agreements.

Yet this would not deal with the wider problem of the obsolescence of the EU's neighbourhood policy, alongside the growing reality that the EU deploys an increasingly impressive and common array of policy instruments to all its European neighbours that share association agreements with it. This invites development of a new neighbourhood policy concept, which might be called a 'Wider Europe' policy. This would embrace all countries willing to adopt or approximate EU single market regulations and support EU political values – albeit with some seeking accession and others not. This Wider Europe policy would be based on the range of common instruments of EU policy that can be applied by non-member states.

The AA+ could be a stand-alone initiative, but would optimally be developed alongside and as part of a Wider Europe policy. The existing AA/DCFTAs and even more so the AA+ have features relevant for other existing or possible association agreements, for example the Balkan (SAA) association agreements.

*The economic integration of this vast European space has an economic rationale going way beyond that of limited regional integration arrangements.*

The economic integration of this vast European space has an economic rationale going way beyond that of limited regional integration arrangements. Its political significance is heightened by the need to respond strategically to external threats, notably from Russia.

Articulation of a Wider Europe policy could be prepared by the Commission/EEAS with a Green Paper for consultation within the EU and with neighbouring states. Detailed questions of possible degrees of harmonisation of specific instruments of policy, including possible degrees of multilateralisation, would need to be addressed in detail.

The Wider Europe policy would also aim to achieve the most constructive possible relations with other outer groups, including the other Eastern Partnership states (notably those now members of the Eurasian Economic Union), and North Africa.

These issues lead further into questions about the EU's currently stagnating enlargement policy, whose resolution might be facilitated by ideas for further developing a multi-speed Europe. Simple talk of a federal Europe, to lie in some way on top of a basic EU, has not been translated into operationally plausible proposals, and understandably so because of fundamental difficulties that would have to be confronted. However, combined with some limited EU institutional reforms, a continued deepening of the three policy domains already subject to limited participation (euro, Schengen, defence) might ease the perceived constraints on further enlargement to the basic EU of the single market, for which the associated states can become well prepared.

**To summarise, the conclusions favour:**

- Upgrading of the AA/DCFTAs, with further sectoral policy and institutional content, branded AA+;
- Replacement of the European Neighbourhood Policy by a 'Wider Europe' policy;
- Development of multi-speed Europe, which with other EU reforms could facilitate further enlargement into the basic EU in the longer term.

## Appendix 1. EU agencies open to non-member states

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European Fisheries Control Agency (EFCA)	European Police Office (EUROPOL)
European Aviation Safety Agency (EASA)	European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX)
European Maritime Safety Agency (EMSA)	European Centre for Disease Prevention and Control (ECDC)
European Agency for Safety and Health at Work (EU-OSHA)	European GNSS Agency (GSA)
European Defence Agency (EDA)	European Chemicals Agency (ECHA)
European Food Safety Authority (EFSA)	European Environment Agency (EEA)
European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)	European Network and Information Security Agency (ENISA)
European Police College (CEPOL)	European Foundation for the Improvement of Living and Working Conditions (EUROFOUND)
European Institute for Gender Equality (EIGE)	European Asylum Support Office (EASO)
European Union Institute for Security Studies (EUISS)	
European Union's Judicial Cooperation Unit (EUROJUST)	

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## Appendix 2. EU programmes open to neighbouring non-member states

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Asylum, Migration and Integration Fund	Galileo and EGNOS Programmes, Global satellite navigation system
Copernicus, European Earth Observation Programme	Health for Growth
Competitiveness of Enterprises and SMEs (COSME)	Hercules III Anti-fraud Programme
Creative Europe, Programme for the cultural and creative sectors	Horizon 2020 Internal Security Fund
Customs 2020	Life Programme, Environment and climate change
Erasmus+	Pericles 2020, Programme for the protection of the euro against counterfeiting
European Maritime and Fisheries Fund	SESAR JU, Air Traffic Management modernisation
European Statistical Programme	European Union Civil Protection Mechanism
European Territorial Cooperation	
Fiscalis 2020 (tax administration support)	

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