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# The European Neighbourhood Policy (ENP): Extending Governance beyond Borders?\*

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***Abstract:** In this paper I argue that the development of the European Neighbourhood Policy (ENP) can be understood as a form of 'externalization of EU governance'. In 2004 and 2007, the EU enlarged to encompass twelve new member states and thus acquired a new neighbourhood, notably in Eastern Europe. Russia, Ukraine, Belarus and Moldova now share a common border with the EU. Since 2001/02, the EU has been developing the ENP to cope with the challenges resulting from this new political landscape, and as such, the ENP is now the primary instrument through which EU governance is externalized. With the exception of Belarus and Russia, the European Union's Eastern neighbours are intent on acquiring EU membership. The EU, in turn, is keen on maintaining its Eastern borders safe and secure from external risks such as illegal migration, environmental degradation and economic crisis. In order to meet these objectives, the EU promotes democratic and economic reforms in the countries located along its Eastern border and in doing so strives to foster political stability and security in the wider Europe. While hierarchy and negotiation constitute the dominant modes of governance in enlargement, this paper will demonstrate that coordination and competition – albeit in the shadow of hierarchy – are the most central modes of governance discernible within the European Neighbourhood Policy.*

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## I. Introduction

The 2004 and 2007 enlargements have pushed the European Union (EU)<sup>1</sup> much closer towards what is now conceived as a ‘new neighbourhood’ – notably in Eastern Europe. Still, concepts such as the ‘European neighbourhood’ or a ‘wider Europe’ that have recently entered the academic discourse are not quite new: While they do not resound the hegemonic notion of the Kremlin’s idea of a ‘near abroad’<sup>2</sup> designating the former Soviet Republics in a presumably Russian sphere of influence, these concepts started to enter into EU jargon at a time when the Forwards Study Unit<sup>3</sup> of the European Commission crafted a particularly bleak scenario of “turbulent neighbourhoods” at the doorsteps of an expanding European Union. According to this scenario, the Europeans would fall victim to a siege or fortress mentality by 2010 as the EU would be doomed to fail “to implement an effective *cordon sanitaire* strategy” (European Commission 1999: 50) along its post-enlargement borders and would not be capable of addressing issues such as illegal immigration, environmental hazards and pandemics which may spread in the wake of weak or failing states (see Moroff 2002 and 2003). The question how to establish an effective ‘*cordon sanitaire*’, or how to equip the European Union with a role in influencing the countries of such a geopolitical ‘grey zone’ and, ultimately, how the EU extends governance beyond its borders,<sup>4</sup> is definitely at the bottom line of the European Neighbourhood Policy (ENP).<sup>5</sup>

In the run-up to the final accession talks for the ten new member countries in 2001, the European Union began to sketch out a unique policy mix, enshrining not only a privileged, but also a deeper political relationship as well as economic integration, built upon a mutual commitment to common values. Consequently, the European Commission

President Romano Prodi described the purpose of the ENP as creating a “*ring of friends* surrounding the Union and its closest European neighbours, from Morocco to Russia and the Black Sea” (Prodi 2002; emphasis added). While there is a strong normative aspect discernible in the Commission’s approach, the European Security Strategy, which was drafted at the same time under the aegis of the Council Secretariat, in turn, is much more pragmatic, favouring the creation of “*a ring of well governed countries*” (European Security Strategy 2003: 8; emphasis added; Missiroli 2007: 2). Henceforth, the ENP was set to exhibit both a normative roll call for Europe as well as a practical policy tool kit for the ‘new Europe’: fostering intensified cooperation and encompassing EU neighbouring countries of Northern Africa, the Middle East and Eastern Europe.<sup>6</sup>

The European Neighbourhood Policy builds into the framework of EU enlargement as much as it recurs to elements of the EC trade and development policy. Its primary goal is to enhance the EU’s overall relationship with these neighbouring countries – at both a collective and individual level. Thus, the ENP is an attempt to square the circle by reaping the benefits of enlargement in terms of the EU’s patronizing role in guiding domestic political reform and economic transition in (neighbouring) third countries, without mandating the EU to promise future membership. The conundrum that evolves from this, in a nutshell, is the following: How can the European Union take advantage of enlargement-tested ‘conditionality’ and, for that matter, expect compliance from neighbouring countries without relying on the golden carrot of membership (Magen 2006)? Or to put the question into the perspective of this volume on modes of new governance in the EU’s policy-making, how can the EU govern its immediate vicinity

without the hierarchy-inducing prospect of future accession, hence relying on a silver carrot of a nothing but privileged relationship of some kind?

The first section will seek to establish the European Neighbourhood Policy as a domain within the EU's 'external relations' – broadly conceived. While enlargement is an important aspect of path-dependency within ENP, the European Union has been adamant to reinforce an external relations perspective for its neighbourhood policies. The second section will then address more specifically the origins of ENP in external relations. The third section will assess the ENP policy-making process and the role of central actors and institutions, in particular the European Commission as well as individual member states. Towards the backdrop of the empirical assessment, the fourth section will describe the dominant modes of governance and explain why there have been shifts over time in terms of governance modes which are present in the area of ENP. While hierarchy and negotiation constitute the dominant mode of governance in enlargement policies and practices, this contribution will demonstrate that coordination and competition – albeit in the shadow of hierarchy – are the most central modes of governance discernible within the European Neighbourhood Policy.

## **II. 'Neither (quite) in nor (quite) out': Establishing a new policy area in the EU's external relations**

Since the beginning of European integration, the EC/EU has been compelled to foster relations with third countries as well as other organizations of regional integration in Europe and the world. The EC/EU pursues relations at a bilateral or multilateral level, or a mixture of both. Clearly, the EC/EU has always declared to be in favour of regional

cooperation within and beyond its borders, e.g. *vis-à-vis* the Benelux, or Mercosur in South-America or, in the context of enlargement, the Central European Free Trade Area (CEFTA) – despite the fact that official EU rhetoric has not always matched EU politics in this respect. While the EU encouraged Central and East European countries aspiring for EU membership into some form of regional arrangement, the politics of enlargement has, on the contrary, prioritized the bilateral relationship between each country and the European Union.

In addition to that, some alternative schemes of regional integration in Europe, such as the European Free Trade Agreement (EFTA) or more recently the Single Economic Space in Eastern Europe and Central Asia (Malfliet et al 2007; Mattli 1999), were construed to provide an option for those states in Europe that did not aspire for the EC's far-reaching purposes in terms of economic and political integration nor subscribed to the EC's distinct supranational character. Ultimately, it was only in the 1970s that the EC developed into the central core of regional integration in Western Europe; and, finally, it was in the aftermath of the Cold War that the EC/EU gained recognition as the central institution for integrating both hemispheres of Europe – West and East. However, as it has been the case with EC/EU enlargement, the Community also sought for means to effectively protect itself against potentially detrimental effects of rapid institutional enlargements and massive expansions of membership. In this light, the European Economic Area (EEA) of 1989, encompassing former EFTA countries and EC/EU member states also aimed at providing an alternative model of integration into selected policy areas of the EC/EU below the level of EC/EU membership. Without offering any sort of participation in the decision-making processes of the EU institutions, the

European Economic Area (EEA) extended the single market to EFTA countries. Arrangements such as a 'Wider European Economic Area' or a 'Deep Free Trade' are at the forefront of discussions about the finality of the European Neighbourhood Policy (Emerson et al 2006). Whereas most of the EEA member countries are content with the quality and level of integration into the European Union, such an approach would underestimate the desire of many ENP countries to actually become a member of the European Union. Thus, ENP cannot only be regarded through the lens of external relations with close European neighbours; it also needs to be addressed as a component of the EU's post-accession strategy in post-enlargement Europe.

Clearly, for most of the time, the Cold War determined rather narrowly the potential scope of inter-state relations in Europe as well as the prospects for European unification. However, it was only with the end of the East-West conflict that the EC/EU was urged to fundamentally redefine its relationship with the states of Central and Eastern Europe. So far, the European Union has pursued a gradual (albeit incremental) and differentiated *rapprochement* prior to ultimate inclusion. According to Karen E. Smith, the history between the EU and Central and Eastern Europe can be read, by and large, as the European Union "coping with the exclusion/inclusion dilemma by eventually choosing inclusion" (Smith 2005: 57). With the most recent rounds of enlargement as well as the prospective expansion to include the countries of South-Eastern Europe, inclusion clearly won or is likely to win out over exclusion. However, as at the same time 'enlargement fatigue' in many EU member states (with a sharp cleavage between old and new members though) has risen to an unexpected magnitude. Therefore, it is highly questionable whether the 'inclusionary approach' will continue to prevail in the future.

To solve this dilemma, the European Union has proposed the European Neighbourhood Policy as a framework for creating an intermediate stage in an attempt to escape the binary logic of inclusion and exclusion.<sup>7</sup>

This approach makes the European Neighbourhood Policy rather unique. ENP comes close to concepts such as ‘privileged partnership’ or ‘strategic partnership’, which, ironically, are now applied to Turkey and Russia. Although Turkey is on an EU accession track, a number of politicians in EU member countries – in particular in France and Germany – would like to see Turkey rather as a privileged partner than a full-fledged member of the European Union. Hence, some authors (and politicians) also consider ENP in terms of a potential exit strategy for candidate countries. The Russian government, in turn, is developing a ‘strategic partnership’ *sui generis* with the EU, despite the fact that the Commission had hoped to include the Russian Federation into the European Neighbourhood Policy at an early drafting stage. Both the EU and Russia have agreed upon the creation of the so-called ‘Common Spaces’ (encompassing economic cooperation as well as cooperation in the fields of external and internal security, plus education and research) at the EU-Russia summit in St. Petersburg in May 2003. Clearly, this decision provided an unintended ‘enlargement twist’ to ENP as it brought countries in Eastern Europe together which, by and large, share the goal of EU membership. Anyhow, one should not forget that the offer of ENP in 2004 did not satisfy the high aspirations of either the Ukrainian or the Moldovan government who are eager to acquire a clear EU membership perspective.

Paradoxically, throughout the process of EU accession, enlargement policy has lost its foreign and security policy punch (K. E. Smith 1999), and turned much more into

a pre-domestic policy which aimed at ensuring a sufficiently high level of anticipatory adaptation or compliance with EU norms, standards and policies prior to accession. By doing so, the European Union was able to equip the process enlargement with sufficient legitimacy over (softly) intervening into the domestic politics of ‘third’ countries. EU officials and policy-makers, in turn, are adamant in manifesting the European Neighbourhood Policy as a foreign policy, albeit a “modern, intelligent foreign policy, stepping beyond traditional diplomacy of the 20<sup>th</sup> century” (Benita Ferrero-Waldner 2006; *author’s translation*) as stated by the Commissioner responsible for External Relations and the ENP. Hence, as put by the Director General of DG External Relations, the ENP does not declare future membership but rather political and economic “transition as a goal in its own right” (Landaburu 2006: 2) and seeks to acquire legitimacy by supporting delivery of efficient reforms in these neighbouring countries.

### **III. The Development of the European Neighbourhood Policy (ENP)**

The development of ENP has been described as highly path-dependent and “clearly modelled [...] on the enlargement process” (Kelley 2006: 30). However, it should not be overlooked that some of the questions pertaining to ENP were on the table at a much earlier stage of European integration, when the EC/EU was compelled to define its relations with European countries and neighbours who had, for various reasons, no interest in contemplating accession to the Community. In dealing with its immediate vicinity, the EC/EU projected three basic, sometimes interlinking models throughout the 1990s. First, it devised comprehensive, all-inclusive models of pan-European cooperation (such as the EEA or the ‘European confederation’ and the Europe Conference, which I

will describe later); second, it developed differentiated approaches of gradual and conditional integration of individual countries<sup>8</sup> into the EC/EU (based on the so-called Europe Agreements) or cooperation/integration with the EC/EU (based on the Partnership and Cooperation Agreements); and, third, the European Union fostered regional foci in terms of its external relations, involving the EU and non-EU countries (particularly in the context of the Euro-Mediterranean partnership, the so-called ‘Barcelona process’, the ‘Northern Dimension’ Initiative and the Stability Pact for South Eastern Europe) and blurring the line between internal and external policies.

As early as January 1990, French President François Mitterrand tabled the idea of establishing a European Confederation providing links between all European states – including the Soviet Union (Weisenfeld 1991, 1993: 356ff.). Ultimately, this idea would have brought the EC very close to the Conference on Security and Cooperation in Europe (CSCE), which at that time was preparing negotiations for the Charter of Paris (November 1990). In April 1991, the European Commissioner for External Relations, Frans Andriessen, suggested creating the status of ‘affiliated members’ who were supposed to have a voice, but no vote in a number of specified areas, such as foreign policy, transport, environment, monetary affairs and research (quoted in K. E. Smith 1998). This status was, in a sense, similar to what the Community had awarded to Germany’s Eastern *länder* following the reunification of Germany up until 1994, as East German MEPs were granted observer status in the European Parliament (Gänzle 2007: 115). In June 1992, the European Commission sketched out the idea of a ‘European Political Area’ which would provide a forum for regular meetings of EU member-states and associated countries from Central and Eastern Europe. One year later, in June 1993,

this suggestion developed into the Copenhagen European Council's initiative to create the 'structured dialogue', a "framework for discussions on all areas of EU business" (Smith 2005: 761). Concomitantly, the EU fleshed out a similar, but less ambitious policy *vis-à-vis* those countries of Eastern Europe that were likely – for various reasons – to be left out of the enlargement process for the foreseeable future, specifically Russia and Ukraine. Most important in this regard were the Partnership and Cooperation Agreements signed in 1994, and the launch of Common Strategies in 1999. While both agreements set-out a plethora of inter-institutional relations and called upon Russia and Ukraine to pursue political and economic reforms, none of them created a perspective for the relationship that once might transcend the creation of a common market with the European Union.

In 1997, the European Union decided to upgrade the structured dialogue with the Central and East European countries to a 'European Conference', thereby including countries such as Switzerland, Iceland, Turkey and Norway in the process. European conferences involved regular meeting of heads of state and government to discuss a wide range of policy issues which were of mutual interest. The conferences were primarily offered in order to mollify Turkey for not being considered as a candidate for EU enlargement at the Luxembourg EU summit; yet, for a number of years, Turkey refused to participate. At the Göteborg European Council of June 2001, the EU member states decided to invite Ukraine, Moldova, and Russia as well as the countries of Western Balkans to the European Conference. Still, running short of any political decision-making capacities, the European Conference largely remained an exercise in symbolic politics which did not yield any major success.

The Northern Dimension Initiative, comparable to the ‘Barcelona process’ starting in 1995, offered yet another approach. The initiative was launched by the Finnish government in 1997 in order to raise EU-wide awareness of the particular (environmental) needs and concerns of Northern Europe and its immediate vicinity (Russia, the ‘Baltic States’ and Poland). Similar to the European Conference, albeit limited in its geographical scope, Finland and Denmark organized Northern Dimension conferences involving Russia in the context of a ‘partnership approach’; yet, neither the Northern Dimension conferences nor the European Conference itself allowed non-EU members a seat at the decision-making table.

Hence, the European Neighbourhood Policy, inspired by a number of policy instruments devised in the context of EU enlargement, is strongly entrenched in the practice of close neighbourly relations below the level of membership, such as the European Economic Area. While this approach might be sufficient for countries from the Mediterranean rim and the Middle East, it does not match the hopes and aspirations of those European or Western NIS, like Ukraine and Moldova, which are aspiring for stronger inclusion in the institutions of the West.

#### **IV. The European Neighbourhood Policy: the Policy-making Process, Institutions and Actors**

A variety of EU institutions and actors – in particular the new member states – are at play in the policy-making processes of the European Neighbourhood Policy. Simply put, it can be said that intergovernmental institutions – such as the European Council and the Council of Ministers (in its General Affairs Council formation) – provide the overall

policy-guidance and direction for ENP, whereas the European Commission is much more versed in the day-to-day management and operational matters of ENP. Similar to the early stages of EU enlargement, where the Commission had been “catapulted into leadership” (Pelkmans/Murphy 1991), the European Commission so far has been able to assume a fair amount of policy entrepreneurship within the making and developing of ENP. The European Parliament, in turn, is not only involved in terms of co-decision procedure on ENP matters (such as the budget), but also when it comes to developing policy ideas about ENP itself.

The first concrete steps leading to ENP, however, were taken following a letter from the British foreign minister to the then Spanish Presidency of the European Union in January 2002. In this document Foreign Minister Jack Straw suggested to offer Ukraine, Belarus and Moldova “clear and practical incentives” for proceeding with political and economic reform. Furthermore, his proposal included granting these countries the status of “special neighbour” based on a firm commitment to democratic governance and free market principles (Comelli 2005: 13). At this stage, the countries of the Southern Mediterranean area were not yet included as potential candidates for such an inclusive approach. Meeting with the same resistance of Southern EU members to Eastern enlargement throughout the 1990s (which had brought to life the ‘Barcelona process’) the geographical scope of the new policy was quickly broadened to include both Russia and Southern Mediterranean rim (Johansson 2007). In August 2002, the High Representative of the CFSP, Javier Solana, and the EU Commissioner for External Relations, Chris Patten, addressed a joint letter to the Danish EU Presidency inviting the European Council of Copenhagen in December of that year to contemplate the “dual challenge of

avoiding new dividing lines in Europe while responding to the needs from newly created borders of the Union” (Patten and Solana 2002: 1). At the same time, DG Enlargement was the object of bureaucratic reshuffling as it became obvious that the number of accession teams needed to be reduced in the very near future (Kelley 2006). Hence for inertia, it was the Enlargement Commissioner, Günter Verheugen, who signed up for the European Neighbourhood Policy (and not his colleague Chris Patten). It is likely that some “bureaucratic politics” (Missiroli 2007: 2; Kelley 2006) had occurred at this stage of the policy development. Similarly, at the same time, Javier Solana attempted to strengthen the foreign policy perspective *vis-à-vis* the neighbourhood as the European Security Strategy, whose first draft he presented in December 2003, declaring that “building security in our neighbourhood” (European Security Strategy 2003: 7) was amongst the core strategic objectives of the EU. With regards to Eastern Europe, the Strategy affirms that “[i]t 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” (European Security Strategy 2003: 7-8).

Still, it was the European Council of Copenhagen in December 2002 that approved of the idea of a ‘Wider Europe’ in principle. Another strong intergovernmental component was added by the ‘Treaty Establishing a Constitution for Europe’ in 2003/04, which proposed the category of a ‘special relationship’ to be reserved for immediate

neighbours aspiring for closer relations. Hence, Art. I-57 of the ‘European Constitution’ stipulates:

- “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 the Treaty is unlikely to be ratified in its current form, most of the objectives expressed above became a vital part of ENP. In May 2004, the European Commission published its Strategy Paper on the European Neighbourhood Policy. In this document, the Commission laid out the principles and objectives that would govern all future ENP partnerships. The ENP aims at “sharing the benefits of the EU’s enlargement in 2004 with neighbouring countries in strengthening stability, security and well-being for all concerned” in order to “prevent the emergence of new dividing lines in Europe” (European Commission 2003: 4). Throughout the process of drafting the European Neighbourhood Policy, the normative tone was upheld:

The EU has a duty, not only towards its citizens and those of the new member-states, but also towards its present and future neighbours to ensure continuing social cohesion and economic dynamism. The EU must act to promote the regional and sub-regional cooperation and integration that are preconditions for political stability, economic development and the reduction of poverty and social divisions in our shared environment (European Commission 2003: 3).

Towards this background, ENP is designed to contribute towards greater regional security. The Commission President Prodi emphasized that the “aim is to extend to this neighbouring region a set of principles, values and standards which define the very essence of the European Union” (Prodi 2002). The European Union attempted to make clear that ENP was about partnership with, and not membership in the European Union. Still, various Commission officials sought to remain ambivalent in terms of the membership issue. While, for instance, the Commissioner for Enlargement, Günter Verheugen (Fraser 2007; Beunderman 2006), declared that Ukraine was not going to become an EU member any time soon, the Commission President Romano Prodi declared that “[w]e have to be prepared to offer more than partnership and less than membership, without precluding the latter” (Prodi 2002). In a nutshell, ENP seeks to extend the “chance to participate in various EU activities through greater political, security, economic and cultural cooperation” (European Commission 2003: 3) – albeit below the membership level. If not membership, what else could be offered as an incentive? In March 2003, the European Commission asserted that the EU’s neighbours should be offered the prospect of “a stake in the EU’s Internal Market” (European Commission 2003: 4). Subsequently, this incentive evolved into more concrete suggestions such as special Free Trade Agreements or participation in EU programmes and agencies (European Commission 2006).

Policy-making processes within the European Neighbourhood Policy rest upon several key principles: *First*, the ENP subscribes to a traditional institutional approach as it is built into the existing framework of the EU’s bilateral relations with a respective ENP partner country. Thereby the European Union attempts to avoid duplicating existing

institutional structures. The Partnership and Cooperation Agreements (which were developed in the first half of the 1990s to serve the NIS) and the Association Agreements with the Mediterranean countries provide the legal platform for ENP. Ultimately, this is also a commitment to a strict and differentiated bilateralism in terms of inter-institutional relations despite the fact that ENP also encourages its neighbouring countries to engage in sub-regional cooperation. *Second*, the Commission has declared that ENP constitutes a case for “joint ownership” (European Commission 2004: 8) of the institutions and of the process in general – albeit this ownership is “based on the awareness of shared values and common interests” (ibid.). Although the European Union does not explicitly state that the normative model is to be taken from the EU itself, it is clear that ENP countries are expected to converge unilaterally towards the normative model of the Union. This is clearly due to the internal constraints of EU governance, which make it extremely difficult to unpack agreements that have been painstakingly developed for the 15 member-states that made up the EU prior to the 2004 enlargement. Furthermore, the EU reiterates what is already an essential part of the PCAs. For example, in the case of Ukraine, the PCA affirms that Ukraine needs to approximate its existing and future legislation to that of the Community.<sup>9</sup> The PCAs that entered into force in 1998 were only agreed to for an initial period of ten years. Therefore, the strong focus on these legal documents make it more likely that the PCAs will be renewed in order to avoid another lengthy discussion and ratification process for new treaties.<sup>10</sup> *Third*, the ENP sets up a procedure for monitoring the success as well as shortcomings of agreements made under ENP (‘naming and shaming’).

Following this comprehensive step towards achieving the overarching policy goals of ENP, the European Commission refined its existing country strategies. The ENP is being reshaped in order to be compatible with the existing framework of relationships between the EU and its neighbours. Each country strategy paper subsequently supplies a strategic framework for the period 2002-2006. Furthermore, these strategy papers set out EU cooperation goals and policy responses as well as identifying areas for cooperation which are defined as key priorities. In addition, the country strategy papers provide an assessment of the partner countries' policy agendas, political and socio-economic situations as well as information about the EU's response (for instance in the case of Jordan) "in more detail, highlighting programme objectives, expected results and conditionality in the priority fields of co-operation for the period 2002-2004" (Action plan EU-Jordan 2002: 2).

The primary objective of the strategy papers was to define the scope and depth of cooperation, underpinned by financial aspects. Concomitantly, the European Commission drew up its first set of country reports. In May 2004, country reports were published on the first seven of the ENP countries which have Association or Partnership Agreements with the EU in force. A further five country reports were published in March 2005 on the next set of countries to be included in the policy (Georgia, Azerbaijan and Armenia), as well as with those countries whose Agreements had already come into force (Egypt and Lebanon). These reports provide an outline of the political, economic and social situation in the ENP countries. They also provide the space for future assessments on the achievements of each of the EU's partner countries.

The next stage in the development of ENP saw the conclusion of ENP Action Plans with each of the countries. In June 2004, the Council of the EU endorsed the Commission's proposal: "Action plans should be comprehensive but at the same time identify clearly a limited number of key priorities and offer real incentives for reform. Action plans should also contribute, where possible, to regional cooperation" (Council of the EU 2004). Subsequently, a wide range of other areas have been emphasized. They jointly define an agenda of political and economic reform by means of short and medium-term priorities (between 3 and 5 years). They cover political dialogue and reform, economic and social cooperation and development, trade-related issues and market and regulatory reform, cooperation in justice and home affairs, cooperation in sectors (such as transport, energy, information society, environment, research and development) as well as a human dimension (people-to-people contacts, civil society, education, public health). The incentives the EU offers in return for progress on relevant reforms are greater integration into European programs and networks, increased assistance and enhanced market access.

Finally, the implementation of mutual commitments and objectives agreed upon in the action plans are subject to regular monitoring by the European Commission and the partner country. In addition, the European Commission issues periodic reports commenting on progress as well as shortcomings. This procedure clearly reinforces elements of conditionality by offering reviews of the relationship in exchange for compliance with jointly agreed commitments. According to the Deputy Head of Ukraine's Mission to the EU, his country aims at "under-promising, but over-

delivering”<sup>11</sup> on the terms of its objectives set in the Action Plan. In December 2006, a first set of progress reports was released by the European Commission.

Another important aspect in terms of policy-making refers to financial aspects. Until 2006, EU assistance to the countries covered by the European Neighbourhood Policy was channelled through various geographical programs, such as TACIS for the NIS and MEDA for the Mediterranean countries.<sup>12</sup> Today, financial allocations come from the European Neighbourhood and Partnership Instrument (ENPI). Similar to the enlargement practice, assistance is set to be more flexible and ‘policy-driven’, designed to target sustainable development and approximation of EU policies and standards, as well as supporting the agreed-to priorities in the ENP Action Plans. One of its most innovative features is that it entails “a radical simplification to the current situation where cross-border cooperation at the external EU border is hampered by interfaces between internal and external funding instruments operating through different rules” (European Commission 2004: 3). This means that cross-border cooperation with non-EU countries will be considerably eased along the EU’s external land and sea borders in the east and in the south, putting partners under the same funding regime and instruments. The EU hopes to substantiate its goal of avoiding the emergence of new dividing lines in Europe as a result of these changes.

ENPI also envisages extending forms of technical assistance to partner countries that had previously been used in the process of the CEECs *rapprochement* towards the EU, such as Technical Assistance and Information Exchange (TAIEX), long-term twinning arrangements with EU member-states’ administrations (national, regional or local), as well as participation in Community programs and agencies. Moreover, the

Commission expects that the priorities identified in the action plans, which are agreed to with the authorities of the country, will have a ‘lighthouse effect’ in terms of guiding the programming of other assistance programs from other donor countries and institutions. After painstakingly difficult negotiations on the financial perspectives for the years 2007-2013, a compromise was reached at the European Council in December 2005. The Council determined that the EU’s external action – including Pre-accession, Stability, Development Cooperation and Economic Cooperation, ENP, Humanitarian aid and Macro-financial assistance – would receive approximately 50 billion Euro from 2007-13; ENP was to receive a share of approximately 20 per cent.

The EU is particularly interested in securing peace and stability at its periphery. Hence, the ENP is also framed in terms of conflict prevention policy. The ENP Action Plans agreed to in 2005 and 2006 make ample reference to conflict prevention. Likewise, the ENP Country Strategy Papers feature references to territorial disputes and call for a ‘shared responsibility’ for conflict settlement. Similarly, the Action Plans with Israel, Jordan, Morocco, Moldova and Ukraine, the Palestinian Authority and Tunisia all mention a ‘shared responsibility for conflict prevention and resolution’. So far, however, the ‘ENP approach’ to conflict resolution has yet to yield tangible results (European Commission 2006: 4).

When the Council of the EU decided to include the Caucasian Republics in the ENP, conflict prevention had to occupy the top of the agenda. Armenia, Azerbaijan and the issue of Nagorno-Karabakh represent symbols of Europe’s ‘frozen conflicts’. Border conflicts are very often at the origin of conflict in the post-Soviet space. Hence both Georgia and Moldova expressed hopes that the European Union and ENP would play a

pivotal role in resolving some of the conflicts in their territories (Cameron 2006: 5; Gänzle 2007). After a controversial debate among the member-states, the EU Border Assistance Mission to Moldova and Ukraine was set up in November 2005 under the lead of the European Commission. Although it is an advisory, small-scale, technical body with no executive powers, it provides training and advice to Moldovan and Ukrainian officials, reinforcing their capacity to carry out effective customs controls and border surveillance. Ultimately, it is designed to contribute to building confidence and strengthening cross border cooperation, particularly with a view to resolving the ‘frozen conflict’ in Transnistria.

As it has been demonstrated in the analysis of the policy-making processes of ENP, the European Commission occupies a very central role, comparable to the extent of Commission policy entrepreneurship within enlargement policy (in particular prior to the start of the accession talks). The Commission is very present when it comes to the daily management of ENP. The Commission services are pioneering the drafting of country strategy papers as well as, and more importantly, the action plans. Clearly, the European Commission can rely on a great deal of institutional memory given the fact that many of its services dealing with ENP today have been acquired and experienced as members of the Task Force of the Accession Negotiations (1998-99) or DG Enlargement (since 1999). Between 2003 and 2004, at a time when DG Enlargement also assumed responsibility for the European Neighbourhood Policy, some Commission civil servants were transferred from DG Enlargement to DG External Affairs (including the former Head of the Commission Negotiation Team for the Czech Republic, Michael Leigh). In fall 2004 Benita Ferrero-Waldner took the helm of a portfolio that was renamed ‘External

Relations and European Neighbourhood Policy’ – thus giving the ENP a very clear face, and probably contributing to increased ‘enlargement/ENP’ thinking in the field of external relations. By all means, the ENP provides the European Commission with an additional arena to gain profile and informal competence in foreign policy areas, which are primarily associated with the Council of Ministers or the member states.

However, any landmark decision in terms of ENP, whether it is the question of extending the scope of membership (to encompass the Caucasian Republics) or deciding on financial allocations, has to involve the member states, in particular the General Affairs Council. Country reports as well as action plans, drafted by the European Commission and ‘negotiated’ with each ENP country, are submitted to the Council which decides whether to proceed to the next stage of relations. Furthermore, the European Council as well as its Presidency provides additional guidelines as well as input. For instance, the German government announced in summer 2006 that it was planning to ‘use’ its EU Council Presidency in the first half of 2007 to implement a more comprehensive European ‘Eastern Policy’. Clearly, this raised eyebrows among Southern EU member states, who are “encouraging the ensuing Portuguese EU Presidency to rebalance this towards the South” (Missiroli 2007: 3). In this context, the role of the new EU member states cannot be under-estimated. Poland – together with Lithuania – has played an important role in orchestrating the EU’s approach to Ukraine since the Orange Revolution. During the ‘revolution’ itself, both East European countries were of key importance in getting the High Representative of the CFSP involved. Furthermore, the Baltic States play an important role in providing advice and support to post-Soviet governments, such as in Georgia, for all questions relating to market economic reform

and good governance (as well as securing independence and sovereignty) in the immediate vicinity of a hostile regional power such the Russian Federation. There are also many members of the European Parliament from the new EU countries that are far more willing to take a critical stance *vis-à-vis* Russian (domestic as much as foreign) politics.

Still, the European Commission, together with the European Parliament, is well-positioned to explore and suggest policy ideas (such as for instance the proposal to include the Caucasus in the ENP). The Parliament drafted several reports on the state and prospect of ENP and took credit for the inclusion of the countries of the Caucasus in the neighbourhood policy “at the insistence of the European Parliament” (European Parliament 2005: 14). Furthermore, the Parliament has provided a platform to leaders of ENP countries, in particular the President of Ukraine, Victor Yushchenko, to express his hopes for further European integration of his country – beyond the offer of ENP. In general, the European Parliament has taken a very supportive view with regards to the membership aspirations of the European partner countries in ENP. Members of the Parliament have been in favour of contemplating the inclusion of Central Asian countries into ENP, in particular Kazakhstan. Overall, the European Parliament is only loosely associated with policy-making processes within ENP and struggling hard to ensure that its co-decision authority in allocating the ENPI budget is reemphasized (as the Commission proposed to decouple the European Neighbourhood Policy from the ENPI budget).

Hence it is sometimes difficult to clearly attribute specific policy measures to either of the two central European institutions, the Council and the Commission, with

regards to ENP. However, at this early stage of the policy it is obvious that the Council defines the major rules, and the Commission plays the game – at least at the operational level. Furthermore, the new member states are likely to assume a major role when it comes to the issue of long-term sustainability of the European Neighbourhood Policy as a very unique policy area and arena within the EU’s external relations.

## **V. The European Neighbourhood Policy and New Modes of Governance**

Similar to EU enlargement, the European Neighbourhood Policy presents a fascinating policy field in which to explore the emergence of (new) modes of governance.

Entrenched in the path-dependent evolution of EU external relations and enlargement (as we have seen in the previous section), the ENP exhibits all four modes of governance identified in the introduction to this volume: hierarchy, negotiation, competition and cooperation. Yet, which modes of governance have prevailed thus far in this process? Furthermore, do the modes of governance dominant in the development of ENP warrant recognition as new and innovative? Lastly, have shifts of governance modes occurred over time?

It is clear that various forms of negotiation and dialog have increased under the umbrella of ENP. Since the ENP builds upon existing agreements between the EU and the partner country in question (Partnership and Cooperation Agreements, or Association Agreements in the framework of the Euro-Mediterranean Partnership), these negotiations take place – as argued by Tömmel and Verdun elsewhere in this volume – on both a horizontal axis linking various European institutions with one another and a vertical axis including (non-) member states’ governments, political parties, and public opinion. On

the horizontal level, the Commission and the Council (through the Partnership and Cooperation Council and Association Council), but also the European Parliament and semi-organs such as the Committee of the Regions or the ECOSOC are part of the deliberations. These negotiations, defining short-term and medium-term objectives within the ENP partnership, are goal-driven in a sense that both representatives from the EU and the ENP country discuss the scope of reform into which each partner country ultimately wishes or is capable to engage. The European Commission is eager to emphasise that the ENP Action Plan “is fully negotiated and mutually agreed at political level. It is not an imposition by either side, but an agreed agenda for common work” (European Commission 2006: 3). Of course, these negotiations do not occur in a political vacuum. They mirror individual countries’ preferences vis-à-vis the extent and policy breadth of the ENP. After the election of Nicolas Sarkozy as new French President in May 2007, it is likely that France, for instance, will step up its efforts to create a ‘Mediterranean union’ within ENP, thus fostering the links with Southern neighbours of the Mediterranean rim. Poland, in turn, can be expected to take – together with Germany – some more interest for its immediate Eastern neighbours, in particular Ukraine and Belarus. Clearly, these negotiations can be formal as well as informal; however, by all means they rely on arguments as much as the promise of tangible benefits from engaging into this specific kind of relationship.

Without any concrete prospect of future membership at stake, however, we cannot expect hierarchy to be a strong feature of ENP. One may argue though, that some of the negotiations take place in the shadow of hierarchy, where the partner countries expect future benefits – including the prospect of membership – in exchange for compliance.

Ultimately, the level of compliance in the European Neighbourhood Policy is underpinned by domestic conditions in each of the partner countries and the interest of each individual government in subscribing to these goals. It is for these reasons that Commission officials argue that “successful participation in the ENP requires that the pace of convergence to the EU and the internal process of economic reform are matched” (Dodini/Fanitini 2006: 530). Still, the ENP entails various elements and instruments to make ‘compliance’ an attractive policy goal for the partner countries: First, the PCAs and Association Agreements contain ‘human rights clauses’ which make the provision of financial assistance conditional upon the fulfilment of human rights standards (however, the implementation of these clauses has been subject to criticism from various NGO groups) (Kelley 2006: 46). Second, the PCA with Ukraine, for example, explicitly mandates that the country must ensure the approximation of its economic legislation towards EU standards (Article 55). Third, the ENP makes any further improvement in terms of the bilateral relationship, such as the development of “deep and comprehensive free trade agreements (European Commission 2006: 4)”, visa facilitation, participation in EU policies and agencies contingent upon convergence towards EU norms and standards. Similar to the practice in enlargement policies, the ENP sets up monitoring procedures (regular reports) that scrutinizes progress and shortcomings in various policy sectors. Most of the achievements in recent EU-Ukraine relations for instance, such as the opening of negotiations on visa facilitation and readmission agreements, are pursued in a highly hierarchical manner, where Ukraine ultimately is required to adjust towards EU expectations and standards. In turn, Russia (to give the example of a non-ENP

neighbouring country) draws advantage from the fact that Europe and the EU in particular is highly dependant on its energy supplies.

The EU would like to see its neighbours adopt values such as the rule of law, democracy and respect for human rights and minority rights in accordance with the norms and standards (political pluralism, freedom of speech and media, respect for the rights of persons belonging to national minorities, non discrimination on grounds of gender, and on political, religious and ethnic ground) set forth by the OSCE and the Council of Europe (as in the case of Ukraine). The ENP Action Plan encourages a wide range of initiatives in interregional and cross-border cooperation arrangements involving the sub-national level(s), targeting public health, fostering local democracy and civil society as well as building strong national education programs.

As for competition, the ENP aims at the establishment of two different frameworks: a first one between the ENP countries themselves, and second one between the EU and the ENP countries. The first one subscribes to a long standing ('declaratory') EU foreign policy practice which is to frame regional or sub-regional cooperation (in virtually every part of the world) as a primary stepping stone towards closer relations with the European Union. The formation of Visegrad group of states, comprising Poland, the Czech Republic, Slovakia and Hungary, founded in the early 1990s, was a response to this EU foreign policy goal. Similarly, the European Neighbourhood Policy was set up as a comprehensive framework inspired from the inclusive approach of the European Conference. An example for the second approach is the establishment of "a policy dialogue between EU and Ukrainian authorities in the field of education and training" (EU-Ukraine Action Plan 2004: 39). The Action Plan encourages Ukraine to fully

subscribe to the objectives of the Bologna process in Higher Education, to ensure the compatibility of the Ukrainian university system with that of EU member-states.<sup>13</sup> The Bologna club may be interpreted as a way to increase non-compliance-driven benchmarking efforts and mutual learning processes within and outside the European Union. In this respect the European Neighbourhood Policy absorbs modes of governance that have been introduced by the Open Method of Coordination – a system of coordination that emerged with the Lisbon European Council of 2000.

Since the establishment of the European Neighbourhood Policy, there has been a significant increase of ‘networks’ (Lavanex 2004) seeking to facilitate and improve *cooperation* amongst the participating partners. One of the key mechanisms for driving EU-inspired external reforms resides with the “perspective of moving beyond cooperation to a significant degree of integration, including a stake in the EU’s Internal Market and the possibility for Ukraine to participate progressively in key aspects of EU policies and programs” (EU-Ukraine Action Plan 2004: 2) Yet it is not only the ENP country which will benefit from closer forms of inclusion in EU programs and policies. In the case of Ukraine, the EU aims at getting access to the country’s Antonov fleet in order to cope with its weak capabilities *vis-à-vis* its airlift capabilities and to boost its credibility in terms of ESDP. Thus, the success of ENP ultimately will depend on the stakes both partners hold in this process.

## **V. Conclusion**

Similar to EU enlargement, this chapter has demonstrated that all different modes of governance identified in this volume – hierarchy, negotiation, competition and

cooperation – are present throughout various stages of the policy-making processes of the European Neighbourhood Policy. Negotiation may be grasped best as a form of dialog between ‘partners’ presumably on an equal footing. Although the European Commission has stressed the open-endedness and the partnership-approach it is correct to assume that negotiations – at the level of the ENP action plans – occur in the shadow of hierarchy as some of the ENP countries clearly expect the relationship to evolve into future membership. Hence, similar to the practice of enlargement, hierarchy plays a role albeit in different ways in conjunction with the level of commitment and foreign policy design of each ENP partner country. Through the lens of the governance school, it is this particular soft or silent imposition of hierarchy that brings ENP close to the enlargement path. Much more dominant, however, are softer modes of governance such as competition and cooperation within ENP. The overall framework of ENP which lumps together (potentially) sixteen countries has a competitive edge where each country may seek to set itself ahead of the others on scoreboards used by the Commission services in order to assess success in various policy areas. However, it is also fair to say that most of the ENP countries have not responded positively to this comprehensive approach, and seek instead to increase the bilateral component of ENP. Hence, cooperation is to be seen as the strongest mode of governance discernible within ENP.

Still, ENP is a very young EU external policy. Thus it is difficult to assess whether changes in terms of modes of governance have already occurred. However, as the analysis has clearly shown, we should not expect the European Commission to play a strong role in the medium term as – similar to the process of EU enlargement – the intergovernmental institutions are unlikely to loosen their grip on ENP. As such, the

intergovernmental institutions remain the master of the European Neighbourhood Policy, although the European Commission as well as the Parliament are trying hard to raise their profiles. In a nutshell, while cooperation and competition prevail at the operational level, ultimately, the European Council will diligently observe that negotiations between the EU and ENP countries do not bind EU member states in terms of future accessions.

Albeit entrenched in a particular realm of external relations and enlargement policies, the modes of governance in the European Neighbourhood Policy are not new. What can be learned from the analysis is that different modes are far from being subject to a binary logic; instead, as we have seen for instance in the case of hierarchy and negotiation, they must be perceived as closely interlinked. In this respect, we may assume that comparisons of modes of governance in one policy area, such as external relations, will allow drawing some conclusions about how the European Union interacts with the 'outside'. It will further our understanding of particular dynamics and patterns of EU-third country relationship. While the modes of governance in the realm of ENP are not new, the dynamic composition of the governance mix is surprising. While ENP heavily relies on cooperation and competition, negotiation and hierarchy are far from being absent.

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\* Draft chapter for Ingeborg Tömmel and Amy Verdun (eds) *Governance and Policy-Making in the European Union*.

<sup>1</sup> In general, I use the term EU to refer to the European Union after the introduction of the Maastricht Treaty. 'European Community (EC)' specifically refers to the first pillar of the European Union or the time prior to the Treaty of Maastricht.

<sup>2</sup> The concept relates to the so called Karaganov doctrine enshrined in Russian 1993 Foreign Policy Concept. The concept emphasizes the role of the post-Soviet space as a natural area of Russian interest.

<sup>3</sup> The Forward Studies Unit was created in 1989 at a proposal of Jacques Delors, then President of the European Commission, and placed under the direct responsibility of the Commission President.

<sup>4</sup> I consider the term 'external EU governance' as used elsewhere in the literature to be problematic for it seems to suggest a difference between 'internal' and 'external' governance modes.

<sup>5</sup> For a comprehensive overview on the EU's policy towards the East European countries of this 'grey zone' (Belarus, Ukraine and Moldova) as well as Russia, see Stefan Gänzle, *EU-Russia Relations and the Repercussions on the 'In-betweens'*, in: Oliver Schmidtke and Serhy Yekelchuk (ed.), *Europe's Last Frontier*, London: Palgrave 2007 (forthcoming)

<sup>6</sup> Algeria, Israel, the Palestinian Authority, Armenia, Jordan, Syria, Azerbaijan, Lebanon, Tunisia, Ukraine, Egypt, Moldova, Georgia, Morocco have been promoted to the rank of 'ENP partner' countries. Because of their weak democratic records, Libya and Belarus, however, have not yet been admitted to the ENP.

<sup>7</sup> One should not ignore, though, that the ENP did not meet the high aspirations of the Ukrainian government in 2004. Contrary to Moldova, Ukraine was always eager to acquire an EU membership option since the early 1990s.

<sup>8</sup> This country approach encouraged at the same time various forms of sub-regional cooperation (Visegrad states of Poland, Hungary, the Czech and the Slovak Republics; Council of the Baltic Sea States (CBSS); Black Sea cooperation, etc.).

<sup>9</sup> See European Union, Partnership and Cooperation of the European Communities and their Member States and Ukraine, OJ 1998 L49/3, p. 41: "The Parties recognize that an important condition for strengthening the economic links between Ukraine and the Community is the approximation of Ukraine's existing and future legislation to that of the Community. Ukraine shall endeavor to ensure that its legislation will be gradually made compatible with that of the Community."

<sup>10</sup> See Article 101 of the PCA with Ukraine, which stipulates: "This Agreement is concluded for an initial period of ten years. The Agreement shall be automatically renewed year by year provided that neither Party gives the other Party written notice of denunciation of the Agreement six months before it expires."

<sup>11</sup> Interview of the author with Kostiantyn Yeliseiev, Deputy Head of Ukraine's Mission to the EU, Brussels, May 30, 2005.

<sup>12</sup> These programs include TACIS (for its eastern neighbours and Russia) and MEDA (for its southern Mediterranean neighbours), as well as thematic programmes such as European Initiative for Democracy and Human Rights (EIDHR). The budgetary period covering 2000-2006 releases funds of approximately €5.3 billion for MEDA and €3.1 billion for TACIS; in addition the European Investment Bank lends approximately €2 billion to MEDA beneficiary countries and €500 million to TACIS beneficiary countries.

<sup>13</sup> Ukraine joined the 'Bologna club' together with the other Eastern ENP countries Armenia, Azerbaijan, Georgia and Moldova in May 2005.

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