



DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT



Approximation of the national legislation of Eastern Partnership countries with EU legislation in the economic field

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DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION

DIRECTORATE B

POLICY DEPARTMENT

STUDY

**Approximation of the national legislation
of Eastern Partnership countries with EU legislation in the
economic field**

Abstract

With the launch of the Eastern Partnership in 2009, the EU stepped up its involvement in Eastern Europe and the South Caucasus. The offer of a closer relationship with Eastern neighbours is contingent upon partner countries converging with EU norms and standards. Effective regulatory approximation in the economic field is therefore critical to anchoring the reform process in partner countries and to fostering further progress in EU's relations with its Eastern neighbours. Against this backdrop, this briefing paper reviews the achievements to date in regulatory approximation in the economic field in Eastern Partnership countries. Deep and Comprehensive Free Trade Areas (DCFTAs) are a vital trade instrument for building up long-term economic relationships with eastern neighbours. They are likely to have a far-reaching influence on the reform process in partner countries. However, legal approximation and implementation of approximated legislation remain key challenges. The briefing highlights five major problems hindering legal approximation in the economic field: the complexity of the *acquis* to be adopted; institutional coordination; implementation capacities; costs of approximation and political sensitivity in partner countries. The briefing offers recommendations to improve the EU's approach so that DCFTAs could fulfill their potential.

This study was requested by the European Parliament's Committee on Foreign Affairs on the basis of a proposal by the Euronest Committee on 'Economic Integration, Legal Approximation and Convergence with EU Policies'.

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EXECUTIVE SUMMARY

With the launch of Eastern Partnership in 2009, the EU stepped up its involvement in Eastern Europe and the South Caucasus. The offer of a closer relationship with Eastern neighbours is contingent upon partner countries converging with EU norms and standards. Effective regulatory approximation in the economic field is therefore critical to anchoring the reform process in partner countries and to fostering further progress in EU-Eastern neighbours relations.

This briefing paper reviews the achievements to date in regulatory approximation in the economic field in four Eastern Partnership countries: Armenia, Georgia, Moldova and Ukraine.¹ The first section provides an overview of the state of play in these countries with an in-depth analysis of legal approximation in two sectors that the EU considers critical for DCFTA negotiations, i.e. sanitary and phyto-sanitary standards (SPS) and competition policy. The second section examines the impact of the Platform on economic integration in assisting partner countries in the approximation process. The paper concludes by identifying lessons learnt and offering recommendations to improve legal approximation in the economic field.

Main findings

Platform on economic integration and convergence with EU policies

From the scarce information available, it can be concluded that the Platform has had a limited impact in assisting the partners' legal approximation efforts so far. The factors that determine the Platform's impact are a result of the institutional format and the nature of the work that has been undertaken to date. Overall, the work of the Platform is essentially EU-driven. This is because the Platform has primarily sought to familiarise partner countries with EU requirements during the process of preparing for DCFTA negotiations. The Platform has undoubtedly contributed to a better understanding of EU requirements by a broad range of stakeholders. Yet this is only the first step in the approximation process. In the next phase (coinciding with the completion of DCFTA negotiations/the beginning of the DCFTA implementation), the Platform should be able to move on to activities that would enable partner countries (including the broadest possible range of stakeholders) to share their experiences and challenges.

Recommendations

Overall, DCFTAs are a vital trade instrument for building up long-term economic relationships with eastern neighbours. In order for DCFTAs to fulfill their potential, the EU's approach could however be improved with a view to facilitating legal approximation efforts and effective implementation of approximated legislation in partner countries.

Prioritisation of approximation

- Given that the DCFTAs are driven by a political rather than an economic rationale for the EU, key sectors of approximation cannot be prioritised on the basis of the European trade and investment interests. Rather, the EU should prioritise those spheres and degrees of approximation which are most relevant for a given country from a development point of view. When prioritising harmonisation requirements the EU should tailor its recommendations to partner countries'

¹ Negotiations on DCFTAs have not been launched with Azerbaijan (which is not a WTO member) and Belarus. Legal approximation with EU/international norms is limited in both countries, especially in Belarus. Therefore, this briefing will only provide a brief and general overview of the approximation process in these two countries.

needs and situation. The EU should prioritise those spheres and degrees of approximation which are most relevant for a given country from a development point of view.

Implementation of approximated legislation

- The EU should strive to involve more systematically civil society/businesses in its bilateral dialogue with partner countries and ensure that they are properly involved in the law-making process.
- There should be closer monitoring of implementation and greater efforts to promote dialogue at the political level between the EU and partner country governments in order to ensure the implementation of the legislation and coordination between relevant authorities (e.g. with responsibilities for State Aid rules).

EU assistance

- Given the lack of experts on key sectors of the acquis to be approximated, the EU needs to provide continuous support for and training of domestic experts to develop a system which can then be implemented by the domestic authorities.
- EU assistance has so far concentrated on supporting partner countries in the approximation process itself but it has also ought to help partner countries mitigate the negative effects of approximation, address the economic and social costs of alignment to EU standards and access EU markets more quickly.
- EU assistance on legal approximation should not be limited to state authorities, but ought to target a wider range of stakeholders. This broader support base is needed to ensure that implementation is not derailed by the vested interests of the economic actors who have benefited from the status quo.
- Projects targeting non-state actors should be developed under the ENI, particularly as funds allocated to neighbours will be larger than those under the ENPI. The EU should also seek to develop synergies with other donors that actively support civil society (e.g. SIDA) and the private sector (e.g. IFC, EBRD).
- Records of activities under the multilateral track should be made publicly available to the fullest possible extent.

List of abbreviations

AA	Association Agreement
CIB	Comprehensive Institution-Building Programmes
CSO	Civil Society Organisation
DCFTA	Deep and Comprehensive Free-Trade Areas
EC	European Commission
EaP	Eastern Partnership
EBRD	European Bank for Reconstruction and Development
EEAS	European External Action Service
ENI	European Neighbourhood Instrument
ENP	European Neighbourhood Policy
ENP AP	European Neighbourhood Policy Action Plan
ENPARD	European Neighbourhood Programme for Agriculture and Rural Development
ENPI	European Neighbourhood and Partnership Instrument
GATT	General Agreement on Tariffs and Trade
GOST	Gosudarstvennyi standart
HACCP	Hazard Analysis Critical Control Point
IFC	International Finance Corporation
IPR	Intellectual Property Rights
PCA	Partnership and Cooperation Agreements
SIDA	Swedish International Development Agency
SPS	Sanitary and phyto-sanitary standards
TACIS	Technical Assistance to the Commonwealth of Independent States
TBT	Technical Barriers to Trade
WTO	World Trade Organisation

1. INTRODUCTION

With the launch of Eastern Partnership in 2009, the EU stepped up its involvement in Eastern Europe and the South Caucasus. Through the EaP, it offers upgraded contractual relations, deeper economic integration, progressive visa liberalisation and enhanced sectoral cooperation. This offer of a closer relationship with Eastern neighbours is contingent upon partner countries converging with EU norms and standards. To belong to deep and comprehensive free-trade areas (DCFTA), in particular, requires partner countries to adopt legally binding commitments on regulatory approximation in trade-related areas. In return, the EU believes that legal approximation will 'contribute to the modernisation of the economies of the partner countries', while also paving the way for increased market access and enhanced movement of goods, capital and services.²

Effective regulatory approximation in the economic field is therefore critical to anchoring the reform process in partner countries and to fostering further progress in EU-Eastern neighbours relations. The Eastern Partnership summit which will take place in Vilnius in November 2013 will be a major milestone in assessing progress toward economic integration. While talks on an Association Agreement including a DCFTA were completed with Ukraine in 2011, DCFTA negotiations with Armenia, Georgia and Moldova should be 'well advanced, if not finalised'³ by November 2013.

This briefing paper reviews the achievements to date in regulatory approximation in the economic field in four Eastern Partnership countries: Armenia, Georgia, Moldova and Ukraine.⁴ The first section provides an overview of the state of play in two sectors that the EU considers critical for DCFTA negotiations, i.e. sanitary and phyto-sanitary standards (SPS), and competition policy.⁵ The second section examines the impact of the Platform on economic integration and convergence with EU policies in assisting partner countries in the approximation process. The paper concludes by identifying lessons learnt and offering recommendations to improve legislative approximation in the economic field.

In terms of methodology, the paper triangulates a variety of sources to accurately gauge the degree of alignment with EU norms in terms of both the adoption of legislation and the actual implementation of policy. It examines the degree of legal approximation through the prism of:

- key EU policy and assistance documents which have structured the ENP and the Eastern Partnership since their creation, e.g. the ENP's Action Plans, Country Progress Reports published annually by the European Commission, the bilateral and multilateral Roadmaps to the Vilnius Eastern Partnership summit, assistance documents under the European Neighbourhood and Partnership Instrument (ENPI);

² European Commission, *Eastern Partnership*. Communication to the European Parliament and the Council, COM (2008) 823 final, 3 December 2008, pp. 4-5.

³ European Commission/High Representative of the European Union for Foreign Affairs and Security Policy, Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, *Eastern Partnership: A Roadmap to the Autumn 2013 Summit*, JOIN (2012) 13 final, 15 May 2012, p.5.

⁴ Negotiations on DCFTAs have not been launched with Azerbaijan (which is not a WTO member) and Belarus. Legal approximation with EU/international norms is limited in both countries, especially in Belarus. Therefore, this briefing will only provide a brief and general overview of the approximation process in these two countries.

⁵ These are among the key regulatory areas for which the EC issued recommendations specifying the reforms to be undertaken prior to the launch of DCFTA negotiations. Other areas include: TBT, customs administration, rules of origin, IPR, and public procurement. SPS and competition were selected for an in-depth analysis because these areas, together with TBT, are 'likely to be the most sensitive' (Movchan and Shportyuk 2012, p.23) both during DCFTA talks and in subsequent implementation. This is because of the gap between far-reaching EU requirements and the weak degree of approximation (prior to DCFTA talks) in sectors that have heavily been affected by Soviet legacies and post-Soviet transformations.

- neighbouring countries' policy documents in selected sectors, e.g. sector strategies and action plans;
- 80 semi-structured interviews conducted by the authors with EU and local officials in Armenia, Georgia, Moldova and Ukraine in 2011-2013 in the framework of a French-UK research project.⁶

⁶ "Exploring the EU's Impact on Domestic Change in the Post-Soviet Space", co-funded by the Agence Nationale de la Recherche (ANR)/Economic Social and Research Council (ESRC).

2. THE CURRENT POSITION AND GENERAL ASSESSMENT OF THE LEGAL APPROXIMATION PROCESS IN TWO KEY SECTORS IN EASTERN PARTNERSHIP COUNTRIES

2.1 A background to the approximation process

In theory, the process of Eastern partners' legal approximation related to trade should have started with WTO accession, i.e. before the DCFTA negotiations. **WTO membership of the partner country is a prerequisite for all the DCFTAs**, as the countries are required to undergo a legal upgrade to comply with WTO rules. However, in practice this only happened in Ukraine to some extent. Because of their very low importance in terms of trade, Moldova, Georgia and Armenia were required to demonstrate limited compliance with WTO regulations, mostly related to elimination of tariff barriers to trade, prior to and following the accession to WTO. In other aspects, WTO membership has had only a limited impact on the reduction of non-tariff barriers to trade in the eastern neighbours.

Until the launch of the DCFTA negotiations, EU instruments (the PCA, ENP Action Plans) were instrumental in **familiarising partner countries with EU regulations**, yet they remained largely **inconsequential for domestic change**. This is because the key documents governing the EU's relations with the partner countries, such as the PCA and the Action Plan, are ambitious and comprehensive in scope yet at the same time rather vague. Even though the ENP Action Plan was more detailed than the PCA, it remained a fairly generic document with vaguely-worded and numerous priorities for action. This left not only considerable room for countries to decide the scale and timing of their voluntary convergence but also informational lacunae with regard to priority areas, timelines or sources of rules.

DCFTA represents a fundamental shift in the EU's approach. The EU modelled its strategy on the legal approximation of the pre-accession agreements from the 1990s. However, this is very general modelling. There has been no ENP/neighbourhood equivalent of the 1995 'White Paper on the Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union', which would spell out the scope and sequence of integrating the ENP partners into the single market. The lack of a strategy is surprising given the wide gap in the regulatory framework of the partner countries.

This lack of an overarching EU strategy for approximation may be explained by the fact that the offer of deep economic integration through DCFTA is extended to the partner countries **primarily for political reasons**. Partner countries, such as Armenia, Georgia and Moldova and even Ukraine⁷ are simply too insignificant economic trade partners for the EU to justify the conclusions of such agreements (in contrast to countries such as South Korea). **Based on purely economic criteria, the EU has little interest in concluding DCFTAs with those countries**. Georgia, for instance, accounts for 0.1% of the EU's exports⁸. In addition, trade flows with some partner countries are shrinking. Trade with Ukraine has dwindled since 2011 as has trade with Armenia over the last five years.⁹ It is also worth pointing out that the political elites in these countries perceive relations with the EU first of all from political and security perspectives, rather than in economic terms.

⁷ In 2011 Ukraine accounted for 0.9% of EU imports and 1.4% of EU exports. Source: DG Trade, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_111613.pdf

⁸ Source: DG Trade, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_111507.pdf

⁹ Source: DG Trade, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_111471.pdf

The experimental character of the EU's strategy is evidenced by its two-step approach to conditionality. While this was not the case with Ukraine, the EU introduced conditionality with Armenia, Georgia and Moldova prior to launching DCFTA negotiations. This suggests that the EC realised that a two-step approach in legal approximation was necessary in order to facilitate the negotiations and to increase the chances of the DCFTA being fully implemented. Ukraine which was first to open the negotiations in 2008 was not required to fulfill any preconditions and subsequent DCFTA negotiations proved particularly tough. As will be argued below, the introduction of conditionality with Armenia, Georgia and Moldova accounts for the acceleration of legal approximation even though the process remains incomplete in all the partner countries.

Background to the approximation process in the food safety area

In the sphere of SPS, as in many other economic fields, Eastern partners share legacies inherited from the Soviet era, above all, the system of GOST (*Gosudarstvennyi standart*). While it provided for some degree of regulation of food safety, the GOST was bureaucratic and costly. It deeply differed from WTO-compliant standards in that it relied upon a prescriptive approach and focused on end product certification and control. In addition, because they were not recognised by market economies, GOST food safety standards mean that post-Soviet countries struggled to penetrate other markets. Needless to say, the collapse of the Soviet Union and the subsequent economic breakdown hampered its effective application.

The requirement to approximate to EU SPS standards was introduced by the Partnership and Cooperation Agreements that entered into force at the end of the 1990s. SPS provisions were however vague and did not entail concrete obligations. The ENP Action Plan as well as Autonomous Trade Preferences granted by the EU further facilitated convergence with international and EU standards. Yet, the ENP AP combined general statements and very specific requirements which however were not legally binding commitments on the part of partner countries. For instance, the ENP AP signed with Ukraine envisaged 'progress in convergence with EU food traceability legislation; general food safety principles and requirements (Regulation (EC) No 178/2002)', i.e. broad provisions were outlined without any specifications as to the degree of approximation to be reached. The ENP AP also required Ukraine to 'effectively implement the Hazard Analysis Critical Control Point system at enterprises and controlling bodies', something which the country has only recently started to apply. Whereas the ENP AP gave a further impetus to review food safety systems and identified steps to be taken for further convergence with EU standards, in practice the legal and regulatory approximation taking place in Ukraine was patchy.

The systematic approximation with SPS standards started only once negotiations for the creation of DCFTA commenced. Under the DCFTA scheme, the EU requires legal approximation in Partner countries with the general food safety principles (Regulation (EC) No 178/2002) reflecting the Union's 'farm-to-table' approach and stance on the 'hygiene package'.¹⁰ The DCFTA also requires partners to adopt best institutional practice whereby a single agency bears responsibility for animal health and food safety inspections. Finally, it requires the introduction and implementation of the HACCP system which relies upon a systematic prevention approach to food safety and can be used at all stages of the food chain. The creation of a DCFTA is thus contingent upon very significant approximation to EU

¹⁰ Regulation (EC) No. 852/2004 on the hygiene of foodstuffs; Regulation (EC) No. 853/2004 laying down specific hygiene rules for food of animal origin in order to guarantee a high level of food safety and public health; Regulation (EC) No. 854/2004 putting in place a Community framework of official controls on products of animal origin intended for human consumption.

norms and standards in the SPS sphere in partner countries. Clearly, while such approximation will ultimately confer noteworthy benefits on partner countries in terms of gaining access to EU food markets, convergence is particularly costly for EaP countries.

Background to the approximation process in the State Aid area

Under the centrally administered economy and state ownership, enterprises within the Soviet Union constituted part of the state. This established the premise that governments are responsible for bailing out failing enterprises. The result is a legacy whereby financial state support for economic entities is deemed normal and acceptable. Against this background, the very concept of State Aid (i.e. that it is a discrete, distinct and exceptional function of the state rather than standard practice) and a system for its monitoring, including setting up independent authorities, had to be introduced *ab initio* in the eastern partner countries. Indeed, while in the 1990s most countries adopted laws aimed at protecting competition and established anti-monopoly/competition protection authorities, the regulation of State aid lagged behind.

The PCAs included a clause related to State Aid. For example, Article 49 of the EU-Ukraine PCA stated that: '...The Parties shall refrain from granting State aid favouring certain undertakings or the production of goods other than primary products as defined in the GATT, or the provision of services, which distort or threaten to distort competition in so far as they affect trade between the Community and Ukraine'. However, such vague approximation clauses proved to be inadequate in triggering domestic change or stimulating the regulation of State Aid in the post-Soviet countries.

The ENP Action Plans proved to be the first such stimulus. Despite being based on soft-law, the Action Plans included more detailed requirements with regard to regulation of State Aid.¹¹ Furthermore, under the ENPI, also targeted assistance to support approximation on State Aid was provided (through Twinning projects), with EU experts being involved in the process in all the countries. In those states which made the most significant process (such as Moldova and Ukraine) the role of EU assistance and expertise was crucial in the development of draft legislation.

It was as a result of the negotiations on the DCFTA, together with the effects of assistance, that progress was made. In those countries which were confronted with pre-conditions for opening negotiations, such as Moldova and Georgia, relatively fast progress was made in a short period in terms of preparing a strategy for approximation to the EU standards. This subsequently facilitated the passage of laws.

However, it could be argued the approach to approximation in the context of the DCFTA hinders the emergence of cost-effective, efficient and politically-acceptable regulation of State Aid in the partner countries.

¹¹ For example, the Armenia-EU Action Plan of 2006 stated that Armenia should aim for introducing 'full transparency regarding State Aid' by developing a list of state aid grantors, developing a state Inventory of State Aid, i.e. a centralised monitoring on amount, type and recipients of State aid; enhancing appropriate capacity and powers of enforcement of a state body monitoring State Aid.

2.2 Current degree of approximation in partner countries

Armenia

While Armenia has only recently started converging with EU requirements, significant progress has already been achieved in a number of areas, e.g. SPS, TBT and IPR.¹² Concerning **technical barriers to trade**, Armenia adopted in February 2012 four laws on technical regulation, standardisation, accreditation and uniformity of measurements, as well as implementing regulations for the reform of the standardisation and accreditation bodies in line with EU practices. Substantial progress has also been achieved on **intellectual property rights**, with the creation of a new Unit on Intellectual Property Rights enforcement and of a Trademark Association.

In the **food safety** area, laws 'On food safety', 'On Veterinary Practice', 'On Phytosanitary Standards', as well as numerous subordinate normative acts, have recently been adopted. An intergovernmental working group, composed of food safety, veterinary and phytosanitary experts, has been established to ensure further approximation of national legislation with EU requirements (Governmental Decree N 711 of 26 July 2011). A major step in meeting EU requirements was the establishment by governmental decree of a State Service for Food Safety in December 2010, replacing previous bodies and creating a single authority as required by the EU. The establishment of the State Service for Food Safety triggered reforms in the area. A food safety strategy and the related action plan for its implementation was drafted in 2011 in close cooperation with EU experts and in consultation with DG SANCO and DG Trade. Further efforts are needed to pursue approximation and build the capacities of laboratories.

Armenia was one of the eastern partner countries which included provisions on **State Aid** in its domestic legislation prior to the launch of the DCFTA. Although the law on Protection of Economic Competition included art. 16-1 on 'State Aid and Its Prohibition', it was too general to provide a legal basis for controlling and monitoring State Aid in line with the EU requirements. The legal basis therefore still needs to be developed. As in other countries, the key body driving legal approximation is the competition authority - the State Commission for the Protection of Economic Competition. The twinning project on 'Competition and State Aid' which operated during 2011-12 provided significant support to Armenia in terms of drafting, especially given the very limited domestic expertise on the subject. However, unlike in other countries where similar assistance projects existed, in Armenia the draft law was not approved during or immediately after the end of the twinning project.

Azerbaijan

Approximation with EU and international standards is patchy and rather limited in Azerbaijan. The country has recently worked towards approximation with WTO-**SPS** and Codex Alimentarius rules, e.g. by making the work of its laboratories more rigorous. Some progress was also achieved in legal approximation in the area of **intellectual property rights**. A law on enforcement of IPR and on combating piracy was adopted in May 2012. However, no progress was made in other key areas, e.g. **competition**. Negotiations for WTO accession, a prerequisite to the launch of DCFTA negotiations,

¹² According to the EC 2012 Progress Report, "Armenia made substantial progress in implementing the key recommendations for the launch of negotiations on a Deep and Comprehensive Free Trade Area, in particular legislative and institutional reforms in the areas of Technical Barriers to Trade (TBT), Sanitary and Phyto-sanitary Standards (SPS) and Intellectual Property Rights (IPR)". Implementation of the European Neighbourhood Policy in Armenia Progress in 2011 and recommendations for action, SWD(2012) 110 final, 15 May 2012.

need to be revived. Overall, Azerbaijan seems interested in selective convergence with EU rules and a sector-based agreement rather than a deep and comprehensive free-trade area.

Belarus

While Belarus applied for WTO membership in 1993, progress has been hindered by a lack of political commitment. Structural reforms are stagnating and the abolishment of the 2011-2013 privatisation list even suggests a retreat in the privatisation process. Clearly, Belarus has chosen a different statist economic model and this is a major obstacle to its approximation to EU trade-related rules.

Georgia

The approximation process has been chaotic in Georgia. Despite the country's stated ambitions to pursue closer relations with the EU, EU norms failed to resonate in a country whose reform process was grounded in a very liberal and de-regulative approach. The new authorities seem however determined to follow the EU's template for modernisation and to comply with EU requirements since the elections in the autumn of 2012.

The food safety area offers the best illustration of the country's resistance to EU norms under the previous government. While in 2005 the country adopted a Food Safety law in line with international standards, core articles of the law were suspended (most noteworthy being those on food inspection) in 2006-7. The preconditions imposed in the SPS area to open DCFTA negotiations have clearly framed policy developments in the sector since 2009. As a result, Georgia now complies with the key EU requirements. The status of the body in charge of food safety was upgraded from that of a state service to that of a state agency, and allocated resources from the national budget; the Agency was also restructured with a view to unifying the fragmented bodies into a single entity. A comprehensive Strategy and Legislative Approximation Programme in the Sphere of Food Safety was prepared in consultation with DG Trade and approved in December 2010. The country also adopted a new Food Safety, Veterinary and Plant Protection Code in May 2012. A series of government resolutions were adopted between 2010 and 2012 to comply with the EU's hygiene package. The previously suspended articles of the Law on Food Safety and Quality, namely those related to the registration of food business operators and implementation of inspections, are now being implemented.¹³

The development of State Aid rules was clearly driven by the pursuit of closer relations with the EU. Nevertheless, Georgia favours a minimalist system of state regulation. In contrast to other partner countries, there is no special law regulating State Aid in Georgia. Instead, the law on 'Free Trade and Competition' adopted in 2012 covered issues related to State Aid, conferring on the Competition Agency the authority to issue an opinion on whether individual cases of State Aid are compliant with the Law. On the basis of such opinions, the Government of Georgia then makes a decision as to whether or not to grant State Aid. However, the law in many respects diverged from the requirement of independent monitoring of State Aid. Following the elections of 2012, a new draft law, fully compliant with key EU requirements, is being prepared but its adoption, together with secondary legislation, let alone implementation will be a lengthy process.

While progress has been achieved in technical regulations (with the adoption of a Code on product safety and free movement of goods in May 2012, in line with EU regulations), intellectual property rights remains a major issue in Georgia.

¹³ Registration of food business companies began in February 2010, inspection of food business operators commenced a few months later and fines for violating food safety requirements were enacted in 2011.

Moldova

In Moldova, the launch of the EaP coincided with the election of a strongly pro-European government in 2009. This gave a strong impetus to the approximation process.

Technical barriers to trade have significantly been reduced, including recent amendments to the laws on standardization and metrology and the entry into force on the law on accreditation and conformity assessment.

Given the contribution of food products to the country's foreign trade, convergence with EU sanitary and phyto-sanitary standards is particularly important to Moldova. In October 2011 the country adopted a food safety strategy for 2011-2015, which includes the establishment of a food safety authority and a plan for approximation with EU standards. All agri-food control bodies are subsumed into the new food safety authority, which thereby assumes responsibility for the entire food chain. This is fully in line with the EU food safety strategy and legislation. Nonetheless, Moldova needs to fully implement its Strategy¹⁴ and key elements of the EU's approach (i.e. responsibility of producers and controls via the HACCP system) have yet to be introduced.

Concerted efforts to bring Moldova's State Aid regulation in line with EU requirements were made in the context of the DCFTA negotiations. This process benefitted from targeted assistance, such as the 'Support the Implementation of Competition Policy and State Aid to Moldova' twinning project. The Law on State Aid was adopted in August 2012 and will enter into force in August 2013. The law vested the powers to oversee State Aid with the National Agency for Protection of Competition (i.e. the competition authority). Also some practical steps were taken for creating an inventory but implementation remains a challenge for the future.

Ukraine

Ukraine is undoubtedly a pioneer in terms of legal approximation in the Eastern neighbourhood. The country's size and population make it a relatively important market for the EU, too. Yet, approximation is hindered by the complexity and fragmentation of the decision-making process. In addition, worrying trade-related developments were recently noted, e.g. Ukraine's decision to modify import tariffs for a large number of agricultural and industrial products, the raising of customs tariffs resulting from the adoption of a new Law in November 2012 and the deterioration of intellectual property rights protection and enforcement.

Amongst Eastern partners, Ukraine has the greatest potential to export (e.g. dairy, meat, cereals, fruits) to the EU market. However, the country's complex and outdated legal regulations are major obstacles to exploiting its full agricultural potential. For example, while the current Food Law requires HACCP implementation, only 1% of the 20,000 Ukrainian food enterprises (i.e. 200) apply the HACCP system.¹⁵ This is because the private sector's capacity to effectively implement HACCP has not been adequately taken into account in the law. In addition, there is no single agency in charge of food safety and animal health inspections. Responsibilities are currently scattered over six bodies and the Food Law does not provide for overall coordination of monitoring activities. New laws have been

¹⁴ European Commission/High Representative of the European Union for Foreign and Security Policy, Implementation of the European Neighbourhood Policy in Moldova. Progress in 2011 and recommendations for action, SWD(2012) 110 final, 15 May 2012.

¹⁵ Source: IFC, project "Ukraine Food Safety: Improving standards to enhance competitiveness", http://www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/sustainable+business+advisory+services/project+examples/sba-project-ukrainefs accessed 14 March 2013.

drafted with EU support, though they have yet to be adopted.¹⁶ As indicated by the 2013 Joint Progress Report, 'Ukraine is preparing a food safety strategy and a list of SPS legislation to be approximated with EU standards. Laws on food safety, official controls, veterinary checks, novel food, hygienic production and animal feed are in preparation'.

With its accession to the WTO in 2008, the importance of regulation and monitoring of State Aid acquired greater prominence in Ukraine. The Anti-Monopoly Committee, with EU assistance, has taken a leading role in drafting relevant legislation. The draft law on State Aid was submitted to the Cabinet of Ministers in the summer of 2012 and in February 2013, the Cabinet of Ministers of Ukraine approved the draft law 'On State Aid to Economic Entities'. Moreover, in March 2013 the Cabinet of Ministers of Ukraine adopted a resolution on the 'Approval of the Action Plan with regard to the Institutional Reform' in the sphere of monitoring and control of State Aid. This specifies the institutional, legal and organisational actions required to create a transparent system aimed at limiting the negative impact of State Aid on competition and international trade. In particular, the Action Plan, with detailed measures related to the requirements of the EU, has been made public and specifies the timeline for the implementation of specific provisions (it runs from 2013 to 2020).

In sum, partner countries had made limited progress in legal approximation until the opening of negotiations on the DCFTA. However, those negotiations triggered noteworthy progress particularly with regard to the drafting and passing of laws - the provision of targeted assistance was of pivotal importance in delivering this progress. Yet, overall, the pace of approximation is slow.

2.3 An assessment of the issues encountered in the approximation process

1. Complexity of the system

The intricate and dynamic system of EU rules was developed for market economies and is not easily transposed to the eastern partner countries, given their political, economic and administrative context. In addition, the *acquis* is a **fast-moving target** that eastern partners are finding difficult to gauge let alone follow. For example, the EU State Aid *acquis* is among the most challenging for EU Member States, candidate countries and third countries, including those covered by the Eastern Partnership to adhere to. While the difficulties are primarily political (owing to a loss of sovereignty in industrial policy and aspects of tax policy), there are important economic and administrative factors that complicate State Aid regulation and consequently the extent to which the authorities are willing or able to adhere to any commitments. The situation is exacerbated by the fact that the *acquis* itself is evolving rapidly. For instance, a second round of state aid reform has now been initiated under the *State Aid Modernisation* programme launched by the European Commission in May 2012.

2. The decision-making process and institutional issues

Institutional coordination is a significant problem in all partner countries, although for different reasons. For instance, in Ukraine institutional fragmentation, unclear responsibilities and the vested interests of domestic bodies involved in the SPS area are major obstacles in the reform process. In Georgia, the centralisation of the decision-making process within the Prime Minister's Office until 2012 elections deprived the approximation process of the input of line ministries and expert bodies. For instance, the Prime Minister's Office bypassed the Ministry of Agriculture when drafting the food safety strategy. (This problem may be alleviated through EU-funded CIB Programmes, which are

¹⁶ The draft Law on Food Safety was registered in the Ukrainian Parliament at the end of May 2012. Another law was drafted on official controls and veterinary checks.

likely to empower sectoral bodies and line ministries involved in key areas of the approximation process and bring them into the decision making process). In addition, the lack of significant consultation with and involvement of businesses and civil society in the law-making process undermines the effective implementation of approximation legislation, as illustrated by Ukraine's poor record in applying the HACCP system.

Another issue in the approximation process is **the distribution of power among government bodies**. While the institutional framework for regulation of State Aid varies considerably in the EU Member States, in the partner countries the Commission has required that the competencies are vested with the competition authorities. This requirement is however at odds with the political and institutional set up in the partner countries. In Georgia, Armenia, Ukraine and Moldova, the adopted or draft law proposes that the competition authorities act as the key body with regard to enforcing State Aid rules. This basically replicates the basic provisions of EU legislation and makes the role of the competition authorities similar to that of the European Commission (EC). However, in contrast to the EC, the competition authorities are not supranational bodies – they contribute to national state policy formation. Therefore insufficient consideration has been given to the distribution of power among relevant government bodies. The eastern partner countries face particular difficulties in trying to replicate the unique regulatory role of the European Commission in domestic law, policy and administration, as an EU-type institutional entity does not fit with easily the domestic institutional frameworks in partner states. In many respects, a transitional model, involving the competition authorities and the Ministry of Finance and/or the Ministry of Economy would be more appropriate from a political and administrative point of view. This suggests the need for a more context-specific solution rather than direct application of EU templates by the Commission. Overcoming this difficulty will be essential if the implementation of regulation of State Aid is to be successful.

3. Implementation Capacity

Clearly, institutions in key areas of approximation are constrained by **highly limited administrative capacity**. In Armenia, the Food Safety State Service was staffed with 194 people (both in Yerevan and in the regions) at the end of 2011, of which only 5 were responsible for controlling food safety and quality inspection. In addition, staff training has not been completed in all countries.

In this context **EU assistance is crucial** if partner countries are to meet DCFTA requirements. In Georgia, a Twinning project was initiated to provide SPS training for veterinary and phyto-sanitary border inspectors. In Armenia, advice delivered by a group of EU advisors played a key role in the country's initial progress in legal approximation to EU food safety standards. A twinning project 'Strengthening of Food and Feeding' was launched in 2012 to reinforce the legal approximation and institutional reform processes.

The challenge is also to strengthen the administrative capacity of key institutions (e.g. competition authorities overseeing State Aid in all countries) **not only per se, but also in terms of their standing vis-à-vis other state bodies**, such as the Ministries of Finance. Only this is likely to ensure effective cooperation. In particular, there is a real need to bolster their expertise on the vast and fast-changing regulation on State Aid. While legislation was prepared with support from EU-funded experts, with the exception of Ukraine, there are few competent national experts. Indeed, resources are also required for training and awareness raising in other state agencies and business actors in the partner countries.

4. Costs of approximation

There has been no detailed assessment of costs of legal approximation due to a number of inherent difficulties. Legal approximation in the Eastern Partnership countries is voluntary and the degree of

approximation is to reflect the countries preferences and capacities. However, in practice the DCFTA envisages wide-ranging and far-reaching approximation, with the partner countries required to be aligned with 80-90% of the *acquis*.¹⁷ However, until the completion of the Association Agreement, the actual scope of approximation envisaged by specific DCFTAs – and resulting costs - is not yet known. Moreover, the costs of approximation are borne not only by state authorities but also non-state actors (especially, business). It is estimated that during enlargement around half of the overall costs of legal harmonisation was incurred by non-state actors, who needed to adjust to new regulations (e.g. SPS standards). The costs of implementing the DCFTA are likely to be prohibitively high for the partner countries, given their considerably lower level of development than the EU average. These costs are not reflected in the current level of assistance. For instance the Armenian Ministry of Finance estimated the cost of the Food Safety Action Plan alone at €16 million for the state budget, as compared to the estimated €1.93 bn annual State budget expenses in total for 2012. This is one sector only and does not encompass all the costs envisaged in the DCFTA.

5. Political sensitivity

EU-induced reforms require partner countries to **bear significant economic and social costs** which governments cannot fail to take into account, as shown by the example of agriculture (a key economic sector in partner countries). For instance, in Georgia, the authorities left artisan production and the food processing sector (which plays a key role in Georgia's agricultural system) beyond the scope of the law on Food Safety and Quality adopted in 2005. And according to the food safety strategy adopted in 2010, articles of food safety legislation which were suspended will only be implemented gradually. It is therefore crucial for the EU to be flexible and to tailor its requirements to the socio-economic situation in each partner country. At the same time, the EU should also ensure that key requirements, e.g. on inspection,¹⁸ are effectively implemented.

Another example is the implementation of the rules on competition and State Aid that infringes on the **vested interests of powerful business players**, who have a strong and influential presence in government and/or parliament.¹⁹ The competition authorities are not unaware of these realities. So, rather than confront powerful business actors linked to government, they are likely to follow a modest gradual step-by-step strategy and focus on increasing their staffing levels, develop secondary legislation, await clarification on new EU rules and carry out preliminary work etc. Therefore, it is indispensable that in all partner countries the competition authorities are equipped with sufficient authority to control and monitor competition and State Aid. This involves having access to

¹⁷ See, for example, Alexander Duleba, Vladimír Ben and Vladimír Bilčík, *Policy impact of the Eastern Partnership on Ukraine: trade, energy, and visa dialogue* (Research Center of the Slovak Foreign Policy Association 2012), p. 78.

¹⁸ Inspection has been a bone of contention between the EU and Georgia, owing to the country's liberal economic model. In 2006-7 Georgia suspended provisions of the food safety law related to inspection. While it has started controlling food business operators in 2010 and imposing fines in 2011, the scale of testings is still very limited.

¹⁹ For example, in Armenia, the dominance of the powerful commodity-based cartels or monopolistic entities, commonly referred to as oligarchic groups' which have extended their influence to the political arena (See (BTI Report, 2012: 2). As early as 2008, the State Commission for the Protection of Economic Competition named some 60 companies having 'dominant positions', many of which receive direct or indirect state aid, but the Commission has not been able to address the issue. The fact that many of these monopolies are closely linked with the Armenian authorities appears to inhibit the adoption and implementation of State Aid rules in Armenia. Similarly, in Ukraine, the powerful business groups can influence the prospect of the draft law adopted by the Ukrainian government once the law is tabled in Ukrainian parliament (it is worth noting that the parliament did strike down two previous draft laws attempting to regulate State Aid during 2000s).

information from other state bodies, the power to impose significant penalties and recover of unauthorised State Aid.

2.4 Likely trends

Legal challenges remain considerable in all partner countries. Regarding State Aid, only Moldova has a special law in place whereas in other partners countries, drafts were either not passed by parliament (e.g. Ukraine) or even submitted to the government (e.g. Armenia). However, the key challenge will be the actual implementation of the legal framework, which will rely on the political will of respective governments to bear the related political and economic costs of taking control of hitherto unregulated competition and State Aid. The further provision of assistance, especially twinning experts, is crucial to progress in approximation. Therefore, the introduction of State Aid rules will most likely depend on the position of the EU with regard to the relevant obligations of the partner countries under the DCFTA. At the same time, however, due to the lack of knowledge, institutional weakness and numerous gaps and loopholes in domestic legislation, the EU must balance possible political pressure with adequate technical assistance. It is important that the EU promotes institutional solutions which are most attuned to the context of the country and hence likely to result in approximation.

Upon completion of DCFTA negotiations, **implementation of approximated legislation** is likely to remain a major challenge in most countries. This is because of **the cost-benefit disparity**, i.e. the high costs incurred by partner countries in the short term and the benefits they may gain from access to EU markets in the long term. It is therefore unsurprising that Russian and CIS markets are attractive alternatives as no far-reaching reform is required on the part of Eastern partners in order to gain or maintain access to these markets. Owing to the temptation on the part of partner countries to adopt a short-term perspective, it is therefore crucial that the EU adequately monitors the effective implementation of approximated legislation in the SPS area by going beyond the use of mechanisms foreseen under the agreements and engaging partner countries in continuous dialogue. It is also imperative that the EU effectively supports partner countries (e.g. through ENPARD) to gain quicker access to EU markets.

3. AN ASSESSMENT OF THE WORK OF THE PLATFORM ON ECONOMIC INTEGRATION AND CONVERGENCE WITH EU POLICIES AND ITS IMPACT IN ASSISTING THE PARTNERS' EFFORTS

Under the Eastern Partnership, the multilateral track is envisioned as **complementary to bilateral relations** between the EU and each partner country. In essence, legal approximation is a national exercise. Therefore, activities under this Platform are designed to support and accompany the bilateral dialogue and negotiation in the economic field.

The Platform on economic integration and convergence with EU policies provides a framework within which challenges related to regulatory approximation can be addressed.

It pursues four core objectives in this area:

- To assist partners in their efforts concerning trade- and trade-related regulatory approximation and enhancing the administrative capacity-building process,
- To support partners in their efforts to enhance economic relations and business environment which is conducive to investment and to SME development,
- To contribute to the creation of a bilateral network of DCFTAs among the Partner Countries,
- To strengthen traditional trade links, in particular business-to-business contacts to step up trade in goods and services among partners¹²⁰

From the scarce information available,²¹ it can be concluded that the Platform has had **a limited impact in assisting the partners' legal approximation efforts so far**. The factors that determine the Platform's impact are a result of the institutional format and the nature of the work that has been undertaken to date.

To some extent, the Platform's operational structure is still developing. While the Platform first met in June 2009, panels supporting its work were created in November 2009 (specifically, the panel on trade-related regulatory approximation linked to DCFTAs), in 2010 (the panel on SME policy) and in October 2011 (the panel on transport). Participants include partners' ministries and institutions working in the areas concerned. Industrial stakeholders and professional organisations can participate as well, provided they are identified by partners' delegations – a condition which raises major issues with respect to the effective inclusion of economic and social stakeholders by partner countries' authorities. Whereas the EaP Civil Society Forum was initially involved on a case-by-case basis in the Platform's activities, it is now a permanent participant. Nonetheless, the working group on economic integration set up by the Forum follows a slightly different agenda as compared to the Platform's work programme since it prioritises economic and social development issues over legal approximation.²²

The Platform on economic integration is not exclusively dedicated to convergence with the EU trade-related *acquis*. It covers a broad range of topics, including other regulatory approximation, macro-

²⁰ Eastern Partnership, Platform 2 on Economic Integration and Convergence with EU Policies, Core objectives and proposed Work Programme 2009-2011. Cf. http://eeas.europa.eu/eastern/platforms/docs/platform2_151109_en.pdf accessed 10 March 2013.

²¹ While the objectives and successive work programmes of the Platform are publicly available, minutes of the Platform meetings are not disclosed. Brief summaries of panel meetings are only published on an ad-hoc basis. Cf. http://eeas.europa.eu/eastern/platforms/index_en.htm accessed 10 March 2013.

²² Civil Society Forum, Working Group on Economic Integration, Cf. <http://www.eap-csf.eu/en/working-groups/wg2-economic-integration/> accessed 12 March 2013.

financial cooperation, socio-economic development, regional economic cooperation, and cooperation on the environment, climate change and transport. While the scope of activities could have undermined the consistency of activities developed under the Platform and their effectiveness, the successive work programmes (2009-11 and 2012-13) have clearly prioritised trade-related regulatory approximation with a view to assisting partner countries in their approximation efforts. SPS, public procurement, technical regulations and standards were identified as key priorities for cooperation both under the Platform and the Trade panel for 2009-2011.

The areas of cooperation identified under the Platform 'should be of interest to *all* partners' (2009, p.5). However, only four countries have started (and completed, in the case of Ukraine) negotiations for a DCFTA. While the objective of establishing a DCFTA forms an integral part of the association agreements proposed to Eastern partners, the two remaining countries, Azerbaijan and Belarus, are not likely to open negotiations in the near future. Such a two-speed economic integration process undoubtedly affects the work of the Platform, although the lack of information makes it difficult to know whether it limits its impact or whether it is beneficial insofar as it helps the laggards at least become familiar with the EU trade-related *acquis*.

Since 2009, the work of the Platform has been adjusted to take into consideration progress achieved under both the bilateral and multilateral tracks of the EaP. For instance, the range of activities carried out under the Trade panel has been substantially broadened. While the panel initially focused on explaining the *acquis* in selected key sectors,²³ it has now been broadened to include exchanges of information and experience between partner countries and the EU. However, given the lack of available information, it is not possible to assess whether the sharing of best practice, is effectively used by partner countries. The Trade panel also promotes the participation of the business community in the DCFTA process. The first business-to-business meeting was organised in 2010, involving representatives from businesses from Eastern partner countries and from the EU.²⁴ Yet, again it is difficult to assess the extent to which such initiatives have effectively resulted in greater participation of the business community in the DCFTA process and sustained trade links between the partners and the EU, a core objective of the Platform.

Overall, the work of the Platform is **essentially EU-driven**. This is because the Platform has primarily sought to familiarise partner countries with EU requirements during the process of preparing for DCFTA negotiations. The Platform has undoubtedly contributed to a better understanding of EU requirements by a broad range of stakeholders.²⁵ Yet this is only the first step in the approximation process. In the next phase (coinciding with the completion of DCFTA negotiations/the beginning of the DCFTA implementation), the Platform should be able to move on to activities that would enable partner countries (including the broadest possible range of stakeholders) to share their experiences and challenges.

²³ This objective was planned to be achieved by the end of 2011. Cf. Platform 2 "Economic Integration and Convergence with EU Policies, Work Programme 2012 – 2013, p.5, http://eeas.europa.eu/eastern/platforms/2012_2013/docs/work_programme_2012_13_platform2_en.pdf accessed 11 March 2013.

²⁴ Cf. <http://www.eap-csf.eu/en/news-events/news/first-business-to-business-meeting-of-the-eastern-partnership-trade-panel/> accessed 11 March 2012.

²⁵ The EU has sought to promote business-to-business meetings and involve chambers of commerce in specific events organised under the Trade panel. Cf. 7th Eastern Partnership Panel on Trade and Trade Related Regulatory Cooperation linked to DCFTAs, Brussels, 30 March 2011, http://eeas.europa.eu/eastern/docs/2011_03_dcftas_en.pdf accessed 11 March 2013.

4. PROPOSALS TO THE EURONEST ECON COMMITTEE ON HOW TO IMPROVE LEGISLATIVE APPROXIMATION IN THE ECONOMIC FIELD IN PARTNERSHIP COUNTRIES

Main findings

The initial approach developed within the European Commission to deepen economic integration with eastern neighbours was both gradual and tailor-made to partners' specific needs:

'The EU's neighbours are highly diverse, as are the EU's relations with each of them. (...) This means that any approach to economic integration must take a long-term perspective and be tailored to each country's specific situation (...). Yet the challenge with regard to most ENP partners is how to engage them to pursue their ongoing reform processes and to lock in the results. Any approach will need to be **gradual**²⁶

However, with the launch of the DCFTA negotiations, the approach to approximation in general lost its initial flexibility. Tough negotiations with Ukraine prompted the EU to promote *ex-ante* convergence, i.e. there was a requirement for other Eastern partner countries (e.g. Moldova, Georgia and Armenia) to adopt key recommendations before DCFTA negotiations could be launched. The levels of approximation promoted in the Eastern partner countries began to resemble those of candidate states. While providing a clear template for reform, this approach is rigid, complex and technical and hence is something of a disincentive.²⁷ With DCFTAs the EU has promoted a package of norms to be approximated with limited scope for adjustments to the economic, social and political context of the partner countries.²⁸ Thus, paradoxically, the EU has increased the difficulty in approximation. It requires considerable short-term and medium-term effort and costs to be incurred by eastern partners, while the benefits are not uncertain, but are only likely to accrue in the longer term.

Yet EU assistance has undoubtedly supported the approximation effort. It has contributed to advice on legal drafting and the major reforms which need to be conducted (e.g. EU advisory groups deployed in Armenia and Moldova, EU-funded policy and legal advice centres in Armenia, Georgia and Ukraine), to explaining the EU *acquis* (e.g. activities under the Platform for economic integration, TAIEX seminars and workshops) and to building capacity within key institutions (e.g. twinning). CIB Programmes are likely to further strengthen the expertise and administrative capacity of key sectors for the preparation/implementation of the DCFTAs. Nonetheless, EU support has principally targeted state institutions and bodies involved in the approximation process, even though EU norms and rules are not 'directed exclusively at states'.²⁹ DCFTAs are expected to have far-reaching implications in areas of interest to consumers, businesses, trade unions and other civil society organizations, but they have been involved in the preparations for deep economic integration to a limited extent.

²⁶ Emphasis in the original text. European Commission, "ENP – A Path Towards Further Economic Integration", non – paper expanding on the proposals contained in the communication to the European Parliament and the Council on "Strengthening The ENP" – Com (2006) 726 Final of 4 December 2006.

²⁷ The European Commission's evaluation for the launch of DCFTA negotiations was based 'solely on technical criteria described in the "Key recommendations"' drafted for each country. EC replies, Follow up to the European Parliament resolution on Trade Aspects of the Eastern Partnership, adopted by the Commission on 26 September 2012.

²⁸ Georgia, for example, is required to implement EU norms on cable cars and lifts though it does not produce these products, whereas Moldova needs to comply with rules for production of silk worms even though the country does not produce any silk.

²⁹ C. Damro, "Market Power Europe", *Journal of European Public Policy* (19)5, 2012, p.691.

While conditionality provided the EU with major leverage in DCFTA preparations and negotiations, implementation remains a crucial challenge in all partner countries. In most of them, it will test the depth of their commitment to reform in accord with EU templates. Indeed, deep economic integration is not just about legal and regulatory convergence with EU standards. It forms an integral part of association agreements and also entails wide-ranging reforms to strengthen the rule of law and democratisation which are crucial to effectively implementing EU norms in the economic field. For instance, the fact that many Armenian monopolies are closely linked with the authorities appears to inhibit the adoption and implementation of state aid rules in Armenia. Approximation with EU norms should therefore be combined with substantial efforts to fight corruption and to develop a 'strong institutional framework for public procurement and competition policy'.³⁰

DCFTAs are thus a 'vital trade instrument for building up long-term economic relationships' with eastern neighbours and their impact goes far 'beyond purely trade issues, also influencing the state of democracy, the rule of law and other common standards'.³¹ In order for DCFTA to fulfill their full potential, the EU's approach could however be improved with a view to facilitating legal approximation efforts and effective implementation of approximated legislation in partner countries.

Recommendations

Prioritisation of approximation

- When formulating its approximation requirements the EU should tailor its recommendations to partner countries' specific needs and context. Given that the DCFTAs are driven by a political rather than an economic rationale for the EU, key sectors of approximation cannot be prioritised on the basis of the European trade and investment interests. Rather, the EU should prioritise those spheres and degrees of approximation which are most relevant for a given country from a development point of view. For instance, in the case of Armenia's monopolistic structures of the economy, promotion of competition will be decisive if it is to encourage new market entries, attract foreign investors and help decrease the country's economic problems. In a similar vein, approximation to SPS standards will foster the diversification of the country's exports and access to the EU's market.
- The EU also needs to tailor institutional solutions to the specific circumstances of individual countries to ensure their effective cooperation and implementation. For example, with regard to State Aid the model preferred by the EU is to vest the competencies to monitor State Aid in the competition authorities (thereby replicating the role of the European Commission in the EU). But in most of the partner countries it is the Ministries of Finance and/or Economy that are best positioned to embark on regulating this politically sensitive area, whereas the competition authorities are relatively weak and understaffed so unlikely to be successful in implementing the regulation. In many cases a transitional hybrid institutional model would be more appropriate from a political and administrative point of view.

Implementation of approximated legislation

- There should be closer monitoring of implementation and greater efforts to promote dialogue at the political level between the EU and partner country governments in order to ensure the implementation of the legislation and coordination between authorities with responsibilities for

³⁰ European Parliament, Report on the trade aspects of the Eastern Partnership (2011/2306(INI)), Committee on International Trade, Rapporteur : Miloslav Ransdorf, 2012.

³¹ Ibid.

State Aid rules (such as competition authorities, Ministry of Finance, Ministry of Economy, line ministries etc.). While legal approximation is regarded as a technical issue, in practice it deeply affects distribution of political and economic power inside and political dialogue would give higher political profile to legal approximation.

- The EU should strive to involve more systematically civil society/businesses in its bilateral dialogue with partner countries and ensure that they are properly involved in the law-making process. For instance, the EU could 'arrange tripartite meetings, inviting CSOs (based upon a transparent selection process) to monitor EU-partner countries negotiations; link the delivery of budget support to the effective involvement of CSOs in the policy process; and design a specific mechanism (e.g. systematic tripartite dialogue at various stages of the assistance cycle) guaranteeing non-state actors' effective involvement in the ENI programming and monitoring processes'.³² Approximation legislation has major consequences for a wide range of stakeholders whose needs are not sufficiently taken into account at the legal drafting stage. This is a strong impediment to effective implementation, as illustrated by the difficult introduction of the HACCP system in Ukraine.

EU assistance

- Only general assistance figures per country are available and the exact amount of EU funds directly related to legal approximation cannot be assessed. Yet the level of assistance is clearly insufficient to match the costs incurred by partner countries in the approximation process.
- Given the lack of domestic experts on key sectors of the *acquis* to be approximated, the EU needs to provide continuous support for and training of domestic experts to develop a system which can then be implemented by the domestic authorities.
- EU assistance has so far concentrated on supporting partner countries in the approximation process itself. It should also help partner countries mitigate the negative effects of approximation, address the economic and social costs of alignment to EU standards and access EU markets more quickly. The European Neighbourhood Programme for Agriculture and Rural Development (ENPARD), modelled after the instrument which was launched during the 1990's enlargement process, SAPARD, is an example of how this can be done. Similar programmes could be launched in other focal sectors of EU-partner countries cooperation.
- EU assistance on legal approximation should not be limited to state authorities, but ought to target a wider range of non-state stakeholders. This would ensure that the approximation process and objectives are broadly understood by the wider public, and develop checks and balances in the approximation process. For instance, the EU could launch a public awareness campaign on the budgetary consequences of unregulated State Aid amongst state and non-state actors with a view to building broader public support for the regulation of State Aid. This broader support base is needed so that implementation is not derailed by the vested interests of the economic actors who have been benefited from the existing non-transparent systems for State Aid.

³² Bousac, J. Delcour, L., Řiháčková, V., Solonenko, I., Ter-Gabrielyan, G., 'Improving EU Support to Civil Society in the Neighbourhood. Rethinking Procedures, Ensuring that Practices Evolve', Study for the European Parliament, AFET Committee, 2012.

- The EU already supports training of journalists on ENP-related issues. It has also funded or co-funded projects to involve civil society in the DCFTA process.³³ Projects targeting non-state actors should be developed under the ENI, particularly as funds allocated to neighbours will increase as compared to the ENPI. The EU should also seek to develop synergies with other donors that actively support civil society (e.g. SIDA) and the private sector (e.g. IFC, EBRD).

Multilateral track- Platform on Economic Integration and Convergence with EU policies

- Activities under the multilateral track should be made publicly available to the fullest possible extent. The EU should also seek to systematically monitor the impact of the Platform's activities, e.g. it should investigate whether and how best practices/information delivered under the multilateral track are incorporated by participants in their daily work related to approximation.

³³ For instance, the EU and the Swedish Cooperation Agency co-fund a project to promote civil society engagement in food safety reform in Georgia. Cf. <http://www.epfound.ge/english/whats-new/announcements/call-for-applications-training-on-monitoring-and-advocacy-of-food-safety-issues-experience-of-the-eu.html>, accessed 4 February 2013

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6. ANNEX 1. COUNTRY ALLOCATION FOR EASTERN PARTNERS UNDER THE ENPI (€ MILLIONS)³⁴

	2007-2010	2011-2013	Total	Population (million) ³⁵	Assistance per capita (€/year) ³⁶
Armenia	98.4	157.3	255.7	3	12.17
Azerbaijan	92	122.5	214.5	9.5	3.22
Belarus	20	--	20	9.5	0.3
Georgia	120.4	180.3	300.7	4.5	9.54
Moldova	209.7	273.1	482.8	3.6	19.15
Ukraine	494	470.1	964.1	44.8	3.07

³⁴ Based upon L. Delcour, 'Improving the EU's Aid to its Neighbours: Lessons Learnt from the ENPI, Recommendations for the ENI', Briefing paper for the European Parliament's AFET Committee, 2012.

³⁵ Based upon CIA World Factbook, 2012 estimates.

³⁶ Own calculations based upon assistance figures and population data.

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