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AVRUPA BİRLİĞİ ENSTİTÜSÜ

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**LEGAL AND POLITICAL DIMENSIONS OF
THE EUROPEAN NEIGHBOURHOOD POLICY:
THE CASE OF POST-SOVIET COUNTRIES**

YÜKSEK LİSANS TEZİ

Çingiz ALİYEV

İSTANBUL – 2007

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ACKNOWLEDGEMENTS

I would like to take this opportunity to thank my supervisor Dr. Mustafa Tayyar Karayiğit for his time, patience, guidance and invaluable professional advices while dealing with my questions and study. I am also very grateful to Dr. Erdem İlker Mutlu for his strong encouragement and moral support. Lastly, I would like to express my gratitude to all members of my dissertation committee.

ABSTRACT

Launched in March 2003, the European Neighbourhood Policy today is a priority of the external relations of the European Union. This dissertation aims to analyse the legal and political dimensions of this policy and focuses on the post-Soviet states. After providing a general background of the policy, i.e. its genesis, rationale, objectives, principles and instruments, the dissertation examines its legal background. It is argued that the European Neighbourhood Policy, as a comprehensive cross-pillar policy, integrates related components from all three pillars of the European Union's structure under the single and coherent framework and is not based as a whole on any specific provision of the Treaties.

Investigating geopolitical implications of the European Neighbourhood Policy, the dissertation provides that both the European Union and its neighbours have their own interests in pursuing cooperation through this framework. Concerning the role of the European Union in resolution of conflicts in the post-Soviet area it is pointed out that the European Union is not so willing to deeply intervene into this process. The main deficiency of the policy, according to the dissertation, is that obviously lacking accession perspective for the neighbours, it was nevertheless modelled on the enlargement process.

ÖZET

Mart 2003 tarihi ile başlayan Avrupa Komşuluk Politikası, günümüz Avrupa Birliği Dış İlişkilerinin öncelikli konusu haline gelmiştir. Bu inceleme, bu konuyu hukuki ve siyasi açıdan analiz etmeyi ve bu bağlamda post-Sovyet ülkelerini mercek altına almayı amaçlamaktadır. Söz konusu Politikanın gelişimi genel olarak, oluşumu, gerekçeleri, amacı, ilkeleri ve araçları gibi hususlar açısından incelendikten sonra, incelememiz Politikanın hukuki gelişimi üzerinde duracaktır. Avrupa Komşuluk Politikasının, kapsamlı bir sütunlar arası bir politika olması, AB'yi oluşturan üç sütundan da ilgili hususları birleştirerek tek ve tutarlı bir çerçeve içinde birleştirmesi ve bütünüyle herhangi bir Anlaşma hükmüne dayanmaması oldukça tartışılmıştır.

İncelememizde görüleceği üzere, Avrupa Komşuluk Politikasının jeopolitik sonuçlarını açısından ise, gerek AB gerekse komşuları, çizilen bu çerçeve içinde kendi çıkarlarını gözeterek biçimde bir işbirliğine yönelmişlerdir. AB'nin post-Sovyet bölgesindeki sorun çözücülük görevi açısından ise, AB'nin bu sürecin tam anlamıyla bir parçası olmak konusundaki isteksizliğine dikkat çekilmektedir. İncelememize göre, Politikanın en temel eksiği ise, genişleme sürecinin aynen yapılandırılmış olmasına rağmen, komşular açısından katılım perspektifinin bariz eksik olmasıdır .

ABBREVIATIONS

Art. – Article

Arts. – Articles

CFSP – Common Foreign and Security Policy

CoE – Council of Europe

EC – European Community

ECJ – European Court of Justice

edn. – Edition

eds. – Editors

EEA – European Economic Area

e.g. – for example (*exempli gratia*)

EIB – European Investment Bank

ENP – European Neighbourhood Policy

ENPI – European Neighbourhood and Partnership Instrument

EP – European Parliament

EU – European Union

EUBAM – EU Border Assistance Mission on the Moldova-Ukraine state border.

GAERC – General Affairs and External Relations Council

GUAM – Georgia, Ukraine, Azerbaijan and Moldova

Ibid. – the same place (*ibidem*)

i.e. – that is (*id est*)

MEDA – Mediterranean Development Assistance

NATO – Northern Atlantic Treaty Organization

NGO – Non-Governmental Organization

NIP – National Indicative Programme

OJ – Official Journal

op.cit. – the work cited (*opus citatum*)

OSCE – Organisation for Security and Cooperation in Europe

p. – page

Para. – Paragraph

Paras. – Paragraphs

pp. – pages

PCA – Partnership and Cooperation Agreement

PJCC – Police and Judicial Cooperation in Criminal Matters

TACIS – Technical Assistance for the Commonwealth of Independent States

TEC – Treaty establishing the European Community

TEU – Treaty on European Union

UN – United Nations

US – United States

Vol. – Volume

WTO – World Trade Organisation

INTRODUCTION

Today's European Union (EU) of 2007, consisting of 27 member states, is very different from the European Economic Community of 1957, which was established by 6 founding states and currently constitutes only one of the three pillars of the EU. The difference is not only in the degree of integration, which has reached to a quasi-federal/confederal structure, but also in the number of member states, which has considerably increased as the consequence of successive enlargements.

The "big bang" enlargement of 2004 was one of the key moments of the history of European integration. When it was decided in 2002 that ten candidate states would accede to the EU in 2004 and remaining Bulgaria and Romania in 2007, it became obvious that after these enlargements the EU would acquire not only new members, but also several new neighbours in the East and the South. Some of these neighbours, e.g. Ukraine, observing the success of accession negotiations process, manifestly declared their aspiration to become a EU member as well. So, there was a need in bringing the relations with these neighbours into order. This need was also reinforced with the EU's security concerns after September 11, 2001, since the EU wished to strengthen control over its future external borders in order to prevent illegal immigration with the assistance of neighbour states. In order to address the new security environment and to determine key threats, the EU issued the European Security Strategy entitled "A secure Europe in a better world" on 12 December 2003.

The 2004 enlargement has also caused an internal challenge for the EU, called 'enlargement fatigue' or due to tiredness of previous enlargements unwillingness to continue subsequent enlargements. This widely spread 'fatigue' in fact appeared in the referenda on the Constitutional Treaty held in France and the Netherlands in 2005. Taking into consideration this fact, designers of the new neighbourhood policy were forced to be very cautious in offering a membership perspective as the EU's the most attractive 'carrot'.

Therefore, the task was not an easy one. The balanced approach had to be followed in order to invite the neighbours to the closer and reinforced cooperation, while offering

them not a membership perspective, but an alternative to it. In 2002, Romano Prodi, the president of the European Commission, then called this approach - “sharing everything with the Union but institutions”. He put it as follows:

“The goal of accession is certainly the most powerful stimulus for reform we can think of. But why should a less ambitious goal not have some effect? A substantive and workable concept of proximity would have a positive effect.... We have to be prepared to offer more than partnership and less than membership, without precluding the latter.”¹

The European Neighbourhood Policy (ENP) was launched by the EU in March 2003, aiming to address all of these challenges. Today the ENP is a “priority of the EU’s external relations”² and it covers Belarus, Moldova, Ukraine, (Eastern Europe), Armenia, Azerbaijan, Georgia, (Southern Caucasus), Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestinian Authority, Syria and Tunisia (Southern Mediterranean).

Russia, initially included into the ENP, later declined participation, preferring instead to develop a cooperation with the EU on a more ‘equal’ basis of “specific strategic partnership”³ by developing four ‘common spaces’ which are economic; freedom, security and justice; external security; and research and education.⁴

Exclusion from the ENP of current and potential candidates for the EU’s membership, such as Turkey and Western Balkan states, can be seen as an effort to partially define the geographic finality of the European integration process⁵, i.e. the final borders of the EU.

This thesis examines legal and political dimensions of the ENP, and explores the reasons for launching the ENP, its legal basis, functioning mechanism and possible

¹ Romano Prodi “A Wider Europe - A Proximity Policy as the key to stability”, speech /02/619/, **Sixth ECSA-World Conference** – Brussels, 05-06.12.2002, pp.4-5. http://ec.europa.eu/external_relations/news/prodi/sp02_619.htm accessed on 06.02.2007.

² European Commission Communication on **Europe in the World**, 8 June 2006, COM (2006) 278 final, p.3.

³ Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006, laying down general provisions establishing a **European Neighbourhood and Partnership Instrument**. OJ L 310/1, 9.11.2006, preamble, para.11.

⁴ Karen. E. Smith, “The Outsiders: the European Neighbourhood Policy”, **International Affairs**, (2005), 81/4, p.759.

⁵ Rutger Wissels, “The Development of the European Neighbourhood Policy”, July 2006, in “The New Neighbourhood Policy of the European Union: Perspectives from the European Commission, France, Germany, Poland, Ukraine and Moldova”, **Foreign Policy in Dialogue**, Vol.6, No.19, p.4.

results which it will bring about in the future. The scope of the research covers only post-Soviet states (Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine) pursuant to a general comprehension about the entire ENP. Therefore the ENP towards the countries of Southern Mediterranean, EU-Russia relations and relations of above mentioned post-Soviet states with the important regional and global political actors will be analysed only to the extent they are necessary for the content of the thesis. The research questions of the study are: How does the ENP currently function? What consequences would the ENP bring in the future with regard to the EU's relations with its Eastern neighbours?

A research conducted by a person who originally comes from the region and is aware of both the EU's and the region states' legal, political and economic systems, has the potential of bringing an original and innovative perspective to the research on this subject. The majority of the relevant research examines geopolitical and security implications of the ENP and has mainly focused on the aims of the EU in launching the ENP. Existing sources often lack comparative analysis and principally analyse region countries not within the ENP framework, but in general international relations/politics context. These are the gaps in the subject to be fulfilled by the researcher who combines both an insider and outsider perspectives. Accordingly this research can provide a comprehensive, comparative and systematical account of the phenomena considered.

The first chapter of the thesis examines the concept of the ENP and its content. In this regard, genesis of the ENP, i.e. historical evolution of the concept of ENP, rationale and objectives of the ENP, and its principles and instruments are analysed.

The second chapter investigates the legal dimension of the ENP. The term 'legal dimension' is used here in a wider sense, aiming to cover not only legislation concerned, but also non-binding acts issued by the EU Council, the Council of Ministers and the European Parliament. Moreover, by virtue of its political nature, the status of the ENP is determined by a big amount of various political documents, mainly European Commission Communications, so-called 'soft law', which are also included in this chapter for the purposes of comprehensive analysis.

The second chapter consists of two parts. The first part analyses provisions of both primary and secondary EU law, constituting the legal basis of the ENP. In the second part, the other relevant normative documents, issued by the EU Council, the Council of Ministers, the European Parliament and the European Commission are scrutinized.

The third chapter deals with the political dimension of the ENP. First of all, it contains the exploration of geopolitical implications of the ENP. Then, the EU's interests in the countries concerned are examined. The following issue in this chapter is the EU's role in resolving 'frozen conflicts' in the post-Soviet space. The final part of this chapter is the analysis of EU's role in promotion of cross-border cooperation of bordering Member States with the neighbours at issue.

The fourth chapter contains a case study of ENP about the six post-Soviet countries: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine. After the case-by-case analysis of these ENP states' dossiers, the pace of advancement of these countries within the ENP framework and their current state of relations with the EU are comparatively assessed. The thesis is concluded with general remarks and author's vision about the future of ENP.

CHAPTER I: THE CONCEPT OF THE EUROPEAN NEIGHBOURHOOD POLICY (ENP) AND ITS CONTENT

1.1. GENESIS OF THE ENP

The ENP, initially entitled as a ‘wider Europe’, was first officially mentioned in April 2002 in the General Affairs Council Conclusions. Its “Wider Europe: Relations between the future enlarged EU and its Eastern neighbours” section contained, inter alia, a provision that the Council “welcomed the intention of the Commission and of the High Representative Javier Solana to prepare contributions”⁶ on the possibilities for strengthening relations with the Eastern neighbours.

In August 2002 Christopher Patten, then European Commissioner for External Relations and Javier Solana - EU High Representative for the CFSP issued their joint letter on Wider Europe. In this letter they argued that newly created borders of future enlarged EU should not create new dividing lines in Europe. They also stated that the EU should reinforce its relations with Ukraine, Moldova, Belarus and Russia, and these reinforced relations should be “based on a shared set of political and economic values”⁷. Stability and prosperity along the new borders of the future enlarged EU are mentioned in this letter as the main objectives of the new neighbourhood policy.⁸

In September 2002 General Affairs and External Relations (GAER) Council concluded that “beyond the question of Eastern neighbours, the broader question of ‘wider Europe’ deserved consideration”⁹. In November 2002 GAER Council concluded that future relations with the neighbours should be “based on a differentiated approach considering each country’s distinct situation”¹⁰.

In December 2002 the Copenhagen European Council approved the initiative, but also included the southern Mediterranean states into the framework. 11 March 2003 can be

⁶ General Affairs Council Conclusions, 15 April 2002, 7705/02 (presse 91).

⁷ Solana-Patten letter on **Wider Europe**, 7 August 2002, http://ec.europa.eu/world/enp/pdf/0130163334_001_en.pdf accessed on 06.02.2007.

⁸ Ibid. p.2.

⁹ GAER Council Conclusions, 30 September 2002, 12134/02 (presse 279).

¹⁰ GAER Council Conclusions, 18 November 2002, 14183/02 (presse 350).

considered as a date of birth of ENP, since the Commission Communication on ‘Wider Europe - Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours’ was issued at that date. According to the Communication: the EU is determined:

“[t]o avoid drawing new dividing lines in Europe and to promote stability and prosperity within and beyond the new borders of the Union. 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. 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, Ukraine, Moldova, Belarus, and the countries of 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).”¹¹ “If a country has reached this level, it has come as close to the Union as it can be without being a member.”¹²

A week later, GAER Council welcomed Commission Communication, but underlined that “the initiative should be seen as separate from the question of EU membership”¹³. However, in April 2003, GAER Council concluded that “discussion on the ‘wider Europe’ initiative should not prejudge the question of future EU membership”¹⁴.

In June 2003, GAER Council at first time stated that it would examine later the possibility of inclusion of Southern Caucasus countries into the framework of new neighbourhood policy. In July 2003, European Commission issued its next Communication devoted to the new neighbourhood policy – “Paving the way for a New Neighbourhood Instrument”. This Communication assessed the possibility of creation a new Neighbourhood Instrument, and proposed a two-step approach. During the initial phase, from 2004-2006, existing financial instruments were to be coordinated within the

¹¹ Communication from the Commission to the Council and the European Parliament, ‘**Wider Europe - Neighbourhood: a new framework for relations with our eastern and southern neighbours**’, 11 March 2003, COM (2003) 104 final, p.4.

¹² Ibid. p.10, footnote 11.

¹³ GAER Council Conclusions, 18 March 2003, 6941/03 (presse 63).

¹⁴ GAER Council Conclusions, 14 April 2003, 8220/03 (presse 105).

existing legislative and financial framework.¹⁵ In a second phase, after 2006, the Commission intended to propose a new legal instrument.

In October 2003, GAER Council welcomed recent Commission Communication and agreed with the suggested two-step approach for the preparation of new neighbourhood instrument. In December 2003, EU issued above mentioned European Security Strategy outlining security objective of the new neighbourhood policy as follows:

“It is in the European interest that countries on our borders are well-governed. The integration of acceding states increases our security but also brings the EU closer to troubled areas. Our task is to promote a ring of well governed countries to the East of the European Union and on the borders of the Mediterranean with whom we can enjoy close and cooperative relations. It is not in our interest that enlargement should create new dividing lines in Europe. ... We should now take a stronger and more active interest in the problems of the Southern Caucasus, which will in due course also be a neighbouring region.”¹⁶

In May 2004, Commission issued European Neighbourhood Policy Strategy Paper, and since then new neighbourhood policy has been known as the ENP. This comprehensive document, consisting of 35 pages, laid down methods and instruments of the ENP, its legal basis and geographical coverage. For the first time the concept of Action Plans as the main ENP instruments was elaborated in details and main directions which were to be funded by the new Neighbourhood Instrument were determined.

However it is worth noting, that together with the ENP Strategy Paper, the Commission also published its first ENP Country Reports – of Ukraine and Moldova. These Reports described the existing state of countries’ bilateral relations with the EU and provided an evaluation of political, economic and social situation in Ukraine and Moldova.

In June 2004, GAER Council concluded that:

“[t]he objective of the ENP is to share the benefits of an enlarged EU with neighbouring countries in order to contribute to increased stability, security and prosperity of the European Union and its neighbours. The ENP offers the prospect of an increasingly close relationship...with the aim of preventing the emergence of new dividing lines between the enlarged EU and its neighbours. The privileged

¹⁵ European Commission Communication “**Paving the way for a New Neighbourhood Instrument**”, 1 July 2003, COM(2003) 393 final, p.4.

¹⁶ Javier Solana, **European Security Strategy “A secure Europe in a better world”**, 12 December 2003, pp.7-8. <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>, accessed on 06.02.2007.

relationship with neighbours covered by the ENP will be based on joint ownership. It will build on commitments to common values, including democracy, the rule of law, good governance and respect for human rights, and to the principles of market economy. ... The level of ambition of the relationship with each neighbour will depend on the degree of the partner's commitment to common values as well as its capacity to implement jointly agreed priorities.”¹⁷

The Council also “noted the recommendations of the European Parliament, the Commission, and the EU Special Representative for the Southern Caucasus and decided to include Armenia, Azerbaijan and Georgia in the ENP”¹⁸. Moreover, the Council also informed that “the EU and Russia had decided to develop their specific strategic partnership in the context of the four common spaces, as agreed at the St. Petersburg Summit in May 2003”¹⁹.

In September 2004, the Commission issued proposal for a European Neighbourhood and Partnership (ENPI) Regulation. Draft Regulation, as a single financial instrument, aimed to replace existing geographical and thematic programmes covering countries included into the ENP framework. One of its innovative features was the cross-border cooperation component. Despite the fact that Russia decided to continue its cooperation with the EU on a basis of ‘specific strategic partnership’ instead of ENP framework, she was also included into the scope of ENPI. That was the reason why the title of instrument changed from the European Neighbourhood Instrument to the European Neighbourhood and Partnership Instrument.

In December 2004, Commission issued the next Communication – “on the Commission Proposals for Action Plans under the ENP”. Communication repeated that:

“ENP is addressed to partners neighbouring the Union which are not involved in the present accession or pre-accession process. The objective of ENP is to share the benefits of enlargement with neighbouring countries in strengthening stability, security and well-being for all. By drawing countries into an increasingly close relationship with the EU, it can create a ‘ring of friends’ and prevent emergence of new dividing lines. The intensity and level of ambition of relations with each ENP partner is differentiated, reflecting the degree to which common values are effectively shared, the existing state of relations with each country, its needs and capacities, as well as common interests. ... The tailor-made Action Plans contain a number of priorities intended to strengthen commitment to these values. Individual

¹⁷ GAER Council Conclusions, 14 June 2004, 10189/04 (presse 195).

¹⁸ Ibid.

¹⁹ Ibid.

priorities identified in the Action Plan aim to be both ambitious and realistic, and formulated in a manner as precise and specific as possible so as to allow concrete follow-up and monitoring of the commitments taken by both sides.”²⁰

The Communication also informed that first Action Plans had already been developed with the: Jordan, Moldova, Morocco, Tunisia, Ukraine, Israel and the Palestinian Authority. In February 2005, first ENP Action Plans of Moldova and Ukraine, containing new partnership perspectives and long and ambitious list of priorities for action, were endorsed.

The next Commission Communication on ENP was issued in March 2005, and contained recommendations for Armenia, Azerbaijan, Georgia, Egypt and Lebanon. Communication presented a brief overview of five Country Reports prepared by the Commission and made recommendations on future ENP Action Plans for these countries. The Country Reports of these states were also published separately.

In April 2005, GAER Council noted the special role of the ENP for the EU’s external relations. It also stated that ENP country reports formed the basis on which the EU should be able to enter into joint preparations for the ENP Action Plans. In November 2005, Commissioner for External Relations and European Neighbourhood Policy – Benita Ferrero-Waldner issued Communication on implementation and promotion of the ENP to be addressed to the College of Commissioners. In this Communication, she defined the ENP as the “key EU external relations priority”²¹, and provided a brief overview of achievements made to that date.

In January 2006, the European Parliament endorsed the resolution on the ENP. This resolution provided that:

“[t]he ENP includes both the European countries, which under the existing Treaties are entitled as a point of principle to apply for membership of the European Union, and countries that have certainly been the European Union's neighbours and close partners for a long while but cannot join the European Union. This fact in no way affects the abovementioned rights of European countries to apply for accession to

²⁰ Communication from the Commission to the Council “**on the Commission proposals for Action Plans under the European Neighbourhood Policy (ENP)**”, 9 December 2004, COM(2004) 795 final, pp.2-4.

²¹ Communication to the College of Commissioners from Commissioner Ferrero-Waldner - “**Implementing and promoting the European Neighbourhood Policy**”, 22 November 2005, SEC(2005) 1521, p.1.

the EU. All the neighbours, irrespective of the issue of possible membership, have an equal opportunity to establish privileged relations with the EU.”²²

The end of 2006 witnessed very important steps of further development of the ENP. First, on 24 October 2006, ENPI Regulation was issued. This single financial instrument has replaced existing geographical and thematic programmes covering ENP countries and established, for the period of 2007 - 2013, financial framework aimed to promote enhanced cooperation and progressive economic integration between the EU and ENP countries.

In November 2006, Action Plans of Georgia, Azerbaijan and Armenia were endorsed. These Action Plans, similar in structure, however differed in content from those of Moldova and Ukraine. Then, in December 2006, Commission issued its next Communication – “on strengthening the ENP“. In its Communication, the Commission overviewed what had already been done through the ENP, its first achievements and areas where it could be further strengthened. According to the Communication the strengths of the ENP are:

- Integration – integrative feature of the ENP as the single coherent policy framework. Single character of the ENP makes it possible to address common challenges which all the neighbours both to the east and the south face with. Moreover, integrative approach makes it possible to look at the existing problems in different, albeit interconnected areas as a whole, in complex;
- Joint ownership – the main ENP instruments – Action Plans are fully negotiated and mutually agreed at a political level.²³ That’s why they are perceived by the neighbours not as the imposed ones, but as the jointly agreed agenda for the future common work;

²² European Parliament resolution on the **European Neighbourhood Policy**, 19 January 2006, P6_TA(2006)0028, preamble, paras.E-F.

²³ Communication from the Commission to the Council and the European Parliament on **strengthening the European Neighbourhood Policy**, 4 December 2006, COM(2006), 726 final, p.3.

- Concreteness – Action Plans, which are very broad and cover wide-ranging areas are detailed at the same time²⁴; and
- Better use of funds – adoption of ENPI Regulation allows the EU’s assistance to the neighbours to be reinforced and increased. In addition to the already existing areas of cooperation, new areas (e.g. cross-border cooperation) are added.

Trade, economic integration, regional conflicts, mobility and migration are listed in the Communication as the areas where ENP has potential for further progress.

Simultaneously with the Communication, accompanying four Commission staff working documents were published. These documents contained assessments made by sectors and by countries, as well as the overall assessment. While, country assessment very briefly overviewed the basic facts of bilateral relations of EU with the neighbours and main priorities of Action Plans, the overall assessment surveyed the progress made by the neighbours adopting the Action Plans and already starting the process of their implementation. Last but not least, in December 2006, the Commission separately published first ENP Country Progress Reports of: Ukraine, Moldova, Israel, Jordan, The Palestinian Authority, Tunisia, and Morocco.

In March 2007, Commission published for the ENP partners ENPI Country Strategy Papers for the period of 2007 - 2013 and the National Indicative Programmes for the period of 2007 - 2010. These documents were followed by the ENPI Eastern Regional Programme Strategy Paper for the period of 2007 - 2013 and Eastern Regional Indicative Programme for the period of 2007 - 2010. In addition, ENPI Interregional Programme Strategy Paper (2007-2013) and Indicative Programme (2007-2010) were also published at the same time.

ENPI Country Strategy Papers set out the objectives of the EU’s cooperation with the partner state, outlined country’s policy agenda, provided an analysis of the political, economic and social situation of the country, overviewed past and ongoing EC assistance to the country and laid down EC assistance priorities and instruments. ENPI

²⁴ Ibid.

National Indicative Programmes laid down the country's indicative budget and main priority areas of EC assistance.

Eastern Regional and Interregional Strategy Papers and Indicative Programmes were probably endorsed aiming not to summarize the provisions of country Strategy Papers and Indicative Programmes of six eastern ENP partners (Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine), but rather to complement them by indicating priority areas and promoting the cooperation both on the eastern regional level (six ENP partners + Russia) and interregional level (six ENP partners + Russia + Southern Mediterranean).

In March 2007, the Commission also published, under the European Neighbourhood and Partnership Instrument, Cross-Border Cooperation Strategy Paper for the period of 2007 - 2013, and Indicative Programme for the period of 2007 - 2010. Cross-border cooperation on the external borders of the EU was defined here as a key priority of both in the ENP, and in the strategic partnership with Russia.

The Strategy Paper set out EU's general policy and objectives, examined the relevant policy agendas of the partner countries and the economic and social situation of the border regions, gave an overview of past cooperation in this field, and set out the core issues to be addressed. The Indicative Programme defined the individual Cross-Border Cooperation programmes which would be financed by the EU, their geographic eligibility, and established financial allocations for each of the programmes.

1.2. RATIONALE AND OBJECTIVES OF THE ENP

The rationale for launching the ENP in March 2003 were the forthcoming enlargements of 2004 and 2007. As it was already mentioned above, the EU had to address to the new challenges arisen in the context of the enlargements. The main challenges to be addressed were:

- To avoid the emergence of new dividing lines between the enlarged EU and its neighbours and instead to create a zone of friendly neighbourhood – a ‘ring of friends’;
- Need in new, reinforced and well-ordered format of cooperation with both the new and old neighbours;
- Security concerns;
- Illegal immigration;
- Manifestly declared membership aspirations of some neighbours vs. internal ‘enlargement fatigue’.

Thus, the overall objective of the ENP is to avoid the emergence of new dividing lines between the enlarged EU and its neighbours and to create with these neighbours a shared area of security, stability and prosperity. Security, stability and prosperity, as sub-objectives of the ENP, are interdependent.

The security objective is determined by the enlargements and stems from the extension of the EU’s external borders, which has brought the EU “closer to the troubled areas”²⁵. EU has faced with the following choice – either to import insecurity from its neighbours, or to export to them security (involving prosperity and stability).²⁶ Therefore, it is in the EU’s strongest self-interest to invest security, stability and prosperity in the regions around its borders, otherwise the costs of defending itself from incoming threats will be much higher.²⁷

As Ferrero-Waldner put it, by investing in the neighbours and by helping to create prosperous, stable and secure conditions around itself, the EU extends the prosperity,

²⁵ Solana, **European Security Strategy**, op.cit. p.8.

²⁶ William Wallace, “Looking After the Neighbourhood: Responsibilities for the EU-25”, **Notre Europe Policy Papers**, N°4, July 2003, pp.18-19.

²⁷ Ibid.

stability and security of its own,²⁸ since security in the neighbourhood means the added security for the EU²⁹.

The list of 'troubled areas', which involve armed conflicts, in the neighbourhood is quite long. Some of them are very close to the EU's borders (Transnistrian conflict within Moldova), whereas the others are more distant (Middle East, Nagorno-Karabakh conflict between the Azerbaijan and Armenia, Abkhazia and South Ossetia conflicts within Georgia).

The EU tries to contribute to the resolution of these conflicts. However, EU's participation in this process is only one of the facets of the broader security objective. Closer cooperation with neighbours also makes possible better control over both sides of the EU's external border and a joint fight against international terrorism and organised crime.

The energy security is the question of utmost concern for the EU, which demands diversification of suppliers in order to weaken Russian monopoly in this sphere and illustrates as well importance of warm relations with the countries of North Africa, Middle East and South Caucasus.

Stability objective of the ENP aims to promote and support further strengthening of democracy, rule of law, good governance and respect for human rights in the neighbourhood, in order to ensure that the EU is surrounded by the 'ring of well governed friends'.

Prosperity objective is caused by the sharp difference in income levels between those living inside the EU and those living outside. It aimed to promote and support necessary economic reforms and establishment of the genuine market economy in the neighbour states, as this difference pushes some inhabitants of neighbour states who are in difficult financial situation to migrate into the EU, often by illegal ways.

²⁸ Benita Ferrero-Waldner, "Quo vadis Europa", speech 05/797, 'EPP Paneuropa Group' Strasbourg, 14 December 2005, p.4.
<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/05/797&format=HTML&aged=0&language=EN&guiLanguage=en>, accessed on 06.02.2007.

²⁹ Benita Ferrero-Waldner, "The European Neighbourhood Policy: The EU's Newest Foreign Policy Instrument "; *European Foreign Affairs Review*, (2006) 11, p.142.

Thus, illegal immigration stemming from the lack of prosperity in the neighbourhood ignites another (internal) security issue for the EU. Illegal immigration is a sensitive issue for the EU, because it engenders among the EU citizens worries about unemployment and increased competition for jobs.³⁰ However, EU's population is getting smaller and growing older and therefore EU needs migration.³¹

The ENP, through better management of EU's external borders and consequently through better management of migration process, creates for the EU the opportunity to pursue smart migration policy targeting skilled labour and invites on the legal grounds those immigrants whom the EU needs, while preventing illegal immigration.³²

The ENP is based on the commitments to the common values such as:

- democracy,
- the rule of law,
- respect for human rights,
- good governance,
- market economy.³³

The creation of zone of friendly neighbourhood is intended to achieve by reinforcement of relations in four main directions:

- deepening economic integration,
- enhancing and intensifying political and cultural relations,
- enhancing cross-border cooperation,
- sharing responsibility for conflict prevention and conflict resolution.

³⁰ Benita Ferrero-Waldner, "European Neighbourhood Policy", speech /06/149, **Swedish Institute for International Affairs and the European Commission Representation in Sweden**, Stockholm, 7 March 2006, p.4. <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/06/149&format=HTML&aged=0&language=EN&guiLanguage=en> , accessed on 06.02.2007.

³¹ Ibid.

³² Benita Ferrero-Waldner, "Migration, External Relations and the European Neighbourhood Policy", speech /06/30, **Conference on Reinforcing the Area of Freedom, Security, Prosperity and Justice of the EU and its Neighbouring Countries**, Brussels, 24 January 2006, p.2. <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/06/30&type=HTML&aged=0&language=EN&guiLanguage=en> , accessed on 06.02.2007.

³³ **European Neighbourhood and Partnership Instrument** Regulation, op.cit. preamble, para.4.

The legal basis for the work with each ENP partner state are the Partnership and Cooperation Agreements (Eastern Europe and Southern Caucasus) and Association Agreements (Southern Mediterranean) which are currently in force.³⁴

1.3. PRINCIPLES AND INSTRUMENTS OF THE ENP

The following principles can be pointed out as the main principles of the ENP:

- conditionality,
- differentiation,
- joint ownership,
- added value.

According to the principle of conditionality, the pace of progress of the relationship with each neighbour will depend fully on its will, capacity, efforts and concrete achievements in meeting its commitments to common values and implementing political, economic and institutional reforms.³⁵ As it is obviously seen, the conditionality on which the ENP is based is similar with that of enlargement, used to promote reforms³⁶. It is quite logical, taking into consideration the fact that the ENP has been modelled on the enlargement process³⁷.

In return for concrete progress, including in aligning legislation with the *acquis*, the neighbours should benefit from the prospect of closer economic integration with the EU, namely 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).³⁸ Interestingly, as aptly noted Dannreuther, reference to the opening of the four freedoms, found in the Commission Communication on 'Wider

³⁴ European Commission Communication to the Council “**on the Commission Proposals for Action Plans under the European Neighbourhood Policy (ENP)**”, op.cit. p.3.

³⁵ GAER Council Conclusions, 14 June 2004, op.cit.

³⁶ Eneko Landaburu (Head of the Commission's External Relations Directorate-General), “From Neighbourhood to Integration Policy: Are there concrete alternatives to enlargement?” (CEPS working document No.95, March 2006), p.2.

³⁷ Judith Kelley, “New Wine in Old Wineskins: Promoting Political Reforms through the New European Neighbourhood Policy”, **Journal of Common Market Studies** (2006) v. 44. n. 1, p.30.

³⁸ Communication from the Commission to the Council and the European Parliament, ‘**Wider Europe - Neighbourhood: a new framework for relations with our eastern and southern neighbours**’, op.cit. p.4.

Europe' of 2003, was not unfortunately recurred in the Commission ENP Strategy Paper of 2004.³⁹

The principle of differentiation is caused by the differences of States covered by the single policy tool – the ENP. From the very beginning, EU ignored the fact that its Eastern European neighbours are eligible for the EU's membership in terms of Art. 49 of the Treaty on European Union, by putting them into the same framework with the Southern Mediterranean states, not having such perspective.⁴⁰

This also had the effect of dividing Ukraine, Moldova and Belarus from Turkey and Western Balkans. Consequently, ENP partners considerably differ with respect to geographic location, political and economic situation, current degree of commitment to the democracy, rule of law and respect for human rights, current state of relations with the EU, and perception of and expectations from the ENP.⁴¹ That's why, the ENP, while pursuing the same objectives of security, stability and prosperity, at the same time should not be "one size fits all policy"⁴², and above mentioned differences should be taken into consideration during the drawing up of the Action Plans.

Cremona argues that the different starting points of the neighbouring states as well as their different priorities will entail different speeds and timetables and this carries the risk that existing differences between the neighbours in their relations with the EU will grow wider than narrower.⁴³ It is obviously true, but, there is no other way. It is for the governments of neighbour states to determine the speed and timetables of reforms.

The principle of joint ownership provides that the main ENP instruments - Action Plans are fully negotiated and mutually agreed at a political level.⁴⁴ That's why they are perceived (or should be perceived) by the neighbours not as the imposed ones, but as

³⁹ Roland Dannreuther, "Developing the Alternative to Enlargement: The European Neighbourhood Policy" **European Foreign Affairs Review**, (2006) 11, p.191, footnote 20.

⁴⁰ Marise Cremona, "The European Neighbourhood Policy: Partnership, Security and the Rule of Law", in Mayhew and Copsey (eds.) **Ukraine and the European Neighbourhood Policy**, (SEI, University of Sussex 2005), p.9.

⁴¹ European Commission Communication on **European Neighbourhood Policy Strategy Paper**, 12 May 2004, COM(2004), 373 final, p.8.

⁴² European Parliament resolution on the **European Neighbourhood Policy**, op.cit. para.5.

⁴³ Cremona, op.cit. p.8.

⁴⁴ Communication from the Commission to the Council and the European Parliament on **strengthening the European Neighbourhood Policy**, op.cit. p.3.

the jointly agreed agenda for the future common work, and such a perception will undoubtedly contribute to the better implementation of agreed priorities.

The principle of added value means that ENP not only gives new impetus and thereby reinforces already existing cooperation, but also brings additional innovations to the newly created single policy tool (ENP) in order to strengthen it. These innovations are: offer of a stake in the EU's internal market, possibility of participation at certain Community programmes, enhanced and strengthened political and economic cooperation, Action Plans, new financial instrument (ENPI), and signing of European Neighbourhood Agreements, which are the next generation of bilateral agreements to be signed after successful meeting of priorities set out in the Action Plans.⁴⁵

As already mentioned above, main instruments of the ENP are the Action Plans. However, before continuing with the analysis of structure and features of the Action Plans, it is useful to look at the two other ENP instruments, which are Country Reports and Progress Reports.

Country Reports have been prepared by the Commission with the aim to evaluate political, economic and social situation in the countries considered eligible to be included into the ENP, and existing state of their bilateral relations with the EU. Until April 2007, Commission issued Country Reports for 12 from 16 countries. Remaining four are Belarus, Algeria, Libya and Syria.

Whereas the evaluation provided by the Country Reports had been the basis for the drawing up of the subsequent Action Plans, Progress Reports published annually are intended to monitor the progress achieved by the country concerned in implementation of priorities agreed in the Action Plans. Until April 2007 only Progress Reports of Ukraine and Moldova have been published, given the fact that these two countries started in the framework of ENP earlier and move more rapidly than others.

⁴⁵ European Commission Communication on **European Neighbourhood Policy Strategy Paper**, op.cit. pp.8-9.

Action Plans are the key policy instruments of the ENP. They are “fully negotiated and mutually agreed at political level”⁴⁶ documents, tailor-made for each country, covering the timeframe from three to five years, containing an agenda, objectives of future relations and a set of priorities in order to strengthen commitment to the common values.

Those neighbours which fulfil their commitments and cooperate with the EU on key foreign policy objectives such as counter-terrorism and non-proliferation of weapons of mass destruction will receive an offer of a deeper relationship⁴⁷ (e.g. a negotiation of European Neighbourhood Agreements as the next generation of bilateral agreements⁴⁸).

It should also be noted that besides the unilateral progress monitoring by means of Progress Reports, bilateral/joint monitoring will be conducted as well. This monitoring should be made within the bodies established under the Partnership and Cooperation Agreements (Eastern Europe and Southern Caucasus) or Association Agreements (Southern Mediterranean) and includes not only regular informal contacts between the country and the Commission but also a network of subcommittees meeting at expert level at least once a year.⁴⁹

These subcommittees usually cover political issues and human rights, trade and industry, agriculture and rural development, macroeconomic issues and structural reforms, social issues, the environment and transport and energy.⁵⁰ Sub-committees report to the formal Cooperation or Association Committee meetings (consisting of senior officials) and the Cooperation or Association Council meetings (at ministerial level) which take place once a year.⁵¹ There are no legal sanctions for non-implementation of Action Plans’ commitments. In such a case, the consequences would be rather political and/or financial.

⁴⁶ European Commission Communication to the Council and the European Parliament on **strengthening the European Neighbourhood Policy**, op.cit. p.3.

⁴⁷ Ferrero-Waldner, “**The European Neighbourhood Policy: The EU's Newest Foreign Policy Instrument**”, op.cit. p.140.

⁴⁸ European Commission Communication on **European Neighbourhood Policy Strategy Paper**, op.cit. p.5.

⁴⁹ Wissels, op.cit. p.13.

⁵⁰ Ibid.

⁵¹ Ibid. p.14.

CHAPTER II: LEGAL DIMENSION

2.1. LEGAL BASIS

The ENP is a comprehensive cross-pillar policy integrating related components from all three pillars of the EU's structure under the single and coherent framework. The areas covered by the ENP range from the economic development, economic integration, environment, energy and immigration (EC - first pillar), democracy, human rights, foreign aid and conflict prevention (CFSP - second pillar) to the fight against terrorism, trafficking and organized crime (PJCC – third pillar).

The ENP as a whole is not based on any specific provision of Treaty establishing the European Community (TEC) or Treaty on European Union (TEU).⁵² Its different constituents are based on the different provisions of TEC and TEU. The following part aimed to examine these provisions and consequently to determine the legal basis of the ENP.

2.1.1. Primary Legislation

This section analyses not only relevant provisions of the TEC and TEU, but also Art. I-57 of the Constitutional Treaty, specifically devoted to the ENP.

2.1.1.1. Treaty establishing the European Community and Treaty on European Union

As already mentioned above, the legal basis of the EU's bilateral relations (including relations within the ENP framework) with the each Eastern ENP partner states (post-Soviet states of Eastern Europe and Southern Caucasus) is the respective Partnership and Cooperation Agreement (PCA). The PCAs with the post-Soviet states in concern were signed in 1994-1996 and went into force in 1998-1999 (except the PCA with

⁵² Marise Cremona and Christophe Hillion, "The Potential and Limits of the European Neighbourhood Policy", in Copey and Mayhew (eds.) "European Neighbourhood Policy: the Case of Ukraine", SEI Seminar Papers Series No.1, University of Sussex, 2006, p32.

Belarus, which has not been ratified by the EU due to the lack of democracy in Belarus).

The PCAs are however, the mixed agreements, i.e. they are signed on the one side by the third country and on the other side not only by the European Community but also by its Member States. The competence to conclude such agreements is conferred upon the EC by the Art. 300 TEC. This article states that:

“1. Where this Treaty provides for the conclusion of agreements between the Community and one or more States or international organisations, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with special committees appointed by the Council to assist it in this task and within the framework of such directives as the Council may issue to it. ...

7. Agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Community and on Member States.”

Trade and tariffs related provisions of the PCAs are based on the Art.133 TEC. The very important constituent of the ENP – European Neighbourhood and Partnership Instrument (ENPI) is based on Arts. 177, 179 and 181a TEC. Article 177 TEC points out the main objectives of the Community development policy. These objectives are:

- “the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them;
- the smooth and gradual integration of the developing countries into the world economy;
- the campaign against poverty in the developing countries.

Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms....”

According to Article 179 TEC:

“1. Without prejudice to the other provisions of this Treaty, the Council, acting in accordance with the procedure referred to in Article 251, shall adopt the measures necessary to further the objectives referred to in Article 177. Such measures may take the form of multiannual programmes.

2. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1....”

Article 181a TEC providing a legal basis for the economic, financial and technical cooperation of Community with third countries reads as follows:

“1. Without prejudice to the other provisions of this Treaty, and in particular those of Title XX, the Community shall carry out, within its spheres of competence, economic, financial and technical cooperation measures with third countries. Such measures shall be complementary to those carried out by the Member States and consistent with the development policy of the Community. Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to the objective of respecting human rights and fundamental freedoms.

2. The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, shall adopt the measures necessary for the implementation of paragraph 1. The Council shall act unanimously for the association agreements referred to in Article 310 and for the agreements to be concluded with the States which are candidates for accession to the Union.

3. Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300. The first subparagraph shall be without prejudice to the Member States' competence to negotiate in international bodies and to conclude international agreements.”

Surely, while determining the legal basis of newly developed policy, not having specifically devoted article in the Treaty, the Art. 308 TEC, this Community's ‘magic wand’ which is able to transform any area into the area of Community competence should not be forgotten. According to this article:

“If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.”

The notion of ‘implied power’ given to the Community by this article can, as Hartley strongly argued, be formulated in the narrow or wide sense.⁵³ In the narrow sense, “the existence of a given power implies also the existence of any other power which is reasonably necessary for the exercise of the former. In the wide sense, the existence of a given objective or function implies the existence of any power reasonably necessary to attain it.”⁵⁴

In other words, ‘implied power’ (competence) in the narrow sense is the power (competence) stemming from the already existing power (competence), whereas in the wide sense it is the power (competence) stemming from the Treaty objectives. The

⁵³ Paul Craig, Grainne De Burca “EU Law” (Oxford University Press , 3rd edn.), 2003, p.123, footnote 55.

⁵⁴ Ibid.

wider approach made it “virtually impossible to find an activity which could not be brought within the objectives of the Treaty”⁵⁵.

Economic, technical and financial cooperation of the Community with the Eastern neighbours was first based exactly on such a wider reading of implied power and only later Treaty of Nice introduced changes in Art.181a TEC thereby providing a separate Treaty basis for these activities.⁵⁶

ENP’s components related to the CFSP and PJCC are based respectively on the Titles V and VI of TEU. For instance, first part of Art. 11 TEU states that:

“1. The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be:

- to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter,
- to strengthen the security of the Union in all ways,
- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders,
- to promote international cooperation,
- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms...”

Article 29 TEU points out the EU’s PJCC objective, which is:

“[t]o provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia. That objective shall be achieved by preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud....”

The stated objectives can be easily traced in EU’s cross-border cooperation with its neighbours.

2.1.1.2. The Constitutional Treaty

The process of ratification of the Treaty establishing a Constitution for Europe (Constitutional Treaty) has been fallen into the deep crisis by the negative results of

⁵⁵ Ibid. p.125, footnote 58.

⁵⁶ Ibid. p.128.

referenda in France and the Netherlands in 2005. Having obtained these results, EU is looking for the ways of its revitalization. In spite of the fact that the Constitutional Treaty is not in force, its provisions, nevertheless, are indicators of EU's future intentions on the way of further integration and development of the Union. One of such indicators is contained in Art. I-57 of the Constitutional Treaty, in the separate Title VIII. It reads as follows:

Article I-57

The Union and its neighbours.

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

Although this article does not provide anything substantially new on the ENP, it demonstrates the distinction made by the EU between the neighbouring countries and other third countries. The second part of the article provides the basis for the conclusion of specific agreements with the neighbouring countries.

Inclusion of this provision is not accidental, because the PCAs, concluded with the post-Soviet states, have the term of 10 years. The term of those signed with Russia, Ukraine and Moldova will expire in 2008. That is the ultimate reason why Ukraine and Moldova preferred their Action Plans to have a term not of 5 years (as those of South Caucasian states), but of 3 years. As these Action Plans were endorsed in 2005, this means that not only the PCAs but also the Action Plans of Ukraine and Moldova will expire in 2008. The intention of Ukraine and Moldova is to sign the new single coherent and strengthened agreements which will be very similar to the ‘European Neighbourhood Agreements’ mentioned in the ENP Strategy Paper⁵⁷.

EU may not be willing to increase much the scope of new agreements, by using the conditionality principle. However, it is already obvious that the coverage of these

⁵⁷ Op.cit. footnote 48.

‘enhanced’ agreements will be considerably broader than the current PCAs and Action Plans. So, the EU needs a Treaty basis for the conclusion of new enhanced agreements and as the Constitutional Treaty is not in force, this basis will probably be provided by the Arts.300 and 308 TEC plus articles for the respective areas included into the new agreements.

2.1.2. Secondary Legislation - European Neighbourhood and Partnership Instrument (ENPI) Regulation

The ENPI Regulation⁵⁸ consists of preamble, 5 titles (objectives and principles, programming and allocation of funds, cross-border cooperation, implementation and final provisions), and 32 articles. It reiterates that ENPI as a single coherent framework is aimed to make the Community’s external assistance more effective, and privileged partnership established between the EU and its neighbours in the framework of ENP with the intention to avoid new dividing lines in Europe, is based on the joint ownership and commitment to common values.

The Regulation replaces existing geographical and thematic programmes covering the countries concerned (such as the TACIS, covered post-Soviet countries and expired on 31 December 2006) and establishes a financial envelope for the period of 2007 - 2013.

The overall objectives of the ENPI consist of promotion of political, economic and social reforms across the neighbourhood and enhanced cooperation and progressive economic integration between the EU and its neighbours. Cross-border cooperation along the external borders of the EU is underlined as the issue of particular importance.

It is also enshrined that the EU and Russia “have decided to develop their specific strategic partnership through the creation of four common spaces, and Community assistance will be used to support the development of this partnership and to promote cross-border cooperation at the border between Russia and its European Union neighbours.”⁵⁹ Thus, the ENPI Regulation covers not only Belarus, Moldova, Ukraine,

⁵⁸ **European Neighbourhood and Partnership Instrument** Regulation, op.cit.

⁵⁹ Ibid. preamble, para. 11.

(Eastern Europe), Armenia, Azerbaijan, Georgia (Southern Caucasus), Algeria, Egypt, Israel Jordan, Lebanon, Libya, Morocco, Palestinian Authority of the West Bank and Gaza Strip, Syria, and Tunisia, (Southern Mediterranean), but also Russian Federation.

That's why the instrument has been named neither Neighbourhood instrument, nor ENP instrument, but European Neighbourhood and *Partnership* instrument (emphasis added). The ENPI does not cover assistance to neighbouring countries with membership perspective, such as Turkey and countries of Western Balkans. Assistance to these countries is covered under a separate Pre-Accession Instrument.

Second part of Art.2 of Regulation lists in details objectives of the ENPI. These are:

- promoting political dialogue and reform;
- promoting legislative and regulatory approximation towards higher standards in all relevant areas;
- strengthening of national institutions and bodies responsible for the elaboration and the effective implementation of policies in areas covered in association agreements, partnership and cooperation agreements, and other multilateral agreements to which the Community and/or its Member States and partner countries are parties;
- promoting the rule of law and good governance;
- promoting sustainable development in all aspects;
- pursuing regional and local development efforts;
- promoting environmental protection;
- supporting policies aimed at poverty reduction;
- supporting policies to promote social development, social inclusion, gender equality, non-discrimination, employment and social protection;
- supporting policies to promote health, education and training;
- promoting and protecting human rights and fundamental freedoms;
- supporting democratisation, inter alia, by enhancing the role of civil society organisations and promoting media pluralism, as well as through electoral observation and assistance;

- fostering the development of civil society and of nongovernmental organisations;
- promoting the development of a market economy;
- promoting cooperation in the sectors of energy, telecommunication and transport;
- providing support for actions aimed at increasing food safety for citizens;
- ensuring efficient and secure border management;
- supporting reform and strengthening capacity in the field of justice and home affairs;
- supporting administrative cooperation to improve transparency and the exchange of information in the area of taxation;
- promoting participation in Community research and innovation activities;
- promoting cooperation between the Member States and partner countries in higher education and mobility of teachers, researchers and students;
- promoting multicultural dialogue and people-to-people contacts;
- supporting cooperation aimed at protecting historical and cultural heritage;
- supporting participation of partner countries in Community programmes and agencies;
- supporting cross-border cooperation;
- promoting regional and sub-regional cooperation and integration;
- providing support in post-crisis situations;
- encouraging communication and promoting exchange among the partners on the measures and activities financed under the programmes;
- addressing common thematic challenges in fields of mutual concern and any other objectives consistent with the scope of this Regulation.

This long list, including general Community development policy objectives alongside the specific ENP objectives shows the breadth of ENPI's coverage.

According to Art. 3 of Regulation, bilateral agreements (PCAs and Association Agreements), relevant Commission Communications, Council Conclusions and Action Plans constitute the overall policy framework for the programming of Community

assistance under ENPI. Community assistance may nevertheless be provided even in the absence of such agreements, if it is useful for pursuing EU's policy objectives.

Article 4 sets out general principles of ENPI's implementation. Thus, Community assistance shall:

- complement national measures to promote synergy and enhance impact;
- be established in partnership between the Commission and the beneficiaries;
- be co-financed in order to promote ownership and maximise its leverage effect.

Article 5 underlines the importance of consistence of Community assistance under ENPI with other Community policies and coordination between Community and Member States. The types of programmes through which assistance under ENPI will be provided are specified in Art.6. These programmes are:

- country and multi-country programmes;
- thematic programmes; and
- cross-border cooperation programmes.

Article 7 of Regulation states that for country and multi-country programmes Country Strategy Papers and National Indicative Programmes shall be adopted. National Indicative Programmes shall contain multi-annual financial allocations and priority objectives for each country or region. These allocations shall reflect not only specific characteristics and needs of the country or the region concerned, but also the level of ambition of the EU's partnership with a given country, the pace of progress, and the capacity of managing and absorbing Community assistance.

Article 7 also provides for the adoption of Cross-Border Cooperation Strategy Paper and National Indicative Programme and notes that financial allocations for the joint cross-border programmes shall be based on the objective criteria (notably, population of the eligible areas). In the event of crises or threats to the common values in the partner state, Strategy Papers may be reviewed ad hoc.

Implementing Arts. 6 and 7 of Regulation, in March 2007 Commission issued first documents aimed to establish a detailed framework for implementation of the above mentioned programmes. These are:

- ENPI Country Strategy Papers (2007 – 2013) and National Indicative Programmes (2007 - 2010);
- ENPI Eastern Regional Programme Strategy Paper (2007 – 2013) and Eastern Regional Indicative Programme (2007 – 2010);
- ENPI Interregional Programme Strategy Paper (2007 - 2013) and Indicative Programme (2007 - 2010);
- ENPI Cross-Border Cooperation Strategy Paper (2007 – 2013), and Indicative Programme (2007 – 2010).

Under Art.9, joint cross-border programmes for land borders and sea crossings of significant importance shall be established for each border at the appropriate territorial level and include eligible territorial units belonging to one or more Member States and one or more partner countries. Joint operational programmes for sea basins shall be multilateral and include eligible territorial units facing a common sea basin belonging to several participating countries, including at least one Member State and one partner country.

Article 10 provides for the joint management of the cross-border programmes by the relevant Member States and partner countries through a joint managing authority usually located in a Member State.

Article 12 specifies that above mentioned action programmes, drawn up on the basis of the strategy papers, shall specify the objectives pursued, the fields of intervention, the expected results, the management procedures and the total amount of financing planned.

Article 13 permits, on the exceptional basis, in the event of unforeseen and duly justified needs or circumstances, adoption of special measures not provided for in the strategy papers or indicative programmes. Such measures shall specify the objectives pursued, the areas of activity, the expected results, the management procedures used and the total amount of financing planned. They shall also contain a description of the

operations to be financed, an indication of the amounts allocated for each operation and an indicative implementation timetable.

Article 14 lists the entities, bodies and institutions eligible under the Regulation. These are:

- partner countries and regions and their institutions;
- decentralised bodies in the partner countries, such as regions, departments, provinces and municipalities;
- joint bodies set up by the partner countries and regions and the Community;
- international organisations, including regional organisations, UN bodies, departments and missions, international financial institutions and development banks,
- Community institutions and bodies,
- European Union agencies;
- the following entities and bodies of the Member States, partner countries and regions and any other third country complying with the rules on access to the Community's external assistance referred to in Article 21, in so far as they contribute to the objectives of this Regulation:
 - (a) public or parastatal bodies, local authorities or administrations and consortia;
 - (b) companies, firms and other private organisations and businesses;
 - (c) financial institutions that grant, promote and finance private investment in partner countries and regions;
 - (d) non-state actors as defined in below;
 - (e) natural persons;
- the following non-state actors:
 - (a) non-governmental organisations;
 - (b) organisations representing national and/or ethnic minorities;
 - (c) local citizens' groups and traders' associations;
 - (d) cooperatives, trade unions, organisations representing economic and social interests;

- (e) local organisations involved in decentralised regional cooperation and integration;
- (f) consumer organisations, women's and youth organisations, teaching, cultural research and scientific organisations;
- (g) universities;
- (h) churches and religious associations and communities;
- (i) the media;
- (j) cross-border associations, non-governmental associations and independent foundations.

Article 15 of the Regulation lays down that alongside with the financing of main programmes, Community assistance under ENPI may also be used:

- to finance technical assistance and targeted administrative measures, including those cooperation measures involving public-sector experts dispatched from the member states and their regional and local authorities involved in the programme;
- to finance investments and investment-related activities;
- for contributions to the EIB or other financial intermediaries, in accordance with Article 23, for loan financing, equity investments, guarantee funds or investment funds;
- for debt relief programmes in exceptional cases, under an internationally agreed debt relief programme;
- for sectoral or general budget support if the partner country's management of public spending is sufficiently transparent, reliable and effective, and where it has put in place properly formulated sectoral or macroeconomic policies approved by its principal donors, including, where relevant, the international financial institutions;
- to provide interest-rate subsidies, in particular for environmental loans;
- to provide insurance against non-commercial risks;
- to contribute to a fund established by the Community, its Member States, international and regional organisations, other donors or partner countries;
- to contribute to the capital of international financial institutions or the regional

- development banks;
- to finance the costs necessary for the effective administration and supervision of projects and programmes by the countries benefiting from Community assistance;
- to finance microprojects;
- for food security measures.

Article 17 enables the measures which are financed under ENPI to be also co-financed by the:

- Member States, their regional and local authorities and their public and parastatal agencies;
- EEA countries, Switzerland and other donor countries, and in particular their public and parastatal agencies;
- international organisations, including regional organisations, and in particular international and regional financial institutions;
- companies, firms, other private organisations and businesses, and other non-state actors;
- partner countries and regions in receipt of funding.

Articles 24-25 of Regulation set that Commission shall regularly evaluate the results of programmes financed, and lessons learnt should contribute to improving of future operations. Basing on the examination of results achieved, Commission also shall submit to the European Parliament and the Council annual report on the implementation of Community assistance.

Article 26 lays down that the Commission shall be assisted by a committee and makes reference concerning this committee to the Council Decision 1999/468/EC. This decision provides, inter alia, that management committees assisting the Commission compose of the representatives of the Member States and are chaired by the representative of the Commission.⁶⁰

⁶⁰ Council Decision (1999/468/EC) of 28 June 1999, laying down **the procedures for the exercise of implementing powers conferred on the Commission**, OJ L 184/24, 17.7.1999, art.4.

Last, as it is enshrined in Art. 29, the total sum of the financial allocations provided under ENPI is EUR 11 181 000 000, a minimum 95% of which shall be allocated to the country and multi-country programmes and remaining 5% to the cross-border cooperation programmes.

Thus, as it is evidently seen and drawn up on the lessons learnt from operation of TACIS and MEDA, the ENPI Regulation with its specific and innovative cross-border cooperation component constitutes a significant step forward in terms of both enhancing the scope of Community assistance and its efficiency.

2.2. OTHER NORMATIVE DOCUMENTS

Anyone who is aware of functioning mechanism of EU's institutions knows that the principle of separation of powers working within the EU's legal order is as "sui generis" as the legal order within which it is functioning. This uniqueness has reflected in the foreign policy-making process as well.

Thus, the 'almighty' European Court of Justice (ECJ), albeit proved itself as a very serious policymaker in EC pillar, has however very limited competence in PJCC and no competence in CFSP.⁶¹ Hence, the ECJ has not been involved in the process of construction of the ENP's framework. The European Parliament was involved in this process only in the end of 2006, by adoption of ENPI Regulation, together with the Council under the so called 'co-decision procedure' (the Art.251 TEC procedure), and by endorsement of its (however non-binding) Resolution on ENP.

So, as also evident from the process of genesis of the ENP, its genuine constructors were the European Council (consisting of the heads of the Member States and heads of the governments), the Council (consisting of ministers, usually of foreign affairs), and Commission (surely, not without the consultations with the Member States).

⁶¹ And probably this situation will not have changed in the near future, as, even the Constitutional Treaty which tried to do very big step forward in the integration process (and probably it was one of the main reasons of its dropping), did not dare to give the ECJ jurisdiction/competence in this, very sensible for the member states (from the point of lack of sovereignty) area by stating in the arts. III-376,377 that "the 'Court of Justice of the European Union' shall not have jurisdiction in the area of common foreign and security policy, and shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State".

Saying in very simple terms, the process can be described as follows: the Council had expressed an idea, the Commission fleshed it out, the Council and European Council welcomed (approved) the result and showed to the Commission the frames within which it should continue its work (e.g. not offering the membership perspective). The Commission continued its work on establishing the policy framework (keeping on consulting with the Member States) and issued the ENP Strategy Paper and other Communications. As the newborn child proved itself as promising one, the relevant legislative act – ENPI Regulation was issued.

This excursus has been made in order to illustrate that, due to its political nature, the vast majority of main documents on ENP are neither binding nor legislative but political documents. These documents, issued by the EU Council, Council of Ministers, European Parliament and Commission, for the purposes of comprehensive analysis are explored below because they can be considered as the sources of the so-called ‘soft law’.

2.2.1. European Council Presidency Conclusions and General Affairs and External Relations Council Conclusions

The European Council and the Council (of ministers) consist of the representatives of the EU’s member states. Their ‘conclusions’ may both express the new idea and assign to the Commission the task of its further elaboration, and approve the idea already expressed by the Commission and encourage the Commission to its further elaboration.

It was the General Affairs and External Relations (GAER) Council Conclusions where the ENP (then a ‘Wider Europe’) was first officially mentioned in April 2002. The GAER Council then approved the Commission’s idea. After the preparation of Solana-Patten letter, the EU’s Southern member states – notably France, Spain and Italy (which are at the same time Northern Mediterranean states) strongly lobbied for the inclusion of the Southern Mediterranean states into the ENP. The results of this lobbying were reflected in the GAER Council Conclusions of September and November of 2002. In December, the EU Council in its Presidency Conclusions upheld the idea of inclusion of

Southern Mediterranean States. Then, the cycle repeated again – Commission Communication of March 2003, the March and April GAER Council Conclusions approving it and making some additional notes. Then, the idea of inclusion of Southern Caucasian states into the ENP was first expressed by the Commission and then approved by the GAER Council.

Thus, the mechanism was: expression of the new idea by the Commission, then approval of the idea by the GAER Council Conclusions and consequent approval by the European Council Presidency Conclusions.

In order to illustrate the significant role of the EU Council Presidency Conclusions and GAER Council Presidency Conclusions, it worth also mentioning among others the GAER Council Conclusions of June 2004. Here we can find the provisions providing for the inclusion of Southern Caucasian states into the ENP and reference to the decision of developing of bilateral relations with Russia not in the ENP framework, but in the context of four ‘common spaces’.

The Conclusions of June 2004 had also briefly referred to the rationale and objectives of the ENP, repeated that the ENP was built on the commitment to common values, and described the contents of the conditionality and joint ownership principles.

In the absence of specifically devoted to the ENP Treaty provisions, the EU Council Presidency Conclusions and GAER Council Presidency Conclusions played very important role, providing during the initial phase of the ENP’s genesis necessary basis for the subsequent development of the policy.

2.2.2. European Commission ENP Strategy Paper

The ENP Strategy Paper issued by the Commission in May 2004, just in a month after the big bang enlargement, first time laid down in a systematized way the foundations of the ENP. In the introduction, the Strategy Paper mentions that the ENP is a response to

the new challenges posed by the enlargement of 2004 and it will contribute to the realization of the European Security Strategy's objectives.⁶²

Then, the way passed by the ENP in the timeframe between March 2003 and March 2004 is briefly overviewed and the interest, expressed by the neighbouring states during the exploratory talks and consultations with them on the future substance of ENP and priorities to be included into the Action Plans, is noted.⁶³ It is repeated again that the ENP is distinct from the possibilities available to European Countries under Art.49 TEU, i.e. from the enlargement. The Strategy paper argues that ENP will reinforce stability and security and contribute to the resolution of conflicts in the neighbourhood.⁶⁴

The ENP's vision, according to the Strategy Paper, involves a "ring of countries, sharing the EU's fundamental values and objectives, drawn into an increasingly close relationship, going beyond cooperation to involve a significant measure of economic and political integration."⁶⁵

The Strategy Paper points out that the ENP is a comprehensive policy and as such it integrates related components from all three pillars of the EU, and underlines that in the implementation of ENP, the EU's member states and institutions should act in a consistent and coherent way.⁶⁶ It describes in details the main principles of the ENP, which are: conditionality, differentiation, joint ownership and added value.⁶⁷ While describing the monitoring process of Action Plans it mentions both the unilateral and joint monitoring.⁶⁸

The Strategy Paper determines the geographical coverage of the ENP and argues that ENP, basing on the EU's bilateral agreements with the neighbouring countries, will try to realise, by enhancing cooperation, the potential of these agreements, which were not

⁶² European Commission Communication on **European Neighbourhood Policy Strategy Paper**, op.cit. p.2.

⁶³ Ibid. pp.2-3.

⁶⁴ Ibid. p.4.

⁶⁵ Ibid. p.5.

⁶⁶ Ibid. p.6.

⁶⁷ Ibid. pp.8-9.

⁶⁸ Ibid. p.10.

fully used.⁶⁹ As, at that time the Southern Caucasian states have not been included into the framework yet, it recommends to the Council to expand the ENP's 'umbrella' to the South Caucasus. The Commission supports its proposal by references to the similar views of the European Parliament, EU High Representative for CFSP and EU Special Representative to the South Caucasus, and also reminds the reference to the region, made by the European Security Strategy and importance of the region in terms of geopolitics (not least as an energy supplier).⁷⁰ Concerning Belarus, the Strategy Paper confirms that Belarus is in principle covered by the ENP, but currently cannot fully benefit from its advantages, as the PCA with Belarus has not been ratified.⁷¹

The Strategy Paper also underlines that ENP is based on the commitment to common values, because the EU itself is based on these values and seeks commitment to them in its ENP partners. So, as "the extent to which, ENP partners implement these commitments differs and there is a scope for improvement, the level and ambitions of the EU's relations with the partner state will take into account the extent to which they are shared"⁷², which is called the conditionality principle.

According to the Strategy Paper, the future Action Plans will contain, inter alia, provisions related to the political and economic dialog, trade and internal market, social development policy and justice and home affairs.⁷³ Interestingly, it is also indicated that the EU is the world's largest energy importer, surrounded at the same time by the world's largest energy exporters (Russia, Caspian basin, Middle East and North Africa), so the energy issues will surely find their place in the Action Plans.⁷⁴

The other issues to be included into the Action Plans according to the Strategy Paper should be: transport, environment, information society, research and innovation, people-to-people contacts etc. Last but not least issue to discuss in the Strategy Paper is the future ENPI – here just ENI (without Russia's 'P'). But, under the Strategy Paper, until

⁶⁹ Ibid. p.7.

⁷⁰ Ibid. pp.10-11.

⁷¹ Ibid. pp.11-12.

⁷² Ibid. p.13.

⁷³ Ibid. pp.14-16.

⁷⁴ Ibid. p.17.

it will be launched in 2007, the ENP should be financed by the existing financial instruments – TACIS and MEDA.

2.2.3. Other Communications of the European Commission

As it has already become evident from the first chapter, the ENP Strategy Paper is the most important among many other Commission Communications on the ENP. The aim of this section is not to repeat all provisions, but to briefly overview just the main provisions of these Communications, thereby illustrating their important role in the construction of the ENP's overall framework.

These Communications are:

- “Wider Europe - Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours (March 2003);
- “Paving the way for a New Neighbourhood Instrument” (July 2003);
- “Commission Proposals for Action Plans under the ENP” (December 2004);
- “Recommendations for Armenia, Azerbaijan, Georgia, Egypt and Lebanon” (March 2005);
- “Implementing and promoting the ENP” (November 2005);
- “Strengthening the ENP” (December 2006).

The first one, on “Wider Europe”, has laid down, first time in official document, the main objectives and geographical coverage of the ‘Wider Europe’ policy. The second has assessed the possibility of creation of a new Neighbourhood Instrument and proposed that existing financial instruments should support the new policy until the new Neighbourhood Instrument will be launched in 2007.

The third has described the content of future Action Plans, underlined the principle of differentiation and specified that Action Plans should be ‘tailor-made’ for each country. The fourth has briefly overviewed ENP Country Reports of Armenia, Azerbaijan, Georgia, Egypt and Lebanon, and made recommendations on future ENP Action Plans of these countries.

The fifth, addressed by the Commissioner for External Relations and European Neighbourhood Policy – Benita Ferrero-Waldner to the College of Commissioners, has defined the ENP as a key EU external relations priority and informed about the achievements made to date.

The sixth has surveyed what had already been done through the ENP and noted its first achievements. It has underlined the integrative character of the ENP, better use of funds under ENPI, joint ownership of Action Plans and their concreteness as the strengths of the ENP. At the same time, trade, economic integration, regional conflicts, mobility and migration were indicated as the areas where cooperation could be further strengthened.

Simultaneously with the Communication ‘on Strengthening the ENP’ of December 2006, Commission staff working documents, containing ENP assessments made by sectors and by countries, as well as the overall assessment, were also published by the Commission.

Thus, it is evident that the Commission Communications, together with the European Council Presidency Conclusions and GAER Council Conclusions, being the ‘cornerstones’ of the ENP’s framework, have been provided a necessary basis for its subsequent evolution and development.

2.2.4. European Parliament Resolution on the ENP

This resolution, endorsed by the European Parliament (EP) on 19 January 2006, slightly differs from the other ENP documents. Reiterating the principles and objectives of the ENP, it, at the same time, pays more attention not to the technical features of ENP, but to its geopolitical implications, providing also a brief overview of the regions covered by ENP.

In preamble, the Resolution, providing the normative basis for the ENP, while listing relevant documents first refers to the art. I-57 of the Constitutional Treaty, however, noting that the Treaty is not in force.

The Resolution points out the rationale and objectives of the ENP. It also provides that the ENP covers both the European countries eligible in terms of art.49 TEU to apply for EU membership and countries not having such perspective, and underlines that this fact should not affect the rights of eligible countries to apply for membership.⁷⁵

The EU, according to the Resolution, should play more active role in the settlement of conflicts in the neighbourhood and in support to the democratic transition of Belarus.⁷⁶ The Resolution emphasizes that the enlargements should continue and membership aspirations of some neighbours should not be rejected.⁷⁷

It also stresses that ENP should not be ‘one size fits all’ policy and welcomes the idea of signing of European Neighbourhood Agreements in the end of ENP process with those countries which are not applying for the EU membership.⁷⁸ The joint management of the shared border between the EU and neighbouring state, and strong anti-corruption measures should, under the Resolution, be essential elements of these agreements.⁷⁹

The Resolution provides that the ENP Action Plans “should serve as a tool towards achievement of the goals of potential EU membership” for the eligible countries.⁸⁰ With regard to the monitoring process, it interestingly proposes creation of the multilateral framework, covering all the countries concerned, for the joint assessment of the monitoring reports and discussions about the overall future of the ENP.⁸¹

The Resolution underlines importance of the involvement of local and regional authorities and also public organisations in the EU Member States and ENP partner states into the process of development and implementation of the ENP.⁸² The other important issue discussed in the Resolution is the strengthening of cooperation among the neighbours themselves. Here, the need in strengthening of political dimension of the ENP, alongside with the economic dimension, is pointed out, and emphasis is put not

⁷⁵ European Parliament resolution on the **European Neighbourhood Policy**, op.cit. preamble, para.E.

⁷⁶ Ibid. paras. J,L.

⁷⁷ Ibid. para.3.

⁷⁸ Ibid. paras.5,7.

⁷⁹ Ibid. paras.10,28.

⁸⁰ Ibid. para.17.

⁸¹ Ibid. para.20.

⁸² Ibid. para.29.

only on the cooperation and integration on the regional level, but also on those on the sub-regional level.⁸³

Last point seems quite logical taking into consideration the fact that EU's ENP partners can be divided not only to Eastern neighbours and Southern neighbours. For example, 6 Eastern neighbours (except Russia) are all the republics of former Soviet Union and usually are mentioned in the 3+3 format – Eastern Europe + Southern Caucasus.⁸⁴

The Resolution calls on the EU's member states to strengthen and develop the Council of Europe in order to make it “the most important pan-European forum of cooperation for all the different European spaces”.⁸⁵ This idea undoubtedly makes sense, since not only all EU member states, but also Russia and 5 eastern neighbours (except Belarus)⁸⁶ are the members of the Council of Europe.

The EP also reasonably argues that the strengthened interaction with the OSCE and the Council of Europe will provide the EU with the essential knowledge and instruments it lacks, in the fields of monitoring of human rights, democracy and rule of law commitments and of prevention and resolution of political and military conflicts.⁸⁷ However, EP's next proposition to the EU, to sign the European Convention on Human Rights,⁸⁸ seems more controversial. The EP probably does not consider the Opinion 2/94 of the ECJ as the last stop in debate on this issue.

The Resolution underlines energy and illegal immigration issues as those of the big importance for the EU and therefore argues that they must be covered by the ENP.⁸⁹ With regard to the Eastern Europe, it recognises Ukraine's and Moldova's European aspirations and calls for a long-term membership perspective to be established by the EU for these countries.⁹⁰ With regard to the Southern Caucasus, it stresses the

⁸³ Ibid. paras.35-36.

⁸⁴ The same can be said about the Southern Mediterranean. Here, there are Maghreb (Algeria, Morocco, Tunisia, and Libya), Mashreq (Egypt, Jordan, Lebanon, and Syria), and Middle East (Israel and Palestinian Authority).

⁸⁵ European Parliament resolution on the **European Neighbourhood Policy**, op.cit. para.39.

⁸⁶ Belarus is currently an associated member of the Council of Europe and candidate for the full membership. In spite of the fact that it applied for the full membership earlier than many other post-Soviet states, in 1993, its application was, however, rejected in 1997. (Data retrieved from www.coe.int, accessed on 23.04.2007).

⁸⁷ European Parliament resolution on the **European Neighbourhood Policy**, op.cit. para.38.

⁸⁸ Ibid. para.40.

⁸⁹ Ibid. paras.44,48.

⁹⁰ Ibid. paras.62-63.

importance of the resolution of ‘frozen’ conflicts, impeding the development of the region.⁹¹

⁹¹ Ibid. paras.66,70.

CHAPTER III: POLITICAL DIMENSION

3.1. ENP's GEOPOLITICAL IMPLICATIONS

As a policy, addressed to the neighbours – the states which are proximate to the EU because of their geographic location, the ENP can be called as a genuine ‘geo-policy’. Its geopolitical roots are enshrined in the European Security Strategy of 2003. This document specifies the building security in the EU’s neighbourhood as one of the strategic objectives of the EU and states as follows:

“Even in an era of globalisation, geography is still important. It is in the European interest that countries on our borders are well-governed. Neighbours who are engaged in violent conflict, weak states where organised crime flourishes, dysfunctional societies or exploding population growth on its borders all pose problems for Europe. The integration of acceding states increases our security but also brings the EU closer to troubled areas. Our task is to promote a ring of well governed countries to the East of the European Union and on the borders of the Mediterranean with whom we can enjoy close and cooperative relations. ... It is not in our interest that enlargement should create new dividing lines in Europe. We need to extend the benefits of economic and political cooperation to our neighbours in the East while tackling political problems there....We should now take a stronger and more active interest in the problems of the Southern Caucasus, which will in due course also be a neighbouring region....Resolution of the Arab/Israeli conflict is a strategic priority for Europe”.⁹²

The same document declares that:

“As a union of 25 states with over 450 million people producing a quarter of the world's Gross National Product, the European Union is inevitably a global player... it should be ready to share in the responsibility for global security and in building a better world.”⁹³

Today, as a union of even 27 states with the population of approximately 500 millions, the EU is indeed a global player. As Dannreuther strongly argues, “territorially enlarged EU can no longer be a disinterested actor in relation to the countries on its periphery, as it is just too powerful and has too many interests of its own to continue to accept an uncritical devolution of its responsibilities to other external actors, such as Russia and

⁹² Solana, **European Security Strategy**, op.cit. pp.7-8.

⁹³ Ibid. p.1.

the USA.”⁹⁴ He also adds that, “EU’s ambitions to gain greater international status and prestige, and its desire to become a serious global power, are very much connected to the relative success or failure of its regional policies, because the EU’s immediate neighbourhood is a principal litmus test for its claim to be a transformative power.”⁹⁵

The normative attractiveness of the EU for its neighbours is beyond doubt. From the outside, especially from the poorer states, the EU is sometimes seen as a prosperous heaven, such an ideal democratic world where the poverty does not exist and the just laws work. Some of the neighbours (e.g. Ukraine, Moldova and Georgia) desperately want to be a part of this ‘heaven’. However the reality is that the EU Member States do not hurry either to spend additional financial resources for the stabilisation and growth of their economies or to let their cheap labour power to penetrate into the inner labour markets of the EU, and all in all do not want to admit them to the club, at least in the foreseeable future.

It should be reminded that relative toothlessness of the ENP lacking the ‘golden carrot’, namely accession perspective, is the weakness of the ENP. Indeed, EU has tried to draw the line of geographic finality of the union, by not including Turkey and Western Balkans countries in the ENP.

Nevertheless, it should be noted, that even though it lacks accession perspective, the ENP still retains some attractiveness both for the neighbours considering it as just a step for a further preparation for membership, and for those satisfied, or having no other choice than being satisfied, with the status-quo, mainly thanks to the financial assistance offered. This financial assistance is not, however, offered free of charge. In its return, EU gains its own benefits, as discussed in the first chapter, and among them, the neighbours’ alignment with the EU on the key foreign policy issues should not be overlooked.

By means of the ENP, the EU very significantly extends its sphere of external influence. Even excluding Russia, this sphere now covers a huge area from the Atlantic shores of

⁹⁴ Dannreuther, op.cit. p.184.

⁹⁵ Ibid.

Morocco to the Caspian shores of Azerbaijan, and from the Palestinian Authority to Ukraine.

As Aliboni points out, it is an ENP's geopolitical novelty to bring into the same policy framework two such distinctive regions, as the Eastern Europe and Southern Mediterranean.⁹⁶ He continues, that "while regarding these areas as a single geopolitical arc may definitely make sense in a broader perspective, the EU should not overlook that this arc comprises very different political, cultural and socio-economic realities, not only on a country-by-country but also on a regional and sub-regional basis, and this means that implications may be global, regional and even sub-regional, where sub-regions may either lie wholly within the arc of neighbours or straddle it."⁹⁷

With regard to the sub-regions, straddling the arc, some Mediterranean countries, not covered by the ENP, can be noted. Whereas in the eastern direction the ENP's umbrella has covered almost all suitable states. Aliboni sees ENP's most obvious geopolitical effect in "expanded political involvement by the EU" in the neighbourhood, including involvement in the conflict resolution.⁹⁸ To date, EU has not been quite successful in the settlement of conflicts in the neighbourhood. Nevertheless, EU's expanded involvement in the affairs of neighbourhood, which indeed has already been taking place, causes the following important consequences:

- External confrontation of interests with the other geopolitical stakeholders (notably the US and Russia), and
- Internal foreign policy contradictions within the EU itself.

In addition, these factors are closely inter-connected and often overlap. For instance, in the Arab/Israeli conflict the position of EU, being the result of UK v. France/Germany compromise, is more balanced and not as pro Israeli as that of the US. The other example is that while the EU's common stance is in favour of not granting the membership perspective to Ukraine and Moldova, Poland and Baltic States nevertheless

⁹⁶ Roberto Aliboni, "The Geopolitical Implications of the European Neighbourhood Policy", **European Foreign Affairs Review** (2005) 10, p.1.

⁹⁷ Ibid. p.2.

⁹⁸ Ibid. p.16.

continue lobbying the Ukrainian membership perspective, and the same Romania does for Moldova.

In the eastern direction, EU's interests, while being generally non-contradictory to those of the US, often directly confronts with the Russia's interests. The vast majority of states, entered to the EU in 2004 and 2007, were the states of former communist block. Considerable expansion of the EU's (and NATO's) borders to the east has inevitably meant for the Russia considerable restriction of its sphere of influence.

Moreover, even in spite of the fact that, unlike the Baltic States, which entered into the EU in 2004, six eastern EU's ENP partner states are currently far from the accession to the EU, the EU's influence in the eastern neighbourhood nonetheless keeps growing. That's why Russia, not willing to surrender its last bastions, tries to strengthen its geopolitical influence in the region as well.

The EU's interests in the eastern neighbourhood and their confrontation and overlapping with the interests of other actors, alongside with the geopolitical overview of the region will be investigated in detail in the second part of this chapter.

3.2. GEOPOLITICAL OVERVIEW OF THE EASTERN NEIGHBOURHOOD AND INTERESTS OF THE EU IN THE REGION

3.2.1. Eastern Europe (Ukraine, Moldova, Belarus)

Belarus, Moldova and Ukraine have re-gained their independence after the disintegration of the Soviet Union. Eastern Europe, because of its geographic proximity has always been an important region for the EU, has become, after the enlargements of 2004 and 2007, the region of utmost importance. The 'Wider Europe' policy was initially designed to deal exactly with Ukraine, Moldova, Belarus and Russia. It is evident from the Solana/Patten letter and other first documents.

First and foremost factor determining the region's privileged status in the list of EU's external relations priorities is its geographic location in the immediate vicinity of the

EU's eastern borders. It is enough to look at the geographical map in order to realise the geopolitical status-quo in the region. There is Russia in the east, the EU in the west, and buffer zone, consisting of Moldova, Ukraine and Belarus, between them. Moldova has the common border with Romania, Ukraine with Romania, Hungary, Slovakia and Poland, and Belarus with Poland, Lithuania and Latvia.

So, it is evident that alongside the joint and thereby strengthened control over the eastern borders, the political and economic stability in these states is also very important for the EU. Reiterating the strong argument of Wallace, the EU faces with the dilemma – “either to import insecurity from the neighbours, or to export to them security (involving stability and prosperity)”⁹⁹. Undoubtedly, the EU's choice is the latter.

Ukraine, Moldova and Belarus, being the states of the same region, nevertheless differ from each other with regard to the current geopolitical orientation, and political and economic situation. Ukraine proclaimed its intention to become a member of the EU as early as in mid-90s. However, this idea had not been considered seriously by the EU until the Ukrainian ‘Orange Revolution’ happened. After the ‘revolution’, newly elected president Yushchenko proclaimed EU membership as priority number one for Ukraine and expressed willingness to join to the NATO.

These intentions were welcomed by the EU and especially by the US, while met with the furious reaction of Russia. All what Ukraine needed at that moment was the grant of accession perspective. But the timing was very unlucky. EU officials and Member States preferred to wait for the results of referenda in France and the Netherlands. After the results were obtained, the EU did not dare, seeing such unwillingness of its citizens to continue enlargements, to give the accession perspective to Ukraine. This refusal has made the internal political situation in the country even more complicated.

Having considerable territory and population, Ukraine is an illustrative example of the country situated between two geopolitical poles. It is internally divided into two parts. The western and central regions are inhabited by the Ukrainians who are very close to

⁹⁹ Op.cit. footnote 26.

the Poles in ethno-linguistic terms. They want Ukraine to be a member of the EU and the NATO.

The southern and eastern regions are overwhelmingly inhabited by the Ukrainians who are generally not objecting to the EU membership, but are strongly against the membership of Ukraine in NATO. In their view, Russia should be the closest political, security and economic ally of Ukraine. Inhabitants of eastern and southern regions of Ukraine were really surprised while realising, after the dissolution of the Soviet Union, that they have become the citizens of sovereign Ukraine. In spite of the fact that the only official language in the Ukrainian territory is Ukrainian language, they prefer to speak in Russian. It is not surprising because many of them perceived themselves not as the Ukrainians, but as the Russians.

The recent political crisis of April 2007 reflected again the seriousness of antagonisms between those two parts of Ukraine. It also illustrated the disappointment of vacillating part of Ukrainians, related to the non-granting of accession perspective to Ukraine.

Moldova, while having been attracted by two geopolitical poles as well, has its own problems, the most important of which is unresolved conflict in Transnistria. This conflict arose between the central Moldovan government and local secessionist forces during the process of disintegration of the Soviet Union. The point of secessionists was that Moldova was going to re-unite with Romania and they did not want to become a part of Romanian speaking state, as they were of Slavic origin and Russian speaking, so it was time for them to establish their own independent state or to become the part of Russia.

During the 1991-1992 war, secessionists won, turned out the central government, and established the self-proclaimed Dnestr Moldovan Republic, thanks to the direct involvement and support of Russian army. In the 90s, the central Moldovan government, unable to resolve the conflict, was predominantly occupied with the rehabilitation of economy and elimination of poverty.

In 2001, Voronin, the head of the Communist Party of Moldova won the presidential elections. The basic point of his programme was the strengthening of partnership and

cooperation not with the EU, but with Russia. The same leader nevertheless made in 2003 unexpected geopolitical move, by making 180-degree turn to the EU side. There were several reasons accumulation of which pushed him to take this decision. First, forthcoming expansion of the borders of EU and NATO and thereby their approaching to the Moldovan borders. Second, need in lessening economic dependency on Russia.¹⁰⁰ Third, 'Rose Revolution' in Georgia and considerable growth of the pro-EU mood among the Moldovans. Fourth, exclusion of Moldova from the 'Common Economic Space' agreement, signed by Russia, Ukraine, Kazakhstan and Belarus in 2003.¹⁰¹ And fifth, Moldova's rejection to sign the Russian plan of resolution of Transnistrian conflict, which implied the federalisation of Moldova.¹⁰² However, this geopolitical shift has not become the final decision and today Moldova successfully continues policy of balanced drifting between two geopolitical poles.

Belarus on the contrary is not drifting. It left the post-Soviet chaos of early 90s with fewer losses than Ukraine or Moldova and has not suffered either from separatism or from internal antagonisms. However, its current non-changeable political regime under the president Lukashenka is considered by the international community as undemocratic and authoritarian. Belarus has very strong political and economic ties with Russia and in this Eastern European regional trio, only Belarus is its genuinely devoted ally. This fact indicates importance of Belarus for Russia.

Despite the different geopolitical choices of Ukraine, Moldova and Belarus, their bilateral relations with each other are quite warm. Notably a few words can be said about the Ukraine-Moldova relations, after the establishment of the EU Border Assistance Mission (EUBAM) on the Moldova-Ukraine state border. It includes border police and customs officials from 16 EU Member States and aimed to prevent

¹⁰⁰ Adrian Pop et al, "**Romania and the Republic of Moldova – between the European Neighbourhood Policy and the Prospect of European Union Enlargement**", European Institute of Romania, Pre-Accession Impact Studies III, Study No. 5, Bucharest, 2006, p.89.

¹⁰¹ Ibid. p.42.

¹⁰² Ibid.

smuggling, trafficking, and customs fraud, by providing advice and training to improve the capacity of the Moldovan and Ukrainian border and customs services.¹⁰³

As a consequence, what are the stakes of the EU in the region? They are much bigger than those of the US, whose predominant interest here is the involvement of Ukraine in the NATO. Ukraine, Moldova and Belarus constitute for the EU potential source of instability on its eastern backyard. The main interest of the EU here is to support continuing transition process of Ukraine and Moldova and assist them to complete this process and to become full-fledged democracies. With regard to Belarus, the EU supports civil society (opposition) and generally ‘people of Belarus’, but not its current leadership.

The financial and technical assistance provided to these states is not the EU’s gesture of generosity. Illegal immigrants and organised criminal groups try to penetrate to the EU from the east. Establishment of EUBAM illustrates determination to tackle these problems. The Russian oil and gas pipelines are flowing to the EU through the territory of these states. Alignment of these states with the EU on the key foreign policy issues is also important for the EU. All in all, the EU wants these states to be stable, democratic and strong. It is in the vital interests of its own.

3.2.2. Southern Caucasus (Georgia, Azerbaijan, Armenia)

Bordering with Russia on the North, Iran on the South, Turkey on the West, and Caspian Sea and Central Asia on the East, Southern Caucasus undoubtedly has an important geopolitical location. Three South Caucasian states – Armenia, Azerbaijan and Georgia re-gained their independence after the disintegration of the Soviet Union.

One of the distinct features of the region is its richness with the oil and gas resources exploited by the Azerbaijan and then transported via Georgia and Turkey.¹⁰⁴ However, its other feature is overriddenness with the armed territorial conflicts which started

¹⁰³ “Solana and Ferrero-Waldner launch Border Assistance Mission in Odessa” Brussels, press release IP05/1448, 29 November 2005. http://ec.europa.eu/external_relations/ceeca/news/ip05_1488.htm , accessed on 06.02.2007.

¹⁰⁴ Baku-Tbilisi-Ceyhan oil pipeline and Baku-Tbilisi-Erzurum gas pipeline.

simultaneously with the process of disintegration of the Soviet Union and were interrupted by the sign of ceasefires in the early 90s.

Today these conflicts, or the process of their settlement, are still frozen. Two of them - Abkhazian and South Ossetian, are Georgian internal conflicts between the central government and secessionist breakaway entities, whereas the third one is the conflict between Armenia and Azerbaijan over the Azerbaijani Nagorno-Karabakh region currently occupied¹⁰⁵ by the Armenia alongside with the seven surrounding Azerbaijani districts.

So, all the three states of the South Caucasus are currently involved in the conflicts. Whereas the current state of relations between Armenia and Azerbaijan is obviously bad, both states preserve friendly relations with Georgia. At the moment the conflicts, successfully used by the neighbours as the leverage tools, remain the “Achilles’ heel” of the South Caucasian States and together with the complex geopolitical surrounding of the region determine their different geopolitical choices.

It should also be borne in mind that the number of geopolitical stakeholders in the Southern Caucasus is not restricted to Armenia, Azerbaijan and Georgia, and includes the EU, the US and Russia as well. Turkey and Iran are also serious actors here.

Georgia, not having the shared border with Iran, after the ‘Rose Revolution’ of 2003 declared as the main priorities the accession of the country to the NATO and the EU, and has found full US support to this issue. At the same time, the possible eventual NATO membership of Georgia has met the furious reaction from Russia, which has shifted its attitude towards Abkhazia and South Ossetia from the concealed economic and military help to the explicit support including granting to the vast majority of local inhabitants the Russian citizenship. So if one day Georgia having no results from the peaceful negotiations decides to re-establish its territorial integrity by the military

¹⁰⁵ For Armenians it is not the occupation, but deliberation and self-determination. However, as the fact of occupation has been confirmed by the UN Security Council Resolutions 822, 853, 874, 884, and by the Council of Europe’s Resolution 1416, here the term ‘occupation’ is used.

means, it will mean the attack to the citizens of the Russian Federation with all the subsequent consequences.¹⁰⁶

Armenia today holds the different direction. Turkey closed its border with Armenia in 1993 not only in showing support to the Azerbaijanis, but also in answering to the reference in Armenian Constitution to the Eastern Turkey as the Western Armenia and to strengthening efforts for recognizing, with the strong support of Armenian diaspora in France and the US, of the forced relocation of Armenians in 1915 in the Ottoman Empire as the “Armenian genocide”. So feeling the threat from the allied Azerbaijan and Turkey, Armenia sees the Russia as the closest ally. It should not also be forgotten that the vast majority of electric, gas, air-passenger transport, railway, telecommunication and other infrastructure in Armenia today belongs to the Russian companies, both state and private. In addition, Russia does not have military bases either in Georgia or in Azerbaijan, but in Armenia. The US - Armenia relations are also good enough. The other Armenian neighbour, Iran has developed warm relations with Armenia as an answer to the development by the Azerbaijan of relations with the US and Israel.

Azerbaijani external policy is also multi-vectoral. As was mentioned above, Turkey and Azerbaijan because of the ethno-cultural ties are the closest allies. However, Georgia is also Azerbaijani key neighbour, because its oil and gas are transported through the Georgian territory. Moreover, in the February 2007 Azerbaijan, Georgia and Turkey signed agreement about the construction of Baku-Tbilisi-Kars railway. It will be the third big project starting in Azerbaijani capital, continuing on the Georgian territory and finishing in Turkey. This project, as the previous two ones, will obviously, on the insistence of Azerbaijan, bypass Armenia. The interesting point here is also that the Georgian Akhalkalaki region, which will host considerable section of the railway, is predominantly inhabited by the ethnic Armenians.

Relations of Azerbaijan with Russia are complicated. In 90-s they were undoubtedly cold, as the Russia Azerbaijani moving away from its sphere of influence and many

¹⁰⁶ Similarly argues Dov Lynch in “Why Georgia matters”, **European Union Institute for Security Studies Chaillot Paper 86** – February 2006, p.50.

Azerbaijanis perceived, albeit many still perceive, Russia as the main contributor to the military success of Armenia during the Armenian-Azerbaijani Nagorno-Karabakh war.

Since Putin's¹⁰⁷ official visit to Azerbaijan in 2001, bilateral relations have been considerably warmed. Unlike Georgia, Azerbaijan decided to choose more moderate approach in relations with the NATO and did not manifestly proclaim the will to become its member. Thanking to this, Russia differentiated its approach to the Nagorno-Karabakh conflict with that to the Abkhazian and South Ossetian conflicts, and shifted to the rhetoric recognition and respect to the territorial integrity of Azerbaijan.

However in the end of 2006 bilateral relations considerably worsened, when Azerbaijan supported Georgia in its energy (gas prices) dispute with Russia. Russia offered the gas to the Azerbaijan on the same price, only on condition that this gas would not be sold to Georgia. Azerbaijan rejected this condition, then Russia doubled price more than a twice. As the price for Armenia has not changed, Azerbaijan considered this price unjust and rejected to buy Russian gas at all. Instead it proclaimed the stop of transportation of crude Caspian oil to Russia by the Baku-Novorossiysk oil pipeline, arguing that this crude oil would be used for country's energy needs. So, as it was put bluntly by the Russian ambassador to Azerbaijan in 2006, "Azerbaijan is a close partner for Russia, whereas the Armenia is its key ally in the region".

The relations of Azerbaijan with Iran are rather more complicated, mainly because of the following factors:

- More than 30 millions of ethnic Azerbaijanis compactly living in the Northern part of Iran, who are prohibited to read and write in their mother tongue;
- Cooperation of Azerbaijan with the NATO in the framework of IPAP (Individual Partnership Action Plan);
- Iran's nuclear programme;
- Functioning in the Azerbaijan of Israeli embassy;
- Non-regulated yet legal status of the Caspian Sea.

¹⁰⁷ President of Russian Federation in 2000-2008.

This is not the exhaustive list of problems existing in the bilateral relations between Azerbaijan and Iran. In contrast, the US have approximately as good relations with Azerbaijan as with Armenia. In addition to the influential Armenian diaspora, Azerbaijani hydrocarbon (oil and gas) resources and Georgian active anti-Russian stance, growing tensions around the Iran's nuclear program has also risen the US' interest to the region. Supported by all the three states of the region in its campaigns in Afghanistan and Iraq, the US hopes to use this area as a suitable bridge-head in the case of possible military attack on Iran.

Consequently, what are the EU's stakes in the Southern Caucasus? The region is more distant from the EU than the Eastern Europe. Nevertheless, after the enlargement of 2007 it is not so far. The main interests for the EU in the region are closely interconnected. Thus, the EU is interested in the region because of the hydrocarbon resources exploited there by the Azerbaijan and transported via Georgia.

Moreover, the region can also serve as the corridor for transportation of oil and gas from the eastern coast of the Caspian sea (Kazakhstan and Turkmenistan). Taken alone Azerbaijani oil and gas will not significantly support the EU's diversification of energy supplies, aimed on weakening of its dependence on Russia in this sphere. However, the situation would considerably change if the Kazakhstan and Turkmenistan decide to sell their significant part of their resources not through Russia, but bypassing her.

In order to secure supply of energy from the region, the EU needs stability there. With this regard, the resolution of armed conflicts in the region is in the EU's direct interest. The EU is also interested in promotion of democracy in the region. The other EU's important stake in the region is to maintain the cooperation of the region states with the EU in the field of international politics.

All in all, the ENP's general security, stability and prosperity objectives genuinely apply in the case of Southern Caucasus. However, the EU's current engagement in the region is carefully weighed up on the 'costs-benefits scales', which is most evident in the EU's role in resolution of territorial conflicts in the Southern Caucasus.

3.3. THE EU'S ROLE IN RESOLUTION OF CONFLICTS IN THE POST-SOVIET AREA

There are four territorial conflicts in and between the post-Soviet countries, covered by the ENP:

- Transnistria (within Moldova),
- Abkhazia (within Georgia),
- South Ossetia (within Georgia),
- Nagorno-Karabakh (between Azerbaijan and Armenia).

The existence of 'frozen' armed territorial conflicts in the region undoubtedly directly contradicts the EU's interests. This frozen status-quo generates the elements of insecurity and instability, as, one day the conflicts may return to the 'hot' phase. Moreover, current lack of international control over the territories of unrecognised separatist 'republics' is also the issue of serious concern, as these 'black holes' may host various international terrorist organisations and organised criminal networks.

The EU's stance on the first three conflicts is a firm support to the territorial integrity of Georgia and Moldova. However, the situation with regard to the Nagorno-Karabakh conflict is rather different. The conflict today is commonly recognised as the conflict between Armenia and Azerbaijan. Whereas from the one side recognition of the territorial aggression of Armenia against Azerbaijan is a positive factor for Azerbaijan and negative for Armenia, from the other side this feature of the conflict caused more 'balanced' approach, currently maintained by many states and international organisations.

Three main elements of this 'balanced' approach are: to recognise the territorial integrity of Azerbaijan and the fact of violation of this integrity, to omit whom this integrity was violated by, and to declare that conflict should be resolved by the way of bilateral negotiations between the parties. This balanced approach is undoubtedly aimed to maintain friendly relations with both Armenia and Azerbaijan.

The EU has the same position. While there are no internal contradictions within the EU with regard to the common stance towards the conflicts of Transnistria, Abkhazia and South Ossetia, and the territorial integrity of Moldova and Georgia is clearly recognised by the EU, with regard to the Nagorno-Karabakh conflict above mentioned 'balanced' approach is even more strengthened by the pro-Armenian stance of France (caused by the strong and influential Armenian diaspora in France). The most illustrative example of this approach is a reference to the principle of territorial integrity and inviolability of internationally recognised borders in the Azerbaijani Action Plan and reference to the principle of self-determination of peoples in Armenian one.

Interestingly, the position of the other, main geopolitical stakeholder in the post-Soviet space, Russia, while being very similar to the EU's position with regard to the Nagorno-Karabakh conflict, differs from that of the EU with regard to the conflicts in Transnistria, Abkhazia and South Ossetia. Russia has tried to use these conflicts as the useful levers in order to prevent further integration of Moldova and Georgia to the EU and the NATO.

However, these levers could be used by Russia more accurately and effectively. Russia just simply answered to every Moldova's and Georgia's step towards the West by further increasing economic and military assistance to the separatist entities and thus continued a 'vicious circle', because these actions had the only effect of accelerating their moving in the Western direction.

The EU's unwillingness to enter into an open confrontation with Russia because of the Moldova or Georgia is indeed a decision weighed up on the 'costs-benefits scales'. That is why the EU prefers not to deeply intervene itself but instead to support efforts of the OSCE and the UN to settle these stalemate conflicts. Peaceful resolution of the conflicts is included into the respective sections of Action Plans of Armenia, Azerbaijan, Georgia and Moldova. The mandate of the EU's Special Representative for the South Caucasus includes support to the resolution of conflicts. The EU has also Special Representative for Moldova, the fact that is taken together with the establishment of above mentioned EUBAM shows the EU's concern about the Transnistria conflict, which has constituted, after the accession of Romania to the EU, a close threat in the EU's eastern borders.

3.4. THE EU'S ROLE IN THE PROMOTION OF REGIONAL AND CROSS-BORDER COOPERATION IN THE POST-SOVIET AREA

Promotion of regional and cross-border cooperation is one of the integral components of the ENP. Endorsed in March 2007 alongside the ENPI Country Strategy Papers (2007 – 2013) and National Indicative Programmes (2007 – 2010): ENPI Eastern Regional Programme Strategy Paper (2007 – 2013) and Eastern Regional Indicative Programme (2007 - 2010); ENPI Interregional Programme Strategy Paper (2007-2013) and Indicative Programme (2007 - 2010); and ENPI Cross-Border Cooperation Strategy Paper (2007 – 2013) and Indicative Programme (2007 – 2010) have laid down the basis for the future enhancement of the regional and cross-border cooperation in the EU's eastern neighbourhood.

As mentioned above, Eastern Regional and Interregional Strategy Papers and Indicative Programmes were endorsed aiming not to summarize the provisions of Country Strategy Papers and Indicative Programmes of six eastern ENP partners (Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine), but rather to complement them by indicating common priority areas and promoting the cooperation both on the eastern regional ENPI level (six ENP partners plus Russia) and interregional level (six ENP partners, plus Russia and Southern Mediterranean).

ENPI Eastern Regional Programme Strategy Paper notes that several challenges faced by the EU's Eastern ENP partners such as fight against terrorism and transnational organised crime, have cross-border character and can sometimes only be tackled through cooperation at a regional level.¹⁰⁸ The EU's overall strategic objective in the region is implementation of the ENP and agreement on 'Four Common Spaces' with Russia.¹⁰⁹ Specific strategic objectives are: sustainable development and environmental protection, diversification and security of energy supplies to the EU, further

¹⁰⁸ ENPI Eastern Regional Programme Strategy Paper (2007-2013), p.5.
http://ec.europa.eu/world/enp/pdf/country/enpi_eastern_rsp_en.pdf , accessed on 28.03.2007.

¹⁰⁹ Ibid. p.6.

development of transport links between the enlarged EU and its neighbours, security and good governance.¹¹⁰

Strategy Paper also provides very brief overview of the Eastern Region in the areas of regional cooperation, justice, freedom and security, governance and democracy, economic and business environment, environment protection, forestry, energy and transport. The principal objective of the Strategy Paper is to facilitate and advance cooperation in areas of mutual interest and benefit between the partner countries themselves, and between the EU and the partner countries.¹¹¹

Key issues to be addressed in the region, according to the Strategy Paper are: networks, environment protection and forestry, border and migration management, fight against transnational organised crime, customs, people-to-people activities, information and support, land-mines, explosive remnants of war, small arms and light weapons.

Eastern Regional Indicative Programme specifies a strategic context, justification, long-term impact, specific objectives, expected results and indicators of achievement of EC financial assistance provided on each of these key issues/areas. The Programme also provides an indicative budget for the 2007-2010 period.

ENPI Interregional Programme is aimed to fund activities that are best implemented at interregional level for reasons of visibility, coherence or administrative efficiency, and also, to gradually strengthen dialogue and cooperation between the EU and the ENPI region and between eastern and southern neighbours.¹¹² Four main focus areas of the Interregional Programme are: promoting reform through European advice and expertise; promoting higher education and student mobility; promoting cooperation between local actors in the partner countries and in the EU; and promoting implementation of the ENP and the Partnership with Russia.

ENPI Interregional Indicative Programme sets out an indicative budget for the 2007-2010 period. It also provides background, objectives, expected results, indicators and

¹¹⁰ Ibid. pp.6-7.

¹¹¹ Ibid. p.16.

¹¹² **ENPI Interregional Programme Strategy Paper (2007-2013) and Indicative Programme (2007 – 2010)**, p.2. http://ec.europa.eu/world/enp/pdf/country/enpi_interregional_en.pdf, accessed on 28.03.2007.

brief description of the programme of the financial assistance allocated for each of the four main focus areas.

ENPI Cross-Border Cooperation Strategy Paper and Indicative Programme provide the strategic framework for EC support for cross-border cooperation on the external borders of the EU.¹¹³ The core objectives of the cross-border cooperation are:

- to promote and support sustainable economic and social development in regions along both sides of the EU's external borders;
- to help decrease differences in living standards across these borders, and to address the challenges (such as environment, public health and the prevention of and fight against organised crime) and opportunities following on the EU enlargement or otherwise arising from the proximity between regions across our land and sea borders;
- to ensure efficient and secure borders;
- to promote local cross-border people-to-people actions.¹¹⁴

Two main categories of programmes to be established under ENPI Cross-Border Cooperation are: programmes covering a common land border or short sea crossing, and programmes covering a sea basin.¹¹⁵

The Strategy Paper also provides an analysis of the relevant policy agendas of the partner countries and the economic and social situation of the border regions, and gives an overview of past and ongoing cooperation in this field. The Indicative Programme defines the individual Cross-Border Cooperation programmes which will be financed by the EU and their geographic eligibility, establishes financial allocations for each of the programmes and sets out the objectives, indicators, expected results and possible risks for the each programme.¹¹⁶

¹¹³ ENPI Cross-Border Cooperation Strategy Paper (2007 – 2013) and Indicative Programme (2007 – 2010), p.3. http://ec.europa.eu/world/enp/pdf/country/enpi_cross-border_cooperation_strategy_paper_en.pdf , accessed on 28.03.2007.

¹¹⁴ Ibid. p.5.

¹¹⁵ Ibid. p.17.

¹¹⁶ Ibid. p.20.

CHAPTER IV: SPECIFIC CASE STUDIES

4.1. UKRAINE

4.1.1. Legal basis of bilateral relations – Partnership and Cooperation Agreement (PCA)

Signed between the European Communities and their Member States, and Ukraine, in 1994, and entered into force in 1998, EC – Ukraine PCA constitutes a legal basis of bilateral relations. The objectives of the EC – Ukraine partnership are:

- to provide an appropriate framework for the political dialogue between the parties allowing the development of close political relations;
- to promote trade and investment and harmonious economic relations between the parties and so to foster their sustainable development;
- to provide a basis for mutually advantageous economic, social, financial, civil scientific technological and cultural co-operation; and
- to support Ukrainian efforts to consolidate its democracy and to develop its economy and to complete the transition into a market economy.¹¹⁷

The PCA's provisions are mainly devoted to the trade-related matters, such as trade in goods, business and investment, establishment and operation of companies, services, payments and capital, competition, intellectual, industrial and commercial property protection. Nevertheless, energy, environment and transport areas are also covered by the agreement.

The PCA provides that Ukraine shall endeavour to ensure that its legislation will be gradually made compatible with that of the EC, and intended approximation of laws shall extend to the following areas: customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, public procurement, protection of health and

¹¹⁷ EC-Ukraine Partnership and Cooperation Agreement, art.1.
http://ec.europa.eu/external_relations/ceeca/pca/pca_ukraine.pdf , accessed on 05.03.2007.

life of humans, animals and plants, the environment, consumer protection, indirect taxation, technical rules and standards, nuclear laws and regulations and transport.¹¹⁸

The main bilateral organs/structures established by the PCA are:

- bilateral Summit meetings (annual, between the President of Ukraine and the EU Presidency together with the President of the Commission and the EU’s High Representative);
- Cooperation Councils (annual, at ministerial/commissioner level (EU Presidency, European Commission, High Representative, Government of Ukraine));¹¹⁹
- Cooperation Committees (senior civil servants level, chaired alternately by the European Commission and the Ukrainian side);
- Sub-Committees (expert level, supporting the work of the Cooperation Committee).

Currently, the following sub-committees are operational: on Trade and Investment; on Economic and Social Affairs, Finance and Statistics; on Enterprise Policy, Competition, and Regulatory Cooperation; on Energy, Transport, Information Society, Nuclear Safety and Environment; on Customs and Cross-Border Cooperation; on Justice, Freedom and Security; and on Science and Technology, Research and Development, Education, Culture and Public Health.¹²⁰

4.1.2. TACIS Country Strategy Paper and National Indicative Programme (NIP), and ENPI Strategy Paper and NIP

Technical Assistance for Commonwealth of Independent States (TACIS) programme was launched by the EC soon after the break-up of the Soviet Union aiming to provide technical and financial assistance to the Newly Independent States, re-gained their independence, on the way of transition to the democracy and market economy. Having

¹¹⁸ Ibid. art.51.

¹¹⁹ Ibid. arts.85-89.

¹²⁰ **The EU’ relations with Ukraine.** http://ec.europa.eu/external_relations/ukraine/intro/index.htm , accessed on 05.03.2007.

successfully functioned until the end of 2006 it was substituted by the ENPI and since 1 January 2007 financial assistance to Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine has been provided under the framework of ENPI.

In 2001 European Commission issued TACIS Country Strategy Paper (2002 – 2006) and NIP (2002 – 2003) for Ukraine. In 2003 Commission adopted next NIP for Ukraine for a 2004 – 2006 period. ENPI Country Strategy Paper (2007 – 2013) and NIP (2007 – 2010) for Ukraine were endorsed by the Commission in March 2007.

TACIS Strategy Paper points out EU/EC cooperation objectives in the areas of trade and commercial relations, political and security issues, nuclear safety and rationalisation of energy policies. It touches on the policy agenda of Ukraine and describes country's political, economic and social situation. The other issues to discuss here are the current policies and reforms, medium term challenges and past and ongoing EC assistance.

Ukrainian TACIS NIP (2002 – 2003) identifies the following priority areas for assistance and cooperation:

- Legal, judicial and administrative reform;
- Border management;
- Civil Society, training and education;
- Business, trade and investment promotion;
- Fuel gap; and
- Social reform.

NIP 2004 – 2006 also adds to this list media and democracy and local development in selected municipalities.

ENPI Country Strategy Paper (2007 – 2013) for Ukraine notes that after the 'orange revolution' of 2004, "Ukraine has pursued an agenda of ambitious reforms in order to root democracy and the market economy firmly in the country"¹²¹.

Current internal policy objectives of Ukraine, according to the ENPI Strategy Paper are:

¹²¹ ENPI Country Strategy Paper - Ukraine (2007 – 2013), p.4.
http://ec.europa.eu/world/enp/pdf/country/enpi_csp_ukraine_en.pdf, accessed on 28.03.2007.

- Consolidating democracy, protection of human rights and fundamental freedoms;
- Consolidating the judiciary;
- Effective fight against crime and corruption;
- Public sector reform;
- Improving the investment climate; and
- Provision of social services.¹²²

Ukraine's external policy objectives are summarized by the Strategy Paper as: EU integration, NATO accession, cooperation with Russia and constructive regional role.¹²³

EC assistance priorities according to the Strategy Paper are:

- Political dialogue and reform;
- Economic and social reform and development;
- Trade, market and regulatory reform;
- Cooperation in justice, freedom and security;
- Transport, energy, information society and environment; and
- People-to-people contacts.¹²⁴

Focus priority areas according the Ukraine's ENPI NIP (2007 – 2010) are:

- Public administration reform and public finance management;
- Rule of law and judicial reform;
- Human rights, civil society development and local government;
- Education, science and people-to-people contacts/exchanges;
- Promoting mutual trade, improving the investment climate and strengthening social reform;
- Energy (non-nuclear);
- Transport;
- Environment;
- Border management and migration including readmission related issues.

¹²² Ibid. pp.4-5.

¹²³ Ibid. p.5.

¹²⁴ Ibid. pp.13-15.

4.1.3. ENP Country Report and ENP Action Plan

ENP Country Report of Ukraine was published by the Commission in May 2004. Aimed to provide guidance for the future Action Plan,¹²⁵ it overviews political, economic and social situation in Ukraine to that date. With regard to the political situation, democracy and the rule of law (polity, corruption, civil service etc.), human rights and fundamental freedoms (freedom of assembly, media freedom, death penalty, torture and ill-treatment, gender discrimination etc.), and EU – Ukraine specific Action Plan on Justice and Home Affairs, signed in December 2001 (with priority areas of readmission and migration, border management, fight against organized crime, corruption, money laundering, trafficking in human beings and drugs) are described.

With regard to the economic and social situation, recent economic developments (Gross Domestic Product and inflation), fiscal management, monetary and exchange policy, social situation and human development policies (poverty, population and unemployment), privatization, competition, banking, customs, taxation, intellectual and industrial property rights, transport, information society, research and innovation, energy and environment are touched on in the Report.

The EU – Ukraine Action Plan, concluded for a period of 3 years, was jointly adopted at a special Cooperation Council in February 2005.¹²⁶ The Plan notes that after the enlargement of 2004 EU and Ukraine share border as direct neighbours.¹²⁷ Further economic integration, according to the Plan, will make possible the establishment of EU – Ukraine Free Trade Area.¹²⁸ New partnership, economic integration and cooperation perspectives opened by the Action Plan are:

- The perspective of moving beyond cooperation to a significant degree of integration, including through a stake in the EU's internal market, and the

¹²⁵ **ENP Country Report – Ukraine**, 12 May 2004, Commission Staff Working Paper, COM(2004), 373 final, SEC(2004) 566, p.3.

¹²⁶ **The EU' relations with Ukraine**, op.cit.

¹²⁷ **EU – Ukraine Action Plan**, p.1. http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf , accessed on 05.03.2007.

¹²⁸ Ibid.

possibility for Ukraine to participate progressively in key aspects of EU policies and programmes;

- An upgrade in the scope and intensity of political cooperation;
- The opportunity for convergence of economic legislation, the opening of economies to each other, and the continued reduction of trade barriers which will stimulate investment and growth;
- Increased financial support;
- Possibilities of gradual opening of, or reinforced participation in, certain Community programmes, promoting cultural, educational, environmental, technical and scientific links;
- Support for legislative approximation to meet EU norms and standards, including technical assistance, twinning and targeted advice and support;
- Deepening trade and economic relations, including review of the feasibility of the establishment of the Free Trade Area following Ukraine's accession to the WTO;
- Consideration will be given to the possibility of a new enhanced agreement, whose scope will be defined in the light of the fulfillment of the objectives of the Action Plan and of the overall evolution of EU – Ukraine relations. The advisability of any new contractual arrangements will be considered in due time.¹²⁹

Priorities for Action under the EU - Ukraine Plan are:

- Further strengthening the stability and effectiveness of institutions guaranteeing democracy and the rule of law;
- Ensuring the democratic conduct of presidential (2004) and parliamentary (2006) elections in Ukraine in accordance with the OSCE standards;
- Ensuring respect for the freedom of the media and freedom of expression;
- Develop possibilities for enhancing EU – Ukraine consultations on crisis management;
- Enhanced co-operation in the field of disarmament and non-proliferation;

¹²⁹ Ibid. pp.2-3.

- Enhanced co-operation in a common neighbourhood and regional security, in particular working towards a viable solution to the Transnistria conflict in Moldova, including addressing border issues;
- Accession to the WTO;
- Gradual removal of restrictions and non-tariff barriers that impede bilateral trade and implementation of the necessary regulatory reforms;
- Improving the investment climate, through non-discriminatory, transparent and predictable business conditions, simplified administrative procedures and by the fight against corruption;
- Tax reform, improved tax administration and sound management of public finances;
- Establishing a constructive dialogue on visa facilitation between the EU and Ukraine, with a view to preparing for future negotiations on a visa facilitation agreement, taking account of the need for progress on the ongoing negotiations for an EC – Ukraine readmission agreement;
- Gradual approximation of Ukrainian legislation, norms and standards with those of the EU;
- Further reinforcing administrative and judicial capacity;
- Encourage dialogue on employment issues and best endeavours, in accordance with the PCA;
- to ensure that treatment of migrant workers does not discriminate on grounds of nationality;
- Full implementation of the Memorandum of Understanding on the closure of the Chernobyl nuclear power plant, including completing and starting-up of the ‘K2R4’ nuclear reactors, in compliance with the internationally accepted nuclear safety standards.¹³⁰

The main areas of EU – Ukraine cooperation under the Action Plan are: democracy; the rule of law; human rights and fundamental freedoms; regional and international issues; cooperation on foreign and security policy; non-proliferation and disarmament of weapons of mass destruction; conflict prevention and crisis management; functioning

¹³⁰ Ibid. pp.3-4.

market economy; monetary, exchange rate and fiscal policies; structural reforms; social situation; employment; poverty reduction; regional development; sustainable development; trade relations; customs; standards, technical regulations and conformity assessment (EU harmonised areas); elimination of restrictions and streamlined administration (EU non-harmonised areas); sanitary and phytosanitary issues; establishment and company law; services; movement of capital and current payments; movement of persons (including movement of workers); taxation; competition policy; intellectual and industrial property rights; public procurement; statistics; financial control; enterprise policy; Justice and Home Affairs; transport; energy; information society; environment; science and technology; research and development; education, training and youth; culture and audio-visual issues; cross-border and regional level cooperation; public health etc.

4.1.4. ENP Progress Report

ENP Progress Report of Ukraine was endorsed by the Commission in December 2006. This document reports on overall progress made on the implementation of the EU – Ukraine Action Plan and concentrates primarily on the development of EU – Ukraine bilateral relations.¹³¹

The Report states that political dialogue between the EU and Ukraine has been further intensified since the adoption of the EU – Ukraine Action Plan.¹³² Ukrainian Parliamentary elections of March 2006 are considered by the Report as conducted largely in line with democratic standards.¹³³ Constitutional reform, which strengthened the role of Parliament vis-à-vis the President and Government, is also described in the Report. Ukraine's membership in the Council of Europe's group of states against corruption (GRECO) is indicated in the Report as a step in the fight against corruption.¹³⁴

¹³¹ **ENP Progress Report – Ukraine**, 4 December 2006, Commission Staff Working Paper COM(2006)726 final, SEC(2006) 1505/2, p.2.

¹³² Ibid. p.3.

¹³³ Ibid.

¹³⁴ Ibid. p.4.

With regard to the human rights and fundamental freedoms, Report mentions ratification by Ukraine of Protocols 12 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, adoption of law on television and radio broadcast, more effective respect of the freedom of media, progress as regards respect for the rights of persons belonging to national minorities, and signing (but not yet ratification) of the Rome Statute of the International Criminal Court on 20 January 2000.¹³⁵

The report notes significant increase of cooperation and dialogue in CFSP matters, and stresses that as of July 2006 Ukraine has aligned itself with 549 out of 589 EU's CFSP declarations.¹³⁶ However, Report also states that Ukraine did not align itself with the measures imposed by the EU on Belarus following the presidential elections in that country.¹³⁷

With regard to the economic and social situation, Report indicates that Ukrainian economy remains vulnerable to external factors and population continues to decline.¹³⁸ The Report also emphasizes the initialling of the EC – Ukraine readmission and visa facilitation agreement at the October 2006 EU – Ukraine Summit.¹³⁹ Concerning the EU's energy security, Report notes that Ukraine is a key transit country, notably as regards transit of Russian gas and oil supplies.¹⁴⁰

4.2. MOLDOVA

4.2.1. Legal basis of bilateral relations – Partnership and Cooperation Agreement (PCA)

Signed between the European Communities and their Member States, and Moldova, in 1994, and entered into force in 1998, EC – Moldova PCA constitutes a legal basis of bilateral relations. The objectives of the EC – Moldova Partnership are:

¹³⁵ Ibid. p.5.

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Ibid. pp.6-7.

¹³⁹ Ibid. p.13.

¹⁴⁰ Ibid. p.14.

- to provide an appropriate framework for the political dialogue between the parties allowing the development of political relations;
- to promote trade and investment and harmonious economic relations between the parties and so to foster their sustainable economic development;
- to provide a basis for legislative, economic, social, financial, and cultural cooperation;
- to support efforts of the Republic of Moldova to consolidate its democracy and to develop its economy and to complete the transition into a market economy.¹⁴¹

As the Ukrainian one, the EC – Moldova PCA contains overwhelmingly trade-related provisions. Among these are provisions concerning trade in goods, intellectual, industrial and commercial property protection, business and investment, establishment and operation of companies, services, payments and capital, and competition.

The PCA also provides for establishment of regular political dialogue between the Community and Moldova.¹⁴² This dialogue is intended to strengthen the links between the Moldova and the Community, to bring about an increasing convergence of positions on international issues of mutual concern, and to foresee that the parties endeavour to cooperate on matters pertaining to the strengthening of stability and security in Europe, the observance of the principles of democracy, and the respect and promotion of human rights.¹⁴³

The PCA states that an important condition for strengthening the economic links between Moldova and the Community is the approximation of the Moldova's existing and future legislation to that of the Community in the following areas: customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, public procurement, protection of health and life of humans, animals and plants, the

¹⁴¹ EC-Moldova Partnership and Cooperation Agreement, art.1.

¹⁴² http://ec.europa.eu/external_relations/ceeca/pca/pca_moldova.pdf , accessed on 05.03.2007.

¹⁴³ Ibid. art.6.

¹⁴³ Ibid.

environment, consumer protection, indirect taxation, technical rules and standards, nuclear laws and regulations and transport.¹⁴⁴

4.2.2. TACIS Country Strategy Paper and National Indicative Programme (NIP), and ENPI Strategy Paper and NIP

TACIS Country Strategy Paper (2004-2006) and NIP (2005-2006), issued by the Commission for Moldova, express a very deep concern with regard to the unresolved Transnistria conflict, as “it will be at the doorstep of the EU after Romania’s accession”.¹⁴⁵ The Country Strategy Paper reminds Russian commitment (made in the OSCE context) to withdraw ammunition and troops from Transnistria.¹⁴⁶

It is a very interesting fact that the Moldova’s Country Strategy Paper contains also historical information about Moldova. It states as follows:

“The main part of today’s Moldova lies between the Prut and Nistru rivers. As part of the ancient principality of Moldova which also comprised areas of today’s Romania, this region was under Ottoman rule until it was ceded to the Russian empire in 1812 and became a province called “Bessarabia”. After the October revolution, the Moldovan Republic was proclaimed in Bessarabia. The following year, the Parliament of the new Republic decided to join Romania. However, the USSR never recognized Romania’s right to this province: in 1924, a narrow strip of Ukrainian land on the left bank of the Nistru river was declared as the “Moldovan Autonomous Soviet Socialist Republic” by the Soviet authorities. In June 1940, following the Molotov-Ribbentrop pact, the area of Bessarabia was annexed by Soviet troops and proclaimed the “Moldovan Soviet Socialist Republic” together with the Ukrainian territory on the left bank. During the Second World War, Romania reconquered Bessarabia in 1941 but lost the province again in 1944 to the Soviet Union....

The population in Moldova is composed by different ethnic groups: Moldovans (63.9%), Ukrainians (14.3%), Russians (12.8%) and Gaugazians (a population of Turkish origins in the south of Moldova, 3%). Under Tsarist rule, and to a much greater extent under the USSR, Moldova was the subject of a systematic policy of russification.”¹⁴⁷

¹⁴⁴ Ibid. art.50.

¹⁴⁵ TACIS Country Strategy Paper - Moldova (2004 – 2006), para.14.

http://ec.europa.eu/external_relations/moldova/csp/csp04_06_nip05_06.pdf , accessed on 05.03.2007.

¹⁴⁶ Ibid. para.19.

¹⁴⁷ Ibid. paras.24–25,28.

The other issues discussed in the TACIS Strategy Paper are: Moldova's foreign policy orientation, economic policy, privatisation and structural reforms, social situation, higher education, justice and home affairs and environment. Moldova's TACIS NIP identifies the following priority areas for assistance and cooperation:

- Support for the implementation of the Action Plan and of the PCA, and for legislative approximation;
- Support to health reform;
- Justice and Home Affairs activities;
- Strengthening of Civil Society/NGOs/local initiatives and government;
- Support to higher education;
- Export and investment promotion;
- Regional/local development, development of micro and small enterprises with focus on rural areas;
- Support in addressing the social consequences of transition.

The ENPI Country Strategy Paper (2007 – 2013) for Moldova sets out the following internal policy objectives:

- Consolidating democracy, the protection of human rights and fundamental freedoms;
- Consolidating the rule of law;
- Effective fight against corruption;
- Public sector reform;
- Improving the investment climate;
- Improving welfare, increasing living standards and enhancing the provision of social services;
- Security of energy supply.¹⁴⁸

External policy objectives are: orientation towards the EU and greater integration into cooperation arrangements in South – East Europe, other regional initiatives (GUAM)¹⁴⁹,

¹⁴⁸ ENPI Country Strategy Paper - Moldova (2007 – 2013), pp.4–5.

http://ec.europa.eu/world/enp/pdf/country/enpi_csp_moldova_en.pdf, accessed on 28.03.2007.

¹⁴⁹ Regional organisation comprising Georgia, Ukraine, Azerbaijan and Moldova.

promoting trade.¹⁵⁰ Undoubtedly, finding solution to the Transnistrian conflict, in full respect of Moldova's territorial integrity, is a key priority of Moldova.¹⁵¹

EC assistance priorities according to the Strategy Paper are:

- Political dialogue and reform;
- Cooperation for the settlement of the Transnistria conflict;
- Economic and social reform and development;
- Trade-related issues, market and regulatory reform;
- Cooperation in Justice and Home Affairs;
- Transport, energy, telecommunications, environment;
- Research, development and innovation;
- People-to-people contacts.¹⁵²

Focus priority areas according the Moldova's ENPI NIP (2007 – 2010) are:

- Public administration reform and public finance management;
- The rule of law and judicial reform;
- Human rights, civil society development and local government;
- Education, science and people-to-people contacts/exchanges;
- Promoting mutual trade, improving the investment climate and strengthening social reform;
- Support for poverty reduction and economic growth.

4.2.3. ENP Country Report and ENP Action Plan

ENP Country Report of Moldova, published by the Commission in May 2004, aims to provide guidance for the future Action Plan. It overviews political, economic and social situation in Moldova to that date. With regard to the political situation, democracy and the rule of law (polity, judicial system, local government reforms, corruption, etc.), human rights and fundamental freedoms (development of civil society, freedom of

¹⁵⁰ ENPI Country Strategy Paper – Moldova, op.cit. p.5.

¹⁵¹ Ibid.

¹⁵² Ibid. pp.14-17.

association, media freedom, abolishment of death penalty, torture and ill-treatment, gender discrimination etc.) are discussed.

The separatist region of Transnistria is paid a particular attention in the report. Thus, it is stated that non-internationally recognised self-proclaimed “Transdnestrian Moldovan Republic”, consisting of a narrow strip of land of roughly 200 kilometres on the eastern border of Moldova, almost entirely contained between the Ukrainian border and the river Nistru.¹⁵³ Its territory constitutes an estimated 11% of the territory of Moldova.¹⁵⁴ The region has a population of some 600,000 and ethnic Moldovans constitute roughly 40% of them, the remaining 60% being mainly ethnic Ukrainians and Russians.¹⁵⁵

The EU – Moldova Action Plan, covering a timeframe of three years, was adopted in February 2005. The Plan notes that its implementation will significantly advance the approximation of Moldovan legislation, norms and standards to those of the EU.¹⁵⁶ New partnership perspectives opened by the Action Plan are:

- The perspective of moving beyond cooperation to a significant degree of integration, including through a stake in the EU’s internal market, and the possibility for Moldova to participate progressively in key aspects of EU policies and programmes;
- An upgrade in the scope and intensity of political cooperation, through further development of mechanisms for political dialogue;
- Continuing strong EU commitment to support the settlement of the Transnistria conflict, drawing on the instruments at the EU’s disposal, and in close consultation with the OSCE. The EU is ready to consider ways to strengthen further its engagement;
- The opportunity for convergence of economic legislation, the opening of economies to each other, and the continued reduction of trade barriers which will stimulate investment and growth;

¹⁵³ **ENP Country Report – Moldova**, 12 May 2004, Commission Staff Working Paper, COM(2004), 373 final, SEC(2004) 567, p.10.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ **EU – Moldova Action Plan**, p.2. http://ec.europa.eu/world/enp/pdf/action_plans/moldova_enp_ap_final_en.pdf, accessed on 05.03.2007.

- Increased financial support;
- Possibilities of gradual opening of or reinforced participation in certain Community programmes, promoting cultural, educational, environmental, technical and scientific links;
- Support including technical assistance and twinning to meet EU norms and standards, and targeted advice and support for legislative approximation;
- Deepening trade and economic relations;
- Establishing a constructive dialogue on visa cooperation between the EU and Moldova, including an exchange of views on possibilities of visa facilitation in compliance with the *acquis*;
- Opening as soon as possible a Commission Delegation in Moldova.¹⁵⁷

Priorities for Action under the EU – Moldova Plan are:

- Sustained efforts towards a viable solution to the Transnistria conflict;
- Further strengthening the stability and effectiveness of institutions guaranteeing democracy and the rule of law;
- Ensuring the democratic conduct of parliamentary elections (February 2005) in Moldova in accordance with European standards;
- Ensuring respect for the freedom of the media and the freedom of expression;
- Further reinforcing administrative and judicial capacity;
- Resuming cooperation with International Financial Institutions;
- Implementing actions aimed at poverty reduction, to strengthen private sector led growth and for fiscal sustainability;
- Improving the investment climate through appropriate structural reforms aimed at ensuring non-discriminatory, transparent and predictable business conditions and by the fight against corruption;
- Progress towards a system of efficient, comprehensive state border management on all sectors of the Moldovan border including the Transnistrian sector;

¹⁵⁷ Ibid. pp.2-3.

- Working towards the EU granting Autonomous Trade Preferences, by ensuring effective control of the origin of goods from Moldova;
- Stepping up the fight against organised crime, including trafficking in human beings;
- Ensuring the efficient management of migratory flows, including initiating the process towards conclusion of a readmission agreement between the European Community and Moldova.¹⁵⁸

The main areas of EU – Moldova cooperation under the Action Plan are: democracy; the rule of law; human rights and fundamental freedoms; cooperation on foreign and security policy; conflict prevention and crisis management; regional cooperation; cooperation for the settlement of the Transnistria conflict; economic and social reform and development; functioning market economy; regional and rural development; employment and social policy; sustainable development; movement of goods; customs; standards, technical regulations and conformity assessment procedures (EU harmonized areas); elimination of restrictions and streamlined administration (EU non-harmonised areas); sanitary and phytosanitary issues; company law; services; movement of capital and current payments; movement of persons, including movement of workers and coordination of social security; taxation; competition policy; intellectual and industrial property rights; public procurement; statistics; financial control; enterprise policy; migration issues (legal and illegal migration, readmission, visa, asylum); border management; fight against organised crime (including trafficking in human beings); drugs; money laundering, financial and economic crime; police and judicial cooperation; transport; energy; telecommunications; environment; research, development and innovation; education, training and youth; culture and audio-visual issues; civil society cooperation; cross-border and regional level cooperation; public health etc.

4.2.4. ENP Progress Report

¹⁵⁸ Ibid. pp.3-4.

Issued by the Commission in December 2006, ENP Progress Report of Moldova overviews overall progress made on the implementation of the EU – Moldova Action Plan and concentrates primarily on the development of EU – Moldova bilateral relations.¹⁵⁹

The Report notes that the 2005 parliamentary and local elections (except pre-election campaign) generally complied with international standards.¹⁶⁰ Report also stresses that throughout 2005 the Moldovan Parliament adopted a significant number of laws (amendment of the electoral code, amended law on the judicial system etc), in order to meet the Action Plan's reform requirements.¹⁶¹ In fighting against corruption, Moldova introduced a national anti-corruption strategy in January 2005.¹⁶²

With regard to human rights and fundamental freedoms, Report mentions amendment to the Constitution, made in June 2006, abolishing the use of the death penalty even in exceptional cases and amendment to the Criminal Code, made in May 2005, making any use of physical torture by the police and prison staff a criminal offence.¹⁶³

Cooperating with the EU in CFSP matters, Moldova, according to the Report, has been aligning itself with EU's CFSP declarations since June 2005.¹⁶⁴ However, Moldova as well as Ukraine did not align itself with the measures imposed by the EU on Belarus following the presidential elections in that country.¹⁶⁵

Concerning Transnistria, Report highlights an appointment of EU's Special Representative for Moldova in March 2005 and establishment of EUBAM in November 2005.¹⁶⁶ Report also informs about the adoption, in December 2005, of Moldovan – Ukrainian Joint Declaration on customs issues, according to which, Ukraine committed to allowing the transit of Moldovan (Transnistrian) goods through the Ukrainian border only if accompanied by official Moldovan customs stamps, while Moldova committed

¹⁵⁹ **ENP Progress Report – Moldova**, 4 December 2006, Commission Staff Working Paper COM(2006)726 final, SEC(2006) 1506/2, p.2.

¹⁶⁰ Ibid. p.3.

¹⁶¹ Ibid.

¹⁶² Ibid. p.4.

¹⁶³ Ibid.

¹⁶⁴ Ibid. p.5.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

to facilitating registration and access to official Moldovan customs stamps for Transnistrian companies.¹⁶⁷ Moreover, as of July 2006, in full agreement with Moldova and Ukraine, the EU has further reinforced the EUBAM, by bringing the total number of EU experts to 101 and by reinforcing its capacity for risk analysis.¹⁶⁸

4.3. GEORGIA

4.3.1. Legal basis of bilateral relations – Partnership and Cooperation Agreement (PCA)

Signed between the European Communities and their Member States, and Georgia, EC – Georgia PCA was concluded in 1996 and went into force in 1999. The PCA lays down the following objectives of the EC – Georgia partnership:

- to provide an appropriate framework for the political dialogue between the EC and Georgia allowing the development of political relations;
- to support Georgia's efforts to consolidate its democracy and to develop its economy and to complete the transition into a market economy;
- to promote trade and investment and harmonious economic relations between the EC and Georgia and so to foster their sustainable economic development;
- to provide a basis for legislative, economic, social, financial, civil scientific, technological and cultural cooperation.¹⁶⁹

The PCA underlines importance of establishing of political dialogue between the EC and Georgia, which will strengthen the links of Georgia with the Community and its Member States; will bring about an increasing convergence of positions on international issues of mutual concern, thus increasing security and stability in the region and promoting the future development of the States of the Transcaucasus; and will foresee that the parties endeavour to cooperate on matters pertaining to the strengthening of

¹⁶⁷ Ibid. p.6.

¹⁶⁸ Ibid. pp.5-6.

¹⁶⁹ EC-Georgia Partnership and Cooperation Agreement, art.1.

http://ec.europa.eu/external_relations/ceeca/pca/pca_georgia.pdf, accessed on 05.03.2007.

stability and security in Europe, democracy, and the respect and promotion of human rights.¹⁷⁰

The PCA covers mainly economic issues, such as trade in goods, business and investment, establishment and operation of companies, cross-border supply of services between the Community and Georgia, current payments and capital, intellectual, industrial and commercial property protection, consumer protection and customs. Nonetheless, provisions concerning environment, energy, science and technology, education and training, transport, regional development, tourism, cooperation on matters relating to democracy and human rights, cooperation on prevention of illegal activities and the prevention and control of illegal immigration are also included into the PCA.

Georgia, as well as Moldova and Ukraine, is also invited to approximate its existing and future legislation to that of the Community in the areas of customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, public procurement, protection of health and life of humans, animals and plants, the environment, consumer protection, indirect taxation, technical rules and standards, nuclear laws and regulations and transport.¹⁷¹

4.3.2. TACIS Country Strategy Paper and National Indicative Programme (NIP), and ENPI Strategy Paper and NIP

Adopted by the Commission, TACIS Country Strategy Paper (2003 – 2006) and NIP (2004 – 2006) for Georgia, reflect difficulties experienced by Georgia due to the internal conflicts and weak economy. With regard to the political situation, TACIS Strategy Paper points out that Georgia is lagging behind its commitments and expectations on transition towards democracy and the rule of law, and argues that the key to settling Georgia's internal conflicts is the stabilisation of the political

¹⁷⁰ Ibid. art.5.

¹⁷¹ Ibid. art.43.

environment, which will require sustained democratisation efforts internally and Georgian-Russian agreement on the nature and design of their bilateral relationship.¹⁷²

Georgian TACIS NIP identifies the following key areas for assistance:

- Promoting the rule of law, good governance and respect for human rights and democratic institutions, including the strengthening of civil society and the promotion of active participation of non-governmental organisations in further transition towards democracy;
- Specific measures to support the fight against poverty are intended to be included in the EU/EC overall approach. Assistance will target the most vulnerable groups, improving access to health services and social safety nets in particular;
- Promoting conflict prevention, resolution and post-conflict rehabilitation: there will be sustained EU/EC commitment to promote the settlement of internal conflicts through confidence building measures and actions in favour of affected population groups.

ENPI Country Strategy Paper (2007 – 2013) for Georgia notes that after the “Rose revolution” of 2003, and election of Saakashvili as President, Georgia is pursuing an agenda of ambitious political and economic reforms in order to fight endemic corruption and build a modern state based on democracy, the rule of law, good governance and market economy principles.¹⁷³

ENPI Strategy Paper summarizes Georgia’s current internal policy objectives as follows:

- Resolution of internal conflicts;
- Consolidating democracy, the protection of human rights and fundamental freedoms;
- Strengthening the judiciary;

¹⁷² TACIS Country Strategy Paper - Georgia (2003 – 2006), p.10.
http://ec.europa.eu/external_relations/georgia/csp/georgia_csp_6.pdf , accessed on 05.03.2007.

¹⁷³ ENPI Country Strategy Paper - Georgia (2007 – 2013), p.8.
http://ec.europa.eu/world/enp/pdf/country/enpi_csp_georgia_en.pdf , accessed on 28.03.2007.

- Macro-economic policy;
- Effective fight against crime and corruption;
- Public sector reform;
- Poverty reduction;
- Improved budgetary and policy planning;
- Improving the investment climate.¹⁷⁴

Georgia's external policy objectives are:

- EU integration;
- NATO accession;
- Relations with Russia;
- Relations with the US and Turkey;
- External trade;
- Regional cooperation.¹⁷⁵

Among these, the issue of relations with Russia is especially deep concern for Georgia. As informs the ENPI Strategy Paper, constantly deteriorating since 2004, they are currently at their lowest, following the breakdown imposed by Russia of all trade, communication and diplomatic links with Georgia and the expulsion of hundreds of Georgian citizens living in Russia.¹⁷⁶ Georgia claims that the root cause for the deterioration of bilateral relations lies with Russian objections to Georgia's European and Euro-Atlantic aspirations and blames Russia for providing economic and political support for the breakaway regimes in Abkhazia and South Ossetia.¹⁷⁷ Undoubtedly, links made by Russia between final status of Kosovo and secessionist aspirations in the two breakaway regions have also contributed to increased tensions between Georgia and Russia.¹⁷⁸

According to the ENPI Strategy Paper the priorities of EC assistance for Georgia are:

- Political dialogue and reform;

¹⁷⁴ Ibid. pp.9-10.

¹⁷⁵ Ibid. pp.11-12.

¹⁷⁶ Ibid. p,11.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

- Cooperation for the settlement of Georgia's internal conflicts;
- Cooperation on justice, freedom and security;
- Economic and social reform, poverty reduction and sustainable development;
- Trade-related issues, market and regulatory reforms;
- Cooperation in specific sectors (transport, energy, environment, information society and media);
- People-to-people contacts.¹⁷⁹

Focus priority areas according the Georgia's ENPI NIP (2007 – 2010) are:

- Democracy, human rights, civil society development;
- The rule of law and judicial reform;
- Good governance, public finance reform and administrative capacity building;
- Promoting external trade and improving the investment climate;
- Supporting PCA/ENP AP implementation and regulatory reforms;
- Education, including vocational education, science, and people-to-people contacts/exchanges;
- Support for poverty reduction and social reforms;
- Rural and regional development;
- Support for peaceful settlement of Georgia's internal conflicts.

4.3.3. ENP Country Report and ENP Action Plan

Issued by the Commission in March 2005, ENP Country Report of Georgia makes an overview of political, economic and social situation in Georgia to that date, with the intention to provide guidance for the future Action Plan. It mentions changes brought by the “Rose revolution” of 2003, and warmly welcomes the strong commitment of the Georgian authorities to implement their reform plans.¹⁸⁰ In this regard Country Report also underlines the establishment by the Georgian government of “Commission for

¹⁷⁹ Ibid. pp.20-24.

¹⁸⁰ **ENP Country Report – Georgia**, 2 March 2005, Commission Staff Working Paper, COM(2005), 72 final, SEC(2005) 288/3, p.4.

Georgia's integration into the EU", in order to facilitate PCA implementation and participation in ENP.¹⁸¹

Report describes the polity, administrative-territorial and judicial system of Georgia. With regard to the human rights, development of civil society (including developed NGO sector), freedom of expression and freedom of association, and abolishment of death penalty in all circumstances are discussed. Separatist conflicts in Abkhazia and South Ossetia are addressed in the report as well.

The EU – Georgia Action Plan, concluded for a period of 5 years, was adopted in November 2006. According to the plan, the EU takes note of Georgia's expressed European aspirations.¹⁸² The new partnership perspectives opened by the Action Plan are:

- The perspective of moving beyond cooperation to a significant degree of integration, including through a stake in the EU's internal market and gradual extension of four freedoms to Georgia, as well as the possibility for Georgia to participate progressively in key aspects of EU policies and programmes;
- An upgrade in the scope and intensity of political cooperation, through further development of mechanisms for political dialogue;
- Continuing strong EU commitment to support the settlement of Georgia's internal conflicts, drawing on the instruments at the EU's disposal, and in close consultation with the UN and the OSCE. The EU is ready to consider ways to strengthen further its engagement;
- Enhancing cooperation in the area of Justice, Freedom and Security, notably in the field of border management and migration;
- Increased possibilities for closer cooperation in the area of foreign and security policy, including European Security and Defense Policy in particular on the issues of regional stability and crisis management;
- Deepening trade and economic relations;

¹⁸¹ Ibid, p.5.

¹⁸² EU – Georgia Action Plan, p.1. http://ec.europa.eu/world/enp/pdf/action_plans/georgia_enp_ap_final_en.pdf , accessed on 05.03.2007.

- Enhancing co-operation in the fields of energy, transport and environment contributing to energy security and supply diversification needs for the EU;
- In parallel with the South Caucasus Partnership, enhance bilateral and multilateral cooperation in the Black Sea area – including strengthened regional economic cooperation between the Baltic, Black and Caspian Sea regions;
- The perspective of identifying particular initiatives that needs to be taken for a better governance on maritime related matters in the Black Sea and a more coordinated approach to the management of the sea space in the region;
- Increased financial support (The Commission also intends to propose an extension of the EIB mandate to Georgia as of 2007);
- Possibilities of gradual opening of reinforced participation in certain Community programmes, promoting cultural, educational, environmental and scientific links;
- Support including through financial, technical assistance and twinning to meet EU norms and standards, and targeted advice and support for legislative approximation ;
- Establish a dialogue, in accordance with the *acquis*, on matters related to the movement of people between the EU and Georgia;
- In light of the fulfilment of the objectives of the Action Plan and of the overall evolution of EU-Georgia relations, consideration will be given in due time to the possibility of a new enhanced contractual relationship.¹⁸³

The main priority areas for Action under the EU – Georgia Plan are:

1. Strengthen the rule of law especially through reform of the judicial system, including the penitentiary system, and through rebuilding state institutions. Strengthen democratic institutions and respect for human rights and fundamental freedoms in compliance with international commitments of Georgia (PCA, Council of Europe, OSCE, UN);

¹⁸³ Ibid. pp.2-4.

2. Improve the business and investment climate, including a transparent privatisation process, and continue the fight against corruption;
3. Encourage economic development and enhance poverty reduction efforts and social cohesion, promote sustainable development including the protection of the environment. Further convergence of economic legislation and administrative practices;
4. Enhance cooperation in the field of justice, freedom and security, including in the field of border management;
5. Strengthen regional cooperation;
6. Promote peaceful resolution of internal conflicts;
7. Cooperation on Foreign and Security Policy;
8. Transport and Energy.¹⁸⁴

4.4. AZERBAIJAN

4.4.1. Legal basis of bilateral relations – Partnership and Cooperation Agreement (PCA)

Signed between the European Communities and their Member States, and Azerbaijan, in 1994, and entered into force in 1998, EC – Azerbaijan PCA constitutes a legal basis of bilateral relations. The PCA points out the objectives of EC – Azerbaijan partnership, which are:

- to provide an appropriate framework for the political dialogue between the EC and Azerbaijan, allowing the development of political relations;
- to support the Republic of Azerbaijan’s efforts to consolidate its democracy and to develop its economy and to complete the transition into a market economy;
- to promote trade and investment and harmonious economic relations between the EC and Azerbaijan and so to foster their sustainable economic development;

¹⁸⁴ Ibid. pp.4-11.

- to provide a basis for legislative, economic, social, financial, civil scientific, technological and cultural cooperation.¹⁸⁵

The PCA also stresses importance of establishing of political dialogue between the EC and Azerbaijan, which will strengthen the links of Azerbaijan with the EC and its Member States; will bring about an increasing convergence of positions on international issues of mutual concern (thus increasing security and stability in the region and promoting the future development of the states of the region); and will foresee that the parties endeavour to cooperate on matters pertaining to the strengthening of stability and security in Europe, democracy, and the respect and promotion of human rights.¹⁸⁶

The PCA's provisions are mainly devoted to the economic matters, such as trade in goods, business and investment, establishment and operation of companies, cross-border supply of services between the Community and Azerbaijan, current payments and capital, intellectual, industrial and commercial property protection, consumer protection and customs. Nevertheless, provisions concerning environment, energy, science and technology, education and training, transport, regional development, tourism, cultural cooperation, cooperation on matters relating to democracy and human rights, cooperation on prevention of illegal activities and the prevention and control of illegal immigration are also included into the PCA.

As well as those of Moldova, Georgia and Ukraine, the EC – Azerbaijan PCA provides for a gradual approximation of the Azerbaijani legislation to that of the Community in the following areas: customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, public procurement, protection of health and life, consumer protection, indirect taxation, technical rules and standards, nuclear laws and regulations, transport, environment and legislation regarding the exploitation and utilization of natural resources.¹⁸⁷

The main bilateral organs/structures established by the PCA are:

¹⁸⁵ EC-Azerbaijan Partnership and Cooperation Agreement, art.1.

http://ec.europa.eu/external_relations/ceeca/pca/pca_azerbaijan.pdf, accessed on 05.03.2007.

¹⁸⁶ Ibid. art.5.

¹⁸⁷ Ibid. art.43.

- Cooperation Councils (annual, at ministerial/commissioner level, European Commission, Government of Azerbaijan);
- Cooperation Committee (senior civil servants level);
- Parliamentary Cooperation Committee (members of Azerbaijani Parliament and European Parliament, chaired alternately by the EU and the Azerbaijani side).¹⁸⁸

4.4.2. TACIS Country Strategy Paper and National Indicative Programme (NIP), and ENPI Strategy Paper and NIP

TACIS Country Strategy Paper (2002-2006) issued by the Commission for Azerbaijan states that as a result of war with Armenia “20% of Azerbaijan’s territory is occupied and 10% of its population is displaced”.¹⁸⁹ In this regard, it also mentions participation of EC in the rehabilitation of war-damaged areas.¹⁹⁰ TACIS Strategy Paper touches on the Azerbaijani political, economic and social situation and underlines country’s accession to the Council of Europe as a very positive step.¹⁹¹

Azerbaijani TACIS NIP (2002-2003) identifies the following priority areas for assistance and cooperation:

- Support for institutional, legal and administrative reform;
- Support to the private sector and assistance for economic development.

TACIS NIP (2004 – 2006) further specifies these areas as follows:

- Implementation of the PCA;
- Improved border management and combating trafficking in people;
- Modernisation of the State Customs Committee;
- Improved targeting of social assistance;
- Support to the Ministry of Ecology and Natural Resources;

¹⁸⁸ Ibid. arts.81-88.

¹⁸⁹ **TACIS Country Strategy Paper - Azerbaijan (2002 – 2006)**, pp.3-4.

http://ec.europa.eu/external_relations/azerbaidjan/csp/02_06_en.pdf, accessed on 05.03.2007.

¹⁹⁰ Ibid. p.13.

¹⁹¹ Ibid. p.4.

- Support to encourage economic development and diversification;
- Modernisation of the tax system.

ENPI Country Strategy Paper (2007 – 2013) for Azerbaijan highlights the pivotal role which the country plays in ensuring security of EU's energy supply.¹⁹²

Current internal policy objectives of Azerbaijan, according to the ENPI Strategy Paper are:

- Consolidating democracy, protection of human rights and fundamental freedoms;
- Consolidating the judiciary;
- Promoting balanced economic growth and the fight against poverty;
- Effective fight against crime and corruption;
- Public sector reform;
- Improving the investment climate.¹⁹³

The external policy objectives are:

- EU approximation;
- Cooperation with Turkey, Russia and Iran;
- Regional cooperation;
- NATO accession;
- Promoting trade.¹⁹⁴

Undoubtedly, restoration of the territorial integrity by means of the peaceful settlement of the Nagorno-Karabakh conflict is a key priority for Azerbaijan.

EC assistance priorities according to the Strategy Paper are:

- Political dialogue and reform;
- Economic and social reform, poverty reduction and sustainable development;

¹⁹² ENPI Country Strategy Paper - Azerbaijan (2007 – 2013), p.5.
http://ec.europa.eu/world/enp/pdf/country/enpi_csp_azerbaijan_en.pdf , accessed on 28.03.2007.

¹⁹³ Ibid. pp.6-7.

¹⁹⁴ Ibid. pp.7-8. Cooperation with the US can also be added to this list.

- Trade-related issues, market and regulatory reform;
- Cooperation in the field of Justice, Freedom and Security;
- Energy, transport, environment, information society and media;
- People-to-people contacts.¹⁹⁵

Focus priority areas according to the Azerbaijani ENPI NIP (2007 – 2010) are:

- Public administration reform and public finance management, including public internal control and external audit;
- Rule of law and judicial reform;
- Human rights, civil society development and local government;
- Education, science and people-to-people contacts/exchanges;
- Promoting mutual trade, improving the investment climate and strengthening social reform;
- Diversification of the economy;
- Sector-specific regulatory aspects, including public accounting;
- Energy;
- Transport;
- Environment.

4.4.3. ENP Country Report and ENP Action Plan

ENP Country Report of Azerbaijan was published by the Commission in March 2005. Aimed to provide guidance for the future Action Plan, it overviews political, economic and social situation in Azerbaijan to that date. The Report mentions an appointment, in July 2003, of the first EU Special Representative for the Southern Caucasus.¹⁹⁶ His mandate includes assistance to the Council in developing a comprehensive policy towards the South Caucasus, to contribute to conflict prevention and assist the conflict settlement mechanisms in the region.¹⁹⁷

¹⁹⁵ Ibid. pp.20-23.

¹⁹⁶ **ENP Country Report – Azerbaijan**, 2 March 2005, Commission Staff Working Paper, COM(2005), 72 final, SEC(2005) 286/3, p.4.

¹⁹⁷ Ibid.

The polity, administrative-territorial and judicial system of Azerbaijan are discussed in the Report. With regard to the human rights and fundamental freedoms, Report notes that “the Constitution of the Republic of Azerbaijan provides for freedom of thought and speech, conscience, association and assembly.”¹⁹⁸ The ‘multi-vectoral’ foreign policy of Azerbaijan, aiming to preserve balance in relations with the US, the EU, Turkey, Russia and Iran is also touched on in the Report.¹⁹⁹

With regard to the Nagorno-Karabakh conflict, Report points out that “portions of Azerbaijan's territory remain under Armenian occupation”.²⁰⁰ Not yet determined Caspian Sea border demarcation, despite the fact that Azerbaijan, Kazakhstan and Russia have already signed bilateral agreements demarcating their respective sectors, is also mentioned in the Report.²⁰¹

The EU – Azerbaijan Action Plan, concluded for a period of 5 years, was adopted in November 2006. Action Plan includes in the list of common values, on which the ENP is based, the respect of and support for the sovereignty, territorial integrity and inviolability of internationally recognised borders of each other.²⁰² The EU also “takes note of Azerbaijan’s expressed European aspirations”.²⁰³

New partnership perspectives opened by the Action Plan are:

- The perspective of moving beyond cooperation to a significant degree of integration, including through a stake in the EU’s internal market, and the possibility for Azerbaijan to participate progressively in key aspects of EU policies and programmes;
- An upgrade in the scope and intensity of political cooperation, through further development of mechanisms for political dialogue and consultations on security issues that affect the interests of both sides;

¹⁹⁸ Ibid. p.7.

¹⁹⁹ Ibid. p.10.

²⁰⁰ Ibid. p.11.

²⁰¹ Ibid.

²⁰² EU – Azerbaijan Action Plan, p.1.

http://ec.europa.eu/world/enp/pdf/action_plans/azerbaijan_enp_ap_final_en.pdf accessed on 05.03.2007.

²⁰³ Ibid.

- Continuing strong EU commitment to support the settlement of the Nagorno-Karabakh conflict, drawing on the instruments at the EU's disposal, including the EU Special Representative, and in close consultation with the OSCE. The EU is ready to consider ways to strengthen further its engagement in conflict resolution and post-conflict rehabilitation;
- Deepening trade and economic relations; providing the opportunity for convergence of economic legislation, the opening of economies to each other, and the continued reduction of non-tariff barriers to trade, which will stimulate investment and growth;
- Increased financial support (the Commission also intends to propose an extension of the EIB mandate to Azerbaijan as of 2007);
- Possibilities of gradual opening of or reinforced participation in certain Community programmes, promoting cultural, educational, environmental, technical and scientific links;
- Support including technical assistance and twinning to meet EU norms and standards, and targeted advice and support for legislative approximation;
- Establish a dialogue in accordance with the *acquis* on matters related to the movement of people between the EU and Azerbaijan;
- Opening as soon as possible of a Commission Delegation in Azerbaijan.
- In light of the fulfilment of the objectives of the Action Plan and of the overall evolution of EU – Azerbaijan relations, consideration will be given in due time to the possibility of a new contractual relationship.²⁰⁴

The main priority areas for Action under the EU – Azerbaijan Plan are:

1. Contribute to a peaceful solution of the Nagorno-Karabakh conflict;
2. Strengthen democracy in the country, including through fair and transparent electoral process, in line with international requirements;
3. Strengthen the protection of human rights and of fundamental freedoms and the rule of law, in compliance with international commitments of Azerbaijan (PCA, CoE, OSCE, UN);

²⁰⁴ Ibid. pp.2-3.

4. Improve the business and investment climate, particularly by strengthening the fight against corruption;
5. Improve functioning of customs;
6. Support balanced and sustained economic development, with a particular focus on diversification of economic activities, development of rural areas, poverty reduction and social/territorial cohesion; promote sustainable development including the protection of the environment;
7. Further convergence of economic legislation and administrative practices;
8. Strengthening EU – Azerbaijan energy bilateral cooperation and energy and transport regional cooperation, in order to achieve the objectives of the November 2004 Baku Ministerial Conferences;
9. Enhancement of cooperation in the field of Justice, Freedom and Security, including in the field of border management;
10. Strengthen regional cooperation.²⁰⁵

4.5. ARMENIA

4.5.1. Legal basis of bilateral relations – Partnership and Cooperation Agreement (PCA)

Providing a legal basis of bilateral relations EC – Armenia PCA was signed between the European Communities and their Member States, and Armenia, in 1996, and entered into force in 1999. It is based on the same template as those concluded with Azerbaijan, Georgia, Moldova and Ukraine. Consequently, it does not significantly differ from the other PCAs discussed in this chapter. Thus, the objectives of EC – Armenia partnership are:

- to provide an appropriate framework for the political dialogue between the EC and Armenia allowing the development of political relations;
- to support the Republic of Armenia's efforts to consolidate its democracy and to develop its economy and to complete the transition into a market economy;

²⁰⁵ Ibid. pp.3-10.

- to promote trade and investment and harmonious economic relations between the EC and Armenia and so to foster their sustainable economic development;
- to provide a basis for legislative, economic, social, financial, civil scientific, technological and cultural cooperation.²⁰⁶

As the other PCAs, the EC – Armenian one calls for establishment of regular political dialogue between the EC and Armenia which will strengthen the links of Armenia with the Community and its member states; will bring about an increasing convergence of positions on international issues of mutual concern (thus increasing security and stability in the region and promoting the future development of the region); and will foresee that the parties endeavour to cooperate on matters pertaining to the strengthening of stability and security in Europe, democracy, and the respect and promotion of human rights.²⁰⁷

Again, as well as the other PCAs, EC – Armenian one contains overwhelmingly trade-related provisions concerning: trade in goods, business and investment, establishment and operation of companies, services, payments and capital, and intellectual, industrial and commercial property protection.

Armenia is also invited to approximate its existing and future legislation to that of the Community in the areas of customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, public procurement, protection of health and life of humans, animals and plants, the environment, consumer protection, indirect taxation, technical rules and standards, nuclear laws and regulations and transport.²⁰⁸

4.5.2. TACIS Country Strategy Paper and National Indicative Programme (NIP) and ENPI Strategy Paper and NIP

²⁰⁶ EC-Armenia Partnership and Cooperation Agreement, art.1.

http://ec.europa.eu/external_relations/ceeca/pca/pca_armenia.pdf , accessed on 05.03.2007.

²⁰⁷ Ibid. art.5.

²⁰⁸ Ibid. art.43.

TACIS Country Strategy Paper (2002 – 2006), issued by the Commission for Armenia, points out Armenia’s fragile political situation and indicates a dependence of national economy on international aid and remittances from the diaspora.²⁰⁹ Thus, it is noted that “over 68% of the population is below or only marginally above the poverty line”²¹⁰. The TACIS Strategy Paper also provides that the EU and Armenia will continue their dialogue on the closure of the Medzamor Nuclear Power Plant (MNPP) and recalls in this context Armenian commitments taken regarding the closure of MNPP.²¹¹

Armenian TACIS NIP (2002 – 2003) identifies the following priority areas for assistance and cooperation:

- Support to PCA implementation;
- Support to the development of education, including vocational training and Information Technologies;
- Support to the implementation of the Food Security Programme;
- Support in addressing the social consequences of transition.

Armenian TACIS NIP (2004 – 2006) adds to this list support to energy policy, support to local self-governance and development of regions and support to pro-poor policy reforms in agriculture and social protection.

The ENPI Country Strategy Paper (2007 – 2013) for Armenia sets out the following internal policy objectives:

- Consolidating democracy, the protection of human rights and fundamental freedoms;
- Consolidating the rule of law;
- Effective fight against corruption;
- Public sector reform;
- Improving the investment climate;

²⁰⁹ TACIS Country Strategy Paper - Armenia (2002 – 2006), p.3.
http://ec.europa.eu/external_relations/armenia/csp/02_06_en.pdf, accessed on 05.03.2007.

²¹⁰ Ibid. p.9.

²¹¹ Ibid. p.4.

- Improving welfare, reducing poverty and enhancing the provision of social services;
- Security of energy supply.²¹²

External policy objectives are: orientation towards the EU and greater integration into cooperation arrangements in Eastern Europe, regional cooperation and promoting trade.²¹³

EC assistance priorities according to the Strategy Paper are:

- Political dialogue and reform;
- Cooperation for the settlement of the conflict over Nagorno-Karabakh;
- Economic and social reform, poverty reduction and sustainable development;
- Trade-related issues, market and regulatory reform;
- Cooperation in the field of Justice, Freedom and Security;
- Cooperation in specific sectors, including transport, energy, environment and information society;
- People-to-people contacts.²¹⁴

Focus priority areas according the Armenia's ENPI NIP (2007 – 2010) are:

- The rule of law and reform of the judiciary;
- Public administration reform, including local self government / public finance management / public internal financial control and external audit / combat of corruption;
- Human rights, fundamental freedoms, civil society, people-to-people contacts;
- Approximation of legislation, norms and standards;
- Support for poverty reduction efforts;
- Education;
- Regional development and social services.

²¹² ENPI Country Strategy Paper - Armenia (2007 – 2013), pp.6-7.
http://ec.europa.eu/world/enp/pdf/country/enpi_csp_armenia_en.pdf , accessed on 28.03.2007.

²¹³ Ibid. p.7

²¹⁴ Ibid. pp.17-20.

4.5.3. ENP Country Report and ENP Action Plan

The ENP Country Report of Armenia, published by the Commission in March 2005 aims to provide guidance for the future Action Plan. It overviews political, economic and social situation in Armenia to that date. With regard to the political situation, democracy and the rule of law (polity, administrative-territorial system, judicial system, corruption, etc.), and human rights and fundamental freedoms (development of civil society, freedom of association, media freedom, torture and ill-treatment, gender discrimination etc.) are discussed.

Report also touches on the fact that Armenia signed the Rome statute of the International Criminal Court.²¹⁵ However, ratification is pending due to the decision of Constitutional Court on incompatibility of the Statute with national legislation.²¹⁶ With regard to the demographic situation, Report indicates that since 1988 about 1 million have emigrated from Armenia, thereby dropping the population to the current level of about 3 million.²¹⁷

The EU – Armenia Action Plan, covering a timeframe of five years, was adopted in November 2006. According to the plan, the EU takes note of Armenia’s expressed European aspirations.²¹⁸ New partnership perspectives opened by the Action Plan are:

- The perspective of moving beyond cooperation to a significant degree of integration, including through a stake in the EU’s internal market, and the possibility for Armenia to participate progressively in key aspects of EU policies and programmes;
- An upgrade in the scope and intensity of political cooperation, through further development of mechanisms for political dialogue;
- Continuing strong EU commitment to support the settlement of the Nagorno-Karabakh conflict, drawing on the instruments at the EU’s disposal, and in

²¹⁵ **ENP Country Report – Armenia**, 2 March 2005, Commission Staff Working Paper, COM(2005), 72 final, SEC(2005) 285/3, p.9.

²¹⁶ Ibid.

²¹⁷ Ibid. pp.11-12.

²¹⁸ **EU – Armenia Action Plan**, p.2. http://ec.europa.eu/world/enp/pdf/action_plans/armenia_enp_ap_final_en.pdf , accessed on 05.03.2007.

close consultation with the OSCE. The EU is ready to consider ways to strengthen further its engagement in conflict resolution and post conflict rehabilitation;

- Deepening trade and economic relations;
- Increased financial support (the Commission will also propose an extension of the EIB mandate to Armenia as of 2007);
- Possibilities of gradual opening of or reinforced participation in certain Community programmes, promoting economic, cultural, educational, environmental, technical and scientific links;
- Support including technical assistance and twinning to meet EU norms and standards, and targeted advice and support for legislative approximation;
- Establish a dialogue, in accordance with the acquis, on matters related to the movement of people, including on readmission and visa, between the EU and Armenia;
- In light of the fulfilment of the objectives of the Action Plan and of the overall evolution of EU – Armenia relations, consideration will be given in due time to the possibility of a new enhanced contractual relationship.²¹⁹

Priorities for Action under the EU – Armenia Plan are:

1. Strengthening of democratic structures, of the rule of law, including reform of the judiciary and combat of fraud and corruption;
2. Strengthening of respect for human rights and fundamental freedoms, in compliance with international commitments of Armenia (PCA, CoE, OSCE, UN);
3. Encourage further economic development, enhance poverty reduction efforts and social cohesion, thereby contributing to the long term objective of sustainable development, including the protection of the environment;
4. Further improvement of investment climate and strengthening of private sector-led growth;
5. Further convergence of economic legislation and administrative practices;

²¹⁹ Ibid. pp.2-3.

6. Development of an energy strategy, including an early decommissioning of the Medzamor Nuclear Power Plant;
7. Contribute to a peaceful solution of the Nagorno-Karabakh conflict;
8. Enhanced efforts in the field of regional cooperation.²²⁰

4.6. BELARUS

4.6.1. Frozen status within the ENP framework and its rationale

EU – Belarus relations, progressing after the EU’s recognition of independence of Belarus, started to worsen after the election of president Lukashenka in 1994.²²¹ Although both sides negotiated PCA in 1995, it never came into force.²²² The reason was the actions taken by Lukashenka in 1996. First, he reformed the constitution of 1994, concentrating powers around the president.²²³ Then, he replaced democratically elected parliament with a national assembly, nominated by the president.²²⁴ In the end of 1996 he extended his presidential term to 2001 via flawed referendum, which postponed the presidential elections to be held in 1999.²²⁵

As a result of this, the Council stated in the conclusions of September 1997 that the EC would not conclude PCA with Belarus.²²⁶ The parliamentary elections of 2000, presidential elections of 2001 and local elections of 2003 all were considered by the EU and the OSCE as flawed to comply with the minimum international standards.²²⁷

When the EU launched the ENP, Belarus expressed its interest and suggested specific areas for cooperation. However, as these suggestions were not accompanied with any democratic reforms, situation remained unchanged.²²⁸ In the presidential elections of

²²⁰ Ibid. pp.4-10.

²²¹ **The EU’ relations with Belarus.** http://ec.europa.eu/external_relations/belarus/intro/index.htm , accessed on 05.03.2007.

²²² Ibid.

²²³ Ibid.

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ Ibid.

2006, which were considered by the EU and the OSCE as severely flawed, Lukashenka was again elected as the president.

The authoritarian rule of the president Lukashenka is a reason for the frozen status of Belarus within a ENP framework. Despite its primary eligibility in geographic terms, Belarus fails to comply with the commitment to common values such as democracy, the rule of law, respect for human rights and good governance. Hence, the Commission has issued neither an ENP Country Report, nor the ENP Action Plan for the Belarus. The TACIS Country Strategy Paper and NIP and ENPI Country Strategy Paper and NIP have been issued by the Commission for Belarus, aiming to support not the president and government, but the civil society and population of the country.

4.6.2. TACIS Country Strategy Paper and National Indicative Programme (NIP), and ENPI Strategy Paper and NIP

TACIS Country Strategy Paper (2005 – 2006) and NIP (2005 – 2006) were adopted by the Commission in 2004. The Strategy Paper declares that “the long-term goals of the EU are that Belarus be a democratic, stable, reliable, and increasingly prosperous partner with which the enlarged EU will share not only common borders, but also a common agenda driven by shared values.”²²⁹

In the Strategy Paper the authoritarian rule of president, pressure on media, and the Belarusian foreign policy strongly focused on relations with Russia are discussed. It is also noted that Belarus is not a signatory of a number of key international human rights conventions.

Priority cooperation areas, laid down by the TACIS NIP are:

- Support to civil society and democratisation (NGO support, capacity building, awareness raising on EU matters, support to the alignment with international conventions).
- Support to higher education.

²²⁹ TACIS Country Strategy Paper - Belarus (2005 – 2006), p.3.
http://ec.europa.eu/external_relations/belarus/csp/csp05_06.pdf, accessed on 05.03.2007.

- Support to Chernobyl affected areas.

The ENPI Country Strategy Paper and NIP of Belarus were issued by the Commission simultaneously with the similar documents of other ENP partners, in March 2007. The current EU approach according to the Strategy Paper consists of two tracks: restrictions on political contacts, and links with and assistance for other actors in civil society.²³⁰

EC assistance priorities according to the Strategy paper are:

- Democracy, human rights and civil society;
- Addressing the needs of the Belarusian population;
- Social and economic development;
- Border and migration management and customs;
- The fight against organised crime and the fight against corruption;
- Sectoral issues (energy, environment, transport etc.);
- People-to-people contacts and exchanges.²³¹

Priority areas of cooperation and assistance according to the NIP (2007 – 2010) are:

- Social and economic development,
- Democratic development and good governance.

4.7. COMPARATIVE ASSESSMENT BETWEEN THE COUNTRIES’ CURRENT STAGE OF RELATIONS AND THEIR INTERESTS IN COOPERATION WITH THE EU

The structure of the fourth chapter and sequence of the countries in non-alphabetical order reflects the author’s vision of the current stage of these countries’ bilateral relations with the EU. Their current pace of advancement within the ENP framework is determined not only by the economic situation, internal developments after the regaining of independence, external political factors and consequent degree of EU’s

²³⁰ ENPI Country Strategy Paper - Belarus (2007 – 2013), p.3.

http://ec.europa.eu/world/enp/pdf/country/enpi_csp_nip_belarus_en.pdf, accessed on 28.03.2007.

²³¹ Ibid. pp.17-19.

willingness to enhance and deepen relations, but also by the political will and interests of the political leaders of these countries.

Having sizeable territory and population, important geopolitical location, comparatively strong economy, and consequent advanced level of relations with the EU, Ukraine is put first in this chapter. An indicator of the Ukraine's advanced status is the EU's intention to establish a deep free trade area with Ukraine and to facilitate visa regime.

Moldova is the second in the list. Its unresolved Transnistria conflict is the main obstacle for the country's economic development. Moldova is the poorest country of Europe and its territory and population are much smaller than those of Ukraine. Nevertheless, Moldova enjoys its geographic location and it is, as a direct neighbour, also important for the EU. Visa facilitation is intended to apply for Moldova as well.

Unlike Ukraine and Moldova, Georgia has not direct land border with the EU. However, Ukraine and Moldova while trying to accede to the EU circumspetly looks back at Russia. On the other hand, Georgia has preferred an open confrontation. Its desperate desire to join the EU (and the NATO) and its significant democratic reforms have been warmly welcomed by the EU. Nevertheless, its problematical territorial conflicts impede quicker development of the country.

Azerbaijan has approximately the same level of bilateral relations with the EU as Georgia. Unlike Georgia, it has not a maritime border with the EU. But, it is beginning to play more and more important role for the EU in terms of energy security. Currently exploiting its own oil and gas resources, it can become also a transit country for the transportation of energy resources of Kazakhstan and Turkmenistan in the near future. Situated between Russia and Iran, Azerbaijan prefers to moderately declare its ultimate goal – being a member of Euro-Atlantic integration (the EU and the NATO).

Armenia is put fifthly in the list. This small poor country, the whole economy of which is under the Russian control, has neither the border with the EU, nor the natural resources. Nor it conducts significant democratic reforms. The main interest of the EU in Armenia (supported by France and its Armenian diaspora) is to weaken the Russian influence there.

Belarus is the sixth in the list. Under the different circumstances and having a different political regime it would probably be the second. However, currently, the participation of Belarus in the ENP is frozen. History does not endure a subjunctive mood.

The interests of these countries in cooperation with the EU are similar: to weaken the Russian influence, to receive a significant financial assistance and to enjoy other benefits of the approximation with the EU. However, the ways for pursuing these objectives are different. Ukraine and Moldova are slowly leaving the zone of Russian influence and consider the ENP as a preliminary step for an application for membership in the EU. On the other hand, Azerbaijan, while leaving this zone, realizes that it is not currently ready for such an application. Armenia is just unsuccessfully trying to leave the zone, whereas Georgia, although very painfully, has probably already managed to do so. Belarus (its current political leadership) considers the integration and close cooperation with Russia much more profitable than that with the EU. That's the reason of little attractiveness of the ENP for Belarus.

CONCLUSION

The most important challenge of the ENP is undoubtedly its obvious inability to moderate membership aspirations of some neighbours, such as Ukraine, Moldova and Georgia. The ENP has been modelled on the enlargement process. Hence, the similarity of instruments (Action Plans and annual Progress Reports) and methodologies/principles (conditionality and differentiation) between them is natural.

Transfer of many Commission officials, previously worked on enlargement, to the ENP also impacted on the likeness between the EU's neighbourhood and enlargement policies. Nevertheless, even though the conditionality on which the ENP is based is similar with that of enlargement, used to prepare candidates for accession, the ENP lacks the accession perspective as the 'golden carrot' of the enlargement process.

This ambiguity accordingly results in some contradictions within the institutional framework of the ENP. Looking through the 'costs-benefits lenses', acceding states accepted all the obligations imposed by the EU. However, looking through the same lenses, the neighbouring states, albeit accepted alternatively offered privileged form of partnership, may not be willing to carry out all the necessary painful reforms without any concrete incentives.

The EU offers to the neighbours to align their legislation with *acquis*, but if they have no accession perspective, then it should be asked, why should they carry out that? One may point out here the possibility to have a stake in the EU's internal market. However, financial assistance, to be provided through the newly launched ENPI in a concrete way, might have more chances to serve as an attractive carrot for the neighbours.

Furthermore, the joint ownership principle has been influenced by the ambiguous character of the ENP. Thus, in spite of existence of joint monitoring alongside the unilateral one, it is not for the neighbour states but for the EU to assess the performance shown during the implementation of reforms, and to decide to what extent the neighbours committed to the common values and cooperate with the EU on the key

foreign policy objectives. This situation could be quite normal for the accession process, however it is not quite suitable for the ‘partnership’, even for its imbalanced form.

Interestingly, when the ENP is analysed not from the critical but from the ‘Realpolitik’ point of view, ‘take it or leave it’ approach currently looks indeed quite realistic, because, as Wissels, the head of the Commission’s ENP unit, put it:

“[i]t is neither helpful nor very relevant to focus on what the EU is not offering these countries. What is important is what the ENP does offer. The fact is that the ENP applies to countries which do not have, or do not currently have, an accession perspective. It is a distraction when parts of our neighbourhood are viewed through an enlargement lens.”²³²

Moreover, the enlargement aspirations of some neighbours are not surely the only challenge which the ENP faces. Its other main challenges are to improve regional cooperation among the neighbours, to contribute to the resolution of conflicts remaining in the neighbourhood and to improve relations with some currently ‘difficult’ countries, especially with Belarus. Unfortunately, until now the ENP has been able to be successful in neither of these areas.

These tasks are obviously interconnected. Even though the EU has established EUBAM and thereby has promoted the cooperation between Ukraine and Moldova, it has not succeeded to improve relations with Belarus and to improve a regional cooperation in the South Caucasus. It seems beneficial that attractive incentives should be offered to Belarus in exchange for its democratisation.

Furthermore, in order to promote a regional cooperation in the South Caucasus, the EU should first contribute to the resolution of current territorial conflicts, impeding such cooperation. It is to be declared that the EU’s unwillingness to enter into open confrontation with Russia nevertheless prevents its more active interference into the process of resolution of territorial conflicts in the post-Soviet space.

In order to tackle these difficult tasks the ENP should be strengthened. For that purpose, the Action Plans should provide not only rhetoric, but also the concrete provisions. Only consolidated, improved and strengthened ENP, providing attractive incentives, is able to

²³² Wissels, op.cit., p.15.

become not the 'second best option', but instead the 'win-win policy' and genuine alternative to the enlargement.

Nevertheless, EU's eastern neighbours will not be completely satisfied with the ENP, either in its current, or in its strengthened form. Albeit the EU has clearly let the neighbours know that the ENP is distinct from the enlargement, they see it as just a preliminary step for a future membership application. However, it would serve that purpose as such a step only on the condition that the neighbours become much stronger, in political and economic terms. If they are like Switzerland or Norway, the EU would not hesitate to consider them as suitable candidates for the EU's membership.

In the near future the Eastern neighbours will become closer to the EU. Especially Ukraine and Moldova will start to reap the harvest of political approximation with the EU. Visa facilitation is only the first step. It should not also be forgotten that 2008 is the year when both the PCAs and Action Plans of Ukraine and Moldova will expire. Ukraine and Moldova preferred their Action Plans to cover the timeframe not of five but of three years. Their calculation is based on their wish to sign in 2008 with the EU European Neighbourhood Agreements, as mentioned in the ENP Strategy Paper.

The EU would not probably agree to sign such agreements with Ukraine and Moldova, since it can hardly be argued that they have fulfilled all the commitments which take place in the Action Plans. Nevertheless, aiming to reward Ukraine and Moldova for their political approximation with the EU, future agreements will be much more enhanced than the current PCAs and Action Plans.

A new EU – Ukraine enhanced agreement would be even more 'enhanced', if the protracted internal political crisis, caused by the painful East-West identity controversy, did not start in Ukraine in April 2007. Probably, the lessons learnt from the difficulties with the implementation of PCAs and Action Plans will be taken into account and future agreements hopefully will contain more concrete provisions.

The EU's Eastern neighbours will continue the course towards further approximation with the EU in political and economic terms. They do clearly realize all the advantages of this course, which promotes their development. They will not become full members

of the EU neither in short-term, nor in mid-term perspectives. But, this way is profitable for them and will become even more profitable in the future.

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