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DISSERTATION

Titel der Dissertation

Governing Wider Europe in an Interdependent World.

**Explaining Modes of EU's External Policy in Migration
Management. A Comparative Case Study with Ukraine,
Belarus and the Russian Federation**

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Abstract

Diese Dissertation befasst sich mit dem Phänomen der Institutionalisierung von der Außenbeziehung der Europäischen Union (EU) mit der Ukraine, Russland und Belarus. Die Untersuchung dieses Prozesses erfolgt anhand der EU Kooperation mit diesen Ländern in den Bereichen Visaerleichterung, Rückführung von Personen mit irregulärem Aufenthalt in der EU in die entsprechenden Herkunfts- und Transitländer, Grenzraumüberwachung und Asylpolitik.

Die eigentliche Institutionalisierung setzte mit dem Inkrafttreten des Partnerschafts- und Kooperationsabkommen mit Russland 1997 und mit der Ukraine 1998 ein. Mit den aktuellen Verhandlungen über ein neues Assoziierungsabkommen werden der Grad der Institutionalisierung und die gesetzlichen Rahmenbedingungen weiter intensiviert. Mit Belarus hingegen kam es aufgrund anhaltender Menschenrechtsverletzungen und der mangelhaften, demokratischen Praxis nie zur Unterzeichnung eines Partnerschafts- und Kooperationsabkommen. Im Laufe des Annäherungsprozess der EU mit seinen Nachbarschaftsstaaten wurden 2004 mit der Europäischen Nachbarschaftspolitik (ENP) und der Strategischen Partnerschaft anhand '4 Gemeinsamer Räume' mit Russland, sowie 2009 mit der Osteuropapartnerschaft zusätzliche Strukturen geschaffen, um die Zusammenarbeit in wesentlichen Politikbereichen zu konkretisieren und geeignete Hilfsmittel und Förderprogramme bereit zu stellen.

Die Interaktionsformen der jeweiligen Akteure haben sich im Zuge dieser Institutionalisierung wesentlich verändert. Im Gegensatz zu so genannten ‚harten‘ Mechanismen, die in der Tradition von positiver und negativer Konditionalität stehen; haben sich in den letzten 10 Jahren vermehrt Politiknetzwerke etabliert, die im Sinne ‚sanfter‘ Mechanismen auf Überzeugung, Informations- und Wissensvermittlung und Unterstützung bei Implementierungsprozessen setzen. Im Sinne der Freiwilligkeit, stellen diese Politiknetzwerke ein Angebot der EU dar, die aufgrund von thematischen Förderprogrammen von den Partnerländern genützt werden können.

Die Arbeit stellt sich die Fragen, warum und unter welchen Bedingungen Staaten zur Mitarbeit in den vorhin erwähnten Politiknetzwerken bereit sind und welche Voraussetzungen erfüllt sein müssen, dass effektiver Regeltransfer von EU Gesetzen und Normen in Drittstaaten ermöglicht wird. Das Ziel dieser wissenschaftlichen Arbeit ist es daher, Erklärungen über die Potentiale aber auch die Limits einer möglichen Integration von Drittstaaten anhand von EU-geführten Politiknetzwerken zu liefern.

Abstract

This thesis tackles the phenomenon of the institutionalisation of European Union's (EU) cooperation with neighbouring countries such as Ukraine, the Russian Federation (RF) and Belarus. The institutionalisation started with the entry into force of the Partnership and Cooperation Agreement (PCA) in 1997 with the RF and in 1998 with Ukraine, and is continuing into the present day with the current negotiations between the EU with the Ukraine and RF on an enhanced association agreement. The institutional framework currently in force has been revitalised by several initiatives, such as the European Neighbourhood Policy (ENP) and the 'Four Common Spaces' with the RF in 2004, as well as the Eastern Partnership (EaP) in 2009. Given the dense institutional framework of the EU's international cooperation with Eastern European countries, in which intergovernmental networks are utilized to coordinate and regulate crucial issues, we may label it 'governance between governments' or 'External Governance'.

Furthermore, this paper emphasises the importance of institutionalising cooperation through the introduction of task-specific policy networks, which can, in the long-run, guarantee a harmonisation and internalisation of norms, rules, and objectives (e.g. Lavenex 2008 and Schimmelfennig/ Sedelmeier 2008). In addition to conventional foreign traditional tit-for-tat strategy, several less-hierarchic modes and strategies find their way into the EU's external policy coordination in its attempts to solve collective problems (e.g. Lavenex 2008; Weber/ Smith/ Braun 2008; Meloni 2007; Schimmelfennig/ Sedelmeier 2005). However, as this cooperation is merely on a voluntarily basis, this paper raises the following questions: why do third countries agree on institutionalising their cooperation with the EU, and how can this institutionalisation lead to legal approximation between the EU and neighbouring countries as efficiently as the 'accession conditionality'? Therefore, this paper stresses the importance of several conditions that determine the extent and efficacy of institutional settings for cooperation in IR. This may help to figure out limits to and possibilities for integrating third countries into EU policies without offering EU membership.

Keywords

Europeanisation; Institutionalisation of Foreign Affairs; External Governance; Network Governance; Migration Management; European Neighbourhood Policy (ENP); External Dimension of JHA;

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List of Abbreviations

ABM	Anti-Ballistic Missile
AENEAS	Programme for financial and technical assistance to third countries in the area of migration and asylum
AFSJ	Area of Freedom, Security and Justice
BRIC	Brazil, Russian Federation, India, China
CBC	Cross-Border Cooperation
CFE	Adapted Conventional Forces in Europe
CFSP	Common Foreign and Security Policy
CIREA	Centre for Information, Reflection and Exchange on Asylum
CIREFI	Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration
CIS	Commonwealth of Independent States
CISFTA	Commonwealth of Independent States Freedom Trade Agreement
CSTO	Collective Security Treaty Organisation
COM	European Commission
CoE	Council of Europe
COREPER	Committee of Permanent Representatives
DG JFS	Directorate General for Justices, Liberty and Security of the Commission
DG RELEX	Directorate General for the External Relations
EaP	Eastern Partnership
EEAS	European External Action Service
EC	European Commission
ECRE	European Council on Refugees and Exiles
e.g.	exempli gratia
EID	European Integration Department of Ukraine
EIDHR	European Instrument for Democracy and Human Rights
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood and Partnership Instrument
EU	European Union
EurASEC	Eurasian Economic Community
EUROJUST	Judicial cooperation body
EUROPOL	European Police Office
FTD	Facilitated Transit Document
FRTD	Facilitated Rail Transit Document
FMS	Federal Migration Service
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
GAERC	EU General Affairs and External Relations Council

GDP	Gross Domestic Product
GSP	Generalised System of Preferences
HLWG	High Level Working Group Asylum and Migration
HUREMAS	IOM-led project on reinforcing the State Border Guard Service of Ukraine Human Resources Management
IR	International Relations
IAEA	International Atomic Energy Agency
ICMPD	International Centre for Migration Policy Development
IO	Intergovernmental and International Organisations
IOM	International Organisation for Migration
JHA	Justice and Home Affairs
JFS	Justice, Freedom and Security
LIBE	Committee on Civil Liberties, Justice and Home Affairs of the Committee European Parliament
MEP	Member of the European Parliament
MEG	Modes of External Governance
MS	Member States
NATO	North Atlantic Treaty Organisation
ND	Northern Dimension
NRC	NATO-Russia Council
n.b.	nota bene
NEA	New Enhanced Agreement
NIP	National Indicative Programme
OSCE	Organisation for Security and Cooperation in Europe
PACE	Parliamentary Assembly of the Council of Europe
PCA	Partnership and Cooperation Agreement
PHARE	Poland and Hungary: Aid for Restructuring of the Economies
PJC	Police and judicial cooperation
QMV	Qualified Majority Voting
RF	Russian Federation
SDLA	Ukrainian State Department for Legislation Approximation
StP	Strategic Partnership
START	Strategic Arms Reduction Treaty
SBGC	State Border Guard Committee
SCIFA	Strategic Committee on Immigration, Frontiers, and Asylum
TACIS	Technical Assistance to the Commonwealth of Independent States
TAIEX	Technical Assistance and Information Exchange
TEC	Treaty establishing the European Community
TEU	Treaty establishing the European Union

TFEU	Treaty on the Functioning of the European Union
TCN	Third-Country Nationals
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
VAT	Value-added tax

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1 The Shift in EU's External Policy to Eastern Europe – Application of New Modes and Instruments in International Cooperation

This study provides an in-depth understanding of how the European Union (EU) achieves their objectives to achieve harmonised regulation in sensitive policy areas with neighbouring countries, in order to curtail possible externalities. During the Eastern Enlargement rounds in 2004 and 2007, the EU responded to new geopolitical realities in Central and Eastern Europe with a new approach, aiming to tighten relations with its neighbours in Eastern Europe. This new approach attempts to approximate neighbouring countries to EU norms, rules and procedures by facilitating dialogue and cooperation on crucial policy issues. This is done by an institutionalisation of the EU's interaction with third countries, starting with the Partnership and Cooperation Agreement with the Russian Federation (RF) in 1997 and Ukraine and Moldova in 1998. Nowadays, the EU's External Policy towards Ukraine, Moldova and Russia on migratory issues, namely visa facilitation, readmission, border management and refugee protection, is characterised by a highly institutionalised cooperation. Cooperation between the EU and Belarus on the respective issues evolved in the recent years.

In regard to the phenomenon of institutionalisation and legalisation of International Relations (IR), an in-depth analysis is done to scrutinise the shift in EU's external policy from governance by conditionality to 'soft' modes within issue-based policy networks (e.g. Lavenex 2008; Weber/ Smith/ Braun 2008; Meloni 2007; Schimmelfennig/ Sedelmeier 2005). Assisted by technical and financial aid, these 'soft' modes refer to persuasion, information exchange of best practice models and knowledge transfer, and range from policy-emulation over informal agreements to binding interstate law. Cooperation, therefore, might be ad-hoc or instead formalised by a set of institutional conventions and legal constraints. Introducing these 'soft' modes into foreign policy is an attempt to enable cooperation with a less binding character and less commitment, as it keeps the cooperation more flexible, mostly technocratic and depoliticised.

This innovation in the EU's external policy deserves a closer look as it provides an outlook for less hierarchical policy coordination between states, which may help to overcome potential deadlocks. A principal question is, firstly, why third countries agree on tightened institutional cooperation by introducing policy networks based adherence, when cooperation is merely voluntarily demand driven and, further, how this can lead to legal

approximation between the EU and the neighbouring countries as efficiently as the “*accession conditionality*” (Schimmelfenning 2007).

Hence, the analytical part of this study investigates how and why the EU’s external policy towards Eastern European countries becomes institutionalised and, further, inquires into the conditions determining the modes of the cooperation between the EU and its partners. The research questions are discussed through the lens of the core concepts of International Cooperation and Europeanisation in order to scrutinise crucial conditions for institutionalisation in IR and how it effects further cooperation afield. A theory-led explanatory model will be deduced to grasp the correlation between crucial conditions and distinct modes of interaction.

Further, according to a varying degree of institutionalised interaction across countries and policies, a comparative case study of the EU’s external policy towards Ukraine, Belarus and RF on migratory issues, namely visa facilitation, readmission, border management and refugee protection, will be done. This thesis conducts an analysis on applied modes, making the core distinction between hierarchical versus non-hierarchical policy coordination (e.g. Lavenex 2008; March/ Olsen 1998), in order to scrutinise crucial prerogatives and conditions that determine the extent and the efficacy of institutionalising intergovernmental cooperation.

Following that, this study may consequently help to figure out limits and possibilities in integrating third countries into EU institutions without offering EU membership. Thus, we conclude with a prospect on deepening institutional integration of the EU’s relations with neighbouring countries in Eastern Europe, thought as a possible third way of integration between an EU membership and being outside of any EU policies. More broadly speaking, this study takes part in the debate over the limits and possibilities of cooperation between the EU and the permanent ‘outsider’ states. According to current and highly salient debates on a possible membership of Turkey, it seems to be very promising to do research on alternative forms of cooperation and modalities of integration into EU institutions. Besides, Ukraine, Belarus and the South Caucasian States as well as countries of the Maghreb and Mashreq need a clear perspective for further cooperation. The EU’s lack of strategy, however, weakens its geopolitical position in the region, and thus weakens the possibility of creating an area of security, stability and prosperity. Beyond that, a clear and pro-active strategy can be a new impetus to overcome the blockades in EU-Belarus relations and improve the cooperation between them.

This study proceeds as follows: after discussing the area of research and the unresolved issues that remain, a comprehensive overview of the state of the art in this research area is given, in order to highlight former scientific findings and to delineate the necessity and innovative character of the present research project. Subsequently, we will describe the main research gaps that lead to the formulation of feasible research questions, which form the basis of the following study.

Chapter 2 outlines the observed phenomenon of an ongoing institutionalisation of cooperation in the EU's external policy and traces the development of a widespread institutionalised network of interaction between the EU and outsider states, and regional and international organisations. This chapter concludes with a more detailed insight into the legal and organisational dimension of the institutional framework of the EU's external policy, into the relevant actors taking part in the described forum, and into the EU instruments supporting the cooperation on justice and home affairs (JHA)-matters. Subsequently, section 1.2 discusses the methodology of doing research on this correlation, in other words the methods used for collecting and processing the underlying empirical data and the selection of empirical cases.

In Chapter 3, the operationalisation of the research question, 'Why and how to get international cooperation between the EU and its neighbours institutionalised' will be addressed. Chapter 3.1, therefore, scrutinises the external dimension of EU governance and analyses the EU's attempts to prevent negative externalities by gaining influence in policy regulation in third countries, accomplished through the facilitation of interaction and cooperation in crucial policy areas and the installation of efficient institutions to coordinate relations. To grasp the EU's interaction with third countries, the study refers to the two concepts of 'Europeanisation' – rational and sociological institutionalism – which provide explanations about the process of rule approximation within the EU and beyond; and, 'External Governance' which gives insight into institutions and the structure of bilateral decision making (polity and politics dimension). Chapter 3.2 poses the question of why institutions evolve in IR and, therefore, starts with an introduction of the core concepts of international cooperation and discusses their theoretical background in order to explain why states agree to institutionalise their relations. Thus, the analysis in Chapter 3.3 identifies the crucial conditions that impact the institutionalisation of international cooperation, and discusses their relevance in explaining the institutionalisation of the EU's external relations by: 1) mapping the international environment and nature of relations between the EU and its neighbours; 2) figuring out the preference building within the states; and, 3) measuring the influence of issue salience. In Chapter 3.4, the analytical

hypotheses are presented, based on the theoretically elaborated correlations between the determinants of intergovernmental cooperation and the extent of institutionalisation and its respective modes of cooperation.

The empirical part of the study contains three case studies on the EU's external policy in migration management towards the RF, Ukraine and Belarus (Chapters 4-6). This thesis concludes with a discussion of the empirical results and their explanatory value in order to comprehend the influence of certain conditions on the institutionalisation of EU's external relations. Finally, it provides an outlook on further developments in the research area and EU's external relations.

1.1 Determining the Research Gap: State of Research to the Subject Matter

The Partnership and Cooperation Agreements (PCA) with RF (1997), Ukraine and Moldova (1998) mark an incremental process of institutionalising cooperation between the EU and its neighbourhood. Continued by the European Neighbourhood Policy (ENP), Strategic Partnership (StP) with RF, both launched in 2004, and the 2009 introduction of the Eastern Partnership (EaP) initiative prove the importance of institutional ties in this specific cooperation between the EU and its neighbourhood.

In this short period, whose changes have allowed for new empirical insights, a great deal of research has already been done to grasp this new momentum in foreign relations between the EU and its neighbours in Eastern Europe. Especially the Ukraine, Moldova and RF have been subjects of intense research (e.g. Zhyznomirska (2009), whose research concerns EU-RF cooperation on migration management). Wherever, little investigation has been done on Belarus, which does not take part in any of the EU's foreign policy initiatives but is invited to engage in the new EaP (e.g. Council of the EU 2009b).

On the policy level, the state of the art in scholarly discussion about legal approximation is primarily geared towards the enlargement process, e.g. Trauner (2008) scrutinises EU rule transfer to the Western Balkans in the area of justice and home affairs (JHA). However, in the scientific literature on legal approximation, more and more attention is being paid to non-candidate countries, e.g. Meloni (2007) focuses on policy export at the core of internal markets to RF and Ukraine; Lavenex (1999) conducted research on the extension of EU asylum and immigration policies to Central and Eastern Europe; Wichmann (2007) dealt with JHA-elements of the ENP; Balzacq (2008), who did research

on the external dimension of EU JHA from a normative approach; and, Wolff, Wichmann and Mounier edited a special issue on the 'External Dimension of JHA' in 2009. The preceding studies mostly used theoretical considerations on rule transfers to third countries and applied concepts, such as "*Europeanisation beyond Europe*" (Schimmelfennig et al. 2005; Schimmelfennig 2007) or "*External Governance*" (Lavenex 2007; 2008).

Important insights into the research on legal approximation in non-member states can be given by using insights from the Europeanisation literature, which is mainly based on the impact of the EU on policies and institutions in member states. Most of the literature handles Europeanisation as solely a phenomenon within the EU (e.g. Bulmer/ Radaelli 2004; Cowles et al. 2001; Börzel/ Risse 2000; Radaelli 2000a/b; Knill/ Lehmkuhl 1999 and March/Olsen 1998). On the contrary, many authors have already envisaged third countries as a case of Europeanisation (e.g. Grabbe 2006, Schimmelfennig/ Sedelmeier 2005, Schimmelfennig et al. 2002, Radaelli 2000b), while some have also explicitly examined the externalities of the European regime on third countries from this point of view (e.g. Kruse 2003).

While there is little literature studying the domestic impact of the EU beyond Europe, the academic input in this research field has increased over the last years. The process is ongoing and thus, further research is needed to complement the literature. The results of research on Europeanisation within the EU and member states, therefore, can be useful to the identification of different mechanisms with which the EU tries to induce changes at the domestic level of non-member states. Thus, a comprehensive understanding of the EU's role in the international context requires an additional discussion of its impact on third countries which are affected, almost by default, by the process of European Integration (e.g. Mattli 1999: 59).

Although most of the present research builds on rule transfer by conditionality, Lavenex, Belokurova and Lehmkuhl (2008), however, did an important turnaround in their study on new modes of governance in relations with non-member-states.¹ They analysed rule approximation in non-member states from a governance perspective and scrutinised

¹ New-Gov Project No. 16 within cluster 3. (Revised version, September 2007): This project aims at examining how the EU manages its relations with third states through institutionalised forms of cooperation. The investigation covers six countries representing different forms of co-operation: Maghreb: Morocco and Tunisia; Eastern Europe: Ukraine and Moldavia; RF as non ENP-country; Western Europe: Switzerland and Norway as non ENP-country; in six major policy fields: drugs, organized crime, environment, transport, research, asylum & migration, police & judicial cooperation.

integration beyond conditionality by focusing on respective policy networks (Lavenex 2008). Whereas this research focuses on how rules are transferred to third countries, the current thesis fills a void in the research by scrutinizing 'why the respective Modes of External Governance (MEG) in the framework of ENP are chosen to govern interdependent relations with neighbouring countries?' Apart from this leading research question, the study questions: How and to what extent is the interregional cooperation on migration management between the EU and its neighbouring countries institutionalised? Which modes of interregional cooperation prevail in various policy areas and countries? Why do modes differ across policies and third countries? And, what are the conditions that determine the design of the institutional frameworks of interregional cooperation?

1.2 Methodology of the Research

This chapter briefly delivers insight into the methodology of the research and the used empirical data. First of all, the sources for the empirical analysis are: 1) Secondary literature used for collecting data on examining state-to-state relations on the basis of economic data (e.g. FDI, trade balance), opinion polls and qualitative analysis on security threats as well as economic relations (e.g. country reports, action plans, strategy paper and minutes of specialised subcommittees); 2) An analysis of official documents provides information on the agreed modes of International cooperation and EU's foreign policy strategy towards Ukraine, Belarus and the RF (e.g. Partnership- and Cooperation Agreements, Visa Facilitation and Readmission Agreement); And, 3) The main data source is semi-structured interviews with 47 officials from the EU, Ukraine, Belarus and RF. Subject of interest is the experience made by civil servants in this negotiation process between the EU and its partner countries (e.g. DG Relex; DG JFS; Council Secretariat; representatives of the ministries and the governments of the associated partner countries, as well as of representatives of Member States (embassies in the respective partner countries) and involved IO's, as IOM, ICMPD, UNHCR.

The research concludes with interviews with the researchers in the field (e.g. Sandra Lavenex (University of Lucerne), Olga Potemkina (Russian Academy of Science), Victor Shadurski (Belarusian State University, Faculty of International Relations), and Nico Lange (Konrad Adenauer Foundation)) to discuss and reflect major findings. (For the detailed interview list see appendix 10.2).

The variety and multitude of sources provide the analysis with a comprehensive empirical insight into the research area and help to scrutinise the correlation between the elaborated independent variables and the modes of intergovernmental cooperation between the EU and its neighbouring countries. The following figure illustrates the sources of measuring the respective variables.

Figure 1. Defining Dependent and Independent Variables

Conditions / Variables	Characteristics	Measurement
Modes of interregional cooperation	Legalisation and Institutionalisation	Documents; Interviews
Bargaining Power	Dependencies & Bargaining Chips	Analysis of bilateral relations; Data on trade relations
Credibility	Yield of a statement or promise	Interviews; Opinion polls
Cost-Benefit Calculation	Comparison of costs and benefits; (opportunity structure, costs of non-cooperation)	Interviews; Analysis
Issue Salience	Politicisation of policy issues by public debates and powerful stakeholders	Interviews; Opinion polls
International Normative Pressure	Influence of other actors or international organisations on countries for rule approximation to „international“ rules and procedures (OSCE, CoE, UNHCR)	Interviews, Documents

1.2.1 Case Selection

The study is designed as a comparative case study; by comparing three heterogeneous countries in terms of size, power and focus in external policy – RF, Ukraine and Belarus – and four policy sectors with varying degrees of legalisation and institutionalisation – Visa and Readmission Policies, as well as Border Management Policy and Asylum Policy. By doing so, the study is able to show how the modes and structure of International cooperation are determined by conditions of the macro- and micro dimension. The time of observation is limited to the entering into force of the Partnership and Cooperation Agreement 1994/1997 until current agreements in 2011. The interest of the research is on the external dimension of JHA and its aftermaths for the International cooperation between the EU and RF, Belarus, as well as Ukraine. In particular, the analysis relies on the practice of cooperation in visa facilitation, readmission, border security and refugee protection.

The country selection takes place on the geopolitical dimension of the EU-periphery, semi-periphery and opposite centre. The factors: *Bargaining Power* and *Credibility* account for differences across the selected countries. Thus, the analysis contains: 1) Ukraine as a neighbour located in the periphery with a strong interest in EU integration in an otherwise post-Soviet space traditionally dominated by RF. Both countries attempted at an early stage to establish good and fruitful relations with the West in order to benefit from an access to Western markets, as well as with investors and military pacts to improve their geopolitical standing in the region. They partially follow EU precedence and welcome any cooperation to align with EU legislation. 2) The RF is “a *state sui generis*” (Interview with Commission official, Council/ Dpt. on JHA, Brussels, 21 April 2009). The Russian leaders see itself as a regional power and attempt to restore its influence in the neighbouring and former allied countries. Their interests are conflicting and additionally different methodologies or practices concerning the regulation of migratory flows hinder a fruitful cooperation. At least with the beginning of the 21st century the RF recognised its fall behind the EU’s fruitful initiatives in the common neighbourhood. Furthermore, the NATO extension to this common neighbourhood and the role the EU played in the revolutionary regime changes in Ukraine and Georgia led the RF to doubt the EU’s credibility regarding its policies towards RF. And, 3) Belarus as a semi-peripheral state affiliated with RF, has no official relations with the EU at all. There are hardly any attempts from EU officials to deepen relations to the current political leaders due to their “*outright authoritarian regime*” (Raik 2006a: 32).

These three countries represent each a completely different situation for EU’s policy initiatives, by, at the same time, facing the same problems in tackling migratory issues. Following this, a variance is given between the countries, whereas the selected policy case studies are coherent throughout them. Moldova, which would also fit perfectly in this scheme, didn’t get selected, due to crucial similarities to the Ukrainian case. Other neighbouring countries of the ENP – in the Maghreb, Mashreq and Southern Caucasus – would make this case study sample too fuzzy, where else, a next step could be to compare the regions as such.

Figure 2. Case Study: Country Selection

	Ukraine	Russian Federation	Belarus
EU - Credibility	high	medium	low
Bargaining Power	low	high	medium

The EU is rather active in cooperating with these countries, although the circumstances for each country differ and provide a distinct scope of actions for the EU. Moreover, the policy dimension is almost similar in these four countries, whereas it is possible to draw conclusions and exemplifies best the different modes and structure of cooperation. The four policies – border control, readmission, visa facilitation and asylum policy – are on top of the agenda and have a high variance in their characteristics: 1) border control, which is also of self interest to the neighbouring countries and of low salience; 2) readmission policy, which is of high interest to the EU; 3) visa policy, which is high salient in the respective countries; and 4) asylum policy, which is marked by a high normative pressure of the international communities. Whereas all policy issues are a matter of political and technical cooperation, our analysis identified a high political cooperation in the case of visa policy and readmission and a merely technical cooperation for refugee protection and border management. This has a concrete impact on the choice of modes and structure of cooperation.

On the Micro-level, comparison is done on the JHA-policies: Visa Policy, Readmission, Border Management and Asylum Policy. By doing so, the study is able to show the influence of the respective factors on modes and structure of International cooperation, quite independently from the macro dimension of interstate relation. The four policies are chosen, as the EU and RF, Ukraine and Belarus are rather active in cooperating in these respective issues and exemplifies best the different modes and structure of cooperation. Moreover, the policy dimension is almost similar through the three countries, whereas it is possible to draw conclusions from differences of cooperation in these respective areas.

Figure 3. Case Study: Policy Areas in the Field of Migration Management

	Visa Facilitation	Readmission	Asylum Policy	Border Management
issue-specific power relation	low	high	medium	high
Costs vs. Benefit	low	high	high	medium
Salience	high	medium	medium	low
International normative pressure	low	medium	high	low

These four policies have a high variance of characteristics: visa policy, which is high salient in the respective countries; readmission policy, which is of high interest to the EU; asylum policy, which is marked by a high normative pressure of the international communities; and, border management, which is also of self interest to the neighbouring countries and low salient. Whereas all policy issues are a matter of political and technical

cooperation, in the case of visa policy and readmission the paper identified a high political cooperation, and for asylum and border management a merely technical cooperation, which has a concrete impact on the choice of modes and structure of cooperation.

2 Genealogy of JHA in External Policy towards Eastern European Countries – Strategy and Objectives behind EU’s External Policy on Migration Management

The observed phenomenon of institutionalisation within the EU’s external policy demonstrates the EU’s attempts to curtail possible externalities associated with transnational migration with its eastern neighbours, through intense and on-going cooperation in aligning policy regulation in sensitive areas. The ongoing process of institutionalising cooperation on migratory issues results from the increasing awareness that eastern neighbours are an incremental threat to internal security interests of the EU in the aftermath of the breakdown of the Soviet Union. The EU’s relationship with neighbouring non-member states in the east became one of the EU’s new priority issues. As with the enlargement, the EU moved closer to a neighbourhood that was perceived as a major source of ‘soft’ security threats such as irregular migration, organised crime, and human and drugs trafficking; there is no longer any ‘buffer zone’ between the core and the ‘outside.’ Consequently, uncontrolled inflows of migrants and porous borders have been regarded as a major challenge to the EU’s internal security interests and were integrated into its external policy towards third countries.

Because of its vulnerability to externalities from outside, the EU’s internal and external policy goals come closer together and call for a common policy approach (e.g. Lavenex 2004: 680). In order to achieve the goal of a stable, safe, and secure Europe, the EU requires a good, functioning relationship based on mutual trust and close cooperation with the neighbouring ‘outsider’ states (e.g. Higashino 2004; Grabbe 2000; Lavenex 1999). Hence, there is a strong functional argument that the EU should engage more substantively with third countries in order to prevent the spill-over of insecurity into the EU (e.g. Wichmann 2008: 6).

The process of recreating the EU’s external policy towards the east began in the aftermath of the breakdown of the Soviet Union and can be seen as a process of asserting its role in this new geopolitical environment. This paper attempts to understand in depth how the EU achieves their objectives to come up with common regulation of sensitive policy areas to curtail potential externalities. The European Union – at the time

facing increasing interdependencies of economic, energy supply, environmental, and security matters – reacted to the new challenges by: 1) ‘Inter-governmentalism’, in the sense of developing a common external and security policy (CFSP) and a common policy on JHA on the supranational level – the so called 2nd and 3rd pillar – with entry into force of the Treaty of Maastricht in 1993.

2) ‘Communitarisation’ or ‘Supranationalism’ of competences with the Treaty of Amsterdam in 1999. ‘Communitarisation’, therefore, refers to the fact that JHA-issues were brought substantially under the European Community Treaty. These issues went from being ‘Union’ to ‘Community’ competences. Since the entry into force of the Amsterdam Treaty (European Council 1997), as the decisive landmark, the creation of a European Area of Freedom, Security and Justice (FSJ) has become a major treaty objective of the EU (Art. 1; Title VI and Title IIIa: Art. 72i). Finally, with the entry into force of the Lisbon Treaty on the 1 December 2009, the EU’s scope of action in external relations was further extended and gained more competences in the area of JHA (e.g. Title V TFEU).

3) ‘Externalisation’ (Boswell 2003) or ‘Extra-territorialisation’ (Rijpma/ Cremona 2007: 11), referring to the extension of internal policy objectives and regulation to third countries’ domestic policies through the introduction of new modes of cooperation in the EU’s external policy on Asylum and Migration Policy in the Tampere European Council 1999. Although primarily thought of as an EU internal security regime, the EU has developed an external dimension to its justice and home affair policies, impacting the EU’s interactions with the outside world (e.g. Wolff/ Wichmann/ Mounier 2009). The efforts to create a closer internal-external security nexus have been based on the understanding that the EU may enhance its problem-solving capacity in relation to transnational challenges such as the fight against irregular migration, organised crime or terrorism if it succeeds in engaging third countries (‘European Security Strategy’; Council of the EU 2003d). This is done by transferring its internal policy regulations to third countries and providing them with accurate financial and technical assistance to meet the internal standards. Apart from that, the EU tries to externalise risks to buffer states, in order to prevent negative externalities affecting the EU territory.

In particular, in the course of the eastward enlargements in 2004 and 2007, the perception of neighbouring countries in the east as a major source of ‘soft’ security threats comes to the fore, caused by ill-demarcated and porous protected borders and a lack of expertise in migration and border management. As a consequence, the EU-proposed measures – with the ENP and the Common Space initiative with the RF – to improve migration

management and enable more effective border controls as elements of the neighbouring countries' obligations to achieve its JHA-related objectives and enhance security in the wider European region (e.g. Council of the EU 2001: 2). These states were encouraged to improve the control of their ill-demarcated and poorly protected borders and to closely cooperate with the EU in the field of illegal migration. At the same time, the EU actively sought to bring them closer to core values of international refugee protection and to align their asylum policies to EU and internationally agreed-upon standards.

This development received a great deal of scholarly attention; for instance, Rijpma and Cremona (2007: 12) described it as the "extra-territorialisation of EU migration policies and the rule of law" (e.g. Bigo/ Guild, 2005; Balzacq 2009; Wolff et al. 2009). Against the background of the EU's efforts to minimise irregular migration to the Union, migration control policy has become a particularly important issue in the EU's cooperation with third countries (Lavenex 2006). Various instruments that were introduced since the 1999 Tampere Council deserve attention because they present a dynamic process of the EU searching for techniques and ideas regarding how to make migration governable and how to incorporate third countries into the system in an effort to stem migration flows into the EU territory. This indeed reveals the Union's objective to expand its political space of governance beyond its borders.

And, 4) 'Institutionalisation' of EU's external policy towards third countries by introducing task-specific policy networks, meaning that negotiations and coordination of cross-national policy issues are done within coordinative and/or regulatory bodies by including several actors in the field (e.g. also 'Network Governance' by Sandra Lavenex 2008). With the signing of the Partnership and Cooperation Agreement (PCA) in 1994 with Ukraine, Moldova and the RF – which entered into force in 1997 with the RF and in 1998 with Ukraine and Moldova – the EU launched a widespread institutional framework, forming the basis of bilateral cooperation in major policy areas. Additional initiatives, specifically the European Neighbourhood Policy (ENP) or the Four Common Spaces with the RF, both launched in 2004, have deepened the cooperation within these institutions. Furthermore, the latest initiative for the Eastern Partnership in May 2009 – driven by Poland and Sweden – prove the EU objective of tightening institutional ties with neighbouring countries in the east (Council of the EU 2009a). Currently, since 2007, the EU is negotiating with the RF and Ukraine on a new enhanced agreement (NEA) to renew the basis for cooperation after the expired PCA, which was in the meantime extended on an annual basis. This new agreement will mark a new generation of association agreements. Both sides claim to provide a comprehensive agreement, to tackle common

interests and to go more into detail in policy coordination and in partial integration into EU policies (e.g. Sushko et al. 2007).

In sum, we can draw on the conclusion that the EU's external policy went through a major shift, according to applied modes and strategies. Apart from traditional foreign policy in the tradition of tit-for-tat, several less-hierarchical modes find their way into the EU's external policy coordination to solve collective problems with third countries (e.g. Lavenex 2008; Weber/ Smith/ Braun 2008; Meloni 2007; Schimmelfennig/ Sedelmeier 2005). These 'soft' modes range from policy-emulation over informal agreements to binding interstate law. Cooperation, therefore, might be ad-hoc or rather formalised by a set of institutional conventions. As this paper argues, this new form of non-hierarchical coordination in foreign policy allows for cooperation within a broad area of issues on a voluntary basis and helps to overcome former deadlocks in interstate relations, e.g. in EU-Belarus relations. The change to non-hierarchical modes was a necessity as the previous hierarchical governance strategy towards candidate countries didn't work towards non-candidate countries. Hence, instruments and modes to govern interdependent policy issues and common interests in the region were adapted to the specific circumstances of EU relationships with non-members.

2.1 Intergovernmental Coordination

Several existing ad hoc groups, covering immigration, asylum, policing and law, were replaced by permanent structures under the auspices of the Council of Ministers. The given commitment to elaborate on a common policy on migration issues has already been raised by the Council of the European Communities (1989). The so called 'Palma document' sets out "*areas of essential action [such as] a system of surveillance at external frontiers [...] combating illegal immigration networks [and a] system to exchange information on people who are 'inadmissible' to the EC*" (COM 1989).

The adoption of the Palma document in 1989 marked the beginning of the transformation from ad hoc inter-state mechanisms to an institutionalised intergovernmental coordination (e.g. Bunyan 1993: 1). It is in the interest of all member states to concentrate their bargaining power in international relations, on an inter-governmental dimension to tackle upcoming challenges from outside the EU, so long as it helps to succeed in one's own policy objectives. Furthermore, member states gained access to a new scope of action, redefining their role in a multipolar world order and increasing their sphere of influence, especially in 'Wider Europe' (e.g. Emerson: 2004), meaning the near European region and beyond.

The Palma document also introduced the principle doctrine of EU migration policies that continues to be: internal free movements require tough immigration and external border controls (e.g. Bunyan 1993). Furthermore, in 1991, the EU's principle body, the Council of the EU, acknowledged at its Berlin conference that 'illegal migration' is a major political topic which should be addressed a) through joint efforts which should b) go beyond the EU's boundaries (e.g. Düvell/ Vollmer 2009: 6). Together with the 12 EU member states, 14 other European countries took part to work on joint measures. Already two years later in 1993, the 26 countries started the so-called 'Budapest process' to strengthen cooperation in the field of migration on an international and European level. To moderate the process, the signatories founded the International Centre for Migration and Policy Development (ICMPD), located in Vienna.

On the EU level, the dialogue on JHA matters between ministers of the member states was named the 'Trevi group'. Primarily founded in response to terrorist attacks in the 1970s, it slowly extended its agenda to other JHA issues. The Council's work, further, was supported by the Strategic Committee on Immigration, Frontiers, and Asylum (SCIFA), which operates under the Committee of Permanent Representatives (COREPER) and prepares Council decisions within the respective policy areas. The committee is supported by the Centre for Information, Reflection and Exchange on Asylum (CIREA) and the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI), both of which were founded in 1992 in order to facilitate the exchange of information between experts from the member states on issuing joint reports on countries of origin of asylum-seekers, on asylum seekers' travel routes, and on legal and irregular immigration and the use of false or falsified documents.

In addition, the EU member states initiated a major treaty revision, which resulted in the Maastricht Treaty's entry into force in 1993 (Council of the EU 1992). The Maastricht Treaty resulted in an institutionalisation of intergovernmental coordination among member states on Foreign Policy and JHA matters. The member states agreed to create a common external and security policy (CFSP) and a common policy on JHA on the supranational level – the so called second and third pillar. Many of the practices and a large part of the structure in former Third Pillar policy-making were originated in the Coordinators' Group, like the Trevi Group and the Ad Hoc Group on Immigration. Title K of the Maastricht Treaty sets out the new structure for EU coordination in JHA. While the Coordinators' Group disappeared, senior officials from each member state form the Coordinating Committee under the new treaty obligations.

Besides the treaty revisions of Maastricht, another agreement got a major say in the EU's intergovernmental cooperation on JHA matters. In 1985, the Schengen agreement was signed by France, Germany, Belgium, Luxembourg and the Netherlands in order to improve their cooperation on migratory issues. Several measurements have since been implemented to succeed in their common goal of enabling free movement within the EU and securing the external borders from irregular immigration and criminal transborder activities. Following the signing of the Treaty of Amsterdam, this intergovernmental cooperation was incorporated into the EU framework on 1 May 1999.

2.2 'Communitarisation'² of Competences in EU's External Policy on JHA Matters

As a landmark of deepening cooperation with third countries, the creation of a European Area of Freedom, Security and Justice (AFSJ) by the Amsterdam Treaty in 1997 has become a major treaty objective of the EU, set inter alia to harmonise and improve cooperation on police, customs, and justice in migration and asylum matters. When the Amsterdam Treaty came into force on 1st May 1999, the EC gained competence to launch external policy initiatives targeting JHA-issues by creating supranational responsibilities in formerly national affairs and altering the equation between state governments and EU institutions in policy-making and accountability (notably article IV, paragraphs 61 to 69 on 'visa, asylum, immigration and other politics regarding the free movement of persons'). This so-called 'Communitarisation' of competences is the reaction to the external dimension of JHA and the need for action in this policy area, which requires an effective and comprehensive framework for cooperation, "in which European institutions can adopt legal instruments and operative actions that respond efficiently to the challenges that affect the external dimension of the AFSJ" (Vara 2008: 545).

In the following, member states transferred more and more JHA competences to the Community level, and authorised Community bodies to raise JHA-issues in its external policy (e.g. Lavenex 2004: 682; COM 2005b). However, any common policy in this area is intriguing as it touches a sensitive part of a nation state's sovereignty, concerning regulation over who is allowed to enter, to stay and to work in their territory and under what circumstances this permission should be granted. At any rate, member states

² 'Communitarisation' refers to the fact, that JHA-issues were brought substantial under the European Community Treaty, in the form of the new Title IV EC. These issues went from being 'Union' to 'Community' competences.

welcome a common policy in the field of migration management to tackle challenges related to it.

The objective of creating a common policy was challenged by the 'institutional mess' of the EU political system (e.g. Gomart 2008: 9), which designates a fuzzy representation in external relations and an inefficient decision making in JHA policy-making and foreign and security policy with enormous and irresolvable internal contradictions (e.g. Wessel: 2000). The EU's capability to act in IR is limited due to this institutional mess, which makes it impossible to pursue a coherent strategy over the years. One major reason for this is the strength of the Council in foreign-policy making and the six-month rotating presidencies of the EU, which has a major impact on the respective foreign policy agenda during this period. If the EU wants to have a major say in IR, it has to develop its leadership on the supranational level.

Given the ever greater importance involved in what we could refer to as the external dimension of the AFSJ, before the reform treaty of Lisbon, three primary needs are identified in relation to external policy on JHA matters: First, the need for greater coordination between the policy areas ('de-pillarisation'). Second, the need for greater coherence between the EU and its distinct Member States external policies (have 'one voice'). Third, the need for a stronger projection of unity abroad (become visible within IR). These needs may be challenged by ensuing questions, such as: how to ensure the coherence of Union's action and coordinate all the measures taken in foreign policy (including CFSP, trade policy, development aid, humanitarian action, financial assistance, etc.)? What can be done to ensure that the decision-making process allows the Union to act rapidly and effectively on the international scene? How far could the Community method be extended to other fields of action?

First of all, in regards to the Union's external action in JHA necessitates the development of a comprehensive approach that overcomes fractious and political divisions and combines different legal regimens of policy issues of Community competence. The current pillar division on such wide-ranging fields as human rights, good governance and rule of law, migration, asylum and border management, and the fight against terrorism and organised crime, has proven to be insufficient in order to cope with the main challenges posed by these issues (e.g. Julien-Laferrière/ Labayle/ Edström 2005; Balzacq/ Carrera 2005). It follows that the JHA dimension needs cross-pillar coordination and measurements, which should be incorporated into the EU's external policy. Apart from requiring close coordination between the institutions involved, the Commission insists that

“there should be a clear link between internal activities aimed at creating an area of freedom, security and justice and external actions to support this process” (COM 2005b: 7). However, for a long period of time, member states have proven reluctant to relinquish control over areas that are closely linked to the notion of sovereignty.

Second, a lack of coherence not only weakens the position of the EU in IR; above all, it diminishes its credibility. This is caused, on the one hand, by distinct competences regarding policy issues across the three pillars. On the other hand, a coherent external policy is almost impossible as its priorities change according to the EU's six-month rotating presidency. E.g. the Spanish presidency in the first half of 2010 beckons the RF to push for the abolition of visa restriction for Russian citizens, which increased their expectation and in the long run frustration because of a lack of progress (e.g. EurAsia Centre 2010). Apart from that, the French presidency in the second half of 2008 took a decisive role, concerning its importance in IR, in tackling the Russia-Georgia conflict.

Another crucial point is the relative power of each member state in the decision-making process in the Council and their individual foreign policy, which followed particular interests and were often not in line with each other, undermining the EU's overall policy towards third countries – 27 separate states, *“all of which have their own frequently divergent national interests”* (EuRussia Centre 2008c). No example better demonstrates the intrinsic difficulty of forging a common foreign policy for the EU than the case of the RF. Especially in the case of the RF; there are crucial disagreements over a range of issues from democratic values to energy security throughout the member states.”

“The EU has been deeply divided on this, not only because of economic considerations, but also because of differing perceptions rooted in historical and geographical factors”
(EuRussia Centre 2008c).

Thus, EU policy on RF has been challenged by the unanimity in the Council, Lithuania and Poland could veto the start of negotiations on the EU-Russia enhanced strategic partnership agreement. In this respect, it will not have escaped the Russian leaders' notice that EU member states do not always speak with one voice on foreign policy. Another complicating factor was, and continues to be, the willingness of individual EU Member States, particularly those with a very large amount of influence such as France, Germany and the UK, which try to outdo each other by establishing special relations with the RF. The EU's position is weakened by the individual actions of its member states, which limit the EU's ability to present a united front when dealing with third countries.

Member states have an interest in a common European position, as long as it supports their interests; otherwise, they are prone to search for bilateral solutions to succeed. In the view of Hiski Haukkala, certain member states used EU foreign policy tools and declarations as:

“avenues through which they expressed their collective disapproval of the Russian actions while using them simultaneously as shields under which they were able more or less to carry on business as usual in their bilateral dealings with Moscow” (Haukkala 2009: 1763).

With the Eastern enlargement, the disputes on a common strategy towards the RF increased, as the new member states in Central and Eastern Europe have their own agenda towards the RF, based on specific tensions and unsolved bilateral disputes, e.g. Poland, Baltic countries. A challenging issue for the EU's external policy is, inter alia, that member states try to settle their individual disputes with the RF by using the EU as a lever to achieve their goals.

On the contrary, individual member states try to outdo each other by establishing a special relationship with the RF. They evidently expect such a relationship to deliver more for them than a common European position. The RF itself seems to be benefiting from inter-EU disagreements by entering into separate agreements with certain member states. Nevertheless, the RF cannot avoid the European Commission in all the fields of Community policy, such as trade, visa regulations and access to the single market. An additional problem is that member states that want to settle specific disputes with the RF use the EU as a lever to achieve their goals.

With the entry into force of the reform treaty of Lisbon on the 1 December 2009, major changes have been undertaken to strengthen EU's role in IR and improve the decision-making on challenging issues of JHA. The ratification of the treaty has changed the institutional, legal and political framework of the EU and has a bearing on both the internal and the external dimension of the AFSJ (e.g. Part 5 'External Action by the European Union' and Part 3/Title V 'AFSJ' TFEU). Hence, the revision attempts to increase the clarity in relations with the rest of the world, effectiveness and legal certainty and more effective action. Nevertheless, the resulting implications of the Lisbon Treaty have bearings on both the internal and the external dimension and its implication for the cooperation with third countries. The major changes relate to: 1) abolishing the complex pillar structure ('de-pillarisation'), 2) empowering the ECJ; 3) simplifying the decision making on JHA matters; 4) the creation of a coherent external policy; and, 5) making the EU more visible in IR.

First, the abolition of the complex pillar structure ('de-pillarisation') and the communitarisation of the third pillar, called 'Police Cooperation and Judicial Cooperation in Criminal Matters' – resulting in a transfer of further competences in the respective policy areas to the Community level – will entail a clarification and simplification of the Union's external competence and will help to improve the exterior projection of the AFSJ. The EC acquired major competences in all fields of Community policy, such as trade, visa regulations and access to the single market. In contrast, the CFSP "*continues to uphold its inter-governmental character despite the formal abolition of the pillars*" (Vara 2008: 546). Principal areas of FSJ are still shared competences between the Union and the member states (Art. 4 TFEU). Agreements in this field still require constant coordination between the EU and its member states throughout the negotiation process, which may give rise to considerable confusion in third countries. Rules for the negotiation of agreements between the EU and third countries are laid down in Art. 218 TFEU, but according to Vara (2008) these rules remain weak (ibid.: 549).

Secondly, the application of what is called the 'Community method' to the PJC in criminal matters is "*accompanied by the extension of the jurisdiction of the ECJ to the entire area of freedom, security and justice, repealing those specific mechanisms provided for in article 35 TEU*" (Vara 2008: 550).

"This change is very important as the measures adopted in this field may entail treading on fundamental rights. The Court shall be competent to review the validity and interpret the acts adopted within the sphere of the AFSJ" (ibid.)

Furthermore, natural or legal persons should be enabled to gain access to protection of their rights within the sphere of the CFSP (Art. 215; 275 TFEU). Furthermore, the jurisprudence of the ECJ extends to control the legality of international agreements regarding matters already included in the third pillar. There is no doubt that the consequences of this extension of competences will have far-reaching implications in the external dimension of the AFSJ.

Apart from that, the Lisbon Treaty refers to the values contained in the provisions devoted to the external action (Art. 3; Art. 21). Article 21 of the Treaty says that the Union's external action will be guided "*by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world*" TFEU Art. 21).

“Including among others, the indivisibility of human rights and fundamental freedoms, and respect for the principles of the United Nations Charter and International law. Although this specific reference to values in external action is made in the Title devoted to the ‘General provisions on the Union’s external action,’ the EU also has to respect these principles in the implementation of the external aspects of the AFSJ (Art. 21(3)). In addition, the new Article 6 includes a direct reference to the Charter of Fundamental Rights (COM 2007c) that will enable its binding nature to be preserved” (Vara 2008: 554).

The rights, freedoms and principles set out in the Charter will have the same legal value as the Treaties. The provisions of the Charter are legally binding for the European institutions, bodies, offices and agencies of the Union, as well as for Member States when they implement Union law (Art. 51 of the Charter).³ Consequently, the development of the policies included in the AFSJ is towards upholding fundamental rights in both internal and external actions. The incorporation of the Charter into the TEU means that the external action in police cooperation and criminal matters will forthwith pass from being developed within a merely intergovernmental framework to being fully subject to fundamental rights. If we consider that most of the measures adopted in the AFSJ have ramifications for the nationals of other States, the emphasis on the Union’s values and the incorporation of the Charter into the Treaty may have a positive bearing on the external dimension of these policies (e.g. Mitsilegas 2007: 497).

Thirdly, the decision making on JHA matters was changed by extending the system of qualified majority voting (QMV)⁴ into the police and judicial cooperation and increasing the power of the European Parliament (EP) and national parliaments (Title III and Annex: ‘Protocol on the Role of National Parliament in the EU’). The integration of PJC in criminal matters within the Community sphere implies the suppression of the specific legal acts currently available under the third pillar, the application of the ‘ordinary legislative procedure’ that involves the enhancement of the powers of the EP and the use of a QMV in the decision-making process (Art. 16 TEU), and the extension of the jurisdiction of the Court of Justice (ECJ) to all spheres of the AFSJ.

³ Unfortunately, the exception of Poland and United Kingdom to the application of the Charter may have a negative impact on the development of the AFSJ

⁴ Art. 16 TEU: The qualified majority voting stipulates a majority approval, when it is supported by 1) at least 55 % of the EU Member States; 2) at least 65 % of the population of the EU; and, 3) can only be blocked by at least four member states. The votes for each member state are predetermined by the Treaty itself and apply a scale ranging from 29 votes each for the four largest Member States to 3 votes for the smallest. The definition of the qualified majority is going to be changed in November 2014 and will then be a double majority.

As another innovation, the roles of the EP and national parliaments were enhanced by the Lisbon Treaty (Title III TEU). On the one hand, the EP got more decisive power through an extension of the co-decision procedure, and, on the other hand, the national parliaments became included into the decision-making of the EU due to the principle of subsidiarity. The extension of the co-decision procedure ('ordinary legislative procedure') and competences in setting budgets⁵ will put an end to the democratic shortfall that characterises the procedure of Article 24 TEU (EP 2008; 2007a).

"This democratic enhancement will obviously have its repercussions in the external dimension of all the policies included in the AFSJ. It is to be expected that the new powers vested in the EP by the Lisbon Treaty will enable it to influence the implementation of new actions undertaken by the EU both in policies on border checks, asylum, and immigration and in PJC in criminal matters" (Vara 2008: 555)

The involvement of the EP should be the guarantee for an increasingly greater bearing on individual rights and freedoms. Besides the EP's general control competences, the involvement of national Parliaments in the control of draft legislation in the institutions will also have repercussions on the external dimension of the AFSJ (Title II: Art. 12. 'Provisions on Democratic Principles'). The Treaty of Lisbon provides an even stronger role for national parliaments than that foreseen in the Constitutional Treaty as it pertains not only to the control of the principles of subsidiarity, but also the political mechanisms of control (e.g. Carrera/ Geyer 2007: 2f).

Fourthly, although the EU was given a special status to take part in meetings of several IO's – as in the case being recognised in the UN as a regional economic integration organisation with certain rights to observe negotiations within their meetings -- the Lisbon treaty provides the EU with a comprehensive legal status and recognises its international legal personality (Art. 74). It follows that the EU establishes a new international organisation which will replace and succeed the current European Community and EU in all their international rights and obligations (Art. 1). The EU can sign treaties, go to and be summoned to court and can become a member of international organisations. Article 216 of the TFEU states that:

"the Union may conclude an agreement with one or more third countries or international organizations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the

⁵ The distinction between 'compulsory' and 'non-compulsory' expenditure got abolished. Thus, the parliament will decide on the entire EU budget together with the Council and has the final say.

objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope” [Member states, however,] “may negotiate and conclude agreements with third countries or international organizations in the areas of judicial cooperation in civil matters and criminal matters and police cooperation, in so far as such agreements comply with Union law” (Art. 218 TFEU).

Finally, major changes of competences between EU bodies should increase the coherence and visibility of the EU's external action. On the one hand, the treaty foresees the creation of the position of President of the European Council (for a period of 2.5 years) and of High Representative (HR) of the Union for Foreign Affairs and Security Policy. Both positions clarify, simplify and, hence, might make EU's external policy more effective.

Although the President of the Council will have a key representative role in IR, the real novelty is the creation of the HR – a hybrid institutional figure combining: a) the pioneering role previously played by Javier Solana as High Representative for CFSP (1999-2009); b) that of a Vice-President of the Commission in charge of external relations and coordinating other relevant portfolios; and c) the role hitherto played by the Foreign Minister of the country holding the rotating EU Presidency, namely, chairing the Council formation dealing with Foreign Affairs at large (Art.17-18 TEU), now separate from the General Affairs Council. The merging of these three posts to one gives the EU more coherence, continuity and visibility in external relations.

“Now, the EU has one person who is responsible for influencing and implementing big foreign policy political decisions with the funding and staff to give input to, and implement, the course of action to be taken” (Euractiv 2010b).

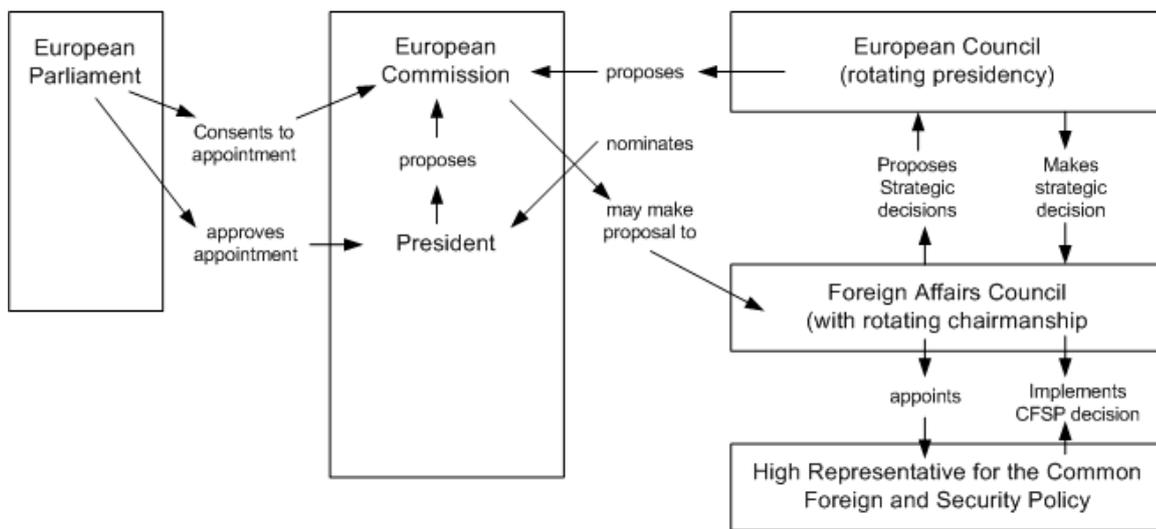
Besides the HR, the establishment of the new European External Action Service (EEAS) may help to improve the efficiency and coherence of the Union's external action (Art. 27(3)). The EEAS aims to assist the High Representative of the Union for Foreign Affairs and Security Policy. In the new revisions, the new HR Catherine Ashton states that:

“The aim of the Lisbon Treaty and the creation of the External Action Service is to enhance our global impact, by bringing together the wide range of instruments - civilian and military - in support of one political strategy. The watchwords are coherence, comprehensiveness and co-ordination” (Council of the EU 2010b).

The 'multi-hatted' position of the HR should guarantee the evolution of a more comprehensive and coherent approach in the EU's external policies (e.g. Art. 22.2 TEU). The HR functions as the link between the Commission and the Council and administers both agendas. Furthermore, the HR coordinates several Commissions that aim to bring about coherence across the entire range of EU common policies in external relations. In

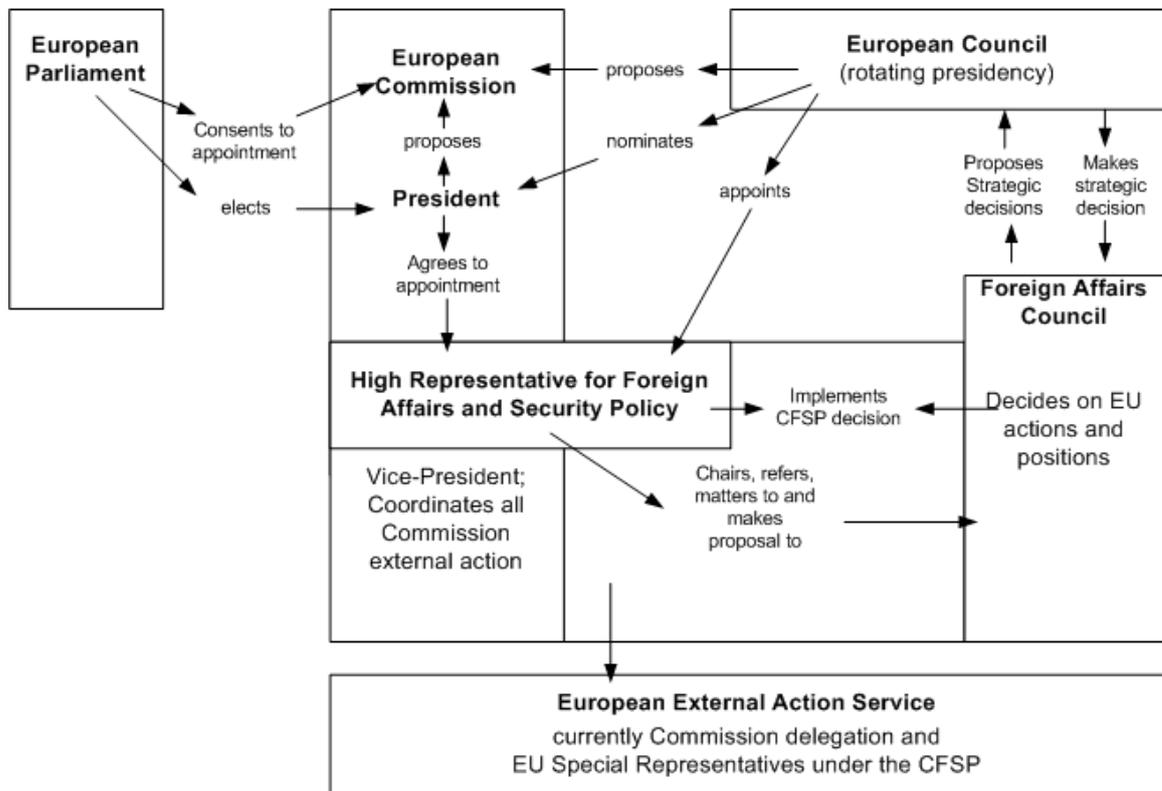
the so-called 'groups of commissioners', the EU's actions in external relations will be coordinated throughout several policy areas according to their respective competencies within the commissions. In 2011, this group of commissioners is chaired by the HR and encompasses the Commissioners for Enlargement and Neighbourhood Policy (Stefan Fuele), for Development (Andris Piebalgs), and for International Cooperation, Humanitarian Aid and Civil Protection (Kristalina Georgieva) (Art. 21). Others, such as the Commissioners for Economic and Monetary Affairs (Olli Rehn), the Commissioner for Trade (Karel de Gucht) or the Commissioner for Energy (Günther Oettinger), can be included if required. The procedures behind this coordination and the share of responsibilities between the fellow commissioners is not that clear, but it is widely expected that the HR will be involved in policy-specific talks with third countries as far as it touches politically strategic and sensitive issues. For instance, energy talks between the Commissioner for Energy and the respective RF's counterparts should involve the HR.

Figure 4. Foreign Policy-making Structures and Processes before Lisbon Reform-Treaty



Source: Institute for International and European Policy. Katholieke Universiteit Leuven. [Retrieved from <http://soc.kuleuven.be/iieb/eufp/files/Foreign%20policy-making%20before%20&%20after%20Lisbon.pdf>, 23 February 2011]

Figure 5. Foreign Policy-making Structures and Processes under Lisbon Reform-Treaty



Source: Institute for International and European Policy. Katholieke Universiteit Leuven. [Retrieved from <http://soc.kuleuven.be/iieb/eufp/files/Foreign%20policy-making%20before%20&%20after%20Lisbon.pdf>, 23 February 2011]

The HR is supported by the new created European External Action Service (EEAS) (Art. 27).

“In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the member states” (Art. 27(3) TEU).

The EEAS brings the Commission’s 120 delegations, representatives of the Council and a contingent of national diplomats together under one roof.

2.3 Externalisation of Internal Policy Legislations and Objectives⁶

Although primarily thought of as an EU internal security regime, the EU has developed an external dimension to its justice and home affair policies, which has changed the EU's interactions with the outside world (e.g. Boswell 2003; Wolff/ Wichmann/ Mounier 2009; Lavenex/ Wichmann 2009; Rees 2008). The efforts to create a closer internal-external security nexus have been based on the understanding that the EU may enhance its problem-solving capacity in relation to transnational challenges such as the fight against irregular migration, organised crime or terrorism if it succeeds in engaging third countries, particularly countries neighbouring the EU, in achieving its JHA-related objectives (e.g. COM 2002a, 2003a; Council of the EU 2002b). The reason why the EU is keen to improve cooperation with the neighbouring countries on internal security questions is the high degree of security interdependence. Because of the interdependencies of these policy areas, internal and foreign policy goals come closer together (e.g. Lavenex 2004: 680) and call for a comprehensive policy approach. This has further evolved into a formal external agenda designed to secure the area of freedom, security and justice for EU citizens, with further conflation of internal and external security in the EU (European Security Strategy 2003).

Already in the mid-1990s, parallel to establishing a coherent supranational EU migration control system, efforts were made to expand this regime to third countries of origin or transit migration (e.g. Düvell/ Vollmer 2009: 7).

"[...] policy makers in Europe have been intrigued by the idea of 'externalizing' or 'internationalising' the hosting of asylum seekers and migrants attempting to reach, or already on, the territory of the EU" (UNHCR 2006).

In 1998, the High Level Working Group Asylum and Migration (HLWG) was set up and mandated to:

1) *"develop a strategic approach and a coherent and integrated policy of the European Union for the most important countries and regions of origin and transit of asylum seekers and migrants, [n.b.: and in opposite to its previous mandate] without geographical limitations"* (Council of the European Union 1999a); and, 2) to produce *"horizontal analyses of a limited number of countries of origin of asylum seekers and illegal*

⁶ Parts of this chapter got also presented by the author at the ECPR 7th Pan-European Conference on International Relations. Stockholm, 9-11 September. [Bernhard Zeilinger: 'EU's External Policy towards Eastern Europe on Migration Issues. Breaking New Ground in International Relations?']

immigrants and ...to provide concrete suggestions for measures for managing and containing migration flows from these countries” (Council of the EU 1998b).

The external dimension of EU asylum and migration policy covers several components, including (e.g. UNHCR 2006):

- *Refusal of entry to EU territory of persons coming from countries designated as ‘safe countries of origin’ or transiting through countries deemed to be ‘safe third countries’;*
- *Interdiction at sea of persons attempting to reach EU territory;*
- *The conclusion of ‘readmission agreements’ with countries outside the EU, by which the countries agree to accept the return from EU territory of migrants and asylum seekers who transited through the countries en route to the EU; and*
- *Support to border enforcement and detention capacity in transit countries that border the EU.*

As a result of increased competences on the Community level, the Commission was able to raise new initiatives on interregional cooperation with associated third countries. Since the first Special European Council Meeting on Justice and Home Affairs in Tampere in October 1999, when cooperation with third countries in the area of migration was formally approved, migration matters have experienced an increased visibility in the EU’s external relations in order to integrate all countries of transit and origin into a comprehensive migration control policy and to export its policies (European Council 1999b). Some ideas that were introduced beginning with the 1999 Tampere Council deserve more attention because they represent the starting point for an intense process of the EU searching for techniques and ideas of how to make migration governable and how to incorporate third countries into the system in order to stem migration flows into EU territory. It was exemplified ‘to put the fight against illegal immigration to the front of the community’, to adopt ‘any measure necessary’, to enforce ‘a closed door policy for those who immigrate illegally and who must be effectively deported’; and to develop “*a global approach for combating [n.b.: illegal migration] networks including all suitable measures, from country of origin to destination*” (Council of the European Union 2002b). The rationality of governing immigration to Europe is based on a continuous search for new ideas and solutions to problems at hand by producing new knowledge and activating expertise of security apparatuses mobilised to govern political spaces through governing human mobility. This indeed reveals the Union’s willingness to expand its political space of governance by governing mobility and borders.

The Tampere Council called on the Union “*to develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders to stop illegal immigration and combat those who organise it and commit related international crimes*” (Tampere European Council 1999). Further, in the Treaty of the

Functioning of the EU (TFEU) a few references are made to the external dimension of the AFSJ can be found in the TFEU (e.g. Vara 2008: 549). Article 78(2g) of the TFEU stresses the need to seek for close cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection. Article 70(3), however, emphasises the importance of implementing agreements with third countries for the readmission of illegal immigrants into their country of origin or provenance.

The participants of the summit called for a common approach to asylum and migration issues, with an emphasis on partnership with countries of origin and transit of migrants, improved and effective asylum measures, and fair treatment for Third-Country-Nationals (TCN) who legally reside in the member states. Three interrelated community policies in the realm of migration management were approved: common asylum and immigration policy; immigrant integration policy; and external border management to stop any illegal movement across the EU borders. Since stemming illegal immigration into the European Union was a main concern of member states, the Council supported providing assistance to third countries with voluntary return and strengthening their ability to effectively combat trafficking in human beings and to cope with their readmission obligations. The Commission received a mandate – on behalf of the member states – to negotiate readmission agreements with relevant third countries. At this stage, there was no understanding of what ‘cooperation’ with countries of origin and transit actually meant; rather, one-sided thinking about the EU’s and member states’ interests in managing illegal migration prevailed (e.g. Zhyznomirska 2009: 6).

At the Seville European Council of June 2002, member states called for a ‘targeted approach’ to the problem of migration management, with explicit reference to Common External and Security Policies and other European Union Policies as possible frameworks to penalise third countries who do not fulfil their obligations in border management and migration management (Seville European Council 2002). In response, the Commission recommended that the overall coherence of the EU external policies and actions be respected, with proper consideration given to the situation of each individual country. The Commission appealed for encouraging those countries “*that accept new disciplines [n.b.: on a voluntarily basis], but not penalizing those who are not willing or not capable to do so*” (COM 2002a).

Hence, according to ‘positive conditionality’, the EU offers rewards to third countries in return for undertaking serious reforms in crucial policy areas. Meanwhile, there is hardly any European development aid, support for reconstruction, trade or technical cooperation

negotiations or agreements with countries of origin and transit migratory flows to the EU states that do not also include e.g. a paragraph on measurements to curb irregular migration and readmission policies.

It was of interest to the EU to 'extra-territorialise' (Boswell 2003; Rijpma/ Cremona 2007: 11) the management of security threats to neighbouring countries by exporting its own rules and policy regulatory instruments to neighbouring countries' legislation and enhance cooperation in the respective policies (e.g. Bigo/ Guild 2005; Balzacq 2008; Wolff et al. 2009). The 'externalisation approach' is a restrictive and control-oriented approach in which the EU passes classic migration control instruments on to non-member countries that have to agree on common regulations towards migration management, e.g. capacity-building in the area of border control and the enhancement of non-member countries' risk analysis and information-gathering capacities, and non-member countries taking their responsibility towards refugee seekers (e.g. Trauner/ Kruse 2008: 8). As a consequence, the EC Commission proposes a number of measures in its five year Action Plan for FJS, with detailed proposals to enhance non-member states' capacities in order to improve their migration management and enable more effective border controls, considered to be crucial for neighbouring countries' obligations to enhance security in the wider European region. This Action Plan follows the overall priorities for FJS set out in the Hague Programme – endorsed by the Brussels European Council in November 2004 (COM 2005a).

For example Ukraine and Moldova came under massive pressure from a number of EU member countries to curb irregular migration by improving their border control activities and document security, to agree on a common return policy of irregular residents in the EU, including their citizens as well as transit migrants reaching the EU through their territory, and, finally, to provide needed infrastructure to host refugee seekers and grant asylum according to international standards. As a consequence, responsibility for preventing unwanted migrants from entering EU territory has been shifted towards non-EU countries (FFM 1997). Basaran (2008) calls this approach of externalisation a 'policy of delegation' that aims to transfer responsibility over population control and migratory flow through one's own country (e.g. *ibid*: 344). Such practices turn these countries into "buffer zones" (Collinson 1996), tasked with halting and absorbing 'unwanted' migration flow into the core of the EU. Sometimes, however, EU countries are criticised for simply 'dumping' politically unwanted immigrants on their neighbours' territories, e.g. through migration containment and return policies, instead of recognising their international obligations towards refugees (e.g. Balzacq 2008). Therefore, some would argue that the

EU's 'burden sharing' policy is a euphemism for 'shifting the burden' to its neighbouring countries, who are held responsible for keeping unwanted immigrants off EU territory and who could therefore become a 'buffer zone' for migrants unwanted in the EU (e.g. Düvell/Vollmer 2009: 9).

This process is facilitated through the 2004 initiatives of the ENP and the *Four Common Spaces* with the RF. One of the main objectives of the ENP is to develop a zone of peace and stability – “a *‘ring of friends’ – with whom the EU enjoys close, peaceful and cooperative relations in an otherwise conflict-ridden neighbourhood*” (COM 2003a). At least in rhetoric, the ENP highlights joint responsibility and common interests, especially when talking about a wide spectrum of security issues of a transnational character such as the fight against illegal migration, organised crime, or terrorism. The Commission's Communication reflected this theme, declaring that “[a] *shared neighbourhood implies burden-sharing and joint responsibility for addressing the threats to stability created by conflict and insecurity*” (COM 2003b: 12).

It indeed can be argued that the external dimension of the EU's principles and norms in internal security beyond its borders is reflective of the geopolitical ambitions of the EU broadly understood as 'the use of space for political purposes, that is, control and management of people, objects and movement' (Balzacq 2008: 1), and to establish itself as the core integration project in Europe by installing common institutions to regulate these policy issues and exert its influence in the periphery (e.g. Dimitrovova 2010: 7). The EU's presentation of itself in the neighbourhood is focused on exporting and sharing its values with outsiders, and hence the ENP can be read as a carrier of the values of modernity. The values to be spread are merely technical and universal norms and therefore less controversial. Additionally, the EU's legislation is seen positively and it is applied by countries voluntarily. The efficacy of EU's regulatory model and its coherence with regulatory models of leading economies determines so to say its sense of superiority when it comes to its diffusion to other countries.

2.4 The Institutionalisation of Interaction between the EU and its Neighbourhood⁷

The EU not only attempts to develop a joint and coherent approach to migration, but also increasingly integrates source and transit countries in its neighbourhood into its efforts and has introduced formal and informal institutional set ups to facilitate the interaction and cooperation on crucial policy issues, inter alia as a reaction of the enlargement process. These include numerous multilateral and bilateral processes such as: EU accession processes (Europe agreements), European Neighbourhood Policy (ENP), Mediterranean Union (former Barcelona Process), Strategic Partnerships with BRIC-states and USA, Northern Dimension, Budapest Process⁸ and Söderköping Process⁹.

Following the entry into force of the Partnership and Cooperation Agreement (PCA) in 1997/98, the cooperation between the EU and its Eastern neighbours improved and became more successful on the basis of a comprehensive legal and organisational framework. The PCA forms the basis of bilateral cooperation in the major policy areas: trade, transport, energy, JHA and environment. The ENP also seeks to go beyond an economic rationale and create a:

“ring of countries, sharing the EU’s fundamental values and objectives, drawn into an increasingly close relationship” and offer a rich menu to move “beyond cooperation to involve a significant measure of economic and political integration” (COM 2004a).

If the ENP countries agree and implement their action plans they will become significantly integrated into the EU space of governance, although not on an equal footing (e.g. Dimitrovova 2010:10). The initiatives contain all Eastern European countries with the

⁷ Parts of this chapter got also presented by the author at the ECPR 7th Pan-European Conference on International Relations. Stockholm, 9-11 September. [Bernhard Zeilinger: 'EU's External Policy towards Eastern Europe on Migration Issues. Breaking New Ground in International Relations?']

⁸ The Budapest process is a consultative forum of about 50 governments (e.g. RF, Ukraine, Moldova and Belarus) and ten international organizations, bringing together experts from countries of destination, transit and origin of migration. It addresses external border issues with the aim to coordinating measures for controlling irregular migration from Eastern Europe and Central Asia. (http://www.icmpd.org/fileadmin/ICMPD-Website/Budapest_Process/What_is_the_Budapest_Process_January_2010.pdf, last access 12 January 2011)

⁹ The Söderköping Process was launched under the auspices of the Swedish International Development Cooperation Agency (SIDA) in May 2001 as a proactive initiative to respond to the challenges of EU enlargement eastwards and to promote better cooperation on asylum and migration related issues among the countries situated along the future eastern border of EU Member States. The Process is coordinated by a Network of National Coordinators covering ten countries situated along the enlarged EU border: and a Secretariat which works to facilitate and enhance intergovernmental cooperation and information-sharing between the EU and Belarus, Moldova and Ukraine. (<http://soderkoping.org.ua/page2864.html>, last access 12 January 2011)

exception of Belarus. Belarus, under the leadership of Lukashenko, did not fulfil the political criteria for an agreement to deepen the cooperation with the EU, due to their democratic deficits.

These established institutions were inspired by several policy initiatives over the years, such as the European Neighbourhood Policy (ENP) or the 'Four Common Spaces' with the RF, both launched in 2004, which facilitate interaction and enable a continuous cooperation on crucial topics. The latest initiative for the Eastern Partnership in May 2009 – driven by Poland and Sweden – illustrates the EU's objective of tightening institutional ties with neighbouring countries in the East (e.g. Prague European Council 2009). Furthermore, since 2007, the EU has been negotiating with the RF, Ukraine and Moldova on a new enhanced agreement (NEA) to renew the basis for cooperation after the expired PCA, which has in the meantime been extended on an annual basis. This new agreement will mark a new generation of association agreements. Both sides claim to provide a comprehensive agreement, to tackle common interests and to go more into detail in common policy coordination by partial integration into EU policies (e.g. Sushko et al. 2007). It should provide for a strengthened legal basis and legally binding commitments covering all main areas of the relationship. The ENP, 'Four Common Spaces' with the RF and the outlook on the new enhanced agreement are a clear proof of a shift in the EU's external policy towards neighbouring countries, given its increasing institutionalisation and the attempts of the EU to facilitate the cooperation and strengthen the engagement of neighbouring countries by including officials from third countries to elaborate on a common policy concerning migration in the region (e.g. COM 2003a; Saari 2006:5).

Migration management cooperation on tackling soft security threats, accompanied by irregular immigration between the EU and Eastern European countries, addresses three major dimensions in the creation of a common area of 'Justice, Freedom and Security' (e.g. COM 2003a). These include, first of all, a comprehensive legal and organisational framework to evaluate the current situation on migratory issues, to elaborate on common interests and concrete measures, to monitor the agreed obligations, and to regulate the execution of the respective policy. Furthermore, as a second point, it provides necessary technical and financial assistance to support legal approximation and to improve certain standards of migration management. Thirdly, EU external policy involves governmental, intergovernmental and multilateral task-specific agencies to succeed in its policy objectives. For a closer look, this chapter proceeds in scrutinizing the cooperation between the EU and the RF, Belarus and Ukraine on migration management along these three dimensions. We chose migration management as a case study for EU's external

policy towards Eastern Europe as it is the most advanced policy area in this cooperation besides trade. However, contrary to the rationality of trade issues, migration management deserve a closer look as it is more controversial and politicised which is assumed to be a good precondition for introducing a long-term and less hierarchical cooperation.

2.4.1 The Organisational and Legal Dimension of EU's External Policy

The basis for the macro-institutional framework is laid down in the Partnership and Cooperation Agreement (PCA). In its nature, the PCA is embodied by a joint commitment to promote partnership and understanding for mutual benefit. The PCA opened a new chapter in the EU's relations with Eastern Europe as it established a comprehensive institutional framework to provide for a continuous dialogue and cooperation. The deepening of institutional ties between the EU and its associated partner countries caused broadly ramified cooperation on several levels, which led in some policies to the sectoral integration of third countries into EU-led cross-national policy networks. We might term this form of international cooperation as 'Sectoral Integration' or 'Network Governance' (e.g. Lavenex 2008) in IR, whereas interstate negotiations and coordination of cross-national policy issues are done within coordinative regulatory bodies by including several actors in the field.

In this section, this paper will to explain the macro-institutional framework of the cooperation between the EU and third countries, which allows for certain cooperation. The political framework of the cooperation is laid down in the Partnership and Cooperation Agreement (PCA), signed with the RF, Moldova and Ukraine in June 1994 and entered into force in December 1997/98. Belarus, however, did not fulfil the criteria for an agreement to deepen the cooperation with the EU. The agreement contains an ambitious agenda on enhancing the cooperation on crucial issues, as trade, transport, environment, energy, justice and home affairs (JHA). The basis of cooperation is formed of mutually binding commitments to common values set out, for example, in article six of the PCA with Ukraine:

A regular political dialogue shall be established between the Parties which they intend to develop and intensify. It shall accompany and consolidate the rapprochement between the Community and Ukraine, support the political and economic changes underway in that country and contribute to the establishment of new forms of co-operation. The political dialogue:

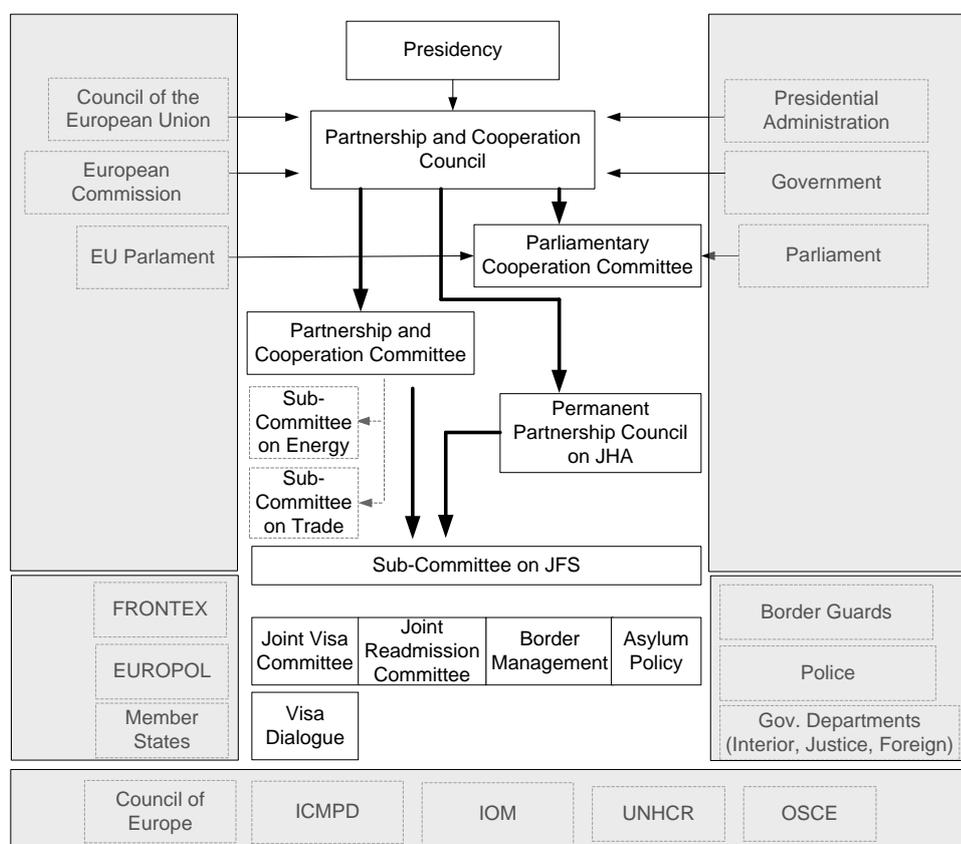
– shall strengthen the links of Ukraine with the Community, and thus with the community of democratic nations. The economic convergence achieved through this Agreement will lead to more intense political relations;

- shall bring about an increasing convergence of positions on international issues of mutual concern thus increasing security and stability;
- shall foresee that the Parties endeavour to co-operate on matters pertaining to the strengthening of stability and security in Europe, the observance of the principles of democracy, the respect and promotion of human rights, particularly those of minorities and shall hold consultations, if necessary, on the relevant matters (Council of the EU 1998a: Art. 6)

In institutional terms, the macro-institutional framework of the PCA is relatively centralised. At the top of the cooperation, the Partnership and Cooperation Council (PCC) is the main decisive political body, in which ministerial representatives of the partner countries meet with the EU Troika on an annual basis. Their main function is to exchange information and negotiate action plans to coordinate and align policy regulations. Furthermore, the PCC is the key monitoring body that observes the progress achieved in the realisation of the action plan commitments (Art. 90). The Cooperation Council is assisted by a Cooperation Committee that consists of senior and civil servants. They also meet on a yearly basis (Art. 92). Additionally, a Parliamentary Cooperation Committee (ParlCC) was established to bring together Members of the European Parliament (MEP) and, for example in the case of the RF, members of the Federal Assembly (State Duma and Council of Federation) and, for Ukraine, members of the Verkhovna Rada. The ParlCC compiles recommendations for the meetings of the Cooperation Council. Their meetings are held as often as necessary (Art. 95).

An important innovation of the PCA with Ukraine, Moldova and the RF is the introduction of technical subcommittees in crucial policy areas and the Permanent Partnership Council (PPC) on JHA to tackle issue-specific technical and political issues. Whereas the PCC is a forum for political dialogue, the subcommittees and the PPC bear the potential for more horizontal or symmetrical discussions based on technical expertise rather than political considerations. In contrast to a political macro-structure, they are composed of civil servants from partner countries, EU member states and the Commission. Yet, in practice, RF prefers to send either high-ranking officials or diplomats (e.g. Interview with Official from the EC Delegation to the RF, Moscow, 28 May 2009). The meetings are held on an expert level to discuss joint priorities and technical problems encountered during the implementation of the subcommittees' agreed road maps. The content for the subcommittees was set in the negotiated action plans within the 2004-established European Neighbourhood Policy (ENP) in the case of Ukraine, and, within the Common Space Strategy in the case of the RF.

Figure 6. Institutional Framework of EU's External Policy towards Neighbouring Countries on Migratory Issues



In the case of the EU-RF relations, the cooperation is along four thematic common spaces, namely the: Common Economic Space; the Common Space on Freedom, Security and Justice; the Common Space on External Security; and, the Common Space on Research, Education and Culture (13th EU-RF Summit in St. Petersburg: Joint Statement, Art. 2). The priorities listed in the road maps are rather vague; thus, they are the basis for ongoing consultations which rely on political commitment rather than legal obligation. The approximation to the EU *acquis communautaire* is not obligated, but serves as a model for guiding third countries in the conduct of domestic reforms. The common space on 'Freedom, Security and Justice (FSJ)' is limited, addressing only illegal cross-border activities, including organised crime, money-laundering, illegal trafficking in human beings, drug trafficking, and illegal immigration. An ambitious road map was set in 2003 at the EU-RF Summit in St. Petersburg, and adopted in 2005 at the EU-RF Summit in Moscow. This road map contains policy issues, upon which both parties want to enhance their cooperation in the field of Justice and Home Affairs. Technical subcommittees are responsible for implementing this road map, while monitoring the results rests with the EU-RF PPC on JHA at ministerial level. Other networks, such as the

joint visa and readmission committee and the visa dialogue, are excellent examples of advanced cooperation. The joint visa and readmission committees have the task of monitoring the application of the agreement, supervising the implementation of the agreement, exchange of information, and proposing amendments to the agreement, if deemed necessary. It consists of representatives of the associate partner countries and the European Commission acting on behalf of the European Community. European Commission representatives are assisted by experts from member states. The joint committee decisions are binding to the contracting parties.

2.4.2 EC Assistance Instruments

In the wake of the 2004 EU enlargement round, the EU has put aside targeted financial and technical assistance as well as opened some community programmes and agencies for associated neighbours (e.g. COM 2006b). The goal has been to promote reforms and to assist third countries in implementing them as well as to enable and support third countries in administering their responsibilities toward migrants, e.g. establishing adequate humanitarian conditions in detention centres, guarantee needed health care to asylum seekers, and improve readmission procedures and the social reintegration of returnees. Some of the innovative tools of technical assistance being used to run certain projects for capacity building, training activities and law enforcement for regulatory convergence are being supported through mechanisms that have proved successful for candidate countries (e.g. Kelley 2006), e.g. targeted expert assistance (e.g. Technical Assistance and Information Exchange (TAIEX), AENEAS, CBC programme), seconding of staff by long-term twinning arrangements with EU Member States' administrations and joint operations through participation in relevant Community programmes and agencies (e.g. European Union Border Assistance Mission to Moldova and Ukraine (EUBAM)). All of these instruments are demand-driven and as such "*require a pro-active approach from the beneficiary administrations. It is for the individual Ministries, Services and Departments to identify their needs and make an application*"¹⁰.

The EU's bilateral assistance priorities are elaborated by consultative meetings together with the associated countries and other relevant actors that are involved in the implementation of respective projects. The commitment of all actors to success in crucial policy objectives and to running certain projects is identified in the Country Strategy Papers (CSPs), covering overall policy objectives within a period of seven years, as well

¹⁰ Website of the EC Delegation to Russia. [http://eeas.europa.eu/delegations/russia/eu_russia/tech_financial_cooperation/taix_instrument/index_en.htm, last access 22 October 2011]

as in the agreed National Indicative Programmes (NIPs), which cover detailed annual programmes for a total period of three years. Further specific action plans with Ukraine and the RF were introduced by the High-level Working Group on Asylum and Migration, which was established:

“to prepare action plans for the countries of origin and transit of asylum-seekers and migrants. The action plans carry out an assessment of the political, economic and human rights situations in countries of origin and provide a joint analysis of the causes and consequences of migration” (Council of Europe 1999b).

According to these action-oriented papers, EU provides financial and technical assistance to support its implementation, e.g. for provisions in capacity building, training activities and law enforcement.

Concrete projects are defined through a multi-step process. First, the EU sets out the priorities agreed on with their partner in a CSP (Council of the EU 2006d). Then, based on the CSP, the European Commission and the third country’s government work together to determine the financial resources to be allocated to the priority objectives and develop the National Indicative Programme (NIP).

“The National Indicative Programme is intended to guide the planning and identification of financial cooperation with Russia according to a number of Priority Areas. The national allocation will be therefore be dedicated in the main to a closely-focussed, demand-led programme intended to further roadmap objectives identified as priorities for financial support” (COM 2006c: 3).

Finally, based on the NIP, the European Commission adopts annual action programmes (AAP). These programmes establish the specific, detailed projects that match the objectives set forth in the CSP and NIP. These projects are funded under the legal framework of the European Neighbourhood Policy Instrument (ENPI) and its specific Cross-Border-Cooperation programmes (CBC), which had replaced the former Technical Aid to the Commonwealth of Independent States (TACIS) by 1 January 2007 (e.g. Council of the EU 2006d). The ENPI is designed to support sustainable development and approximation to EU policies and standards. The priorities are formulated in Action Plans and Association Agreements in accordance with the authorities of the associated countries and are also used in guiding assistance programmes. For the Financial Framework 2007-2013, approximately EUR 12 billion in EU funding are available to support these partners' reforms, an increase of 32% in real terms as compared to the period 2000-2006 (COM 2006e).

In addition, with the Programme for financial and technical assistance to third countries in the area of migration and asylum (AENEAS), the EU offers targeted financial assistance to support third country governments in an effort to better manage migratory flows, and to combat illegal migration and trafficking in human beings. The AENEAS programme, adopted through co-decision in 2004, was funded with an overall budget of €250 million for 2004-2008 (COM 2006a). The programme pursued the general objective of bringing “*specific, complementary assistance to third countries to support them in their efforts to ensure better management of migratory flows in all their dimensions*” (ibid: 7).

Regarding readmission agreements, the AENEAS programme was drafted to support third countries with regard to the social and professional reintegration of returnees, the establishment of adequate humanitarian conditions in detention centres, and the “*strengthening of their institutional capacities to provide asylum and international protection and to develop national legal frameworks in line with the agreement*” (ibid.). AENEAS was replaced in 2007 by the Thematic Programme on Migration and Asylum.

2.4.3 Governmental, Intergovernmental and Multilateral Actors

The implementation of the respective action plans and road maps in the relevant partner countries is assisted by several governmental, EU and multilateral agencies. Thus, in addition to the cooperation between EU agencies and state authorities of partner countries (including border guards, customs and policy, national security and other relevant authorities)¹¹, the EU also uses the expertise and experience of International Organisations (IO's) in the policy area of migration management and in the respective countries. The cooperation is limited to the areas of: initialisation, coordination and improvement of joint operations, funded merely by EU projects and programmes; exchanges of experiences, best practices in common conferences, and trainings; partial participation in meetings between the EU and its partner countries; and, advising on relevant EU institutions with regard to operational asylum and migration matters.

In the following, closer attention will be paid to how agencies as well as organisations that operate on behalf of EU's interests play a role in interregional cooperation on migration management. First, governmental agencies deserve a closer look, as they already have experience in cooperating with neighbouring countries as part of their regular foreign

¹¹ E.g.: Ukraine: State Border Guards (SBGS), State Committee for Nationalities and Religion (SCNR), Department for Citizenship, Immigration and Registration of Physical Persons of Ministry of Internal Affairs, Consular Department of the Ministry for Foreign Affairs, State Department on Approximation of Legislation; Belarus: State Bureau for Passport Issuance, Office for Citizenship and Migration (Mol); Russia: Federal Migration Service (FMS);

policy and development assistance. Most of them are immediate neighbours and share the same borders. A brief summary of the most relevant: The Swedish Migration Board 'Migrationsverket' and Swedish International Development Cooperation Agency SIDA, the Danish International Development Agency (DANIDA), the Danish Refugee Council, the Hungarian Office of Immigration and Nationality, the Border Guard of the Republic of the Poland and the Polish Office for Foreigners, the Department for Asylum and Migration Policy of the Ministry of the Interior of the Czech Republic, the Immigration and Naturalisation Service of the Ministry of Justice from the Netherlands, the Migration Office of the Ministry of Interior of Slovakia and the UK Border Agency.

These agencies either run their own projects on a bilateral basis, or, which is more often or increasingly the case, they concentrate their resources and expertise on running common projects under the auspices of EC funded programmes or together with intergovernmental as well as multilateral agencies. In addition to agencies from the EU member states, agencies from non-member states also take part in common projects, e.g. USAID, U.S. Department of State, and the Swiss Agency for Development and Cooperation (SDC) (e.g. Interview with IOM official, Moscow, 17 June 2009).

Secondly, EU agencies are a reaction to the increasing competences of the EC and their extending field of activity. Agencies at the EU level had been launched in order to bundle expertise and enable information exchange between the member states. In the wake of the enlargement process and facing new challenges, their mandate was extended to include neighbouring countries. Their task is to collect and provide expertise on certain policy issues and to undertake operational projects in order to support associate partner countries on e.g., the use of biometrics, data protection, and document security.

The agencies implement certain projects according to a concrete given assignment of tasks, e.g., European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), the European Law Enforcement Organisation (EUROPOL), Centre for Information, Discussion and Exchange on the Crossing of Borders and Immigration (CIREFI), the European Border Surveillance System (EUROSUR), and the judicial cooperation body EUROJUST. Furthermore, experts of the EURODAC, a fingerprint data base, and FADO, a data bank for False and Authentic Documents, take part in the cooperation. FRONTEX activities are the most important when it comes to border security. The Warsaw-located agency acts on behalf of the Council Regulation as of 25 November 2004 (Council of the EU 2004b).

According to the Council Regulation, Frontex is authorised to sign working agreements with third countries and execute extra-territorial operations in the framework of “*integrated border management*” (ibid: Art. 14). Several working agreements have already been concluded with third countries and IO’s with regard to cooperation on border control and surveillance, and the readmission and training of border guards. Working agreements have to comply with international and EU laws such as the Schengen Borders Code and the Asylum Procedures Directive.

Thirdly, we would like to mention multilateral agencies, which took over an important role in cooperation between the EU and its neighbours in the East. Especially in the case of cooperation with Belarus, most activities in the respective policies are enabled by projects of IO’s, financed mostly by the EU, its member states and partly by the USA (e.g. Interview with IOM official, Moscow, 17 June 2009). This is a consequence of the suspension of any and all official dialogue, due to serious violations of human rights and democratic principles. Therefore, other channels of interaction have also been established, to allow for cooperation on the approximation to EU norms and standards; these channels often receive support through IO’s as ‘transactors; of EU’s interests. Thus, IO’s help in overcoming deadlocks in cooperation as well as facilitating interaction between several actors as they are seen as more credible than individual states. Prominent actors working on improving migration management in Eastern Europe are the International Organisation for Migration (IOM), the International Centre for Migration Policy Development (ICMPD) and the United Nations High Commissioner for Refugees (UNHCR).

3 Operationalisation: Building an Analytical and Theoretical Framework

As previously described, we can observe an ongoing process of institutionalizing external relations between the EU and its neighbouring countries in the East. In the following paragraphs, we will tackle this phenomenon by introducing the relevant core concepts and drawing an analytical model. This chapter explores the topic of international cooperation between the EU and its neighbouring countries by illustrating the contextual and situational factors which influence the structure and mode of cooperation regimes. It scrutinises the correlation between conditions and specific structures and modes of cooperation and, therefore, offers an important contribution to the current debate on how to integrate non-member states in EU policies.

Three major questions lay the basis on which we may build the analytical framework of our analysis: 1) how to characterise the structure and mode of cooperation and how to measure the extent of institutionalisation in international cooperation; 2) which conditions determine the mode of cooperation; and, 3) how can we relate these conditions to the extent of institutionalisation and the respective modes. Referring to major theories – as on negotiations and cooperation in International Relations (IR); on Europeanisation effects within and beyond the EU; and, theories on External Governance – the following sections are going to operationalise our research, elaborate on hypotheses and make them measurable for the analysis. First, the chapter begins with a tackling of the phenomenon of the external dimension of EU governance and, based on rational and sociological institutionalism, elaborates on a model to characterise the distinct modes of cooperation between the EU and third countries. Second, theories on IR are discussed in order to explain the processes of Institutionalisation in IR. Thirdly, this chapter scrutinises crucial conditions that explain the willingness of countries to institutionalise their interaction, which means to accept institutional constraints and legal obligations.

3.1 External Dimension of EU Governance¹²

Under the impression of the changed geopolitical configuration after the dissolution of the Soviet Union and the wave of democratisation in 1989/90, the EU foreign policy changed

¹² Parts of this chapter got also presented by the author at the ECPR 7th Pan-European Conference on International Relations. Stockholm, 9-11 September. [Bernhard Zeilinger: 'EU's External Policy towards Eastern Europe on Migration Issues. Breaking New Ground in International Relations?']

rapidly. With the end of the bipolar world order, the EU had to define its own pattern of foreign policy and had to take on a more active role in the nearby region. A more effective comprehensive external policy of the EU was needed, as the EU became increasingly challenged by several international threats and negative externalities, which called for powerful leadership. Additionally, the wave of democratisation not only strengthened the international legitimacy of liberal democracy, but also increased the need to assist new democracies in their transformation towards democracy and market economy (e.g. Schimmelfennig 2007: 11). For decades, the EU operated within a relatively stable territory, defined by its member states and their coherent geopolitical, institutional, legal, cultural and transactional boundaries (e.g. Smith 1996: 13). Europeanisation was an exclusive process, implicating the harmonisation of legislation within the EU because of its exclusionary origin. Foreign policy was in the hands of the member states and therefore all the competences in this policy area belonged to them. The increased process of internationalisation leads, to some degree, to an “*unbundling of territoriality*” (Ruggie 1993: 165) and precludes politics of exclusion.

As a result, the EU has expanded its competences in external policy domains and has moved from its “*politics of exclusion*” towards a “*politics of inclusion*” (Smith 1996: 5) to reflect the changing demands of the European order. The ‘politics of inclusion’ or sectoral integration are seen as an ordinary strategy to tackle the consequences of interdependencies through the external projection of internal solutions (e.g. Lavenex 2004: 695). Therefore it can be expected that the EU’s external governance may in the long run result in patterns of differentiated integration with associated countries in selected policy fields of mutual interest (e.g. Lavenex 2004: 695). The prospect of partial inclusion, as with a stake in the internal market, has to be beneficiary for the third country in the long run to result in its willingness for legal approximation. At the core of the processes stands the EU with its “*centripetal effect in economic terms*” (Rosencrance 1998: 18), which gives the EU dominance over third countries.

These countries are dependent to some extent on a partial integration into the EU internal market as they are less developed in the economic, political and social spheres (e.g. Tirmaa-Klaar 2006: 8). The EU acts as the major centre of gravity in Europe. As Emerson (2004) points out in his “*Wider Europe Matrix*” (Ibid: 8), external governance is influenced by the relation between the centre and periphery whereas semi-centre and semi-periphery. With the EU in the centre and the neighbouring countries as the periphery, there are semi-centres, like the RF, and semi-peripheries, like Central Asia or Iran. In its role as a centre of gravity in Europe, the EU has to deal with functionally-related

competitors, such as NATO, the OSCE, or the RF's own Commonwealth of Independent States (CIS) (e.g. Smith 2005: 7).

The strategy of inclusion refers to the strategic attempt to gain control over policy developments in non-member states (e.g. Lavenex 2004: 685). The EU may aim to increase its international influence, stimulating and stabilizing democratic transformations by extending the EU's legal boundary. Diffusion of EU legislation requires the ability to manage this transfer of rules to non-member states and the legitimacy of EU law in these countries. These processes of legal adjustment in a great variety of policy areas are accompanied by bilateral arrangements that are dominated by the EU. Apart from that, legal adjustment is supported by various forms of institutional affiliation linking third countries with the EU. However, instead of examining mutually advantageous relationships, in which parties voluntarily curtail their autonomy and delegate authority to a cooperative structure, the relation of the EU with third countries is characterised by power asymmetries. The EU acts as a regional hegemony that tries to extend its influence into neighbouring countries by rule transfer. It sets the conditions and dominates the process of harmonisation by offering partial integration into EU structures and policies. In the sense of this subordination of third countries it is difficult to speak about a real shift towards the "*politics of inclusion*" (Smith 2005: 8).

In order to explain EU's external policy, a clarification of the dimensions of EU's external spheres, first and foremost, is needed. Michael Smith's (1996) "*concept of four boundaries*" is a useful starting point to delineate the interaction between the EU and its associated third countries. The 'concept of four boundaries' makes a distinction between four boundaries: geopolitical, cultural, transactional and institutional/legal boundaries (Smith 1996: 13).

Geopolitical boundary refers to the identity of the EU. It marks the distinction between the 'EU' and 'others'. Therefore, the identity of the EU is constructed by showing their differences vis-à-vis non-member states. The geopolitical boundary involves the definitions characteristic to the realist IR tradition, in which the "*EU is seen as an island of security and stability opposing to disorderly outside world*" (Smith 1996: 14). The EU is seen as the best reference model with regards to human rights, good governance, and rule of law, and accordingly the third countries should follow these established EU norms, procedures and rules (e.g. Tirmaa-Klaar 2006: 9). For example, the ENP strategy papers state:

"The privileged relationship with neighbours will build on mutual commitment to common values principally within the fields of the rule of law, good governance, the respect for

human rights, including minority rights, the promotion of good neighbourly relations, and the principles of market economy and sustainable development' (COM 2004a: 3).

Cultural boundary is another classification that envelops the common practices within the EU, such as norms and values. As the soft-power model states, the "*EU's internal normative qualities will be translated into its external policies*" (Tirmaa-Klaar 2006: 5). The willingness to adopt EU legislation corresponds to an extension of the EU's cultural boundary. Only shared norms and values could lead to successful law diffusion in neighbouring countries. Transactional boundary stands for transnational interactions between EU and actors in third countries through a countless number of networks. Because of these complex relationships precise findings in this area are difficult to achieve (e.g. Smith 1996: 14). The extension of the cultural and transactional boundary precedes an extension of the legal or/and the institutional boundary of the EU to third countries, i.e. the enlargement process (e.g. Tirmaa-Klaar 2006: 6; 11).

Within the categorisation of the four boundaries by Smith (1996) the institutional and legal boundary are merged. They mark the territory governed by EU law and EU institutions. On the one hand it consists of institutions that possess the competences to act within this boundary. On the other hand, the legal boundary refers to the regulatory scope of legal rules, and expands when parts of EU legislation are transposed upon non-member states (e.g. *ibid*: 15). Smith merges institutional and legal boundary whereas Lavenex (2004) comes to the conclusion that, concerning EU adoption to non-member states, institutional and legal boundaries can differ. This finding is important in order to grasp external governance. Hence, the legal boundary of European rules can be extended without a parallel institutional expansion.

*"The crucial criterion for external governance is the extension of the legal boundary of authority beyond institutional integration. In contrast to co-operation under an international agreement or convention, external governance takes place when parts of the *acquis communautaire* are extended to non-member states"* (*Ibid*: 683).

In sum, the extension of the institutional and legal boundary towards third countries extends EU's scope of action and ability to have an impact on national policy regulation. In the following sections, the concepts of Europeanisation will be discussed in order to determine the major characteristics of legal approximation mechanisms. Following this, an explanatory model will be drawn to classify distinct modes of external governance.

3.1.1 *Europeanisation beyond EU Member States: Processes and Mechanisms*

The current concept of Europeanisation has emerged within the literature on European Integration since the late 1990s. It is guided by the core analytical question over the extent to which EU organisations and policies have a relevant domestic impact in the member states. As already stated in the introductory chapter, the concept of Europeanisation also provides insights into capturing domestic impact in non-member states, e.g. in states that participate in the EU's internal market (EFTA-countries) and in a significant number of other EU policies, and in the candidate states that need to adopt the *acquis communautaire* in order to qualify for membership (Western Balkans, Turkey). But is the concept able to cover the wider process of Europeanisation spreading well beyond the EU, within countries without any membership perspective? Does it give useful consideration to the external projection of European regimes and value patterns, which also affect the ways in which the EU will acquire influence in a wider global setting?

In the beginning it is necessary to lay down a useful definition – of what Europeanisation is and should be and what it is not – in order to grasp the concept of how Europeanisation works. First of all, it is of importance to clarify the essence of being 'European' in 'Europeanisation'. By going through the common literature, the notion 'European' envelops EU norms, procedures and rules, mainly manifested in the *acquis communautaire*. Hence, Europeanisation is seen as the process of approximation to the EU *acquis*, which means that, on the basis of its market power and its political stability, the EU demonstrates a kind of "gravity centre" (Emerson/ Noutcheva 2004: 8) or reference model for neighbouring countries. In his study on rule transfer into the Western Balkans, Florian Trauner (2008) states that "*the EU acts as the reference model for the modernisation of the political, economic and social systems of the state concerned*" (Ibid: 19). By defining itself as a normative power, the EU seeks, further, to spread its norms and values abroad and make them universally applicable.

If European integration refers to the "*process whereby national political systems become more closely linked within the European system*" (Vink 2004: 3), the concept of Europeanisation is "*crucially related to the feedback process of European integration*" (ibid.). Another definition is given by Hértier (2001) and throws a different light on Europeanisation. She defines Europeanisation as:

"a process of influence deriving from European decisions and impacting member states' policies and political and administrative structures which may extend from a subtle and incremental re-orientation of national policy-making to substantial changes where

European policies crowd out their national counterparts and modify patterns of political and administrative behaviour” (Hértier 2001).

These Europeanisation processes are seen by Radaelli (2003) as:

“Processes of (a) construction (b) diffusion and (c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’ and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies” (ibid: 30).

This definition, which can be applied both to EU member states and third countries, stresses the importance of change in the logic of political behaviour as a *“process leading to the institutionalisation in the domestic political system of discourses, cognitive maps, normative frameworks and styles coming from the EU”* (Meloni 2007b: 23). In this way, Europeanisation is perceived as *“a permanent two-level interaction with member states being both contributors to and products of European integration”* (Trauner 2008: 16).

Although most of the literature handles Europeanisation as a unique phenomenon within the EU (e.g. Börzel/ Risse 2000; Knill/ Lehmkuhl 1999 and March/ Olsen 1998), some of the authors already envisage relations with third countries as cases of Europeanisation (e.g. Grabbe 2006; Schimmelfennig/ Sedelmeier 2005; Kruse 2003; Schimmelfennig et al. 2002; Radaelli 2000b). However, there are huge differences among the EU’s many associations with the entities with which it interacts. But, when we focus on the main mechanisms, the processes are similar, as the EU is always the core reference model for the process of legal approximation and covers a broad domain of political impacts across the triad of policy, politics (policy-making process), and polity (administrative structure) (e.g. Schimmelfennig 2007: 17).

In tackling Europeanisation in third countries, one must explain how and why the states outside the EU adjust to norms, procedures and rules of an external power. The origin of the theoretical implications is rooted in research about compliance in member states and accession countries. To understand the processes within non-member state alignment, some conceptual fine-tuning is needed. The conceptualisation for Europeanisation beyond the borders of the EU has to give consideration to the genuine causality between the EU and third countries. As the whole process seems to be triggered by European decisions, there can be observed some intentionally or unintentionally domestic impacts (e.g. Kruse 2003), taking place in a complex mix of formal and informal institutions and processes between and among states, citizens and organisations. Furthermore, the role of the EU can differ, whether the EU plays a pro-active role or remains passive. The most active role

of the EU is given to the conditionality scheme. In the social-learning and lesson-drawing scheme the EU remains a passive model for imitation. Thus, it has to be taken into account whether the transformation of political order, economic structure and societal beliefs is driven by the EU or by domestic processes.

Europeanisation is driven by different institutional logics, defined by March and Olsen (1989): as 'logic of consequences' and 'logic of appropriateness'. The two alternative logics of Europeanisation try to conceptualise the effect of institutions on an entity's behaviour. In a rationalist manner, the 'logic of consequences' follows the misfit between EU and domestic norms, procedures and rules. The misfit is interpreted as an emerging political opportunity structure, which offers some actors additional resources to exert influence in the domestic domain. The actors are following a cost-benefit approach in which institutions have an impact by altering the expectations an actor has about the actions (e.g. Hall/ Taylor 1996: 939). In a constructivist manner the 'logic of appropriateness' underlines the importance of processes of persuasion and socialisation as possible mechanisms of Europeanisation (e.g. March/ Olsen 1989: 160f.).

Summarising the first considerations regarding Europeanisation, the classification by Schimmelfennig and Sedelmeier (2005) provides a useful overview, as they include meanings of the 'logic of consequences' in their 'external incentives model'. It follows the principal of conditionality and corresponds to the EU policy of 'sticks' and 'carrots'. Conditionality, therefore, is based on the direct, sanctioning or rewarding impact of the EU on the target government. This will change the cost-benefit calculations of the actors. Depending on whether the clarity and credibility of EU conditionality is given, the impact of external incentives increases with the size of net benefits (e.g. *ibid*: 11f.). Following the rational manner of the 'logic of consequences' there can also be an indirect impact on domestic norms, procedures and rules. This logic is based on an adoption of EU legislation voluntarily by domestic actors because they perceive them as solutions to their domestic problems. Schimmelfennig and Sedelmeier (2005) describe such a process as a "*lesson-drawing-model*" (*ibid*: 12).

Finally, apart from intergovernmental interactions such as bargaining or persuasion, Europeanisation can also work through transnational processes via societal actors in third countries (e.g. Schimmelfennig 2007: 7). In line with the 'logic of consequences', societal actors or the market might also have an impact on national governments. Schimmelfennig calls this mechanism "*domestic empowerment*" (*ibid.*). The EU provides incentives for societal actors, or triggers processes of competition, which then change the cost-benefit assessments of the target government in the direction of Europeanisation (e.g. *ibid*: 7).

Figure 7. Mechanisms of EU's Impact in Third Countries (Schimmelfennig 2007: 7)

	Intergovernmental		Transnational	
	Direct	Indirect	Direct	Indirect
Logic of consequences	Conditionality through Compliance	Lesson-drawing through Communication	Domestic Empowerment through Competition	Societal lesson-drawing
Logic of appropriateness	Socialisation through Social learning & Communication	Imitation Through lesson-drawing	Transnational Socialisation Through Social learning	Social imitation

The introduced classifications above overlap with each other within different processes. Only conditionality can be contrasted clearly with lesson-drawing and socialisation (e.g. Schimmelfennig 2007: 7). According to the conditionality model, the EU sets its rules as conditions that the third countries' national administrations must implement reforms to ensure that their national rules comply with those of EU legislation in order to avoid sanctions or to achieve rewards (e.g. Schimmelfennig 2007; Bauer et al 2007; Knill/Lenschow 2005). Thus, the EU imposes conditions unilaterally in order to exert adaptation pressure on third countries administrations. The asymmetry, therefore, is obvious between the EU and neighbouring countries, based mainly on their economical prosperity.

EU conditionality in general is described as a positive tool, which means that it uses 'carrots' rather than 'sticks' to stimulate reforms in associated countries. This means that, if an associated country is doing well in fulfilling EU driven conditions, the EU provides financial support and technical aid and therefore increases its integration into EU institutions, its stake in the internal market, and so on. In the literature, relying on conditionality framework in foreign policy (Cremona & Hillion 2006; Kelley 2006; Magen 2006 with regard to the ENP), a differentiation is done between negative and positive conditionality. Whereas negative conditionality means foreign policy by threat of sanction if requested claims are not fulfilled or to withhold a promised benefit in case of noncompliance, positive conditionality is based on the idea that the EU offers rewards to non-member states for fulfilling reforms. The use of sanctions or the *stick approach* is only used if the associated government violates the *essential elements*, which consist of respect for democracy, human rights and the rule of law. Therefore, "*the EU may suspend or terminate an agreement with a third country*" (Schimmelfennig 2007: 11).

The so called 'carrot and stick approach' of conditionality was successfully used as the main tool in the enlargement process and in EU foreign policy (e.g. Smith 2003). As the

enlargements in 2004 and 2007 showed, the most effective incentive for compliance with EU legislation is the prospect of EU membership. Therefore, the EU conditionality works rather well by offering membership to candidate countries. However, how can third countries be stimulated to adopt EU norms, procedures and rules if the EU does not dangle in front of them a membership perspective? According to this “*accession conditionality*” (Schimmelfennig 2007: 4), such an effective reward for third countries – and so the needed steering capacity for enforcing compliance in third countries – is missing. Therefore, the question arises: what could be other attractive incentives or decisive conditions for adoption? And, what are the alternative models applicable to induce these countries’ motivation for legal approximation with the EU *acquis*?

As the membership prospect is absent in the ENP, the EU needs to increasingly rely on positive conditionality to entice states to move closer to European standards (e.g. Wichmann 2008: 8). Therefore, the EU links the granting of incentives to the commitment of the partner country to carry out certain political or administrative reforms. The decision whether or not to cooperate with the EU is the consequence of a partner country conducting a cost/benefit analysis. The better the cost-benefit balance between EU rewards and domestic adoption costs, the more likely it is for EU rule transfer to succeed (e.g. Schimmelfennig/ Sedelmeier 2004: 663f.). One way is to increase the amount of financial aid and technical support. Another way is to convince or persuade the partner countries of the need for reforms and alignment to EU legislation, which results in an about-turn from conditionality to flexible and merely unbinding modes of interaction, e.g. benchmarking, consultancy, and EU-sponsored policy networks (e.g. Schimmelfennig 2007: 8).

As Smith (2005) points out: “*the EU must rely on other sources of power: leadership/agenda-setting, programme funding, access to its market [and] policy bargaining [...]*” (ibid.: 3). Moreover, the theoretical framework should not be limited to the rational cost-benefit calculation. An extension of the model to include constructivist mechanisms and beliefs (as identities and values) in the target country is needed. Because a significant incentive is missing, the legal approximation by third countries is based on voluntary actions. Thus, the research has to:

“move beyond normative preoccupations and reconsider the importance of the fundamental factors that drive the behaviour of national policy-makers. These include national interest, the rationality and utility of policy transfer, the political salience of policy areas and domestic costs of policy change” (Citi/ Rhodes 2007: 21).

The difficult task will be measuring these 'push and pull' (Börzel 2000: 148) factors to result in causal findings.

In contrast to conditionality, which stimulates third countries through granting specific rewards to harmonise with EU legislation, the alternative logic in international cooperation is of a sociological nature. It stipulates that non-member states can be enticed to follow the EU's model through identification with the values and norms promoted by the EU according to the "*logic of appropriateness*" (March/ Olsen 1989: 160-162). The increased usage of sociologically inspired instruments in foreign policy is a reaction to weak incentives and coercive measures. Proponents of conditionality lost their main argument, which signified the about-turn from political conditionality to flexible and merely unbinding modes of interaction (e.g. benchmarking, consultancy, policy networks). Schimmelfennig and Sedelmeier (2005) characterised these so-called 'soft modes' as "*social learning*" and "*lesson-drawing*" in the meaning of Habermas and Foucault (e.g. Ibid: 11f.; March/ Olsen 1989; Meloni 2007b; Schimmelfennig 2007; Radaelli 2000; Knill/ Lehmkuhl 1999). Both modes operate along the "*logic of appropriateness*" (March/ Olsen 1989: 160-162), and presume that a partner country perceives EU legislation as legitimate and is convinced by its problem-solving capacity in crucial policy areas. Thus, this new form of pro-active external policy tries to persuade a partner of a proposed policy solution by emphasising the voluntariness of states to cooperate (Schimmelfennig/ Sedelmeier 2002).

'Socialisation' or 'social learning' is seen as a process of internalisation of common norms, which creates mutual understanding, harmonises actor's objectives, and leads to similar policy output. It is described as a "*result of voluntary exchange of information and as a result of mutual learning between national policy-makers in EU-sponsored networks*" (Schimmelfennig 2007:6). This may be triggered by proactive persuasion by the EU through intergovernmental communications and institutionalised EU-society links. The extent of 'Social learning' is determined by the accumulated experience of intense reciprocal interaction, most effectively through institutionalised interaction (e.g. March/ Olsen 1989: 13; Schimmelfennig 2007: 6; Rittberger/ Zangl 2005: 40; 46). As a prerogative for deepening institutional ties in interstate relations, the extent of reliance and credibility of each other is of decisive importance. Again, reliance and credibility would be increased by an institutionalised cooperation. Thus, reliance and credibility are both the impetus for institutionalisation as well as its output.

Furthermore, this thesis argues that, as an institutionalised dialogue is initiated in low politicised policy areas, over time the partner country develops an identity shaped by shared norms and values as a result of accumulated experience, and the likelihood of

initiating this sort of institutionalised cooperation in more problematic policy issues increases (March and Olsen 1989: 13). This supports the functional thesis, which denotes a spill-over of such an institutionalisation to other adjacent policy areas. This spill-over can also be a result of unintended momentum away from ongoing regularisation and beyond the competences that were originally agreed upon. The socialisation approach is designed to create opportunities for “*imitations and demonstration effect*” (Youngs 2001: 359). Such a persuasion is only possible if the promoted rules, norms and procedures are seen as legitimate to the domestic actors (e.g. Schimmelfennig/ Sedelmeier 2002) and as useful in increasing the efficiency and problem-solving capacities of internal policies (e.g. Lavenex 2004: 680). The EU can be active in this process of Socialisation through persuasion, by providing information and exchanges of societal actors. Schimmelfennig (2007) refers to ‘Socialisation’ as the main process of Europeanisation (e.g. *ibid*: 6).

In contrast to Socialisation, the ‘lesson-drawing’ scheme does not assume that the actors in third countries identify with EU legislation, but instead assumes that they acknowledge EU legislation’s ability to create efficient policy regulation. Hence, if the government of a third country believes in the problem-solving efficiency of EU legislation, it will adopt or imitate the set of rules because of the expected benefits (e.g. Meloni 2007: 31; Young 2001: 359; Bauer et al 2007). Lesson-drawing relies on a cost-benefit calculation. Only if the government of a third country believes in the problem-solving efficiency of EU legislation, will it adopt their set of rules because of the expected benefits (e.g. Meloni 2007: 31; Schimmelfennig 2007: 6).

The cost-benefit calculation plays a crucial role in the conditionality and lesson-drawing schemes. The willingness of a third country to adopt EU norms, procedures and rules and therefore to bear the costs of legal approximation depends on the expected reward. In more detail, the conditionality and lesson-drawing schemes assumes that “*a State adopts the European rules if the expected benefits of EU’s rewards are higher than the costs*” (Schimmelfennig/ Sedelmeier 2002: 5; Schimmelfennig 2003: 297). According to this logical finding, Geddes (2003) points out: “*we need to go beyond the discussion of the formal transposition of EU law and questions of administrative capacity*” (*ibid*: 189); in order to grasp other important implications of the process of adoption to the EU’s legal apparatus. In addition to the size of expected rewards and the size of adoption costs, Schimmelfennig and Sedelmeier (2004) note the “*determinacy of conditions*” and the “*credibility of threats and promises*” as important sets of factors (*ibid*: 672).

Credibility by itself is linked to the consistency of reward allocation and of actions demonstrated by EU foreign policy. Following Schimmelfennig and Sedelmeier (2005a),

credibility of conditionality and the size of adoption costs are key variables influencing compliance. In opposition to the conditionality scheme, the credibility of EU rewards doesn't play a role in the lesson-drawing scheme (e.g. Meloni 2007: 32).

To sum up the soft modes in foreign policy, both processes, social learning and lesson-drawing, are similar in some aspects, but differ substantially in the idealist point of view. Whereas social learning is more promising in the long term, lesson-drawing results in quick and efficient rule approximation, but may cause problems in the daily practice of transferred policy solutions. Governance by conditionality, on the other side, leads to the highest rate of rule transfer by incentives or coercion, but again often causes problems when reforms are instigated and new rules are implemented, as bureaucrats, who have to run the reforms in detail, lack an understanding of the normative basics. To sum up, any policy transfer without an internalisation of EU norms challenges the implementation of rules in daily practice (e.g. Wichmann 2008: 2). This paper argues that the logic behind these two policy instruments is often used complementary. According to their functional nature, conditionality is proper for short-term objectives, whereas the socialisation mode emphasises long-term objectives. Thus, conditionality-inspired policy instruments are often accompanied by socialisation-inspired policy instruments (e.g. Wichmann 2008: 2). As a consequence, a creative tension arises between the various objectives and instruments inherent in JHA cooperation with neighbouring countries (ibid: 3).

A policy transfer by social learning or lesson-drawing can be institutionalised through policy networks, which facilitate the exchange of information and the coordination of financial or technical assistance. Lavenex et al. (2009) name this form of cooperation as 'Network governance'. It can be defined as transgovernmental co-ordination and co-operation, negotiated in decentralised settings between different governmental and technical bodies (e.g. Schimmelfennig/ Sedelmeier 2004: 683). Network governance presumes: an apparent symmetry in: 1) An equal partnership, even though their relations are affected by the so-called "*shadow of hierarchy*" (Héritier/ Lehmkuhl 2008); 2) Voluntarism; and, 3) On the basis of common interests and common procedures.

Apart from that, domestic factors also exert influence on legal approximation. On one hand, the misfit between European and domestic policies, processes, and institutions plays a crucial role in the cost-benefit calculation as well as political costs for the government in running unpopular reforms. This depends also on the specific policy area within which reforms should be undertaken. On the other hand, legal approximation depends on characteristics of the domestic structures as related to economic development, regime type, national security, or political stability, which form the driving

force for domestic reforms and the capability to carry out these reforms. With regard to regime types, Mattli and Plümpfer (2002) claim that, if a country is a democratic regime, the national political leaders have a greater incentive to push for reforms which would align their country with the rules and institutions of the EU. A problem arises when an associated country might be tempted to comply only symbolically with EU conditions because they are not capable of handling the reforms or because they simply want to keep their costs down.

As the enlargement rounds in 2004 and 2007 showed, the most effective incentive for compliance with EU legislation is the prospect of EU membership. Therefore, the EU conditionality works rather well by offering membership to well-aligned candidate countries. But how can third countries be stimulated to adopt EU norms, procedures and rules if the EU does not dangle a prospect for membership in front of them? According to the “*accession conditionality*” (Schimmelfennig 2007: 4), such an effective reward for third countries is missing.

“In the process of eastern enlargement [...] combined with the high volume and intrusiveness of the rules attached to its membership, have allowed the EU an unprecedented influence [...] on the entire range of public policies in these countries” (Schimmelfennig/ Sedelmeier 2004: 669).

The processes of Europeanisation will follow different mechanisms due to the fact that the most effective mechanism, conditionality, is weakened by the missing prospect for membership. On the other hand, competition and communication are hypothesised to have at least a limited long-term effect, to the extent that third countries are subject to market pressures generated through the EU and take part in EU-sponsored policy networks (e.g. Schimmelfennig 2007: 8).

But can these instruments and strategies be as successful as the accession conditionality? How can the EU extend its leverage without the prospect of EU membership? There is not enough experience in transferring EU legislation abroad to have a good empirical value. More research is needed to figure out under which conditions these mechanisms can successfully lead to legal approximation in third countries.

For this purpose, the analysis of the process taking place beyond the EU borders can indeed provide new insights and can contribute to the more general theoretical debate on the issue. As a matter of fact, an analysis of countries that are not included in the list of prospective members of the Union can improve our understanding of the nature of the

processes that are necessary in order to support the spreading of the European model, and furthermore it can facilitate the assessment of the scope conditions for the effectiveness of alternative mechanisms of Europeanisation (e.g. Meloni 2007: 6). The result of such research will be fruitful to theorise Europeanisation beyond the EU.

“Whereas the literature conveys the picture that Europeanisation efforts beyond Europe are inconsistent and ineffective overall, this does not mean that there are no cases of consistent policy and effective impact. Searching for such cases and studying their conditions in comparison with similar cases may generate better knowledge on the differential effects and the conditions of Europeanisation in non-candidate countries” (Schimmelfennig 2007: 17).

Researchers have to be extremely careful in attributing domestic change in third countries to Europeanisation. The general problem of Europeanisation research is, that it is difficult to separate EU influences from those caused by other international, transnational, and domestic processes (e.g. *ibid*: 10). It is of vital importance to take into account all these sources of influences in order to be cautious and avoid wrong conclusions. The risk derives on the one hand from conceptual overstretching and on the other hand from a possible overlapping between the influences of Europeanisation, Internationalisation and inner developments in the case of transition after political collapse. A good example for such multi-causality is the large-scale changes in the wake of the dissolution of the Soviet Union and the wave of political, economic and societal transformations in post-socialist countries. Another aspect is the influence on policies that derives from the rapid expansion of international trade and from the increasing internationalisation of financial markets. Apart from that, the EU itself is influenced by these processes and is a part of international regimes.

3.1.2 EU External Governance: Extending the Legal Boundary beyond EU Member States

Whereas Europeanisation describes the process of legal approximation and covers a broad domain of political impacts across the triad of policy, politics (policy-making process), and polity (administrative structure), we will in the next step focus on how the EU and its neighbouring countries institutionalise their cooperation on transnational policy issues. In other words, we will grapple with the institutional framework that is used by the EU to extend its ‘legal boundary’ to neighbouring countries and, among other things, transpose EU legislation upon third-countries to move its regulatory scope beyond the circle of its member states. Although we know from the literature (e.g. Keohane 1984: 138; Emerson 2004) that there are many unintended transfers of rules and values

between countries, this paper is merely interested in the intended actions taken by means of concrete instruments and mechanisms. External Governance therefore characterises the EU as a kind of international regime or regional hegemony whose norms, procedures and rules diffuse to neighbouring countries through institutionalised modes of interactions aimed at coordinating and/or regulating social issues and providing collective goods.

*“The crucial criterion for external governance is the extension of the legal boundary of authority beyond institutional integration. In contrast to co-operation under an international agreement or convention, external governance takes place when parts of the *acquis communautaire* are extended to non-member states” (Lavenex 2004: 683).*

Given the tightened institutional framework of the EU's international cooperation with Eastern European countries, we may discuss External Governance in the sense of:

“less than ‘government’, ‘governance’ is more than ‘co-operation’, as it implies a system of rules which exceeds the voluntarism implicit in the term co-operation” (Lavenex 2004: 682).

As Europeanisation may be defined as a *“series of operations leading to systemic convergence through the process of democratisation, marketization, stabilisation and institutional inclusion”* (Demetropoulou 2002: 89) and will presumably take place in a complex mix of formal and informal institutions and processes between and among states, citizens and organisations, External Governance explains the structure and processes that lead to legal approximation. According to the EU's external policy, by using intergovernmental networks to coordinate and regulate the crucial issues, we might speak of ‘governance between governments’.

External Governance refers to the relations between the EU and third countries. It is therefore conditioned by two main factors: one concerns the *“perceptions of interdependence”, and the other ‘institutional roles and capacities’* (Lavenex 2004: 681). Both emerge as crucial determinants for external governance and express the conditions under which EU and non-member states work together (e.g. *ibid*: 685). The perception of interdependence (e.g. Keohane/ Nye 1977) explains why the EU chooses to engage in external action and hence to bind third countries to the fulfilment of internal policy goals. Lavenex (2004) sees external threats, and from this perspective EU vulnerability, as being on the one hand the driving force for EU initiatives for rule extension in its near abroad (e.g. Lavenex 2004: 685). On the other hand external threats also determine the *“nature and degree of a state’s initial commitment to an alliance”* (Smith 2005: 6). The expected benefits of cooperating with other countries are higher, while self-help often leads to suboptimal policy outcomes. Another question is which factors determine the choice of the

modality of cooperation? Rule transfer in third countries is not always a result of intended actions by the EU. Increasing interdependence also leads to legal approximation because of unintended consequences of EU policies (e.g. Trauner 2008: 16).

Institutional roles and capacities are the major condition for any external action in the field of rule extension. They are part of foreign policy and explain rule extension as an attempt to manage the external externalities of the EU (e.g. Lavenex 2004: 681). The EU's ability to manage its relations with these regions depends on the institutional setting within the EU. Institutional capacities refer to the dynamic distribution of competences and resources within the EU's multi-level system and provide the background for the Union's accountability to engage in governance activities (e.g. Lavenex 2004: 686). As Tirmaa-Klaar (2006) points out, EU external policies comprise many dimensions and are not limited to activities within one pillar. "*Institutional fragmented cross-pillar politics in EU policy-making has become prevalent in EU foreign policy*" (ibid: 17). The role of EU institutions still varies greatly in policy formation across issue areas, especially in the realm of foreign and security policy. The analysis of the institutional setting of policy formation underlines the legacy of previous rules and procedures developed towards non-member states.

3.1.3 Conclusion: Introducing Institutions to Govern Beyond – Innovation in EU's External Policy

In the following, this thesis introduces a model, which helps to classify distinct modes of international cooperation along its degree of institutionalisation. Institutionalisation in this sense is defined as patterns of behaviour along common principles (shared objectives) and norms (shared values) as well as procedural and legal constraints (Keohane 1984: 80), which constitutes the framework of interstate relationships by determining the distribution of power and setting the agenda. Thus, institutionalisation is a process of introducing common principles, norms and rules (legal dimension) as well creating common decision-making procedures in international cooperation (organisational dimension).

The organisational dimension is characterised by the following conditions (Abbot et al. 2000: 404f): 1) Frequency, e.g. the continuity and regularity of meetings; 2) Autonomy, e.g. the degree to which the institution is able to act autonomously within a previous agreed scope of action; and, 3) Competence, e.g. the degree of decision-making and the power to execute these decisions, e.g. to sanction free riders and to monitor adherence to agreed measures. Executable institutions, which are capable of executing their decisions,

are especially important in helping to increase its credibility. Each of these characteristics may be present in varying degrees along a continuum, and each can vary independently of the others.

On the other side, the extent of the legal dimension of international cooperation is determined by (ibid: 401f.): 1) Obligation, i.e. the degree to which actors are bound by a rule or a set of rules (legally binding and enforceable); 2) Precision, e.g. the degree to which rules define the respective conduct they require or authorise; and 3) Delegation, e.g. the delegation of the authority to implement, interpret and apply the rules to a third party.

According to the classification of Abbott/ Keohane/ Moravcsik/ Slaughter/ Snidal (2000) the extent of institutionalisation can be defined by procedural and legal constraints, which are: 1) Mandate to act, which means the authority or competence to decide on legally binding agreements and to execute and enforce them respectively (e.g. imposition of sanctions); and, 2) Procedures of decision-making, which defines legal constraints and the kind of actors (e.g. state officials or technical expert); and, 3) Frequency of meetings and consultations (bilateral interaction) (e.g. ibid: 401f).

Based on the theory-led classification, the study makes the core distinction between hierarchical versus non-hierarchical policy coordination, which means that, apart from traditional foreign policy in the tradition of tit-for-tat, several non-hierarchical modes and strategies find one's way into the EU's external policy coordination to solve collective problems. These modes range from policy-emulation over informal agreements to binding interstate law. Cooperation, therefore, might be ad-hoc or rather formalised by a set of institutional conventions.

The EU's external policy is seen as a strategy to coordinate and control interdependent policy areas, as well as to secure and stabilise the neighbourhood. The modes and instruments may vary along two main logics: according to the literature on external governance of the EU, one distinction can be made for 1) 'Governance by conditionality' (Schimmelfennig/ Sedelmeier 2004; Cremona/ Hillion 2006; Kelley 2006 and with reference to ENP: Magen 2006), – according to 'rational institutionalism' (March/ Olsen 1989). The 'governance by conditionality' or 'external incentive model' (Schimmelfennig/ Sedelmeier 2004: 663f.) interprets Europeanisation as an emerging political opportunity structure which offers some actors, behaving according to a 'logic of consequences' (March/Olsen 1989), some additional resources to exert influence in the domestic domain. The second distinction is for 2) 'Policy networks' (Lavenex 2008) – regarding 'sociological

The first mode, called 'governance by conditionality', is characterised by hierarchical top-down command, which refers to the control and steering of cooperation by a hegemonic power. Adapting this distinction to the present context, we talk about a hierarchical mode of external governance when:

*"the role of European (i.e. supranational) law is strong, the conduct of a non-member state is bound by the predetermined obligations of the *acquis communautaire* and when there is an independent judicial review of the conduct of the non-member state"* (Lavenex/ Lehmkuhl/ Wichmann 2009: 3).

With respect to the institutional framework, hierarchic conditionality is characterised by a profound asymmetry between the 'rulers' and the 'ruled' as well as by formal and centralised macro-institutions with dense interactions and little room for third countries to negotiate on their commitments. The EU sets its rules as conditions that the recipients have to fulfil in order to receive rewards. EU external policy in general is described as positive conditionality, which means that it uses carrots rather than sticks to stimulate reforms in associated countries.

Apart from ad-hoc cooperation – based on a clear rational logic – several policy networks have been installed to facilitate cooperation on a widespread area of issues. These policy networks facilitate the exchange of information and provide a framework for coordinating intertwined national policies.

Lavenex et al. (2009) name this form of cooperation as 'Network governance'. It can be defined as transgovernmental co-ordination and co-operation, negotiated in decentralised settings between different governmental and technical bodies (e.g. Schimmelfennig/ Sedelmeier 2004: 683). Network governance presumes: 1) Apparent symmetry in the partnership, despite the existence of "*shadow of hierarchy*" (Héritier/ Lehmkuhl 2008); 2) Voluntarism; and, 3) Common interests and common procedures.

According to the theory of Europeanisation, non-hierarchical cooperation relies on the processes of social learning and lesson drawing in order to agree on common policy objectives. The extent of social learning is a result of accumulated experience by intense interaction with each other, which has its best effect through an institutionalised interaction (e.g. March/Olsen 1989: 13; Schimmelfennig 2007: 6; Rittberger/ Zangl 2005: 40, 46). The lesson-drawing model, in contrast, does not assume that a third country has internalised EU norms and rules, but acknowledges its ability to create efficient policy regulation. Hence, if a government of a third country believes in the problem-solving efficiency of EU

legislation, it will adopt or imitate the set of rules because of the expected benefits (e.g. Meloni 2007: 31; Young 2001: 359).

Thus, next to the hard law nature of hierarchic conditionality and its asymmetric relation between the partners in cooperation, the other three modes are less hierarchic and include a multiplicity of soft law instruments. The three modes are understood as policy networks with particular specification; these are: 1) Cooperation in the way of 'Dialogue' within information networks (diffusion of policy-relevant knowledge, best practices and ideas, sensitivity to international challenges); 2) 'Consultancy' or 'Assistance', meaning financial and technical assistance within implementation networks, which refers to the voluntary and unilateral adoption of measures observed in other jurisdictions without an explicit agreement between different jurisdictions (cooperation among national bureaucrats and technical experts); and, 3) 'Regime', standing for regulatory networks (formulation of common rules and standards in a given policy area) (e.g. Slaughter 2005: 52f.). 'Regime' is defined, according to Stephen D. Krasner (1983), as "*institutions possessing norms, decision rules, and procedures which facilitate a convergence of expectations*" (Krasner 1983 cited in Slaughter 2005: 52).

The second mode, 'Information exchange', describes a form of cooperation based on the exchange of information, as e.g. knowledge and best practice experience. It is characterised by a relative weakness of formal relationships, meaning a low degree of institutionalisation and legalisation, as there is no overarching legal commitment to cooperation, and approximation to the *acquis* is not the point of reference. Both partners are on par in this dialogue mode, even if there is an asymmetry between the EU and a third country in terms of bargaining power. Rather than being governed by a centralised macro-institutional structure and joint institutions, interaction occurs more ad-hoc and on a decentralised basis, e.g. within policy fields. The policy dialogue can be used to convince others to agree with ones' own ideas in policy regulation and occur due to social learning or model drawing, which are used both as a vehicle for fostering norm adoption and compliance, and to enhance the level of policy implementation (e.g. Wichmann 2008: 8).

In contrast to the first two modes, the following two modes are of a higher formal structure. Thirdly, 'Implementation networks' are a form of assistance of partner countries in coming up with policy solutions in order to tackle problems. Therefore, the *acquis* is the reference in the cooperation, and is seen as legitimate and useful in increasing the efficiency and problem solving capacities of internal policies (e.g. Lavenex 2004: 680). The partner country provides technical and financial assistance along its own agenda and with the aim to align others to its own legislation.

The fourth and concluding mode, 'Regime', is based on common regulatory bodies with highly advanced competences to negotiate on rules and procedures in respective policy areas. In contrary to networks of information exchange and implementation, here the regulatory networks act in a highly formal and symmetrical relationship with common rules, procedures, institutions, and decisions. This implies that, despite a dominance of the EU's agenda, third countries have to agree with the selection of topics of cooperation and can bring in their own priorities. The coordination of interdependence in network-type interactions requires a certain degree of institutionalisation and the existence of central coordination structures goes hand-in-hand with decentralised units of interaction; while ties can be formal and informal. The basis for interaction in networks is international law and voluntary agreements, and the norms used are inspired by the *acquis* but not precisely pre-determined. This goes along with a shared political rather than judicial monitoring of the implementation of agreed commitments (e.g. Lavenex/ Lehmkuhl/ Wichmann 2009: 4).

3.2 Why Institutions Evolve in EU's External Relations

Given the modes of international cooperation, this thesis questions the preconditions that bring states into agreement on institutions and determine the applicable mode of international cooperation. However, the following questions remains: why should a third country accept the procedural and legal constraints that are demanded by the EU? Is the rising institutionalisation of bilateral and multilateral cooperation a reaction to the increasing challenges caused by a globalising world? The European continent especially faced major changes in the wake of the breakdown of the Soviet Union and Yugoslavia. We might assume that agreement upon common procedures and legal constraints, which tackle transnational policy issues, is undertaken to overcome an actor's incapacity to overcome these issues efficiently by itself.

To find a reasonable answer to these questions, we must, first and foremost, elaborate on the determinants that are responsible for states' likelihood to institutionalise cooperation – and accept procedural constraints and legal obligations – between themselves and other states. In the following section, a short review of three strands will be given to depict the main components of international negotiations. More specifically, this thesis provides a starting point for an exploration of the factors that impact the negotiation setting, the issues and actors involved, and the structures and modes that characterise international negotiations. It settles on three basic aspects: bargaining power, interest and objectives (preferences), as well as the structure. In the following, these three aspects are clarified

by an elaborate theoretical and analytical framework, which takes into account rational as well as normative aspects.

3.2.1 *International Cooperation in a Triangle of distinct IR Theories*

The paper refers to three main theoretical approaches employed within the study of IR. According to them the willingness of countries depends on their aim 1) to maximise their individual power and to succeed in their rational self interest (realism) (e.g. Waltz 1979: 79-101); 2) to improve cooperation for mutual benefit by reducing transactional costs and uncertainty (neoliberal-institutionalism) (e.g. Keohane 1984, 1989; Rittberger 1990; Zürn 1992); and, 3) to act jointly on common problem-solving on the basis of shared objectives, norms and principles (constructivism) (e.g. Rittberger/ Zangl 2005: 45). Within the realm of international relations, diplomatic negotiation is central to the functioning of the system of nation-states. Within the realm of international relations, political dialogue is central to the functioning of the system of nation-states. A political dialogue facilitates interaction and helps to clarify issues of mutual interest. Additionally, increasing correlations among states have caused augmented interdependence, implying an increase in the vulnerability of states because of negative externalities. As a result, in order to prevent negative externalities and secure their own prosperity and security, states have an interest in cooperating with one another in the harmonisation of policy regulation. Additionally, intense cooperation has an enormous potential to generate beneficial outcomes for all parties.

International negotiations cannot be explained simply by measuring an absolute beneficial outcome. International negotiations are not always about mutual interests or mutual benefits. In international negotiations, Realist theories see win-lose (zero-sum) outcomes, with recognition of clear winners and losers. But, as stated in the book of Starkey, Boyer and Wilkenfeld (2005):

“Negotiation in the real world is, of course, far more complicated. Collaborative approaches to negotiation are based on the assumption that it is possible to achieve win-win (non-zero-sum) outcomes, where the result is at last minimally acceptable to all involved” (ibid: 6).

Raiffa (1982) support this statement and notes, *“it is no longer true that if one party gets more, the other necessarily has to get less: they can both get more. They can cooperate in order to change the pie that they eventually will have to divide”* (ibid: 131).

An outcome must be considered in relation to the respective setting of each negotiation. Distinct conditions, therefore, determine the possible outcomes and give insights into the

structure and modes of international cooperation. One major factor is the objective of negotiations: is the negotiation aimed towards generating mutual beneficial outcomes through the use of common policy regulation, or is it about preventing negative externalities that could potentially result from these common policy regulations? Both can embody interests in common or specific to one actor and thus imply that the setting of cooperation differs.

As already pointed out, every negotiation is about specific interests. Interests either emerge from rational cost-benefit calculation, their origin in the structure of cooperation and/or constructivist value based considerations. These three distinct approaches correlate with three dominant theories for international negotiations: Neo-Realism, Neoliberal-Institutionalism and Constructivism. These theories vary according to their assumptions about the decision-making processes of actors within the scope of international relations. Through the lenses of Neo-Realism and Neoliberal-Institutionalism, actor's preferences are seen as a consequence of the attempt to gain the maximum outcome for themselves. The Constructivist or Idealist Theory on the contrary is lead by the norms of the actors, who determine which preferences are appropriate to the current negotiation. The thesis argues that there cannot be an exclusive use of theories. The phenomenon of international cooperation can only be explained by using an overlapping approach. The following section gives insights into the three major theories of international relations and highlights their contribution to explain international cooperation.

First, in the tradition of 'realist' theories, the question of power is an all-embracing one. Their approach sees states' relations within the international system as anarchic, where every state tries to be more powerful than the others in order to succeed in the fulfilment of their self-interests. The only restricting factor is the exercise of power of another state. The fear that another state could exercise power and harm its interests leads to the so-called "*security dilemma*" (e.g. Mearsheimer 2001: 29-54; Waltz 1990: 29-37; Morgenthau 1963: 75f). According to this idea, every state acts rationally to increase its power in relation to the others (e.g. Waltz 1979: 79-101). This competitive relationship, in turn, makes it impossible for fruitful cooperation regardless of the fact that both states would benefit.

Hasenclever, Mayer and Rittberger (2000: 17f.) name three factors that are crucial for the willingness of states to cooperate with each other: 1) Historic relations between states and experience with former cooperation; 2) Perception of power relations; and, 3) Allocation of possible cost and benefits in order to gain or lose power in relation to other actors. This implies that, even if cooperation among states would be beneficial for both, each state will

take into account whether it or the other state will profit more or less in relation to each other, which precludes cooperation in most cases (e.g. Rittberger/ Zangl 2005: 37). In the perception of the realist literature, even international organisations and institutions are not able to solve the dilemma. One argument is that, as states don't trust each other and seek self-protection, cooperation regimes only exist when they are introduced by a hegemonic actor, who expects a higher benefit and the security of its supremacy. If this hegemony loses its power position, the cooperation regime becomes weakened or suspended (e.g. Rittberger/ Zangl 2005: 319).

'Neo-realist' theories attest that organisations and institutions are successful and effective only if a powerful state is the initiating force behind their foundation. This kind of hegemonic power is willing to bear the foundation costs because this hegemony expects to gain higher benefits through a more effective cooperation regime (e.g. Rittberger/ Zangl 2005: 36). Of crucial importance behind effective institutionalised regimes are the power resources of this hegemony, which determine asymmetric power relations between it and other states. These power resources empower them to bring other states to accept the norms and rules of the initiated cooperation regime (e.g. Rittberger 2000: 201f.; Keohane 1980). The modes to be used are 'coercion' (threats of sanctions) and 'positive conditionality' (stimulation by offering incentives).

'Neoliberal-Institutionalism' (e.g. Keohane 1984, 1989; Rittberger 1990; Zürn 1992) agrees somewhat with the realist assumption about international relations. They overlap on the conclusion that the international system is marked by anarchy and that actors act only rationally and make their decisions in order to fulfil their self-interest at first (e.g. Rittberger/ Zangl 2005: 38). The two theories, however, disagree on the role of institutions. Realists see institutions as an instrument for powerful states to succeed in their interests in a more effective way. In the contrary, neoliberal-institutionalism states that cooperation regimes can also be welcomed by the majority of states; as such regimes are seen, at the very least, as more beneficial than no cooperation at all.

Neoliberal-institutionalism considers that the increasing number of cooperation regimes results in a reaction to the rise of linkages and interconnectedness between states within a globalised international system (e.g. Keohane/ Nye 1989, 2000; Kohler-Koch 1990). These linkages lead to an increase in interdependence on and externalities of distinct policy regulation between states. States become more and more sensitive and vulnerable to externalities from policy regulations in other states (e.g. Rittberger/ Zangl 2005: 39). Countries stay abreast of these changes and build cooperation regimes on several policy issues as they cannot secure their interests on their own any more. Cooperation regimes

help them to agree on common norms and rules within the regulation of policies on the basis of mutual interest (e.g. *ibid*: 41).

In contrary to the realist position, neoliberal-institutionalists state that those cooperation regimes do not need a hegemonic power that initiates and dominates the negotiations. It is assumed that states agree on cooperation regimes with self-enforcing power by norms and rules to regulate transnational policy issues. Compared to realists – who consider a powerful state as a necessity of the effectiveness and stability of international cooperation regimes – neoliberal-institutionalists see autonomy of cooperation regimes, on the basis of a mutual agreement, as possible.

Hence, states agree to institutionalise their cooperation, even at a loss of their sovereignty, by committing themselves to common norms, rules and procedures, if they believe in its ability to tackle collective action problems and guarantee the fulfilment of internal policy goals by partner countries. In order to facilitate negotiation and to make their commitments more credible, states delegate extensive agenda setting, monitoring and enforcement powers to bilateral policy networks. This fact is particularly relevant for collective actors such as governments whose leadership changes over time (e.g. Keohane 1984: 110). Thus, they accept a common set of norms and rules (e.g. *ibid*: 80), which constitutes the framework of interstate relationships by determining the distribution of power and setting the agenda. States accept a loss of their sovereignty and commit themselves on the common norms and rules within the regime due to the belief in beneficial outcomes of the accepted cooperation regime. Apart from that, negotiations on policy regulation cause high transaction costs, which can be reduced by formalised procedures within fixed institutional setting, which provide an arena for negotiation on the basis on agreed norms and rules (e.g. Rittberger/ Zangl 2005: 42f). Transaction costs are an indicator for costs, which arise *ex ante* and *ex post* of cooperation. Therefore, institutions are one way to reduce these costs, as ongoing interaction avoids the costs of information search, organisational expenditure, negotiation rounds, policing and enforcement costs, control measures and so on (e.g. Deutsch 1957; Dahlman 1979).

Institutions provide an effective framework when they are able to contribute to the implementation of agreements as well as to sanction a member state which steps out of line or starts to free-ride. However, also without a powerful tool to sanction 'free-riders', states will take into account that, if they violate common agreements, they will damage their reputation. Further attempts to cooperate with other states will be harmed by former 'free-ridings'. Therefore, Rittberger and Zangl (2005) assume that states obey common agreements, even if an agreement is in opposition to their interest, as they see a benefit of

cooperation in the long-term. Furthermore, it plays a crucial role, whether states trust each other or not. The reliance and credibility of states result from their historical relationships and cooperation. They call this fact the “*shadow of future*” (ibid: 41), which keeps members in line.

As reliance and credibility would increase through a strong institutionalised cooperation, a lack of them can also serve as motivation to agree on an institutionalisation as uncertainty in cooperation would be constrained by fixed procedures. In the case of a lack of credibility, actors might be more willing to accept institutional procedures, when the commitments are quite low. As a good starting point, actors could agree to install institutionalised information exchanges and allow for extensive interaction without any commitment. Uncertainty about actions of other states causes them to initiate cooperation in a long-term manner and to form institutions to fix the norms and rules of how to regulate policies. Distinguishing between egoistic self-interest and conceptions of self-interest in which empathy plays a role,

“actors that interpret their interests as empathetically interdependent, in our terminology, may find it easier to form international regimes than those whose definitions of self-interest are more constricted” (Keohane 1984: 13).

As mentioned previously, capable institution is important to increasing credibility. Thus, states will be pushed to extend their cooperation from one policy area into others, even if they are not convinced of its effectiveness or are merely allowing the extension because policy issues are linked to each other. This implies that these states have to regulate interdependent policy issues. This ‘spill-over’ of common policy regulation is caused by the credibility, socialisation and internalisation of common norms and rules as well as an increase in knowledge regarding the interests of the other members (e.g. Rittberger/ Zangl 2005: 40).

According to Elinor Ostrom (1990), the central question of cooperation is: “*how a group of principals who are in an interdependent situation can organize and govern themselves to obtain continuing joint benefits when all face temptations to free-ride, shirk, or otherwise act opportunistically*” (Ostrom 1990).

Thus, the cause of cooperation is not always because conflicts of interests between states force them to find a peaceful solution. Nevertheless, it makes a difference for the foundation and stability of cooperation regimes, if interests are divergent or mutual (e.g. Hasenclever/ Mayer/ Rittberger 1997: 44f; Rittberger/ Zangl 2005: 42). Other determinants of cooperation regimes are issue salience, power asymmetry and reliance on other states.

Whereas Neo-Realism and Neo-Institutionalism see 'Rational Choice' as the basis of decisions within international relations, social-constructivism is in opposition to these rational approaches. Social-Constructivism stands in the tradition of idealist theories and highlights, holding that decisions have a social component and do not necessarily follow rational arguments. In their concept of international negotiations, actors are influenced in their decision-making by cognitive maps, which define the normative frame that actors refer to when they come to a decision (e.g. Rittberger/ Zangl 2005: 45). Thus, decisions are made along the "*logic of appropriateness*" (March/ Ohlsen 1989).

Cognitive maps determine norms and expectations and therefore determine how actors decide and act. Cognitive maps are not fixed, but build on the strength of past experience. They can change over time, which implicates the possibility of social learning. Thus, actor's relations are reflexive ones (e.g. Rittberger/ Zangl 2005: 47). This effect has the strongest impact within institutions, as they determine strong relations. Institutions build on common values and objectives upon which the members agree. Through intense communications and informational exchange, social learning results in and impacts the formation of cognitive maps. Thus, institutions also help to stabilise and harmonise values and norms. These will lead to common beliefs and expectation, which probably result in common decisions. Furthermore, actors develop trustful relationships, as they get to know others' belief systems and interests.

The more intensely the actors interact, the higher the effects of Socialisation will be. Thus, socialisation effects are strongest between 'epistemic communities'¹³ and 'advocacy networks'. Both are marked by continuous and intense interaction within international or transnational committees or bureaucracies. Whereas epistemic communities have common 'causal beliefs', actors within advocacy networks share 'principled beliefs' (e.g. Rittberger/ Zangl 2005: 46). Both are organised in networks of knowledge-based experts who help decision-makers to define the problems they face, identify various policy solutions and assess policy outcomes.

Institutions are not always found on the basis of common value and interest. More powerful states are able to initiate institutions and determine their norms and rules. Common institutions are made to cooperate on policy issues such as: free trade, human rights, environment, transport, and so on. These institutions are founded upon essential norms and rules. If a member violates these norms and rules, the international community

¹³ Peter Haas defines an epistemic community as "*a network of professionals with recognised expertise and competence in a particular domain and an authoritative claim to policy relevant knowledge within that domain or issue-area*" (Haas 1992: 3)

will sanction their ignorance. The standing of this state will suffer from this official denunciation.

To summarise the main findings, every theoretical approach highlights a different view of negotiation processes within the international arena. While Neo-Realism stresses the importance of power and how power relations affect the interests of states, it faces explanatory shortcomings by revealing the basic phenomenon of bargaining complexity in interdependent relations. Neo-Institutionalism, on the contrary, highlights the role of institutions in negotiations as an influencing factor on the decision-making of actors. Both agree that rational arguments are the basis for decisions but disagree on the role of institutions. Social-Constructivism emphasises the social and idealist nature of actors. Every actor comes to a decision following his cognitive map about norms and objectives. If the norms and objectives are shared, actors would be in favour of institutionalising their interaction in order to succeed in its shared objectives.

This thesis argues that continuous cooperation between actors within an institutionalised framework makes it easier to identify these needed collective interests through information exchange and knowledge transfer as well as normative socialisation effects (Sjöstedt/ Spector/ Zartmann 1994: 14). Actors learn more about the preferences and values of other partners on the negotiation table: with continuous interaction they are able to persuade each other through arguments and new information, which results in consensual knowledge about issues (Sjöstedt/ Spector/ Zartmann 1994: 16). Long-term relationships increase the credibility and confidence of actors, which leads to more integrative, cooperative problem-solving than that created through competitive actions. Besides, agreements on common norms, rules and values within an institutionalised framework for negotiations guarantee a stable relationship, as preferences stay more or less stable, even as representatives or political elites of a state changes (e.g. by democratic national elections).

Institutions, in general, aim to reduce uncertainties in cooperation between states and to secure the exchange of information to gain the best possible outcome for all members. The individual objectives of participating states in agreeing on institutions as a basis for their cooperation are to: 1) Reduce transaction costs 2) Succeed in their self interest as much as possible, including, among others, the increase of individual power and influence; 3) Minimise security risks and costs from externalities of interdependence; 4) Spread their own norms and principles to other countries; and, 5) Secure the commitment of contractual partners so as to provide effective sanctions in case of free-riders.

3.2.2 *Cooperation in Interdependent Relations*

A changed world order brings new challenges for the EU, but also introduces new opportunities. The globalisation processes gained a new dynamic, tightened the interdependencies between states and created fuzzy borders (e.g. Christiansen et. al 2000), as the flow between the EU and the new independent countries in Central and Eastern Europe increased. This internationalisation of societies and markets resulted, on the one hand, in challenges as countries became more vulnerable to external developments, as e.g. organised transnational crime, irregular migration, trafficking of goods and human beings, etc. On the other hand, it opened up opportunities for the EU to take control of its dependencies on these countries.

As countries become more vulnerable and sensitive towards developments in their neighbourhood, domestic policies become shaped by policy regulations taking place in other states. Thus, the linkage between domestic and foreign policies moved closer. As a result, countries strengthened their cooperation and coordination with each other in sensitive policy areas. According to this, interdependence is both the condition of possible cooperation, as well as the cause of cooperation (e.g. Spindler 2003: 103).

These interdependent relations between states have distinct characters and provide different possibilities to make use of opportunities and to prevent or control threats. In this section, the concept of interdependence and its significance to determining cooperation between the EU and neighbouring countries will be explained. First of all, it is necessary to narrow the concept of interdependence and to strengthen its explanatory power by developing a coherent theoretical framework for the political analysis of interdependence. Following that, this paper discusses the linkage between interdependence and bargaining power, and how this might affect the choice of modes of cooperation between the EU and its neighbouring countries.

The concept of interdependence, most simply defined, means the mutual dependency of states or actors. Thus a country or an actor is determined or significantly affected by external forces. Keohane and Nye defined interdependency as follows: "*Interdependence in world politics refers to situations characterised by reciprocal effects among countries or among actors in different countries*" (Keohane/Nye 1977:8). To get a clearer focus of what interdependence is about; it is helpful to distinguish it from processes of interconnectedness. Whereas interconnectedness mainly is a precondition of interdependence, a clear distinction can be made concerning the costs of interstate relations. Whereas interconnectedness refers to the volume or frequency of exchange and

flows of goods and services and interaction between states; interdependence refers to the “*reciprocal costly effects of transactions*” (Keohane/ Nye 1977: 8). The extent of these costly effects determines the structure of interstate interactions, and affects bargaining power and the kind of cooperation and regulatory coordination of interdependent policies.

Interdependency can be a sign of strength or weakness with regards to the power position of a state. Empirical research on interdependence is possible when mutual dependency in different policy areas is analysed and reciprocal effects of domestic, transnational and intergovernmental processes are taken into account (e.g. Kohler-Koch 1994: 224). First of all, we must evaluate how politics of a state are affected by external events. The main questions are: how quickly do changes in one country bring costly changes in another, and how great are the costs of these effects? To lay the groundwork for this analysis, in a first step we must make a distinction between ‘sensitivity’ and ‘vulnerability’ of a state vis-à-vis external impacts and relates them to the concept of power.

In terms of the costs of dependency, vulnerability can be defined as an “*actor’s liability to suffer costs imposed by external events even after policies have been altered*” (Keohane/ Nye 1977: 13). ‘Vulnerability dependence’ therefore can be measured by calculating the costs of making effective adjustments to a changed environment over a period of time (e.g. *ibid.*: 13). Accordingly, the vulnerability dimension of interdependence rests on the relative availability and costliness of the alternatives that various actors face. This depends on a state’s ability to adjust national policies to deal with change and reduce the costs of disruption, such as readmission agreements in case of irregular migration, and on its ability strengthen cooperation in case of transnational organised crime and regulatory coordination in policies like aviation, environment, transport, trade.

By contrast, sensitivity distinguishes an:

“[...] actor’s liability to costly effects imposed from outside before policies are altered to change the situation [...] Sensitivity assumes that the framework remains unchanged. The fact that a set of policies remains constant may reflect the difficulty in formulating new policies within a short time, or it may reflect a commitment to a certain pattern of domestic and international rules” (Keohane/ Nye 1977: 12).

Sensitivity to external events provide the basis for significant political influence only when the rules and norms in effect can be taken for granted, or when it would be prohibitively costly for unsatisfied states to change their policies quickly e.g. increasing oil prices, developments of foreign stock exchanges, ecological pollution, climate change, etc.

“The reality of globalization, and especially the current international financial crisis, is drastically challenging the existing system of world order, let alone the classical priorities of the so-called ‘Realpolitik’. [...] Although the principles of sovereignty and territorial integrity still continue to be corner stones in shaping international relations, they can no longer provide a nation’s security and independence, even more so its economic security” (Smorodinskaya 2009: 1).

The two dimensions, vulnerability and sensitivity, are both important characteristics of interdependence and determine power in international relations. If external developments or events put an actor in a disadvantageous position, that actor will probably try to change its position, if it can do so at a reasonable cost or transfer the cost to another actor. Interdependent relations constrain states’ autonomy and force them to react on externalities of other states. Whether a state is able to react to changes in favour of its interest depends on its individual power position.

A state’s uncertainty about the actions of other state causes them to initiate cooperation in a long-term manner and to form institutions to fix the norms and rules how to regulate policies. Distinguishing between egoistic self-interest and conceptions of self-interest in which empathy plays a role, *“actors that interpret their interests as empathetically interdependent, in our terminology, may find it easier to form international regimes than those whose definitions of self-interest are more constricted”* (Keohane 1984: 13).

Although the EU is the more powerful actor in its relations with most neighbouring countries, it is not able to translate this power into power over outcomes in interdependent relations.

“Interdependence creates a discrepancy between distribution of power and creating of outcomes in concrete negotiations” (Keohane/ Nye 1977: 29).

“One of the most important reasons for this is that the commitment of a weaker state may be much greater than that of its stronger partner. The more dependent actor may be (or appear to be) more willing to suffer” (Keohane/ Nye 1977: 18).

Accordingly, interdependence is both: *“the condition of the possible cooperation as well as the cause of cooperation”* (Spindler 2003: 103; see also Lavenex 2004: 685). Apart from this, competitive interdependencies in economic terms are seen as a further argument for trade cooperation, as it regulates the exchange of complementary trade products (e.g. raw materials as oils compare to high technology). The reason for cooperation, therefore is, that the expected benefits of cooperating with other countries are higher, while self-help often leads to suboptimal policy outcomes. Interstate cooperation within common institutions helps to create *“political and material problem-solving resources”* (Lavenex

2004: 694). Whereas the EU is vulnerable to externalities from state action of neighbours, it is willing to bear the costs of creating institutions to ensure stable and consistent arenas for cooperation and coordination. In return, the EU uses these institutions to control the outcomes of its neighbouring countries and to increase its influence by extending EU norms, principles and rules.

Theoretical approaches of IR theories bring into focus the conditions for cooperation and account for the function of power in interstate relations. To come up with current globalisation processes, the concept of interdependence will be added to the traditional theoretical approaches to give a more elaborated picture of reality in international relations. One major argument for cooperation is the interdependence between actors, which affects policy regulation among one another. Within the realm of the changed international environment, countries' internal policies became more and more vulnerable and sensitive to developments and externalities of policy regulation in other states.

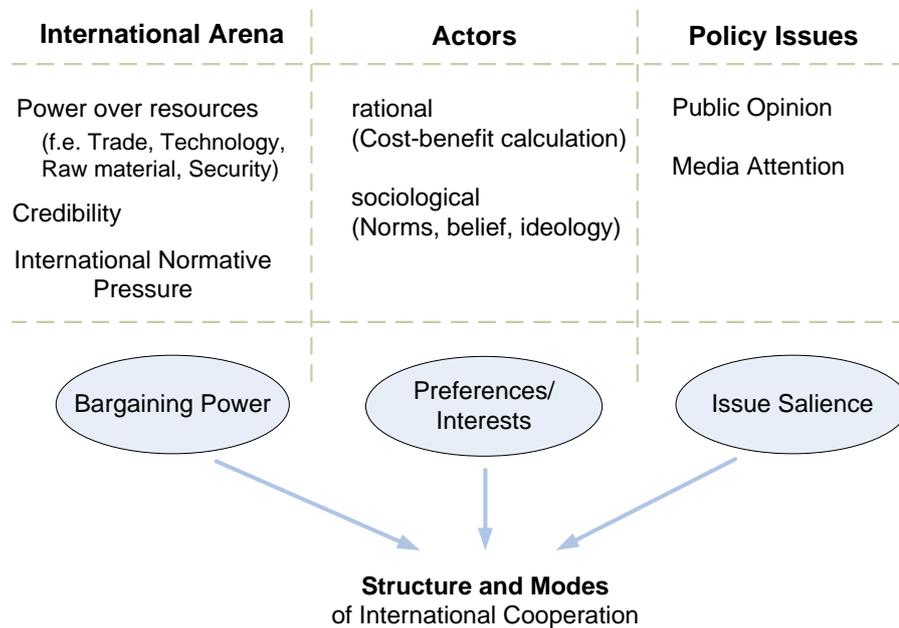
This thesis theoretically looks at how states act and decide within international negotiation processes. IR theories draw an initial picture of the complexity and characteristics of decision-making in international relations. Theoretical approaches of these IR theories bring into focus the conditions for cooperation and account for the function of power in interstate relations. To account for current globalisation processes, the concept of interdependence will be added to the traditional theoretical approaches to give a more elaborated picture of reality in international relations. The perception of interdependence explains why states decide to engage in external action. The expected benefits of cooperating with other countries in interdependent policy areas are higher, while self-help is supposed to lead to suboptimal policy outcomes. Interdependence is the driving force behind the EU's rule extension in its near abroad (e.g. Lavenex 2004: 685) and the "*nature and degree of a state's initial commitment to an alliance*" (Smith 2005: 6). The theoretical findings help figure out an analytical framework for grasping the negotiation settings and its characteristics and conditions. However, the theoretical arguments, which postulate the interdependence of actors in IR, explain why the EU attempts to extend its norms and standards to third countries, and hence facilitate interaction and coordination of policy issues.

3.3 Settings of International Cooperation: Clarification of Contextual Conditions in International Cooperation

In the following, this section identifies the prerogatives to introduce common institutions to govern transnational policy issues and how they drive the institutionalisation process in external policy. There are hardly any attempts to specify systematically the conditions under which particular modes of policy-coordination are likely to be employed by the EU operating in its neighbourhood. Hasenclever, Mayer and Rittberger (2000: 17f.) name three factors as crucial for the willingness of states to cooperate with each other: 1) perception of power relations, which we define as the bargaining power in interstate negotiations; 2) Historic relations between states and experience with former cooperation, which determine the extent of credibility of announced threats and rewards; and, 3) expectations and allocation of possible cost and benefits in order to gain or lose power in relation to other cooperation partners (cost-benefit calculation). Besides these three criteria from Hasenclever, Mayer and Rittberger, the paper suggests to add two more conditions which determine the creation of common institutions: 4) Individual salience of the respective policy issue (extent of politicisation); and, 5) insistence on norms and principles to agree on common policy regulation stressed by the international community (international normative pressure).

Understanding these characteristics and how they intertwine to affect the structure and modes of cooperation is of crucial interest to the current analysis. All five conditions in themselves determine, to some extent, whether states cooperate or not and whether they decide to deepen their cooperation by common institutions. Of decisive importance is the impact of all conditions together. Thus, the study builds on the assumption that the extent of the institutionalisation of cooperation depends on the strength and weakness of the influences of the individual conditions. Depending on which conditions are more influential, cooperation will be more or less institutionalised. Subsequent sections look in more detail at each of these elements.

Figure 9. Contextual Factors in International Cooperation and Negotiations



In each distinct negotiation setting, actors have different space for manoeuvres in negotiations because of internal and external opportunities and constraints (Sjöstedt/ Spector/ Zartmann 1994: 13). Accordingly, cooperation on distinct issues will result in different natures of institutionalisation depending on individual bargaining power, congruence of actors' interests, and on the salience of the respective issue. In the following, these determinants will be related to the supposed mode of cooperation in order to scrutinise their correlation to each other.

First, on the macro-level, 'bargaining power' in state-to-state relation is seen as a crucial condition to explaining their relationship at all. Bargaining power of a state is determined by its power resources. However, a high power position does not automatically mean the usage of negative sanctions (negative conditionality), if a state does not agree. The possession of power also allows a state to use incentives to stimulate the willingness of another state (positive conditionality).

Second, apart from the bargaining power of an actor, the expected costs and benefits are another crucial factor in the willingness of a country to agree on rule alignment. If the threatened sanctions are higher than the benefit of non-alignment or, to state it the other way round, if the announced reward for an alignment exceed the costs, "*a State adopts the European rules if the expected benefits of EU's rewards are higher than the costs*"

(Schimmelfennig 2003: 297). Thus, the higher the expected benefit of an alignment, the more likely is EU rule transfer to succeed (e.g. Schimmelfennig/ Sedelmeier 2004: 663f.).

Third, in addition to the size of expected rewards and adoption costs, Schimmelfennig and Sedelmeier (2004) note the “*determinacy of conditions*” and the “*credibility of threats and promises*” as important sets of factors (ibid.: 672). Credibility alone is linked to the consistency of the allocation of rewards and of actions demonstrated by the EU’s external policy. Thus, it plays a crucial role in cases of rule transfer by the conditionality approach, whereas the credibility of the EU rewards doesn’t play a role in the lesson-drawing scheme (e.g. Meloni 2007: 32).

Fourth, according to domestic conditions, public debates play a decisive role in the decision-making process. State officials have to consider public interests as they are in the focus of the media and broad public debates. As a result, for issues that are high politicised by public debates, it is much more complicated for officials to come to an agreement in international negotiations as the public will be aware of the result (e.g. Starkey/ Boyer/ Wilkenfeld 2005: 72). Thus, the political costs for the government to run unpopular reforms increases. Especially in democratic political systems, officials require the electorates’ explicit endorsement in case of high issue salience.

“Public sentiments about policy priorities have been an important factor in moving problems once relegated to various bureaucracies to centre stage in international negotiations [...]” (ibid: 89).

In the course of a globalising world, issues on the international arena increase and become more and more salient to states. The higher the salience of these issues, the less is the scope of actions for state officials in negotiations. It follows that negotiations on highly salient issues come increasingly into conflict, with less room for compromises. The complexity is not only caused by intense public debates and strong stakeholders interests; policy regulation might have an effect on other policies and therefore, low salient issues can affect highly salient ones – as well as vice versa – and thus become salient as well.

Fifth, the adjustment pressure of other powerful actors has to be taken into account. They also intervene to secure their individual interest in this geopolitically sensible region of Eastern Europe. This may weaken or strengthen the position of the EU in negotiations with neighbouring countries. The EU has to deal with functionally-related competitors, such as the RF, US, China, NATO, United Nations, OSCE and Council of Europe (K. Smith 2005: 7). However, the EU also looks for cooperation with international organisation

and other countries as long as it supports its own interests. The normative pressure of other powerful actors in IR, therefore, has a cumulative effect on the EU's external policy.

In the following sections, this paper will go more into detail in order to scrutinise the possible impact of the highlighted conditions on the scope of action and the applied modes and instruments of the EU's external policy towards third countries.

3.3.1 *Mapping the Context of International Cooperation*

Foremost, this paper examines the macro-level setting of intergovernmental cooperation. As already discussed in the introductory section, contextual factors on the macro-level are bargaining chips, credibility of the actors, and international normative pressure. These conditions determine the scope of negotiations between states and, in the following, the structure and modes of intergovernmental cooperation. The international and regional arena, in which all negotiations take place, is characterised by distinct interdependencies and interconnectedness between various actors. The power relations among actors – the system configuration – and the relative stability of that configuration are particularly important (e.g. Starkey/ Boyer/ Wilkenfeld 2005: 31).

The process of internationalisation and globalisation of economies as well as new communication technologies changed the international system by making boundaries between states more blurry (e.g. Grant 2006). At present, crucial issues on the current global agenda require a huge effort for the broad cooperation between states. Different actors have different ideas and interests on solving the challenges created by these latest developments.

Many of these crucial issues will be tackled on the international arena, in efforts to prevent negative externalities or change unfavourable situations to one's benefit. Bargaining power, therefore, is defined as the power of states to catch their interests and objectives in international relations, or to say it with Goldmann: "*A's ability to cause B to behave in the desired way*" (Goldmann 1979:12). Hence, the success and efficiency of foreign policies depend on the relative power resources of each actor, including their economic strength, access to scarce raw materials, technological headway, and military power (Sjöstedt 1979:45). Crucial external events and changes within the international system are kept in mind.

The ability of an actor to bring another actor in line according to their own interests, according to Keohane and Nye (1977), is made up of 1) power as control over resources (Bargaining Chips), i.e. military, economic, raw material, and normative power; and; 2) power over outcomes (Structural Power), i.e. capabilities to influence political processes in

neighbouring countries (Keohane/ Nye 1977: 23f). Once this overall shape has been laid out, we will realise that determining bargaining power has become much more complex, owing to the increased importance of the credibility of contractual partners and other decisive actors in the international environment. These topics are central to the study of international negotiations, both as the focus of many contemporary negotiation dialogues and, in some cases, as situational factors influencing those dialogues. To sum up, the following four conditions are identified as the key determinants of bargaining power: 1) Bargaining Chips; 2) Institutional Power; 3) Credibility; and, 4) International Actors.

(1) 'Bargaining Chips', which derive from control over resources and used as incentives in negotiations, refer to the concept of interdependence and its impact on the power position of countries. Bargaining Chips define the incentives that an actor can offer in negotiation in order to get, in turn, whatever the actor demands. An offer on its own can differ in its value, as it depends on the subjective assessment by the respective negotiation partner. The value of an offer has, on the one hand, a rational component, which refers to an individual's cost-benefit calculation.

On the other hand, the assessment is also determined by a normative and emotional component, which refers to the credibility an actor concedes to his negotiation partner. In the case of European foreign relations with EEC, incentives are, e.g., a stake into the internal market, visa facilitation, support on military technologies, and technical and financial assistance. In return, the EU seeks rule and norm harmonisation in order to succeed in internal policy goals of creating a prosperous and secure union.

In the meaning of relative gain of power, power arises when a country is more dependent on something of value in another country. Hence, power emerges through an asymmetry of mutual dependencies. The power position of a country in international relations is determined by its specific sensitivity and vulnerability to external events, the extent to which strengthens or weakens a countries' position in bargaining processes and therefore affects the choice of instruments or mechanisms to change an unfavourable situation to one's benefit. It might be that a state is stronger in general terms, but is vulnerable in one issue, whereas the, so to say, weaker state has a better position in the bargaining process because e.g. of its monopolistic or quasi-monopolistic control of raw materials, such as oil or as a transit country for irregular migration. Therefore bargaining power is marked by vulnerability to external events in specific issues and ability for counteractions. Bargaining power is hence not constant between actors but can vary between specific policy issues.

(2) 'Institutional Power', as in power over outcomes, it is seen as the capacity of a country to carry out coercive actions in order to bring another state to behave in its strategic interest. The two dimensions are connected together, as the capacity of a state emerges from the translation of resources into power. It focuses on the organisational architecture and the procedures who lead the negotiations.

(3) 'Credibility' is another decisive condition in bilateral relations, as it determines the willingness of a state to agree with another state on e.g. the mode and structure of cooperation, and to accept political conditionality as well as strong and binding commitments. Thus, credibility consists of the trust and sympathy an actor feels towards another actor. Conditions of credibility are historic relations and current inter-connectedness between states. It is suggested measurements of these conditions can be done through an analysis of the existence or non-existence of a long-term relationship between actors, polls on public opinion, and examinations of the intensity and quality of interaction.

(4) As another condition determining bargaining power, the impact of other powerful actors has to be taken into account, not only because they could possibly provide public goods as another option to a country (opportunity structure) (Starkey/Boyer/ Wilkenfeld 2005:2). They also try to intervene to secure their individual interest in this geopolitical insecure region of Eastern Europe against or in support to EU's ambition. This may weaken or strengthen the position of the EU in negotiations with neighbouring countries. The EU has to deal with functionally-related competitors, such as the US, China, NATO, United Nations, OSCE and Council of Europe (Smith 2005:7). The EU also looks for cooperation with international organisations and other countries as it helps to fulfil its own interests and helps it use international normative pressure to succeed in its own interests.

3.3.1.1 Bargaining Power in Interdependent Relations

In this section, the concept of power and the concept of interdependence will be linked. The elaboration is based on the assumption that the extent of power affects the way the EU governs its relations to neighbouring countries, in order to prevent or reduce negative externalities. Additionally, as discussed in the previous section, interdependence between actors itself has an impact on both the power of an actor in IR, and the extent of externalities. Therefore, this section will give insights into how power and interdependence are interlinked and how they both have an effect on the choice of governance methods for the EU's rule transfer to its neighbourhood. Following this, the main questions asked will be: how to understand bargaining power by taking into account the interdependence

between actors, and how this power can be transposed into concrete instruments and mechanisms of extending EU legislation to third countries.

Power in international relation is defined as the ability of a state to get others to do something they would otherwise not do. But what are the conditions defining the possession of power? It is difficult to measure power and to determine exactly by which conditions power emerges, because the causality between an action and an impact is elusive (Keohane/ Nye 1977: 11). One explanation is that the traditional concept of power changed radically after the Second World War, and the transformation of this concept was given a new dynamic in an increasingly globalised and internationalised world. In traditional thoughts, military power dominated other forms of power. *“States with the most military power controlled world affairs”* (Keohane/ Nye 1977: 11). Nowadays, the resources of power are becoming more complex, and consist of a broad variety of conditions (ibid: 11).

“Since it is rare that all parties to a negotiation have equal power, conventional wisdom assumes that stronger actors will drive the better bargain and end up with the lion’s share; conversely, weaker actors have less clout and therefore get the shorter end of the negotiation stick. However, strength is often a matter of perception, as evidenced by the fact that power relations are among the. [...] In the increasingly complex international environment of the twenty-first century, different elements of power will come to the fore under varying circumstances” (Starkey/ Boyer/ Wilkenfeld 2005: 40f).

In IR, power can be understood as *“A’s ability to cause B to behave in the desired way”* (Goldmann 1979: 12), which means the ability to convince others to do something they otherwise would not do. This definition is restricted to an active attitude of a state. However, referring to power in a system of interdependent relations, power can result in changes in both: an active, as well as a passive, way. Thus, a conceptualisation of power has to take into account both political processes in interdependent relations and individual preferences. The starting point of a conceptualisation of power resources must be to define the possession of power. As Sjösted (1979) states it:

“The possession of power can be described as a disposition to be powerful in relation to some other actor. [...] possession of power begs the question why A is able to have power over B. The explanation is A’s power base in relation to B which is equal to ... (t)hose characteristics of A, of the relation between A and B, and of the system in which A and B are components which lead to A’s possessing power over B” (ibid: 41).

Goldman's (1979) classification of sources of power, which contains the: "*resource structure*", "*dependence structure*", and "*authority structure*" between actors (ibid.: 16), fits best to our model. First, resource structure means the extent to which traditional notions of resources and capabilities remain tenable. Power resources of a state exemplify its control over properties of public goods, economical prosperity, knowledge and technological lead and military force (e.g. Sjöstedt 1979: 45; Goldmann 1979: 16; Keohane/ Nye 1977: 23f). These sources of power function either as "Bargaining Chips" in exchange process within interstate negotiations, or are used as threats to compel a third country's approval.

Second, dependence structure identifies mutual dependencies between actors. As mutual dependencies between states are asymmetric in most cases, the state that is less dependent on another state is in a better position. Thus, the specific structure of asymmetric interdependence determines the relative gain in power and the extent of an actor's vulnerability to external events in specific issues, as well as its ability for counteractions. Interdependence always restricts autonomy and changes the context and structure of international bargaining an indirect relation resulting from resource dependency would be the stake into a state's market, cooperation on crime and environmental issues, and so on. According to this, a strategy to bind other actors to the internal policy objectives is to increase their dependencies, e.g. by an increase of economic integration.

In the meaning of relative gain of power, power arises when a country is more dependent on something of value within another country. Hence, power emerges through the asymmetry of mutual dependencies. The power position of a country in international relations is determined by its specific sensitivity and vulnerability to external events, which strengthens or weakens a countries' position in bargaining processes and therefore affects the choice of instruments or mechanisms to change an unfavourable situation.

It might be that a state is stronger in general terms, but is vulnerable in one issue, whereas the, so to say, weaker state has a better position in the bargaining process because of e.g. its monopolistic or quasi-monopolistic control of raw materials, such as oil, or its role as a transit country for irregular migration. Therefore, bargaining power is marked by vulnerability to external events in specific issues and ability for counteractions. Bargaining power is hence not constant between actors as it may vary between specific policy issues.

Major events and developments of an international magnitude that affect the bargaining power of the EU in the aftermath of the breakdown of the Soviet Union are: 1) the enlargement of the European Union in 2004 and 2007; 2) an ongoing internationalisation of national economies and of activities by business enterprises; 3) the impact of global phenomena, such as market crises and climate change, on domestic policies; 4) dependency on external oil and gas supplies; 5) international organised crime and terrorism; and, 6) increasing migratory flows into the EU. These developments in international relations mark major challenges for nation states, which make them more and more vulnerable to externalities. This changing international environment is the major impetus for states to search for close cooperation in their relationships to other states, in order to tackle externalities in crucial policy areas. This, in turn, changed the nature of foreign policy considerably.

Bargaining power, therefore, cannot be defined as equivalent to power resources. Bargaining power means the power of states to make its interests and objectives heard in IR whereas power resources determine the power relation between states. Both have become much more complex, owing to the increased importance of such factors as cross-national actors and forces, economic globalisation, and international media. These topics are central to the study of international negotiations, both as the focus of many contemporary negotiation dialogues and, in some cases, as situational factors influencing those dialogues (Starkey/ Boyer/ Wilkenfeld 2005:4).

Thirdly, authority structure conversely stands for the structure and system that frame the scope of action in interstate relations (e.g. Goldmann 1979: 16; Keohane/ Nye 1977: 23f). It is closely linked to the leadership ability of an actor, which empowers the more powerful state to force another state to accept norms and rules of their cooperation and preserve its supremacy in the long term. It follows that power can be the crucial source of cooperation as well as the determining factor in how this cooperation will be structured.

Hence, the power position of a state is also linked to the systemic condition and structure of the relationship between states. This category refers to norms and procedures that govern a relationship between states, by distributing power and determining the frame for executive action by e.g. restricting autonomy on certain policy issues. The norms and procedures can be in favour of one state and foster its power position. Three aspects determine the emergence of authority structures: (1) The state's use of its dominance in international relations to set the norms and procedures that favour its power position; (2) High leadership ability because an actor is seen as a legitimate and ideal reference model

for policy regulation; and, (3) Bundling of power because of domestic coherence and unity within an actor's community (e.g. Sjöstedt 1979: 45).

The first aspect refers to the capability of a state to form an authority structure that strengthens its dominant power position. The dominant actor is "*tempted to use its leadership position for the sake of specific, self-oriented gains*" (Keohane/ Nye 1977: 229). States try to institutionalise cooperation by setting common norms, procedures and rules (e.g. Sjöstedt 1979: 45). One of the goals of such a strategy is to integrate states by participating in common regulatory regimes and therefore controlling their outcomes. If a state dominates the creation of norms and procedures of international relations, which determine the rules of the behaviour of states, it can be called a hegemonic power (e.g. Cox 1996: 83). Keohane and Nye (1977) define hegemonic power as a situation in which one state "*is powerful enough to maintain the essential rules governing interstate relations, and is willing to do so*" (ibid.: 229).

"As a stable centre of gravity in Europe, the EU also offers highly robust institutional mechanisms to facilitate regular norm transfer and policy coordination with its neighbours, as well as the prospects for continued positive relations through iteration and reciprocity" (Smith/ Weber 2006: 5).

Another question also in this study is how a hegemonic power, such as the EU, translates its resources, both material and ideological, into rules for the system.

The second aspect refers to normative properties, such as attractiveness, ideology and legitimacy. The power position of an actor is based on implicit consent by its periphery. The countries in the periphery accept the leadership of this dominant actor as they respect its normative ideals as a goal for themselves. Especially after the breakdown of the Soviet Empire, the new independent states and their populations called for a 'return to Europe'. The majority of their populations saw their future in integration into Europe. The political elites have been well-advised to follow public interests, and the public opinion of a country remains a major criterion for how its officials act. The power of the EU in bargaining processes increased due to the support of neighbouring countries' populations for integration into the EU. The governments established their legitimation through progress in rapprochement to the EU. Hence, the EU was able to act more powerfully in relations with these governments. An effective strategy in this case is blaming or shaming of actions by the respective country representatives. Furthermore, the *authority structure* is also encouraged by the impact of international actors. Internationally approved norms have an influence on interstate negotiations and support actors, who act according to these internationally approved norms (international normative pressure).

The third aspect of 'authority structure' refers to its domestic legitimation by its community. The basis for legitimation in nation states is their electorates, and, in the case of state unions, it's their member states. The coherence within an actor's entity is crucial for its power position in international relations (Keohane/ Nye 1977: 19). As mentioned here, other actors within a state become a crucial condition for the power of a state. The more coherent the actors within a state, the more powerful these countries will be in international relations. These conditions refer to the authority structure within a state. Powerful actors within a state can be civil society, economic elites, church, military forces, and so on. In addition, the EU is a union of sovereign states, and therefore contains 27 member states that each has individual interests and power positions.

"Even though the more powerful state may be less dependent in aggregate terms, it may be more fragmented internally and its coherence reduced by conflicts of interest and difficulties of coordination within its own government" (Keohane/ Nye 1977: 19).

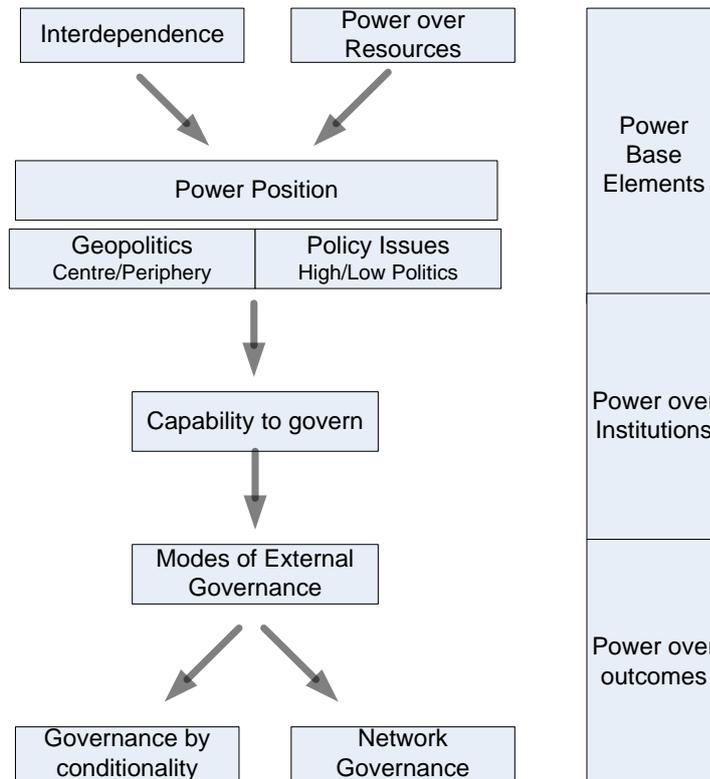
3.3.1.2 EU's Capability to Govern Beyond

After the previous elaboration on measuring bargaining power in interdependent relations, this chapter concludes by asking how an actor is able to transpose its power – such as control over resources (e.g. military, economic, raw material, normative) – into concrete actions, such as power over outcomes (e.g. Keohane/ Nye 1977: 23f). Keohane and Nye (1977) allude to the transposition of power as "[...] *power measured in terms of resources or potential may look different from power measured in terms of influence over outcomes [...]*" (ibid.: 18).

Based on the determinants of the power of a state, the study, therefore, focuses now on how a powerful actor is capable of having an assertive impact on policy regulation in a third country. Thus, the paper scrutinises the correlation between the power relation and the applied mechanisms leading to rule approximation. We have previously mentioned the use of power resources to propose rewards or coerce an actor to fulfil specific requirements according to the conditionality scheme. Furthermore, the previous section mentioned the authority structure that allows the more powerful actor to introduce certain procedures and rules of cooperation, which perpetuate its supremacy in the long term as it determines the distribution of power between actors.

The following model will sum up the previous sections, in an attempt to understand the correlation between bargaining power and the applied modes of cooperation.

Figure 10. Transposition of Power in IR



Note: Own adaption based on Goldmann (1979)

The basis for any cooperation is founded in the specific structure of interdependence and the power of an actor in terms of control over resources of the actors. These are both interlinked, and determine the bargaining power of an actor according to its specific vulnerability and sensitivity to externalities of other actors. Specific power relations at the international system level define the larger setting in which the negotiations take place and impact the options available to the actors in the negotiation.

The particular extent of interdependence determines the “*nature and degree of a state’s initial commitment to an alliance*” (Smith 2005: 6). The expected benefits of cooperating with other countries are higher, while self-help often leads to suboptimal policy outcomes. Interstate cooperation within common institutions helps to create “*political and material problem-solving resources*” (Lavenex 2004: 694). This perception of interdependence explains why the EU chooses to engage in external action and hence to bind third countries to the fulfilment of internal policy goals. Lavenex (2004) sees external threats, and from this perspective EU’s vulnerability to them, as the driving force behind EU’s initiatives for rule extension in its near abroad (e.g. *ibid.*: 685).

At the core of the processes stands the EU with its “*centripetal effect in economic terms*” (Rosencrance 1998: 18), which allows the EU to dominate over third countries. These countries are dependent to some extent on a partial integration into the EU internal market as they are less developed in economic, political and social spheres (e.g. Tirmaa-Klaar 2006: 8). As a stable centre of gravity in Europe, the EU also offers highly robust institutional mechanisms to facilitate regular norm transfers and policy coordination with its neighbours, as well as the “*prospects for continued positive relations through iteration and reciprocity*” (Smith 2005: 3).

Asymmetrical interdependencies between the EU and its neighbouring countries are an intervening condition, determining how deep the cooperation will be. The degree of a country’s dependency on the EU strengthens or weakens, inter alia, the possibility of the EU to extend its legislation. According to this statement, the mode of governance refers to the willingness of a partner country to cooperate and approximate to EU norms, principles and rules. The EU has to acknowledge common goals and to make some adjustments themselves in addition to demanding that others conform to their design. Alternatively, the EU has to be aware of other alternative centres. In its role as a centre of gravity in Europe, the EU has to deal with other actors as RF and with functionally-related competitors, such as NATO, United Nations, OSCE and Council of Europe (e.g. Smith 2005: 7). Furthermore, the EU also looks for cooperation with International organisations and other actors that help it to fulfil its own interest.

Another aspect of gaining power is the procedural power, determined by the institutionalised distribution of power in cooperation regimes. On the one hand, actors create institutions to increase the certainty of commitments and enable a reliable interaction in the long term on a variety of issues. On the other hand, institutions get initiated by hegemonic actors to preserve the status quo of relations and tighten its supremacy in the long term, as well as, legitimate future action.

The ENP and the Strategic Partnership with the RF provide a framework for such bargaining processes between the EU and its associated neighbouring countries. It provides an arena for bargaining between states on the basis of common values, principles and rules (e.g. Schimmelfennig 2007: 11). The participating countries agreed on the common set of norms, principles and rules, which constitutes the frame of interstate relationship by determining the distribution of power and setting the agenda. The institutionalisation of interstate relationships can be used to control states’ behaviour, a fact that is particular relevant for collective actors, such as governments, whose leadership changes periodically (Keohane 1984: 110). Thus, the EU has institutionalised

its relationship with neighbouring countries in order to manage their interdependencies, in the regulation of interstate relations.

Instead of examining mutually advantageous relationships, in which parties voluntarily curtail their autonomy and delegate authority to a cooperative structure, the relation of the EU to third countries is characterised by power asymmetries. The EU acts as a hegemony which tries to extend its influence into neighbouring countries through rule transfer. It sets the conditions and dominates the process of harmonisation by offering partial integration in EU structures and policies. In the sense of this subordination of third countries, it is difficult to speak about a real shift towards the "*policies of inclusion*" (Smith 2005: 8).

The EU introduced these policies to foster cooperative relations and to increase the coordination of policies and take into account mutual interests. But why does the EU take into account mutual interests, as it is the dominant actor in this region? Although the EU is the more powerful actor in its relations with its neighbouring countries, it is not able to translate this power in power over outcomes in interdependent relations.

"One of the most important reasons for this is that the commitment of a weaker state may be much greater than that of its stronger partner. The more dependent actor may be (or appear to be) more willing to suffer" (Keohane/ Nye 1977: 18).

The EU is willing to bear the costs of creating institutions in order to ensure stable and consistent arenas for cooperation and coordination. In return, the EU uses these institutions to control the outcomes of its neighbouring countries and to increase its influence by extending EU norms, principles and rules.

Finally, the question arises, how a powerful actor is able to carry out concrete actions in order to bring another state to behave in its strategic interest. As the EU ambassador to the US, João Vale de Almeida, stressed at a speech in Brussels in 2010, even if the EU is able to shape the agenda of its cooperation with third countries, its influence on the output and implementation of agreements is challenged in reality.¹⁴ Hence, procedural power has a limited effect on the immediate outcome, although this study argues that the effect in the long-term is undisputable, when taking into account social learning effects.

However, the capability of an actor to gain influence in policy regulation in third countries emerges from a combination of power resources and procedural power. Depending on its weight, interaction will take place through soft modes (cooperative), or hard modes (coercive). As already discussed in Chapter 2.4, we distinguish between the conditionality

¹⁴ Speech at the Garnet Ph.D. Alumni Conference on "Global Governance, Regionalism and the EU: Facing the Emergence of a Multipolar World". Brussels, 4-5 March 2010

scheme – threat of negative sanctions (e.g. diplomatic pressure as shaming, breakpoint of cooperation) or the offering of incentives as rewards for successful reforms – and policy networks (information exchange, assistance and regulatory regimes).

3.3.2 Preference Building among Actors on the Table

Whereas the previous section dealt with the macro-level context of intergovernmental cooperation, this section focuses on the micro level, highlighting the respective actors within a state. Foremost, we must clarify the distinct actors and the roles they play in intergovernmental cooperation. Of interest are their specific preferences, which can be, on the one hand, of rational origin (cost-benefit calculation) and, on the other hand, normative ideas. Besides the conditions on the macro level (bargaining power, credibility, international normative pressure, etc.), the coherence or contradiction of preferences, ideas and objectives are crucial determinants of how to institutionalise cooperation in JHA. How issues of intergovernmental cooperation are perceived by the actors on the table is, therefore, of major importance, normative considerations influence the perception of cooperation as costly or beneficial for oneself. Furthermore, cooperation can lead to packaged deals, whose beneficial rewards outweigh the costs.

This study will highlight the actors behind the decision-making process, scrutinise their role in the process, and generate a better understanding of how rational and normative considerations play out together. First of all, a classification of actors will be done. A variety of actors take part in cooperation on different levels. Therefore, any examination has to take into account all relevant actors. A first major distinction can be drawn between officials and non-governmental actors, which means actors who have an official mandate to negotiate on policy issues and actors who try to influence the decision-making process beyond the official negotiations through, for example, lobbying or mobilisation of protests. Official actors include delegated country representatives, who receive a mandate from the government and parliament. These negotiation teams contain civil servants (bureaucrats), experts of the fields (technocrats), government members (executive authority) or members of the parliament (legislature), as well as Court members (judiciary). A negotiation team generally involves a leader or chief negotiator, with other members of the team possessing specific expertise. In such cases, the team leader usually does most of the talking and seeks the advice and expertise of the other delegation members as deemed necessary (e.g. Starkey/ Boyer/ Wilkenfeld 2005: 41).

Yet, many decision-making processes are more complex than those highlighted above. International negotiations are broadly defined to fully take into account non-traditional

actors and issues that are changing the landscape of today's international system. Increasingly, a wide and divergent range of interest groups also participate in decision-making and play a role in generating information (e.g. Sjöstedt/ Spector/ Zartmann 1994: 16). Various actors, beyond or at the negotiation table, lobby at negotiations to represent their interests in the hope of influencing opinion and shifting perceptions of the problem itself (e.g. Starkey/ Boyer/ Wilkenfeld 2005: 92). Mainly, these actors take a critical part in the pre-negotiation and issue-framing process (e.g. Starkey/ Boyer/ Wilkenfeld 2005: 40). These non-governmental interest groups can take many forms – from objective scientific research institutes to advocacy, business, and lobbying groups. To name a few, these include the civil society, scientific community, media, business elites, minority groups, political parties, religious groups, and military. Hence, we can differentiate between negotiation actors at the table or in a caucus (horizontal dimension), and actors within a country who take part in decision-making (vertical dimension).

The following includes a classification based on the conditions that affect decision-making in cooperation regimes: 1) Cohesion among actors; 2) Competence and authority; 3) Technical expertise; 4) Cultural distinctions; 5) Perceptions; and, 6) Egoistic self-interest (e.g. Starkey/ Boyer/ Wilkenfeld 2005: 40ff).

(1) 'Cohesion among actors' involves the unity of actors in a country. Cohesion becomes more and more crucial for negotiations, as it affects the bargaining power of a country (e.g. Starkey/ Boyer/ Wilkenfeld 2005: 40). Ideally, all members of a negotiation team have reached a consensus about the issue under discussion, and work to advance the same interests and speak with one voice (e.g. Starkey/ Boyer/ Wilkenfeld 2005: 41). Alternatively, the government has enough power to follow their own interests and exclude other interest groups from the decision-making process (e.g. in autocratic political systems).

“Although it is convenient to regard nation-states as monolithic entities, the reality of policy making is that many actors (diversity of actors) within countries vie for control of an influence over the outcomes of international negotiations. Members of legislatures with opinions on international affairs that differ from those of the head of state, bureaucrats who work on specialised problems, and interest groups, who champion certain causes often hold more narrow views on the desirability of certain policies. As a result, they work within the political system (and sometimes outside of it), to produce foreign policy decisions that will change the negotiations” (Starkey/ Boyer/ Wilkenfeld 2005: 92).

The EU is a specific actor, covering a varied range of actors. As a union of sovereign states, the EU consists of 27 members, each with their own individual interests and power

positions. Coherence as a condition is crucial for the power position of the EU in international relations.

“Even though the more powerful state may be less dependent in aggregate terms, it may be more fragmented internally and its coherence reduced by conflicts of interest and difficulties of coordination within its own government” (Keohane/ Nye 1977: 19).

(2) ‘Competence and authority’ of actors constitute their possible scope in negotiations and their commitment to agreements. Depending on their mandate the commitments that actors in negotiations get from their country, can be either strong or weak (e.g. Starkey/ Boyer/ Wilkenfeld 2005: 46). The various extent of commitment determines the structure and mode of interaction. For example, a narrow mandate for actors makes it difficult to make concessions or agree on package deals, thus placing a high premium on compromise (e.g. Starkey/ Boyer/ Wilkenfeld 2005: 74). The mandate also defines the allocation of resources for actors to work out expertise to come to elaborated agreements.

(3) ‘Technical expertise’, in a next step, refers to knowledge and information on issue details. There is a crucial difference if experts or civil servants dominate in negotiations or, in other words, if the decision follows technical implications or political interests.

(4) ‘Cultural distinctions or similarities’ among negotiators affect their perceptions about policy issues and also about the willingness to come up with strong commitments in cooperation regimes. Sources of cultural similarities would be long-term relationships, cultural ties and interconnectedness between countries. In the tradition of constructivist theories, cultural distinctions become less prevalent as the interaction between actors increases. The exchange of information about objectives and perceptions also rises, and creates the basis for further cooperation. Thus, the actors can figure out the issues they agree on, and determine the reasons behind disagreements on other issues. Aware of distinct interests, actors can negotiate on these interests and try to persuade each other or succeed in concessions in order to create a mutually beneficial outcome. Intense forms of interaction and cooperation lead to socialisation and harmonisation in norms and rules among actors, such as rules of procedure in cooperation regimes, as well as objectives. The phenomenon of socialisation can be observed especially within epistemic communities and advocacy coalition, which form the basis of intense interaction.

5) There is a human dimension to the negotiation game that should not be ignored. Actors are shaped in their decisions by their perceptions of their opponents in the negotiation. Perceptions are made of one’s own or culturally transmitted experiences in relation to the actors of another country. Thus, perceptions are based on interpretations of opponent’s

actions and interests according to the historical relation between these actors. The relationship between the EU and the RF has an especially long tradition of mutual misunderstandings, which leads to a huge mistrust between these powers. Nevertheless, trust is the implicit condition for a fruitful cooperation. Otherwise, mistrust is an incremental source of conflict and avoids common actions, increasing the potential for conflict. This dilemma can only be solved by intense interaction in order to exchange information about objectives and interests. Further evidence of a trustful actor is its standing in the international community. A positive standing would require an active participation in international organisations and international regimes (e.g. Starkey/ Boyer/ Wilkenfeld 2005:72).

6) Lastly, this study also will take into account the self-interest of actors, as an influential source of decision-making. An examination of their individual self-interests will be done, taking into consideration the factors that differentiate between actors' motivations in negotiations. These self-interests include: increasing individual power position in the decision-making process by allocating resources, and competences to succeed in beneficial negotiation outcome.

3.3.3 Issue Salience in a Changing International System

The third aspect of the negotiation setting is issue salience, which bears in mind conditions that affect possible conflicts of interest on policy issues and agenda setting. The aim of this chapter, therefore, is to illustrate how the issues involved in particular negotiations shape the negotiation themselves. It focuses on: 1) the types of issues debated in international negotiations - technical, security, economic issues, etc. (agenda setting); 2) how salient these issues are in the public debate, e.g. politicisation through public attention, interest group activities (stakeholder interests of labour groups, religious groups, etc.); and, 3) how the salience of issues affect decision-making (Starkey/ Boyer/ Wilkenfeld 2005: 85).

First of all, the section begins with a classification of issue salience, as it is of high significance to the raised question on the outset of this section. The traditional high-low politics scheme is a good starting point for an examination of how issues determine structure and modes of state-state cooperation. It states that issues of high politics affect essential needs of a state, such as e.g. essential security and economic interests, whereas issues of low politics are seen as less problematic, such as e.g. environment, transport, education, culture and movement of people. This distinction is not necessary true in all cases, as it depends on their individual importance for a country (e.g.

environmental issues in the case of the after-effects of the Chernobyl disaster). Hence, Starkey, Boyer and Wilkenfeld argue (2005) that, according to the high-low politics schemes, issues of high-politics are in the competences of high officials, whereas issues of low-politics have usually been perceived as *“the purview of lower-level career officials often buried deep within faceless bureaucracies”* (ibid.: 86f).

Faced with a changed international environment, the internationalisation of world trade and finance, combined with the rapid pace of communication technologies and transportation developments, led to the increasing linkage of states and caused them to become more sensitive and vulnerable to externalities, not only in high-politics issues. Hence, this thesis calls for an extension of the high-low politics scheme, as the dichotomous classification turns out to be limited in explaining intertwined issues in interdependent relationships, where the line between low and high politics becomes increasingly blurred. As Starky, Boyer and Wilkenfeld (2005) state,

“[...] the high/low approach overly simplifies the stakes for the interested parties by ignoring variations in salience. Focussing on salience gives more insight into why the same issue might at one point in time be very important but at other times of seemingly little consequence for the various stakeholders. [...] Understanding variations in issue salience for the actors involved in international negotiations is an important step in the effort to build a more complex understanding of the ways issues affect negotiations” (ibid.: 91).

In sum, the usefulness of distinctions made by the high/low political scheme is limited by the fact that it does not weight the importance of issues. A framework is needed, which can measure political importance in order to take into account the stakeholders of the distinct issues and their weight in the public debate. *“In essence it is not the issue itself that generates stakes for the actors involved but rather the interests that underlie the issues for each and every actor involved”* (Sebenius 2002 In: Starkey/ Boyer/ Wilkenfeld 2005: 90-91). In other words, what an actor values most highly will define which issue are of high or low importance for them.

The following section discusses the conditions that determine the perception of issue salience. Three dimensions are seen to affect the salience of an issue: 1) Agenda setting; 2) Stakeholder interests; And, 3) Politicisation in public debates. Firstly, *Agenda setting* defines which issues come on the table, as well as by whose initiative and for what reason. Thus, this study asks about issue development, issue ownership and objectives. It is argued that consensual knowledge about issues, accomplished through the exchange of information and knowledge transfer, are the basis of getting an issue on the negotiation

table. It's a kind of common learning process that occurs due the evolution of a common agenda.

"In the best of circumstances, these factors can produce a consensual understanding of issues and interests, thereby enabling a shared search for solutions to proceed among the negotiating parties" (Sjöstedt/ Spector/ Zartmann 1994: 14).

Secondly, 'Stakeholder Interests' affect the salience of an issue, depending on the stakeholders' power and influence within the political system. Stakeholders take the initiative on agenda setting and exert their influence on decision-making, in favour of their own particular interests. They will push hard for solutions by mobilising the public and the revocation of political support by (e.g. Starkey/ Boyer/ Wilkenfeld 2005: 94f). The presence of such pressures at the domestic level is a particularly important factor in determining issue salience for state officials, whose negotiation space in international negotiations is determined by these pressures (e.g. *ibid.*: 91). Thus, the study has to take into account the relative power of the respective actors in the political debates.

Thirdly, public debates play a decisive role in the decision-making process, as the electorate legitimises decisions and is needed to support the political elite. Hence, state officials have to consider public interests as they are in the focus of the media and broad public debates. As a result, high politicisation of issues by public debates makes it more complicated for officials to come to an agreement in international negotiations, as the public will be aware of the result. Especially in democratic political systems, officials require the electorates' explicit endorsement in cases of high issue salience (e.g. *ibid.*: 88). In sum, issues within the international arena increased in prevalence and are becoming more and more salient to states. The higher the salience of these issues, the more restrictions there are on the possibility for state officials to come to agreement. It follows that negotiations on highly salient issues come increasingly into conflict, with less room for compromise. The complexity is not only caused by intense and emotionally public debates and strong stakeholders interests; linkages and externalities of policy regulation also connect issues together. Therefore, low salient issues can affect highly salient ones, as well as vice versa and thus become salient as well.

Another aspect concerns the negotiation of low and highly salient issues at the same time, which opens a broad space for manoeuvres to succeed in joint agreements (e.g. package deals).

"However, an increase in issues can also enhance the probability of a successful outcome to the negotiation since the number of combinations of favourable outcomes for each of the actors to consider is increased. In effect, as the number of issues increases,

the situation has the potential to change from one where a single actor wins and the other loses (zero-sum) to a more mutually beneficial one that offers opportunities for each actor to win something (positive sum). Once this happens, it is possible for both actors to come away from the negotiation feeling that they won at least some issues” (Starkey/ Boyer/ Wilkenfeld 2005: 48).

Hence, it is possible to transform difficult and even deadlocked negotiations into ones with possibilities for mutually beneficial outcomes for all by linking a set of issues (package deals) (e.g. Starkey/Boyer/Wilkenfeld 2005:49). As an example, the EU attempts to create such linkages between progress on human rights and the achievement of free trade by moving both issues in a favourable direction for both parties in the negotiation.

3.4 Analytical Hypotheses

As highlighted in the above sections, a variety of conditions at the macro-level (Bargaining Power and Credibility) and at the micro-level (Cost-Benefit Calculation, Issue Salience and International Normative Pressure) determine whether or not states are willing to cooperate, as well as how they cooperate with each other. This study investigates the correlation between these conditions and the applied modes of cooperation along the institutionalisation and legalisation scale. Furthermore, we must take into account the interconnections between the conditions and how the extent of the institutionalisation of cooperation depends on the strength and weakness of the influence of the individual conditions. Depending on which conditions are more influential, cooperation will be more or less institutionalised. In the following, we will discuss major correlations between the conditions and modes of cooperation on policy regulation.

First, on the Macro-Level, Bargaining Power in state-to-state relations is seen as a crucial condition in explaining their relationship. Bargaining power is made up of a state's power resources on the one hand, and its relative gain on the other. Power resources mean the potential ability to use coercive actions against another state, which must behave in the interest of the more powerful state. However, a higher power position does not automatically mean the usage of negative sanction (negative conditionality). The possession of power allows a state also to use incentives to stimulate the willingness of another state (positive conditionality).

The EU's external policy towards Eastern Europe mainly uses positive conditionality, and therefore we want to scrutinise the crucial bargaining chips in their negotiations. The most promising incentive – offering EU membership – is missing in this respective relation. Other crucial rewards are: access to the EU market; financial and technical assistance in

order to modernise their industrial properties, especially in the sector of gas production and heavy industry; facilitation of transnational people-to-people contact; and knowledge transfer in public management.

But it is not only the absolute value of power that is decisive for estimating one actor's bargaining power. It is of crucial necessity to take into account the meaning of its value in relation to the negotiation partner. Thus, the bargaining power of a country increases if the opposite country is more dependent on something of value. Hence, power emerges by asymmetry of mutual dependencies.

It might be that a state is stronger in general terms but vulnerable in one area, whereas the weaker state has a better position in the bargaining process because e.g. of its monopolistic or quasi-monopolistic control of raw materials, such as oil or its position as a transit country for irregular migration. Both – absolute and relative values of power – determine a country's position in bargaining processes, and therefore affect the choice of instruments or mechanisms to change an unfavourable situation. According to theories on international negotiations, we hypothesise that:

(H 1) 'Bargaining Power': The weaker the power position of the EU in relation to its neighbouring countries, the less the EU will be able to force another state to accept conditionality or to set up the institutional agreements for international cooperation to the EU's own benefit. As a result, the modes will be less binding and more informal (>> low in the organisational and legal dimensions).

Given the assumption that the EU is interested in preserving its powerful position towards neighbours in Eastern Europe in the long run, we also could argue that the EU uses its power to set an institutional framework that reduces the uncertainty of state actions instead of gaining beneficial outcomes in the short term. Although the EU has to accept a limited scope of action, a mutual agreed institutional framework guarantees a stabilisation of cooperation for a longer period.

Second, Schimmelfennig and Sedelmeier (2004) point out that the "*determinacy of conditions*" and the "*credibility of threats and promises*" are important sets of factors that are crucial to the potency of the bargaining power (ibid: 672). Credibility is linked to the consistency of reward allocations and the consistency of actions demonstrated by EU external policy. Following Schimmelfennig and Sedelmeier (2005), credibility of conditionality and the size of adoption costs are key variables influencing compliance. In Opposition to the conditionality scheme, the credibility of EU rewards doesn't play a role in

the lesson-drawing scheme (Meloni 2007: 32), as the partner country is already convinced of the policy solution capacity of the EU legislation. In the case of any lack of credibility, cooperation only takes place if institutional constraints hinder infringements and limit the room for possible misinterpretation and ‘free-riding’.

(H 2) ‘Credibility’: The higher the credibility of the EU, the stronger are the commitments that are agreed upon (>> high in legal dimension). If the credibility of the EU is lacking, actors prefer to fix the agreements through institutional ties and reject strong commitments (>> high in organisational dimension, low in legal terms).

Apart from the conditions on the macro-level – bargaining power and credibility – the thesis adds three more conditions that correlate to the applied modes in international cooperation. As the third condition we ascribe a major role to the cost-benefit calculation of expected rewards to adoption costs. If the threatened sanctions are higher than the benefit of non-alignment or, to state it the other way round, the announced reward for an alignment exceeds the costs: “*a State adopts the European rules if the expected benefits of EU’s rewards are higher than the costs*” (Schimmelfennig 2003: 297). Thus, the higher the expected benefit of an alignment, the more likely is EU rule transfer to succeed (e.g. Schimmelfennig/ Sedelmeier 2004: 663f.). The argument made here is about rational choice in decision making and therefore assumes:

(H 3) ‘Cost-Benefit Calculation’: The higher the expected beneficial outcome of cooperation, the more a state is willing to accept a high commitment on the legal dimension and/or to institutionalise cooperation to a high degree.

What influences the cost-benefit calculation are merely the costs of non-cooperation and the alternative opportunities that would allow a country to succeed in its self interest. In the case of Belarus and Ukraine, the RF is a possible alternative to the EU and therefore strengthens their position in their relations with the EU. The RF, therefore, plays a crucial role in the EU-Belarus and EU-Ukraine relations. According to the benefits of cooperation and the possibility of eventual legal approximation, we observe a high willingness in areas in which a high number of reforms are demanded, such as e.g. border management, combating organised crime, refugee protection, trade reforms, and rule of law. Furthermore, the EU stimulates reforms in partner countries by offering financial and technical assistance, as well as offering package deals; on the other hand, costly reforms are linked to beneficial rewards, such as e.g. linking visa facilitation with the readmission agreement.

Fourthly, according to domestic conditions, the salience of particular issues play a decisive role in the decision making process. State officials have to consider public interests as they are in the focus of the media and broad public debates. As a result, when issues become high politicised by public debates, that makes it more complicated for officials to come to an agreement in international negotiations regarding these issues, as the public will be aware of the result (e.g. Starkey/ Boyer/ Wilkenfeld 2005: 72). Thus, the political costs for the government to run unpopular reforms increase. Especially in democratic political systems, officials require the electorates' explicit endorsement in case of high issue salience. In sum, issues on the international arena are increasing, and becoming more and more salient to states. The higher salience of these issues, the less likely it is that state officials will come to an agreement on these issues. It follows, that negotiations on highly salient issues come increasingly into conflict, leaving less room for compromise. The complexity is not only caused by intense and emotional public debates and strong stakeholders interests. Individual policy regulations are often closely linked to each other, and thus influence policy outcomes. Therefore, highly salient issues can affect low salient ones, as well as vice versa, and thus, these low salient issues become salient as well. The importance and emphases of a policy issues on the agenda is taken into account in Hypothesis Four:

(H 4) 'Issue Salience': The higher the salience of a particular policy issue, the lower the level of commitment to cooperation will be, and thus the lower the degree of institutionalisation and legalisation in international cooperation will be.

Fifthly, another condition takes into account the international arena and the international actors that pressure for alignment in particular policy areas and influence the relationships between the EU and its neighbourhood countries. They also intervene to secure their individual interests in this geopolitically sensible region of Eastern Europe. This may weaken or strengthen the position of the EU in negotiations with neighbouring countries. The EU has to deal with functionally-related competitors, such as the US, UNHCR, OSCE and Council of Europe (e.g. K. Smith 2005: 7). However, the EU also looks for cooperation with international organisation and other countries as it helps to fulfil its own interest and to use the international normative pressure to succeed in its own interests.

According to these, Hypothesis Five argues:

(H 5) 'International Normative Pressure': The more EU requirements agree with normative pressure applied by the international community, the more partner countries are willing to implement them and will accept cooperation in the respective policy area. In such cases, at least, the degree of legal commitments will be high.

Especially in policy areas such as refugee protection and combating organised crime and trade, international organisations such as the Council of Europe, UNHCR, OSCE, and the WTO play a decisive role in rule approximation to internationally agreed standards by EU neighbours. If EU objectives are coherent to postulations made by the international community, partner countries are more willing to build on announced financial and technical assistance by the EU to implement international standards.

The analysis adds another hypothesis to expand its evidence. Therefore, it tests the evidence of the respective conditions throughout the course of time, by observing the effect of changes in the degree of any condition. The reason of a change might be of exogenous (e.g. financial crisis, gas-conflict Ukraine-RF or Belarus-RF) or endogenous (e.g. elections, armed conflict) nature.

(H 6) 'Change': If an exogenous or endogenous event changes the following conditions: power relation, cost-benefit-calculation, issue salience, credibility and/or international normative pressure, the mode of cooperation also changes along the extent of legal and organisational dimension in international cooperation.

Hypothetically, we assume that any change in conditions can also be without any effect on the mode of cooperation, when cooperation is institutionalised to a minimum extent. Hence, once institutions are founded, there can only be an increase and deepening of institutional ties and processes because a downgrade of institutional ties would result in major costs. Although this argument is in the tradition of the rational approach – which sees the balancing of costs and benefits as the source of any decision and therefore would argue that abolishing former institutions would create major costs – we add a constructivist argument, makes the case, that the process of institutionalisation has its own dynamic as it leads to side effects of internationalisation of common institutions by social learning and increases the credibility between actors, which pushes a deepening of institutional ties further ahead. Therefore, our relevant anti-thesis state:

(A 6) 'Unidirectional Change': A change of conditions leads to an enhancement of institutionalisation rather than leading to a downgrade, because a certain amount of institutionalisation follow its own dynamics and preserve the status quo of institutional ties even when the preconditions are unfavourable for a partner country.

According to this constructivist argument, we argue that, after a certain extent of institutionalised interaction, actors become used to each other and confidence increases as a result of common experiences (epistemic communities). Reliance and credibility increase through an institutionalised cooperation. Thus, reliance and credibility are both the impetus for an institutionalisation as well as the outcome of such. Furthermore, this paper argues that, due to the fact that institutionalised dialogue begins in low politicised policy areas, the likelihood to begin such institutionalised cooperation in more problematic policy issues increases. This supports the functional thesis, which represents a spill-over of such an institutionalisation to other policy areas. Or, on the other hand, this spill over can also be an unintended side effect of ongoing legalisation beyond primarily agreed competences. Therefore, hypothesis seven states:

(H 7) 'Functional spill-over': A certain extent of institutionalised cooperation in one policy area affects interrelated policy areas and therefore calls for extending the institutional framework to this affected policy areas.

In sum, the following table illustrates the assumed correlations between conditions and modes. It should be read as follows: Hierarchic governance is a result of an asymmetry in power relations favourable to the hegemony based on a certain amount of credibility. Furthermore, reforms are costly for the partner country. But if policy issues are less salient and the international community is not putting pressure on the issue, the political costs are minimal and the officials can bargain along rational arguments. This figure defines an ideal case based on the analytical model. In the following sections, the analysis will test its explanatory power in practice.

Figure 11. Correlation between Conditions and Modes in International Cooperation

	EU attributes		policy specific characteristics		
	Bargaining Power	Credibility	Cost-Calculation	Saliency	Int. Pressure
Hierarchic Conditionality	(++)	(+)	(++)	(-)	(-)
Information Networks	(- -)	(-)	(+)	(++)	(+)
Implementation Networks	(-)	(+)	(- -)	(- -)	(++)
Regulatory Networks	(-)	(++)	(-)	(-)	(-)

4 EU-RF Cooperation: A possible Strategic Partnership under changed Circumstance?

The end of the isolationist period during the so-called 'Cold War' opened a new era of partnership between the RF and the EU. Nowadays, the RF is a 'strategic' partner of the EU for several reasons. However, the RF remains an independent power which is not currently a candidate to the EU integration process, and neither does it wish to become one, at least in the near future.

This partner is also an unpredictable one because it still has to go through an uncertain era of political, economic, demographic, social and geopolitical transformation, and thus differs from the model proposed by European democracies. The development of the RF is ambiguous, as the successor state of the Soviet Union goes through an transformation process and is therefore still in the making. These internal dynamics are unpredictable and will be observed by the EU with strong interest. As long as RF's development remains unpredictable, the EU is tempted to be prepared for distinct drawbacks and new opportunities.

Although RF's foreign policy reflects the internal struggles, RF's lack of reliability as a partner for the EU cannot only be explained by internal factors. As many scholars argue, RF's alternation in its policy towards the EU is also a reaction to diffuse signals sent by the Commission and member states (e.g. Roth 2009; Gomart 2008). A cohesive EU foreign policy towards RF is needed to improve the cooperation by strengthening its position and making a concrete offer. Subsequently, the main evidence of this uncertainty is the incapacity of both parties to jointly formulate their strategic goals in their relations and to define common values, interests and tasks, although, both actors are aware of shared objectives and the necessity to formulate a common policy to tackle interdependent policy issues as trade, migration, energy, environment and security in the interest of political stability, lasting security, and economic prosperity in the whole region. Their joint effort to develop close cooperation with each other is based on the assumption that EU-RF interdependence cannot be avoided and will only get stronger in the future.

It is of crucial importance to tackle mutual dependencies to succeed in internal policy goals as well as seize the chance of benefiting from improved trade relations and increased political dialogue. Yet, for a variety of other reasons, the two parties seem strained on a multitude of issues, including but not limited to: the expansion of the NATO and the EU on the European ground; NATO-plans to install an Anti-Ballistic Missile (ABM)

system in Poland and Czech Republic; NATO-oriented security architecture of the EU; energy-hungry markets of the EU and its vulnerability on unsecure gas transit routes; resolution of frozen conflicts (e.g. Transnistria, Nagorno Karabakh, Abkhazia, South-Ossetia); economic interlinkages; security externalities; unexpectedly rapid economic recovery of the RF; and, international conflicts in Afghanistan, Iraq; Iran, Kosovo, and in the Maghreb and Middle East.

Whereas RF constitutes not only the main parameter of European security but also a strategic trade and energy partner for the EU, a fact pinpointed ever since the 10th EU-RF Summit of November 2002, RF sees in the EU and its member states strong partners to succeed in the task of

“not only sustaining economic growth, but also diversifying the economy away from oil and gas, as well as stimulating investments and innovation, to modernize its system of governance, to build a civil society, to integrate growing numbers of immigrants, and to alleviate the economic effect of RF’s dire demographics” (Trenin 2005a: 8).

Unlike Ukraine, the RF has never declared its willingness to join the European process; it can be assumed, that the usual EU instruments, which are merely based on the principles of conditionality and gradual rapprochement, are ineffective with the RF for the most part. What is more, the EU finds itself confronted by a player who openly defies its values, insofar as the RF insists on a cooperation that is not based on a system of legal constraints and common values. Further, the RF takes up a fending stance on European regulations and standards, presuming them as weakening its sovereignty (e.g. Gomart 2008: 13).

Despite many achievements since the early 1990s, both parties have clearly failed in building a trustful and credible relationship. Twenty years after the breakdown of the Soviet Union and the subsequent conclusion of the Cold War mentality, the EU and the RF didn’t not succeed in establishing a fruitful cooperation throughout the European continent and strengthen its strategic position on the global level. Accordingly, the relationship should be analysed in the broader context of their domestic and foreign politics. However, the EU-RF partnership is essential for both actors. For better or for worse, the EU-RF relationship is strategic in every sense of the word. Both, the EU and RF, want to be taken seriously as global actors and they need to rethink their external priorities.

“The EU is a strong partner for Russia and the EU must be intensified in the interest of political stability, lasting security, and economic prosperity in the whole region” (Andoura 2008: 15).

In the following section, the study sheds light on the current cooperation between the EU and the RF and goes more into detail about the cooperation on migratory issues in order to scrutinise crucial factors for improving cooperation through institutional ties, thereby furthering the interests of both parties. In a first step, the analysis gives a review on the development of EU-RF relations from 1991 to 2011 and how it was shaped by internal and external factors. Section 4.2 scrutinises the nature of EU-RF relations and investigates possible factors explaining why cooperation is lacking, and where we see prospects for progress in the near future.

The EU-RF relationship is outlined by a range of issues: (1) the interdependence of economy exchanges and energy resources; (2) geopolitics in the case of the common neighbourhood; (3) Europe's security architecture; as well as, (4) systemic divergence and the gap in values. Section 4.3 gives insight on the institutional framework of the EU-RF cooperation introduced in 1997 by the Partnership and Cooperation Agreement (PCA) and gives an outlook on the current negotiations on the New Enhanced Agreement (NEA), which will replace the PCA. Further, an investigation is done on how the PCA was implemented in the case of cooperation on migratory issues. Finally, the results will be discussed and matched with the theoretical background of the analysis, with the aim of figuring out the crucial condition for a substantive deepening of the partnership by institutionalising its interaction and cooperation.

4.1 Four Phases in the Development of EU-RF Relations in the Aftermath of the Breakdown of the Soviet Union 1991

In the period after the end of the bipolar world order and RF's rise as the heir of the Soviet Union, the geopolitical order, especially in Europe, was changed completely and opened up huge room for manoeuvre. Nearly all the former Communist governments in Central Europe were overruled by public upheavals and turned towards democratic state systems. The Soviet Union was dissolved at the end of 1991, with the beginning of full independence for the twelve remaining republics and the breakup of the three Baltic States. At the same time, the Commonwealth of Independent States (CIS) was launched at a summit in the Kazakh capital of Almaty as a loose confederation, not comparable to the old Soviet Union. The RF, the new name of the Russian republic, was generally recognised as the legal successor of the Soviet Union, and membership of e.g., the UN Security Council passed seamlessly to it.

The search for their new national identity remains at the top of current Russian public debate. The process of redefining its new role in international and regional relations goes along with misperceptions and miscalculations of the new reality. The two dominant actors in Europe, the EU (with its key member states France, Germany, Italy and United Kingdom) and RF, have gone through this still-unsettled process since 1991 in order to figure out its new role in this changed geopolitical area. The process that EU-RF relations were subjected to, in the aftermath of the breakdown of the Soviet Union, can be differentiated into four phases: 1) Rapprochement between naive 'EU-phoria' and national self-assertion after the transition period (Yeltsin I); 2) Stagnation (Yeltsin II, Putin I); 3) Depression (Putin II); And, 4) Normalisation or New Pragmatism in EU-RF relations (Duopol leadership Medvedev/Putin).

4.1.1 Rapprochement between naive Euphoria and National Self-Assertion after the Systemic Transition (Yeltsin I, 1991-1996)

Firstly, in the post-soviet phase from 1991 onwards, RF's first president Boris Yeltsin and a new generation of political elites had to redefine their role in international relations and in the region. The end of the bipolar world order opened up new space for manoeuvre for new actors, as well as for the EU in creating a Common Foreign and Security Policy (CFSP) through the treaty of Maastricht in 1993. In this context, the relationship with the EU, as the counterpart in the region, becomes, under the struggle of the transition process into a democracy and market economy, a fundamental part of Russian foreign policy.

Vice versa, the EU, after the entry into force of the treaty of Maastricht in 1993 and the introduction of a CFSP, incrementally acquired more competences in foreign policy, to act on behalf of its member states interest and tackle issues of geopolitical magnitude in its near abroad. This was a clear reaction to the major changes in Europe and the need for a common policy and a strong voice to represent a capable power, which provides stability and prosperity. In its first strategy towards RF in 1995, named "*European Union's Strategy for Future EU/Russia Relations*" (European Council 1995: Annex 8), the EU emphasised its goal of encouraging:

"the progressive integration between Russia and a wider area of cooperation in Europe" [and states its commitment to] "establishing a substantial partnership with Russia in order to promote the democratic and economic reform process, to enhance the respect of human rights, to consolidate peace, stability and security in order to avoid new dividing lines in Europe and to achieve the full integration of Russia into the community of free and democratic nations" (ibid.).

In addition, the EU even states that future European decisions related to Western security institutions should be taken into consideration, in an effort to avoid misperceptions capable of jeopardizing the new cooperative relationship with RF (ibid. article 8.).

Furthermore, the EU responded to these regional upheavals by offering technical and financial assistance and thus contributing to economic cooperation and stability in the continent. Relations between the EU and the RF were initially modelled on a Trade and Cooperation Agreement (TCA) signed at the end of 1989. In 1990, the European Council in Rome resolved that closer ties with the Soviet Union were desirable so that the EU could open its doors to provide technical and financial assistance to the RF and asked the Commission to start the negotiations over an extension of the cooperation (European Council 1990).

It is in this context that the negotiations on a Partnership and Cooperation Agreement (PCA) (European Council 1997) did not come into force until 1 December 1997, due to misperceptions within the EU member states and between the EU and the RF about the nature of cooperation. The PCA with the RF is more comprehensive than the former TCA but not as comprehensive as the agreements signed with the Central European candidate countries at that time. These agreements with Central and Eastern candidate countries aimed at the harmonisation of their legislation with EU legislation, whereas, the EU and RF slightly attempt to facilitate its cooperation on an equal basis. Thus, the EU-RF PCA includes a framework for regular political dialogue, with an EU-Russia conference at the highest political level twice a year to discuss both the political and economic transition.

This period of cautious rapprochement was characterised by high expectations in economic terms and was seen as a chance to secure the regional supremacy of the RF during this challenging time of political instability and economic breakdown. Both the economic and political interests go together with the interests of the new oligarchic business elites, who have slipped into the political sphere (e.g. Mommsen 2004; Bunce 2004, Merkel 1999). Another aspect, which explains the interest of the RF for a prosper cooperation with the EU, is its objective to preserve its supremacy in Eastern Europe (especially in the Black Sea region), the Southern Caucasus, and Central Asia. Furthermore, the Yeltsin regime hoped to repress the scope of action of the USA in the Wider Europe region by deepening cooperation with the EU and its member states.

4.1.2 *Stagnation and Frustration (Yeltsin II, Putin I): Internal Challenges and unaccomplished Expectations.*

Secondly, the re-election of Boris Yeltsin for the presidency of the RF in 1996 took place under difficult circumstances and heralded a period of stagnation in the EU-RF relations. One of the reasons was the weakness of Yeltsin's leadership; its unpopularity and the depressed economic recovery which led to a setback of RF's claim to be a prosperous and stable global power. Further, the EU was not able to fulfil RF's expectations in providing enough assistance and a clear strategy for cooperation with the RF in the long-term during this challenging transition period (e.g. Andoura 2008; Kempe/ Smith 2006). As a consequence, the ruling political elites got under incremental pressure; they tried to appease their electorate by a revival of nationalism and called for national unity also by military force (e.g. 1st Chechen War 1994-96). This development leads to a more increasing unilateralist foreign policy and isolation from the West. Even the Partnership and Cooperation Agreement (PCA), which came into force 1997, was not able to encourage the relation between the EU and RF. On the one hand, it happened too late and on the other hand, the scope of action within the PCA was rather too limited to enable major cooperation in crucial policy areas (e.g. Andoura 2008). According to the 'underachiever' EU, RF changed its strategy in foreign policy and displayed a more unilateral policy in the common region of interest (e.g. Transnistria region, Abkhazia, South Ossetia, Ukraine, Belarus and Central Asia) and continued its autonomous policy in interdependent policy areas (e.g. Gomart 2008). Besides, RF enhanced its bilateral relations with major member states to succeed in particular interests (Schmidt-Felzmann 2008).

However, the PCA was the first document to structure EU-RF relations from 1997 onwards (e.g. Haukkala 2004). The Agreement established a partnership between the European Communities and their Member States, of one part, and the RF, of the other. The preamble of the PCA points out to *"the importance of the historical links existing between the Community, its Member States and Russia and the common values that they share"* and the goal of *"strengthening the political and economic freedoms which constitute the very basis of the partnership"* (Council of the EU 1997a). Moreover, article 1 presents the *"goals of the partnership"*, which are:

- "- to provide an appropriate framework for the political dialogue between the parties allowing the development of close relations between them in this field,*
- to promote trade and investment and harmonious economic relations between the Parties based on the principles of market economy and so to foster sustainable development in the Parties,*

- to strengthen political and economic freedoms, - to support Russian efforts to consolidate its democracy and to develop its economy and to complete the transition into a market economy,
- to provide a basis for economic, social, financial and cultural cooperation founded on the principles of mutual advantage, mutual responsibility and mutual support,
- to promote activities of joint interest,
- to provide an appropriate framework for the gradual integration between Russia and a wider area of cooperation in Europe,
- to create the necessary conditions for the future establishment of a free trade area between the Community and Russia covering substantially all trade in goods between them, as well as conditions for bringing about freedom of establishment of companies, of cross-border trade in services and of capital movements” (Ibid.: article 1)

The signing of the PCA was of crucial interest to both because it demonstrated the beginning of a new meaning in EU-RF relations, which was acquired via establishing institutionalised communication channels. This agreement marks a turning point in their relations even though most of its content is limited to oral intention and its implementation in concrete action is lacking (e.g. Kempe/ Smith 2006). However, the mutual attempt to foster cooperation is clearly expressed by this document. Both parties are addressed by the agreement as equals and are, therefore, given the possibility to tackle policy issues by addressing mutual interests. Following this, the agreement defines a kind of relationship proposed in very different terms than before, providing an institutionalised framework for an intense interaction and cooperation on crucial policy issues, which is based on common goals and a common procedure to coordinate interdependent policy issues. Hence, what can be observed is that the proposal of partnership is a very ambitious one, aiming at developing a democratic and market-oriented RF. A more subtle element is the inequality of status of them, as it gets clear that it is the overall goal of the cooperation to bring the RF closer to ‘European’ norms in political and economic terms, which are seen as the reference model for any modernisation.

This new era in EU-RF relations, in the rising of the 21st century, is well expressed by two other policy papers. On the EU side, the EU member states approved the first Common Strategy of the European Union on Russia at the Cologne European Council 1999, with the goal to “strengthen the strategic partnership between Russia and the European Union, which is so crucial to maintaining peace and security in Europe and beyond and to meeting common European challenges” (European Council 1999: Art. 78). The policy paper further emphasises the necessity to integrate RF “to its rightful place in the European family in a spirit of friendship, cooperation, fair accommodation of interests and

of the foundations of shared values enshrined in the common heritage of European civilization" (ibid.). The strategic goals mentioned in the document are:

- a stable, open and pluralistic democracy in Russia, governed by the rule of Law and underpinning a prosperous market economy benefiting alike all the people of Russia and of the European Union;
- maintaining European stability, promoting global security and responding to the common challenges of the continent through intensified cooperation with Russia" (ibid.).

On the RF side, the most prominent documents that demonstrate the change in terms of RF's relation towards the EU are, on the one hand, RF's "*Middle Term Strategy towards the EU (2000-2010)*" (RF Presidency 1999), which got launched in October 1999, two months before Putin's inauguration; and, on the other hand a document, approved by Vladimir Putin in June 2000, which is called "*Foreign Policy Concept of the Russian Federation*" (RF Presidency 2000). The first stresses the benefit of fruitful cooperation with the EU, in which the

"[P]artnership with the EU can manifest itself into joint efforts to establish an effective collective security system in Europe on the basis of equality without dividing lines [...] in a high level of mutual confidence and cooperation in politics and economy" (RF Presidency 1999: Art. 1.1).

Putin's takeover of the RF Presidency in 2000 continues, merely, the pro-EU foreign policy of the RF as it got stated in the 'Foreign Policy Concept of the Russian Federation' that:

"[o]f key importance are relations with the European Union (EU). [...] The Russian Federation views the EU as one of its main political and economic partners and will strive to develop with it an intensive, stable and long-term cooperation devoid of expediency fluctuations" (RF Presidency 2000: IV. Regional Priorities).

What attracts our attention is that the recovery of Russia's great power status is put in evidence when Russian foreign policy goals are presented as:

"[t]o ensure reliable security of the country, to preserve and strengthen its sovereignty and territorial integrity, to achieve firm and prestigious positions in the world community, most fully consistent with the interests of the Russian Federation as a great power, as one of the most influential centers of the modern world, and which are necessary for the growth of its political, economic, intellectual and spiritual potential" (ibid.: I. General Principles).

Vladimir Putin's presidency continued the inward looking policy of his predecessor in order to stabilise the regime that got decisively weakened under Yeltsin. His harsh note in its

internal policy towards former business elites, also named as oligarchs (e.g. detention of Chodorkowsky, Beresowski, Friedman, Potanin, et al.); regime critics; re-nationalisation of former state companies, which got privatised during the second term of Yeltsin's presidency; and, internal ethnic conflicts (e.g. 2nd Chechnya war (1999-2000), uprising in Dagestan and Ingushetia) as well as in the 'Near Abroad' (Transnistria, Abkhazia, South-Ossetia, Belarus, Ukraine) held also true in IR and towards the EU and its new member states (Lithuania, Estonia, Latvia, Poland) (e.g. Mommsen 2004). This recovered self-confidence is also a consequence of soaring prices for oil and gas, the major exporting goods of RF which provided a better gain of the Gross-Domestic Product (GDP). Thus, the standing of RF in economic terms enhanced. According to the economic recovering and the strong leadership of Putin, the 'bear has re-awaked' and demonstrates its new attempt being a global player (e.g. Mangott/ Trenin/ Senn 2005).

Smorodinskaya (2008) argues that the auspicious deployment strengthened Putin's leadership in domestic and foreign politics. *"It helps the Kremlin to conceal political centralization and compensates for outweigh failures in economic modernization"* (ibid.: 1). Hence, Putin has embedded a centralised political system of vertical-type governance, which (?) empowered the Kremlin as the ultimate authority in the Federation. Further, she stressed that:

"[w]hen the system of subordinating verticals ('verticals of power') began to be re-established in Russia, the national competitive market space started to shrink, and the subsequent 'vacuum' quickly filled up with powerful bureaucratic networks. In this bureaucratized, profit-oriented macroeconomic environment, transaction costs are so high that real development cannot take place by definition" (Smorodinskaya 2008: 2).

With the economic recovery and the consolidated leadership of Putin's presidency, RF's occurrence in IR got more assertive and slightly aggressive. The RF turned back to its great power politics and rhetoric towards the international community. Or, as Gomart (2008) names it "after almost a century of isolation and self-isolation" Russia is returning "to global politics and [the] global economy" (ibid.: 3). In the case of the NATO enlargement and EU's expansionist policy in the common neighbourhood, the RF used harsh anti-Western rhetoric, rejecting this unilateral policy in its former area of influence. After an improved relationship between the EU, US and the RF in the outgoing 1990s, the relationship gradually cooled and became more fraught. The reasons are miscellaneous. The Dutch Advisory Council on International Affairs (AIV) constitutes, first and foremost, the changing security architecture in Europe – strengthening NATO's role and leaving the RF outside; and, Western advice on the transition to a market economy, which got blamed

for the severe economic crisis of 1998 (e.g. *ibid.*: 10). Gomart (2008) however, sees a reason for the cooling down in EU-RF relations in EU's inability to anticipate RF's recovery (e.g. *ibid.*: 8).

Echoing Putin's dissatisfaction about the progress in the EU-RF relations, he states RF's commitment to the development of true cooperation and partnership:

"we have so far failed to recognize the changes that have happened in our world over the past ten years and continue to live in the old system of values: we are talking about partnership, but in reality we have not yet learned to trust each other (...) [t]here are barriers and obstacles on that road that we are surmounting (?). However, if we leave aside objective problems and occasional ineptness of our own, we will see the beat of Russia's strong, live heart. And this heart is open to true cooperation and partnership" (Speech by Putin at the German Federal Parliament on 25 September 2001).

In his speech, it became clear that the European perception in RF has changed – an utterance that demonstrates an interest in changing the rules of the 'European-Russian game'. It emphasises the necessity of a fruitful cooperation by not neglecting the gap of values. And, although transition is a 'bumpy road' it is the beginning of the introduction of a new language capable of conducting to constructive practices. The existing 'gap of values' therefore is a crucial challenge for EU-RF relations and for the development of a successful strategic partnership (e.g. Lynch 2004: 112).

4.1.3 Depression as a Result of hardly any Progression in EU-RF Cooperation (Putin II)

Vladimir Putin demonstrated great assertiveness vis-à-vis the EU during his second term, which is rooted in a series of awkward events, as e.g.: Western critics about Russian human rights abuses during the Second Chechen War (1999-2000); NATO's and EU's eastwards expansion in 2003 and 2004; Western support for the 'coloured revolutions' in Georgia (2003) and Ukraine (2004/2005); and receiving a check in the case of facilitated visa freedom for RF citizens (e.g. COM 2004b). The EU, however, was upset about RF's increasingly assertive energy policy in the common neighbourhood and the missing willingness to respect human rights and democratic principles. At the same time, their trade increased considerably, owing to EU energy needs and increasing demand for products from EU member states.

Both the 1997 PCA and the 1999 Strategic Partnership have failed to live up to individual expectations. Facing EU's inability to forge an efficient foreign policy towards RF hinders progress still further and is a result of its lack of commitment, leadership within the EU,

executive capacities and power, which left a broad space for mistrust on the credibility of the EU (e.g. Mendras 2006: 46f; Andoura 2008: 12; Hughes 2006).

This lack of any real engagement made it easier for RF to hide behind a curtain of isolationist rhetoric and encourage demonstrating power in IR. However, their bilateral relationship is accompanied with serious suspicion and distrust. This assessment got supported by EU's trade commissioner, Peter Mandelson, who stated that the EU-RF relations still "*contain a level of misunderstanding and even mistrust we have not seen since the end of the Cold War*" (COM 2007j). Despite positive signs of progress, every point of friction is considered as a sign of the "*natural incompatibility*" (Putin 2007a; 2011) between the parties and every initiative is seen as empty rhetoric. In example, the launch of the four common space initiative caused huge expectations on the Russian side, especially in the areas of trade, security and visa liberalisation. Due to this overcast expectations, the reality of progress in their relations caused frustration.

That is merely a result of the clash between the positive accentuation of 'strategic partnership' and the emphasis of gaps and incompatibilities of goals and values. Since the 2004 enlargement of the European Union to the East, relations between the EU and the RF have become increasingly tense.

Following the EU expansion eastward, geopolitics in the region completely changed. As a reaction to the new neighbours of the EU, the Council initiated a new policy to tackle all arising issues. This policy is called the European Neighbourhood Policy (ENP) and comprises all neighbouring countries in the East and the northern Mediterranean. The RF did not want to be thrown into the same pot as the EU's other neighbours – treated like a neighbouring country of the EU than an equal power. Hence, the St. Petersburg EU-RF Summit in May 2003 launched exclusively the 'Four Common Spaces' Initiative, which contains strategic goals in four areas: the common economic space, the common space of freedom security and justice, the common space of external security, and the common space of research and education including cultural aspects (EU-RF Summit 2003). As pointed out in the declaration, the creation of these four common spaces takes place within the framework of the PCA creates a process of cooperation which

"will be approached in a systematic way and on equal footing, with specific targets and reciprocal arrangements in each space. It will be realized gradually and methodically"
(ibid.: Joint Statement).

In regard to the importance of the four spaces, economic cooperation is by far the most important. The 'Common Economic Space' is aiming to facilitate trade relations and therefore deals with issues as investments, the protection of intellectual property, procurement and technical regulation. Dozens of official working parties have in any event gradually increased understanding of each other's regulations and the improved contacts may be important in future negotiations. The '*common space of cooperation in the field of external security*' is trying to elaborate commonalities of EU's Common Foreign and Security Policy (CFSP) and the European Security and Defence Policy (ESDP) and RF foreign policy in areas of common or divergent interests, e.g.: involvement of the RF in the Kosovo conflict; Transnistria; support for EU's military mission in Chad; and the role of NATO. The '*common space of freedom, security and justice*' tackles issues as the promotion of the rule of law, democracy and human rights and also provides for cooperation between police forces and judicial authorities on such dossiers as illegal migration, human trafficking, combating international crime, exchange of counterterrorism information; last, the '*common space of research, education and culture*', which is in principle politically non-controversial and therefore lends itself to closer cooperation. Cooperation aims to facilitate contacts and cooperation between higher education institutions and enables RF's participation in EU research community by extending its research funds to RF's research institutes and universities.

This form of cooperation turned out to be more effective and resulted in concrete measurements. President Putin shows its satisfaction about progress by the new instrument in improving the cooperation in both interests. It got best expressed by an article, published on 25 March 2007:

"Our common goal of comprehensive, intensive and long-term cooperation is bringing tangible results. Our joint efforts have already allowed us to build a solid foundation for a strategic partnership and promising joint projects. There is an increasing dialogue between various sectors of industry. We have a deepening sense of fellowship in our common struggle against new threats. Bilateral trade relations are flourishing and investments are growing. Cultural, humanitarian and educational contacts are widening. In the nearest future the Visa Facilitation Agreement will become effective" (Putin 2007b).

This statement by Putin is supported by an assessment of Nicole Gnesotto and Giovanni Grevi (2006), who see clear evidence that the EU is seen by the RF as their "*key interlocutor*" (ibid.: 111) when it comes to economic and political reforms. Although the RF presents itself as a great power with a far wider focus than Europe alone – profiting from its geopolitical position between the economically prosperous regions in Europe and Asia

–, it does not, however, allay uncertainties over the viability of its economic development, its political stability and its strategic ambitions (e.g. Gomart 2008). From this point of view, the evolution of EU-RF relations is crucial for a stable development in political and economic terms.

4.1.4 *The Medvedev-Putin Tandem: Normalisation or New Pragmatism in EU-RF Relations*

RF is now at a major turning point. It has a new parliament, a new President and a new Government. This turning point represents a historic opportunity for the RF and RF-EU relations overall. The EU-RF relationship in the last decade was characterised by many set-backs as elaborated above. Both parties were not able to put their relationship into perspective and define a common vision for their strategic partnership (e.g. Gomart 2008: 1). Having undergone these periods of stagnation and depression, the Medvedev-Putin administration got more pragmatic in establishing cooperation with the EU, aiming at putting aside past differences and focusing merely on reviving trade and boosting RF's troubled economy (e.g. *ibid.*). Overcoming the depression requires the identification of the crucial obstacles and the formulation of these obstacles in political terms. This means a better understanding of each other's interest and possibilities as well as providing needed channels for these dual processes. The new presidency demonstrates a new-found pragmatism in its relations with the EU, which is based on the awareness of the interdependencies in economic relations and of the necessity to cooperate with Western economies to modernise its one-sided and very old-fashioned economy as well as its public administration, legislation and law enforcement (e.g. Barysch 2006). Especially in the aftermath of the financial crisis, growing economic calamities in RF (suffering from relatively high inflation, collapses in the stock market, banking crisis, capital flight, expected transition from budget surplus to budget deficit and a negative trade balance) (e.g. Dean 2004).

At the eve of the EU-RF Summit in Khabarovsk on 21-22 May 2009, EC President José Manuel Barroso stressed the importance of bilateral dialogue: *“Russia and the EU are interdependent. The global financial and economic crisis stresses the need to develop the potential of our relationship, remove obstacles and coordinate our efforts. Regular and frank political dialogue is the right way to manage our relationship and it must prevail in all times, no matter how difficult the issues at stake are”* (Barroso in a Press Release at the EU-RF summit 2009).

Further, it should be kept in mind that the Russian economy has never been that integrated into the European economy. Apart from that, the EU is concerned about RF's currency reserves in euro, which account for nearly half of some € 450 billion in total currency reserves (e.g. EurActiv 2010a). Consultations with RF's Central Bank are needed, to avoid actions that could undermine confidence in the Euro.

The current president of Russia is facing the formidable challenge of solving the internal problems described above while simultaneously diversifying the economy. To do so, he urgently needs support from western economies through technology exchange, FDI's and management know-how. Medvedev emphasised in several speeches that the EU would be the promising partner to succeed in the needed modernisation of RF's economy. His first visit as RF's president in June 2008, thus, went to the most competitive economy Germany, where he made proposals to extend economic cooperation as well as mentioned the need to find a common policy on international security (e.g. Financial Times 6 June 2008). RF's new willingness to cooperate is not a change in the value system, but driven chiefly by pragmatic politics. This pragmatism is based on the expected benefits to resurrect itself as a global power even through the help of western economies.

“In the wake of pragmatic cooperation on the economic front, this could contribute to greater understanding of other issues, including the common neighbourhood and foreign policy issues such as Iran and Afghanistan. It could also be accompanied by moves to abolish visas and greatly expand educational and scientific exchanges” (EuRussia Centre 2009d).

Is this new pragmatism a profound development or just a temporary one? We can't answer yet, but as many of disputes could be solved, the current presidency of Medvedev gives reason to be optimistic for the upcoming decades. *“It seems that all conditions are set to start a new page in EU-RF relations, a new step that would help overcome the always present suspicion and distrust between the parties”* (Blanco 2010: 21). The new leader of the Kremlin has put a warmer face on ties with the West since he took over the presidency.

Generally speaking, Medvedev's modernisation strategy is about the European choice as a model for RF's economic and political evolution and is convinced about the necessity for close cooperation with the EU and other Western economies to modernise its economy and place it on a broader footing. There is a good chance that RF's new president will opt to change RF's attitudes towards them. Medvedev belongs to a different generation – aged 46 in 2011 – he did not rise through the ranks of Communist Party officialdom, which are sometimes indistinguishable from imperial ambitions. The fact that Medvedev is not

part of the *siloviki*¹⁵ might be an advantage in this respect, but he also has the disadvantage of not having his own power base. Considering this, Dmitry Medvedev's policy will be, merely, in line with his predecessor Vladimir Putin, who became rather popular during his presidency and took over the position as prime minister. It is a novel factor to have the former president as the current prime minister, which got considerably more power than the nine prime ministers before. Furthermore, it is rather paradox that Putin received major competences for economic development, whereas Medvedev, who is known as a supporter of a more liberal economy, is responsible for foreign and security policy. Even though Putin has to tackle major challenges in the wake of the financial crisis, he gained major competences which help him to remain a powerful player in RF politics and maybe to prepare its return to the Kremlin.

Medvedev's first visible action, however, has been observed with concern. In August 2008, Russian troops attacked Georgia to assure the independence of South Ossetia and Abkhazia, which broke free from Tbilisi's rule in the early 1990s. The EU member states expressed their resentment in a declaration at the European Council in December 2008. The declaration even recalls the values on which the partnership with Russia is based:

"Our relations with Russia have deteriorated over the conflict with Georgia. The EU expects Russia to honour its commitments in a way that will restore the necessary confidence. Our partnership should be based on respect for common values, notably human rights, democracy, and rule of law, and market economic principles as well as on common interests and objectives" (Council of the EU: Report on the Implementation of the European Security 2008a: 10).

Resentment in EU-RF relations was caused by the gas-related conflict in the beginning of 2009 between RF and the Ukraine, which gives support to critics of EU's energetic dependence to RF. This was the motivation for a declaration by the President of the EC, José Manuel Barroso, who stated in a declaration on 5 February 2009 that: *"I look forward to discussing how we can work together to build-up trust and make the EU Russia relationship a more reliable partnership at all levels"* (COM 2009d).

"The fact that the RF is not perceived by the EU as a reliable partner shows the difficulty in moving on towards a relationship based on trust" (Blanco 2010).

¹⁵ Siloviki is a Russian word for politicians, who serve in the security or military service, Get more information about Siloviki and their role in Russian politics (e.g. Bremmer/ Charap 2007)

The Russian-Georgian ‘Five Day War’ again fed Europe’s distrust towards Russia. Medvedev addressed this breakdown in trust and EU’s caveat by proposing the creation of an all comprehensive New European Security System at his visit to Berlin on 5 June 2008, aimed at overcoming security tensions between the EU and the RF. Medvedev’s proposal envisages a European security pact with Russia’s participation, inherently in opposition to the NATO (e.g. Eurasia Daily Monitor, 9 June 2008). Additionally, the “*Foreign Policy Concept of the Russian Federation*” (RF presidency 2008), entered into force on 12 July 2009, seeks to deepen the ties with Europe, which is stated in the document as follows:

“put our strategic relations with the European Union on a solid and modern legal basis and establish a legal space under the auspices of the Council of Europe that would span across the entire Europe” and stressing that “[f]rom the long-term perspective, it is in the interests of Russia to agree with the European Union on a strategic partnership treaty setting special, most advanced forms of equitable and mutually beneficial cooperation with the European Union in all spheres with a view to establishing a visa free regime” (ibid.).

Foreign minister of the RF, Sergey Lavrov (2009), got clearer in promoting an own security architecture in Europe:

“The existence of NATO contradicts the principle of ‘indivisibility of security’ because it results in the formation of two zones of different security, a ‘NATO area’ and a ‘non-NATO area’; fragmenting the so-called pan-European space” (speech by Lavrov at the OSCE Annual Security Review Conference, 23 June 2009).

On the EU side, the appraisal of the EU-RF relation so far arises that the EU has to take the situation and interests of RF more into account. Benita Ferrero Waldner, the former EU Commissioner for External Relations and European Neighbourhood Policy stressed in a speech in Salzburg in April 2008 that

“I think we need a more realistic approach to Russia that is based on facts” [and that the EU should] *“talk to Russia as it is, rather than with Russia as we would like it to be”* (Ferrero-Waldner 2008b).

The insistence on democratic reforms and human rights issues often inhibited progress in the EU-RF cooperation. The EU has to compromise on this if they want to conclude on policy solutions in crucial policy issues as energy security, organised crime, environmental policy, trade and irregular migration.

“Previous summits under former President Vladimir Putin were often marred by rows over thorny issues such as human rights. RF will apply any measures of force to preserve the status-quo and keep the existing system of governance alive” (EurActiv 2010a).

The Kremlin's chief political strategist Vladislav Surkov warned that the RF risks collapsing into chaos if officials try to tinker with the political system by flirting with liberal reforms:

“If we add any sort of political instability to that then our development would simply be paralysed. There would be a lot of demagoguery, a lot of empty talk, a lot of lobbying and ripping Russia to pieces, but no development” (Surkov cited in: Kyiv Post, 26 October 2009).

RF enjoins any intervention into RF domestic politics which are related to its sovereignty and the fundamental issue of statehood. The rejection of any critics on RF internal politics concerns merely human-rights violations in Chechnya. Part of the problem with the EU's response was its apparent desire to avoid damaging its 'strategic partnership' with Russia or risk alienating the country's new leader at a very delicate time. According to the 1999 Helsinki European Council's declaration on the war in Chechnya *“[...] there was a genuine concern on the EU's part that by pushing Russia too harshly over Chechnya the already turbulent country could be nudged towards increasing isolationism which in turn could have unpredictable consequences for the country's future development” (European Council 1999c).*

Moreover, as Stefania Panebianco (2006) points out, *“the EU does not react with a coherent defence of human rights and democracy because, when dealing with crucial political or economic partners, pragmatism prevails over the defence of values and principles” (ibid.: 138).* Thus, as EU's strategy of trying to blame RF over its perceived violations of human rights during the Chechen conflict had little resonance, its critique simply became lip-service to its stated human rights ideals while allowing to pursue other policy objectives which it sees as more important.

This is indicative of the Commission's realism to see the cooperation more pragmatic in a way of focusing rather on common interests than to insist on one position too much. Both sides have to show willingness in order to conclude on policy solutions. This realism derives from the changed context in which EU-RF relation find itself:

“Russia is back. For us, Europe is stronger and more stable with a strong and open Russia reaching out to the world. [...] In this new international security architecture, Russia is a key partner. We want to work as much as possible with a Russia that is ready to play its part. [...] We have some well-known disagreements. From trade disputes to travel restrictions over whether media and organizations like the British Council can

operate in truly free and independent manner. But trade is booming. And cooperation expanding to a wide range of areas. This broad nature of relationship has a stabilizing effect. Nevertheless, we do not have a real strategic convergence yet. Still lingering mistrust here and there. I believe we are at a turning point” (Speech by Javier Solana at the 44th Munich Conference on Security Policy, 8-10 February 2008).

To sum up, the cooperation under Medvedev got a more pragmatic drive, with an evolving respect for each other's interest. Due to crucial obstacles, both are aware of their interdependence and are looking for beneficial cooperation. Gomart (2008) interprets it as *“the two parties are unable to do without each other and cannot afford to avoid the redefinition of their partnership”* (ibid.: 1). Whereas a clear common vision is still missing, both are willing now to improve their cooperation in order to succeed in internal policy goals. At the 27th EU-Russia Summit on 27 June 2008 in Khanty-Mansiysk, both declared the start of negotiations to the implementation of the new treaty that would substitute the PCA (Council of the EU 2008c). On this occasion, Medvedev stressed that:

“[T]he future agreement will be an instrument for genuine rapprochement between Russia and the European Union. It should be built on the principles of equality, pragmatism, mutual respect for each other's interests and, of course, common approaches to key security issues. It will lay the long-term foundation for the strategic partnership between Russia and the European Union” (President of the RF 2008a).

According to the latest EU-Russia Summit on 10 June 2011 in Nizhny Novgorod, following issues are currently on their agenda: 1) a common free trade area, implying the RF accession to the WTO; 2) improve their energy dialogue; 3) implementation of RF's launched Modernisation Partnership; 4) rapprochement between the NATO-led European architecture and the RF; 5) facilitate the cooperation on JHA-issues and create a visa-free area; 6) create a comprehensive follow-up agreement to the PCA covering all aspects of the relationship and provide an institutional framework to tackle them efficiently; and, 7) tackling the world financial crisis (Van Rompuy 2011).

Already at the immediate previous EU-Russia summit on 31 May to 1 June 2010 in Rostov-on-Don, a major step in improving EU-Ukraine has been undertaken. First and foremost, the EU-RF Partnership for Modernisation was launched, aiming to strengthen their trade and economic partnership (Council of the EU 2010e) and to *“contribute to the global recovery and stronger international economic governance”* (Barroso in COM 2010e). George Bovt, analyst at the EU-Russia Centre in Brussels, sees the enormous potential of this latest initiative and emphasises its success as supportive for Medvedev's possible rerun for the presidential elections in 2012 (Bovt 2010).

4.2 Nature of the EU-RF Relationship

In this section the paper is going to scrutinise the relationship between the EU and RF in order to investigate whether and how these two actors are willing to cooperate on migratory issues. Therefore, the main controversial issues in this specific relation are going to be discussed, focusing on the factors determining the extent of institutionalizing cooperation – bargaining power, credibility, rational cost-benefit calculation, issue salience and international normative pressure.

Since the end of the Cold War and the breakdown of the Soviet-Union, EU-RF relations have been developing in a process in which the recovery of RF's capacity of projecting power has been followed by episodes of major disagreements between them (e.g. Blanco 2010). While the expansion of NATO; the enlargement of the EU and its neighbourhood policy eastwards; plans to install missile defence complexes in Poland and Czech Republic and the recognition of Kosovo's independence were understood as being a threat to the RF; vice versa, RF's approach concerning the delivery of gas to Western Europe ('gas diplomacy'); its own concept of sovereign democracy and its hegemonic foreign policy towards the 'Near Abroad'– which culminated with the RF -Georgian war in 2008 – made the EU constantly uncomfortable and reticent about the possibilities of strengthening ties with this neighbour that unfortunately cannot be ignored for the sake of its own interests (e.g. Blanco 2010).

Before closing this very short and 'down-to-the facts' review, it has to be stressed that both actors are aware of their interdependence and that they have to find a way to cooperate, at least, in the most salient policy issues as trade and security. A speech, done 1999 by the former High Representative for the CFSP, Javier Solana, stresses the meaning of the relationship with the RF to the EU:

"[d]eveloping the Partnership with Russia is the most important, the most urgent and the most challenging task that the European Union (EU) faces at the beginning of the 21st century. Building a partnership with Russia will not be easy, but I would argue most strongly that it is an opportunity we cannot afford to miss. This is why: Firstly, Russia is a natural partner of the EU. (...) This trade with Russia is mutually beneficial. Russia and the EU need one another. (...) Secondly, Russia is a country in transition towards democracy and market economy. It is strongly in our interest that this transition is successful so that we can live in harmony with Russia. (...) Thirdly, we need to engage Russia in partnership for security reasons. Russia is a natural security partner for Europe – our security is indivisible. We cannot have a secure Europe without a secure Russia.

(...) [W]e must in future guard against thinking that we know best what Russia needs”
(Javier Solana, 13 October 1999).

As the rational elements seem to be clear, we should also stress the importance of emotional elements covering this challenging relationship causing resentments as a result of: lack of trust; the traumata of the loss of the role as one of the two major global players and identity crisis within the RF. In the following, the section is going to elaborate on the briefly outlined issues in order to draw a comprehensive picture of the difficulties as well as possibilities of wide-range cooperation between the EU and RF. Whichever way the relationship with Russia is approached, economic and energy interests are on the core of their relations, which is considered in the following section. There then follows a section on the struggle on the common neighbourhood and policies on gaining influence in this geopolitical area. The next section considers the common space of external security, with particular attention to the NATO-oriented European security architecture and the EU-RF dialogue on IR issues. Finally, the paper responds to the question on the role of democratic values and human rights in their ratio-based cooperation. This chapter closes by screening the crucial conditions having an effect on the way of EU-RF cooperation.

4.2.1 Interdependent Economies in a Globalising World

EU-RF economic interaction increased significantly since 2000. Trade and economic cooperation is, nowadays, one of the most important factors in EU-RF relations, as the EU is RF's largest economic partner, both in terms of trade and investment, whereas the EU draws almost one-third of its demand of natural resources from the RF (Eurostat 2011a). Besides, the Russian market is attractive for investors from the EU as its economic growth shows a stable GDP growth from 8.5 % in 2007 and 5.2 % in 2008. In 2009, the world financial crisis resulted in a decline of -7.8 % (COM 2011a). According to data from the IMF, the economic growth in 2010 was increased again to 4.0 and prognoses a slightly rise to 4.2 % in 2011¹⁶. The World Bank, however, estimates an increase to 4.4 % in 2011 and almost verifies IMF expectations on RF's GDP growth¹⁷.

Hence, their manifold economic relations have by far not reached the potential maximum. What is needed is a stronger coordination in internal market regulation (e.g. competition law, rule of law, fully employed market economies) and cooperation on enhancing bilateral trade relations. Crucial steps are taken, inter alia, by the Common Economic Space

¹⁶ International Monetary Fund (IMF): <http://www.imf.org>, last access 23 May 2011

¹⁷ World Bank: <http://worldbank.orf>, last access 23 May 2011

initiative in 2004 and the launch of the Modernisation Partnership 2010. Further steps are going to follow, as currently both are negotiating on a new Enhanced Agreement, which should contain a common free-trade agreement. A conclusion of this new Enhanced Agreement presupposes RF's accession to the WTO, which is still a controversial topic for RF representatives. Besides, RF's own regional integrationist projects – such as the Customs Union between RF, Belarus and Kazakhstan – are conflicting with the creation of a common free-trade area and could be the stumbling block for an enhanced partnership.

Figure 12. EU27 Trade in Goods with the RF and in total in bln. EUR, 2000-2010

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Russian Federation											
Exports	22.7	31.6	34.4	37.2	46.0	56.7	72.3	89.1	105.0	65.6	86.5
Imports	63.8	65.9	64.5	70.7	84.0	112.6	140.9	145.0	178.1	117.7	158.4
Balance	-41.0	-34.3	-30.1	-33.5	-37.9	-55.9	-68.6	-55.9	-71	-52.1	-71.9
Total EU27											
Exports	849.7	884.7	891.9	869.2	953.0	1052.7	1160.1	1240.6	1309.9	1097.1	1348.8
Imports	992.7	979.1	937.0	935.2	1027.5	1179.6	1352.8	1435.0	1566.3	1206.5	1501.8
Balance	-143.0	-94.4	-45.1	-66.0	-74.6	-126.8	-192.7	-194.5	-256.4	-109.3	-153.1

Source: EUROSTAT Newsrelease: 'Partial recovery of trade in goods between EU27 and Russia in 2010', 9 June 2011. [Retrieved from http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/6-09062011-BP/EN/6-09062011-BP-EN.PDF, last access 22 June 2011]

Between 2000 and 2008, EU-RF bilateral trade “has been growing at an annual rate of 20%. It is now three times larger than it was in 2000” (Ashton 2008). After a huge decline in 2009, as a reaction to the world financial crisis, in 2010 EU-RF trade relations again recovered. The EU had already become RF's main trading partner by a share of 46.80% in 2010 of RF external trade amount. Others are China with 8.85%, the USA with 4.86% and Ukraine with 4.30%. However, RF accounts for 8.59% of EU's total trade and, therefore, is its third largest trading partner behind the USA with 14.44% and China with 13.86%. As for 2000, the RF's share of EU's external trade has amounted only 4.55%.

Figure 13. EU's and RF's main Trade Countries, 2005/2007/2010

European Union			Russian Federation		
Country	mln EUR	%	Country	mln EUR	%
USA	411.562,50	14,44%	EU27	224.036,30	46,80%
China	395.128,80	13,86%	China	42.385,40	8,85%
RF	244.893,70	8,59%	USA	23.279,50	4,86%
Switzerland	89.559,50	3,14%	Ukraine	20.585,30	4,30%
Norway	121.039,50	4,25%	Turkey	18.659,70	3,90%
Japan	108.628,20	3,81%	Japan	17.857,90	3,73%
Turkey	103.277,70	3,62%	Belarus	14.521,80	3,03%
India	67.946,10	2,38%	Kazakhstan	11.638,80	2,43%
TOTAL	2.850.636,30	100%		478.667,60	100%

Source: DG Trade of the European Commission/ EUROSTAT. [Retrieved from http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113440.pdf, 22 June 2011]

Within the EU, Germany is by far RF's main trading partner (30.4 % of total exports in 2010), followed by Italy (9.2 %) and the Netherlands (7.9 %). Germany is also RF's main importing country in the EU, accounting for 29.3 % of total imports, followed by the Netherlands (13.7 %), Poland (8.6 %) and Italy (8.3 %). Two important factors must be noted here. According to the divergent economic interaction with the RF, EU member states have different political and economic interests in their relations with the RF. Second, due to the EU accession of former Soviet Countries, EU's dependency on natural resources as oil and gas increased.¹⁸

Figure 14. EU Member States' Trade in Goods with the RF in mln. EUR, 2000/2010

	Exports				Imports				Balance	
	2000		2010		2000		2010		2000	2010
EU 27	22738	100%	86508	100%	63777	100%	158385	100%	41039	71877
Germany	6660	29,3%	26276	30,4%	14263	22,4%	29933	18,9%	-7603	-3657
Italy	2521	11,1%	7923	9,2%	8336	13,1%	13078	8,3%	-5815	-5155
Netherlands	1796	7,9%	6077	7,0%	3901	6,1%	21700	13,7%	-2105	15623
Poland	943	4,1%	5046	5,8%	5019	7,9%	13618	8,6%	-4077	-8572
Finland	2174	9,6%	4693	5,4%	3471	5,4%	9064	5,7%	-1296	-4371
United Kingdom	1066	4,7%	3618	4,2%	3256	5,1%	5740	3,6%	-2190	-2123
Lithuania	238	1,0%	2449	2,8%	1544	2,4%	5757	3,6%	-1306	-3308
Austria	711	3,1%	2873	3,3%	1132	1,8%	2170	1,4%	-421	704
Hungary	496	2,2%	2574	3,0%	2809	4,4%	5199	3,3%	-2313	-2625
Belgium	944	4,2%	3682	4,3%	1614	2,5%	6225	3,9%	-670	-2543

Source: EUROSTAT Newsrelease: 'Partial recovery of trade in goods between EU27 and Russia in 2010', 9 June 2011. [Retrieved from http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/6-09062011-BP/EN/6-09062011-BP-EN.PDF, last access 22 June 2011]

¹⁸ Source: World Trade organization (WTO). [Retrieved from <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=RU>, 17 May 2011]

As noted above (Fig. 12: 'EU's and RF's main Trade Countries'), almost half of RF's exports go to the EU; from that, two-third of the exported goods in 2009 consisted of fuels and mining products (69 %) ¹⁹. The EU's exports to the RF are more diversified and refer by a share of 79.8 % to manufactured goods including medicine, motor cars, mobile phones and aircraft ²⁰. In 2010, the share of imports of fuels and mining products raised to 74.6 % (Eurostat 2011a). This corresponds to an increase to 118192.8 mln. EUR, compared to 35793 mln. EUR in 2000 (ibid.). Nowadays, RF provides 35.1 % of EU's total imports of gas and oil, which amounts 63.2 % of EU's imports from the RF (COM 2011a). Concluding on the data, Russian oil and gas exports are targeted solely to the EU market, which make the RF still a very regional and a global supplier of energy.

Having in mind that RF has the largest reserves of natural gas, the second largest coal reserves and the eight largest crude oil reserves, we can suppose an increasing role of the RF as a provider for energy the forthcoming decades ²¹. Further, according to the U.S. Energy Information Administration, the RF was the largest producer of crude oil in 2009, surpassing Saudi Arabia ²². On contrary, the EU is one of the world's largest importer of oil, gas and coal and its dependency on imports is expected to increase to 70 percent in 2030 (COM 2000). As Gomart (2008) express it:

"[t]he EU will therefore increase its energy dependency on all providers, at the head of which list is Russia: that country produces 12.3 percent and 21.3 percent of the world's oil and gas respectively. Russian gas exports to the EU account for 84.8 percent of Russia's total gas export and 26.3 percent of European consumption. Oil exports from the Commonwealth of Independent States (CIS) to the EU represent 83.3 percent of oil exports from this region and 38.7 percent of European consumption" (ibi.: 11).

There is no doubt about EU's dependency on gas supply from the RF, but we should break the vicious circle of polemics on who is more dependent on whom, i.e. Europe on Russia for its supplies, or Russian energy producers for their sales in the European market. What is challenging is RF's dependency on its one-sided exports of fuels and mining products and its major quota in their GDP. It shows that RF's economic recovery basically leads back to the increase of gas prices on the world market, which on the other hand indicates its vulnerability on world market prices on this one niche. To sum up the above discussed data on EU-RF economic interaction, following three crucial factors are

¹⁹ Ibid.

²⁰ Ibid.

²¹ Source: U.S. Energy Information Administration. [Retrieved from <http://www.eia.gov/countries/country-data.cfm?fips=RS>, 17 May 2011

²² Ibid.

striking: (1) Energy Dependency, Vulnerabilities and Diversification; (2) FDI and Modernisation of RF's economy; and, (3) legalisation and institutionalisation of bilateral economic cooperation.

4.2.1.1 Energy Dependency, Vulnerabilities and Diversification

First, EU-RF's economic relations are mainly dominated by their trade of gas and oil. Whereas the EU covers almost one-third of its oil and gas consumption with imports from the RF, more than two-thirds of RF's export revenue depend directly on its oil and gas exports to EU member states (e.g. Gomart 2008: 11). Therefore, although the EU is heavily dependent on RF's energy supply, the RF itself is also heavily dependent on the EU market as the by far largest customer of its natural resources. This domination of trade of oil and gas makes both economies rather vulnerable to negative externalities, as decrease of gas and oil prices on the RF side, and disruption of energy supply on the EU side. Thus, the RF attempts to diversify its economy, whereas the EU seeks a diversification of its supplier countries and routes.

On the one hand, the EU seeks to ensure a regular flow of gas and oil at a reasonable price. After all, the EU is heavily dependent upon Russian gas and oil. The EU is concerned about this dependency because the RF might not flinch from use EU's dependency to succeed in its interests, as the RF has already done by the so called gas-diplomacy towards Ukraine and Belarus. Especially the current 'gas war', at the beginning of 2009, between the Ukraine and RF weakened RF's reliability as an energy provider. Furthermore, this was not the first time that Europe had suffered from spats between the RF and its transit countries, keeping in mind RF-Ukraine gas crisis in 2006/2007 and 2008/2009, which left some EU countries with drastically reduced oil and gas supplies in the depths of winter.

As Ukraine is by far the main transit country for gas from RF, around 18 countries of the EU suffered from the lack in delivery as many households couldn't heat their homes for some weeks (Reuters, 7 January 2009). This conflict between RF and its 'backyard' sent a message to everyone and can be interpreted as a warning sign of RF's future behavior in its external relations, even to the EU. Thus, the EU in general and member states in particular walk the talk on the objective to reduce its dependency on RF gas imports. Several new pipeline projects got set up: On the one hand, four member states (Austria, Hungary, Bulgaria and Romania) and Turkey signed a framework agreement on the 13 July 2009 and, thus, declared their support for the so-called Nabucco pipeline project which is going to connect the EU with Azerbaijan and potential gas producers in Central

Asia – especially Turkmenistan, Kazakhstan.²³ A further connection with suppliers in Kurdish Iraq and Iran are not on the official agenda, yet.

The shareholders of the Nabucco project are to an equal share of 16.67%: Bulgarian Energy Holding (Bulgaria), Botas (Turkey), MOL (Hungary), OMV (Austria), RWE (Germany) and Transgaz (Romania). This pipeline is proposed to go on line in 2015 by a capacity of 31bcm/ year²⁴. A further diversification of gas delivery has been done by the 2004 opened gas pipeline between Italy and Libya, which connects the EU with the broader Mediterranean. This pipeline project was contested as the leader of Libya, Muammar Gaddafi, has been the target of several embargos because of his anti-democratic leadership. Despite seriously beginning to pursue its aim of diversifying its gas suppliers, it will take decades to significantly reduce RF-European energy dependence. Additionally, this cannot be managed only by diversification but also by applying new technologies and alternative energy sources.

Günther Oettinger, commissioner for energy since 10 February 2010, pronounced the Nabucco project to be an important tool to gain more independence from RF. Apart from that, he stressed that the RF not only delivers its own gas but resells gas after acquiring it from third countries, as e.g. Kazakhstan. Oettinger call for a strategy to access the sources independently from the RF (e.g. Kurier 2010). The Nabucco project initiators, however, are still facing problems to get the needed quantity delivered, as needed procurement contracts are still not signed and the Russian Gazprom competes with companies from the EU on prices and conditions; e.g. Gazprom are also in contractual relations with the main gas producers in the region: Azerbaijan, Kazakhstan, Turkmenistan. Further, the RF recently strengthened its ties with Turkey on energy cooperation and succeeded in signing an agreement on building a section of the South Stream pipeline on Turkish territory (EuRussia Centre 2010b). The fight over the main sources in the region almost reached its climax, and sees the RF in the forefront, which is caused by still closed ties with the main gas producer Kazakhstan and Uzbekistan. Azerbaijan is playing a double card in order to attract both regional powers and even the Aliev clan favours a closer cooperation with the EU as it needs the RF in the region, especially in the 'frozen conflict' in Nagorno-Karabakh. In the case of Central Asian Countries, we can see the struggle for the EU to finalise agreements with former Soviet Countries. As for Kazakhstan and Uzbekistan, they held back from supporting the

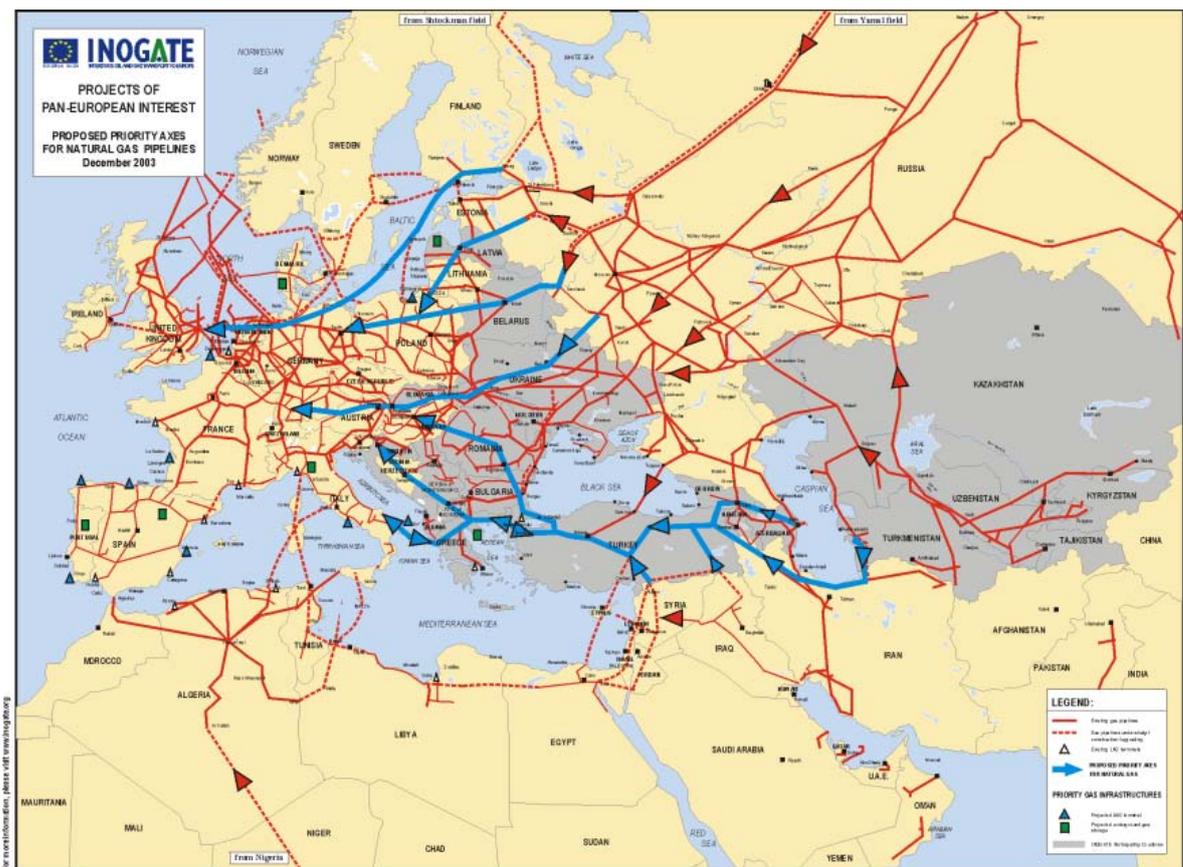
²³ Website of the Nabucco pipeline project: <http://www.nabucco-pipeline.com>, last access 13 May 2011

²⁴ Ibid.

Nabucco pipeline out of loyalty to Russia. Turkmenistan, however, turned to the Nabucco shareholders as a mean of revenge against the RF, after Gazprom abruptly cancelled the contract with Turkmenistan as the prices and the demand fell in the aftermath of the global economic crisis. But, according to policy experts, the authoritarian leader of Turkmenistan, Gurbanguly Berdymukhamedov, is known as a not very reliable partner (e.g. EuRussia Centre 2009c).

Besides the Caspian Basin and Central Asian region there could be some new potential gas providers to Nabucco. They are Iraq (mainly the Kurdish part), Iran and even Egypt and Saudi Arabia. Their participation would make the project unbeatable by Gazprom. However, so far their participation seems not credible which makes it possible for Russia to continue playing on disagreements between the participating countries as it tries to keep its important role in the European market.

Figure 15. Pipeline Projects of Pan-European Interests (Inogate 2003)



Source: Inogate (2004): INOGATE Developments 2001 – 2004 and New Perspectives. p. 10. [Retrieved from http://www.inogate.org/inogate_programme/inogate_resource_center/maps/gas_map_big.gif, 12 November 2010

Apart from the EU's diversification strategy of pipeline routes and suppliers the RF also initiates new pipeline projects to reduce the dependency on uncertainty transit routes by bypassing Belarus and Ukraine in the South and in the North. Especially, the so-called 'North-Stream' pipeline is rather advanced and mainly supported by Germany and the Netherlands in cooperation with the RF, as it is a joint venture of five shareholders: Russian Gazprom (51%); German Wintershall/ BASF (15.5%) and E.ON Ruhrgas (15.5%); the Dutch N.V. Nederlandse Gasunie (9%); and, the French GDF Suez (9%). It is planned, that the 'North-Stream' pipeline will go on line in 2012 with a capacity of 55 bcm per year²⁵.

The second project of the RF is the 'South-Stream' pipeline, developed by Gazprom in cooperation with the Italian company ENI. The pipeline should deliver gas by 2015 through Bulgaria to Western Europe under the Black Sea. In the last two years, several intergovernmental agreements got signed with the transit countries Bulgaria, Serbia, Hungary, Slovenia and Greece. Negotiations with Austria are underway and should be finalised by 2011 and connect the South Stream with the European pipeline network²⁶. Both pipeline projects are a clear reaction to the proposed Nabucco pipeline and the critics on RF's reliability because of recent delivery problems, trying to neutralise all other competitive options.

The fact that some EU member states have their special bilateral energy relations with the RF, however, annoys bypassed member states such as Poland, the Baltic States and the Scandinavian states. They fear, first of all, a bickering throughout the EU member states on a common energy strategy and a common approach towards the RF. On the contrary, the RF aims with its pipeline projects to undermine competitive pipelines from the Caspian plate and to maximise the economic and political leverage of its energy assets and limit the EU diversification options.

²⁵ Website of the Nord-Stream AG: <http://www.nord-stream.com>, last access 12 May 2011

²⁶ Website of the South Stream project by Gazprom and ENI: <http://south-stream.info>, last access 12 May 2011

Figure 16. Existing and planned Russian Gas Pipelines to the EU



Source: Ukrainian Energy. [Retrieved from http://ukrainian-energy.com/articles/market_comments/160/, 12 November 2010]. See also U.S. Energy Information Administration. [Retrieved from <http://www.eia.gov/>, 12 November 2010]

4.2.1.2 FDI and Modernisation of RF's Economy

RF's economy is merely characterised by an old-fashioned heavy industry, and the main revenue of its GNP comes from its exports of oil and gas. Further, despite its former role in IR, RF's share of the world economy doesn't exceed 3% in 2005. Compared to others, the RF is by far behind the USA (22.5%), China (nearly 10%), Japan (7%), Germany (4.6%), the UK (3.5%) and France (3.4%) (International Bank for Reconstruction and Development/ World Bank 2008). Hence, it would be wrong, though, to overestimate the

relative size of RF's economy, whose GDP per capita is even behind Hungary and Poland and similar to Romania and Turkey. The national income it generates, however, is lower than that of Brazil and only doubled to that of Turkey. Compared to EU member states, RF's GDP is similar to that of the ten new member states or the Benelux states together.

Figure 17. GDP Performance in 2009

	GDP per capita in USD Units	Population in mln	GDP in bln. USD
EU member states			
Austria	45,685.879	8.363	382.073
Czech Republic	18,170.868	10.468	190.204
France	42,409.874	62.637	2,656.407
Germany	40,831.659	81.767	3,338.675
Hungary	12,893.958	10.031	129.339
Italy	35,250.810	60.045	2,116.637
Poland	11,298.879	38.111	430.614
Romania	7,609.603	21.462	163.317
Russia	8,614.026	141.900	1,222.330
Ukraine	2,568.653	45.706	117.404
Belarus	5,190.787	9.480	49.209
Others			
Norway	78,182.772	4.843	378.614
Switzerland	63,535.942	7.742	491.923
Turkey	8,711.161	70.538	614.466
US	45,934.469	307.374	14,119.050
China	3,738.952	1,334.740	4,990.528
Brazil	8,360.327	191.481	1,600.841
India	1,058.226	1,199.062	1,268.878

Source: IMF, 20 June 2011. [Retrieved from <http://www.imf.org/>, 6 June 2011]
 DG Trade, European Commission. [Retrieved from <http://ec.europa.eu/trade>, 6 June 2011]

RF's economy develops far below its potentials. Its economy is less diversified and therefore high vulnerable to negative externalities. E.g. after economic rising for nearly a decade – as a result of the increase in oil and, consequently, gas prices –, RF's economy completely fell sharply due to the international economic crisis; demonstrated by a negative growth of 7.8% in 2009 (COM 2011a). Its economy is old-fashioned, less competitive and merely based on raw materials. The main industries – strategic sectors,

including oil and gas, nuclear power, the mining of metals, arms, the aerospace industry, etc. – are under state control, e.g. the energy market is dominated by the two state-controlled energy companies Gazprom – the second largest energy company in the world – and Rosneft (The First Post 2006). Thus, RF's domestic and foreign economic policies are highly politicised and streamlined with an old-fashioned approach to security (e.g. RF presidency 2008). Smorodinskaya (2008) analysis of RF's economic and energy policy as follows:

“[t]his very approach has formed a leading motivation behind Kremlin's course towards consolidating verticals of power in the Russian society, establishing control of state-owned corporations over key sectors of economy, aggressive takeovers in foreign markets and retaining Russia's image as a super-power, especially in the CIS” (Smorodinskaya 2008: 1f.).

To grasp the importance of Gazprom, we have to take into account that it produces 95% of RF's gas (EurActiv 2006). Without any major alternative competitors and bringing the internal production chain under political control of the Kremlin, the energy market is rather out-dated. As Kamp (2008) has expressed in an article: *“mmismanagement and insufficient reinvestment of earnings are the primary causes of its obsolete pipelines and infrastructure”* (ibid.: 29).

To conclude, it is not only about EU's vulnerability on gas import from the RF; it is also about RF's needed access on the Western markets and to Western drilling technologies and expertise to increase its efficiency in gas production. What is needed to ensure a sustainable economic growth are: a diversification of RF's economy; implementation of major market reforms and strengthening the rule of law; and attracting FDI's and technology transfer to make the Russian economy more efficient and competitive. The EU as the closest player in the region plays a crucial role in the modernisation of RF's economy and especially in the phase of the current global economic crisis. Although EU-RF economic interaction increased significantly since 2000, it is still far below the maximum potential.

The EU is already, besides being by far the most important trading partner for the RF, RF's main investor, accounting for more than three-quarters of FDI's in the RF. EU FDI stocks in the RF grew significantly since 2000. Between 2007 to 2009, EU stocks increased by a rate of 24% and hold by 88.8 bln. EUR in 2009 (Eurostat 2011b). However, the FDI flows fell from 27.3 bln. EUR in 2008 to almost zero in 2009 (0.7) and 2010 (-0.4), in the wave of the financial crisis (ibid.).

Figure 18. EU's main FDI Partners in 2009

	2007	2008	2009	Growth rate 2007-2009
TOTAL EU 27	3231.6	3319.8	3665.5	13%
USA	1027.1	1089.5	1134.0	10%
Switzerland	458.0	462.9	503.3	10%
Canada	142.6	142.7	157.5	10%
Brazil	107.7	108.5	132.2	23%
Singapore	66.7	89.2	95.8	44%
Hong Kong	89.3	89.3	92.9	4%
Russia	71.5	83.2	88.8	24%
Japan	74.8	78.4	84.0	12%
Australia	69.9	70.3	82.8	19%
South Africa	55.1	55.1	77.0	40%

Source: Eurostat (2010): Eurostat Statistical Yearbook 'Europe im Focus' [Retrieved from http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-CD-10-220/EN/KS-CD-10-220-EN.PDF, 22 June 2011]

However, although the EU FDI's stock grew constantly, it is far below its potential, ranking on 7th position of EU investments abroad. Notably, the RF economy, therefore, ranks behind countries as Canada, Brazil, Singapore and Hong Kong. This might be an indication for RF's weak performance and an unattractive investment climate. The RF urgently needs FDI's in order to modernise its economy, create a sustainable growth and be able to compete at the world market. RF's economy faces an urgent need for action to attract FDI's by improving their investment climate; the business climate has by far been sorely suffered by a lack of legal certainty. According to the current business climate of mistrust towards the RF and the unclear relations between business and political power, western enterprises and investors are cautious about entering the Russian market or signing Russian enterprises. Indeed, the well publicised cases of BP, Shell, Telenor and IKEA underline how much Russia still has to do in terms of fighting corruption and establishing the rule of law (e.g. EuRussia Centre 2009b). Otherwise, there are, for example, the French companies Renault, who participate in the modernisation of Russia's Avtovaz car manufacture, and Electricite de France and others, which takes part at the South Stream or North Stream pipeline project (e.g. *ibid.*).

The EU, as the closest and main trading partner and investor, has the financial resources, the technology and the know-how to improve RF's outdated market. First and foremost, major reforms have to be undertaken to guarantee a minimum of reliable legislation and its enforcement. In particular, there is a need to facilitate the access to the Russian market for goods and services from the EU; ease its restrictive laws on foreign ownership; ensure

protection of intellectual property rights; improve the judiciary, facilitate border procedures for international transports; harmonise product standards and abolish trade infringements.

The recent Common Space report notice major progress, made by the RF government by the last years to improve the investment climate in RF market and facilitate the trade relations with the EU (EEAS 2010; see also Meloni 2007a). However, further measurements are needed to tap the full potential of EU-RF economic relations. The EU, therefore, see RF's accession to the WTO as a corner stone for a possible creation of a common free trade area to reach to a maximum of economic integration. A press release by the commission underlines the prospect of RF's accession to the WTO for EU-RF economic relations:

"WTO accession is likely to anchor Russia into an international rules-based trading system. It will enhance openness, transparency and predictability, which are key to attracting foreign investment and provide a foundation for improved economic governance" (COM 2004c).

Additionally, the President of the European Commission, Jose Manuel Barroso, emphasised the necessity of the RF to join the WTO in a press conference during the EU-RF summit on the 7 December 2010 in Brussels:

"[...] truly modern economies are those that are open and shape the global rules of the game, not the ones that practice protectionism. Joining the WTO is also an important stepping stone towards deeper bilateral trade relations" (Barroso 2010).

Although the RF has proposed its application for WTO membership already in 1993, the accession process is marked by conflicting messages and doubtful efforts and didn't result in a finalisation until now. However, the RF facilitated its own integrationist projects on initiating a custom union with Kazakhstan and Belarus which would be fully operational by the beginning of 2012. As RF's envoy to the EU, Vladimir Chizhov stated, the Custom Union will not hinder RF's path towards WTO accession as *"Russia, Kazakhstan and Belarus would join the organisation separately, but on a synchronised basis as part of their Customs Union"* (EuRussia Centre 2009d). Be that as it may, the EU made RF's accession to the WTO the precondition for a new NEA and a free trade agreement (FTA). WTO membership will obviously not resolve all the country's economic woes, but it is a precondition for a level playing field with clear and enforceable non-discrimination obligations and rules to settle trade disputes.

On the other hand, the EU must also open their market for investors from the RF, which are waiting to invest their accumulated vast volumes of oil-gas dollars in strategic areas abroad. So far, EU member states mistrust state-controlled enterprises because they expect a politicisation of trade relations in the long term. To this end, Russian authorities started to build a very wide range of so called 'development institutions' - beginning with the Investment Fund and Development Bank 'Vneshekonombank' and re-nationalisation of enterprises in various 'strategic' branches, ending with a network of state-led corporations where foreigners are not admitted, like Gazprom, Rosneft, Rosatom, Rosnanotekhnologii and others (e.g. Smorodinskaya 2009:3). This is seen as being rather problematic, as most of the financially-strong enterprises are controlled by the Kremlin and it is expected that the ruling elites are advancing its vested interests over and above the national boundaries and try to convert trade into political advantage or vice versa. What seems to be commercial wrestling turns out to be a geopolitical match. The difference in RF's trade relations towards countries who are well-disposed and others epitomises this geopolitical approach, e.g. economic blockades against westernizing post-Soviet countries (Baltic countries, Poland, Ukraine, Georgia). Latest examples are the trade disputes with Poland and Lithuania, realising the North Stream and South project, bypassing the Baltic states, Poland and Ukraine (e.g. Smorodinskaya 2009: 3-4; Roth 2009). RF's politicisation of its energy policy is rather obvious and weakens its reliability as a trading partner.

The EU provides assistance to support RF's reform efforts and also signed a series of cooperation agreements (PCA in 1997; Strategic Partnership in 2004; and, Modernisation Partnership in 2009) to facilitate their cooperation on respective issues. Currently, both negotiate on a new Enhanced Agreement to take the next step in their economic relations, realising a common free trade area. The mandate to negotiate a new PCA contains a long list of subjects in the field of trade and economic cooperation with a view to removing obstacles to trade and investment and achieving the maximum possible convergence of legislation. In the face of its vulnerability in its energy relations with the RF, the EU tries to establish an EU-RF Energy Partnership in order to

"enhance the energy security of the European continent by binding Russia and the EU into a closer relationship in which all issues of mutual concern in the energy sector can be addressed while, at the same time, ensuring that the policies of opening and integrating energy markets are pursued. With the strong mutual dependency and common interest in the energy sector, this is clearly a key area of EU-Russia relations" (European Council 2009).

The cooperation is still based on the EU-RF Energy Dialogue, which got launched in 2000 at the EU-RF summit in Paris, and is in accordance with international obligations fixed in the Energy Charter Treaty²⁷, which got signed in 1998 (COM 2009f).

Over the last 10 years, their cooperation on crucial issues of economic and energy issues got rather institutionalised and regularised to establish uniform 'rules of the game', due to tackle their mutual dependencies and the high level of mistrust between them. Institutionalised and regularised cooperation on economic and energy issues may become the integrationist core of EU-RF relations, as it was the case with the European Coal and Steel Community for the EU integration, established by the Treaty of Paris in 1951 (e.g. Goncharova 2010: 9).

European Commissioner for External Relations, Benita Ferrero-Waldner, stressed in a speech on the 24 September 2007 in Strasbourg the need to improve EU-RF relations:

"Russia is not only a close neighbor, but it is also a strategic partner for the European Union. EU-Russia trade and investment is booming and our energy interdependence is growing. Russia is a key partner to tackle regional conflicts and global challenges. But much remains to be done to develop the full potential of our relationship" (Ferrero-Waldner In: Blanco 2010: 19).

Economic cooperation is by far the most crucial sphere of mutual interest and can be seen as the driving force for the new treaty. One of the priorities is the creation of a free trade area between the EU and the RF. Thus, the EU sees RF's membership in the World Trade Organisation (WTO) as a precondition for the coming into force of an enhanced new agreement, after which further widening and deepening of EU-Russia trade and economic relations can be pursued. In a speech in Moscow EU Commissioner for Trade Peter Mandelson (2007a) stressed that, *"WTO membership is also a stepping stone for the further development of our bilateral relations"* (ibid.). In another speech at the EU-Russia centre, Mandelson (2007b) argues that the EU and Russia are experiencing a difficult period at a time when their relationship is structurally underdeveloped and politically over-sensitised. He made the case that the priority for the EU and Russia must be putting *"the economic fundamentals in place, above all by integrating the EU and*

²⁷ The signatories of the European Energy Charter, including the EU, former Yugoslavia (except Serbia) and former Soviet Union states, undertook to pursue the objectives laid down in the Charter and to establish cooperation under a legally binding basic agreement, which became the Energy Charter Treaty (ECT). The Treaty and the Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA) got into force in 1998. The Trade Amendment to the Treaty's trade provisions is adopted, bringing them in line with the WTO rules. (Source: <http://www.encharter.org/>, last access 23 March 2011)

Russian economies better and getting Russia into the WTO" (*ibid.*). Andris Piebalgs, European Commissioner for Energy, noticed in the wave of the EU-RF PPC on Energy issues that:

"[r]einforcing confidence between the EU and Russia, based on strong legal frameworks, is crucial. While negotiations on the new EU-Russia Partnership and Cooperation agreement are already underway we also need to achieve progress in the short term" (Piebalgs In: COM 2009g).

At the 26th EU-Russia summit, held on the 3 December 2010 in Brussels, the President of the European Commission José Manuel Barroso said:

"We just achieved a bilateral breakthrough on Russia's WTO accession and strongly support Russia's efforts to become a member in 2011. This will strengthen trade and investment and contribute to shared economic growth. It should also give new momentum to our talks on a New EU-Russia Agreement. We will also give further impulses to our Partnership for Modernization, which is key in supporting political and economic reforms in Russia" (European Council 2010a).

4.2.2 *Struggle for Gaining Influence in the Common Neighbourhood*

The second challenging area of EU-RF relations are about geopolitics, stemming from the former Cold War politics. It is about their complementary policies on gaining influence in the common neighbourhood. RF itself demands its lead in its 'backyard' as successor of the former Soviet Union. On the contrary the EU tries to foster its relations with these countries and seeks for cooperation in major policy areas of possible negative externalities to the EU, as well as gaining access to growing markets in this region. Both powers in the region, therefore, have their individual objectives in the region, but avoid developing a common strategy. The common neighbourhood, or what is called 'near abroad' in Russian official rhetoric (e.g. Massari 2007), becomes a central focus for political power games. In this context, the EU is anxious about RF's increasingly assertive foreign policy in recent years, prompted in part by the sharp increase in the strategic value of its stocks of fossil fuels, especially natural gas. Thus, the EU seeks to empower these states by developing their democracies and market economies through both bilateral and multilateral tracks while decreasing their dependence on the mighty RF.

In this section, first of all, several policies and initiatives of the EU are discussed, which attempt to facilitate its interaction with the neighbours in the East and accomplish a partly integration into EU's community of values. Specific attention is given to the implication of EU's enlargement in 2004 and 2007, NATO enlargements and extension of Schengen to new member states on EU-RF relations, as well as specific policies, addressing the

countries in the common sphere of influence, such as the PCA, ENP and the current initiated Eastern Partnership. Second, the section analyses RF's strategic attempt and policy initiatives to exert influence on the former Soviet satellites. At last, we discuss the implication of the EU-RF relations on the dissolution of frozen or current conflicts in the countries of the southern Caucasus (Georgia, Armenia and Azerbaijan) and in Moldova (Transnistria).

After the breakdown of the Soviet Union, the former Warsaw pact countries turned their face to the west and searched for a new partner who could help them transform into market economies and democratic systems. The EU, as the second economically and military powerful player in Europe, attracted these countries, and thus most of them opted for a membership in the EU. Before of this, the EU signed Trade and Cooperation Agreements (TCA) with them (e.g. Hungary 1988; Poland 1989; Czech Republic 1990), launched financial and technical assistance programmes (e.g. PHARE) and finally adopted a pre-accession strategy at the Essen European Council (1994) – defining clear criteria for a membership perspective for countries in Central Eastern Europe (European Council 1994). Following this, the EU signed the so called 'Europe agreements' with applying countries which constituted the legal framework for implementation of the accession process.

Finally, after the preparatory period, the three Baltic States, the Czech Republic, Hungary, Poland, Slovakia and Slovenia became EU members in 2004 together with Cyprus and Malta. Bulgaria and Romania acceded in 2007. The 2004 and 2007 EU enlargement to RF's former satellite states marked a turning point in the EU and RF's mutual perceptions. On the one hand, the EU came closer to the RF territory, holds now the authority in a major part of the former Soviet Union and has increased its power in the region and on a global level. On the other hand, the new member states affect EU-RF relations as they are not afraid to bring issues to the table and turn EU's RF policy to be more outspoken and critical (e.g. Poland, Lithuania, Latvia), whereas the old member states are more reluctant in provoking RF's administration due to their economic interlinkages with the RF (e.g. Germany, Italy and France). Especially the rotating presidencies of the EU provide a major say in the EU's foreign policy and set the agenda to a major extent, which makes the foreign policy of the EU more incoherent. Further, the gas demand of the new member states and their eastward oriented trade increases the dependency of the EU on RF gas supply and market access, and therefore, again, weakens EU's power position in the region. At last, the enlargement affects the mobility of millions of people, as EU's border regime moved eastward and now incorporates a more restrictive visa policy between

former allies. Especially with the accession to Schengen (European Council 1999), a new 'paper curtain' or "*Schengen wall*" (Interview with official from the Belarusian Foreign Ministry, Minsk, 8 June 2009) divide the EU Europe from the rest. This is rather crucial for the case of Kaliningrad, which is now an exclave of the RF between Poland and Lithuania at the Baltic Sea, without any common border with its motherland. An acceptable solution for the Kaliningrad region got approved by a Council Regulation in 2003, establishing the Facilitated Transit Document (FTD) and Facilitated Rail Transit Document (FRTD), both facilitating transit through EU territory to RF territory (European Council 2003). Further, the restrictive border regime divided regional communities, ethnic groups and even families, as e.g. Romans and Russians in Moldova, Finno-Ugric ethnics in the RF and cross-border communities as between Poland, Lithuania and Kaliningrad (Interview with Olga Potemkina, Institute of Europe at the Russian Academy of Sciences, Moscow, 12 June 2009).

Apart from the big EU eastward enlargement in 2004 and 2007, the EU announced also a membership perspective to all Western Balkan countries as well as Turkey. Today, Croatia, Macedonia and recently Montenegro are EU candidate countries along with Turkey. In addition, Ukraine, Moldova and Georgia have expressed an interest in joining the EU, but the Union is not putting their membership on the agenda. Instead, EU's eastern policy became more pro-active and now offers the willing countries in the east far-reaching technical and financial assistance as well as a facilitated interaction and cooperation in areas of mutual interest. For this purpose, the EU launched several agreements and initiatives. Thus, the EU signed PCA's at the end of 1990s with other former Soviet countries such as Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine and Uzbekistan. A PCA was also negotiated with Belarus but has not come into force, according to the existing lack of democratic governance and human rights of the authoritarian leadership of Lukashenko. On the one hand, EU's policies were a response to the demands of these countries to succeed in integration into the EU system. On the other hand, the EU also tried to extend its influence in the East to gain more power in the region.

The PCA, more or less, provides the legal and institutional framework for EU-RF cooperation. The agenda of the interaction and cooperation within these institutions grounds on regional initiatives and policies. Worth mentioning are on the one hand the Northern Dimension (ND) initiative between Scandinavian Countries, Baltic Countries and the RF. The first Action Plan got adopted at the Feira European Council in June 2000 (European Council 2000). On the other hand, the EU launched the European

Neighbourhood Policy (ENP) and the Strategic Partnership (EaP) with the RF in 2004, thought as an instrument to avoid the emergence of new dividing lines between the enlarged EU and the new neighbouring countries. In recent years, two new initiatives within the ENP complement the current framework of interaction in the eastern European region. Firstly, we have to mention the Black Sea Synergy, which comprises the countries in the Black Sea basin, namely the South Caucasus, Ukraine and Moldova. The Black Sea Synergy initiative was proposed by the European Commission in a communication to the Parliament and the Council in 2007. It got formally launched in Kyiv in February 2008 at a summit of all littoral countries.

Secondly, a new programme for the Eastern neighbours, called Eastern Partnership (EaP) got adopted at a Summit in Prague on the 7 May 2009 (COM 2008a). The Eastern Partnership instrument covers six post-soviet countries: Azerbaijan, Armenia, Georgia, Moldova, Ukraine and even Belarus, which is merely excluded from any EU external policies. As for the RF, it was invited to participate in the Eastern Partnership programme as an observer. The adopted joint declaration at the Eastern Partnership Summit in Prague attempts *“to create the necessary conditions to accelerate political association and further economic integration between the European Union and interested partner countries”* (Council of the EU 2009c).

“We are trying to antagonise Russia with Eastern Partnership. We do not want to exclude them” (Interview with Commission official, DG JFS, Brussels, 17 April 2009).

EU's initiatives in the region are aiming to re-integrate the neighbouring countries as much as possible into the 'European family'. As the relations with these countries evolve, there is natural differentiation between them, depending on their distinct aspirations and reform agendas, different relationships with the EU from a historical perspective and also with each other. Many of them have little in common. In this sense, it is a very heterogeneous group of countries. During recent years there have been a number of reversals in the apparently inevitable progression towards permanent democratic transformation and market economy. For example: weak leadership and chaotic parliamentarianism in Ukraine; manipulation of the 2009 presidential election results in Moldova; repression of political opposition in Georgia, authoritarian leadership in Belarus and Azerbaijan; and, lack of rule of law in all Eastern Countries.

The Common Neighbourhood between the EU and RF agenda is equally complex and abounds in mutual suspicions and misunderstandings. It is the area of stiff competition between them, with both sides essentially agreeing on the ends – that the common neighbourhood should be a zone of security and stability – but diverging on the means.

The EU is keen to see these countries adhering to European norms and values, whereas the RF in turn would like to have a ring of loyal regimes to preserve its role as a regional as well as a global actor. Thus, the RF is considered about EU's eastern policy, claiming a sphere of interest in the post-Soviet space. RF, itself denied being a part of the ENP or EaP. It refuses to be seen as a neighbourhood of the EU and either to be downgraded as being equal to Ukraine, Belarus and others. The RF considers the EU eastern policy and its role at revolutionary events in the region as affecting its crucial interests in this region. Any activity of the EU in RF's 'near abroad' is seen as an assault against RF and harms EU's credibility as a trustful partner.

The flurry of the RF administration is caused by the fact that RF itself doesn't have any attractive alternative to offer. As the EU-Russia Centre came to the appraisal, the RF is

“unable to persuade the neighbours to cooperate with peaceful means and not able to offer an attractive transformation model, [thus] Russia places most emphasis on strong-arm tactics. Instead of competing with the EU to offer concessions to the neighbours, it tries to ridicule the EU's role, or create an image of the enemy. Both tactics are false, and lead nowhere” (EuRussia Centre 2009a).

After the breakdown of the Soviet Union, RF's foreign policy was shaped by an identity crisis in the wake of the traumata of the fall as a former global player. Especially the loss of influence in their self-reclaimed post-Soviet backyard grieves the Russian administration. The RF sees itself as the successor of the Soviet Union and therefore seeks to regain influence as a global and regional actor. In reaction to EU's competitive initiatives towards former member states of the Soviet Union, the RF itself seeks to secure its exclusive sphere of influence by its own regional initiatives. Because of RF's limited possibilities to offer itself as an attractive, prosperous and powerful pole in the region, it adopted a more assertive policy to protect and project RF's national interests. On the one hand, the RF provides financial and political carrots, as offering cheap loans or gas supply to a reduced price. On the other hand, the RF doesn't flinch from pushing political pressure on countries to be loyal. E.g.: trade wars (import ban for products from Moldova from March 2006 to November 2007; those from Georgia from March 2006 to the present; and imports from Ukraine. Meat imports from Poland were banned between November 2005 and December 2007); increasing gas prices for political leverage; and use of territorial claims and conflicts, as the independent movements in Abkhazia and South Ossetia, frozen conflicts in Transnistria and Nagorno Karabakh (e.g. EuRussia Centre 2008b: 61).

Facing the near abroad as its own influence area, the RF is calling the West to refrain from spreading its influence in the post-Soviet space. We might observe a rivalry between two geopolitical projects, Russian and European, about the hegemony in the region. As Gomart (2008) points out:

“the Kremlin is always careful to distinguish between Europe and the EU, as it still nurtures the hope of a European continent based on two pillars: a Western pillar (the Union) and an Eastern pillar (led by Russia). This approach can be seen in the principle advocated by the Kremlin in its EU relations - a dialog between equals. A sign of this formula’s success is that it is not contested, even though it does not correspond to the real balance of power” (ibid.: 13).

The shared neighbourhood is, therefore, one of the most difficult areas of negotiation between the EU and RF. Most friction has laid in the cases Ukraine and Georgia and their Western-friendly policy, whereas Ukraine might do a turn back to the RF after the re-election of Yanukovych in 2010. Recent RF rhetoric on zones of influence and its perception of the Eastern Partnership as a form of anti-RF coalition harmed the cooperation between the two regional superpowers (e.g. EurActiv 2010a). As already the enlargement rounds in 2004 and 2007 have contradicted RF’s agenda for the region, the neighbourhood initiatives of the EU annoy Russia’s administration. In reaction, the RF itself started to form its own regional alliances on security and economic matters. Its attempt got supported by the consolidation of Russian leadership under Putin and the economic recovery driven by the rise of revenues from the gas market.

At the same time, the RF is not stop for nothing, to restore its influence in the region. Therefore, the RF uses energy as a political tool for punishing or rewarding countries with supply patterns, prices and volumes depending on their stances towards RF’s policy. Russia’s immediate neighbours have experienced various degrees of pressure by Moscow to assure their loyalty and to prevent them from defecting to the West. The arsenal of instruments deployed for this purpose ranged from gentle military intimidation (e.g. Georgia 2008), to trade sanctions (e.g. Georgia 2006) and raising gas prices, or cutting off energy supplies (e.g. gas wars with Ukraine and Belarus). Apart from that, as regarding authoritarian regimes, RF’s policy of non-interference makes it easier to cooperate and receive loyalty from many countries in the east (e.g. energy contracts; military bases).

Furthermore, the enlarged EU has tangled itself up in its own contradiction around solving its internal decision-making ability and strengthens its unity in foreign affairs. The neighbouring countries miss a clear perspective in its relation with the EU and therefore

look about alternatives. Thus, we could observe countries oscillating between being more Russia-friendly and articulately pro-Western, depending on their proposed benefits.

In recent years, the RF itself launched some 'integrationist projects' to counterweigh Western initiatives. A key role in RF's policy towards its near abroad is taken by the formerly Moscow-centred Commonwealth of Independent States (CIS). Putin and Medvedev pledged to make the CIS their top foreign policy priority to facilitate trade within the former Soviet allies and to maintain the control over gas and oil sources and export routes (e.g. Ria Novosti 2010b). Further, the RF administration attempts to create their own security architecture to guarantee an RF friendly and peaceful neighbourhood. Founded on 8 December 1991, the CIS comprises all former Soviet-Republics, except Ukraine, which is de facto participating, but legally not a member country, and, the Baltic States, which chose not to join²⁸. Georgia left the regional organisation on 18 August 2008, as reaction to the armed conflict in South Ossetia (e.g. *ibid.*)²⁹. Currently, eight countries are full CIS members (Armenia, Azerbaijan, Belarus, Moldova, Kazakhstan, Kyrgyzstan, the RF and Tajikistan). Turkmenistan is an associate member³⁰.

RF's policy towards CIS-countries follows two main objectives, namely to avert security threats, both external and internal, and to pursue its economic interests abroad. According to these ends, the RF initiated the formation of two regional groups under the Russian banner, such as the CIS Free Trade Area (CISFTA) and the Collective Security Treaty Organisation (CSTO) in the early nineties. However, the CISFTA agreements to create a common free trade area were never signed (Ria Novosti 2010d).

Facing the difficulty to conclude on a common agreement with all CIS states, the RF in the meantime agreed with Kazakhstan, Belarus and Ukraine on the creation of a Common Economic Space at a meeting on 23 February 2003. The Common Economic Space would involve a supranational commission on trade and tariffs that would be based in Kiev, would initially be headed by a representative of Kazakhstan, and would not be subordinate to the governments of the four nations (e.g. Tinibai 2010).

The Customs Union between RF, Belarus and Kazakhstan came into existence on 1 January 2010 as well as a unified customs code (effective from 1 July 2010); with a single market envisioned for 2012 (Ria Novosti 2010c). The Customs Union is open for other countries to join as well. The Custom Union should be the first step in establishing a

²⁸ Interparliamentary Assembly of Member States of the Commonwealth of Independent States. <http://www.iacis.ru/>. Last access 23 June 2011

²⁹ *Ibid.*

³⁰ *Ibid.*

broader EU-type economic alliance of former Soviet states. Further, Prime Minister Vladimir Putin didn't preclude seeking collective entry of the Customs Union to the WTO in the future. However, Vladimir Putin seeks further integration on economic issues. The Eurasian Economic Community (EurASEC) got founded as a progression to the Custom Union. It is based on the 1996 Custom Union between the RF, Belarus and Kazakhstan and associates also Central Asian countries Kyrgyzstan, Tajikistan and Uzbekistan and got launched on the 10 October.

Recently, Putin raised the idea to improve the regional cooperation by the establishment of an 'Eurasian Union' earliest in 2015, which would "*build on the experience of the European Union and other regional coalitions*" (Putin cited in BBC, 4 October 2010).

"We won't stop with this and have set an ambitious goal to reach the next, higher level of integration — the Eurasian Union. [...] We offer a model of a powerful supranational body, which could turn into one of the modern-day world's major hubs and play an effective role in linking Europe to the thriving Asia-Pacific region" (Putin cited in The Moscow Times, 5 October 2011).

Another integrationist project is the launch of the Collective Security Treaty Organisation (CSTO), which came into effect in May 2002³¹. The Treaty got signed by Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia and Tajikistan. Uzbekistan joined the intergovernmental military alliance in 2006. All signatories declared not to join any other military alliances or other groups of states, while aggression against one signatory would be perceived as an aggression against all. Thus, no one of the member states should ever be a member of NATO of the EU.

The closest ties between the RF and a neighbouring country could be observed with Belarus. Both states complied with the foundation of a common Union State on the 2 April 1996, sharing the objective to create a common currency, citizenship and freedom of migration, military units, flag and coat of arms and collecting a value added tax (VAT) to finance the Union State bodies (e.g. Zulus 2005). However, current events showed a slight turn of Belarusian administration to the West, foremost as a reaction to the RF's refusal to provide a loan to Minsk in the early 2010. Even though it is a tactic of Lukashenko to play the 'Western Card', it shows the pragmatism in Belarusian – RF relations and how fragile the ties between the allies are. The most challenging relations, however, arouse with Ukraine, even though the pro-Russian candidate for the Ukrainian

³¹ Collective Security Treaty Organization (CSTO).
<http://www.globalsecurity.org/military/world/int/csto.htm>. Last access 23 June 2011

presidency Viktor Yanukovich won the elections on the 7 February 2010. Ukraine is doing well with their Janus-faced foreign policy, trying to benefit from both sides with all options to put pressure on one partner. Thus, the new president declared to follow an 'out-of-blocs' policy, which means neither an alignment with the Western bloc NATO than the RF-led CSTO (Ria Novosti 2010e).

Although the RF administration got rather active in forming regional groups to tighten its relations with the former Soviet republic in the near abroad, the integrationist projects are still at the beginning and show less progress. The sovereign countries of the CIS are aware of the dominant partner RF and the inequality in their partnership. Furthermore, the RF model doesn't really attract the neighbouring countries. The RF tries to attract them by offering financial support and special prices for natural resources. Besides, the former superpower shows that they are not flinching away from using their military power to put through their interests; but as the latest CIS summit in Chisinau, Moldova, has shown, the CIS has proved itself as incapable of setting out and following any common agenda, as well as using any kind of effective mechanism of multilateral cooperation, never mind any thoughts of integrationist power. Referring to the last CIS summit in Chisinau, Moldova, the presidents of Turkmenistan, Tajikistan and the biggest supporter of the CIS Kazakhstan, were absent – the first time since the establishment of the CIS in 1991. Although their absence was caused merely by particular interests, it is a clear proof of how weak the organisation is and how the member states are annoyed by the dominance of the RF. Especially Kazakhstan, Turkmenistan and Azerbaijan are cautious of any influence of RF, as they are eager to keep control over their own oil and gas deposits and export them directly to West Europe without unnecessary middlemen. To bring it to the point, RF, more or less, has failed to create an attractive cooperative model that does not resemble a new form of domination over its neighbours (e.g. Gomart 2008: 13).

To conclude, the battle on gaining influence in the common neighbourhood remains one of the major stumbling blocks in EU-RF relations. Both regional powers are trying to exert influence on the common neighbourhood, but with divergent interests. Whereas (While) the EU is entering RF's sphere of geopolitical interest, the RF sees itself as the successor of the Soviet Union and tries to preserve its zone of vital interest in the former Soviet Republics and Warsaw Pact countries. This difference in history is also a major aspect when it comes to understanding the difference in the distinct policy towards the common neighbourhood. As Gomart (2008) points out: *"the 'battle' therefore comprises a psychological and identity dimension that is often ignored by the European Union in its exchanges with Moscow"* (ibid: 5).

After the breakdown of the Soviet Union and the loss of the status as a global power, the RF felt itself in a defensive position. They faced, first, the expansion of the NATO to their former allies; second, the accession to the EU of most of the allies as followed by the extension of the Schengen area; and, third, efforts of the EU to integrate the common neighbourhood in their area of interest (e.g. ENP, EaP). The RF reacted like a defiant child, seeing itself helpless against initiatives of other actors. Using the energy trump card among other arguments, it sought to build up bilateral relations with friendly countries, while accusing countries which had turned to the West. Under Putin, the RF became consolidated, not least because of the energy recovery caused by the increased prices for oil and gas. The invigoration of its self-confidence can be observed in its foreign policy in IR. The RF was merely eager to offer an alternative for the 'near abroad' against Western initiatives. Furthermore, the RF administration consistently refuses to treat the EU as a single actor in IR and even does not resign from confronting US policies in the region (e.g. ABM systems, NATO extension to Georgia and Ukraine).

Especially EU's approach to strengthen its ties with the common neighbourhood peevs the RF, which sees EU's course of action as hostile against RF's interest (e.g. Interview with Commission official, DG Relex, Brussels, 21 April 2009). Their distinct approach reflects a broader cleavage between the two powers in the region. Relations between the EU and the RF for the years to come will depend not only to a small degree on whether this gap could be bridged. The EU also should have in mind to be more sensitive when entering former areas of influence and dominance (maybe: in entering areas where other countries held considerable influence not long ago...). In a report of the Dutch Advisory Council on International Affairs (AIV), the members come to the conclusion that:

"[i]t will be exceedingly difficult, however, for the EU to convince Russia that the EU's close ties with the former Soviet republics are not directed against Moscow and that the EU looks upon its ties with them as a matter of mutual interest and not, like Russia, as part of a zero-sum game" (AIV 2008: 30).

"[...] the Russian view does seem still to be that, 'this is an area where they have a sphere of influence themselves'. They have privileged say, what these countries do. I don't say that it's an attempt to turn back to Soviet Union, Soviet empire, certainly not. But they do feel that these are countries, where they have an privileged interest. We don't accept, that these countries have not choice. We don't insist them to turn their back on Russia, but we want them to be free, that they can work with whoever they want to" (Interview with Commission official, DG Relex, Brussels, 21 April 2009).

However, this struggle between the EU and the RF is not only an issue between these two actors; it affects wide-ranging issues in IR. Their relationship has a direct impact on: internal politics in the countries of the common neighbourhood; geopolitics on energy; ensuring a stable and peaceful environment as, e.g., solving the frozen conflicts in the region, or accounting for peace in the western Balkan region; and the global security architecture. RF and the EU also influence the conduct of major powers in the region, among those the United States and China, but also countries such as Turkey, India and Japan.

The negative impact of these dissenting approaches can be notably observed with the issue of resolving the frozen or simmering conflicts in places like Moldova, Georgia, Armenia and Azerbaijan. The conflicts are the biggest obstacles on the way to prosperity and security in this region. The EU would like to see the frozen conflicts in the region resolved and seeks to play an active role in the peace process, whereas Russia is satisfied with the status quo, as it ensures political leverage over the secessionist entities and up to a point over the sovereign states of the region, especially Georgia and Moldova. It allows the RF to impose pressure upon them. The addressed conflicts are Transnistria, which has declared its independence from Moldova, and Abkhazia and South Ossetia, which have separated from Georgia. Further, the conflict around the Armenian occupation of Nagorno-Karabakh is also waiting to be solved³². RF's role is clear: on the one hand it is part of the game, which means it actively is involved and supports the secessionist groups; and on the other hand it is the only key to solve the conflicts. RF's actions range from military presence in South-Ossetia and Abkhazia to mediation in Transnistria and Nagorno-Karabakh. In all three cases it became clear that any restoration of territorial integrity will be possible without cooperation from the RF and that they would be well advised to adopt policies that accommodate Russia.

The Transnistria dispute is a good example for this approach. After years of being sanctioned by the RF (e.g. import ban for agricultural goods, increase of gas prices), the RF administration signalled a way out of this conflict and even considers a reunification of the country as possible. This turnaround in RF's position in the conflicts is a reaction of the Moldovan indication to satisfy RF's condition by guaranteeing permanent neutrality and recognising Russian ownership of Moldovan companies and property 'sold' by the

³² Although the Security Council resolution No. 822 calls for a removal of Armenian troops, the area is still occupied by Armenian soldiers. Text of the resolution got retrieved from <http://www.unhcr.org/refworld/docid/3b00f15764.html>, 24 November 2010. To get a general overview about UN resolutions in this case have a look on: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/478/35/PDF/N0747835.pdf>, last access 23 June 2011

Transnistrian 'government' to Russian companies (e.g. AIV 2008: 32). As a first step, the Moldovan president, Vladimir Voronin, announced Moldova's withdrawal from GUAM, the regional organisation of Georgia, Ukraine, Azerbaijan and Moldova, which Moscow regards as anti-Russian (e.g. *ibid.*). An interesting difference has arisen in recent months in RF's approach to Abkhazia and South Ossetia, where the RF explicitly insisted on independence of the Georgian provinces. Additionally, in the case of Nagorno-Karabakh, the political leverage can clearly be observed in negotiations with Azerbaijan on gas businesses with the West.

Another conflict is closely linked to RF's foreign policy; it is the case of secession movements in Kosovo and Republica Srpska. As a close ally, the RF supports Serbia's position in the region. In the case of the declaration of Kosovo's independence in 2008, RF officials argued that if Kosovo's independence is going to be recognised by the International community, other secession movements in Republica Srpska, Abkhazia and South Ossetia should have the right to do the same for themselves. It is rather obvious that RF's policy in this case is a rather pragmatic one, to gain a higher political leverage in the region.

Although we observe rather controversial approaches in both policies to the common neighbourhood or call it their common zone of responsibility, their policy has not to be confrontational at all. It should be of both interests to detect areas of mutual objectives and to emphasise building confidence in their relations. For the moment, we have the impression, as Gomart (2008) points out, *"that self-absorption fuels the current depression by distracting the EU-RF couple from the real challenges and opportunities it faces"* (*ibid.*: 1). Especially security and energy matters provide every legitimate opportunity for the EU and the RF to cooperate with each other and for mutual benefit. Exceptionally, the frozen conflicts in the region can only be solved by their combined efforts. Both actors will be well advised to rather prioritise the common objectives than keep on stressing the disparities. Moreover, comparing official statements of both actors that refer to the common neighbourhood, we see several similarities in their objectives: In May 2007 the Russian Ministry of Foreign Affairs, Sergey Lavrov, said that

"relations with the CIS countries [are] the chief priority of Russian foreign policy' and that 'Russia is interested in having friendly, prosperous, democratic and stable states along the perimeter of its borders" (translated from Russian, AIV 2008:30).

In contrary, the EU 'Wider Europe initiative' proposes that: *"the communication proposes that the EU should aim to develop a zone of prosperity and a friendly neighbourhood – a 'ring of friends' - with whom the EU enjoys close, peaceful and co-operative relations"*(COM 2003a: 30).

The challenges in the common neighbourhood clearly need a concerted action by the EU and RF. Legvold (2007) stressed in its publication of 2007 that *"the EU would benefit from understanding that Russian policy toward it is fuelled, in part, by strong resentment. It should take care to analyse more carefully the reference to the past used by the Kremlin"* (ibid.: 10). As the EU expands its influence towards countries perceived by the RF as its area of influence, a more sensitive approach would be more appropriate. It would be helpful to acknowledge RF interests in their geopolitics in the region and develop an integrated approach of common objectives. To mention some examples: an adjustment of their foreign policy on global challenges as terrorism, global warming, irregular migration and conflicts of a global scope; the creation of a common security architecture for Europe; a cooperation to ensure energy supply for Europe as in the case of accession of new energy sources and modernisation of the current gas and oil pipeline's; and the development of a Europe-wide free trade area. Both actors would be doing well to develop a common vision for the shared neighbourhood which presupposes a common vision of EU-RF relation in the long term. European security governance urgently needs a RF as one of the stakeholders in order to solve frozen conflicts in the region and to prevent security threats to evolve.

4.2.3 Security Architecture in Europe and US Atlanticism

The security situation in Europe completely changed after the end of the bipolar world order. Besides new challenges, attended by an ongoing globalising world, new security governance is needed to fill the new vacuum after the strict divide in a Western bloc (NATO), and an Eastern bloc (Warsaw Pact). Whereas the US-lead NATO follows an expansionist policy in Eastern Europe, the Moscow-lead military pacts face a decline. Thus, the RF administration fears a decrease of its influence in the region and a loss of power in support of US dominance, the former antagonist power. Although the EU and NATO are two separate actors, a clear link between the US Atlanticism and the EU-RF dialogue occurs. Most of the EU member states are already member of the NATO, and the most powerful ones look back on a beneficial cooperation in post-war Europe. Currently, neighbouring countries as Ukraine and Georgia asked for the membership. It would be ignorant to think this should not affect RF's interests; of course it does, and the EU should be careful not to ignore RF's perception.

Following that, the EU, as the West in general, should not underestimate RF's strategic importance in major security questions, as well as its special relations in Central Asia. Thus, in the long term, a solid security partnership between them is needed if the questions important to both, the EU and RF, are to be answered. EU-RF cooperation on security matters is far below their potentials. Especially in the case of the mentioned 'frozen conflicts' in Europe, a close cooperation pledges a sustainable conflict resolution. Further, RF's influence in Central Asia is of strategic importance to EU's foreign policy. Currently, security governance in Europe faces two major issues: First, cooperation between the EU member states and the RF concerning independent European security architecture; second, impact of US Atlanticism and the dominance of the military alliance NATO on the EU-RF security cooperation.

First, the EU-RF security cooperation is about many separate issues, merely of regional interest and of varying degrees of importance, as e.g. the disputed independence of Kosovo, declared in 2008; conflict resolution of frozen conflicts in Transnistria and Nagorno Karabakh, as well as peace building in Georgia's separatist provinces Abkhazia and South Ossetia; combating terrorism and smuggling of weapons; NATO alliances of European states; American plans to place an ABM shield in Central Europe; and the implementation of the Treaty on Conventional Armed Forces in Europe. Most of the issues in the field of security policy are subject of serious RF-EU disagreements. An intense dialogue is needed to be able to improve the situation. In effect, misperceptions lead to mistrust and turned the relation in a power game. RF does not see its interest taken into account by the EU, whereas they do not see a chance for a common agenda and a need to accept EU's lead into the security dialogue.

Underestimating RF, therefore, could constitute a serious threat to European security and EU's ability to provide a stable environment for development. Regarding its historical standing in the region, its geopolitical position, its military power, and its huge nuclear arsenal gives reason to be a strategic partner of the EU and even for the US. There is no way to built European security without RF's participation, and respectively, RF's good will. On the contrary, a common European security strategy could be beneficial for RF's administration. According to Sergey Lavrov, foreign minister of the RF since 2004, RF's strategy is to see their country as an independent pole with a right to its own place in the development of a multi-polar world order. Recalling memories of the 19th-century 'concert of Europe', in which tsarist Russia played an important role, the Russian foreign minister Sergey Lavrov (2007) has referred to a "*concert of the powers of the 21st century*" (*ibid.*), with such countries as the US, RF, EU, China, India, Brazil and South Africa. Lavrov also

thought of an institutionalisation of the dialogue between them, exemplified by the G8. Thus, the RF calls for new security architecture, besides the current NATO dominance, which should include relevant military powers of the international community.

President Putin shares Lavrov's statement as he expressed his ideas about the new geopolitical reality in a speech at the Munich Conference on Security Policy in February 2007:

"I consider that the unipolar model is not only unacceptable but also impossible in today's world. And this is not only because if there was individual leadership in today's - and precisely in today's - world, then the military, political and economic resources would not suffice. What is even more important is that the model itself is flawed because at its basis there is and can be no moral foundations for modern civilization. [...] We are seeing a greater and greater disdain for the basic principles of international law. And independent legal norms are, as a matter of fact, coming increasingly closer to one state's legal system. One state and, of course, first and foremost the United States, has overstepped its national borders in every way. This is visible in the economic, political, cultural and educational policies it imposes on other nations. Well, who likes this? Who is happy about this?" (Putin 2007a)

This evocation of multipolarity in the global order, in the sense of the RF administration, first of all, aims at a disempowerment of the US and its dominance worldwide. A multipolarity in global security cooperation should base, according to Putin and Lavrov, on an equal footing by all major states. Further, the RF calls for an independent security architecture in Europe, which should contain an own military alliance – displacing NATO from European ground. RF's initiatives are a reaction to a chain of events, resulting in RF's tougher stance with regard to European security. These events showed that security policy in Europe takes place beyond RF's participation and interests instead of being a decisive part in the European security architecture. Being outside and see itself targeted by actions against its interests, the RF perceives the EU as a non-credible strategic player, often not distinguishing its actions and motives from those of NATO (e.g. Zielonka 2006: 156).

The RF administration has for years complained about disregard for its interests and about western actions such as: western security policy in the Western Balkans (bombing of Serbia in 1999, backing for Kosovo's independence); EU's support for NATO's expansionist policy in the common neighbourhood; alleged interference in the internal affairs of CIS countries; the abrogation of the Anti-Ballistic Missile (ABM) Treaty and the effort to build a missile defence shield (e.g. Putin 2007a). It is a pity that as a result RF

bared its teeth, supported by its economic recovery in the beginning of this century. In terms of security issues, RF administration made its statements clear by serious opposition against US influence on Europe, e.g. against anti-ballistic facilities in Poland and Czech Republic, and is not flinching from using its military force to pursue its interest in its near abroad, e.g. attacking Georgia in August 2008. Coincidentally, the RF raised ideas of new forms of engagement between RF and the EU on security matters, independent from US influence – aiming to empower Europe to go its own path lead by the two regional powers EU and RF.

The Georgia crisis, however, marked a watershed in one sense. The EU, under French presidency, became rather active in mediating between the two rivals, Georgia and RF. For the first time, the EU occurred as a coherent actor and the French role in negotiating the ceasefire agreement got accepted by both rivals as their mediator. Further, the EU member states made clear that they aren't willing to tolerate RF's course of action and decided to stop the negotiations on the new Association Agreement. Right after the Georgian-Russian war, the European Council's Report on 'the Implementation of the European Security Strategy: Providing Security in a Changing World' stated that:

"[o]ur relations with Russia have deteriorated over the conflict with Georgia. The EU expects Russia to honour its commitments in a way that will restore the necessary confidence. Our partnership should be based on respect for common values, notably human rights, democracy, and rule of law, as well as market economic principles serving common interests and objectives" (European Council 2008a: 10).

RF appreciates a strong partner in Europe, as long as it pursues the same interests and it neglects US dominance in European and global affairs (e.g. Massari 2007: 2; Splidsboel-Hansen 2002). Thus, the opposition of several member states of the EU towards the US-invasion of Iraq and Afghanistan were welcomed by RF administration despite the fact that it shows the possibility of the EU distancing itself from American initiatives through NATO. Vice versa, the EU is aware, that RF is a:

"major factor in our security and prosperity [and that] there are few if any problems we can deal with on our own. [...] International cooperation is a necessity. We need to pursue our objectives both through multilateral cooperation in international organizations and through partnerships with key actors" (European Council 2003: 13-14).

Seeing that, RF strongly favours an independent European security policy and, therefore, calls for reforming the present European security structures around the US-led NATO and proposes the ratification of a common European Security Treaty (President of the RF 2009).

Related to RF's attempt in creating an own European security architecture, Dmitry Rogozin, Russian ambassador to NATO, stated in an interview that, *"Great powers do not join alliances, they create alliances. And if we consider ourselves to be a country with the right to independence, to its own constitution and to its own view of the world order, why should we join someone else's alliance?"* (Rogozin cited in EuRussia Centre 2008d) The RF proposal for a European Security Treaty (Permanent Mission of the RF to the EU 2009) should be a first step to create an own security architecture lead by the two European powers EU and RF. Thus, the influence on Europe by the US-lead alliance NATO should be repelled and displaced by new forms to guarantee security in the region. As Vladimir Chizhov, RF's ambassador to the EU, pointed out in a speech in 2010:

"the treaty may be used as a basis to develop systematic and constructive dialogue on wide-spectrum of security issues – arms control and confidence-building measures, cooperation between all organizations and actors in the Euro-Atlantic security space, elaboration of common approaches to conflict settlement as well as to counter global security challenges" (Chizhov 2010).

Although there is still not such an agreement in prospective, the security cooperation between the EU and RF has improved, especially after 9/11 (e.g. De Spiegeleire 2002; Trenin 2002). The signing of a joint declaration on further practical steps in developing political dialogue and cooperation on crisis management and security matters at the EU-Russia summit 2002 and the Common Space initiative (2003), including a Common Space on external security, marked the beginning of further commitments to improve its cooperation on security matters (13th EU-RF Summit in St. Petersburg: Joint Statement, Art. 2). As a result, the RF became notably involved in the implementation of the EU's CFSP.

To mention RF's role in contributing to peacekeeping operations under the EU flag, as recently in Chad (European Council 2008b): The RF military force provided logistical support for the EU peacekeeping mission in Chad. It may be another strategic goal to empower the EU as an independent actor and make them less inclined itself so closely to US-driven policies in global affairs, however, the RF shows its willingness to cooperate with the EU in such military missions, which was unthinkable some years before. Another joint action worth mentioning is the joint statement about the Gaza crisis, signed by High Representative for Foreign Affairs and Security Policy Catherine Ashton on behalf of the EU and RF's Minister for Foreign Affairs Sergey Lavrov at the EU-RF summit in Rostov-on-Don in June 2010 (Council of the EU 2010f).

Further, both parties are aiming to improve their consultation mechanism. On the one hand, the Political and Security Committee of the EU initiates several meetings with the RF on security matters (Andoura 2008: 5). On the other hand, German Chancellor Angela Merkel and French President Nicolas Sarkozy are calling for the creation of a new security committee between the foreign ministers of the EU, currently held by the British Catherine Ashton, and RF, currently held by Sergey Lavrov (New York Times, 17 October 2010). The new committee should enable the:

“exchange [of] views on current issues of international politics and security [...] and develop guidelines for joint civil/military operations [and] make recommendations [on] the various conflicts and crisis situations [...]” (EuObserver 2010).

This ‘positive’ development was preceded by a trilateral summit meeting between the leaders of France, Germany and RF in Deauville in 2010. Besides, other European countries feel excluded from the process, as it seems to them that the major countries have monopolised it. We will see how Catherine Ashton is able to bring France and Germany back to form a joint strategy of all EU member states and strengthen EU’s respective institutions in the field. Anyway, this trilateral summit meeting helped to increase the certainty and trust between the EU and RF.

Second, the chapter is going to scrutinise the impact of the ‘Atlantic factor’ and the dominance of the military alliance NATO on the EU-RF security cooperation. As one of the heritages of the Cold war, the RF is still frightened about US influence on Europe’s ground – primarily not seen as an immediate threat as such, but as an ongoing spread of its influence in Europe and the RF’s zone of influence in the long-term. Thus, RF’s is afraid of losing power in this zero-sum game in aid of the US. As stated before, this reasons RF’s attempt to create an own independent security architecture in Europe, with itself as the main military power on the continent. The EU, however, is seen as being a junior partner of the US, whereas the membership to the US-led NATO of 22 out of 27 EU member states would be a clear evidence for this.

Anyhow, US-RF relations undergo a long period of mutual tension which changed in the recent years to be more pragmatic. The transatlantic dialogue between both former duopolies got a new fresh impetus, building on a generous letter that was sent in 2009 by Obama to Medvedev, stating that:

“it’s time to press the reset button and to revisit the many areas where we can and should be working together with Russia” (Cited by Vice-President Joe Biden at 45th Munich Conference on Security Policy, 7 February 2009).

This opening to this new American emphasis on a pragmatic relationship with the RF got prepared by US Secretary of State Hillary Clinton with her counterpart Sergey Lavrov in spring 2009. Their aim was to overcome tension between US and RF during the Bush administration, where the US either took action against RF's interest in e.g. bombing of Serbia in 1999; pushing for NATO enlargement eastwards; recognizing of Kosovo's independence in February 2008; invading Iraq in 2003; supporting Georgia's President Saakashvili; entering RF's sphere of interest in Central Asia by opening military bases in Uzbekistan, Tajikistan and Kyrgyzstan, mostly to ferry troops and material that got transported in and out of Afghanistan (CNN 2010); and the planned ABM system on European ground.

The most challenging issues in EU-RF relations are, at the moment, the NATO expansion and the planned ABM facilities in Poland and Czech Republic. With regard to the NATO enlargement in 1999 (Hungary, Czech Republic and Poland) and 2004 (Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia), the RF does not enjoy the post-soviet space and its old sphere of influence under the influence of Western allies. Any further expansion is strictly defeated by the RF administration and any ambition in this direction would be seen as an aggressive act against RF.

Thus, the decision on 3 April 2008 by the NATO in Bucharest to open negotiations with Ukraine and Georgia to become a member (NATO 2008: Art. 23) has been put on the back burner. In the wave of the Bucharest meeting of the 26 leaders of the NATO, Putin told in a press conference that: "*The appearance of a powerful military bloc on our borders will be taken by Russia as a direct threat to the security of our country*" (Bloomberg 2008). And, with a side-blow to U.S. plans to establish a missile shield in Central-East Europe, Putin stressed in an interview:

"We are concerned that if these countries become part of NATO today, tomorrow we will see offensive missile systems deployed on their territory which will pose a serious threat to us" (Ria Novosti 2008).

Several NATO members, such as Germany and Netherland, stressed that the NATO has to be aware of potential pros and cons of such an enlargement, as e.g. the possible repercussions on relations with third countries like the RF. In turn, other NATO member states, mainly from Eastern Europe, expressed concern about being intimidated by the RF and feared, further, a weakening of Western position on democracy and human rights issues. These NATO members from the East would, however, even go further, as Lithuania's Minister of Defence Rasa Jukneviene stated, and call also for Belarus to join NATO (The Lithuania Tribune 2010). Many of these Eastern European Countries still

value NATO for its original purpose, as a *“bulwark against Soviet aggression. [...] Having endured occupation or the subsuming of national independence within a Soviet empire, they are still deeply suspicious of Moscow’s intentions”* (The Times 2006).

Another big test for the RF-NATO relations was the current dispute over the US plan on installing an ABM shield in Europe, which the RF views as a threat. In reaction to the respective plans of the Bush administration, the RF threatened to deploy Iskander short range missiles in the Kaliningrad enclave adjoining Poland if the US does not step back in creating an ABM shield in Eastern Europe. When US President Obama took over the leadership, the new administration decided to scrap the plans of his predecessor for a moment and started consultations with its RF’s counterpart going ahead with plans to deploy a joint ABM system against possible missile shots from Iran. With regard to the debate on an ABM missile system on European ground, EU’s strategic marginalisation is really striking (e.g. Allison 2006).

This new tone in US-RF relations also increased the climate in RF-NATO relations, where both are calling for a new dialogue or partnership is a result of a common understanding that both are facing the same challenging issues and expect to solve it by cooperating. Anders Fogh Rasmussen, secretary general of NATO, puts it like this:

“We now have a great opportunity to build security not only in Europe, but across the entire Euro-Atlantic area — as NATO and Russia set aside old differences to work more closely together. [...] Long after the Cold War ended, NATO and Russia continued to look at each other with suspicion. Yet, the case for broader, more solid NATO-Russia cooperation became more and more compelling as threats to the security of our nations increased in number and complexity. Terrorism, nuclear proliferation, cyber crime and piracy are just some of the new global threats that now affect all of our nations” (Rasmussen 2011).

The NATO and the RF have recently signed several agreements (e.g. Partnership for Peace 1994; Military Cooperation Agreement 2005; Strategic Arms Reduction Treaty (START I) and action Plans (e.g. Action Plan on Terrorism) as well as declared their willingness to cooperate on conflict resolution in the respective conflict regions (e.g. NATO-Russia Council 2011; 2010).

Another though issue got on the agenda of a common strategy in IR between the US and RF. It is the case of dealing with Iran and its proposed nuclear programme, whether for peaceful use of nuclear energy or to be able to produce weapons of mass destruction in the long term. Recently, the Medvedev administration shows cooperativeness and is willing, as a member of the UN Security Council, to support stepping up sanctions against

Iran, if they neglect cooperation with the IAEA on the use of uranium. Regarding this, the RF has decided to postpone the supply of the S-300 anti-missile system to Iran following the UN Security Council resolution which contains sanctions against Teheran (The Washington Post 2010).

“By other terms of the resolution, the Council decided that Iran should not acquire interests in any commercial activity relating to uranium enrichment and other nuclear materials or technology in other States, and that all States should prevent the transfer to Iran of any tanks, armored combat vehicles, large-caliber artillery systems, attack helicopters, or missiles and related systems or parts” (UN Security Council 2010).

This new found ‘harmony’ between the Obama and Medvedev administration affects of course the EU-RF relationship and has enormous benefit for security matters in Europe. Whereas the ‘Atlantic-factor’ caused suspiciousness in the past these new forms of interaction between the US and RF allow for a new impetus for EU-RF relations. However, the fact that the US are keen to engage with RF on a wide range of issues aroused not only consent but a lot of criticism by several new member states of the EU. Especially the former Warsaw Pact Countries still face the RF as an existential threat, as recent tensions in Georgia have shown.

Further, they express concern about US future bearing on democracy and human rights when it comes to RF as well as their policy on the neighbouring countries. Others, such as Germany and the United Kingdom, welcome US decision to press the reset button with the RF and a possible positive spin off in EU-RF relations. They argue that it is too important for relations to be disrupted and that Russia can help in some of the *“big picture items like Iran and Afghanistan”* (BBC 2009). There is no doubt that this opening between the US and RF will have enormous significance for the security dialogue between the RF and the EU (e.g. De Spiegeleire 2010; Cameron 2009). Yet, at this point the EU’s priority should be built on how to construct European security with RF and not against RF.

Considering this point, NATO is still the issue in Europe’s security architecture. Therefore any rapprochement between the NATO and the RF has a direct bearing on it. NATO Secretary General Anders Fogh Rasmussen recently emphasised in a key note speech, that:

“[...] the time has now come for a fresh start in relations between the NATO nations and Russia. I think Lisbon will be the place we make that fresh start – with more cooperation on Afghanistan, a shared assessment of the security threats we face today, and, I hope, a way forward towards cooperation on missile defense” (Rasmussen 2010).

The will to search for closer cooperation with Russia is also manifested in the Lisbon Summit Declaration of the NATO Council on 20th November 2010 (see NATO 2010) and marks a clear improvement in RF-NATO relations since the Georgia crisis in August 2008.

The participation of the RF at a NATO-Russia Council (NRC) as such was conceived as a means for fostering security in the Euro-Atlantic region. In their third summit, all 28 NATO members and the RF issued a joint statement and stressed:

“[the] tremendous potential of the NATO-Russia Council through the continued development of their political dialogue and practical cooperation based on their shared interests. We underscore that the NRC is a forum for political dialogue at all times and on all issues, including where we disagree. We are determined to make full use of the NRC mechanism for consultation, consensus-building, cooperation, joint decision and joint action on a wide spectrum of security issues in the Euro-Atlantic region [...] with the aim of contributing to the creation of a common space of peace, security and stability in the Euro-Atlantic area” (NATO-Russia Council 2010, ‘joint statement’).

Further, the RF made a major concession in supporting NATO operations in Afghanistan, agreed to facilitate railway transit of non-lethal ISAF goods through Russian territory and confirmed its interest in resuming its support to NATO’s counter-terrorist operation “Active Endeavour” in the Mediterranean Sea (e.g. *ibid.*). Regarding this examples, the two sides began to develop joint operational planning for operations and joint training for peacekeeping operation in the area (*ibid.*).

But still there are a lot of tensions between the former opponents NATO and RF. The history of Russia-NATO has been contradictory and complex and cannot be changed into a fruitful and close partnership within a short period. That is why it is especially important today not to miss the opportunity to begin cooperation on a more wide-scale and equal footing which results in a relationship full of trust and common perceptions; and, although the ‘National Security Strategy of the Russian Federation until 2020’, approved by President Medvedev on 12 May 2009, evokes a less hostile attitude towards US and NATO in general, NATO is still considered by Russian elite as an adversary, if not enemy. According to the National Security Strategy (NSS), the US and NATO are still the main military threats for RF’s security. RF’s Security Council trace the military threats from the West back to:

“USA’s unilateral annulment of the Ant-Ballistic Missile (ABM) Treaty in 2002, as well as to the refusal of the NATO member states to ratify the Adapted Conventional Forces in Europe (CFE) Treaty of 1999, which caused Russia to suspend this treaty in December 2007” (Security Council of the RF 2009).

As another threat, the RF perceives NATO's expansionist policy in RF's near abroad and criticises its attempt to grant the military alliance a global role (e.g. Haas 2009; Schröder 2009; Dimitrakopoulou/ Liaropoulos 2010). As former President Putin made already clear in his speech at the 43rd Munich conference on Security Policy:

"I think it is obvious that NATO expansion does not have any relation with the modernization of the Alliance itself or with ensuring security in Europe. On the contrary, it represents a serious provocation that reduces the level of mutual trust. And we have the right to ask: against whom is this expansion intended? And what happened to the assurances our western partners made after the dissolution of the Warsaw Pact? Where are those declarations today? No one even remembers them?"(Putin 2007a)

The National Security Strategy still shares this concern, again stresses its resentments against the accession of former Soviet republics and strongly opposes any further enlargement into RF's backyard to include Ukraine and Georgia, as announced in Paragraph 23 of the *"Bucharest summit Declaration"* (Nato2008). The RF, however, wishes the NATO to stop its expansionist strategy in Europe and to agree on a neutral buffer zone, meaning neutrality of Ukraine, Georgia and other countries in the common neighbourhood as soon as possible, to restore stability and security in the region (e.g. Korduban 2010). As in the case of Ukraine, the newly elected President Viktor Yanukovich abandoned its former application to be accepted as a member by the NATO and stressed the geopolitical importance for Ukraine to be neither a member of NATO nor of CSTO, but be a neutral partner with good relations to both.

"It's certain that Ukraine was and will be non-aligned state... We strive neither to join NATO nor the CSTO. We'll maintain a neutral status," Yanukovich said in an interview with the Komsomolskaya Pravda (Kyiv Post 2010a).

However, there is still a lot in the flux, according to Europe's security architecture and the role of the RF in international security architecture. Over the last years, the NATO and the RF found a way to get along in a more cooperative way. Thus, the RF got more relaxed about NATO's role, although it stresses its one-sided dominance by the US administration. It becomes increasingly integrated in the broad Euro-Atlantic security architecture through, among others, its partnership with the EU, the NATO-RF council and its membership of both the Council of Europe and the OSCE of which it is a founding member.

4.2.4 Systemic Divergences: Democratic Values in a Rational Interest-Based Relationship

The EU continues to claim that human rights, rule of law and democratic values are an important component of its formal relations with the RF and is not getting tired in emphasising RF's necessity to run certain reforms, aiming to overcome the disparity of values by promoting its own norms and values. The apparent objective of this approach appears to be to socialise the RF to 'European' human rights norms and standards through dialogue and cooperation with Russian government officials and civil society organisations. This 'Europeanisation' of RF's norms, values and procedures should guarantee that the RF develops into a credible partner in the region.

Systemic congruencies, therefore, are a precondition for fruitful and stable partnership in IR, making its policy more predictable and legitimate, rather than having cooperation on occasional or sporadic basis. A common set of values and decision making procedures have to be shared in order to result in mutual understanding and trust in vice-versa politics (e.g. Blanco 2010). Thus, the EU included a humanitarian clause in the PCA, which obliges the RF part to respect the international norms on human rights (Council of the EU 1007: Art. 2), otherwise, the PCA will be suspended by the EU (ibid.: Art. 107). Further, the EU has provided a number of policy instruments aimed at promoting human rights in its relations with the RF, such as: financial assistance (TACIS, EIDHR) and political dialogue within the Common Spaces and the more recent Human Rights Consultations (e.g. COM 2010f; Weersma-Haworth et al. 2008).

The further democratisation of RF's political system is a high salient issue in EU-RF relations. The EU and IO's – as the CoE, OSCE and UNHCR – are still calling for reforms and stress in their assessments about RF's democratic transformation that the current status and the progress made are not at all satisfying. It became increasingly clear that the Russian political system was not evolving as hoped and the separation of powers necessary in a democracy would not yet be forthcoming. The RF administration shows less respect for human rights and authoritarian tendencies in the political systems are still the case. The fast transition from the Soviet autocracy to a more pluralist Western-style political model and towards market economy in the nineties resulted in a period of chaos, upheaval and decline of RF's economy. After Yeltsin's weak leadership, Vladimir Putin returned to a more centralised and autocratic style of leadership which was perceived by RF's citizens as a return to political stability and economic recovery. The RF defines its

political model as a 'sovereign democracy', meaning first of all the sovereignty of the state authority above individual interests of citizens to restore order and security and to reject intervention from abroad (e.g. Lynch 2004: 112; Okara 2007; Kampfner 2010: 104).

Areas of crucial concern are: human rights abuses in Chechnya; lack in freedom of speech and of an independent media; relegating Civil Society organisations to the fringe and limit Western contacts; the rule of law and the independence of the judiciary; as well as fair elections (e.g. Council of the EU 2006c). In regard to the RF, the EU Annual Human Rights Report 2007 states that:

"Although human rights in Russia are guaranteed by the Constitution, and despite Russia's participation in many international human rights conventions, the EU continues to have concerns about the human rights situation in Russia, in particular regarding freedom of opinion and assembly, freedom of the press, the situation of Russian non-governmental organisations (NGOs) and civil society, respect for the rule of law and the situation in Chechnya and other parts of the North Caucasus" (COM 2007k).

Especially the second Chechnya war in 1999 evoked a lot of criticism from the International community. The Helsinki European Council on 11 December 1999 agreed on the 'Declaration on Chechnya' in which RF's sovereignty and rights to fight terrorism were acknowledged but which openly criticised RF's lack of respect for human rights demonstrated in its incursions in the Chechen Republic (Council of the EU 1999c: Annex II). Sanctions were implemented like the suspension of some PCA provisions and the transfer from part of TACIS funds to humanitarian assistance. Recently, another crucial case causing criticism from the EU and IO's were the murder of the journalist Anna Politkovskaya in 2006.

The importance of upholding international human rights standards in Russia is something referred to in virtually all the documents governing EU-Russia relations. A human rights clause became a compulsory part of all external agreements with non-EU countries in the nineties and did so in the case of the signed Partnership and Cooperation Agreement (PCA) with the RF in 1997. In respect of practical implementation of human rights protection, the EU settled a number of instruments. In 2005, the EU and RF established Human Rights Consultations within the framework of the Common Space initiative. The purpose of the Consultations is to discuss internal and international human rights issues and call for a close cooperation with the UN, the Council of Europe (CoE) and the OSCE. Further, the EU in particular is actively involved in financing projects to improve the human rights situation in the RF. The so called European Initiative for Democracy and Human Rights (EIDHR) has been already involved in over 250 projects since its launch in RF in

1997 (e.g. EuRussia Centre 2011). The projects are aiming to support the development of democracy, the protection of human rights and the civil society in the RF.

Considering the fact that the RF is a party of the most important human rights instruments (ECHR) and furthermore a member of the CoE and the OSCE, we could assume RF's compliance with their obligations. But, as all major reports state, the RF is far away from respecting standards and norms entailed in this treaties. Thus, the EU and its key partners in the field of HR – CoE, OSCE and UNHCR – continue to insist on RF's greater observance of human rights and compliance with the judgments of the European Court of Human Rights. The RF became full member of the CoE in 1996 and, thus, a party to the ECHR. Being a member of the CoE, the RF declared to respect the minimum standards of human rights and the rule of law, as laid down in the treaty. Thus, the RF is subject to monitoring of its human rights record by the Council's Parliamentary Assembly (PACE), its Commissioner for Human Rights, and it's Committee of Ministers. Besides assuming international obligation through its membership to the CoE, the RF is also a member of the OSCE. The OSCE is the second serious key actor – since the Helsinki Final Act in 1975 – focusing on human rights.

Incidentally, the CoE, not the EU, has the primary responsibility for human rights and is the most direct channel for holding Russia to the Convention for the Protection of Human Rights and Fundamental Freedoms. The EU itself is hampered by a number of organisational features, meaning that the RF will always be an external part which must be negotiated with. Although RF is an important member of the CoE and the OSCE, to be a member does by no means prevent a member from going its own way in terms of designing its political system. Many cases of human rights violations – mostly relating to the situation in Chechnya – have been brought to the ECHR against the RF. The international community's concerns about RF's systemic lack in protecting human rights have undermined its credibility. The RF refuses criticism from mostly western states and wishes not be lectured and patronised by them constantly. All-too-obvious European interference provokes a great deal of irritation in a country basking in regained self-respect.

Its explicit opposition to a system based on Western values is justified by RF's administration by arguing that the Russians are not yet ready for the way of democracy, exemplified by Western democracies (e.g. Baker/ Glasser 2005: 377). It has to be argued that the RF has no substantial tradition of political pluralism to be referred to. People are used to a strong political leadership as long as it provides sufficient welfare, prosperity and security.

RF's democracy is seen from scientific observers as managed and guided by the Kremlin administration, who decided what kind of democratic reforms should be undertaken and what role Civil Society should play within the RF political system. The RF labelled itself thereafter as a 'sovereign democracy', which:

"carries two simultaneous messages to Russian society. The first message says that we are a party wielding state power and a sovereign elite, and the sources of our legitimacy are found in Russia, not in the West, like it was during the 'guided democracy' of the Yeltsin era. Second, being a power-wielding force, we are the guarantors of Russia's sovereignty and survival in the context of globalization and other external super-threats" (Okara 2007).

This implies RF superior role about democratic transformation according to:

"a society's political life where the political powers, their authorities and decisions are decided and controlled by a diverse Russian nation for the purpose of reaching material welfare, freedom and fairness by all citizens, social groups and nationalities, by the people that formed it" (Putin's deputy head of administration Vladislav Surkov in Kampfner 2010: 104).

Thus, the RF has been irritated by the EU's financial support of Civil Society organisations and its insistence on greater media freedom as well as on human rights in general, especially in the long standing Chechen conflict. However, the NGO scene sees in EU's action not more than paying lip-service to its stated human rights ideals while pursuing other policy objectives (e.g. energy and security concerns) which it sees as more important (e.g. Bindman 2010). However, EU officials see the key for democratisation, rule of law and increasing civil society activities in fruitful cooperation on practical issues first, which imply the alignment of EU values in the long term. This pragmatism in EU-RF cooperation is also favored by the RF, as RF's Ambassador to the EU, Vladimir Chizhov stresses:

"The programme should be more focused on practical issues and contain no discussions of the benefits of European values," Chizhov said. "We are thinking about technological exchanges, joint innovative projects with the EU; not the relationship of a patron and the favoured one" (Chizhov in Bovt 2010).

4.2.5 Summary: EU-RF Relations at a Glance

Up to today, EU-RF relations, although having achieved some accomplishments in improving their interaction, are still trapped in geopolitical rivalry and serious diplomatic tension on economic and security matters, which prevent a fostering of their cooperation. As has been discussed in the previous sections, the relationship is merely outlined by a

range of issues, as: trade relations; geopolitics and Europe's security architecture; JHA; as well as systemic divergence and the gap in values. The range of issues discussed between the EU and the RF are best demonstrated in their biannual summits. In the following, this section likes to sum up the crucial issues and discuss their influence on the format of cooperation.

As argued in the initial chapter on EU's external governance, EU's foreign policy gets more and more institutionalised and legalised due to interdependencies, geopolitical necessities, shared objectives and historical links. In this concluding section, the study scrutinises the link between macro-conditions, such as Bargaining Power, Credibility, Issue Saliency, Rational Choice (Cost-Benefit Calculation) and International Normative Pressure, and the institutional and legal structure of their cooperation.

“Mutual dependence is the most important element in forming conditions for rational choice in relations between Russia and the European Union. [...] The axiom of Russian-European interdependence remains [...] the biggest straw to hold on to in order not to slip into confrontation. [...] Mutual dependence is what it is – dependence that puts limits on sovereign rights and opportunities, which [...] a state would seek to get rid of in one way or another” (Bordachev 2008: 3).

The analysis delivers insights on how the two regional powers are going to put their partnership into perspective, what a common vision could be and which concrete objectives are shared by both. Three analytical questions arise out of this. First, how do mutual dependencies – in trade relations, energy supply for the EU and on respective security interests – have an effect on the format of cooperation? Second, can the current high level of mistrust, the divergence of values and the political system in general be obviated by a certain structure of cooperation? And, third, what can be concluded from this investigation on the macro dimension for our case study on EU-RF's cooperation on migratory issues?

The most obvious issues are relating to the bargaining power of an actor. Thus, the chapter emphasis, inter alia, the interdependency of economic and security matters between the EU and the RF. As pointed out by the President of the European Commission, Jose Manuel Barroso, at a press conference at the 26th EU-RF summit in Brussels on the 7 December 2010, the main objectives of a new Enhanced Agreement should attempt *“substantive provisions in all key areas, including trade, investment and energy”* (Barroso 2010). He further stressed the common objective of the EU and RF to increase the economic growth in Europe through a close cooperation. This included a tough interaction to tackle the global financial and economic crisis which harmed

Europe's economy. Relating to this, both agreed at the 25th EU-RF summit in Rost-on-Dov on 1 June 2010, to sign the Partnership for Modernisation. This document stresses the will to cooperate on:

“common interest in enhancing bilateral trade and investment opportunities and in facilitating and liberalising trade in the global economy as well as strengthening and developing competition, including through Russia's early WTO accession” (Council of the EU 2010e).

Trade relations are always on top of the agenda, while the investigation shows a mutual dependency between the two economies: From the EU side, to develop new markets and ensure a constant flow of energy resources and, from RF side, to attract FDI's and have a guaranteed bulk purchaser of their rich energy resources. Their interdependence is their motivation and driving force of any cooperation:

“Our mutual interdependence is a reality. It is therefore not only in our shared interest but a political imperative for both sides to work together, as closely as possible, and on as many issues as possible” (Barroso 2010).

However, their trade relation is not without any friction. The RF is aware of the dependency of EU on their gas supply and uses EU's vulnerability as strength in the sense of power projection. Ultimately, the EU and RF have a direct bearing on geopolitics of energy which is in the process of becoming global in its reach. Such self absorption fuels the current depression by distracting the EU-RF couple from the real challenges it faces; trapped in a pure power game, both sides are unable to break away from the logic of a 'zero-sum game'.

The level of interdependencies changes all the time and so does the bargaining power of each actor. The EU had an enormous gain in power after the breakdown of the Soviet Union. Its power and influence in the region increased by the eastern enlargement of 2004 and 2007, as well as being the only attractive and prosperous economy in the region. In military terms, most of the EU member states are associated with the NATO. The RF itself suffered from a huge decline. Its economy got in major troubles during the transformation process: its exports of manufactured goods to former allies decreased; the old-fashioned industry was not able to compete on the global markets; and the unsecure legislation frightened off FDI's from abroad. As a result, its exports got rather one-sided, as it is merely dominated by the export of fuels and mining goods.

After years of weak leadership by Boris Yeltsin and a patronised economy, the Putin administration was able to consolidate the RF economy and strengthen its leadership

throughout the country and beyond in the beginning of the 21st century. Further, the Putin administration benefited from the increase of price and demand of natural resources. Because of this fragile economic recovery and the reloaded strong leadership, EU faced a different RF than in the nineties; filled with a new sense of self-confidence. Critics call RF's regaining of strength also the 'reawakening of the bear', as a synonym related to the former great empire (e.g. Mangott/ Trenin/ Senn 2005; Emerson 2001). According to RF's recovery in economic terms, its bargaining power increased and changed RF's interaction with the EU. It changed that way, as RF's poise lead to a renunciation from concessions made former.

The RF is still trapped in the zero-sum power game and tries from case to case to increase its benefits and also increase the pay off for a concession.

"It is clear that Russia is back, but this does not necessarily mean that Russia should avoid becoming too obsessed with prestige. The longer it continues its "soft-revenge" approach in its relations with the West, the less it will get the trust it needs to form the ties that will ensure its development" (Gomart 2008: 16).

In reaction to this, the EU calls for ensuring the rule of law and the implementation of arrangements to hinder uncertain interaction through the institutionalisation of their cooperation. In a statement president Barroso emphasised the importance of *"discussing how we can work together to build-up trust and make the EU Russia relationship a more reliable partnership at all levels"* (COM 2009i).

The common interests are prosperity, security and stability in the region of Europe on the one hand, and on the other hand both actors seek to lead this region by its own norms and rules. What follows is a footrace of a relative gain in power. Besides, both actors are aware of their interdependence in economic and security terms and search for improvement of their cooperation to deal with issues of common European security architecture on the ground and an effective framework to deal with their trade relations and the current financial crisis. The RF has many tools to influence the region. Therefore, the EU should try to engage the RF in resolving immediate problems in the common neighbourhood and encourage it to participate as a partner. The common neighbourhood could become a testing ground for constructive cooperation between the RF and the EU for their benefit and prosperity and for the sake of stability in the region. Besides, the RF itself is in need of technical and financial support from the EU in order to tackle:

“the task of not only sustaining economic growth, but also diversifying the economy away from oil and gas, as well as stimulating investment and innovation, to modernize its system of governance, to build a civil society, to integration growing, numbers of immigrants, and to alleviate the economic effect of RF’s dire demographics” (Trenin 2005a: 8).

Economic and trade relations are still by far the most important areas for cooperation. A free-trade area is already on the way but presupposes RF’s membership of the WTO first. As Kempe and Smith (2006) argue, the prospect of a free trade agreement with the EU is one of the carrots for further rule alignment of the RF (ibid.: 18). Further, the RF seeks to attract FDI’s to modernise and diversify its existing economic petrol-state model. In the area of energy, the EU and the RF have developed a close energy partnership and have launched in 2000 the EU-RF Energy Dialogue.

Energy Commissioner Andris Piebalgs sees in the EU-RF Energy Dialogue a good chance to improve the relationship in general as:

“[i]ts main objective is to promote trust and transparency in the EU-Russia energy relations, evaluate trade barriers and obstacles to energy investment and market development. The dialogue is a real potential for further development from which both sides could benefit, therefore it is important to further deepen this cooperation” (ibid: 6).

The cooperation on these crucial areas has advanced in the last years. However, the cooperation is an expression of the interdependence of their economies and is based on a rational cost-benefit calculation, wrapped in the thinking of zero-sum, where one participant’s gains or losses are equal to the other participant’s losses or gains. In that zero-sum game, the RF is tempted to play with the West its vast energy resources and its specific role in regional frozen conflicts as a serious trump card, to increase its bargaining power and gain its benefit.

A clear proof is RF’s demonstration of power from time to time and often in a chronological nexus to upcoming negotiations and summits. The fear of energy shortages is pushing individual EU member states, such as Germany, Belgium and Hungary, into Russia’s embrace and leads to underpinning strategies of a common EU approach to reduce its vulnerability on energy shortages. Amongst others, it has underlined the crucial need for the EU to build a real common energy policy and diplomacy. Even if Russia has global ambitions, mainly founded on its energy power, it will remain principally a Europe-oriented regional power, at least for economic reasons (e.g. Gomart 2008: 17). The RF is aware of not being able to modernise and diversify its economy without Europe. The understanding of this strong interdependence should not be limited to economic and

energy issues. Another major issue is the cooperation on security matters, as the frozen conflicts in the region, combating international terrorism and organised crime. Both are looking for a common security policy; the EU in order to empower its position in IR and the RF in order to create security architecture on the European ground, in opposition to a US-led NATO.

This evolving circumstance also changed their relationship. Before, EU's policy towards the RF was affected from its policy towards Europhilic countries in Central and Eastern Europe. In this sense, EU's policy imposed strict conditions on cooperation and pursued its own interest first of all. The results, however, have clearly not met the policy ambitions, which were sometimes set too high. At the same time, The EU affronted the RF by several actions, as the eastern enlargement of 2004 and 2007, the extension of the Schengen acquis to former Soviet allies, increased its activities with former allies by the ENP and EaP initiatives and, the support for NATO expansion towards the East. These events have contributed to the fact that EU-RF relations have reached their record low. Russia's assertive behaviour in foreign policy, coupled with the Kremlin's consolidation of power at the expense of democratic freedom and human rights, is one part of the story.

Their relationship nowadays faces the harsh reality in which positions of relative power between states still matter a great deal, governments at home tend to be judged on the results they get out of negotiations with other countries and national prestige is a major source of power. RF's muscle flexing and assertive stance clearly entails demanding equality and reciprocity in any relationship with other superpowers. Henry Kissinger (1994) noticed in his book on International Diplomacy that the international system always attempts to balance the powers of certain actors over a certain period of time:

„Of course, in the end a balance of power always comes about de facto when several states interact. The question is whether the maintenance of the international system can turn into a conscious design, or whether it will grow out of a series of tests of strength” (Kissinger 1994: 76-77).

To conclude this issue, the EU and the RF have to create a common set of institutional and legal constraints to tackle their controversial relationship in an environment of mutual beneficiaries. The 2004 Common Space initiative came up with a scheme of this new nature of relationship by sticking more to an agenda of mutual interests, providing a number of beneficial projects and extending its financial and technical assistance. And, the currently negotiated NEA will start the beginning of a new generation of EU's external governance and a possible fresh start for a real partnership between the EU and the RF. Of importance is the inclusion of a specific chapter on JHA in the NEA, which is not the

case for the PCA, as the competences on the supranational level have been limited on JHA before the treaty revision 1999 at the Amsterdam Council summit.

Despite many achievements over the past twenty years, the EU-RF cooperation is still dominated by rational implications. However, to get a holistic picture of the nature of their relationship, we also have to take into account the irrational factors; determining the credibility of the actors: level of mistrust, certainty of action and the complementarities of values.

The level of mistrust is rather high and originates from the after-pains of the cold-war logic, which dominated the relations for half a century. Further, EU's intervention in the common neighbourhood and its alliance in economic and security matters with the former opponent the USA are a crucial source of tensions between the EU and the RF. In general, the common neighbourhood is a serious litmus test for EU-RF relations.

“From this point of view, EU member states should be very careful about the respective countries in order to avoid its transformation into a political and symbolic battlefield between the West and the RF” (Gomart 2008: 16).

Whereas RF's intervention against Ukraine and Georgia created tensions at the EU side, the RF elites see in EU's proactive intervention in the region an aggressive confrontation in their self-proclaimed sphere of influence. In the light of these political developments, the question is whether Russia can or must be seen as a power seeking to restore its influence in the area of the former Soviet Union. Is it a country preoccupied with increasing its international status and determined to restore its former glory and honour, one that demands respect as a great power and instils fear into other countries? Especially in the case of energy supply the EU does not see the RF as a 'reliable partner' by referring to gas-related conflicts between the RF and Ukraine, which gives support to critics of EU's energy dependence on RF's gas and oil. Only a common approach or a transparent policy could reduce possible tensions in EU-RF relationship and cause an opportunity for closer ties to tackle common challenges in the region.

Apart from these issues, uncertain policy actions diminish the credibility of both. On the one hand, both actors are in the flux. The RF has gone through certain ups and downs since the breakdown of the Soviet Union, which changed actors and foreign policy strategies. On the other hand, the EU has changed, too. Since the nineties, the EU grew into a union of 27 countries, facilitated its activities with third countries with the treaty reforms of Amsterdam 1997 and Lisbon 2009, and strengthened its foreign policy profile by a continuous transfer of competences in foreign policy matters, especially by the latest

treaty reform in 2009 at the Lisbon Council. Whereas the respective foreign policies got more certain in recent years, crucial uncertainties could be observed in the beginning of the 21st century. First, the RF under Putin took a stronger position in IR and appeared more self-confident in its relations with the EU. Second, EU's policy towards the RF became more cautious and provocative with the accession of former Soviet countries, which got a major say in EU's foreign policy due to its procedural rules (e.g. veto power for individual member states due to the unanimity rule in the Council). It follows that although EU's supranational bodies are in constant contact with the RF administration and agree on certain aspects, when it comes to decision making, the Council – and therefore the member states – gives a ruling. This may irritate or disappoint EU's partner states, as it happened with the veto from Poland and Lithuania on the start of negotiations on a new enhanced agreement in 2007 and 2008.

Owing to the eastern enlargement 2004 and 2007, the discerning attitude of the new member states towards the former superior power RF affected EU's-RF relations to a vast bulk. On the one hand, their hostile attitude is a consequence of their historic relation during the Soviet empire. On the other hand, the Central and Eastern European Countries are still afraid of the powerful neighbor. Several events, such as: the gas-related conflict with Belarus and Ukraine and the following shortage of energy supply; RF-Estonia conflict over a war monument; RF-Polish skirmish over the meat affair and the RF-Lithuanian and Latvian conflict over Russian minorities caused annoyance by both sides.

As the new member states have a decisive power in the decision making procedure, they used it to exemplify their potency and took the supremacy of the EU as their 'political hostages'. This way, the opening of negotiations for a new association agreement between the EU and the RF was postponed as new member states blocked it. This hampers for sure the EU-RF relations and makes the EU an incredibly actor in the eyes of the RF. As a consequence, the RF started to intensify its bilateral relations with member states and undermined the supranational bodies of the EU.

“Bilateral agreements with Russia have undermined the EU's ability to secure key policy goals. In the energy sphere, Russia's deals with Italy, Austria, Hungary and Bulgaria about pipelines and gas storage facilities undermine the key Nabucco pipeline project aimed at diversifying gas supply routes, Similarly, France, Germany and Italy signed separate bilateral visa-facilitation deals with Russia, which were deemed to breach Schengen rules and were thus suspended by the European Commission” (Leonard/ Popescu 2007: 16)

But as Gomart (2008) has stressed in an article: *“Russia should not overestimate divisions among EU members and should understand that there is a growing lassitude toward Russia’s muscle flexing”* (ibid.: 2008: 16).

With the treaty of Lisbon, the decision making in the EU changed as well as its role in the foreign policy of the Union got strengthened. As a consequence, the Veto-power of individual member states got diminished by an extension of the Qualitative Majority Voting (QMV) procedure and it was made sure that EU’s policy will be more coherent. Besides, the EU profited of French’s presidency during the Georgian war, as Sarkozy’s administration enabled a clear proceeding in the settlement of the crisis in a very effective and rapid manner.

Further, both need to develop a common vision on the basis of shared values to allow for fruitful cooperation and determine their role in this cooperation first, or as it is stated by Karaganov and Bordachev (2005): *“the main factor that prevents Moscow and Brussels from overcoming the ambiguity and the crisis of confidence in their mutual relation is the lack of a long-term strategic vision”* (ibid.). However, we also have to keep in mind that both actors themselves are still in the making and therefore pass through identity construction. Especially the RF is searching for their new national identity in a changed global environment by creating a nexus to the former superior status of Russia within the Soviet Union. In this crucial phase, the RF is rather sensitive towards influence from former opponents as it is still trapped in the dichotomy of values and symbolic acts during the cold war. An assessment of the present state of affairs might help address this dilemma. What we can still observe is a widespread divergence in values and perceptions between the two regional actors, which is a huge handicap for a fruitful cooperation. Several dossiers on RF’s democracy and human rights abuses irritated their administration, which sees these dossiers as an act of egomaniac and arrogance from the side of the EU, as well as an attempt to patronise the RF. The RF refuses any outside interference in their internal policies, as it was the case of the Chechen wars, national elections, freedom of media and the repression against social activists, referring to their proclaimed ‘sovereign democracy’ model.

Finally, to sum up the basic findings, the prospects of positive cooperation between the EU and the RF are manifested by achieving: 1) a depoliticisation of their cooperation by focussing on concrete technical measurement; 2) to develop a common understanding of how the cooperation should look like in the medium and in the long term; and 3) to set up efficient institutions to improve their cooperation and make it more certain and sustainable.

First, what can be derived from the previous analysis of EU-RF cooperation is the 'politicisation trap', meaning the dogmatic criticism on RF's lack in human rights and democratic values. EU's coercive diplomacy may be the wrong approach to deal with the RF's on these issues. Massari (2007) sees in this a source of tension which puts obstacles in the way of a fruitful and efficient cooperation on a widespread area of issues.

"While there has been significant progress in several areas of technical cooperation, the relationship has suffered from too many political ups and downs and a growing and mutual distrust" (ibid.: 1).

As Massari and others argue, practical issues should dominate the agenda first, in order to find a deepened political will to foster their cooperation and align also in the field of human rights, rule of law and democratic values. This idea is formulated most clearly by Dmitry Trenin:

"[t]he West should build relations with Russia on Russia's term, achieve an acceptable balance of mutual concessions, and not be guided by certain normative principles such as the presence or absence of democratic reforms" (Trenin In: Shevtsova 2008).

EU's value-based approach, however, has proven to be ineffective in achieving its goal. In contrary, a more pragmatic approach could prove to be more effective concerning the respect of EU's values and norms in the long term. As Hiski Haukkala (2005) noted: *"the EU has sought to make a virtue out of the necessity: as enforcement and sanctions in a pragmatic manner in a hope of achieving some of the normative aims in the process"* (ibid.: 16-17). A twin-track policy is suggested, in order to allow for a continuation of the EU-RF dialogue on practical issues, in defiance to RF's breach of international laws and its lack of democracy. In this regard, Maull (2000) got cited in Haukkala, emphasising that *"it is better to retain the dialogue and seek progress through positive incentives rather than negative sanctions and punitive measures"* (Maull 2000 In: Haukkala 2005: 17).

The necessity for cooperation is approved by both sides. The RF has to tackle the same challenges as the EU, including international trade, international terrorism, organised crime, irregular migration, financial crisis, let alone its own internal threats – the fragility of its petro-related economy, increase of poverty and looming demographic decline – where it would profit from external assistance (e.g. Karaganov et al. 2010). Further, both actors would be better off from a close cooperation in order to improve their competitiveness on the world markets as other countries of the BRIC (Brazil-RF-India-China) push on the markets. A close EU-RF alliance would prevent Europe to turn into a *"monument to its old grandeur, while Russia would risk becoming a raw-materials backyard for a rising Asia"*. (Karaganov et al. 2010). However, once they bring themselves to find together and

develop a common vision for their alliance, it could open a totally new dimension of EU-RF relations that would benefit the entire continent.

Hence, both sides will have to de-escalate the political discourse. After a proper dialogue is re-established, both should concentrate on topics offering real prospects of concrete measurements. For example, to try to work on a mutually beneficial energy deal, address the issue of illegal immigration, readmitting third country nationals, energy security, supply for EU troops in Afghanistan through RF territory, Kaliningrad transit etc.; without bothering too much about a big new treaty. In fact, 'depoliticising' the agenda is exactly what the RF had in mind when they were negotiating the Four Common Spaces. The RF insisted on a purely pragmatic approach to cooperation, while the EU sought to have a package deal that would condition progress in specific sectors on RF's respect for democracy. Besides, depoliticise cooperation further reduces the political costs for each of them – especially in the case of high salient issues – and makes it easier to compromise on concrete road maps. This opportunistic sentiment is supposed to guide towards a new partnership between the EU and the RF, which is based, firstly, on gaining from a pragmatic relationship that provides a fair balance of interests that founds itself on common values in order to get used to each other. The notion of partnership is about promoting common interests as much as it is about mitigating conflicting ones. It implies mutual respect and a sober assessment of what is to be achieved.

Secondly, both actors have to put their partnership into perspective; becoming aware of commonalities in policy objectives and developing a common vision for Europe and their partnership in the core of it. Moshes argues that "*the list of shared foreign and security policy interests between the EU and RF is very long and if the internal problems on both sides could be overcome then cooperation could grow quickly*" (Moshes cited in: EU-RF Centre 2007: 3).

Furthermore, the RF has sought the EU's help in improving RF's economic process and modernisation and to put it back into the global sphere. On this basis, both have further to set up common values and rules to give their partnership a suitable format, as well as creating a partnership in the spirit of mutual respect and confidence. Marius Vahl (2006) states that "[i]t has been suggested that the presence of common values, common interests and mutual understanding are essential criteria for a 'partnership', as opposed to mere 'co-operation'" (ibid.).

Furthermore, the very notion of their partnership implies on the part of all to accept a degree of interdependence, and therefore of sovereign concession. On the Russian side,

those are the illusions that integration with the West could be attainable without substantial internal reforms. On the side of the EU, those are the hopes that Russia could develop by just acquiring Western norms performing as a junior partner.

“An ambitious EU-RF policy would be successful only if the parties had a clear, shared understanding of the strategic prospects of their mutual relations. Thus far, RF and the EU have not acquired such an understanding. Therefore we have to limit ourselves to more modest goals even if this situation is unsatisfactory both for the Union and for RF” (Andoura 2008: 15).

In the case of the EU, an internal debate on the nature of the political relations, which should be forged with the RF, cannot be delayed for much longer; it is a debate that will force the 27 member states to clarify its prospect of its policy towards the RF: *“is Russia a partner or a threat? As long as the EU fails to deal with this dilemma, they will be unable to draw up a common policy”* (Gomart 2008: 9). It is no longer possible to pretend to have a ‘strategic partnership’³³ with the RF and at the same time treat it as a threat. The RF is a difficult partner, but a crucial one. In contrary to other neighbouring countries, the EU will not be able to set the agenda of their cooperation unilaterally. Thus, it also has to share the leadership of the cooperation and not only the burden.

Whatever the case, the RF is currently allergic to what it sees as Western arrogance. The RF thinks the current cooperation is patronising and therefore one-sided. What is true, however, is EU’s approach in its relationship towards the RF to apply conditionality in any form, which refers to former policies towards candidate countries. With its regained self-image as a great power, the RF no longer wishes to be ‘guided’ by the EU, as other neighbouring countries, on the path to democracy, the rule of law and a free market economy.

The fact that the EU assumes it is allowed to maintain such a role towards smaller countries that have a realistic prospect of EU membership or a relatively low level of development (like most of the ENP countries) is understandable. It is also understandable that the EU adopted this attitude towards the RF during the disintegration of the Soviet Union and the sharp fall in living standards that accompanied the standstill of the Soviet economy. However, such an approach is misplaced towards a former superpower that is back on the road to recovery. On the other hand, the RF seeks to be a perceivably crucial actor in International Affairs. Therefore it has to accept international legal commitments

³³ Emerson (2001) defines strategic partnership as a kind of relationship, which *“involves two actors that are powerful and capable of taking strategic action together”* (ibid.: 45)

on human rights and to be an active participant in IR. The EU itself is accepted to be a legitimate gate keeper to enter IOs such as the WTO, to allow for close cooperation with the NATO or to be a partner in IOs such as the OSCE, OECD or UN.

The EU itself has to keep this in mind when it seeks to improve its cooperation with the RF. Therefore, EU institutions need to change their mindset about the RF. The current mindset did not anticipate RF's recovery and its consequences. Against this background, the EU has to treat the RF on an equal basis, in emphasising the win-win situation of cooperation instead of fixing too strict preconditions and telling them how to organise their society and their economy. The European Commissioner for External Relations and European Neighbourhood Policy, Benita Ferrero-Waldner (2008b), spoke wisely when she said "*we should be sure to talk to Russia as it is, rather than with Russia as we would like it to be*". To sketch it, it means to stop pressing on barely shared values, and rather seek to exploit mutual interests and an institutional basis to continue finding out communalities.

Third, what their relationship needs, to be more certain and efficient to deal with their mutual dependencies, is a well-developed system of bilateral ties at various levels. It will not be easy to move from an atmosphere of suspicion to one of mutual cooperation. It is of crucial need to agree on a legally binding basis and introduce an effective institutional set-up. A widespread institutionalisation of contacts between the respective administrations will increase the capacity of both parties to jointly formulate shared objectives in their relations and to define common values, interests and tasks. Thus, playing by the same rules, following the same objectives and having a continuing and sincere communication increases mutual trust and credibility in their relationship. The EU and RF already set-up such an institutional framework with the PCA in 1997 and currently negotiate on a new Enhanced Agreement, aiming to extend the areas of cooperation and to strengthen its bodies and networks by increasing its competences and scope of action.

The PCA institutions have facilitated the dialogue and cooperation on widespread issues between the two administrations and lead to an improvement of the relationship. Several initiatives in the framework of the Four Common Space initiative and the Modernisation Partnership have enriched their partnership with an effective policy; resulting in concrete measurements and road maps. This and the increasing involvement of the RF in EU's and Western actions created an atmosphere of good-neighbourliness and mutual understanding. The experience of putting the relation on an institutional and legal basis has been proven to be beneficial for both and built a solid basis for further integration to form a bilateral association. Two processes of the institutionalisation of EU-RF cooperation can be extracted: Socialisation and the Spill-over effect. First of all, the

analysis shows a slightly socialisation; meaning the alignment of policy objectives, getting used to the procedures of bilateral decision making and becoming aware of the importance of common values in their relationship. Secondly, as the current negotiations on the NEA, but also the Four Common Space Initiatives, the PCA, show, the areas of cooperation got extended from former core areas as economy and energy to more problematic and salient issues as JHA.

4.3 Legal Basis and Institutional Framework of EU-RF

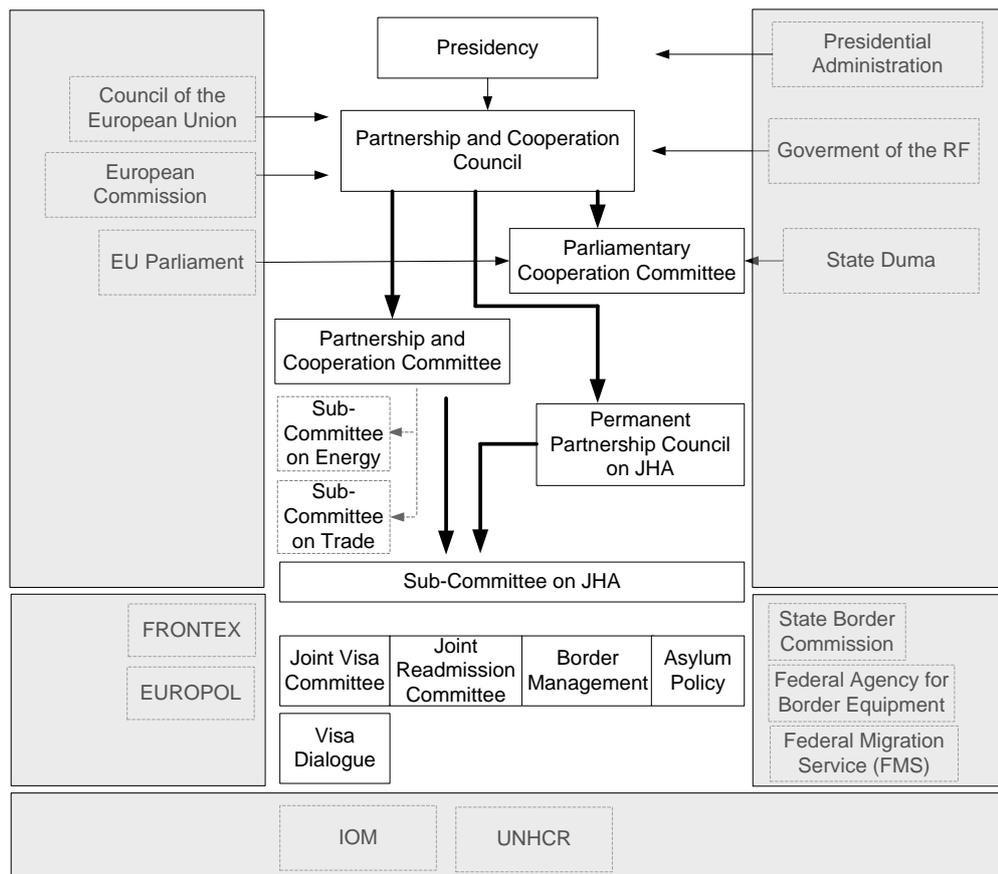
Cooperation on Migratory Issues

In this section, the paper is scrutinizing the institutional framework and the legal basis of the cooperation between RF and the EU and asks about the instruments and modes to tackle the respective issues of migratory matters. The question is in what framework and at what level can the EU best hold talks with RF with the goal of creating, in both parties' interests, the maximum possible outcome of a safe, stable and prosperous Europe. The current EU-RF framework for cooperation is laid down with the Partnership and Cooperation Agreement (PCA), signed in June 1994. The PCA came into force in December 1997 and opened a new chapter in EU-RF relations. In its nature, the PCA is embodied by a joint commitment to promote a close cooperation on shared objectives for mutual benefit. The main aim is to establish a practice of regular consultations and permanent liaison links between the EU administration and its RF counterparts. Furthermore, on the EU side, the changes for its External Policy in the course of the implementation of the Lisbon Treaty might improve their relationship with the RF. The creation of the post of the High Representative for Foreign Affairs and Security Policy and the new European External Action Service will have an impact on the coherence and consistency of its policy towards the RF.

On an institutional level, the plethora of mechanisms within the EU-RF partnership encompasses joint structures (e.g. regular meetings of the EU Troika with the RF administration; a permanent council on JHA, trade, energy, ...; working groups), bilateral agreements (e.g. PCA, "Four Common Spaces", Modernisation Partnership), and issue specific instruments (Action Plans, projects covered by e.g. TACIS or ENPI). The institutional framework for regular consultations between the EU and RF take place at five different levels: Troika meetings, bi-annual summits of Heads of State/Heads of Government, the Permanent Partnership Council (respective Ministers), the Cooperation Committee, issue specific sub-committees and the Parliamentary Cooperation Committee. These levels are very centralised in nature. On top of the cooperation, the Partnership and

Cooperation Council (PCC) is the main decisive political body, where the RF's president meets with the EU Troika in 6-monthly PCC meetings. Their main function is to exchange information and negotiate on action plans to coordinate and align policy regulations. Further, the PCC is the key monitoring instance which observes the progress achieved in the realisation of the action plan commitments (Art. 90).

Figure 19. Institutional Framework of the EU-RF Cooperation on Migratory Issues



In 2003, the Partnership and Cooperation Council was replaced by the Permanent Partnership Council, which is constituted by ministers from the RF, the current and incoming EU presidency and the respective EU Commissioner. The PPC is the main decisive body in EU-RF cooperation and covers several policy areas, such as JHA, Energy, Transport, Agriculture, Environment, Culture, Science and Education. The dialogue within the EU-RF PPC on JHA is merely defined by a road map adopted in 2005 (Council of the EU 2005b). It is their task to coordinate the implementing of this road map, develop respective action plans and monitor them. Several additional committees and working groups support the work of the PPC, which consists of experts in the respective ministries and think tanks and meet more recently and on an informal level.

The work of the PPC is supported by several working groups or committees. First of all, the Parliamentary Cooperation Committee, which got established to bring together European and Russian parliamentary delegations – Members of the European Parliament (MEP) and the State Duma of the RF – which do recommendations to the PPC. Their regular meetings are held as often if necessary (Art. 95). Further, the Cooperation Committee is composed of senior EU and RF civil servants, who meet on a yearly basis and consult on EU-RF's cooperation in general (Art. 92). The PPC, however, have set up numerous subcommittees and working groups tackling specific technical and political issues. One of the most obvious developments is the decision to consider some of the more contentious issues – human rights, civil society and visa liberalisation – on an expert level within issue-specific working groups.

Although the institutional framework provides distinct forum for interaction, the EU-RF cooperation faces several limitations in getting operational results in measureable outcomes. The scope of action within these forums seems to be challenged by the complexity of the two actors' decision making processes. On the RF side, several players are involved in drawing up European policy under the control of the presidential administration. The Ministry of Foreign Affairs has no real power in coordinating this process. However, the administration of the Foreign Ministry may recover some prerogatives with the new presidential administration. The presidential administration itself is lacking the political will to develop close cooperation as it will be forced to make concessions. Further, the internal political struggle in the beginning of the 21st century hindered an improvement of cooperation.

On the RF side, the presidency is in charge to define the framework of the cooperation and the political dialogue with the EU Troika. Issue-specific ministries and agencies are, however, responsible to implement the adopted action plans and working agreements between the RF presidency and the EU Council; in the case of migratory issues, e.g., Border Guards Service; Federal Migration Service; Federal Security Bureau.

On the EU side, the implementation of the action plan is supported by numerous financial and technical assistance programmes and EU agencies, which run certain projects together with their respective counterparts in the RF. In example, the EU agencies Frontex and Europol signed several working agreements with RF agencies. Apart from EU and national agencies, international organisations as well help with their expertise and knowledge on certain issues to implement specific projects, as e.g. IOM, who runs several projects on the implementation of biometric passports or the readmission of people.

4.3.1 *Excursus: Negotiating a New Enhanced Agreement on EU-RF Cooperation*

EU-Russia relations are currently carried out under the auspices of the 1997 Partnership and Cooperation Agreement (PCA). This treaty was negotiated in 1994 during the Yeltsin presidency and modelled in the system of instruments open to other EU neighbours. The PCA entered into force in 1997 for an initial period of ten years and expired at the end of 2007. Until a new agreement is in force, the former PCA is going to be renewed automatically on an annual basis. Both sides agreed about the need for a new agreement, largely due to the outdated existing PCA, but also because of the necessity to facilitate their increasing economic and human exchanges and to install an appropriate instrument to tackle global changes, as e.g. the current economic crisis, climate change and frozen conflicts.

"The EU-Russia relationship has to find a clearer strategic rationale to put their partnership on more stable ground, taking into account the changes that have occurred inside Russia, within the EU and in the international system" (Massari 2007: 1).

In the meantime RF's re-found self-confidence fits uneasily to the concept of the current PCA. Therefore, it is not surprising that the RF repeatedly stresses its willingness to cooperate with the EU only on the basis of equality and reciprocity:

"[t]he future agreement will be an instrument for genuine rapprochement between Russia and the European Union. It should be built on the principles of equality, pragmatism, mutual respect for each other's interests and, of course, common approaches to key security issues. It will lay the long-term foundation for the strategic partnership between Russia and the European Union" (Medvedev 2008a).

Furthermore, Commissioner Ferrero-Waldner (2008a) stresses the need to update the legal framework of EU-RF relations *"to reflect the substantial changes in both Russia and the EU since the current Partnership and Cooperation Agreement was negotiated in the early 1990s"* (Ferrero-Waldner 2008a). How this is done will have a crucial bearing on the future of the bilateral relationship between the two biggest political actors in Europe. The former Commissioner for External Relations, Benita Ferrero-Waldner stressed that:

"The new agreement currently under negotiation is a chance for both sides to realise the full potential of our relationship, with well established ground rules in key areas. Russia is a crucial partner for the EU in international matters from climate change to the Middle East and Afghanistan but alongside these important topics we need also to maintain our channels of communication on issues where we do not agree, and notably our differing views on the respect for the territorial integrity and sovereignty of Georgia" (COM 2009d).

The negotiation of a new agreement are an opportunity for both for stocktaking and have a crucial bearing on the future of the bilateral relationship between the two biggest political actors in Europe to provide a solid basis for deepened bilateral relations covering all aspects of their relationship (e.g. Council of the EU 2008b). In the Commission press release of 3 July 2006, the Commission announces that:

“the new agreement will provide an updated and more ambitious framework for the EU-RF relationship [...] based on recognition of common values such as democracy, human rights and the rule of law”. [It will cover] “the whole range of EU-RF cooperation”, including a “progressive deepening and development of trade relations and fair and open development of the energy relationship”, as well as “ambitious objectives on political and external security cooperation” (COM 2006f).

This intention again got underlined by both parties in a joint statement on the launch of negotiations for a NEA, given at the EU-RF summit in Khanty-Mansiysk on the 27th June 2008:

“We agreed that the aim is to conclude a strategic agreement that will provide a comprehensive framework for EU/Russia relations for the foreseeable future and help to develop the potential of our relationship. It should provide for a strengthened legal basis and legally binding commitments covering all main areas of the relationship, as included in the four EU/Russia common spaces and their road maps which were agreed at the Moscow Summit in May 2005” (Council of EU 2008c).

The question of the future of EU-RF contractual relations is dominating the current bilateral agenda in the next few years and it is of great significance for the development from a medium to a long-term relationship. The new agreement will comprise all areas of cooperation in political, security, economic, trade, scientific and cultural affairs, building on the four common spaces agreed in 2003. Further, it is going to adapt to new realities. When the PCA was negotiated from 1994 onwards, the EU and RF faced different challenges and possibilities than nowadays. The RF complains that the PCA was negotiated during a period of weakness and chaotic leadership and it expects that new negotiations will be carried out by two equals. The EU contends that the PCA needs to be replaced in order to provide a legal base for new policy areas that have been developed in the past decade, referring to EU's internal shift of competences on the supranational level by the Treaties of Amsterdam (1999), Nice (2003) and Lisbon (2009). The 'Communitarisation' of competences in the second and third pillar allow for a broader framework of cooperation than the current PCA. Although the new agreement will comprise an increasing number of various specific areas, the cooperation will still remain split over many different agreements and projects in various specific areas.

Without a clear date of finalisation, the negotiation of a new agreement takes place already since 2007. It is the EC who conducts negotiations on all aspects of the future agreement, in accordance with a mandate issued to it by the Council. On the one hand, the negotiations are delayed by Polish and Lithuanian vetoes and the conflict in Georgia, but the conflicting points have since been overcome. On the other hand, the agreement should provide a sufficient framework to deal with a broad variety of issues. The difficulties are not only to find a good compromise between the EU and the RF, but also within the EU. Several legal issues regarding the future agreement between RF and the EU directly must refer back to the division of competences between the EU and its 27 Member States. According to the relevant procedural rules for the negotiation, signature, conclusion and implementation of an international agreement by the European Community, contained in Article 300 of the EC treaty, it is the EU Council that takes the decision by qualified majority or unanimity, depending on the type or content of the agreement (e.g. Andouras/ Vahl 2006: 7). Thus, regarding the scope of the future agreement, it would be exclusively concluded by the EU or by the EU and the Member States, as in case of a mixed agreement such as the current PCA.

One should bear in mind that a negative vote by only one Member State in the ratification process would be sufficient to hinder the coming into force of the agreement. Remembering the vetoes of Poland and Lithuania on the opening of negotiations with the RF (e.g. Roth 2009), a consensus between the Commission and the RF does not automatically mean a successful approval by the Council. The EC, therefore, while seeking to influence the course of the EU-Russia dialog, also has to reach a compromise with EU members, as well as with the EP, who both pursue their own agendas. There are still a variety of bilateral frictions between the RF and individual Member states on the floor, which could challenge a positive approval in the end. This institutional clumsiness undermines the credibility of the EC at negotiations with RF representatives, which is a crucial pre-condition of achieving a positive outcome. In the light of all this, it seems clear that the EU and RF are faced with difficult and lengthy negotiation and ratification processes before a new comprehensive bilateral agreement to replace the PCA can come into force. Further, it is a tricky task to define a common vision on how the future partnership should look like as well as to elaborate a meaningful strategy, facing these distinct actors on the table.

The current reforms by the Treaty of Lisbon have a positive bearing on the negotiations and on the nature of the agreement (see also Chapter 2.2). On the one hand, it extended the competences of the EC to further policy areas, as e.g. JHA, and dissolves the former

pillar structure of the EU. On the other hand, the supranational bodies of the EU got major competences in IR. The Lisbon Treaty provides the EU with a comprehensive legal status and recognises its international personality (Art. 74) in order to conclude agreements with States or IOs (Art. 37). The EU becomes a new international organisation which will replace and succeed the current European Community and European Union in all their international rights and obligations (Art. 1). Further, there is a renewed focus from the EU side now that a new Commission and the High Representative for Foreign Affairs Baroness Ashton are in place, on treaty negotiations with Russia. *“As a consequence, the coherence, unity and uniformity of the EU’s position prevailed”* (Andoura/ Vahl 2006: 7).

All these issues influence the EU-RF negotiations on a new enhanced agreement. But the main questions are what form this new agreement should take. On the RF side, it wishes to create an agreement which treats both signatures as an equal partner and to have the partnership anchored in an appropriate institutional framework (President of the RF 2008b: ‘Foreign Policy Concept of the RF’).

RF’s impression of contractual relations is contrary to EU’s pattern towards other third countries in Europe. They are not willing to play the role of a junior partner of the EU and accept EU’s rules, standards and values without discussing them. The EU should, therefore, involve the RF at every step of creating a new contractual basis and define a common vision for their future relations. The EU however aims towards a framework agreement, based on common strategic objectives and rules of procedure to deal with the vast area of cooperation built up in the intervening years, notably set out in the common spaces road maps adopted in 2005 (e.g. COM 2006g; European Council 2008c). They include to *“continue to insist on a broad, wide-ranging and legally binding agreement based on a shared commitment to human rights, covering the whole range of cooperation between the parties”* (Prystayko 2009).

On the more technical level of negotiations, the two parties face the problem of the evolutionist pattern of their cooperation. Thus, beside the framework agreement, the detailed cooperation in the various policy areas could then be conducted separately within sector-specific agreements (e.g. Andoura and Vahl 2006: 8). The framework agreement could come in the form of an association treaty, which provides an increased flexibility for the EU-RF cooperation (e.g. Article 217 TFEU). The scope of the association treaty would allow for the possibility of supplementing with issue-specific agreements and not be limited to its specific legal basis as in the case of the PCA.

A new agreement raises a number of legal and political issues that will have to be addressed. As Andoura and Vahl (2006) state, *“the EU has never concluded such an ambitious and comprehensive agreement with any third country, and the EU treaties do not provide any clear guidance as to how such an agreement might be concluded”* (ibid.: 5). Even with the US, one of the strongest allies of the EU, the contractual relations are not as comprehensive as it is planned with the RF. The EU-US relations are based on the Transatlantic Declaration (European Council 1990), the New Transatlantic Agenda (European Council 1995), the Transatlantic Economic Partnership (European Council 1998) and the Framework for Economic Integration (European Council 2007). The institutional framework, defined by the Transatlantic Declaration in 1990, is rather similar to that agreed between the RF and the EU in the PCA of 1997. In addition, the EU and the US launched the Transatlantic Economic Council to improve their economic partnership (e.g. ibid.).

Relations with other countries, as the BRIC states or Israel, have all a similar institutional framework but differ in the contents of their cooperation. Whereas economic cooperation is a main issue in all relationships, the political dialogue is only advanced in the case of Israel and other Mediterranean countries, by signing the Euro-Mediterranean Association agreement (European Council 2000b). The most developed relations with third countries are with the four EFTA states and the membership aspirants in the Balkans and Turkey. In the case of EU-Ukraine relations, negotiations of a new association agreement are on the way. For that reasons, both parties agreed on the Association Agenda, which aims at preparing for and facilitating the coming into force of the Association Agreement (COM 2010a).

None of the present models of the EU's relations with third countries can be fully applied to the case of Russia. Each of these models is based on a unique historical, economic, political and cultural platform and cannot mechanically be transposed elsewhere (e.g. Karaganov et al.: 11; Matta 2007: 2). EU's relation with the RF is rather specific in its nature, compared to EU relations with other third countries. It is characterised by crucial interdependencies in economic, energy and security matters, because of its size, hegemonic history and geopolitical position, which strengthen their respective bargaining power in negotiations with each other. However, the level of mistrust between the two actors is rather high and affects the conceded credibility and predictability. A strong institutional framework therefore is needed to allow for a fruitful cooperation and a stable partnership between them. The basis for a new agreement is the entirety of interests in crucial policy areas. In 2006 Commissioner for External Relations and Neighbourhood

Policy, Benita Ferrero-Waldner stated that *“RF is a strategic partner for the EU and we share many areas of interest and inter-dependence; it is important that these should be reflected in the new Agreement”* (COM 2006f). The question is, however, what has been achieved so far and how could this ‘Russian Model’ of relations with the EU look alike?

According to the Russian Foreign Ministry press release of 3 April 2009, cited in an article by Olena Prystayko (2009), the negotiations have already been succeeded by affirming *“a common vision of the new agreement as a framework and a legally binding document, to be supplemented in the future by sectoral agreements”* (ibid.). At the same time, the statement highlighted *“certain, occasionally serious, differences in the approaches of the parties to fleshing out the agreement* (ibid.)”. Disagreements still exist about the question on how far the framework agreement should rely on common values. Whereas the EU insists on a strong commitment to human rights and democratic rules, the RF calls for a pragmatic cooperation, based rather on mutual interests and technical cooperation than on interference in internal policies of sovereign states (e.g. Gomart 2008: 7).

“The Russian side proposes that a short political agreement would be the best, arguing that the Agreement cannot regulate relations for decades ahead, because both sides are in a state of transition, just as the international environment is changing fast” (Prystayko 2009).

The question on the EU side concerns the optimal balance between common values and common interest in relations with the RF. While the EU has become increasingly concerned about the direction of RF on fundamental issues such as democracy, human rights and the rule of law, RF on its side is less inclined to accept a partnership based on European definitions of such common values. Andoura and Vahl (2006) note that *“this was one of the most contentious issues in the negotiations on the Road Maps, and was eventually resolved by including only limited and vague references to such common values”* (ibid.: 10). However, the EU wants at least a legally binding agreement, based on international agreements and obligations, as the basis for common values. According to Vladimir Socor (2008), the RF, however, *“wants such a treaty to be brief, with a “general framework” character, without “excessive details” or “politicization,” and underscoring the purported “strategic” content to Russia-EU relation”* (ibid.). Thus, the NEA should be evolutionary in nature in order to take into account EU-RF’s partnership sui generis (e.g. COM 2006h).

In practical terms, the NEA approaches all the dimensions of their relationship, as *“the framework would be complemented by a series of sectoral agreements which would be legally binding”* (COM 2006h). Several of these sectoral agreements are already in force

or under negotiations and should be included in the new treaty³⁴. As the previous PCA is still in force and becomes automatically extended on a yearly basis and several additional protocols and agreements cover issues beyond the PCA, there is no need to rush the process of negotiating on the NEA. The negotiations are still ongoing and a final date is not in prospect.

4.4 Modes and Instruments of the Cooperation on Migration Management

The cooperation in JHA matters is coordinated by the biannual meetings of the EU-RF Permanent Partnership Council (PPC). As mentioned in the previous chapter, the PPC is a forum of the respective representatives of each side. For example, at the PPC meetings in Kazan, 25-26 May 2010, the Russian side was represented by Alexander Konovalov, Minister of Justice and Presidential Special Envoy for EU-Russia JFS cooperation, and Minister of the Interior Rashid Nurgaliev. The EU side was represented by the Ministers of the Interior and Justice of the incumbent Spanish Presidency and by the responsible member of the European Commission Cecilia Malmström. The meeting was also attended by Stefaan De Clerck, Minister of Justice of Belgium, Melchior Wathelet, State Secretary for Asylum and Migration of Belgium, and Judit Fazekas-Lévay, State Secretary for EU affairs at the Ministry of Justice and Law Enforcement of Hungary (e.g. EU-RF PPC 2010a; COM 2010a: 40). It is their task to identify concrete actions to realise the 2005 agreed road map to guarantee their implementation by sufficient financial and technical assistance and to monitor their progress (e.g. 15th EU-RF summit 2005, Annex 2: 26-27).

In addition to these formal meetings, further informal dialogue and expert meetings complement the coordination and monitoring of agreed actions, e.g. the joint committees monitoring the implementation of the Visa Facilitation and Readmission Agreements and the visa dialogue (e.g. COM 2010a: 40). Besides, issues that are touching common commitments to democracy, human rights and fundamental freedom, are also tackled by the bi-annual Human Rights Consultations (e.g. *ibid.*). Further, *“there is dialogue with the Council of Europe and the OSCE as regards the Federation with a view to upholding respect for internationally-agreed norms and standards”* (Council of the EU 2006c: 23).

³⁴ Bilateral Agreements between the EU and the RF are listed on the Website of the EC on [<http://ec.europa.eu/world/agreements/searchByCountryAndContinent.do?countryId=3853&countryName=Russia>, last access: 23 January 2011]

As the core institution for any cooperation in JHA matters, the PPC incorporates the objectives of the 2005 road maps into concrete action plans, mentioned in the Country Strategy Papers (2002-2006 and 2007-2013) and the National Indicative Programmes (2002-2003; 2004-2006; 2007-2010). The road maps are based on the 2003 launched 'Four Common Spaces' initiative at the EU-RF Summit in St. Petersburg, including a: Common Economic Space; Common Space on Freedom, Security and Justice; Common Space on External Security; and Common Space on Research, Education and Culture (13th EU-RF Summit 2003: Art. 2). A number of priority areas were identified by the 2005 road maps, concerning migration management: Visa facilitation and readmission, among other issues as combating organised crime, border security and refugee protection, are set on top of the agenda on cooperation in JHA. As stated in the joint statement of the EU-RF Summit 2005, both parties agreed to contribute to:

"building a new Europe without dividing lines and facilitating travel between all Europeans while creating conditions for effectively fighting illegal migration [...] To facilitate human contacts and travel between the EU and Russia, ensure smooth legal border crossings and lawful stays on their territories, as well as to work together to tackle illegal migration and illegal cross-border activities" (15th EU-RF Summit in Moscow 2005: Joint Statement).

The road map was adopted at the EU-RF summit 2005, which sets out the principal common objectives for cooperation on the 'Four Common Spaces' for the short and medium term (15th EU-RF Summit 2005: Annex). These road maps represent the working agenda of the EU-RF cooperation, which are rather vague and legally non-binding. The EU's main objective is therefore to engage Russia to build a genuine strategic partnership, founded on common interests and shared values to which both sides are committed in the relevant international organisations such as the UN, Council of Europe, and the OSCE, as well as with each other in the bilateral Partnership and Cooperation Agreement. These interests and values include in particular democracy, human rights, and the rule of law (e.g. Council of the EU 2006b). The road map on JHA includes following migratory-led objectives:

Figure 20. EU-RF Road Map on Migratory Issues (15th EU-RF summit 2005, Annex 2: 26-27)

1.1 To facilitate the movement of persons / readmission

- in the short-term, conclude parallel negotiations on an agreement on visa facilitation and an agreement on readmission
- continue and intensify the visa dialogue at expert and political level to examine the conditions for a mutual visa-free travel regime as a long-term perspective.

1.2 To cooperate on border management and control

- intensify discussions on border management, including border protection, and continue to support improvements of border crossing points, notably on the common border, and to improve cooperation between units on the common border
- discuss issues of common interest in relation to the strengthening of Russia's southern border
- explore the possibilities of cooperation at operational level, where appropriate, between the EU and Russia in the framework, principally of the EU's future border management agency
- develop cooperation projects to step up the efficiency of border management, by strengthening the institutional and administrative framework and the capacity to implement border controls as well as improving border surveillance (15th EU-RF summit 2005, Annex 2: 23)

1.3 To support an efficient migration policy

- implement the Protocol against the Smuggling of Migrants by Land, Sea, and Air, supplementing the UN Convention against Transnational Organized Crime assess jointly the scale of illegal migration by exchanging information of migratory flows
- exchange information on migration management policies and best practices, and cooperate as appropriate in this field in relation to third countries
- develop an appropriate legislative framework related to migration management
- provide appropriate support to the Border Guards Service with the possibility to set up Joint Training Programmes and Training Centres for Customs Officers and Border Guards
- examine the possibility of cooperation projects to improve the management of migration flows, including the assessment of statistics and measures to fight against illegal migration

1.4 To develop cooperation in the field of asylum policy

- implement the 1951 UN Convention relating to the status of refugees and i.a. its 1967 Protocol, including the right to seek asylum and respect for the principle of 'non-refoulement' by all countries in accordance with UNHCR recommendations
- implement standard procedures relating to treatment of asylum applications, in accordance with UNHCR recommendations
- protect individuals in the territory of EU Member States and Russia against possible threats to their life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group
- not to subject permanent residents in EU Member States and Russia to expulsion contrary to the principle of 'non-refoulement' (15th EU-RF summit 2005, Annex 2: 24)

2.2 To improve the security of documents, prevent the use of multiple identities, and falsified/stolen documents, which authorize the crossing of borders (travel documents)

- discuss at expert level how the security of travel documents can be improved
- promote cooperation, including through exchange of experience, on possible measures to stop the malpractice of multiple identities in regard to the production, control and storage of documents
- apply legislation and rules to support criminalisation of the use of multiple identities
- explore the possibility of using the Interpol database on lost and stolen blank and issued travel documents (ASF-STD) by national law enforcement agencies, in accordance with the Interpol Constitution, and to transfer data currently contained in national databases about lost and stolen, issued and blank travel documents to the Interpol database
- exchange information about the introduction of biometric features in travel documents, based on ICAO standards

A revised version of the 2005 road map on JHA matters got adopted at the EU-RF PPC in Stockholm on the 2nd December 2009. This revised road map emphasises to:

Figure 21. EU-RF Road Map on Migratory Issues (EU-RF PPC 2009)

- continue to work on the EC-Russia visa facilitation and readmission agreements,
- discuss possible amendments to the EC-Russia visa facilitation agreement with a focus on Kaliningrad and local border traffic agreements,
- lend their support for swift negotiation; look forward to the Senior Officials' report on the EU-Russia Visa Dialogue,
- enhance EU-Russia dialogue on all migration issues,
- examine border co-operation,
- negotiate an operational agreement between Europol and Russia on personal data protection,
- intensify anti-drug co-operation,
- strengthen EU-Russia Co-operation in the fight against corruption and trafficking,
- solve the current problems on judicial co-operation,
- strengthen judicial co-operation in civil and commercial matters

Representatives of the EU and the RF discuss in issue-specific expert meetings joint priorities and problems encountered during the implementation of the agreed road maps for the four common spaces and develop concrete action plans to succeed in these objectives. The priorities listed in the road maps are rather vague. Thus, they are basis for ongoing consultations relying rather on a political commitment than on a legal obligation. The approximation to EU acquis is not a must, but its legislation serves often as a model for guiding the RF in the conduct of domestic reforms.

In order to implement this road map on JHA, the respective representatives of both sides at the PPC are to draft a more detailed action-oriented paper. From the EU side, the Council agreed on a modus operandi to arrange its assistance towards the RF. According to their statement at their Council meeting on the 26 November 2006:

“these papers should include: i) an analysis of the issue and the EU's objectives, drawing on relevant information from the EU's institutions; ii) a summary of current action being carried out by both the Commission and by Member States; and iii) identification of what needs to be done at the political, technical and operational levels in order to meet EU objectives. In addition, information on the situation in the Member States and relevant EU agencies, such as Europol, Eurojust and Frontex, for example, has been included in the action-oriented paper on justice and home affairs concerning Russia” (Council of the EU 2006b).

In regard to the implementation of the agreed road maps, the EU provides issue-specific technical and financial assistance within the ENPI, funding, inter alia: the administrative capacity building, improvement of border-crossing infrastructure and developing integrated border management systems (COM 2006g). E.g. a special program on Cross-Border Cooperation (CBC) with Russia is funded by the EU with a total amount of EUR 307.446 million (COM 2006d; Annex 2.1: 33), with a co-financing from the RF with the amount of EUR 122 million (Ehin/ Nahtigal 2008: 12). The overall amount of EUR 429.488 million is used to provide financial assistance to seven CBC programmes. The seven joint CBC programmes got confirmed at the EU-RF summit in Khanty-Mansiysk, June 2008 (ibid.). The CBC programme goals are, inter alia, to “ensure efficient and secure borders” (COM 2006d: 3) along the EU and the RF borders. Thus, both parties agreed on the following five land border and two sea basin programmes: Kolarctic/Russia, Karelia/Russia, SE Finland/Russia, Estonia/Latvia/Russia, Lithuania/Poland/Russia, Black Sea and Baltic Sea Region programmes. Another important supportive instrument is the 2008 launched Common Space Facility, aiming to facilitate the interaction between bureaucrats of the EU and the RF in order to exchange information and knowledge.

The demand-led programmes are open to national as well as international contractors in cooperation with respective authorities. In order to improve the coordination of the JHA cooperation between RF and the EU, RF introduced new institutions in the field of migration and border management. A State Border Commission and Federal Agency for Border Equipment of the RF were approved to support the State Border Guards (SBG); the Federal Migration Service (FMS) got reorganised and is now under the federal supervision of the Ministry of Internal Affairs. It got more competences and a broader mandate for implementing the visa facilitation and readmission agreement.

On the EU side, the most prominent agencies running projects with RF authorities are the ‘European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union’ (FRONTEX), Europol and Eurojust. Several agreements between agencies of both sides got signed in the last years to improve the coordination of common projects. During the EU-RF summit in November 2003, an agreement with the Europol was signed by the respective RF counterparts, which defines the “tools of cooperation in strategic and technical information sharing” (Potemkina 2006: 40). Further agreements were agreed on between Frontex, the Federal Border Security Service of the RF, the Eurojust and the RF Prosecutor General’s Office (Council of the EU 2006c: 23). Apart from that, EU funded projects, furthermore, are implemented by IOs as the IOM, UNHCR or agencies from EU member states.

4.4.1 Visa Facilitation

The extension of the Schengen area onto Central and Eastern European countries on the 21 December 2007 (Council of the EU 2007e: Article 1(1)) marked a sensitive change for the mobility of RF citizens. The new member states had to implement the Schengen Acquis, which provide: measurement to make border controls more efficient; restrictive requirements to get a visa; close police cooperation; and the protection of personal data (Council of the EU 1999b: Annex A). In reaction to this, the RF claims to facilitate visa requirements for its citizen or even to offer complete freedom to travel without visas between the RF and the EU by taking the RF off the EU 'black list' of countries whose nationals need visas to come to the EU (Council of the EU 2001). Elena Prokhorova (2007) noted that the abolition of any mutual visa requirements would be a major step towards removing prejudice and suspicion between the EU and RF.

A crucial case in this sense is the settlement of the RF exclave Kaliningrad oblast, whose citizen's mobility towards its motherland RF got constrained by new visa legislation in former allied transit countries, especially in Lithuania and Poland from 1 July 2003 (COM 2002d: 3). Before Lithuania's accession to the EU and the implementation of the 'National Action Plan for the Adoption of the 'Schengen Acquis', the RF and Lithuania had agreed on the 'Provisional Agreement on Travel of Citizens' in 1995 to regulate the transit of permanent residents in Kaliningrad oblast through Lithuania without any required visa or additional permission to stay in its territory up to 30 days (e.g. Ministry of Foreign Affairs of the Republic of Lithuania 1995 and Interview with Olga Potemkina, Institute of Europe at the Academy of Sciences, 12 June 2009). In the course of the eastern enlargement, the EU and the RF composed a joint statement on 'Transit between the Kaliningrad Region and the rest of the Russian Federation', including a comprehensive package of measures to facilitate the easy passage of borders, and in particular to create a Facilitated Transit Document (FTD) scheme (10th EU-RF summit 2002). Following this joint statement in 2002, the Council of the EU adopted a Council Regulation on 'establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual' (Council of the EU 2003d).

The EU itself wishes a more facilitated visa regime, as EU citizen increasingly attempt to travel to RF for business or tourist reasons. Thus, both agreed to declare visa facilitation as one of their top priority within the Common Space of FSJ:

"The EU and Russia agreed to examine the conditions for visa-free travel as a long term perspective. The EU and Russia agreed to conclude timely the negotiations on a

readmission agreement. We also agreed to promote the better use of existing flexibilities in the Schengen agreement. We want to facilitate to the greatest possible extent cooperation along the border between the Russia and the enlarged EU” (13th EU-RF summit 2003: Article 15).

The 2003 statement was included in the road map of the Common Space of FSJ, where the main objective is: *“to facilitate ease of movement between the EU and Russia, in particular for business, travel and tourism, within a context free of terrorist threat, organised crime and corruption” (15th EU-RF summit 2005: Article 1).* What became clear is that the EU attempts to link the goal of establishing a visa free area between the RF and the EU with concrete measures to combat security threats that come along with cross-border mobility such as illegal migration; cross-border crime; human trafficking; smuggling of weapons and drugs.

At the 17th EU-RF summit in Sochi on 4 May 2006, RF and the EU already approved the visa facilitation and readmission agreement (17th EU-RF summit 2006a; 2006b). The signature under the agreements was a landmark in the EU-RF relations on JHA and for relations with third countries in general. The EU-RF visa facilitation agreement is the first agreement in this vein with a third country (Joint Visa Facilitation Committee 2008, Annex 8: 1). In the joint statement of the 17th EU-RF summit, the EU insisted to include the paragraph *“recognising that this facilitation should not lead to illegal migration and paying attention to security and readmission” (17th EU-RF summit: ‘Visa Facilitation Agreement’ 2006a).*

Whereas visa-free travel has been an issue of strong importance to the RF, the EU considered the signing of a readmission agreement a priority. Thus, the EU insisted on a package deal: facilitation of the visa procedures, coupled with a readmission agreement imposing on both sides legal and financial responsibilities to take back illegal immigrants. Linking both agreements with each other is a consequence of an interest driven foreign policy, aiming to create a win-win situation.

“By opening up the prospect of easier travel and contacts between Russia and the EU, while at the same time providing for a more effective cooperation against illegal migration, the agreements go to the very heart of the Common Space” (Council of the EU 2006c: 9).

“The European Union’s relations with RF should be made subject to a conditionality principle, as is the case for the European Neighbourhood Policy. According to this principle, there can be no visa facilitation or visa-free travel without compliance with the rules of democracy and the rule of law” (European Parliament 2007).

The EU-RF agreement on visa facilitation, together with the readmission agreement, finally came into force in June 2007. The agreement stresses the need:

“to facilitate people to people contacts as an important condition for a steady development of economic, humanitarian, cultural, scientific and other ties, by facilitating the issuing of visas to the citizens of the Russian Federation and the European Union on the basis of reciprocity” (17th EU-RF summit 2006a).

The agreed facilitation of visas applies on categories of citizens such as business people, researchers, journalists, people taking part in cultural or sport events, or officials participating in government (17th EU-RF summit 2006c: Art. 5), who are going to benefit from a simplified procedure of applying for visas; but the facilitated issuing of visas is limited to multiple-entry short-stay visas (so-called C-visas) – up to 90 days in total; and/or transit visas (so-called B-visas), especially for transit from RF citizens living in the exclave Kaliningrad oblast (Art. 3(e)).

The agreement consists of several measurements on how to facilitate visa requirements for the respective categories of citizens, which concerns: the mutual recognition of documentary evidence, regarding the purpose of the journey for the categories foreseen in Article 5 (Art. 2(2)); the introduction of uniform fees which can be levied by the signatures, or exemption of fees for certain categories (Art. 6); and, finally, easing the rules of procedure for processing visa applications (Art. 7). The validity of issued visas in the frame of this agreement is limited to the Schengen area, which means that the provisions of this agreement do not apply for non-Schengen members UK and Ireland. Two associate members of the Schengen club are non EU members, Norway and Iceland, are invited to join the scheme (17th EU-RF summit 2006c: 1). However, Denmark – EU and Schengen member – decided to sign a bilateral, but finally equal agreement which entered into force on the 1 October 2008 (Denmark-RF summit 2008).

The both contracting parties agreed to install a joint committee, which supervise the implementation of the agreement. The joint committee has the task to monitor the application of the agreement; to arrange the execution of the agreement; to exchange information; and to propose amendments to the agreement, if deemed necessary (Art. 13).

“Every time when a violation of the agreement gets observed. Our [experts] task is to collect all the shortcomings to bring it on the agenda of the joint committee. They ask people to send their complaints to the respective consulates” (Interview with Olga Potemkina, Institute of Europe at the Academy of Sciences, Moscow, 12 June 2009).

In this sense the committee is authorised to approve changes to the agreement, as long as it is within the agreed framework. In practical terms, the committee got active in the area of defining mutually acceptable documents which proof the affiliation to one of the above mentioned categories. In addition, the joint committee is authorised to establish legally binding rights and obligations, on the basis of reciprocity (Joint Visa Facilitation Committee 2008: Annex 8).

The committee consists of experts in the field, representing the RF, such as FMS, SBG and from the Interior Ministry; and on behalf of the EU by the Commission DG JFS and several experts from member states (e.g. Interview with Official from the EC Delegation to the RF, Moscow, 28 May 2009). In the Implementation Guidelines, both parties *“highly recommended that diplomatic and consular staff consistently follow them when implementing the provisions of the agreement”* (Joint Visa Facilitation Committee 2008: Annex 8: 1). The members of the committee meet *“whenever necessary at the request of one of the Parties and at least once a year”* (Article 13(3)). According to the EU-RF Progress Report on the Common Space of FSJ, the joint committee on visa facilitation met twice a year in 2009, on the 12-13 March and 10-11 December (COM 2010a: 40). At their meeting in March, they also adopted their common implementing guidelines (Joint Visa Facilitation Committee 2008: Annex 8), in order to fulfil the requirement of the Article 13 (4) of the visa facilitation agreement, postulating for the establishment of common rules of procedure for the execution of the agreement.

The committee becomes active whenever the implementation is incomplete or not exactly formulated; and whenever one side claims a cause for a complaint according to a misleading execution of the agreement. First, the RF side is claiming the practice of charging higher fees as proposed by the embassies of EU member states, which often exceed the proposed fee of EUR 35 (Interview with Olga Potemkina, Institute of Europe at the Academy of Sciences, Moscow, 12 June 2009). This was the case as EU member states outsourced the submission of the respective visa application to so-called non-state 'Visa-Centre'. These 'Visa Centres' charge an extra fee for handling the collection and the verification of needed documents. The individual Consular Offices of the EU member states confine themselves to issuing or denying visas according to the received documents and/ or chat with applicants. Given that the Visa Centres charge an extra fee for its services, the total fee for visa application exceeds the agreed fee. Although the RF administration is complaining, the Visa Centres have a decisive advantage for RF citizens living afar from the common location of member states Consular offices, as Visa Centres are also represented in major cities of the RF (Interview with Olga Potemkina, Institute of

Europe at the Academy of Sciences, Moscow, 12 June 2009 and with an official from the Finnish embassy, Moscow 19 June).

Secondly, the EU side is concerned about two travel obstacles: the annoying registration procedure for EU citizens and unsecure RF documents (e.g. Interview with Official from the EC Delegation to the RF, Moscow, 28 May 2009). The second is a major issue, as far as the implementation of the agreement is concerned. The matter of concern is the weak control mechanisms and avoiding possible falsification of RF documents. First, the EU calls for a centralised register data base of all issued passports. The current system allows RF citizens to have more than one passport. Especially lorry drivers are suspected to take advantage of this lack of control and to hold more passports in order to apply for several short-stay visas, which allow entering the EU for a longer period than included in the EU-RF agreement on visa facilitation. Further, corrupt officers are able to sell additional passports or issuing fake documents, as in the case of declaring the purpose of the journey into the EU. Intense consultations are going on in the joint committees, according the mutual approval of documents and the verification of their validity. Referring to the passport security, the RF agreed to introduce biometric passports with 1 March 2010.

Third, the EC and the RF are disappointed about the varying rejection rate throughout the Schengen member state consular offices. The practice of the visa facilitation agreement cannot be satisfying, as long as the issuing of visa is not regulated. Member States of stricter visa requirements complain that the lax issuance of visas in other countries would lead to 'visa-shopping' (Interview with Official from the German Embassy in Ukraine, Kyiv, 18 September 2009). Despite the 2005 introduced Common Consular Instruction (CCI), the distinct Consular offices, still, rate visa application differently (e.g. Salminen/ Moshes 2009: 23ff.). The CCI provides the basic guidelines for visa practices and stipulates the conditions governing the issue of a uniform visa (Council of the EU 2005c). The CCI states that uniform visas may be issued only once the entry conditions laid down in Article 15 of the Schengen Convention and Article 5 of the Schengen Borders Code have been met (ibid.). This naturally leaves a lot of room for interpretation on the part of the visa official. The harmonisation of day-to-day practice, however, is a matter of Local Consular Cooperation (LCC) between national liaison officers. In reaction to the lack of uniformity of the issuance of visas, the EU Commission, recently, finalised a "*Handbook for the processing of visa applications and the modification of issued visas*" (COM 2010a).

As early as 2003, visa-free travel was designated a long-term goal and inscribed in the roadmaps of the Common Space of FSJ (13th EU-RF summit 2003: Art. 15). The signing

of the Visa Facilitation together with the Readmission Agreement is a logical first step in realising their common vision of a visa-free zone. Apart from the agreed facilitation of visa issuance to EU and RF citizens, the long term objective of waiving visa requirements remains still one of the important issues on the agenda as noted by RF's President Dmitry Medvedev and President of the European Council Herman van Rompuy at a news conference following the EU-RF summit in Nizhny Novgorod on the 10 June 2011.

"Visa-free travel has been and remains one of the important issues on the agenda of course. We have made progress, but there is still a lot of work ahead. This is not something that will happen in the next year or two, but at the same time, we need to set concrete objectives to move towards" (President of the European Council Herman van Rompuy 2011).

A continuous dialogue on visa liberalisation between RF and the EU got introduced thereafter in 2007 by the PCC on JHA *"at expert and political level aimed at defining the procedure for examining the conditions for a mutual visa-free travel regime as a long-term perspective, as set out in the Common Space"* (15th EU-RF summit 2005, Annex 2, Art. 1(1)). What the visa dialogue attempted to do was to solve challenging issues in visa relations between the EU and the RF. The dialogue mode provides a basis for ongoing information exchange on the legislation and practices concerning the movement of people. To get visa-facilitation and, in the long term, visa-free travel, RF has made considerable efforts in dealing with the following JHA related issues, in particular since the common space initiative in 2005: readmitting its own country and third country nationals from the EU into RF; assuming responsibility and fulfilling obligations for refugee seekers on the RF territory; and improving border management and document security. Regarding visa issues, the RF made major progress to harmonise its visa issuance in accordance to the 'Schengen Acquis' (e.g. Salminen/ Moshes 2009: 23-24). Despite to RF's progress, the EU stresses the necessity for further steps before they would be able to talk about the abolition of visa duty for RF's citizen (e.g. Andoura 2008:5). Although the Minister of Foreign Affairs of the RF, Sergey Lavrov, repeated many times that the RF is ready to pass to the visa-free regime in short terms, the EU *"only see visa-free travel becoming a reality in the very long term, and only then if all the concerns are addressed"* (Lavrov In: Salminen/ Moshes 2009: 7).

The EU-RF Visa Dialogue consists merely of senior officials of the RF side, Interior Ministry and Consular Department of the Foreign Ministry, and from the EU, the DG JFS of the Commission, of the EU dealing with the main obstacles of a visa free travel. The members of the visa dialogue pledged to work on measures, based on a step-by-step

approach, which would pave the way to negotiations on an EU-RF visa waiver agreement. The results of their meeting are reported to the ministerial session of the Russia-EU Permanent Partnership Council on FSJ. Following the outcome of the 25th EU-RF Summit at Rostov-on-Don, 31 May to 1 June 2010, both parties agreed to call on the members of the Visa Dialogue meetings on the 24 September and 18 November 2010, to elaborate *“an exhaustive list of common steps the implementation of which will open possibility for engaging in negotiations on a EU-Russia visa waiver agreement”* (EU-RF PPC on FSJ 2010), as far as the effective implementation of the Agreements on readmission and on visa facilitation is guaranteed (e.g. *ibid.*). President of the EU Commission José Manuel Barroso emphasised at a meeting with Premier Minister Vladimir Putin in February 2011 the importance of visa-free travel for EU-RF relations:

“on the visa issue, which is of great importance to Russia and the EU, we have launched joint work on a list of common steps towards a possible visa-free travel regime, as agreed last year. As soon as our Member States have agreed on the draft common steps, we will discuss these steps with Russia. We are also willing to launch negotiations on amending our visa facilitation agreement. I believe it is possible if there is good will from both sides to achieve progress on the visa issues” (Barroso 2011).

The salience of visa issues in public debates to a politicisation of the dialogue between the EU and the RF on visa issues. Although the EU-RF cooperation is in practice dominated by trade, security and energy issues, the most irritable and visible issue for RF citizen remains the issue of achieving visa-free regime with the EU. Despite the fact, that only about ten percent of RF citizens hold a passport and would in theory be able to travel into the EU, we can assume that visa free travel is far more than a topic of practical necessity. It is rather an issue of the nationalist ego, to see oneself excluded from the main European continent, and, which is all the more striking, from former allied countries. The citizen got the impression not to be welcomed in a common Europe and, which is all the more affronting, to be seen as a security threat for Western European citizens.

The decrease of the RF's role in IR is also manifested in the EU-RF relations, where the EU is the more powerful actor – setting the agenda and the conditions of cooperation – and their relation is not seen by the public as a relation between equal European partners. During Putin's presidency, the tone on the visa issue between the RF and EU administration was rather rough. The RF foreign minister Sergey Lavrov (2011), for example, does not get tired to stress that the abolition of visas is only a matter of political will by EU member states and emphasises that a lack of a clear perspective for a common visa free area hurts bilateral relations. *“[...] I would pick out the global task of coordinating*

a specific plan to transfer to a visa-free regime. This task is long overdue" (Lavrov in Ria Novosti 2011). President Dmitry Medvedev, however, said at a press conference that:

"We should be moving to the main goal, namely, lifting the visa regime. But the main thing is not to politicise the issue and not to be engaged in impracticable projects. We should face the truth and see how the whole European Union is ready to [solve] this problem" (Medvedev in Rossiyskaya Gazeta, 14 June 2010).

Aware of the sensitivity of the visa issue, the EU is anxious to tackle the issue as a solely technical one. Although the EU officially stresses the importance of limiting the dialogue on visa issues to technical issues, internal debates show a differentiated picture. Apart from the technical categories, the political momentum behind visa-free travel between Russia and the EU is growing, due the fact that visa-free travel is not only based *"on technical criteria but also on mutual confidence and a sense of security"* (Finnish Foreign Minister Alexander Stubb 2010).

Thus, the EU proposed a road map on easing people's mobility and attempts to define clear preconditions for the abolition of visas. To have a visa-free deal, the RF needs to meet a minimum of issued preconditions, which include for example: the security of travel documents; the introduction of biometric passports; secure borders; corrupt administration; lack of a centralised population registry; facilitate RF's tight registration procedure for non-residents; and the correct execution of the readmission agreement in accordance with international conventions on the repatriation of illegal immigrants (e.g. Council of the EU 2006b; Salminen/ Moshes 2009).

First and foremost, the visa issue is used as a leverage to put pressure on the RF to stop human rights abuses in their country; return back to negotiations with Georgia; reform its politicised and inefficient judiciary; as well as using its influence in the region to solve the 'frozen conflicts' in Transnistria and Nagorno-Karabakh (e.g. Salminen/ Moshes 2009). Related to EU-RF's dialogue on visa-free travel, member states further criticised RF's hostile practise of 'passportisation' in Georgian provinces Abkhazia and South Ossetia (e.g. Goble 2008; OSCE 2009).

Second, the member states take into account the public attitude on a possible visa waiving for RF citizen. Politicians fear that if they would support a visa-free travel with the RF, this *"could spark a backlash among voters in Western Europe, where high levels of migration from the ex-Communist east have become increasingly sensitive"* (EurActiv 2010a) But there are also countries which have a great interest to allow for facilitated travelling across the border. It is the matter between Finland and the Baltic States, where

ethnic minorities are living in the wider borderland. For example the Russian ethnic minority in Estonia called 'Seto' or the Finnish minority in the Republic Karelia or the Ingrian Finns in Leningrad Oblast on the RF territory. Thus it is not astonishing that these countries support the facilitation of people-to-people contact across the border. The Finnish Foreign Minister Alexander Stubb stressed that the EU and the RF should speed up the visa freedom process.

"Visa facilitation is important," he said. *"I say this coming from Finland which is a 'Russian visa superpower'. Last year we issued 740,000 visas to Russians, three times as many as the next biggest in the EU, which was Italy. It's important to move on this"* (Stubb in Financial Times 14 November 2010).

Also Marko Mihkelson, chairman of the Estonian Parliament's European Affairs Committee, favours an abolition of visas for RF citizens. *"We definitely support visa-free [travel] between Europe and Russia once all requirements are met"* (Mihkelson in the Moscow Times 2010).

Related to borderland communities at external Schengen borders, the EU installed special financial and technical assistance in the course of the Eastern Enlargement in 2004, for bilateral cross-border cooperation, aiming to improve the development of these economic, social and environmental areas under specific conditions. Further, the EU introduced the Local Border Traffic (LBT) Permit as a tool to facilitate visa-free travel within these regions (COM 2009b). These LBT arrangements apply to residents living within an administrative district of 30 to 50 kilometres from the borders (EU Council of the EU 2006a: Art. 3). Permits may only be issued to persons who can prove a legitimate reason to frequently cross an external land border under the LBT regime. Schengen States which share an external land border with a non-Schengen country are authorised by virtue of the EU regulation EC 1931/2006 to conclude or maintain bilateral agreements with neighbouring third countries for the purpose of implementing an LBT regime (e.g. *ibid.*).

The European Commission is authorised to approve an agreement with a non-Schengen country and is responsible to confirm its legality. (*ibid.*: Art. 13(2)). An LBT agreement may only be concluded if the neighbouring country grants at least reciprocal rights to the relevant Schengen state, and readmission of illegally staying persons from the neighbouring country is ensured. For local border traffic, fast lanes or special border crossings may be introduced (*ibid.*: Art. 13(3)). The maximum permitted period of stay may not exceed three months (*ibid.*: Art. 5). Negotiations on bilateral local border traffic agreements between the RF, on the one hand, and respectively Latvia, Lithuania, Poland and Norway, on the other hand, were carried out in 2009. (COM 2010a: 41).

To sum up the major findings on the cooperation on visa facilitation the analysis showed a combination of hierarchical and network modes of governance. The negotiation process on the visa facilitation and readmission agreement was explicitly of a conditional nature, as both actors agreed on a package deal to link both agreements. However, the implementation of both agreements is coordinated by a joint committee. This so-called regulatory network got a clear mandate and sufficient competences to deal with the implementation within the agreed framework agreement. Due to the long-term objective of a visa waivers agreement, both created a visa dialogue, whose participants monitor the path towards a visa-free travel between the EU and RF. Based on defined conditions in the road map on visa free travel, experts from the EU and RF tackle a widespread range of issues – e.g. document security, data protection, human rights, border control and management, as well as combating corruption within RF's public administration.

The visa-dialogue is merely an information network, aiming to exchange information and expertise on efficient policy regulation in the mentioned policy areas, without a clear mandate or even competences to take binding decisions. The members of the visa dialogue are more or less congruent as the members of the joint committee, responsible for the implementation of the visa facilitation agreement. Anyhow, the visa dialogue elaborates on concrete measurements and monitors the policy developments and reforms on the RF side. Among the declared goals of the visa dialogue is to help to depoliticise the political debate on a visa-free travel due to concrete technical conditions included in the road map.

Within issue-specific implementation networks on technical preparations for visa free travel, the EU provides financial and technical assistance in order to implement the action-oriented papers from the visa dialogue and the joint committee on visa facilitation. Implementing actors are, amongst others, EU agencies (e.g. Frontex, Europol), EU member states' agencies (e.g. SIDA) or IOs (e.g. IOM, UNHCR) together with RF's national agencies (e.g. State Border Guards).

4.4.2 Readmission Policy – Return Unwanted Migrants

Negotiations between the EU and RF on a readmission agreement started in September 2000, as the commission received the mandate from the Council (Council of the EU 2005d: 4). The Negotiations on an agreement, encompassing the readmission of both national and third-country nationals (TCN), were initially very difficult and lacked substantive progress for a long period of time (e.g. Kruse 2005; Potemkina 2004). The first negotiation round failed as RF authorities viewed EU's strategy as too intrusive into

their internal politics and did not accept it as a legitimate addition to the EU-RF cooperation framework (Interview Olga Potemkina, Institute of Europe, Russian Academy of Sciences, Moscow, 12 June 2009). It turned out that the crucial conflicting point is the readmission of TCN. As Rig and Huddleston (2007) emphasised: *“since 1999, the EU has negotiated and signed agreements including readmission clauses covering only nationals, with 102 countries. Readmission agreements covering nationals and non-nationals have been concluded with only five (ibid.: 374) – Albania, Hong Kong Region, Macao, Russia and Sri Lanka (e.g. ibid.: 364).*

The EU was not able to conclude an agreement on readmission as long as it insisted on the readmission of TCN. The negotiations remained frozen for almost four years until the EU tailored an incentive package to meet the specific interest of the RF (e.g. Roig/ Huddleston 2007). Only after the EU initiated parallel negotiations on facilitated EU visa requirements for certain categories of people (e.g. businessmen, students) in return for signing the readmission agreement, a breakthrough was reached (e.g. Interview Potemkina 2009; Roig/ Huddleston 2007). The negotiations could be finalised at the 15th EU-RF summit in Moscow in 2005 and came into force in June 2007. Although the European Commission was in charge of the negotiations with RF, responsibility for the actual readmission of persons lies with individual EU member state. With their signature on a readmission agreement, both parties agree to readmit their nationals or third-country nationals who transited through their country and who do not or no longer fulfil the conditions for entry or stay in the territory of the requested country. Such agreements are being signed on the basis of reciprocity, meaning that all contracting states must be prepared to readmit not only their own citizens, but also third-country nationals on the same terms. However, with regard to Community readmission agreements with third countries of transit or origin, it is difficult to imagine a situation in which e.g. RF faces difficulties in readmitting irregularly entered or staying EU-nationals to the EU.

Besides, the EU promised to provide sufficient technical assistance to meet the agreement and accepted a three-year transition period on readmitting TCN and stateless people (Art. 23(3)). Therefore, the agreement will fully come into force in June 2010. In the meantime the RF was granted a ‘breathing space’ to have enough time to improve its respective legislative framework, to enhance the administrative capacity and to provide the required infrastructure, i.e. detention centres on its territory to host illegal immigrants in line with minimal human rights standards, as well as allocate enough budgetary means for deportation to further countries of origin. “An accord on mutual readmission has been concluded with Ukraine, talks are underway with Kazakhstan, Vietnam and China”

(Prokhorova 2007). Regarding the three-year transit period, Roig and Huddleston (2007) argue in their article that:

“the transition period was employed by Russia first and foremost as a strategy to circumvent the obligation of returning non-nationals. In addition, the transition period gives Russia the possibility to sign as many bilateral readmission agreements as possible with neighbouring countries and other countries of origin in order to have the possibility of transferring third-country nationals readmitted from the EU to other countries” (ibid.: 373).

Be that as it may, the deal was considered beneficial for both parties. RF gained facilitated travel opportunities for bona fide travellers while the EU was provided a lever to make RF sign a readmission agreement and improve RF's reform efforts in the domestic justice and home affairs sector (e.g. Trauner/ Kruse 2008). At the summit, both parties agreed, further, to intensify cooperation in a range of related JHA issues, in particular border control, irregular migration, document security and data and information sharing (Council of the European Union 2005a).

The EC-RF readmission agreement sets out clear obligations and procedures for the contracting parties on who has to be readmitted and under which conditions. It includes technical rules on the readmission procedure and transit operations, including: the content and format of the readmission application; source of evidence establishing nationality; data protection; and the respect of international obligations and standards. The readmission obligatory rules concern the category of people that can be readmitted between the contracting parties – country nationals, third-country nationals and stateless persons. A fourth category may be added, namely those persons that had been readmitted under the agreement but, in the course of new investigations, were discovered to have no link whatsoever to the requested country. The literature refers to these cases as *“readmission in error”* (Balzacq 2008: 22).

The stipulations on the readmission procedure provide technical and detailed specification with regard to the process of readmission, including the verification of the purpose of readmission to the requested country, formal submission of a readmission application and the transfer of a person. Contrary to most readmission agreements signed between the EU and third countries, the EC-RF readmission agreement contains a strict time-frame for the submission of a readmission application. RF insists on a submission “within a maximum of 6 months after the requesting State's authority has gained knowledge that a third-country national or a stateless person does no longer fulfil the conditions in force for entry, presence or residence” (Article 11(1)). A special accelerated procedure applies to persons who are apprehended in border regions: They may be returned within a few days

(Art. 6 (2)). The costs of readmitting a person, including transit costs, shall be borne by the requesting party (Art. 16). However, there is no institutionalised mechanism to prevent the respective state from demanding money from a readmitted migrant - a fact that has been met with criticism as it might lead to abuse: *“For instance, how could the EU check that the individuals concerned are not sent to jail, for failure to pay back the costs incurred by the state in readmitting them?”* (Balzacq 2008: 24).

With regard to the guidelines on data protection (Art. 17), both parties agreed that personal data shall only be exchanged if necessary for the implementation of the readmission agreement and shall be *“processed fairly and lawfully”* (Art. 17(a)). Personal data must be *“adequate, relevant and not excessive in relation to the purpose”* (Art. 17(c)) for which they are collected. However, while EC member states are requested to abide by the data protection directive 95/46/EC, the readmission agreement lacks similar obligations for the RF side: It only refers to legislation in the respective contracting country (Art. 17). Even though the issue of data protection is being discussed under the heading of security-based obligations, the lack of any concrete and effective data protection rules that apply to the RF government has important value-related implications. The lack of sufficient protection of personal data in the context of readmission puts the individual migrant in severe danger and violates international human rights standards.

Article 18 of the readmission agreement clarifies all relevant obligations with regard to international humanitarian and refugee protection, including, in particular, the principle of *non-refoulement*³⁵ (primarily the Convention of 28 July 1951; the Protocol of 31 January 1967 relating to the Status of Refugees; the European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms; and the Convention of 10th December 1984 against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment). Moreover, some reference to the obligations and rights of returned persons can be found in other parts of the agreement. In the stipulations on the transit of third-country nationals and stateless persons, it is outlined that the transit may be refused on grounds of:

35 The principle of non-refoulement refers to article 33 of the Geneva Convention stating that “no contracting state shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership or a particular social group or political opinion” (Geneva Convention on the Status of Refugees 1951, Art. 33). In addition, article 3 of the European Convention on Human Rights (ECHR) sets out: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment” (Convention for the Protection of Human Rights and Fundamental Freedoms 1950, as amended by Protocol No. 11).

- (a) If the third-country nationals or stateless persons run the risk of being subjected to torture or to inhumane or degrading treatment or punishment or the death penalty or of persecution because of race, religion, nationality, membership of a particular social group or political conviction in the State of destination or another state of transit; or
- (b) If the third-country national or the stateless person will be subject to criminal prosecution or sanctions in the requested state or in another State of transit; or
- (c) on grounds of public health, domestic security, public order or other national interests of the requested state (Art. 14(3)).

The EU was aware of the ill-developed RF tradition of dealing with asylum seekers and irregular migrants and their weak legislation in this area. Thus, both agreed first and foremost on a transition period of three years on readmitting third-country nationals and stateless people to give enough time to RF administration to harmonise its practice and legislation to those of the EU and in accordance to international obligations. Further, both set up a joint readmission committee, similar to those dealing with the visa facilitation agreement, being responsible for an efficient implementation of the agreement. As defined in Article 19 of the agreement, the joint committee was given the task of monitoring the application of the agreement, arranging the execution of the agreement, exchanging information and proposing amendments to the agreement, if deemed necessary. Committee decisions are binding on the contracting parties (Art. 19 (2)). It consists of representatives of the RF, such as FMS, SBG and from the Interior Ministry; and the European Commission DG JFS acting on behalf of the European Community. European Commission representatives are assisted by experts from member states. The DG JFS is supported by two EU agencies: The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) and the European Law Enforcement Organisation EUROPOL.

Both coordinate the operational aspects of readmission of irregular third-country nationals and thus play a decisive role in the implementation of readmission agreements (for more details, see Carrera 2007; Jorry 2007). For instance, FRONTEX developed a practical guide for the implementation of returns, which includes recommendations on how to adhere to human rights standards at each stage of the return procedure. It also organises common trainings for national border guards. EUROPOL, for example, seeks close cooperation with police and intelligence forces according to information exchange on migratory flows.

When aiding in the implementation of the EC readmission agreement in RF, the EU seeks cooperation with international organisations, in particular the International Organisation for Migration (IOM). For instance, IOM implemented a project called 'Assistance to the

Government of the RF Federation in Establishing Legal and Administrative Framework for the Implementation and Development of Readmission Agreements' (DIRA).³⁶ It aimed at improving the RF government's organisational, practical and legislative capacity to implement the readmission agreement. The project was described as *"a platform for the expertise and knowledge interchange between the EU and RF in the field of migrants' readmission and return"* (IOM, 2008).

More broadly, IOM has helped to implement several EU projects on JHA topics together with RF authorities, including projects on the usage of biometrics, facilitating reception centres for readmitted people and training authorities on new procedures in readmitting people. According to interviews with EU officials in Moscow in May 2009, IOM has been the most important cooperation partner of the EU with regard to readmission. Other cooperation partners include the UNDP and the UNHCR. Moreover, certain EU member states act as donors in RF in this regard, at times through their national implementing institutions such as the Danish International Development Agency (DANIDA) and the Swedish International Development Cooperation Agency (SIDA).

To run certain projects, supporting the implementation of the agreement, the EU provides financial and technical assistance to assist RF to assume the responsibilities deriving from the readmission agreement and to enhance efficiency in return procedures. Several projects benefited from the fund of the European Neighbourhood and Partnership Instrument (ENPI, former TACIS) and the Technical Assistance and Information Exchange (TAIEX). Additionally, during the period from 2007 to 2010, the new 'thematic programme on cooperation with third countries in the areas of migration and asylum' provides EUR 50 million for the assistance of countries along the Eastern migratory route (COM 2006a: 3). With regard to readmission agreements, the thematic programme provides financial and technical assistance for: the social and professional reintegration of returnees; establishing adequate humanitarian conditions in reception and detention centres; training of executive authorities; strengthening third countries' institutional capacities to provide asylum and international protection as well as to develop national legal frameworks in line with the agreement (ibid).

To conclude on EU-RF cooperation on readmission, the political decision and the negotiation of the readmission agreement was clearly of conditionality matters. Linking the visa facilitation and readmission agreement was therefore a critical juncture in EU's efforts

³⁶ This project was funded by the governments of Germany and Finland and the EU under the AENEAS 2005.

to make RF sign the agreement on readmission of irregular residents. The full implementation was, just like in the case of the visa facilitation agreement, coordinated by a joint committee. Further, the EU, again, allocates funding to support RF's law enforcement, especially for training of border guards and the policy and to build up the facilities to detain the irregular subjects in compliance with international standards and human rights. Apart from EU-RF cooperation on a common return policy, the analysis showed the need of a regional approach to deal with irregular subjects and their readmission to their countries of origin to guarantee the efficiency of readmission and the respect of human rights in dealing with these human beings.

4.4.3 Border Surveillance & Management

EU-RF cooperation on Border Control and Management marks a fundamental issue in their relations. It touches crucial JHA issues, such as: internationally organised crime; trafficking of humans, weapons, drugs and other goods; illegal migration; as well as the previous mentioned visa policy and readmission of people. However, an efficient border management and control to prevent irregular migration is a precondition for any further facilitation of visa issuance (e.g. EU-RF PPC on FSJ 2010). At the 24th EU-RF summit, held in Stockholm on the 2 December 2009, both parties agreed on major steps to improve their cooperation on border-related security issues (24th EU-RF PPC 2009).

Many of the tackled issues in the visa dialogue are concerned with RF's ability to guarantee border control and management in accordance with the road map on realising a visa-free area between the EU and RF (EU-RF summit 2005). To have a visa-free deal, the RF needs to meet a minimum of issued preconditions, which include for example: the security of travel documents; the introduction of biometric passports; secure borders; combat its corrupt administration; lack of a centralised population registry; and the correct execution of the readmission agreement in accordance with international conventions on the repatriation of illegal immigrants (e.g. Council of the EU 2006b: 4; Salminen/ Moshes 2009).

Thus, EU programmes were installed in order to help ensuring efficient and secure borders. The main challenges regard: the harmonisation and improvement of border crossing procedures (e.g. Custom control); human resources (recruiting, trainings); border infrastructure (surveillance equipment as night vision sights, infrared camera); travel document security and biometrics; combating organised crime through information exchange and data sharing between the respective authorities (e.g. COM 2006g: 6).

Certain points are on the agenda of the PPC, but there is no concrete roadmap in place. The delegation of the EU to the RF defines together with the Border Guard Service (BGS) a branch of the Federal Security Service (FSB), concrete projects on the basis of the National Indicative Programmes (NIP). Key roles in the cooperation on border management play the two specialised EU agencies Frontex and Europol. The RF was the first third country, where the Frontex signed a working arrangement which entered into force on the 14 September 2006 (e.g. Guild/ Bigo 2010: 21). And, as Olga Potemkina from the Russian Academy of Sciences noted: “[t]he Russian authorities of the border guards are quite satisfied with the assistance given by FRONTEX” (Interview with Olga Potemkina, Institute of Europe, Russian Academy of Sciences, Moscow, 12 June 2009).

Most of the projects were administrated by Frontex and include: Implementing and developing border-crossing infrastructure; enhancing RF’s administrative capacity building and the management of the RF’s border checkpoints; modernising RF’s passport issuing arrangements to include biometric data; data processing and information exchange (e.g. COM 2010b; Ehin/ Nahtigal 2008: 13). As Olga Potemkina stressed in an interview, the new Russian passports are rather closed to the passports of EU member states (Interview with Olga Potemkina, Institute of Europe, Russian Academy of Sciences, Moscow, 12 June 2009).

The projects comprise: annual meetings at executive level, regular meetings of experts on risk analysis, training and research and development related to border management, as well as the possibility of involvement of the Russian border guard authorities, e.g. in joint operations under the aegis of the Frontex project on “Border Delegate Organisation” (BDO) (e.g. Council of the EU 2006b: 7). Under the BDO-project, Frontex coordinates the compilation of best practices in cooperation between the border guard authorities of EU Member States and the RF, carried out at local and regional level at their borders (e.g. COM 2010a: 41).

Europol, however, concluded on the 6 November 2003 an agreement on Co-operation with the RF law enforcement authorities: Ministry of Internal Affairs and the Federal Security Council (Europol 2003a: Annex 1).

"The European Union Member States and Europol place a high emphasis on cooperation with the Law Enforcement Authorities of the Russian Federation", stated Europol's Director Jürgen Storbeck, "The agreement constitutes the first step forward in strengthening our common efforts for combating organised crime more efficiently" (Europol 2003b).

Their respective representatives will hold regular working meeting and consultations (Art. 11) to examine ways of combating transborder crime and illegal migration, inter alia enabling practical and operational cooperation on the common border (Art. 4). The agreement is the legal base for the cooperation in the area of combating organised crime provide for the following (Art. 5):

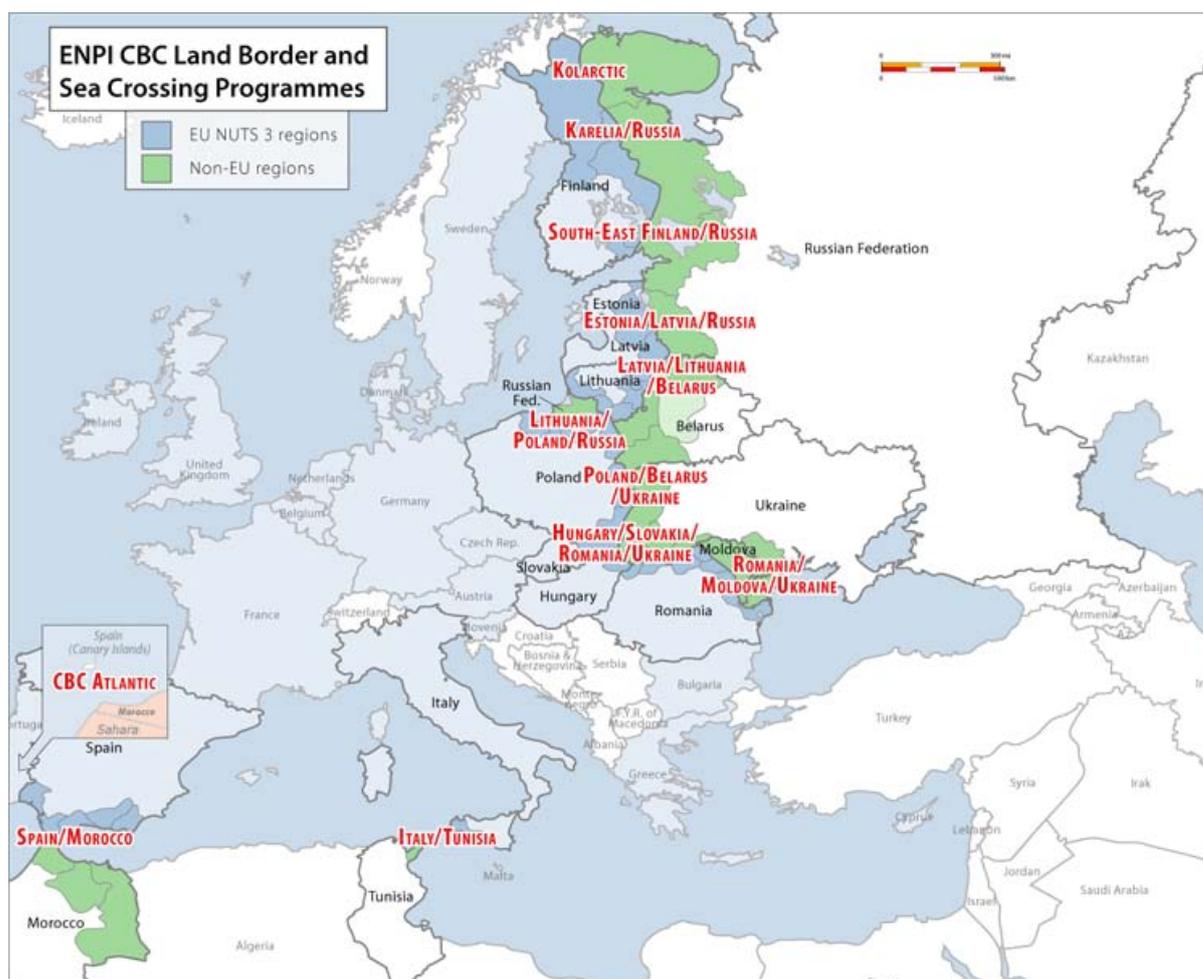
- *The exchange of strategic and technical information; strategic information includes e.g. information on enforcement actions, routes and methods used by smugglers, threat assessments and crime situation reports; technical information refers to issues of police methodology, administrative measures undertaken by police forces, etc.*
- *exchange of law enforcement experience including the organisation of scientific and practice-oriented conferences, internships, consultations and seminars;*
- *exchange of legislation, manuals, technical literature and other law enforcement materials; and*
- *The possibility for trainings and the exchange liaison officers (twinning programme).*

Most of the financial and technical assistance is provided on a demand-driven basis and requires a Co-funding from the partner country. In the framework of the ENPI Cross-Border Cooperation (CBC) several projects were implemented to meet the issued objectives in the National Indicative Programme 2007-2010 (COM 2006g: 6; COM 2010b: 34). According to the formulated core objectives in the CBC Strategy Paper 2007-2013, Commissioner for External Relations and European Neighbourhood Policy, Benita Ferrero-Waldner and the Russian Minister for Regional Development, Viktor Basargin, signed on behalf of their mandate the 'Financing Agreements for five land border cross-border co-operation programmes (CBC)' at the EU-RF summit in Stockholm on the 18th November 2009 (COM 2009a).

"The programmes have a total budget of approximately €437 million until 2013, and are funded by different sources: European Commission (€267 mio), Member States (€67 mio) and the Russian Federation (€103.7 mio). The cofinancing by the Russian Federation confirms the spirit of partnership at the core of the European Neighbourhood and Partnership Instrument (ENPI)" (ibid.).

First, most efforts are targeted on the build-up of modern border crossing infrastructure. EU funding within the ENPI CBC programme provides financial assistance to five border checkpoints at the EU-RF border:

Figure 22. ENPI CBC Land Border and Sea Crossing Programmes



Source: Delegation of the EU to Russia. Cross Border Cooperation under ENPI. [Retrieved from http://eeas.europa.eu/delegations/russia/eu_russia/tech_financial_cooperation/cbc_enpi/index_en.htm, 14 November 2010]. See also Regional Capacity Building Initiative, http://www.rcbi.info/pages/12_1.html, 22 February 2011]

Figure 23. ENPI Cross-Border Cooperation. Indicative Allocations in mln. EUR, 2007-2013

	2007-2010	2010-2013	Total
Kolarctic/ Russia	14.728	13.513	28.241
Karelia/ Russia	12.101	11.102	23.203
South-East Finland/ Russia	18.871	17.314	36.185
Estonia/ Latvia/ Russia	24.915	22.859	47.775
Lithuania/ Poland/ Russia	68.908	63.222	132.130
Total	139.523	128.010	267.534

Source: ENPI CBC Strategy Paper 2007-2013, Indicative programme 2007-2010, page 29

The EU funding covers several topics of cross-border cooperation. Investments in border infrastructure and Surveillance technology for border control are only one eligible issue provided by the EU funding. Of high importance was the funding of border-crossing infrastructures in Kaliningrad region. Several checkpoints were financed by the EU: Chernyshevskoye (EUR 8 mln.) Mamonovo II (EUR 13.3 mln.) and Sovetsk (EUR 10 mln.) (COM 2010a:19). Further, the EU launched specific Sea–Basin programmes, where Russia inter alia takes part in the Baltic and Black Sea programme. (COM 2006e: 32).

Second, a project on enhancing the management of the RF border checkpoints was funded by EUR 600,000 under the Common Space Facility. IOM together with the Federal Agency for Border Management of the RF (Rosgranitsa) are the implementing authorities (ibid.). The project started in September 2009 and aimed the *“implementation of effective systems of state border management and efficient border control procedures with the final purpose of bringing closer together European and Russian practices and approaches towards management of common borders”* (COM 2010a: 18).

Thirdly, several trainings and workshops were organised under the financial instrument TAIEX of the European Commission. Over the last years the RF participated in a seminar on control-free travel (Vilnius, 11-13 July 2007), Study Visits on biometric passports and document security (Paris, 14-16 January 2008; Rome, 26-28 March 2008), workshops on efficient border management systems (Batum, 14-16 January 2008) and on international standards in migration statistics (Tallin, 31 March – 1 April 2009) (TAEIX activity reports 2008, 2009, 2010).

Fourth, Frontex launched several joint operations aiming for the improvement of information exchange and data processing between Frontex, EU member states and the RF border guards. Joint operations with the RF, as e.g. Mercury 2009 (EUR 87.911), Good Will 2009 (EUR 27.000) and Unity 2010 (EUR 99.000), are implemented through the voluntary participation of EU member states, as e.g. Estonia, Finland, Latvia, Lithuania, Poland, Romania, Austria, Germany, and Schengen countries as Norway in the above mentioned operations (Frontex Work programmes 2011; 2010). According to data processing, both parties emphasised to ease their cooperation on data protection. After that Eurojust became active and looked for proper seminar and exchange programmes to foster RF's data protection legislation on the basis of the Council of Europe 1981 Convention on the Automatic Processing of Personal Data and of the 2001 Additional Protocol thereto (COM 2010a: 43).

To sum up, the cooperation on border control and management is merely on technical issues and therefore low salient and less controversial. However, although the cooperation is rather intense and frequent, it is less institutionalised and has a low degree of legalisation. Assistance by the EU is characterised by positive conditionality, in form of providing financial and technical assistance according to alignment to EU standards and rules. Detached projects are done merely by technical bodies as Frontex, on the EU side, and State Border Guards on the side of the RF. Many of these projects are also carried out together with the support of International Organisation, primarily with the International Organisation for Migration (IOM) and agencies from EU member states. According to the analytical model of four modes of governance, cooperation in this policy area happens merely within information networks – on the exchange of information, best practices and knowledge – and within implementation networks on executing certain measurements.

4.4.4 Asylum Policy and Refugee Protection

The EU attempts to facilitate cooperation in the area of refugee protection; this cooperation has two major objectives: to prevent mass immigration to the EU by asylum seekers through demanding RF's responsibility according to international obligations in the field; and to improve RF's legislation and capacity to guarantee asylum seekers rights in order to be able to readmit them to the RF. In order to reach success concerning these ends, the EU provides substantive funding to the RF. As stated in the recently published country report on the situation for refugees, asylum seekers and Internally Displaced People (IDP) in the RF particularly include: low recognition rates of asylum application; lack of access to interpreters and free legal advice; lack of access of NGO's to detainees at border; violation of human rights in relation to asylum seekers by border guards and other respective officials; and returning individuals to totalitarian regimes such as Uzbekistan, Turkmenistan, North Korea and China against the non-refoulement principle enshrined in the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol and Art 3 of the 1984 Torture Convention (e.g. ECRE 2008: 3; ECRE 2009: 2; UNHCR 'Regional Operation Profile' 2011; U.S. State Department 'Human Rights Report' 2009; U.S. Committee for Refugees and Immigrants 'World Refugees Survey' 2009; Afshar 2005). With regards to the lack in guarantee asylum seekers rights, EU funding allocates primarily expenditure on the assistance of the implementation of international obligation into national legislation of the RF, and also supports the law enforcement agencies (FMS, Border Guards) as well as building the capacity to protect asylum seekers (e.g. investments in reception and detention centres, housing facilities and legal assistance) (e.g. ECRE 2008).

The RF welcomed EU's assistance to implement international obligations into RF's legislation, such as in particular relevant UN Conventions from the European Convention of 4 November 1950 for the Protection of Human Rights, the Convention of 28 July 1951 (the 'Geneva Convention') and the Protocol of 31 January 1967 on the Status of Refugees. (EU-RF summit 2005: Art. 18).

The RF is a party to these respective documents and included their obligations in its legislation on refugees. The 1997 launched "*law on refugees*" (RF Presidency 1997), which got extended through several amendments, complies with the major internationally agreed convention on the protection of refugee's rights, but lacks in its daily practice (e.g. UNHCR 'Regional Operation Profile' 2011; U.S. State Department 'Human Rights Report' 2009; U.S. Committee for Refugees and Immigrants 'World Refugees Survey' 2009; Afshar 2005). The reform legislation on RF's law on refugees in 2007, however, happened in close cooperation with EU law experts.

"[T]he law was influenced very much by EU law. [...] on the asylum policy the influence is rather high, as the EU has a high expertise on that and Russia not" (Interview with Olga Potemkina, Institute of Europe, Russian Academy of Sciences, Moscow, 12 June 2009).

Regarding the raised criticism due to imperfections in existing legislation and legal practice, the EU is triggered to provide sufficient assistance to RF authorities in order to prevent a further transit to the EU of asylum seekers and to be able to readmit irregular immigrants to the country from where they entered the EU. Several programmes concentrate on law enforcement and support measurements to: enable the access to the asylum procedure (legal advice, contact to NGO's, administrative appeal and access to courts...); improve the treatment by border guards and migration service staff of the FMS; provide human board, medical assistance and lodging; prevent the readmission of applicants to countries where they face a credible threat of torture ('non-refoulement'); and respect their status during the open proceeding.

First and foremost, the EU created an efficient network of contact points between the EU (COM and member states) and RF authorities responsible for migration and asylum issues; taking into account the experiences and best practices gained at a bilateral level (e.g. Council of the EU 2006b). These information exchange networks try to gain support for reinforcing the asylum system which helps to protect refugees in line with the Geneva Convention and to extend the system to include other persons in need of protection. In this regard, projects – funded by general programmes (TACIS, EIDHR, ENPI) and thematic programmes (AENEAS, Thematic Programme for cooperation with third countries in the areas of migration and asylum) are worth mentioning (e.g. ECRE 2008:

8). New forms of technical assistance are provided by targeted expert assistance (TAIEX); twinning arrangements with EU member states; and participation in relevant community programmes and agencies (FRONTEX) (e.g. ECRE 2008: 9). Further, the European Council launched the High-Level Working Group on Asylum and Migration (HLWG) initiating projects in the context of the Global Approach to Migration.

Following projects were realised recently (ECRE 2008, Annex 1):

- *'House for Asylum seekers and Refugees in St. Petersburg' and 'Complex action for improvement of refugees reception system in St. Petersburg' (2005-2008, HLWG and AENEAS)*
- *'Network of Legal Assistance to Refugees and Forced Migrants in Russian Regions' (2005-2009, HLWG, AENEAS)*
- *'Human Rights for Russia's Refugees (2004, EIDHR)*
- *Dialogue and Technical capacity building in migration management (2003-2005, HLWG)*
- *Establishing a Legal and Administrative Framework for the Development and Implementation of Readmission Agreements (2007-2009, AENEAS)*

To sum up, EU-RF cooperation on asylum policy matters is less intense, even though the EU provides financial and technical assistance to improve RF's policies and treatment of refugees and asylum seekers. Anyhow, as a matter of less interest to both actors, the cooperation is limited to ad-hoc cooperation within certain information and implementation networks. As the research has identified, RF's attempt to align international standards in refugee protection is more a reaction to international normative pressure than because of EU's efforts. However, the EU offers support by specific funds and twinning programmes in order to enhance asylum policy and refugee protection in the RF and prevent asylum seekers from entering the EU to seek asylum (e.g. Roig and Huddleston 2007). Furthermore, RF's asylum policy has a direct bearing on EU's return policy.

4.5 Conclusion: Depoliticisation of EU-RF's tense Relationship

The EU-RF relationship is special in the sense that these are two regional powers, both attempting to gain influence in Central and Eastern Europe while remaining suspicious of each others' actions. However, both have recognised that there is a critical need for cooperation, which could benefit both parties in the long run. Representing a vestige of twentieth century afflictions, both powers have been rivals for half a century, looking upon each other with mistrust and resentment. Under these circumstances, it is not an easy task to put their relationship into a constructive perspective; create an efficient framework for cooperation and develop a common vision for a fruitful partnership. However, their mutual dependencies, especially in terms of economics, energy and security, are crucial

for both and create a necessity for an enhanced cooperation. According to their mutual dependencies, the EU and RF jointly formulated a common vision in 2003, when both signed the plan of action on the 'Four Common Space' initiative, in a way inspired by the 'four freedoms' exemplified by the EU integration process.

EU-RF cooperation in these policy areas began to intensify in recent years. The PCA, entered into force in 1997, introduced a legal basis and an institutional framework in order to structure cooperation on a widespread range of issues. This PCA is still in force and has proven itself suitable in strengthening the EU-RF relationship and improving their cooperation in crucial policy areas. The common commitments to tackle challenges in the area of FSJ can only materialise through concrete cooperation. Then again, the established institutions have proven to be a good basis for their dialogue on migratory issues. The PPC on JHA has thus been of crucial importance, and has been assisted by technical subcommittees, such as the joint committee on visa facilitation and readmission, as well as the visa dialogue. In contrast to the political dialogue within the PPC, the issue-specific committees are composed of civil servants of the RF, EU member states, and the Commission, providing for more horizontal or symmetrical discussions based on technical expertise rather than political considerations; yet, in practice, the RF prefers to send either high-ranking officials or diplomats (e.g. Interview with Official from the EC Delegation to the RF, Moscow, 28 May 2009).

The PPC on JHA, therefore, is the main decisive body that coordinates and monitors EU-RF cooperation on migratory issues. The members of the PPC define shared objectives and formulate road maps and action-oriented papers. These road maps are not legally binding texts than political commitments. However, NEA, under current negotiation and intended to replace the PCA, will be more obligatory in nature.

Owing to the more binding nature of the current draft of the NEA, our analysis observed an ongoing institutionalisation and legalisation of the EU-RF relationship since the PCA was entered into force in 1997. The respective institutions gained more and more competences to regulate policy issues within the PCA framework agreement. Furthermore, initiatives such as the 'Four Common Spaces' (2004) and the 'Modernisation Partnership' (2009), as well as enhanced financial and technical assistance to the RF from the EU, supplied the framework with specific actions and projects. According to the applied modes of cooperation, the analysis has shown that cooperation within EU-RF networks is increasingly taking place, especially in terms of information exchange, support for implementing the agreed road maps, and on the common regulation of trans-border

policy issues such as the visa and readmission policy, laid out in the relevant visa facilitation and readmission agreement.

Unlike the EU's previous external policies towards candidate countries and other neighbouring countries – based on governance by conditionality – (e.g. Kelley 2006; Trauner 2008; Trauner/ Kruse 2008), EU-RF cooperation has taken a completely different drift, away from a purely EU-led coordination and towards a relationship based on reciprocity and mutual benefits. Accustomed to coping with aspiring countries, the EU faces new circumstances with the RF in its attempts to govern its neighbouring countries and extend to them its values, rules and procedures. The RF's administration rejects any form of conditionality in the EU's policy, as it prefers cooperation between equals over being patronised by the EU. Additional channels for interaction and cooperation were introduced by both, shifting the cooperation from the mere political level to issue-specific expert networks.

However, the overwhelmingly issue – in the EU-RF cooperation on migratory issues – of visa liberalisation strikes the reciprocity principle at its core, and is used by the EU as a leverage point to demand for RF policy reforms in the areas of readmission, border security, and refugee protection. The EU's offer of visa liberalisation in return for widespread reforms in RF migration management has proven to be rather effective, even though the RF's official statements reject such an approach. A good example is the linkage of the visa facilitation and readmission agreements, which were signed jointly in 2006 and whose enforcement depends on the full implementation of both agreements. In the wake of the implementation of the visa facilitation agreement, the visa dialogue was set up with the aim to coordinate and monitor the path towards the abolition of visa requirements. The respective road map for lifting visa requirements for RF citizen got adopted at the 27th EU-Russia summit meeting on 10 June 2011 in Nizhny Novgorod. It calls for major law reforms laid down in the Schengen acquis. The road map for visa-free travel between the EU and the RF contains also measurements in the areas of border management and asylum policy.

Although the analysis shows a continuing dominance of the conditionality mode in EU-RF cooperation, it also stresses the limits of this mode, when it comes to the implementation of concrete reforms. Therefore, as already mentioned above, several networks came into existence, playing a crucial role in the EU and the RF's cooperation in the salient issues of migration management. Being less institutionalised but highly legalised, the conditionality mode's success is limited to low salient issues or vague framework agreements. The

conditionality mode implies high commitments and therefore complicates possible compromises.

Thus, instead of an administrative vertical relation, horizontal partnerships in the form of networks were increasingly introduced with the goal facilitating EU-RF interaction in order to share information, assist in the implementation of agreed road maps, and regulate transborder issues on a collective basis. These networks presuppose efficient institutions that are based on clear procedures, rules, and shared values. According to the theoretical model, the analysis differentiates between three networks, distinct in their function, legal commitment and institutionalisation: information, implementation and regulatory networks (see also section 3.1.3).

In the RF's case, information networks have the crucial function of facilitating contact between EU and RF bureaucrats, who share their information and expertise through formal or informal meetings, seminars, workshops, study trips, and training sessions related to policies, legislation and best practices of migration-related policies (e.g. Council of the EU 2006b). Several of these events were organised within the TAIEX-programme by the Commission DG JFS, EU agencies (Europol, Frontex), EU member states' agencies, and IOM together with Russian counterparts (e.g. FMS, State Border Guards). Of course, EU-financed events aim, first and foremost, to promote their own solution policies for their respective issues.

Apart from the promotion of EU norms and standards, the information networks help to elaborate on concrete reforms and formulate common objectives, which are defined in road maps and action-oriented papers. In connection with these defined measurements, implementation networks are created for the realisation of agreed measures. Accordingly, the EU provides technical and financial assistance to help the RF comply with defined goals through the ENPI and the Common Space Facility. EU-financed projects were mainly administrated by Frontex, IOM, or grant specific funds directly to RF bodies, aiming to support the RF's law enforcement (e.g. Interview with Official from the EC Delegation to the RF, Moscow, 28 May 2009). The most institutionalised and legalised networks are regulatory networks, which are given the widespread mandate to create legally binding outcomes, such as e.g. EU-RF joint monitoring committee on the implementation of the visa facilitation and readmission agreement.

After becoming familiar with the applied modes in EU-RF cooperation, this chapter will conclude with the analytical research question: "how do certain conditions affect the structure of and modes in EU-RF cooperation on migratory issues?" Therefore, the

conducted analysis scrutinises the impact of the Macro conditions, bargaining power, and credibility, as well as the effects of issue-specific conditions, cost-benefit calculation, issue salience, and international normative pressure, on the applied modes in cooperating on migratory issues.

If we recall the EU-RF relationship since the breakdown of the Soviet, we can see that both are trapped in a serious cycle of suspicion because of the burdens of the cold-war. Both have reclaimed the status of a regional power in Europe, and therefore see their relationship as a zero-sum game, which has been shown through their policies towards their common neighbourhood in Central and Eastern Europe. The RF faced crucial challenges in its transition from a communist autocracy and planned economy to a more open political system and market economy. In the wake of this systemic transition, the RF's capacity for power projection has declined, and EU has been given the possibility to wield power over the RF, potentially transforming this country into one based on Western values and legislation.

However, this potential has gone untapped, due mostly to the EU's internal politics, which hindered a united and strong EU leadership in the region. After the Maastricht Treaty (1992) and the Amsterdam Treaty (1997), the EU was given the opportunity to improve its role as a regional power, and began to make serious offers to the former Soviet countries in Central and Eastern Europe. In contrast, the lack of a concrete offer to the RF during the early transformation process changed the RF's regional approach. After the internal struggles that came about from its systemic transition and the financial crisis in 1998, the RF's status in the region increased as a consequence of its economic recovery and the consolidated leadership of the Kremlin with the election of Vladimir Putin in 2000.

RF's re-strengthening – also named in the literature as the 'reawaken of the bear' (e.g. Mangott/ Trenin/ Senn 2005; Emerson 2001) – naturally threatens the EU side, and triggers increasing tension between the EU and the RF in their efforts to build a beneficial relationship. Additionally, the EU's bargaining power has decreased due to increasing dependencies on RF supplies of oil and gas and vulnerabilities to possible externalities from RF policies in JHA, e.g. irregular immigration from or through RF territory and into the EU. Furthermore, the RF plays an important role in conflict resolution in the region. To conclude on power relations between the EU and the RF, the analysis sees a balancing out of power in regards to mutual dependencies in economic, energy and security relations.

Another crucial aspect of the EU-RF relationship is the lack of trust between the two regional powers, based on a 40-year-old cold war logic that divided Europe into a Western and an Eastern hemisphere (e.g. Interview with Olga Potemkina, Institute of Europe at the Academy of Sciences, 12 June 2009).. The lack of interaction and systemic divergences impeded a fruitful cooperation between the EU and the RF. Additionally, EU's internal decision-making in regards to its interactions with external partners is complicated by 27 individual agendas towards the RF, thus undermining the EU's role in international negotiations. Numerous bilateral conflicts between former Soviet countries and the RF have also seriously complicated the EU-RF relationship; for example, Poland and Lithuania's veto against the initiation of negotiations on an NEA best illustrates the inherent weakness of the EU as a foreign policy actor.

Despite the uncertainty of this starting point, the introduction of common institutions and a clear medium for interaction by the PCA in 1997 facilitated cooperation between the EU and the RF and subdued former prejudices and suspicions. On both sides of the former East/West divide, the establishment of such an unprecedented cooperative network brought with it great expectations that failed to materialise, and therefore caused disillusionment about the relationship. On the other hand, the new institutionalised interaction and a firm economic grounding increased the level of confidence. As a consequence of increasing interdependencies and a high level of mistrust, both the EU and the RF have an interest in harmonising their legislation, and agreeing on common rules that would create stable expectations and predictable behaviour.

In addition, the actors experienced increasing credibility because of good experiences and more recent tentative rapprochements in trade and security cooperation, facilitating the willingness to cooperate on more difficult issues, such as JHA. Additionally, initiatives such as the 'Four Common Spaces' and the Modernisation partnership have fostered the EU-RF relationship. Because of numerous interactions within a variety of information, implementation, and regulatory networks between knowledge-based experts, EU and RF rules, values, and objectives begin to coincide. The respective members are socialised within these networks, and internalise the *modus operandi*. Becoming an 'epistemic community'³⁷, these bureaucrats are advancing the EU-RF relationship and pushing for extended cooperation.

³⁷ Peter Haas defines an epistemic community as "*a network of professionals with recognised expertise and competence in a particular domain and an authoritative claim to policy relevant knowledge within that domain or issue-area*" (Haas 1992: 3)

Whereas the individual bargaining power and the credibility of the actors have a bearing on the overall relations, three conditions – cost-benefit calculation, issue salience, and international normative pressure – solely influence the individual modes and instruments applied in cooperation on border management, visa facilitation, readmission, and refugee protection. The first factor, cost-benefit calculation, is a crucial determinant when it comes to the implementation of concrete actions. As in the conditionality mode, costly reforms are rewarded with beneficial incentives. Such package deals are an effective instrument with which to outweigh costs with beneficial rewards, as is what happened in numerous cases: the readmission agreement, which was linked with the visa facilitation agreement; a road map towards a visa waiver agreement; and granted financial and technical assistance in order to implement reforms in border management policies and refugee protection.

Cooperation in the latter two policy areas is demand-driven in nature, which means, the RF has to call EU's financial and technical assistance programmes. In the case of border management, the RF has its own interests in improving its technologies and facilities, enhancing its border surveillance capabilities, applying efficient procedures at the borders, and implementing internationally agreed standards in combating transborder criminal activities. Refugee protection, however, is a matter of the RF's commitment to international agreements, standards on human rights in general, and refugee protection in specific terms. The EU, therefore, is seen as an appropriate role model in these areas, and the RF is willing to align with the EU's best practices. This gives the EU a certain leverage as the RF finds itself obliged to adopt. The EU and its member states, however, are the most significant norm setter in migration management or at least, its legislation fits the world standards well.

“On readmission, I have to say that the EU wanted it more than Russia, and Russia accepted it as a price for the visa facilitation. The carrot for our side was the readmission and the stick was the visa facilitation. On border management, it's clearly of mutual benefit that boarder guards do better and more efficiently their job and prevent illegal migration. The idea is to have a swift boarder crossing [...] while fighting illegal migration. That's in the interest of both sides. On asylum policy, there is not too much cooperation for the moment. The deal is that Russia has to implement the international standard – but we don't have a carrot” (Interview with Commission official, DG JFS, Brussels, 17 April 2009).

What proved to be entirely true is the impact of salience or politicisation on the mode of cooperation. The higher the salience of an issue, the more difficult it became to try to find a compromise. As in the case of visa liberalisation, the scope of action of both actors was

rather narrow, due to the grandiose expectations of RF citizens and EU citizens' critical resentments of security threats. The negotiations, therefore, were stagnated because of these controversial opinions. Linking visa facilitation with the readmission agreement was a way out of this dilemma, but, at the core, did not meet the RF's wish for visa-free travel. Finally, both were able to move forward on visa liberalisation by tackling the issue merely as a technical one, by focusing on policies such as: biometrics, document security, training of border guards, etc. Thus, both launched the visa dialogue, in which members were able to define a road map that included the needed technical preparations on the path towards a visa waiver agreement.

Lastly, this study takes into account the effect of international normative pressure on EU-RF cooperation on certain policies. On the one hand, the EU insists on the inclusion of international norms into their bilateral agreement with the RF. On the other hand, the RF commits itself to international agreements and treaties, but often fails when it comes to implementation. Because of the compliance between EU and international norms and standards, the EU's attempts to align the RF to EU *aquis* receive support from international agreements and treaties.

To summarise the major findings of this study, four interrelated propositions and conclusions follow from the analysis of EU-RF cooperation on migratory issues: 1) An effort should be made for depoliticisation, in which cooperation is treated in a more pragmatic manner by defining clear and realistic technical details; 2) Spill-over effects occur because of interrelated policy issues; 3) Institutionalisation increases because of good experiences within the epistemic community; and 4) Regarding regime building on regional migratory management, issues such as readmission of irregular migrants call for a regional approach and affect third countries' policy cooperation with other countries (e.g. Central Asian countries).

5 EU-Ukraine Cooperation: Integration beyond Membership

The democratic revolutions of the early 1990s in the countries of the former communist bloc marked a beginning of geopolitical changes that experienced a turning point with the accession of the ten CEE states to the EU in 2004 and 2007³⁸ and to the transatlantic military alliance (NATO) in 1999 and 2004³⁹. European values and EU legislation came closer to the borders of the Ukraine. Because of these new geopolitical realities, the Ukraine reevaluated its regional foreign policy approach and opted to further integrate into the wider European and Euro-Atlantic space (e.g. Ponomarenko 1999: 13). Leonid Kuchma, Ukraine's president from 1994 to 2004, declared in 1998 in a decree, that Ukraine would set the course for European integration (President of Ukraine 1998a). In 2000, another presidential decree confirmed Ukraine's efforts of approximation to the EU (President of Ukraine 2000). In the first transition period after Ukraine's independence the country sought to reinforce its role at the edge of Europe; between the former hegemony RF and the aspiring civil and economic power EU. The tremendous transformation in the region and the decline of the RF regional leadership increased the level of uncertainty and led to a more open-minded foreign policy approach. Already President Kuchma set the course for European and Euro-Atlantic integration, while maintaining close cultural and economical links with the RF. However, Kuchma's Janus-faced strategy provoked uncertainty by its regional partners. In brief, during a period of major geopolitical changes, due to EU and NATO enlargement, Ukraine under the leadership of Kuchma tried to reinforce its role in the region by embarking on a Janus-faced strategy which however diminishes its future potential in Europe.

Facing high expectation of eventual EU integration and economic recovery, years of stagnation caused disillusionment and frustration and increased the public opposition to the Kuchma regime. As a consequence, the predefined successor, the former Prime Minister from 2002 to January 2005 and RF-oriented Viktor Yanukovych, lost in the first round of the presidential elections in 2004 against his contender and Prime Minister from 1999 to 2001 Western oriented Viktor Yushchenko (Central Election Commission of Ukraine 2004). The second round was won by Yanukovych due to massive voter fraud.

³⁸ In 2004 eight CEE states (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia) and, in 2007 Romania and Bulgaria joined the EU.

³⁹ Hungary, the Czech Republic and Poland got NATO members in 1999, whereas the Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia joined in 2004.

Masses of people called for a repeat of the ballot, which got finally approved by the Ukrainian Supreme Court (e.g. Aslund/ McFaul 2006). The final re-run ballot was held on December 26. Viktor Yushchenko was declared the winner with 52 percent of the vote to Yanukovych's 44 percent (Central Election Commission of Ukraine 2004).

The victory of the Western oriented democratic forces opened new possibilities for the EU to foster democratisation and promote its European values. The new leadership of the main opposition groups announced EU integration as their main foreign policy goal and stated that EU norms and standards should guide their policy reforms (e.g. Kuzio 2006a: 89). Despite Ukraine's new orientation, the EU appeared to be rather reserved and observant in the beginning, regarding the unclear domestic developments in the immediate aftermath of the Orange Revolution.

With the completion of the eastern enlargement in 2004 and 2007, the EU sought to intensify its interaction with the newly independent country marked by its extraordinary size, population and geopolitical standing in Europe. Ukraine was the first post-Soviet country with which the EU signed a Partnership and Cooperation Agreement (PCA) in June 1994. Furthermore, the EU launched the ENP in 2004 and the Eastern Partnership in 2009. These are policy frameworks to manage the closer interdependence with neighbouring countries. They should help assist Ukraine's reform efforts after the Orange Revolution and stabilise the political and economical system in the tremendous transformation from an autocratic regime with a state-directed economy to a democratic and pluralistic political system with a market economy based on the rule of law. There appeared a necessity to intensify the political dialogue and provide sufficient assistance in this reform process. The EU seemed to be clear about what it does want Ukraine not to become – an unreformed black hole of insecurity and instability, or an integrated part of a new RF-led pact. Yet, the EU was not entirely clear what it should or could offer Ukraine for closer integration in the EU and NATO. The current negotiations on a new Enhanced Agreement (NEA), started in 2007, might mark therefore the next step of the EU-Ukraine relationship, offering extended cooperation on a widespread range of issues and the creation of a common free trade area as well as the prospect for visa free travel.

This chapter scrutinises the preconditions of the EU-Ukraine cooperation on migratory issues and analyses the applied modes and institutions of interaction. It is structured as follow: It starts by tracing the internal transformation process within Ukraine and its relations with the EU. A focus is the recent events of the presidential election and the victory of the pre-Revolution and RF oriented regime under Viktor Yanukovych. The chapter then highlights the main issues on the agenda including trade relations; energy

security; Ukraine-RF relations; NATO partnership; the frozen conflict in Transnistria and Ukraine's role in settling the conflict; and, 'soft' security issues, such as efficient control over border, irregular migration, trafficking of drugs, weapons, goods and human beings and transnational organised crime. The chapter ends by analysing the institutional setting of EU-Ukraine cooperation on migratory issues and examines how certain conditions affect the actual modes of EU-Ukraine cooperation.

5.1 EU-Ukraine Relations in the Context of Dense Political and Economic Transformations

Ukraine's development after its independence in 1991 was turbulent and included high frictions. Ukraine has not made any democratic experience before being governed by the Moscow centred Soviet autocracy. After centuries under foreign rule – apart from a short period of independence from 1918 to 1922⁴⁰ – many domestic struggles concerned the project of nation-building as such, and, the definition of its role in the altered geopolitical context. Three major phases after Ukraine's independence can be distinguished: 1) the autocratic regimes of Kravchuk and Kuchma from 1991 to 2004; 2) liberalisation processes after the Orange Revolution under Viktor Yushchenko from 2005 to 2010; and, 3) A pragmatic recurrence to Pre-Revolutionary Ukraine under Viktor Yanukovych since 25 February 2010.

The transition period after the independence from the Soviet Union was characterised by a lack of political and economical reforms. The first two presidents Kravchuk and Kuchma had been part of the Soviet regime. Their leadership sought to continue this autocratic tradition in order to preserve its leadership. Kuchma, however, was aware that Ukraine had to emancipate from RF dominance (President of Ukraine 1999). According to his view, the economy should be more Western oriented to attract FDI's. Kuchma enacted several decrees to open Ukraine's economy towards the economical powerful EU: in 1998, the decree No. 148 on '*Facilitating Implementation of the Agreement on Partnership and Cooperation between Ukraine and the European Union and Improving the Mechanism for Cooperation with the European Union*'; In 1998, the decree No. 615 approved the '*Strategy for Integration of Ukraine into the European Union*'; and, finally in 2003 the decree on '*Facilitating the Activities of Ukraine's Authorized Representative on*

⁴⁰ Ukraine's independence after the October Revolution last until the Ukrainian-Polish war 1918/1919, which entailed being divided into a West and Eastern Ukraine, occupied by the Polish in the West and the Soviets in the East in 1921.

European and Euro-Atlantic Integration' (Ukrainian Government 2003). President Kuchma and the government under Prime Minister Yushchenko, who held the position from December 1999 to May 2001, installed several executive bodies to ensure the implementation of the '*Strategy for integration of Ukraine into the European Union*' (President of Ukraine 1999).

Although initiatives were undertaken to demonstrate Ukraine's willingness to harmonise with EU legislation and foster economic exchange, the measurements were more declaratory than effective. Kataryna Wolczuk (2003) named this, little flattering, as "*declarative Europeanisation*" (e.g. Sherr 1998: 12). However, Kuchma's leadership set the first stage of EU integration, even if real measures were missed. As James Sherr (1998) pointed out: "Ukraine's political leaders have sometimes acted as if they could achieve integration by declaration, or simply by joining and participating in international organisational and political clubs, rather than by undertaking concrete structural changes" (ibid.: 2f.). This declaratory EU rapprochement shows Kuchma's foreign policy strategy of counterbalancing the influence of the RF by strengthening its independence and state sovereignty and confirming Ukraine's territorial integrity (e.g. Shapovalova/ Ozymok 2008: 29).

In line with its economical interests, Ukraine sought to place itself as a strategically important edge to Asia. Ukraine has seen itself as an important geopolitical partner for both the RF and the EU and has sought to capitalise from this position. Kuchma's janus-faced foreign policy was not successful; also as the EU did not respond in the expected way and RF's altered foreign policy with the inauguration of President Vladimir Putin who increased the pressure on Ukraine's leadership.

On the one hand Ukraine oriented towards the West and sought to gain more independence from the RF, reflected e.g. with its accession to the 1997 founded Organisation for Democracy and Economic Development GUAM (Georgia, Ukraine, Azerbaijan and Moldova) and, the 'Black Sea Synergy', an EU initiative to facilitate the economic and security cooperation among countries adjacent to the Black Sea. On the other hand, Ukraine signed the agreement on the creation of a Single Economic Space with the RF, Belarus and Kazakhstan in 2003. It also approved the take-over of the Odessa-Brody pipeline by a RF company, which was crucial for "*Ukraine's energy security from a one-sided dependence on Russia*" (Shapovalova/ Ozymok 2008: 31). Shapovalova and Ozymok (2008) emphasises that Ukraine's gave up its aspirations for a NATO membership "*in exchange for the Kremlin's political support for Victor Yanukoviych [...] in the presidential election*" (ibid.: 31).

Kuchma's slow path of political and economical reforms as well as his eastward course caused insecurity in the Ukrainian electorate. His proposed successor Victor Yanukovych did not get the expected majority at the presidential elections 31 October 2004. As the first round did not result in a majority for one of the candidates, the regime announced its candidate Yanukovych as the winner of the second ballot. Because of allegations of widespread vote-rigging, a revolutionary movement raised – to be known as the 'Orange Revolution'. It successfully came to an end when the Courts annulled the results of the second round and mandated to rerun the second round. As Kataryna Wolczuk (2007) pointed out, this decision to repeat the election was preceded by a negotiated pact between the two main blocs on a constitutional reform. It stipulated a shift of powers from the presidency to the parliament and entered into force with the parliamentary elections in August 2006, which was won by Yushchenko's former opponent Yanukovych (e.g. *ibid.*: 11). The opposition leader and westward oriented Viktor Yushchenko came off as winner at the third round, held on 26 December 2004. He emphasised that he would call the EU for deeper ties and outlined a four-point plan: acknowledgement of Ukraine as a market economy, entry in the WTO, associate membership in the EU, and, finally, full membership (e.g. *EU Observer* 2004). The Orange Revolution of 2004 improved Ukraine's prospects for EU integration and made the new leaders announce to the public that Ukraine's could be an EU member in the near future. *"We have chosen Europe: it is not just a question of geography, but a matter of shared spiritual and moral values"*, stressed Viktor Yushchenko after his inauguration (Yushchenko 2005).

However, even if the presidency of Yushchenko was outspoken in its declarations, it faced major domestic challenges to execute reforms. Four major problems caused a slowdown of Ukraine's reforms: 1) a constitutional trap; 2) a power struggle within the 'Orange' bloc; 3) a limited technical capacity; and 4) the EU's cautious foreign policy towards the Ukraine.

First, the power balance between the President and the Prime Minister turned Ukraine's domestic politics into a ruinous power struggle. It contributed to a deadlock of the reform agenda after the 2004 Orange upheavals. Whereas the amendments to the constitution contain a shift of power to the parliament and therefore a strengthening of the position of the Prime Minister, the ministries for foreign affairs and defence are still the President's prerogative. He nominates the respective ministers, who have to be approved by the parliament (e.g. *Council of Europe* 2005). Because of this competences share, it is easy to block each other'. As Yushchenko's opponent Viktor Yanukovych held the position of the Prime Minister from August 2006 until December 2007, they both used their

competences to undermine the policy of the other, as a result, hindered the country's progress and reforms. Yushchenko's efforts to align with EU legislation would have needed a Prime Minister agreeing on these objectives, as the government is responsible to execute the proposed measurements.

Second, Yushchenko's former ally within the 'Orange' bloc and Prime Minister from 24 January 2005, Yulia Tymoshenko, turned into an opponent and got dismissed by the president on 8 September 2005 (Fritz 2007: 184). Held together by the common objective of avoiding Kuchma's candidate Yanukovych, a power struggle between them led to a split after their bloc succeeded in the presidential election. This weakened the post-revolutionary reforms. President Yushchenko stressed that the removal was a necessity: *"Separate blocs that emerged within the team began playing their own games behind closed doors, which was rather unpleasant"* (NY Times, 8 September 2005). Yushchenko nominated his confidant Yuriy Yehkanurov from his party as the successor of Tymoshenko. Yehkanurov's government, however, lost its power by a 'vote of no confidence' on 10 January 2006 and got removed by the parliamentary elections on 26 March 2006 (e.g. Kuzio 2006b).

Victor Yanukovych's 'Party of Regions' won the election and formed a Government with the Socialists and Communists. He became Prime Minister until Yushchenko dissolved the parliament again in 2007. In the following election in December 2007, the former members of the 'Orange bloc' decided to form a new alliance to succeed against Yanukovych and signed a coalition agreement. Yanukovych got again the majority of votes with a share of 32.14 percent, the alliance of Tymoshenko and Yanukovych together reached around 36.8 percent and formed a new government under the leadership of Tymoshenko (Central Election Committee of Ukraine 2007). This government acted until 4 March 2010 with moderate success.

Third, Ukraine's administration lacked efficient and transparent procedures, and well-educated personnel to enforce legal reforms. Widespread corruption, highly politicisation, long-lasting and intransparent procedures undermined the rule of law and paralysed Ukraine's bureaucracy and scared off FDI's.

Finally, the EU reacted observant to the 'Orange Revolution' and the coming into power of a pro-EU president. Despite the huge expectations and the euphoric policy vis-à-vis the EU of the new president and the orange bloc, the EU refrained from opening the 'membership question' due to the unstable political situation and the lack of political and economical reforms (e.g. Wolczuk 2007: 11).

“Nonetheless the continuing political instability was not conducive to reform. [...] There is a continuing need to address the country’s problems with unity and leadership” (COM 2009e).

The EU insisted on deepening relations in the framework of the 2004 launched ENP, which failed to live up to Ukraine’s expectations. Ukraine’s criticism concerned the cautious foreign policy of the EU and the lack of defining long-term objectives of the relations (e.g. Derhachov 2007). But President Yushchenko reaffirmed to continue Ukraine’s reform path towards integration into the EU and emphasised that the EU could not continue to neglect Ukraine’s membership aspiration after the adoption of EU legislation and widespread support for EU values (e.g. Wolczuk 2007: 11). In his first visit to Brussels in 2005, President Yushchenko stressed, that:

“Accession to the EU is the aim of my country, a major task of the new government and my personal objective. We are ready to prove the seriousness of declared intentions by hard everyday work. I want every internal decision in economy or in any other sector to be taken in the European integration spirit” (Derhachov 2007: 3).

Ukraine’s tenaciousness can be explained by the revolutionary experiences and the promise of the new leaders to bring Ukraine closer to the EU, and become a member of the EU in the near future. A main driving force for the pro-EU attitude of the president was the positive public attitude towards EU-integration. Around half of Ukrainian citizens have been in favour of a possible EU membership of Ukraine. However, as the results of the opinion poll of the National Institute for Strategic Studies (NISS) showed, the support for Ukraine’s membership in the EU has decreased from 55 percent in 2001, to 47 percent in 2005, and 43 percent in 2006 (cited after Shumylo 2007: 7).

EU-integration and the closely interlinked issue of economic recovery were the most salient issues on the political agenda. The new leadership called the EU to provide a credible road map towards an EU-integration of Ukraine. In response to EU-criticism concerning the lack of political and economic reforms, Yushchenko *“promised to close the gap between declarations and domestic policy-making”* (Wolczuk 2007: 11). The Progress Report 2010 and 2009 recognises Ukraine’s reforms in economic terms, which dominate most of the priorities of the Action Plan, whereas it highlights crucial lacks in terms of democracy, human rights and rule of law (e.g. COM 2010c; COM 2009e).

The most active ministries in putting reforms in place or accelerate rapprochement with the EU have been the Ministry for Foreign Affairs (MFA) and the Ministry of the Economy and European Integration (MEEI). According to an evaluation of Kataryna Wolczuk (2007) the MFA *“aligned itself with 549 out of 589 CFSP declarations or 93% compliance with the*

EU position" (ibid: 16). The MEEI is guided by a strong self-interest, as the EU is the most prosperous market on the continent and the main trading partner. Ukrainian political and business elites have urged for the WTO accession and were keen to attract international FDI's.

An example of Ukraine's new policy towards the EU was its visa policy. In 2005, energised by the victory of the annual Eurovision Song Contest, which was held in Kiev in May 2005 and already contained a visa lift starting from 1 May to end of August 2005, Yushchenko passed on the 26 July 2005 a decree '*On the Establishment of Visa-Free Regime for Citizens of the EU, Switzerland and Liechtenstein*' for short-term visas (President of Ukraine 2005). This one-sided visa repeal was hoped to energise further EU-Ukraine talks on a mutual visa-free regime. The EU, however, refused a visa free entry regime for Ukrainian citizens as demanded reforms would not be implemented. The EU insisted on the implementation of the 2004 Action Plan – negotiated under Kuchma – and denied any concrete statement on Ukraine's membership prospects. Yushchenko only reluctantly agreed to sign the Action Plan in February 2005. He emphasised its temporary character and referred to the forthcoming negotiations of an enhanced agreement in 2007 (e.g. Wolczuk 2007: 12).

In contrast to the EU as a whole, individual member states expressed more clearly on the prospects of an eventual EU membership for Ukraine. Especially the new member states and Spain and Italy were in favour of an integration of Ukraine into the EU, according to a study of TNS Sofres (e.g. Gromadski/ Lopata/ Raik 2005; Shumylo 2007: 8; Roth 2007; Copsey/ Mayhew 2010). Poland has taken a particularly active position in promoting Ukraine's integration into the EU (e.g. Barburska 2006). Also the European Parliament took a proactive position on EU's policy towards Ukraine and passed a motion, on 13 January 2005, which supported Ukraine's path towards the EU and stressed that Ukraine has an option for membership by referring to Article 49 of the TEU (European Parliament 2005).

In the meanwhile, the EU has launched a new regional initiative, seeking to be more tailor-made for Eastern European countries. It seeks to take into account specific country needs and to decouple the eastern dimension from the southern dimension (COM 2008a). The EU presidencies of Sweden and the Czech Republic promoted the idea of an Eastern Partnership (EaP), referring to the former Northern Dimension. The EaP came into force in May 2009. It aims to engage the Eastern countries in tackling common challenges and provides a framework of interaction on matters of common interest on a multilateral and bilateral basis. Four main areas are defined: (1) democracy, good governance and

stability; (2) economic integration and convergence with EU policies; (3) energy security; and, (4) contacts between people (COM 2008a).

As the previous PCA and the ENP as well EaP initiatives did not raise the credibility of the EU in the eyes of the Ukrainian population, the negotiation on the new enhanced agreement is seen as a litmus test for EU-Ukraine relations. Starting on the 2 March 2007, Ukraine will be the first country with this kind of association agreement (COM 2007d).

“The Association Agreement will renew our common institutional framework, facilitate the deepening of our relations in all areas, strengthen political association and economic integration between Ukraine and the European Union by means of reciprocal rights and obligations. It will provide a solid basis for further convergence between Ukraine and the EU on foreign policy and security issues, including promoting respect for the principles of independence, sovereignty, territorial integrity and inviolability of borders. [...] The establishment of a deep and comprehensive free trade area with large-scale regulatory approximation of Ukraine to EU standards will contribute to the gradual integration of Ukraine to the EU Internal Market. The Association Agreement will also enhance cooperation on a broad range of aspects of justice, liberty and security, including migration issues” (12th EU-Ukraine summit 2008).

The negotiations have been ongoing since March 2007. The core of the new agreement shall be a free-trade agreement, which presumes Ukraine’s accession to the WTO. . The enhanced agreement will mark a privileged relationship between the EU and Ukraine, building upon mutual commitments to common values and agreed policy objectives. Despite the up-and-downs in domestic politics of the Ukraine, the negotiations have taken place without major friction.

Due to the conflict within the Orange bloc, the little progress on political and economic reforms and the dramatic gas crisis with the RF, Yushchenko’s electorate support strongly decreased. It was no surprise that he failed to challenge Yanukovich, who run again at the presidential election on 17 January 2010. Instead of Yanukovich, who got only 5.45 percent of the votes, Yulia Tymoshenko entered into the second ballot with Viktor Yanokovich. In the second round on 7 February 2010, Yanukovich defeated Tymoshenko with 48.95 percent to 45.47 percent of the votes (Central Election Commission of Ukraine 2010). Whereas Yanukovich became the new President and ended the leadership of the ‘Orange bloc’, Yulia Tymoshenko remained Prime Minister but got dismissed by the President and succeeded by the Yanukovich-ally Oleksandr Turchynov on 3 March 2010 (Kyiv Post 2010b). Yanukovich installed his ally as Prime Minister, and repealed the constitutional amendments of 2006, and “*reinstated the semi-*

presidential system of government provided by Ukraine's original Constitution in 1996" (Kyiv Post 2010c).

The election of Yanukovich resulted in less constrained relations with the RF compared to the predecessor Yushchenko. The relations with the RF played in the election campaign a crucial role. But Yanukovich is unlikely to change Ukraine's strategic course towards EU rapprochement, as the public opinion and business elites are in favour of a closer integration with the EU institutions (e.g. Shapovalova/ Boonstra 2010: 10). Tymoshenko's position towards the RF has also become less hostile in recent years, mainly due to pragmatic considerations. Pragmatic aspects, in general, dominate the current foreign policy of Ukraine.

Yanukovich seeks to benefit from Ukraine's geopolitical position. He seeks an integration in EU and RF markets and, strengthen its role as an important transit country for energy supplies to the EU. In the negotiations for a NEA, it is a priority for Ukraine to get access to the European market through a FTA with the EU. The Ukraine seeks to strengthen Ukrainian sovereignty by becoming an associate partner of the EU and entering the main international agreements, which should help to reduce RF's influence in Ukraine. This influence is strong through the take-overs of energy enterprises as the Ukrainian Naftogaz Ukrajiny by Gazprom.

Although, Yanukovich continues Ukraine's EU rapprochement, he made a shift in Ukraine's transatlantic relations and declared that he want the Ukraine to be a "*non-aligned European country*" (The Times 2010). He does thus not seek a NATO membership. But, following the model of the Finnish neutrality, a strategic cooperation with the NATO should remain in place. Yanukovich signed a treaty on extending the lease on the Russian Black Sea Naval base at Sevastopol, but refused to join the Customs Union of the RF, Kazakhstan and Belarus. This would contradict Ukraine's aspiration for the WTO accession (e.g. Kyiv Post 2010d). Apart from Ukraine's foreign policy, Yanukovich reversed the 2006 constitutional reforms and returned back from a presidential-parliamentarian system to a presidential political system in order to consolidate its leadership by a strict vertical power.

5.2 EU-Ukraine Relations at a Crossroad

In recent years the EU-Ukraine relations improved. With the 'Orange Revolution' in 2004 the Ukraine started reforms and accelerated its path into EU integration. But the economic and political reforms are merely done on the paper and are criticised by the EU due to

their limited implementation. In the following, an evaluation is done on the determinants of EU-Ukraine relations. Five main areas will be discussed: Trade relations and economic integration; Role of the RF for EU-Ukraine relations; Transatlantic Relations and NATO-partnership; Combating security threats; Democracy and good governance; and, migration management.

5.2.1 Dependencies and Potentials in Economic Relations

In 1991, the Soviet Union collapsed. The common market experienced a crucial crisis. From 1996 to 1999, Ukraine's export to CIS-countries decreased to half. They even got outrun by the exports with the EU with 3277.3 mln. USD to 3252.2 mln. USD in 1999 (e.g. Shapovalova/ Ozymok 2008: 84). Due to RF's and economic decline after the breakdown of the Soviet Union, Ukraine under Kuchma started to reorient its economy towards the prosperous EU market. This got manifested by several bilateral agreements. The main agreement was the 1998 signed PCA, which intensified the EU-Ukraine relations significantly. However, Ukraine's external trade suffered from the eastern enlargement of the EU to its immediate neighbourhood and major export markets. The EU launched the ENP to outweigh the loss of the market separation and provided financial and technical assistance for the Ukraine to improve its competitiveness. The basis for any economic cooperation were the 2005 action plan, containing articles on the basis of the PCA (title III 'trade in goods') and the provisions of the GATT (Articles XI, XII, XIV, XIX, XX, XXI) (European Council 2005e: Art. 25). The key issues have been, inter alia, an improvement of business and investment climate; the adoption of WTO-related banking and insurance legislation; the adoption of international customs standards; and the establishment of a modern company law framework (COM 2008b: 3f). These priorities have been important for Ukraine's integration into the world's trade and economic systems as well as for the country's economic growth and development. The trade in steel products got partly and trade in textiles has been fully liberalised since 2005 (e.g. Shapovalova/ Ozymok 2008: 88). The EU has granted reduced customs tariffs to preferential imports including chemicals, plant oils, minerals, base metals, machinery, and mechanical appliances, which accounted for EUR 1.61 billion of Ukraine's export to the EU in 2009 (see figure 27). EU's accession to the WTO in May 2008 boosted Ukraine's trade and has provided a more attractive investment climate for FDI's.

After the implementation of certain reforms, the EU has granted Ukraine better access to its internal market, with a prospect for a common free trade zone. The total trade between the EU and Ukraine has progressively increased since 2005. By now, the EU is the most important trade partner and biggest investor in Ukraine. In 2010, 29% of Ukraine's exports

in goods went to the EU/EFTA market (31.6% in 2007), whereas, only 26% of the total share went to RF's market (25.7% in 2007). Compared to 2003, the total amount of Ukraine's exports to the EU/EFTA increased by a rate of 57.8% until 2010, accounting by 1 January 2011 51.4 mln. USD. Imports of goods from the EU/EFTA grew 1.5 times between 2003 and 2010, accounting by 1 January 2011 60.7 mln. USD. The EU has become Ukraine's largest trading partner, accounting for one-third of its external trade.

Figure 24. Ukraine's Foreign Trade in Goods, 2010/2007

	2010			2007		
	Exports thsd.USD	Imports thsd.USD	Balance	Exports thsd.USD	Imports thsd.USD	Balance
Total	51430521	60739969	-9309448	49248064	60669923	-11421859
CIS countries	18744497,2	26697422,3	-7952925,1	18615176,8	25629473,71	-7014296,91
of which						
Russia	13431881	22198005,8	-8766124,8	12668323,9	16837595,5	-4169271,6
Europe	14921426,1	20230008,6	-5308582,5	15559490	23068058	-7508568
of which						
EU + EFTA	14526033	20066992,1	-5540959,1	14823162	22893421	-8070259
Asia	13019222,4	9796833,7	3222388,7	10189672	8921559	1268113
of which						
Iran	1030745	49911,4	980833,6	509496,9	48324,5	461172,4
India	1426117	680748,6	745368,4	736941,33	321406,92	415534,41
China	1316550,1	4700393,5	-3383843,4	431655,2	3307056,7	-2875401,5
UAE	277257,5	50866,3	226391,2	612241,2	32270,7	579970,5
Saudi Arabia	644548,7	37358,9	607189,8	523471,3	3952,6	519518,7
Syria	646816	44569	602247	846941,6	36347,5	810594,1
Turkey	3026668,7	1298282,2	1728386,5	3650005	972079,2	2677925,8
Africa	3018692,1	874429	2144263,1	2792098,3	673087,2	2119011,1
of which						
Algeria	159343,5	4870,4		618254,99	4939,91	613315,08
Egypt	1327993,7	84182,6	1243811,1	880028,4	77497	802531,4
America	1625808,8	2878910,3	-1253101,5	2075491	2247472	-171981
of which						
Brazil	359896,3	459597,4	-99701,1	366795,6	430889,4	-64093,8
Mexico	200071,5	63353	136718,5	166827,4	23788,9	143038,5
USA	812209	1766757,5	-954548,5	1058085,2	1397285,3	-339200,1
Australia and Oceania	28398,3	261358,6	-232960,3	15704,9	128432,7	-112727,8

Source: State Statistic Committee of Ukraine. [Retrieved from <http://www.ukrstat.gov.ua/>, 22 April 2011]

Figure 25. Ukraine's Foreign Trade in Goods, 2005/2003

	2005			2003		
	<i>Exports</i>	<i>Imports</i>	<i>Balance</i>	<i>Exports</i>	<i>Imports</i>	<i>Balance</i>
	<i>thsd. USD</i>	<i>thsd. USD</i>		<i>thsd. USD</i>	<i>thsd. USD</i>	
Total	34286748	36141094	-1854346	23080187	23020771	59416
CIS countries	10739718,76	17030312,34	-6290593,58	6048314,59	11508372,42	-5460057,83
of which						
Russia	7495821,72	12843419,16	-5347597,44	4311395,47	8645741,17	-4334345,7
Europe	11371233	12675650	-1304417	9458122	8212653	1245469
of which						
EU + EFTA	9920061	12275840	-2355779	5333913,9	6108227,4	-774313,5
Asia	8185937	4639663	3546274	5128338,5	1953894,9	3174443,6
of which						
India	736941,33	321406,92	415534,41	202789,42	153974,74	48814,68
Iran	577012,01	18188,53	558823,48	295611,02	8662,63	286948,39
China	711241,23	1810404,15	-1099162,92	1003176,9	519026,44	484150,46
UAE	345667,66	10357,18	335310,48	137118,84	4817,77	132301,07
Saudi Arabia	386484,29	3039,91	383444,38	236671,81	1529,43	235142,38
Syria	676163,25	27725,9	648437,35	281811,3	10894,8	270916,5
Turkey	2034974,78	607697,21	1427277,57	901872,44	312281,23	589591,21
Africa	2405679,38	426207,12	1979472,26	1250377,76	248760,71	1001617,05
of which						
Algeria	618254,99	4939,91	613315,08	351231,39	3947,99	347283,4
Egypt	802501,88	37066,63	765435,25	291561,71	8641,64	282920,07
America	1570195	1264858	305337	1190327,2	1043123,9	147203,3
of which						
Brazil	110023,14	312514,95	-202491,81	177943,63	360529,9	-182586,27
Mexico	116900,78	8497,3	108403,48	43907,9	4607,81	39300,09
USA	956510,52	710072,65	246437,87	718649,03	498268,36	220380,67
Australia and Oceania	13720,97	103951,32	-90230,35	4707,27	53448,52	-48741,25

Source: State Statistic Committee of Ukraine. [Retrieved from <http://www.ukrstat.gov.ua/>, 22 April 2011]

In terms of member states, Italy was one of Ukraine's main partners for exports in goods, together with Poland and Germany, followed by Hungary, Romania, Czech Republic and Slovakia. Italy represented 18.5%, followed by Poland with 13.7%, Germany with 11.5% and Hungary with 6.6% in 2010. There is a dominance of new member states, which had the main concentration of Ukrainian exports, with a total share of 44.3%. Germany was Ukraine's most important import partner, holding 24% of the total Ukrainian imports.

Figure 26. Ukraine's Foreign Trade in Goods with EU Member States in 2010

	Export	Import	Balance		Export	Import	Balance
Total	13051,9	19101,2	-6049,3	Total	13051,9	19101,2	-6049,3
Italy	2412,4	1390,3	1022,1	Lithuania	264,4	637,5	-373,1
Poland	1787,2	2788,8	-1001,6	Latvia	180,2	88,1	92,1
Germany	1499,5	4605,3	-3105,8	Cyprus	175,4	90,5	84,9
Hungary	860,1	1214,6	-354,5	Greece	164	104,1	59,9
Romania	705,8	682,2	23,6	Denmark	124,5	240,5	-116,0
Czech Republic	626,2	747,9	-121,7	Portugal	121,8	51,5	70,3
Slovakia	568,2	442,6	125,6	Estonia	106,3	123,4	-17,1
Netherlands	563,2	837,9	-274,7	Sweden	77,8	358,8	-281,0
Austria	508	697,6	-189,6	Malta	49,6	13,4	36,2
United Kingdom	506,5	821	-314,5	Finland	34,1	429,8	-395,7
France	476,9	1106,7	-629,8	Slovenia	11,6	212,6	-201,0
Bulgaria	450,6	218	232,6	Ireland	4,5	112,1	-107,6
Spain	411,7	468,6	-56,9	Luxembourg	4,5	29,1	-24,6
Belgium	356,9	588,3	-231,4				

Source: State Statistic Committee of Ukraine. [Retrieved from <http://www.ukrstat.gov.ua/>, 22 April 2011]

The EU has replaced the RF as Ukraine's most relevant trading partner. There is a huge trade imbalance between the EU and Ukraine – in 2010 the EU absorbed 29% of Ukraine's exports worth 14.9 bln. USD and provided 33% of its imports worth 20.2 bln. USD. Thus, the trade balance is negative by 5.3 bln. USD. EU-Ukraine trade relations are asymmetric. In 2010 Ukraine accounted for only 0.8 of the EU's total imports and 1.3 of its total exports (Eurostat/ GD Trade A2). Such small share of Ukraine in the EU trade, combined with the high significance of the EU for Ukraine's trade means that Ukraine is more exposed to losses or benefits from closer economic cooperation than the EU.

Although the trade between the EU and Ukraine got more liberalised, the Ukraine is disadvantaged due to its weak market competitiveness. Major problems are the old-fashioned industry, which is still highly concentrated on raw materials and is highly energy intensive. Further, the Ukrainian export portfolio is not very diversified. Metal products, energy and agricultural products account for more than half of its exports.

Figure 27. Commodity Patterns of Foreign Trade of Ukraine, 2010

Commodity code and title by Ukrainian Classification of Commodities in Foreign Trade	Exports		Imports	
	thsd. USD	% of the total volume	thsd. USD	% of the total volume
Total	51430522	100	60739969	100
Agricultural and food industry products	9936094	19,3	5761877	9,4
Mineral products	6731329	13,1	21127917	34,8
of which:				
Coal	563056,8	1,1	1781372	2,9
Crude oil	–	–	4171265	6,9
Natural gas	2023,1	0	9392940	15,5
Products of chemical and allied industries	3479169	6,8	6441659	10,6
Base metals and preparations thereof	17332547	33,7	4127967	6,8
Machines, equipment and mechanisms, electric and technical equipment, audio and video equipment, TV equipment	5670416	11	8166975	13,4
Ground, air and water transport facilities	3262441	6,3	3664287	6

Source: State Statistic Committee of Ukraine. [Retrieved from <http://www.ukrstat.gov.ua/>, 22 April 2011]

Due to Ukraine's energy needs, especially in metallurgic industries, almost 45% of Ukraine's imports are fossil fuels. The main energy supplier is the RF. It has granted discounted sales for gas and oil and has a dominating role on the energy market. Being dependent on the RF for internal energy consumption, Ukraine is vulnerable to a price increase of the supplied energy resources. Gas prices are used by the RF to enforce Ukraine concession. After the coming into power of the West-oriented 'orange' bloc, the conflicts between the two countries increased. They were mainly related to the RF's reconsidering of energy prices. The national joint-stock company Gazprom started to

increase the prices for gas exports to Ukraine to the level of the world market price. Several gas disputes were the result since 2005 due to Ukraine's struggle to pay for its RF imports. In 2009, the negative climax of Ukrainian-RF gas disputes got out of hand. The RF started to block gas deliveries to Ukraine as of 1 January 2009. This did not only affect Ukrainian consumer, but also had crucial implication on EU's gas supply. The Ukraine is the main transit country for RF's gas deliveries to the EU. Today around 38% of EU's demand of gas gets purchased from the RF and is delivered through Ukrainian gas pipelines (e.g. COM 2009f: 5). The Ukrainian-RF gas dispute turned out to be a crucial challenge for the security of the energy supply (e.g. Council of the EU 2003a). The RF reacted due to these disputes and its contractual relations with EU consumers by constructing the North and South Stream pipelines which shall mitigate RF's dependence on Ukraine's pipeline facilitates to transport gas to the EU. But the security of gas delivery still plays a key role in the EU-Ukraine relations. The pipeline projects diminish Ukraine's role as a main transit country of RF gas and reduce its ability to use its geostrategic role as a bargaining chip.

The EU initiated already with the PCA in 1998 a framework for the EU-Ukraine energy relations. The first ENP Action Plan which got agreed in February 2005 and the Memorandum of Understanding which got signed in December 2005 both emphasised energy security as a key priority (e.g. COM 2005c: par. 52; COM 2007e: Annex 1; COM 2007f: 7). Ukraine is a founding member of the Energy Community and signed the Energy Community Treaty in October 2005, which "*acts as the basis for an emerging regional energy market*" (COM 2007e: 23). The main objectives are to create a stable and regulatory market framework capable of attracting investment; to create a single regulatory space for trade; to enhance security of supply; to improve the environmental situation and to develop electricity and gas market competition on a broader geographical scale (e.g. Energy Community 2005: Art.2). These initiatives aim to facilitate the stable delivery of energy resources to the EU; to help the Ukraine to diversify its sources of energy supply and, hence, to gain more independence from the RF; and, finally, to increase its efficiency of energy production and consumption, as well as, to integrate into the European energy market.

Due to the old and sparely diversified industry, FDI's became crucial for Ukraine's economic development. They should increase the competitiveness of Ukrainian products at the world market. Growing import from the EU had a positive effect in that it brought new technologies and equipment to the Ukrainian market, and thus improved the investment climate for foreign investors. The major obstacles have been, for example, in

areas such “*fight against corruption, a more transparent plan for further privatisation consistent with the rule of law, the adoption of the Joint stock company law, incompatibilities between the civil and commercial codes and court systems, the overall improvement of transparency and predictability and further reduction of the burden of licensing and inspection regimes*” (COM 2006c: 11).

In recent years, Ukraine sought to create a more predictable and safer environment for investments to encourage investors (e.g. Copsy/ Mayhew 2006). Apart from its geographical position between the Western-European and Eastern-Eurasian market and its large inward consumer area of 45.8 mln. people (as of 1 December 2010, State Statistics Committee of Ukraine 2011), Ukraine’s orientation to the West after the ‘Orange Revolution’ and its accession to the WTO in August 2008 were the most important factors for FDI attraction. By 1 January 2011, a total of 44.7 bln. USD has been invested in Ukraine. This equates to an increase of more than 9-times, compared to 5.3 bln. USD in 2003.

The EU is by far the largest foreign investor in Ukraine, accounting for 76% (around 35 bln. USD) of the total share, leaving behind the RF with 7.6% (3.4 bln. USD) and the USA with 2.6% (1.2 bln. USD). Before the revolutionary upheaval in 2004, the FDI from the EU were on a level with investments from the USA. Two years later, in 2006, FDI flow from the EU already ranked at a share of 71% of the total FDI in the Ukrainian economy. Within the EU, the main foreign investors came from Germany (29% within EU / 15.8% of total amount), the Netherlands (13.8% / 10.5%); followed by Austria (7.8% / 5.9%); France (6.7% / 5.1%) and UK (6.9% / 5.3%). Although the analysis shows a clear trend and highlight the importance of several actors, we have to take into account specific circumstances of the international financial system and the mobility of capital. The specific characteristics of the financial market in Cyprus and the British Virgin Island are used as a hub, mainly by Russian and also Ukrainian investors, to invest money in Ukraine from Cyprus than from their home countries (Crane/ Larrabee 2007: 17). Cyprus (22.2%) and the British Virgin Island (3.3%) run together for more than a quarter of the total FDI’s in Ukraine, as it is a combination of both Russian and Ukrainian investments.

Figure 28. Volume of Direct Investments in Ukraine in mln. USD

	as of 1.1.2011	In % to the total	as of 1.1.2008	In % to the total	as of 1.1.2006	In % to the total	as of 1.1.2003	In % to the total
Total	44708	100	29489,4	100	16375,2	100	5339	100
of which								
Cyprus	9914,6	22,2	5941,8	20,1	1562	9,5	602,6	11,3
Germany	7076,9	15,8	5917,9	20,1	5505,5	33,6	312,1	5,8
Netherland	4707,8	10,5	2511,2	8,5	721,8	4,4	398,8	7,5
Russia	3402,8	7,6	1462,2	5	799,7	4,9	322,6	6
Austria	2658,2	5,9	2075,2	7	1423,6	8,7	no data	no data
France	2298,8	5,1	1046,2	3,5	no data	no data	no data	no data
UK	2367,1	5,3	1968,8	6,7	1155,3	7,1	510,5	9,6
Sweden	1729,9	3,9	1006,6	3,4	no data	no data	no data	no data
Virgin Islands, British	1460,8	3,3	1045,7	3,5	688,7	4,2	337	6,3
USA	1192,4	2,7	1436,8	4,9	1374,1	8,4	898	16,8
Italy	982,4	2,2	no data	no data	no data	no data	no data	no data
Poland	935,8	2,1	670,5	2,3	224	1,4	no data	no data
Switzerland	859,4	1,9	583,8	2	445,9	2,7	272,7	5,1
Other countries	5121,1	11,5	3421,8	11,6	2111,3	12,8	1303,3	24,5

Source: State Statistic Committee of Ukraine. [Retrieved from <http://www.ukrstat.gov.ua/>, 22 April 2011]

To sum up, the EU has become the most crucial economic partner for the Ukraine. The economic interaction in trade and investments has boosted after the 'Orange Revolution' and the reinforced orientation to the West in political and economical terms. Since 2005, the EU shaped its economic cooperation with Ukraine mainly through the ENP and the respective action plan. The ENP envisaged as a mid-term goal a further trade liberalisation and the establishment of a FTA provided compliance with the trade-related EU acquis. Ukraine has run several economic reforms to comply with EU and Western market regulations. In 2008, it accessed the WTO, which was a prerogative for the beginning of negotiations on a common Free Trade Agreement between the EU and Ukraine. The FTA will be a core element of the new enhanced Association Agreement, currently under negotiations.

5.2.2 *Ukraine's Path between Old Allies and New Friends: Fragile Western Options vs. Though Arguments from the East*

When the RF's role as the regional hegemony was jeopardised, Ukraine's foreign policy oriented itself towards alternative power centres in the West, first and foremost towards

the EU. This reorientation is based on security and economic considerations. The RF was not considered anymore as powerful enough to ensure security and economic well-being. Despite the common identity in history, culture and religion, Ukraine's leaders looked for alternative options. The foreign policy of the Ukraine in the beginning 1990ies aimed to gain national sovereignty and independence from foreign influence. In this sense, an independent Ukraine means, first and foremost, getting independent from RF. Ukraine was a founding member of the 1997 established Organisation for Democracy and Economic Development GUAM, named after its members Georgia, Ukraine, Azerbaijan and Moldova. Uzbekistan also got a member but withdrew in 2005. The GUAM has its headquarter in Ukraine and aims to strengthen the cooperation between its member states, and to develop an independent regional policy from RF's dominance. After years of little relevance, Ukraine revived the organisation in 2005. In 2006 GUAM got an international organisation.

Ukraine's position has to be seen in its geopolitical and historical context, located between the RF dominated Eurasia, and the Euro-Atlantic hemisphere. The RF still considers Ukraine to be in its immediate sphere of interest. It has a crucial interest in Ukraine, inter alia: as a buffer state between the extended EU and NATO alliance and the RF territory; as a huge market for RF businesses; as a transit country for RF gas towards consumers in the EU; and, from a military strategic point of view.

Despite the still strong influence of RF in Ukraine, EU-Ukraine relations advanced continuously and boosted with the 'Orange Revolution' in 2004. But already during Kuchma's leadership from 1994 to 2004, Ukraine went for an EU rapprochement as an answer to RF's influence by harsh power and signed as the first post-Soviet country a PCA with the EU. The EU-Ukraine relations didn't develop as expected by Kuchma, not at least due to its autocratic political system. With the RF's economic recovery, Kuchma sought again closed cooperation with the RF. However, Kuchma's protégé Yanukovich failed to win the presidential elections in 2004 and, the new president Yushchenko adopted a clear pro-EU and pro-NATO policy.

The RF regime was not pleased about this clear anti-RF position of the new president. Further, RF's former president Putin was afraid of a spill-over to other post-Soviet countries, as happened in Georgia in 2003 (Rose Revolution) and Kyrgyz Republic in 2005 (Tulip Revolution). Due to these coloured revolutions, RF's reaction was harsh. It was concerned to lose its influence in the post-Soviet region and be surrounded by a more unpredictable neighbourhood. Especially, Ukraine got the centre for RF's foreign policy of demonstrating its power. It used the country to warn other post-Soviet countries

to follow this path. The RF also adopted a clear position on EU's engagement in the shared neighbourhood. Since the enlargement of the EU and of the NATO to the East, the RF got clearer in rebuffing Western exertion of influence as too condescending and too competitive with its own interests in the common neighbourhood. Ukraine was the centre of this competition on influence between the EU and RF.

The EU introduced the ENP in 2005 and the EaP in 2009 to provide a framework for intense interaction with countries in the eastern neighbourhood. A membership perspective, however, is not foreseen. Nevertheless, the question of EU membership is a sensitive and rather divisive issue between the neighbour states. Ukraine, Georgia and Moldova still envisage EU membership as the ultimate objective in their foreign and internal policies (e.g. Popescu 2001). EU-Ukraine relations have advanced most within the ENP, which also affect EU's relations with the RF. Ukraine is the most important neighbouring country when it comes to size and its geostrategic position and should serve in the eyes of EU officials as a reference for the relation with other third countries. The result of the current negotiations on the new enhanced agreement, started in March 2007, will probably serve as a model for other contractual relations between the EU and its eastern neighbours.

The EU-Ukraine cooperation is influenced by the RF's role in the region. EU officials are willing to take into account RF's attitude and interest, including the question whether the RF as a 'third party' can be integrated in the EU's regional policy. In the last 10 years, RF's reaction to EU's proactive policy in the common neighbourhood is bound to be one of deep suspicion and resentment. The EU doesn't want to provoke the RF, in order not to jeopardise a stable neighbourhood and risk a further lack in energy supply. As stressed in the Commission's paper outlining the EaP: "*Third countries could be involved in the work of a thematic platform, a panel or an initiative on a case by case basis and if there is agreement that common interests in a topic, geographical proximity or existing economic links would make this beneficial*" (COM 2008a: 14). Over time, however, the RF has become used to Ukraine's alignment to EU legislation and accepted Ukraine's effort as long as it helps to achieve a better business climate, and to make the Ukrainian market more predictable and more beneficial for RF investments.

Regarding Ukraine's rapprochement to Western security alliances, notably the US-dominated NATO, the RF takes a clear disclaiming position. Already in July 1997, Kuchma advocated Ukraine's partnership with NATO by signing the Charter on a Distinctive Partnership (NATO Council 1997) and, ratified the Partnership for Peace Status of Forces Agreement (SOFA) in March 2000 (NATO 2002). Ukraine's pro-Nato

strategy got further supplemented by the 2004-elected President Yushchenko, emphasising that: *“We must intensify our work to win membership in the European security system and strengthen the defence capabilities of our country [...] entry into the Euro-Atlantic security system is the only way to protect the lives and ensure the well-being of our families, children and grandchildren”* (The Times 25 August 2008).

The RF is concerned to be surrounded by a military alliance of the former opponent and to lose its influence in the areas of crucial security and economic topics (e.g. RF presidency 2008). At the moment, RF already shares land and sea borders with six NATO-countries. The RF has a negative attitude to any further expansion of the NATO in its self-defined sphere of influence, which would bring NATO military infrastructure closer to RF territory. As the NATO council in Bucharest in April 2008 declared it would welcome Ukraine’s and Georgia’s aspiration becoming a member of the NATO (NATO Council 2008: par. 23), this step was strongly opposed by the RF. Due to RF’s harsh reaction, Ukraine’s and Georgia’s membership Action Plan got, consequently, postponed (FAZ 3 December 2008). For the NATO, the dialogue with RF is a priority which should, if possible, not be undermined by an expansion further east. In the meanwhile, the NATO-RF relations improved and reached a new quality of cooperation, which will have an impact on Europe’s security regime in the upcoming years (see section 4.2.3).

The RF answered to Western pro-active policies in the post-Soviet area by its own integrationist projects (e.g. Prystayko 2009; and, section 4.2.2). Its economic recovery since 2000 and the determined leadership of Putin have allowed intensified engagement in its post-Soviet neighbourhood. The latest Foreign Policy Concept of the RF, assigned in July 2008, attests that the RF *“has now acquired a full-fledged role in global affairs”* and emphasised that *“the development of bilateral and multilateral cooperation with the CIS Member States constitutes a priority area of RF’s foreign policy”* and should create *“strategic partnerships and alliances”* with those CIS states that *“demonstrates their readiness to engage in them”* (RF presidency 2008).

Imitating Western-style initiatives, the RF launched the Eurasian Economic Community (EurASEC) in 2000 and the Collective Security Treaty Organisation (CSTO) in 2002 aimed at *“strengthening the integration process in the CIS”* (Medvedev 2008b). The EurASEC is the most advanced of them. It is based on the 1996 Custom Union between the RF, Belarus and Kazakhstan and associates also Central Asian countries Kyrgyzstan, Tajikistan and Uzbekistan. The Ukraine has refused to take part at any of RF’s led institutions.

However, the RF is willing to use political pressure to achieve an integration of its neighbouring countries. In the case of Ukraine, the RF used the dependence of Ukraine on RF energy imports as a lever. The RF declared to stop its price discount for gas and increases the price on the level of the world market. Further, the RF sought to get access to Ukraine's energy industry, in order to increase Ukraine's dependence and gain higher profit for RF's state-dominated Gazprom.

In short, the shared neighbourhood between the EU and the RF is subject to intense struggles. Ukraine, due to its geostrategic importance, is at the core of them. Both attempt to integrate the Ukraine into its sphere of influence. In recent years, EU has benefited from Ukraine's serious willingness to integrate into the EU and the NATO. However, the 2010 presidential election implied a fundamental change. The 'Orange bloc' with its president Yushchenko and its pro-Western policy were voted out of office. The new presidency of Yanukovich is seen as pro-RF and may reorient Ukraine's foreign policy towards the East. What can be said by now is that Yanukovich seeks for a more independent Ukraine from any Western or Eastern bloc, benefiting from its geostrategic location. The renunciation from the West is also based on a lack of willingness to offer the Ukraine a membership perspective. Another reason is that, Ukraine's political and economical development is still dependent on RF's patronage and that Yushchenko's anti-RF policy brought disadvantages including the gas disputes, trade conflicts, demarcation of Ukraine-RF border, and, hostility of the Russian minority in the Eastern part of Ukraine and in Crimea.

Yanukovich has chosen a more pragmatic foreign policy and, has opened up the country for both the EU and the RF. When Yanukovich came to power, one of his first actions was to extend the lease on the Black Sea Port of Sevastopol for RF's military fleet until 2042. The RF, in return, has granted discounts for gas import to the Ukraine (e.g. The Seattle Times, 3 June 2010). But Yanukovich made it clear in a speech, that the "*Ukraine should make use of its geopolitical advantages and become a bridge between Russia and the West. Developing a good relationship with the West and bridging the gap to Russia will help Ukraine. We should not be forced to make the false choice between the benefits of the East and those of the West [...] join the European Union when the time comes*" (Yanukovich 2010). Yankovich's rebalancing act is seen by Mykhaylo Pashkov from the Razumkov Centre for Political and Economic Studies as: "*This is about Ukraine choosing a foreign policy that will allow it to get the maximum result out of its cooperation with Russia, the EU and the U.S.*" (Pashkov In: Bloomberg 2010).

To underscore its new strategy for Ukraine's foreign policy, Yanukovich rejected Ukraine's previous intention to join the NATO. He and declared that, "*Non-aligned status is an objective need for new Ukraine, which is dictated by the contemporary geopolitical reality. By deciding not to join military alliances, we both alleviated significant tensions surrounding this issue at home and made a step toward improving security in all of Europe*" (Yanukovich in Kyiv Post, 29 March 2010e). The parliament approved on 15 July 2010 a law stipulating the country's non-aligned status. James George Jatras, Deputy Director of the American Institute in Ukraine, sees in Yanukovich's new foreign policy:

"[t]he starting point might be consideration of institutionalizing a form of Ukrainian neutrality, or 'Finlandizing' Ukraine, to ease Russian concerns about Ukraine's joining a potentially anti-Russian security organization, while giving Ukraine adequate security guarantees until a broader European security architecture is elaborated" (Jatras 2009).

5.2.3 *'In Values We Trust': Political Dialogue between 'Declaratory Europeanisation' and Living Values in Common*

Over the past 20 years, Ukraine has experienced far-reaching economic and political transformations. Ukraine has, besides the Baltic States and Moldova, certainly become a more democratic nation than other former Soviet countries. Ukraine's transformation since the breakdown of the Soviet Union was characterised by the gain of national sovereignty and the consolidation of the new leadership of Leonid Kravchuk (1991-1994) and Leonid Kuchma (1994-2004). Their ruling was criticised by the EU, Council of Europe and the OSCE for a lack of democratic governance, rule of law and transparency (e.g. COM 2010c; GRECO 2007; Kovryzhenko/ Chebanenko 2009; OSCE 2008: 400-430). The public disapproval with their corrupt leaders, the weak economic recovery and the lack of democratic procedures led to 2004 Orange Revolution. As observers noted (e.g. Bogomolov 2007: 2), "*the Orange Revolution was not about East versus West but about democracy versus autocracy*" (ibid.). Far more than changing its geopolitical approach, the EU was seen as a reference for reforms and enjoyed high esteem in the Ukrainian public.

The Ukraine has sought to integrate into the Western value system, defined by the EU, Council of Europe, OSCE, WTO and the UN. The Ukraine successfully adopted economic reforms, which led to the accession to the WTO in 2008. It was granted the market economy status by the EU in 2005. Ukraine became a member of 'Group of States Against Corruption' (GRECO) in 2006, and agreed with the Council of Europe on an anticorruption action plan in 2007 and cooperated with the Council of Europe's Venice Commission on constitutional reforms (COM 2008b). Moreover, it sought for a

membership to the NATO and was approved as a possible member of the Alliance in 2008 ('Bucharest Declaration', NATO 2008). The main reference for any reforms has been the EU. In 2005, the EU and Ukraine agreed on a common Action Plan, which, inter alia, contains measurements to improve Ukraine's democracy, human rights, rule of law, the principle separation of powers, judicial independence, economic and social reforms, as well as cooperation on foreign and security policy (COM 2005c: par. 2.1). In detail, measurements to implement the action plans concern, e.g.:

Figure 29. EU-Ukraine Action Plan (COM 2005c: par. 2.1)

- *Strengthen the stability and effectiveness of institutions guaranteeing democracy and the rule of law*
- *Further judicial and legal reform, so as to ensure the independence of the judiciary and strengthen its administrative capacity, and to ensure impartiality and effectiveness of prosecution*
- *Ensure the effectiveness of the fight against corruption*
- *Ensure respect of human rights and fundamental freedoms, in line with international and European standards*
- *Foster the development of civil society*
- *Ensure respect for the freedom of the media and expression*
- *Ensure respect for rights of persons belonging to national minorities*
- *Ensure equal treatment*
- *Further develop co-operation in addressing common security threats, including combating terrorism, non-proliferation of weapons of mass destruction and illegal arms exports*

EU's leverage in Ukraine's transformation process benefits from: the positive attitude towards the EU of the public; the elite's fear of RF dominance; and, the prospect of market integration. Western market integration should ensure the independence of Ukraine's industry. Ukraine became a willing "norm taker" although its implementation record is relatively weak. This is explained by the free-and-easy commitment of President Yushchenko, also termed as "*declarative Europeanisation*" (Wolczuk 2003). It got challenged by the lack of capacity and know-how in implementing public reforms. The willingness was based on the hope of an eventual EU membership. The EU has sent distinct signals to the Ukraine but the EU never declared a concrete membership perspective in any of its official agreements. In brief, the expectations of a fast EU integration have been a main motivation force behind Ukraine's efforts. In the meanwhile, this 'EU-phoric mood' has disappeared and a new pragmatism has been defining Ukraine-EU relations.

The Orange revolution and the election of Viktor Yushchenko as President of Ukraine in December 2004 marked a turning point in Ukraine's transformation. Yushchenko's policy was "unequivocally embarked on a course of Euro-Atlantic integration" (Larrabee 2007: 30). Ukraine progressed and was classified by the Freedom House index as politically free in 2006 onwards (e.g. Sushko/ Prystayrko 2010). The parliamentary (2006, 2007) and the 2010 presidential elections were quite free and fair; Civil Society groups got more than doubled since 2004; media is mostly free; and, the essential elements of free market competition have been established (e.g. Sushko/ Prystayrko 2010; Bertelsmann Transformation Index 2010).

Figure 30. State of Reforms in Ukraine

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Electoral Process	3.50	3.50	4.00	4.50	4.00	4.25	3.50	3.25	3.00	3.00	3.50	3.50
Civil Society	4.00	4.00	3.75	3.75	3.50	3.75	3.00	2.75	2.75	2.75	2.75	2.75
Independent Media	5.00	5.00	5.25	5.50	5.50	5.50	4.75	3.75	3.75	3.50	3.50	3.50
Governance*	n.a.	n.a.	4.75	5.00	5.00	5.25	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
National Democratic Governance*	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	5.00	4.50	4.75	4.75	5.00	5.00
Local Democratic Governance*	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	5.25	5.25	5.25	5.25	5.25	5.25
Judicial Framework and Independence	4.50	4.50	4.50	4.75	4.50	4.75	4.25	4.25	4.50	4.75	5.00	5.00
Corruption	6.00	6.00	6.00	6.00	5.75	5.75	5.75	5.75	5.75	5.75	5.75	5.75
Democracy Score	4.63	4.63	4.71	4.92	4.71	4.88	4.50	4.21	4.25	4.25	4.39	4.39
EBRD transition index	2.48	2.52	2.59	2.63	2.74	2.78	2.81	2.89	2.96	n.a.	3.07	n.a.

* Starting with the 2005 edition, Freedom House introduced separate analysis ratings for national democratic governance and local democratic governance.

Source: Freedom House, Nations in transit; EBRD, Transition report

According to observers (e.g. Moshes 2007, Bogomolov 2007) the achievements of the Orange revolution are remarkable and enabled a democratic Ukraine, which is unlikely to backslide into a post-Soviet autocracy style as observed in other former Soviet countries. But the democratic and economic transformation is incomplete.

"But it is no less evident that today's Ukraine is solely an electoral democracy – where people can indeed elect their future leaders – and not yet a full democracy, where their leaders conduct policies based on the people's interests and expectations and where voters can also affect the behaviour of the leadership during the term" (Moshes 2007: 24).

Ukraine still faces major problems challenging its recent democracy and market economy. As stressed by the democratic index of Freedom House, Ukraine still has a weak parliament, widespread corruption, intransparent decision-making and elements of an authoritarian culture in state institutions (e.g. COM 2010c; COM 2008b; Sushko/Prystayrko 2010; Moshes 2007). Yushchenko's reform efforts have partly failed due to the incapacity of the institutions to implement new laws and the constitutional order facilitating that the President and the Parliament can block each other; and, the collapse of the Orange bloc of Yushchenko and Tymoshenko. The latter is seen by Larrabee (2007: 30) as a matter of "*personal animosities and petty political ambitions*". After years of stagnation and corruption scandals, the electorate lost their faith in the former democratic elite and made Yanukovich to the new president.

Yanukovich's return to power had a sobering effect. But, Yanukovich made clear that he will continue further integration into the EU market and denied to join the RF's led Single Economic Space and the CSTO. He refused the NATO membership aspiration of his predecessor Yushchenko and declared that Ukraine will stay neutral between the two major blocs based on the role model of Finland. In brief, he sought a more pragmatic path for Ukraine, taking advantage of its geopolitical location and acknowledging the EU's refusal to consider Ukraine as a candidate state. Yanukovich attempts to gain the maximum benefit for his leadership, which means reaching a free trade and visa free agreement with the EU, safeguarding Ukraine's energy supply and returning to privileged energy treatment by RF. Moreover, he restored the supremacy of the President by reversing the constitutional amendments introduced after the 'Orange Revolution'. "*With the decision coming into force Ukraine re-establishes the presidential-parliamentary republic according to the initial version of the Constitution adopted in 1996*" (WNU, 1 October 2010). Yanukovich justified his move by referring to the ineffectiveness of the post-2004 political system and stressed the necessity of a strong president. The President would need "real powers to coordinate and control the implementation of key reform issues and the country's strategic course" (Yanukovich in Kyiv Post, 24 August 2010f).

5.3 Legal Basis and Institutional Framework of EU-Ukraine Relations

This section outlines the institutional architecture of EU-Ukraine interaction. Similar to the EU-RF relations, the EU-Ukraine relations are built on the PCA, which entered into force in 1998. The ENP in 2004 and the EaP in 2009 further deepened the cooperation in salient policy issues and aimed at a harmonisation of Ukraine's legislation with EU rules

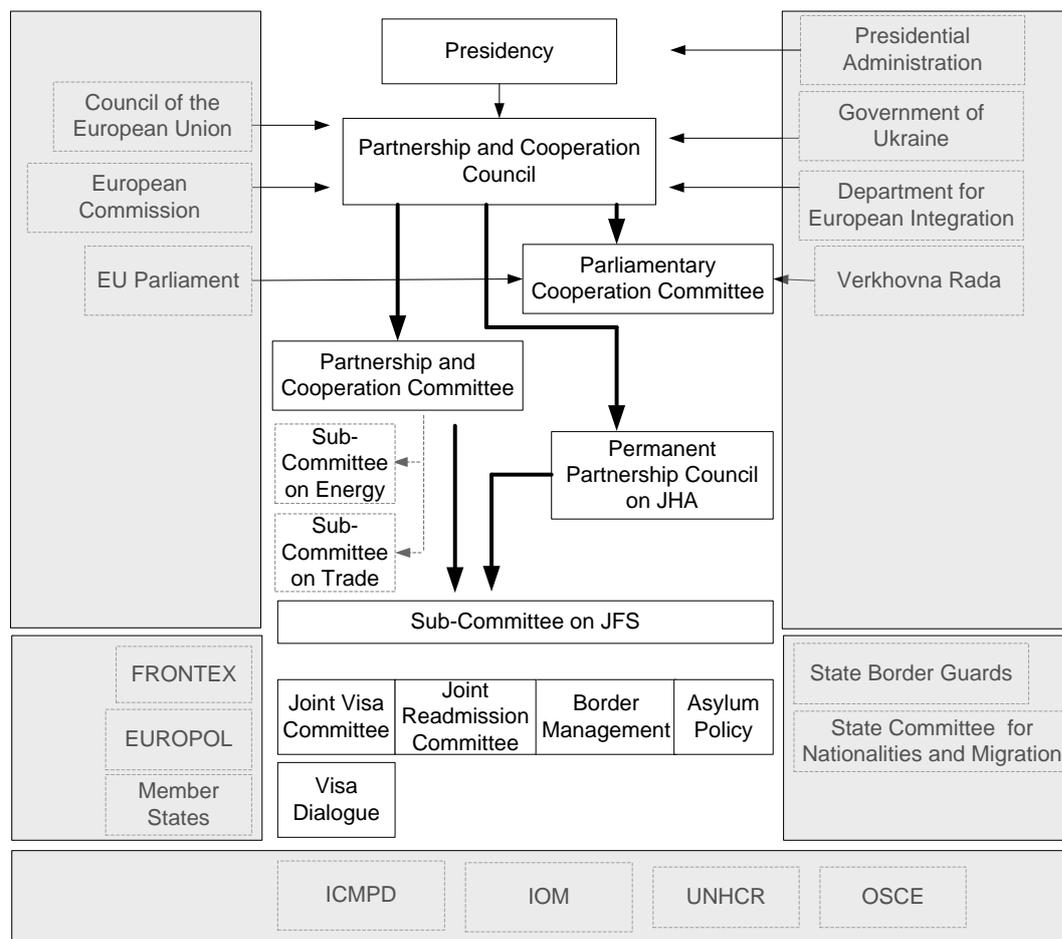
and norms. Several financial and technical assistance programmes of the EU, its member states and other IO's provide the financial means for the cooperation. This section will analyse the institutionalisation of legal approximation of EU laws within the Ukrainian executive bodies.

The main EU-Ukraine bilateral institutions, responsible for interaction on the political level, are defined by the PCA. Both signatories commit (EU-Ukraine PCA: Art. 1):

- 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;*
- to support Ukrainian efforts to consolidate its democracy and to develop its economy and to complete the transition into a market economy.*

The institutional structure provides, on the political level, regular consultation at annual Summit meetings between the EU High Representative for CFSP, the President of the Commission and the EU presidency and the Presidency of Ukraine (EU-Ukraine PCA: Art. 6-9). The 14th and most recent summit meeting was held in Brussels on the 22 November 2010. A Cooperation Council supervises the implementation of the agreed Action Plans. Members of the Ukrainian government on the one hand, and Council and Commission representatives, on the other, meet on an annual basis. The Cooperation Council is assisted by the Cooperation Committee. It monitors the implementation of the Action Plan on an expert level. It meets biannual and provides the Council with evaluations and recommendations. The Cooperation Committee includes seven Sub-committees, each standing for a specific policy area including: Trade and Investment (SC 1); Transport, Energy, Civil and Nuclear Cooperation, Environment (SC 4); Customs and Cross-Border Cooperation (SC 5); and, Justice, Liberty and Security (SC 6). The implementation of the action plan is also observed by a delegation of the European and Ukrainian Parliament, meeting twice a year. EU-Ukraine relations are complemented by formal and informal meetings between the EU Political and Security Committee, the EU Special Representative and their Ukrainian counterparts at the presidential administration, Ministry for Justice, Foreign Affairs and Defence.

Figure 31. Institutional Framework of EU-Ukraine Cooperation on Migratory Issues



Already in 1993, President Kuchma recognised the need of institutional innovation to come closer to the EU. The decree of 28 August 1993 established the Inter-Departmental Committee of Ukraine for the EU, which aimed at coordinating the cooperation with the EU (President of Ukraine 1993). This committee consists of deputy directors of ministries and other key institutions, such as the Chamber of Commerce or the State Custom Service (e.g. Shapovalova/ Ozymok 2008: 7). With the entry into force of the PCA in 1998, the institutional architecture was changed. To improve the coordination with EU institutions, new institutions were created (President of the Ukraine 1998b). Instead of the former inter-departmental committee, the National Agency for Development and European Integration was created. It functioned as a sub-unit of the Ukrainian Cabinet with limited executive power (President of Ukraine 2003c). The key role in the process of EU law alignment is taken by the respective Ministries – mainly the Interior, Justice, Trade and Economy – and their task-specific sub-units. These got also created in reaction to the PCA and were tasked to implement the National Strategy on Integration to the European Community (e.g. President of Ukraine 1999; 1998a). The Co-ordination Bureau for

European and Euro-Atlantic Integration got launched as the secretariat of the Cabinet of Ministers of Ukraine, tasked with the administration of the EU-Ukraine cooperation. On the political level, the main actors are, first and foremost, the Ministry for Foreign Affairs and its Department for European Integration. This is followed by the presidency and the Ukraine Committee for European Integration Issues at the Verkhovna Rada.

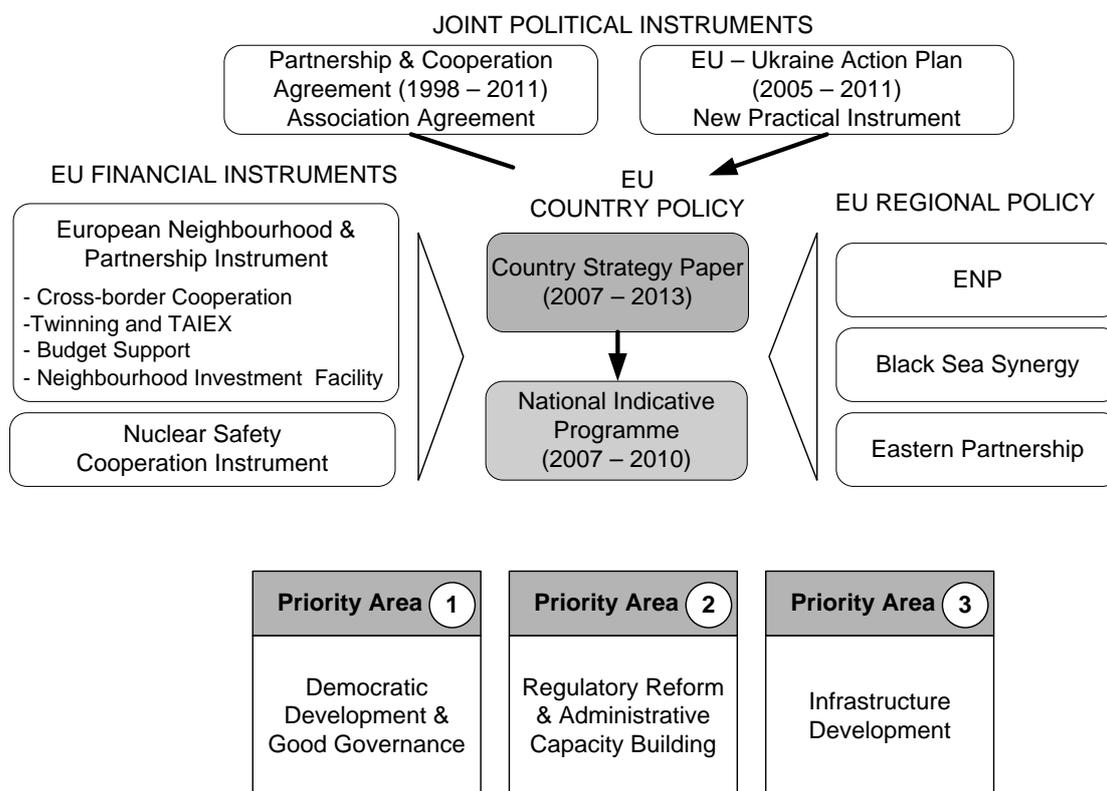
The institutional structure lacked a coherent strategy and clear guidelines. The progress in implementing EU law was rather low. Ukraine's rapprochement to the EU was limited under Kuchma. With the new ENP initiative, the cooperation got again intensified. The coordination of the EU rapprochement became a priority under Yushchenko presidency after the Orange Revolution. Yushchenko's pro-active strategy for EU integration was supported by the public. The Orange coalition of President Yushchenko and Prime Minister Tymoshenko made efforts to approximate Ukrainian law with the *acquis communautaire*. They transformed the former Centre for Comparative and European Law into the newly created State Department for Legislation Approximation (SDLA) in 2004. It became an extended mandate to supervise the adoption of the ENP action plan (e.g. Shapovalova/ Ozymok 2008: 9). The SDLA was modelled after similar institutions in candidate countries, as e.g. the Polish State Committee for European Integration (e.g. Wolzcuk 2007: 9).

In brief, following governmental bodies have been the key actors in coordinating the Ukraine-EU cooperation on law alignment: The European Integration Department (EID) is in lead and subordinated to the Cabinet of Ministers of Ukraine. The EID stays in close contact with other executive bodies in the respective ministries – Ministry of Foreign Affairs, Ministry of Economy, Ministry of Justice and Ministry of Finance –; aiming to define a common strategy on implementing the action plan (e.g. Shapovalova/ Ozymok 2008: 15). Despite the horizontal institutional architecture, there has been a lack of interdepartmental coordination. A clear division of competences and a common strategy of the actors SDLA, EID and the Parliamentary Committee for European Integration have been missing. According to Shapovalova and Ozymok (2008) this lack of a competent central body with a clear agenda to avoid a duplication of competences and ensure effective and coherent mechanisms to implement the Action Plan is problematic (e.g. *ibid*: 11). One reasons for the duplication of competences was the constitutional reform in 2006, which established a complicated sharing of competences between the President and the Prime Minister. This overlap of competences between the coordinating unit Ministry of Foreign Affairs on the one hand, and the implementing Ministries has been a key challenge in the path towards EU integration.

As discussed, the institutionalisation deepened with the ENP initiative in 2004. The EU widened its assistance mechanisms for the eastern neighbours to improve the alignment with the EU acquis, to create a common economic and security area and to avoid new dividing lines in that geopolitical area. In the ENP Commission Strategy Paper, the main objectives have been formulated as *“to give new impetus to cooperation with the EU’s neighbours following the enlargement. Relations with partner countries will be enriched drawing as appropriate on the experience gained in supporting the process of political and economic transition, as well as economic development and modernisation in the new Member States and candidate countries”* (COM 2004a).

A key element of the ENP is the three-year Action Plan, which identifies concrete targets and measures and should strive for *“full implementation of PCA commitments”* (COM 2005c: Art. 2.3.1). The Action Plans are negotiated jointly and are the basis for technical and financial assistance of the EU. In 2007 the EU introduced an extended assistance programme with the European Neighbourhood Policy Instrument (ENPI) for the period 2007 to 2013, which replaced the previous TACIS programme (Council of the EU 2006h). The ENPI is seen as *“a new framework for planning and delivering assistance is proposed in order to make the Community’s external assistance more effective”* (Council of the EU 2006e: Art. 1) and provides technical and financial assistance to harmonisation measures. EU’s assistance includes: the exchange of experts between public administrations of EU member states and a partner country (e.g. Twinning and TAIEX); the support of translating services for EU legislation texts; the training of implementing bureaucrats; the organisation of seminars to present best practice models; and, the application of new technologies and new procedures (e.g. Border Surveillance, biometric passports). All measures are identified in several stages: formulate common targets in crucial policy areas (Country Strategy Report, National Indicative Programme); conduct feasibility studies; monitor and evaluate its implementation with further recommendations for revised action plans (Progress Report). Besides the bilateral institutions, formally held responsible for these tasks, the EU and Ukraine launched the Ukrainian-European Policy and Legal Advice Centre (UEPLAC) and the Ukraine’s National Coordination Unit (NCU). They should facilitate the guidance and monitoring of Ukraine’s EU-law approximation.

Figure 32. Coordination of EU Assistance to the Ukraine



Source: Complementary Technical Assistance to the EU-Funded Budget Support to Ukraine's Energy Strategy Implementation. [Retrieved from <http://esbs.kiev.ua/en/eu-ukraine-cooperation/eu-ukraine-cooperation-and-assistance-framework>, 23 March 2011]

The total amount of EUR 494 mln. of the ENPI funding 2007-2010 concentrated on the following three priority areas: (1) Support for Democratic Development and Good Governance (30% of the total funding); (2) Support for Regulatory Reform and Administration Capacity Building (30%); and, (3) Support for Infrastructure Development (40%) (COM 2007h: 4). For the funding period 2011-2013, the budget got increased by 27 percent with a total amount of 470 mln. (COM 2010d: 9). The main ENPI funded programmes are the Governance Facility, Cross-Border Cooperation, Twinning and TAIEX. Apart from the ENPI, further thematic assistance programmes are provided, as e.g. dealing with: migratory issues (AENEAS), human rights (EIDHR), Border Surveillance (EUBAM), transport (TRACECA) and energy issues (INOGATE).

Despite many critics, the EU launched a new initiative on the 7 May 2009 at the European Council in Prague, which was thought as an attempt to take better into account regional differences. It added to the ENP a southern and an eastern specific policy, called Mediterranean Union and Eastern Partnership (EaP). The new EaP initiative addresses all six former Soviet countries (Belarus, Moldova, Ukraine, Georgia, Armenia, and Azerbaijan) and aims “to create the necessary conditions to accelerate political accession

and further economic integration between the European Union and interested partner countries" (European Council 2009). The EaP should offer a tailor-made initiative for the eastern neighbours, promoting cooperation on four thematic platform – Good Governance, Economic integration, Energy security and cross-border cooperation and contacts – at a multilateral level. Further novelties are: institutionalised sector-specific ministerial meetings once a year; the establishment of the EU-Eastern partners Parliamentary Assembly (EURONEST); and, the involvement of non-state actors within the EaP Civil Society Forum. Joe Boonstra and Natalia Shapovalova (2010) expect that *"through government meetings and due to the involvement of non-state actors, the multilateral track activities open up a number of channels for socialisation and social learning"* (ibid: 6). The EaP is less institutionalised than the Mediterranean Union, which has its own secretariat. The EU Commission solely administers EaP activities and meetings (e.g. Drescher 2009: 10). Despite the multilateral approach, Boonstra and Shapovalova (2010) criticises its regional limitation, without a suitable mechanism to include third countries, at least on a case-by-case base. They suggest extending the level of participation to countries crucial for regional specific issues, as the RF and Turkey and to major donors in the region, as the USA and Japan, and IO's, as the OSCE, the Council of Europe and the UN (ibid: 8).

5.3.1 Excursus: EU-Ukraine Association Agenda: Facilitate Interaction and Increase Ukraine's Commitment through New Contractual Relations

The Ukraine didn't seem to be satisfied with the recent foreign policy initiatives of the EU – the ENP and EaP (e.g. Linkevicius 2008; Korduban 2009). Both initiatives undermined Ukraine's hopes for full EU integration. The country perceived the EU's policy as a stalling tactic to avoid a clear stance on the issue of membership. The main criticism was that the EU has put all neighbouring countries under one umbrella, neglecting the distinct ambition and efforts of these countries' EU rapprochement (e.g. Linkevicius 2008: 77). Gromadzki and Sushko (2005) state: "Ukraine's initial reaction to the ENP was that of indignation for being put in the same basket with clearly non-European countries of Northern Africa and the Middle East" (ibid: 6). However, Ukraine showed a positive will while trying to realise a privileged relation with the EU. According to Ukraine's progress in EU law alignment and the 2008 expired PCA, the EU and Ukraine are ready to open the next stage of their relation and have started the negotiations on an enhanced agreement (NEA).

The negotiations on a NEA have lasted since 5 March 2007. The Council authorised them on the 2 January 2007 and defined the guidelines and procedure (COM 2007d). The NEA will offer a privileged partnership. It aims at realising the maximum of political and

economic integration beyond an EU membership. This is in line with the famous speech of Commission President Prodi in 2002 emphasising that the EU is “*offering everything but institutions*” (Prodi 2002). The NEA will be similar to a Europe Agreement (EA) with the candidate countries of CEE-countries, the Stabilisation and Association Agreement (SAA) with the Western Balkan countries (e.g. Hillion 2007: 174) or the Euro-Mediterranean Association Agreement (EMAA) with Southern ENP countries (e.g. Council of the EU 2005f). Therefore, the NEA would be an association agreement in form and function based on Article 310 EC.

This implies that the NEA will be a legally binding instrument – in contrary to the previous instruments. This will require a reform of the current institutional arrangements into a more “*active and influential framework*” (ibid.: 179). A central decision making organ (e.g. an Association Council) with clear powers and tasks will be set up, as “*already conferred upon the EMA’s association councils*” (ibid.: 180). The NEA is a further development of the EU-Ukraine’s contractual relations, increasing the commitment of both partners which “*go beyond and above the PCA with respect to cooperation, in various fields*” (ibid.: 171). The former instruments, as the ENP Action Plan, the EaP and other arrangements in existence, will remain in place to support Ukraine’s alignment process. An innovation has been the initiation of a new policy instrument called the EU-Ukraine Association Agenda which aimed at preparing and facilitating the implementation of the Association Agreement (EU-Ukraine Cooperation Council 2009). The new instrument got approved at the thirteenth meeting of the EU-Ukraine Cooperation Council held on 16 June 2009. As a first result, the Joint Committee at Senior Official’s Level (JCSO) was established on 25 November 2009. It is responsible for the monitoring of the progress in terms of implementing of the Association Agenda (Ukrainian Government 2010).

In short, the NEA will offer an enhanced opportunity for EU integration, although it will not tackle the issue of membership. In its form and function, it is similar to previous EA’s, which have led, in the past, frequently to a membership perspective in the medium term. The NEA is therefore of great attractiveness to Ukraine and was used by the EU as leverage to induce Ukrainian reforms. Important examples were the alignment of EU regulatory standards in trade policy and the definition of WTO membership as a prerequisite for the start of negotiations. Further, the realisation of free and fair parliamentary elections in 2006 made conditional on its opening.

5.4 Governing Migration Management within the EU-Ukrainian Space

In view of the altered situation in its Eastern neighbourhood, the EU intensified its effort to “develop partnership and practical cooperation between the European Union, its Member States and Ukraine in the field of justice and home affairs” (Council of the EU 2003c). JHA issues are at the very core of the relations next to trade. The priorities on JHA-issues are defined by the EU-Ukraine JHA Ministerial Troika meetings. The cooperation is laid down in the JHA Action Plan of 2001/2003 (Council of the EU 2003c), the EU-Ukraine ENP Action Plan of 2005 (Council of the EU 2005e), the revised JHA Action Plan of 2007 (Council of the EU 2007a) and the EU-Ukraine Association Agenda, adopted by the EU-Ukraine Cooperation Council on 23 November 2009 (COM 2009c).

The EU-Ukraine cooperation is a particularly advanced one in the Eastern neighbourhood and serves as role model for other third countries. The EU is interested to minimise the risks related to various kinds of legal and irregular border crossing, and considers issues such as border surveillance, readmission of people and the treatment of asylum seekers according to international standards as a priority. If cooperation on these issues is successful, the EU might become willing to consider the facilitation of the issuance of visa or, in the long term, the abolition of visas. This should ensure improved mobility throughout EU-Ukrainian space and improve cross-border cooperation of economic, social and cultural character.

In detail, the migratory related priorities, assigned in the revised EU-Ukraine JHA Action Plan (Council of the EU 2007a: 3-6), include, inter alia:

Figure 33. EU-Ukraine JHA Action Plan (pages 3-6)

Concerning institutions and procedures:

- *Develop an appropriate legislative framework related to migration management;*
- *Establish the State Migration Service of Ukraine in order to ensure an adequate intraagency cooperation at central, regional and local levels through the combination of existing structures;*
- *Discuss statistical key data and information on migration management, including illegal migration and best practices;*
- *Assess the scale of illegal migration via Ukraine and monitor migratory movements. Elaborate risk assessment and participate in international assessments on flow of illegal migrants of relevance for Ukraine and systems of early prevention of illegal migration;*

- *Increase participation in regional and international migration-related cooperation networks and fora;*
- *Examine with EU Member States and the Commission possibilities for cooperation to improve the management of migration flows, including the assessment of statistics and measures to fight illegal migration;*
- *Promote Ukrainian efforts to ensure the issuance of secure travel documents and the development of issuing procedures corresponding to the minimum security standards adopted by the EU;*
- *Prosecute persons using multiple identities;*
- *Promote the introduction of machine-readable passports and travel documents and encourage further harmonisation of their security features, including biometric identifiers based on ICAO standards;*
- *Increase the use of the Interpol database on lost and stolen blank and issued travel documents (ASF-STD) by national law enforcement agencies;*

Border Management

- *Adopt, develop and implement an integrated border management strategy;*
- *Enhance inter-agency cooperation among State authorities involved in border management, including the clear division of responsibilities and competencies of all agencies. Strengthen the institutional and administrative framework and the capacity to implement border controls as well as improving border surveillance;*
- *Improve the existing legal framework and procedures of integrated border management in particular at border crossing points;*
- *Support the process of delimitation and demarcation of Ukrainian borders that are presently not demarcated according to international standards;*
- *Support the setting up of a system of mobile Border Guard units, both at the border and covering the in-land territory;*
- *Continue support for improvements of border crossing points, in particular through exploring the advantages of a joint use of infrastructure;*
- *Review recruitment procedures for the State Border Guards Service and existing staffing system. Reduce as quickly as possible the use of conscripts for carrying out border management tasks;*
- *Develop basic and specialised training for staff involved in border management functions;*
- *Strengthen cooperation on issues regarding border management and improve cooperation between the units on the common border. Facilitate the exchange of information by introducing a system of joint contact offices;*
- *Develop working arrangements on operational cooperation with FRONTEX, including evaluation, analysis and management of risks;*

- *Continue cooperation with Moldova on border issues and with the EU Border Assistance Mission on the Ukraine-Moldova border;*
- *Engage actively in, and ensure practical follow-up to, the trilateral expert talks on border related issues involving Ukraine, Moldova and the European Commission;*

Visa Facilitation

- *Conclude the EC-Ukraine Agreement on facilitation of the issuance of visas with a view to entry into force at the same time and parallel implementation with the EU-Ukraine readmission agreement; recognise that the introduction of a visa free travel regime for the citizens of Ukraine is a long term perspective;*
- *Encourage EU Member States to apply the common consular instructions as regards the documents to be submitted when applying for short-stay visas;*
- *Establish an online connection between the Ministry of Foreign Affairs, border crossing points, the Ministry of Interior and diplomatic missions and consular posts abroad, supported by a National Visa Register;*
- *Implement decisions already taken on limiting the number of documents accepted for entry into Ukraine by citizens of third countries;*

Return Policy

- *Conclude the EC-Ukraine readmission agreement with a view to entry into force at the same time and parallel implementation with the EC-Ukraine Agreement on facilitation of the issuance of visas; monitor implementation of the readmission agreement in the joint readmission committee under this agreement;*
- *Ensure appropriate conditions in detention centres for illegal migrants; ensure compliance with European standards of the administrative legislation in respect of persons detained for illegally crossing the Ukrainian border; ensure appropriate judicial control over all decisions on detention longer than 72 hours;*

Refugee Protection

- *Implement the 1951 UN Convention relating to the status of refugees and i.a. its 1967 Protocol, including the right to seek asylum¹ and respect for the principle of 'nonrefoulement' by all countries in accordance with European standards and in cooperation with UNHCR where appropriate;*
- *Develop further legislation on asylum in accordance with European standards and in cooperation with UNHCR where appropriate;*

- *Improve procedures related to treatment of applications on refugee status and asylum in accordance with European standards;*
- *Register and document efficiently all asylum seekers and refugees;*
- *Resolve issues related to subsidiary, humanitarian and temporary protection by adopting and implementing relevant legislation;*
- *Improve the conditions in reception centres for asylum seekers;*
- *Support, where appropriate, the objectives above, including through the pilot Regional Protection Programme;*

These priorities of the 2007 EU-Ukraine Action Plan on JHA seek to improve the handling of migratory issues, including guaranteeing migrant rights, freedoms and legal interests.

In the following, the study examines the applied modes of cooperation in these migratory-related issues. Importantly, the EU has sought to improve the legal and institutional framework. It has financially and technically supported the strengthening of crucial principles of democratic and good governance; rule of law; and, fundamental rights. The main objectives have been to implement the respective EU acquis and support Ukraine in aligning with international standards and values in handling legal and irregular migration. This includes the respect of refugee seekers' rights and the human treatment of detained migrants, without a valid residence permit. The EU does put an emphasis in its migration management that Ukraine does not only establish these laws, but also that they are implemented in the day-to-day practice. The main problems to realise this relate to the low-skilled staff, a lack in capacities and inadequate facilities.

The EU has been aware of the need of capacity building in Ukraine's administration. Its general (e.g. Governance Facility) as well as thematic programmes (e.g. CBC, AENEAS) provided funding to implement a set of legislative, institutional and organisational. Within these programmes, several projects (e.g. GDISC-ERIT⁴¹, CBMM⁴²) got implemented, with the assistance of the main IO's in the field of migration management: IOM and ICMPD. In the case of fundamental rights the UNHCR has been a main partner, in border management the EU agency FRONTEX and in combating human trafficking EUROPOL.

⁴¹ The EU-funded project „Capacity Building and Technical Support to Ukrainian authorities to Effectively Respond to Irregular Transit Migration – A comprehensive and complementary approach to migration management support in Ukraine (GDISC-ERIT)” gets implemented by ICMPD and facilitates knowledge transfer on good governance between the migration services of six EU Member States (Czech Republic, Hungary, the Netherlands, Poland, Slovakia and the United Kingdom) and Ukraine.

⁴² The EU funded programme „Capacity-Building of Migration Management: Ukraine (CBMM)” gets implemented by IOM and aims at improving Ukraine's migration management capacity by establishing five holding facilities for the State Border Guards Service (SBGS).

The financial and technical assistance has sought to contribute to the modernisation of facilities and equipments and the improvement of law enforcement through knowledge transfer. The scope of action of EU agencies was enlarged for these purposes. The Ukrainian-European Policy and Legal Advice Centre (UEPLAC) was established by the EU Commission and the Ukrainian government with the mission to facilitate the legal approximation with EU law⁴³. Its areas of responsibility include the consultation with Ukrainian authorities on drafting legal texts, the conduct of comparative legal studies, the facilitation of information and best practices, the training of public servants in rule enforcement and, the monitoring as well as the evaluation of the implementation of legal texts.

Apart from EU's support for legal reforms, it called for major institutional and organisational reforms in Ukrainian's to ensure the enforcement of adopted laws. An objective has been the merging of competences by creating a single authority being in charge of developing and implementing migration policy. According to the EU-Ukraine JHA Action Plan of 2007, a central State Migration Service supervised by the Ministry of Internal Affairs should be created. This new State Migration Service should combine several tasks of migration management by superseding the Migration and Refugees Department under the State Nationalities and Migration Committee (SNMC) and the State Department for Nationality, Immigration and Registration of Private Individuals under the Ministry of Internal Affairs (e.g. ICPS/ IPA 2006: 34).

These reforms have sought to reverse the former duplication of competences, which came as a by-product of the institutional mess after the constitutional reform of 2006. After this reform, parts of migration policy were under the control of the Ministry of Foreign Affairs – subordinated to the presidential administration –, and the Ministry of Internal Affairs – subordinated to the Prime Minister. Similar reforms have been encouraged by the EU for the State Border Service, suggested to be placed only under the Ministry of Internal Affairs (ibid.: 36). In both areas, the Ukraine achieved substantial progress (e.g. Jaroszewicz 2011). The merging of several competences in the field of migration management under one roof, entitled the State Migration Service, was approved by a presidential decree of the 9 December 2010, which sought to optimise the public administration (President of Ukraine 2010). The decree No. 1085 foresees a considerable

⁴³ For an overview of legal reforms in Ukraine in the area of JHA: UEPLAC (2008): The inventory of Ukrainian Legislation and policy on the sectors covered by Action Plan on Justices, Freedom and Security. UEPLAC working document. [Retrieved from http://ueplac.kiev.ua/downloads/outputs/assessments/08_inventory_JFS/inventory_JFS.pdf, 12 March 2011]

administrative reform. It centralises the tasks and competences by closing 43 governmental agencies throughout all policy areas, inter alia in migratory-related areas. As Jaroszewicz (2011) emphasises in her analysis

“the recent decision to set up the migration service is just a first step towards the creation of an effective system of migration management. The main problem of the new service will be the creation of a civil system for registering foreigners, issuing residence permits, granting refugee status, monitoring the migration situation, and coordinating migration policy in a situation when its supervisory authority (the Ministry of the Interior) remains an unreformed, policy-type bureaucratic institution, which is focused on combating illegal migration rather than legalising migrants” (Jaroszewicz 2011).

The most effective mode to ensure alignment with the EU's acquis communautaire is the use conditionality, offering rewards in return for successful implementation of reforms (e.g. Schimmelfennig 2007). This mode was particularly successful in the rapprochement of candidate countries to the EU. The membership perspective was a crucial motivation force for these states. This incentive is now missing in the EU's policy towards the ENP countries. Already in the PCA, the EU included a human rights clause (Council of the EU 1998a: Art. 2) as a prerequisite for the agreement's entering into force. The conditionality scheme is also a main principle of the EU-Ukraine JHA Action Plan of 2001 and 2007 as well as the Association Agenda of 2009. The EU's strategy is to create beneficial outcomes for Ukraine. This includes putting together acceptable package deals, to outweigh the implementation costs by adequate fund and, to elaborate a credible road map with step-by-step measurements to reach an attractive incentive in a more long-term. This conditionality mode was also applied in the EU-Ukraine cooperation on migratory issues. The EU has held out the prospect of financial assistance in the case of implementing the agreed action plans. Also, the attractive incentive of visa facilitation was used as a reward for signing the readmission agreement (Council of the EU 2007b). Both agreements entered into force on 1 January 2008. This package deal worked out rather well, although the Ukrainian side was quite disappointed about the final result of the rewarded visa facilitation.

“Daher ist die Ukraine enttäuscht, da sie realisiert haben, dass nicht der große Wurf gelungen ist und die Verfahren nach wie vor großen bürokratischen Aufwand bedürfen. In diesem Punkt ist eine Erleichterung sicherlich nicht gelungen” (Interview with Official from the German embassy, Kyiv, 18 September 2009).

The EU has used the prospect of a total lift of visa requirements for other reforms in the area of border management and visa policy. For that reason, the EU published a road

map (EU-Ukraine visa liberalisation action plan cited in: Kyiv Post, 24 November 2010g) with concrete actions to be taken before the abolition of visa requirements. It installed the visa dialogue, which consists of senior officials who observe the progress made by the Ukrainian administration.

The issue of visa requirements for entering the EU is a salient issue in Ukraine. At each election campaign since 2004, the abolition of visa requirements for the EU has been a central topic and has been debated explicitly by politicians and the electorate (e.g. Interview with Official from the German Embassy, Kyiv, 18 September 2009). The Ukraine, announced the unilateral lift of visas for EU citizens in 2005, in the wave of hosting the Eurovision Song Contest (e.g. EU-Ukraine Cooperation Council 2008: 5).

“Visapolitik ist ein hochsensibles und hochemotionales Thema, wobei mit falschen Erwartungen gespielt wurde und wird. [...] Im Falle der Ukraine hatte es zu hohe Erwartungen gegeben, die zum Teil auch gezielt von den verantwortlichen Politikern geschürt worden sind. Vor allem vor Wahlen” (Interview with Commission official, DG JFS, Brussels, 17 April 2009).

“[...] if you go to Kreschatik (main shopping boulevard in Kyiv) and ask the people about the EU – it’s all about visa” (Interview with Official from the Ukrainian Foreign Ministry, Kyiv, 18 September 2009).

The Ukrainian hopes for a fast track to a visa-free regime, however, weren’t met by the EU. The EU rather, asked for further reform efforts by Ukraine. Government officials such as the Foreign Minister Pjotr Poroschenko in an Interview with the Ukrainian weekly ‘Korrespondent’ in January 2010 create hopes that a visa-free regime with the EU is installed soon (e.g. Ukraine Nachrichten 2009). At the same time, officials threaten the EU with the re-introduction of visa for EU citizens (e.g. Ukraine Nachrichten 2010). Such statements, however, are more propaganda directed to Ukrainian citizens as the re-introduction of visa requirements would cost a lot of money and harm Ukrainian business development (e.g. Interview with Official from the German Embassy, Kyiv, 18 September 2009).

The implementation of the visa facilitation agreement and the readmission agreement is further observed by a joint committee. Both agreements are framework agreements that leave specific regulations and requirements open for bilateral negotiations in these joint committees. They consist of senior officials and experts of the relevant administrative bodies, as e.g. representatives from the EU Troika and, Interior Ministry, State Border Guards as well as Ministry of Foreign Affairs and the Ministry of Health. Within this institutionalised meetings, the members develop detailed provision to implement the

agreements. The subject concern the readmission of irregular migrants to the country of origin or transit on the one hand, and to regulate and enable the facilitation of visas for Ukrainian citizens on the other (Council of the EU 2007b; c). The respective joint committee deal with issues such as readmission procedures (Art. 5-9), identification and documentation of readmitted individuals, data protection (Art. 13), submission of a readmission application between the contractual parties and the guarantee for refugee seekers' rights by mandatory checks (e.g. ICPS/ IPA 2006: 17f.). Apart, both, the EU and Ukraine, also agreed on the readmission of third country nationals after three years of entry into force of the agreement. Ukraine, therefore, have agreed to take care about irregular residents in the EU, who entered the EU through the Ukrainian territory; and, take them back. Anyway, as officials from the German embassy in Kyiv and officials from the Council affirmed, the EU will in that case, firstly try to return the individuals to their countries of origin as they are afraid that individuals, who are returned to Ukraine, will again try to enter EU territory (e.g. Interviews with: Official from the German Embassy, Kyiv, 18 September 2009; and Officials from the Council, Brussels, 21 April 2009).

In the case of the visa facilitation agreement, a key subject has been the definition and clarification of certificates (Art. 4). To ensure implementation, the EU has granted readmission-related assistance for improving infrastructure and capacity to deal with irregular migrants. This includes the building of detention centres and the training of responsible staff in dealing with irregular migrants (COM 2007i: Annex II).

Regarding Ukraine's objective of establishing a visa-free regime, the parties agreed at the EU-Ukraine summit in Paris on 9 September 2008 on the launching a "*visa dialogue, developing the relevant conditions, with the long-term perspective of establishing a visa free regime between the EU and Ukraine*" (Council of the EU 2008d). In some meetings of the visa dialogue, the current Action Plan on Visa Liberalisation was drafted and adopted on 22 November 2010 (e.g. Council of the EU 2010d: Art. 7). It sets requirements in four key spheres: (1) Document security, including biometrics; (2) Illegal immigration, including the full and effective implementation of the EU-Ukraine readmission agreement and of asylum policy provisions; (3) Public order and security, as combating organised crime and corruption, judicial protection and data protection; and, (4) External relations and fundamental rights, concerning the free movement within Ukraine, conditions and procedures for issuing identity documents and the protection of citizens' rights (EU-Ukraine visa liberalisation action plan cited in: Kyiv Post, 24 November 2010g). The Action Plan on Visa Liberalisation again is based on conditions to be fulfilled in order to reach the final goal of a visa-free regime. The EU hence uses visa-free incentive in diverse policy

areas, ranging from readmission of irregular migrants, border surveillance, refugee protection and data protection (which would be a necessity to launch the process of issuing biometric documents).

To conclude, both, the conditionality mode and regulatory networks are used in EU-Ukraine cooperation. Both modes result in aligning Ukraine's legislation with that of the EU. Increasingly, the EU has applied soft modes, seeking for persuasion by: (1) promoting best practice models of policy regulation and facilitating the exchange of information and knowledge; and, (2) offering sufficient financial and technical assistance to help the Ukraine in implementing needed reforms. According to the theoretical model, presented in section 3.1.3, these modes correspond to information and implementation networks between the EU and Ukraine. Several projects and programmes (e.g. TAEIX, Twinning, UEPLAC, CBMM, AENEAS), financed by the EU, aim to support Ukraine in reforming its legislation. The assistance is provided for implementing reforms on border surveillance, document security, human resources, combating corruption, police cooperation on human trafficking, data protection, processing readmission and application for asylum and custom control. It also seeks to tackle the weak capacity by improving infrastructure (e.g. reception and detention centre) and high-tech equipment (e.g. biometric technology).

Regarding border security, a major project was initiated on the 30 November 2005 between the Ukrainian-Moldovan borders, called the EU Border Assistance Mission at the Ukrainian-Moldovan border (EUBAM) (Council of the EU 2005h). The main objectives which were defined by a 'Memorandum of Understanding' between the three contractual parties are as follow: to contribute to the implementation of the EU ENP Action Plans with Ukraine and Moldova; to build up appropriate operational and institutional capacity to ensure effective border control and surveillance; to reduce possible security threats originating from the frozen conflict in Transnistria; and, to improve transnational cooperation on border management (COM 2005d: Annex). EUBAM is funded by the ENPI and has its headquarter in the Ukrainian city Odessa. Similar programmes, named ENPI Cross Border Cooperation (CBC) programmes), got initiated at the sea and land borders: Black Sea Basin, Romania/Ukraine/Moldova, Hungary/Slovakia/Romania/Ukraine and Poland/Belarus/Ukraine (COM 2010c: 23).

Other thematic programmes, called Regional Protection programme (RPP) (COM 2005e) and 'for the Cooperation with Partner Countries in the Areas of Migration and Asylum (AENEAS) (COM 2006a) were set up by the EU in Ukraine to comprehensively tackle asylum issues. The regional dimension of these two thematic programmes is eye-catching

and shows the EU attempt of implementing region-wide standards in border management, readmission and refugee protection, based on its own legislation in the field.

Apart from the EU's thematic assistance, EU agencies were also active in the EU's cooperation with third countries. Frontex signed a working agreement with Ukraine on border management issues on 14 September 2007 at the EU-Ukraine summit in Kyiv (Council of the EU 2007d). The new working agreement enables the Ukrainian Border Guard Service to benefit from Frontex training tools, which are "*aimed at making the Service 'Schengen compatible'*" (EU-Ukraine Cooperation Council 2008:6). In addition, several projects got implemented by IO's as the IOM and ICMPD and agreements with the EU agencies Europol and Eurojust are being negotiated.

In brief, we can observe, in addition to the conditionality mode in negotiating on a visa-free regime and regulatory mode within the joint committees on visa facilitation and readmission, widespread activities of information and implementation networks to implement reforms on border control and border management, refugee protection, and return policies.

5.5 Conclusion: Policy Networks in Asymmetric Relationships

The relationship between the EU and Ukraine is out of the ordinary. Due to its size, geopolitical location, economic potential, and positive attitude towards EU membership, Ukraine is of strategic importance in the EU's neighbourhood. However, in order to analyse Ukraine's economical and political developments, its crucial historical, cultural, economic and security ties with the RF must be taken into account. Ukraine is central to the EU's success in its neighbourhood policy. Despite internal deficiencies and a challenging geopolitical position, Ukraine has demonstrated its willingness to integrate into the Western and EU hemisphere. It can be a role model for other neighbouring countries and is a litmus test for the EU's capability to act as a regional power.

EU-Ukraine relations have intensified since the Orange revolutionary upheaval in 2004 and the coming into power of the pro-Western coalition of Yushchenko as President, and Tymoshenko as Prime Minister. The EU launched several policy initiatives for neighbouring countries in Eastern Europe, such as the ENP in 2004 and the EaP in 2009. It also strengthened the financial and technical assistance programmes to support cooperation with these countries. Although Ukraine has complained about a lack of a concrete prospect for membership in these initiatives, it has become a front-runner in implementing the policy objectives. It is currently negotiating a new Enhanced Agreement

with the EU, which would include further integration into EU institutions and policies, but, again, would lack a membership perspective.

Ukraine's leaders emphasise their willingness to integrate as soon as possible into EU institutions. Their priorities include visa-free travel and a common trade area. Necessary reforms, however, have been more declarative and poorly implemented due to internal political crises and weak administrative capacities.

"[with the 'Orange Revolution' and the ENP] we really started cooperation with Ukraine, and it was fully intensive as the one with Russia. But since then they have been disturbed by major internal political crisis" (Interview with Commission official, Council/Dpt. on JHA, Brussels, 21 April 2009).

Apart from domestic factors, this study focused on the impact of external conditions on EU-Ukraine cooperation as well as its applied modes and instruments. Due to the fact that EU-Ukraine cooperation became increasingly institutionalised and legalised since the PCA in 1998, the study inquired into the pre-conditions for such an institutionalisation of the EU's external policy. The analysis considered the main parameters of IR to be bargaining power and credibility. Furthermore, issue-specific parameters, such as cost-benefit calculation, issue salience and international normative pressure, have been taken into account.

The EU-Ukraine relationship is an asymmetrical one. Ukraine can look back on a difficult and uncertain transformation process from a Moscow-led autocratic regime to a democratic political system and from a planned to a market economy. Its geopolitical position in between the EU and the RF – two regional powers – is seen as both a burden and an opportunity to function as a bridge between them. For the moment, Ukraine was a battleground for the EU and the RF in their struggles for influence in the common neighbourhood. The national sovereignty of the Ukraine, therefore, has been challenged, first and foremost, by its dependencies on the RF. However, the membership incentive may contribute to Ukraine's reduction of this dependency.

The EU, in general, has a variety of rewards to offer, apart from the prospect for membership. Visa-free travel, a free-trade agreement, and an association agreement are all attractive leverages, set as conditions to make Ukraine implement policy reforms. The EU can define the cooperation by setting conditions and offering desirable rewards. The EU's strategy has been to deepen cooperation and integration with Ukraine without offering it a prospect for membership.

Because of the EU's advantages in bargaining power, conditionality in EU-Ukraine cooperation works rather well. Nevertheless, the EU introduced several networks to facilitate further reforms and assist in their implementation. With the forthcoming NEA, the EU strives for a "*genuine enhancement of their cooperation*", strengthening the "*obligations foreseen by its provisions*" (Hillion 2007: 182). The Ukrainian side, however, wishes to have an EU membership prospect included in the agreement. "*If the EU membership prospects of Ukraine are not reflected in the association agreement with the European Union, this agreement will be empty*" (Ukrainian President Viktor Yanukovich cited in Ukraine Media, 20 Oktober 2011). Currently, the negotiations of the EU and Ukraine on a trade and association treaty came to an end in October 2011 and should be ratified in the upcoming weeks (Wallstreet online 2011). But, according to the politicised trial on former Prime Minister Tymoshenko and her part in a gas deal with the Russian Gazprom, the EU stopped the process and the further development on the ratification of the agreement is uncertain (ibid.)

"The EU will reflect on its policies towards Ukraine. The way the Ukrainian authorities will generally respect universal values and rule of law, and specifically how they will handle these cases, risks having profound implications for the EU-Ukraine bilateral relationship, including for the conclusion of the Association Agreement, our political dialogue and our co-operation more broadly" (High Representative Catherine Ashton In: COM 2011c).

An enhanced system of monitoring and evaluation would allow the EU to guide Ukrainian reforms, and would also increase the chances of successful implementation and enforcement of legal reforms (e.g. Shapovalova 2008; Hillion 2007). The formulation of common procedures and rules, as well as the introduction of several networks, has created a stable framework for cooperation that has remained in place even after major changes in the political environment, such as the election of the RF-oriented Yanukovich as Ukraine's president.

However, the EU's positive conditionality approach is challenged by Ukraine's disappointment over rewards that fail to meet its expectations (e.g. visa facilitation agreements) and, the unclear 'finalité' of their relationship. The new president Yanukovich again, stresses Ukraine's endeavour on becoming a fully-fledged EU member one day, and, hence, resume Ukraine's foreign policy under the Orange bloc.

"The lack of membership perspective along with the ill-defined goal of the ENP has limited its impact on Ukraine" (Wolczuk 2007: 20).

"Regardless of the fact that some member states don't want to pursue further integration, our position remains unchanged. [...]Some sceptical member states would like to hear

from us: 'You don't like us. So we are going into the Customs Union [with Russia].' But this is not the case. I re-iterate - this is not the case. [...] Despite what you may want, we continue to aspire to one day become a fully fledged member of the European Union" (Ukraine's ambassador to the EU, Kostyantyn Yeliseyev In EuObserver, 21 October 2011)

Hence, the EU's credibility as a partner has suffered, given that Ukraine feels that it must bear the burden of costly reforms without the promise of the ultimate carrot. Nevertheless, the institutionalisation of their relationship has made cooperation more predictable and has, in a sense, compensated for this lack of EU credibility.

The EU has provided widespread financial and technical assistance to support costly reforms. Interaction within networks has helped persuade Ukraine of the necessity and advantages of these reforms. Together with the degree of issue salience, the possible costs have determined the degree of their cooperation's legalisation. If the issues were salient and costly, both actors aimed to tackle these issues in an unbinding, depoliticised, and loose framework (e.g. visa dialogues; human rights consultations). In the case of salient issues, both have sought to depoliticise them, by defining technical preparations that must be implemented (e.g. a road map on a visa waiver agreement) (e.g. Jaroszewicz 2011). In such cases, the cooperation has taken place within information networks that include experts from both administrations. To tackle the issue of visa facilitation and readmission, both partners have agreed on an imprecise framework agreement, whose implementation is coordinated within regulatory networks of officials from both sides.

Finally, the study elaborated on the impact of international normative pressure on the cooperation between the EU and Ukraine. As in the case of Ukraine, its leadership adheres to international laws and standards, as long as they support its national sovereignty and limit the influence of the RF. The EU is seen as Ukraine's promoter in the international community, an example of which is EU support for Ukrainian access to the WTO. Some EU member states are strongly in favour of integrating Ukraine into the Euro-Atlantic security regime.

6 EU-Belarus Cooperation beyond Political Dialogue

This chapter takes stock of EU-Belarus relations in due consideration of their mutual dependencies, Lukashenko's autocratic regime, and the role of the RF. In the light of these matters, I seek to explain the possibilities and limitations of EU-Belarus cooperation on migratory issues. The attention, however, is mainly turned to the modes and instruments that could offer a way out of the current political deadlock and allow for cooperation and rule transfer.

The following chapter begins by tracing the development of EU-Belarus relations, the chapter then goes on to discuss internal conditions and the role of the RF in EU-Belarus relations. The bulk of this chapter is dedicated to the analysis of EU-Belarus cooperation on migratory issues, and the applied modes necessary to succeed in rule transfer or at least to improve Belarus's border surveillance and its handling of refugee seekers. In a final step, the results will be discussed under the theoretical framework of external governance, and this chapter will conclude with an outlook on how EU-Belarus cooperation could evolve after they have gained experience in their cooperation on migratory issues.

6.1 Belarusian Foreign Policy: Captured by Particular Interests of the Lukashenko Regime and the RF as its Protector State

Belarus declared its independence on the 24 August 1991, after the reversal of the coup by communist hardliners in the RF (e.g. Sadowski/ Wierzbowska-Miazga/ Wisniewska 2005: 6). Belarus's political leaders, however, remained unaffected, and founded the new autonomous republic on a post-soviet style economy and political system. Then, in March 1994, a new constitution was adopted, which replaced the soviet-style system with a presidential political system based on basic democratic principles. At that time, EU-Belarus relations began to evolve, and so did Belarus's relations with other Western and international organisations, such as the OSCE, Council of Europe and NATO. Belarus's efforts to keep a door open for the West and especially for the EU was demonstrated by the 1993 drafting of the Foreign Policy Concept calling for 'Belarus's return to its European home' (e.g. Ulakhovich 2001: 84). The basis for cooperation was then laid out in the Agreement on Trade and Economic Cooperation between the EU and the USSR on 18 December 1989; the EU, however, decided at their Council summit in February 1992 to replace this previous agreement with individual Partnership and Cooperation Agreements (PCA) to improve the institutional, legal and administrative framework of cooperation with

its neighbours (COM 1992: Article 130; 228). The first version of a PCA with Belarus was signed on 6 March 1995 (e.g. Paznyak 2003: 5).

Nevertheless, with the success Aleksandr Lukashenko in the 1994 presidential elections, the positive trend in EU-Belarus relations came suddenly to an end. From this date on, Lukashenko introduced an authoritarian leadership at the expense of a pluralist democratic political system. In 1996, he reformed the 1994 Constitution in an effort to concentrate competences around the presidential administration, and replaced the democratically-elected parliament with a national assembly nominated by the president (e.g. Paznyak 2003: 5; Sadowski/ Wierzbowska-Miazga/ Wisniewska 2005: 7).

The EU – and its ‘Western’ allies – have turned away from the Lukashenko autocratic regime and have not recognised electoral results since 2001. This is due to certain activities or policies that for example, infringe on international law or human rights, do not respect the principal of rule of law, or depart from democratic principles, such as electoral fraud in the 2001, 2006 and 2011 elections; the alternation of the Constitution in 2004 to allow the president to stay in power for more than two terms (e.g. Rontoyanni 2005: 54); massive repression against opposition forces; restrictions on independent media (e.g. Kreutz 2009: 5); and the proliferation of arms to rogue states such as Libya, Syria and Iran (Kegö/ Molcean/ Nizhnikau 2011); As a result, beginning in 1997 the EU decided upon a number of diplomatic and economic sanctions against Belarus, including: 1) the EU’s decision not to ratify the PCA; 2) the suspension of high-level political dialogue and bilateral relations at ministerial level; 3) the freezing of EU technical assistance (TACIS) programs (with the exception of humanitarian aid, cross-border cooperation, nuclear safety programs and programs directly benefiting the democratisation process); and 4) restrictive measures – frozen assets and travel bans – against Lukashenko and 192 officials of Belarus (Council of the EU 1997b: 13; Council Decision 2010/639; Council Regulation 2006/765).

Furthermore, Belarus does not take part in the ENP as long as there is no PCA in force, but is still invited to participate in democratisation programs funded by the ENPI. The Council of Ministers declared in 1997 that “(t)he Council reminds the Belarusian authorities, and in particular President Lukashenko, that relations between the European Union and Belarus will not improve while Belarus fails to move towards respect for human rights and fundamental freedoms and to observe the constitutional principles inherent in a democratic State governed by the rule of law” (Council of the EU 1997b: 13). Condoleezza Rice, Secretary of State under the Bush administration, was even more direct when she called Lukashenko “*the last dictator in Europe*” (cited in The Guardian, 19

December 2010). As Paznyak (2003) pointed out, “(t)he EU continues to assert the importance of the reestablishment of democratic conditions, human rights and legality in Belarus as a necessary condition for the restoration of full Belarusian participation in European affairs” (ibid.: 5).

Belarus, however, was seemingly unimpressed by the harsh tones coming from the EU. As a result of Lukashenko’s isolationist foreign policy, the Belarusian administration turned back to its big brother in the East and attempted to tighten and renew its ties with the RF (e.g. Rontoyanni 2005: 47). Consequently, Lukashenko and the RF’s President Boris Yeltsin signed several treaties to define the alliance between Belarus and the RF. On the 2 April 1996, the RF’s President Boris Yeltsin and Belarusian President Lukashenko signed a cooperation agreement on security, economy and foreign policy issues. One year later, on the 2 April 1997, both declared the foundation of a RF-Belarusian Union and adopted the respective treaty another two years later, on the 8 December 1999 (e.g. Rontoyanni 2005: 58f.; Zylus 2005: 150; Sadowski/ Wierzbowska-Miazga/ Wisniewska 2005: 7). This treaty on the RF-Belarusian Union stipulated common institutions – Supreme State Council, Council of Ministers, Standing Committee, Court and a bicameral Union Parliament – as well as a common budget. Major objectives included the creation of a common economic area and a common currency (e.g. Zylus 2005: 151f; Fischer 2007: 19). Besides signing the Collective Security Treaty in 1993, Belarus became a member of the Collective Security Treaty in 2002, the Eurasian Economic Space, and the Single Economic Space launched in 2003 (e.g. Rontoyanni 2005: 61; Gromadzki 2009: 98).

With the exception of regional initiatives, the idea of a Union State between the RF and Belarus has stagnated after Yeltsin’s loss of power: The Constitutional Act, envisaged for 1999, didn’t even conclude in a draft; the supposed elections for the Union parliament in 1999 didn’t take place; a common Union Court was not installed; and, the common currency was postponed sine die (ibid.: 61). Though these agreements resulted in almost no further steps towards the integration of the RF and Belarus, it clearly demonstrated Belarusian foreign policy and its rapprochement to the East throughout the 1990s. The reasons for Belarus’ eastward foreign policy are manifold and are mainly based on the misperceptions of both contractual partners. On the one hand, Lukashenko envisioned a Union in which Belarus was an equal partner to the RF, and now sees Belarus in an asymmetrical position, in which the constitution and the policy of the Union State will be dominated and dictated by the RF (e.g. Dura 2008: 4; Ambrosio 2006: 413; Dreyermond 2004). As Zylus (2005) notes, “Lukashenka’s argument is that the federation is

unacceptable to Belarusians because it would mean the complete renunciation of national sovereignty” (ibid.: 158). This is further clarified in an article by Danilovich (2006), who cites Lukashenko as follows: *“renouncing the course to bring Belarus closer to Russia would mean political death for me”* (ibid.: 124).

On the other hand, the RF pursues an ambitious goal, aiming to bring order to its geopolitical hemisphere, strengthen its position in Eurasia, and establish an attractive counterweight to the EU (see also section 4.2.2).

“Russia’s pressure on Belarus to speed up the creation of the Union State according to the model proposed by Russia can be seen. In Russia, the union of two Slavic states is seen as a stabilising factor that strengthens Russia’s positions in the CIS and the “near abroad”. However, the ruling nomenclature of Belarus is not interested in establishing the Union State as this would put into question its future and position in the structures of the Union State that would be dominated by the Russian nomenclature” (Zylus 2005: 168)

As for the RF, it views Belarus an important geopolitical partner and a crucial ally when it comes to the RF’s integrationist policy towards former soviet countries. However, since Putin’s inauguration in 2000, their relations became more strained as Putin calls for strict loyalty in the RF’s foreign policy, and economic reforms in Belarus in return for the RF’s financial support (e.g. Vesely: 2007: 4; Gromadzki 2009: 95). Lukashenko, in contrast, drew attention to Belarus’s geopolitical trump cards – its part in gas and oil pipeline routes, its access to the RF exclave Kaliningrad, a common air raid defence system and a commando tower for RF submarines – and showed less willingness for economic reforms. Additionally, Lukashenko didn’t shy away from playing the Western card, even though his Janus-faced foreign policy lost its credibility and plausibility over time. This double-dealing became rather obvious in 1999, when both Belarus and the RF were negotiating the Constitutional Act for the Union State, and Yeltsin’s regime endorsed Vladimir Putin the successor of Boris Yeltsin. Lukashenko called for renewed cooperation with the EU and *“more decisive steps towards Europe”*, stressing that *“[...] we have made a big mistake [...]. We have been leaning on the East too long”* (Lukashenko cited in Bosse/ Korosteleva-Polglase 2009a: 155).

“Change in Belarus’s attitudes and policy towards the EU – whether for better or for worse – have always been triggered by changes in relations with Russia. One could say that Belarus’s policy towards the EU is a card that Lukashenka has been playing in his relations with Russia. Increasing tensions in relations with Russia are followed by signs of openness towards the EU – and the other way around. During the energy crisis of January 2007, for example, Lukashenka proposed open dialogue and cooperation with the EU on such issues

as energy, transport, and illegal migration and announced that he would rather join the eurozone and the EU than adopt the Russian rouble and create a union with Russia under the terms dictated by Moscow” (Gromadzki 2009: 98).

The fact remains that the RF subsidizes the Belarusian economy in the form of gas and oil deliveries at preferential price rates (e.g. Dura 2008: 3; Glagolew 2006). Furthermore, it granted huge loans to Belarus both before and also during the financial crisis. The RF has chosen not to use its potential leverage over Belarus due to fears that turning against Lukashenko would result in losing Belarus to the West, as is what already happened in Ukraine and Georgia (e.g. Silitski 2005: 43). The RF’s passivity, however, has a decisive price, as it strengthened Lukashenko’s regime on the one hand, and damaged the RF’s image in the Western international community on the other. Therefore, Putin’s administration decided to handle relations with Belarus on more pragmatic footing, and began to demand rewards in return for the RF’s crucial support.

To underline this request, Putin flexed his muscles, which resulted in gas- and oil-price aggression in 2002, 2004 and in late 2006 (e.g. Bosse/ Korosteleva-Polglase 2009a: 155; Fadeev 2007: 100; Mangott 2005: 91). Further, the 2006 presidential election marked a kind of watershed in the already-worsening relationship between Belarus and the RF. The election proceeded without domestic regime critics, and received massive criticism from the international community, who protests the 2004 constitutional changes that allowed Lukashenko to serve for more than two terms as the president of Belarus (OSCE 2006). Thus, the election results went unrecognised by the EU, Council of Europe and OSCE, because the election, due to massive electoral fraud, prosecution of political opponents, and restrictions on the media, failed to meet OSCE and other IGOs’ standards for democratic elections (OSCE 2006; Council of Europe 2006: PACE Resolution 1482). The Council of the EU decided in the aftermath of this undemocratic election, and based on the on-going violation of human rights and repression of political activists, to adopt other restrictive measures or rather extend the previous ones against Lukashenko’s regime (Council of the EU 2006f).

The self-imposed isolation of the Lukashenko regime thus reached its peak, and its only remaining ally became the RF. Still the RF’s support was also not without controversy, as Putin attempted a regime change and called on Lukashenko to leave the presidency after his second term (e.g. Fischer 2007: 14). The RF knew that it could potentially be harmed by supporting the Lukashenko regime, which could have a negative influence on the RF’s rapprochement to the West as well. The RF, however, tried to take advantage of the isolated Belarus and intensified its interests in its relations with Belarus. In 2006, Putin

finally ordered an end to the subsidies for Belarus and called for a gradual increase in the gas price (starting from \$46.68 in 2006 to \$150 in 2009, which still remains far below the European market price of \$250 in 2009), an acquisition of a 50% share in Beltransgaz by Gazprom and a 70% share in tax revenues for deliveries of transit gas to EU countries (e.g. Dura 2008: 3; Haukkala/ Moshes 2007: 3; Socor 2007; Korosteleva 2007: 8, Glagolew 2006: 13; Timmermann 2006: 5). Against all odds, the RF decided to build the North Stream pipeline to bypass Belarus and abandoned previous plans to build the so-called Yamal-Europe II pipeline through Belarus (e.g. Dura 2008: 3). In light of the fact that refined oil and gas is one of the main export goods of Belarus and account for a large share of the Belarusian GDP, the Lukashenko administration came under enormous pressure. Dura (2008) noted that:

"... the new conditions dictated by Moscow, however, Lukashenko's 'economic miracle' may become more difficult to sustain [...] Belarus may in the short run continue to rely on adjustment loans granted by the Russian Federation to cover its budget deficit, but it may become more inclined to consider certain economic reforms, a diversification of its energy supplies and the attraction of foreign capital and trade partners from the EU" (ibid.: 4).

Although Lukashenko's regime was under immense pressure due to Putin's new policy towards Belarus, he has no other options if he wants to maintain his regime. The EU put in place clear conditions that which would allow for a renewal of EU-Belarus relations; this would mean, first of all, the ratification of the PCA. Lukashenko is aware of this, and knows that, if he were to agree on reforms to remove the sanctions, his regime would be under enormous pressure and possibly end. In this context, Dura (2008) stressed that *"Lukashenko would have to democratise Belarusian politics and society, thereby seriously jeopardizing his future as Belarus' president"* (ibid.: 6). So, Lukashenko see himself in a kind of deadlock. As long as the RF supports his country, he could maintain his regime; however, the RF under Putin will let him soak for that. Hence, the RF's attempt to include Belarus in an RF-dominated mere economic area received a new impetus in recent years (see also section 4.2.2). The question is how long the business elites and the military forces will support Lukashenko under these circumstances.

Since 1996, Belarus has languished in a state of self-imposed political isolation. All these years, it has ignored the risks of its isolationist foreign policy and its growing dependence on the RF's subsidies and resources.

“By 2005, Belarus has become an anomaly in Europe, an isolated authoritarian state, surrounded by a sea of democracies or states on the path towards democracy. Belarus is not in ‘transition’; it seems to have ‘arrived’ and in a lonely, dark corner of Europe” (Trenin 2005: 107).

However, since 2006, the geopolitical situation has changed, mainly because of the RF’s intensified political pressure on Lukashenko, their conflicts over gas prices, and the international financial crisis. Belarus’s dependency on the RF harms Belarus’s interests and complicates its relations to other countries and international actors, which compels Lukashenko to achieve a greater balance between the RF and the West. However, Lukashenko’s options are quite limited due to sanctions in force by the West. In the non-paper ‘What the European Union could bring to Belarus’, the EU made clear what Belarusian authorities must do to become a partner of the EU (COM 2006i).

Lukashenko repeatedly emphasised the need to end Belarus’s one-sided relationship with the RF and create a multi-vectoral foreign policy, meaning first and foremost the need to seek closer relations with the EU and pursue cooperation in several areas of mutual interest, including transport, borders, and energy (e.g. Racz 2010: 8; Gromadzki 2009: 101; Dura 2008: 4).

“Our strategic line to the European Union is clear. We are saying frankly: without intending to join the EU, we offer a mutually beneficial partnership with this strong neighbour [...] Belarus is not an enemy of the EU, she is their partner. We are ready to cooperate” (Lukashenko 2006).

In another speech, Lukashenko spoke even more directly, stating that *“(w)e are very interested in cooperating with the West, especially the EU” (ibid. 2008)*. Belarus’s turnaround is explained by its need to attract FDI’s, gain access to financial assistance to combat the financial crisis and, at the same time, to reduce its dependency on the RF.

Further, in 2008 Lukashenko demonstrated his shift towards the West by releasing six internationally recognised political prisoners, declaring non-recognition of South-Ossetia and Abkhazia independence, and signing an agreement to establish the Delegation of the European Commission in Minsk (e.g. Vieira 2008: 3). In return, the EU began talks with Belarus on energy cooperation (ibid.) and, for a period of 6 months, suspended the visa ban against high-ranked Belarusian officials (Council of the EU 2008h). The suspension of the visa ban was enacted during the establishment of the Eastern Partnership in May 2009 in order to include all participants of this initiative in the preparatory talks. Hence, EU-Belarus relations began to thaw, and official contacts were restored at EU-Belarus Troika meetings, which addressed internal developments in the country, regional matters,

the economic situation, and energy issues. Regarding the resumption of official contacts, before the Troika meeting with Belarus on 27 January 2009, European Commissioner for External Relations and ENP, Benita Ferrero-Waldner emphasised in a press release that:

“We recognise that some positive steps have already been taken by Belarus, and in response, the Commission has entered into an intensified dialogue with Belarus on energy, environment, customs, transport and food safety. I will be calling on my Belarusian counterpart to take further steps in the right direction so that we can develop our relationship” (Ferrero-Waldner in COM 2009h)

The new value of EU-Belarus relations is based on the renewed high-level political dialogue and intensified technical cooperation that has been initiated by the Commission, *“as a way of building mutual understanding and providing an opportunity to address the parties’ concerns and issues of common interest”* (Council of the EU 2009d). Furthermore, the EU launched the Eastern Partnership, which provides a more structured relationship with all Eastern neighbours in a regional format. For Belarus, this is currently the only way to maintain a political dialogue with EU officials, as long as there is no PCA in force.

To sum up this analysis of EU-Belarus relations, Lukashenko has had his day. His options, regarding Belarus’s foreign policy, are restricted, and his self-imposed isolation left the country reliant solely on the courtesy of the RF, who were subsidising Lukashenko’s economic miracle all these years with huge loans and reduced oil and gas prices. The re-export of oil and gas to the EU was considered one of the engines of the *“Belarusian economic miracle in the early and mid-2000s”* (Zlotnikov 2009: 77). However, since Lukashenko has his back up against the wall, the RF has intensified its interest in Belarus, and attempts to include Belarus in its hemisphere by establishing an RF-dominated economic area in Eurasia. The EU, again, asserted its position against Lukashenko’s violation of democratic principles and human rights and broke tie with Belarus officials.

Furthermore, the EU imposed restrictive measures against the Lukashenko regime, and halted the ratification of the PCA. However, due to the RF’s political and economic support, the EU’s sanctions failed to show any success at all. This is also a major disadvantage for the EU’s regional policy, and hinders its attempt to combat possible negative externalities, such as supply shortages of gas; weak border surveillance facilitating irregular migration and trafficking of weapons, human beings and drugs; and, environmental threats. Moreover, the EU’s sanctions hinder its companies’ access to the Belarusian market, and therefore put at risk the profits from the on-going privatisation of

state-owned companies. As a result, the EU initiated, inter alia, the Eastern Partnership, as a new forum for interaction and addressing mutual interests. On the 16 March 2009, the EU declared its suspension of the visa ban against Lukashenko and 35 other officials of his cabinet on a six-month temporarily basis.

Although trade between the EU and Belarus has grown in recent years, the EU has suspended movements towards a closer economic partnership with Belarus until the Lukashenko government shows a greater commitment to democracy and civil rights (COM 2008c). Despite the limitations on trade and economic relations between the EU and Belarus, the EU's significance for Belarus increased. In 2010, the EU accounted for 30% of Belarusian exports (26.3% according to EC data), and was the second biggest market for Belarusian products, behind the RF with 38.5% (40.9%) and followed by Ukraine with 10.1% (10.6%) (WTO 2011; COM 2011b). Belarus, however, accounts for only 0.5% of EU exports and is therefore behind countries such as Tunisia, Nigeria, and Libya. Hence, EU-Belarus trade relations are far from reaching their potential; this is, on the one hand, because of deficient economic cooperation due to a lack of high-level contacts and, on the other hand, because of the temporary withdrawal of the EU Generalised System of Preferences (GSP) from Belarus due to violations of labour rights against core principles of the International Labour Organisation (ILO) (COM 2007l).

Additionally, trade relations between the EU and Belarus are not really diversified, and around two-third of Belarus's exports are made up of oil and gas deliveries (ibid.). Before the financial crisis hit the European markets, the EU was already Belarus's most important export market, due to oil and gas exports. In 2008, the EU accounted for 43.9% of Belarus' exports compared to the RF with 32.2% and Ukraine with 8.5% (WTO 2010). Additionally, against all odds, 21.6% of all imports into Belarus came from EU member states. The RF, as expected, lead this statistic by accounting for 59.8% of all Belarusian imports (ibid.).

Despite Lukashenko's newly proclaimed adherence to reforms and liberalisation, especially in the economic sphere, its reputation for human rights and freedom has again deteriorated throughout the course of the financial and economic crisis in Belarus. As a result of the immense debt in the Belarusian budget, Lukashenko had to cut its welfare system. This, in turn, created crucial difficulties for his regime. Following his welfare cuts, Lukashenko again ordered for an increase in the repression of political opponents, civil society activists, and journalists. The escalating pressure on critics of the regime was mainly related to the presidential election on 19 December 2010. In the course of the presidential campaign, Lukashenko ensured the RF's support for his re-election by signing

a treaty on the foundation of a common economic area between Belarus, the RF and Kazakhstan on the 9 December 2010. A further step in RF's plans for integration came after the Custom Union between these countries came into force on the 6 July 2010. According to a news report, Kyrgyzstan and Tajikistan should be the next to join (RIA Novosti, 6 July 2010).

With the renewed intensity of Lukashenko's systematic repression of his critics, he lost all of his credibility in the West, and the improved interaction between the Belarus and the EU was shot down. Therefore, the RF is left as the only ally of Lukashenko's regime, an ally that demands rewards for its support. On the one hand, the RF assured of having Belarus's loyalty in the RF's integrationist policy in the post-Soviet area and, on the other hand, expects huge economic reforms and privatisation of state-owned companies (e.g. Silitski 2011: 17; Meister 2010). All these years, Lukashenko bridled the Belarusian market against the expansion of Russian companies; however, under the current circumstances, he soon won't be in the position to prevent them from accessing key Belarusian industries, thus increasing Belarus's dependence on the RF.

The EU, however, again intensified its pressure on Lukashenko's regime, and extended previous sanctions against the regime until 31 October 2012 (Council of the EU 2011a). In the course of the presidential election campaign, the EU's High Representative for Foreign Affairs and Security Policy Catherine Ashton noted that:

"The European Union expresses grave concern over the recent harassment of representatives of independent media, civil society and opposition organisations, including restrictions on the freedom of assembly, association and expression, as well as regrets continued difficulties with the registration of NGOs and opposition parties. EU urges Belarus to address the concerns regarding the democracy, situation for human rights and fundamental freedoms in the country" (COM 2010g).

EU-Belarus relations again ended up at point zero, best exemplified by the refusal of the Belarusian authorities to send a representative to the Eastern Partnership Summit in Warsaw on the 29-30 September 2011 (e.g. Melyantsou 2011).

To conclude, this section pointed out the crucial influence of the RF on EU-Belarus relations (e.g. Interview with Official from the Belarusian Foreign Ministry, Minsk, 8 June 2009). Many authors agree that the EU-Belarus struggle and the current deadlock can only be solved by including the RF into the dialogue; therefore, many call on the EU to get the Belarus issue on the agenda of their dialogue with the RF (e.g. Lynch 2005: 7; Timmermann 2006: 20).

6.2 EU-Belarus Cooperation on Migratory Issues: Between Pragmatism and Political Conflict

EU-Belarus relations have undergone several up and downs; it seems that, whenever relations take one step forward, they soon fall two steps back. Over the past 15 years, EU-Belarus relations have been under the influence of a variety of large-scale political processes: imposed sanctions by the EU on many Belarusian senior officials, which in 2011 continues to include 192 officials; the eastward enlargements in 2004 and 2007; the accession of Poland, Lithuania and Latvia to the Schengen Area; the Belarusian-RF gas crisis; and on-going violations of democratic standards and fundamental rights.

Recently, relations reached another deadlock in the official political dialogue. The strong conditionality of EU's policy towards Belarus prevents the development of regional cooperation and impedes the provision of assistance to mitigate the negative consequences of EU enlargement on migratory issues for both sides. However, since 2008, the EU revised its logic of pure conditionality in its policies regarding Belarus. While the EU continued to stress that, in order to establish deep and intense partnership, it is necessary to comply with its core values of fundamental rights, democratic principles and economic liberalisation, the EU did open a new door, enabling cooperation in the fields of regional and sub-regional security, combating cross-border threats, environmental protection, transport, and energy.

Furthermore, it considers Belarus to be an effective barrier to the flow of illegal migrants and trafficking of weapons and drugs. Without any option for political dialogue, the EU has shown signs that it might consider cooperation at a more technical level (e.g. Bosse/Korosteleva 2009a: 150f.; Dura 2008: 6). "*Without being able to engage official Belarus within the framework of the ENP, the EU has to explore other foreign policy tools*" (Dura 2008: 7). Belarus, in return, has expressed an interest in developing pragmatic relations with the EU, in order to counterweight its dependency on the RF, attract FDI's from the West, and gain access to financial assistance to tackle the financial and economic crisis.

On the one hand, the EU's neighbourhood programs also contribute financial and technical assistance to projects in Belarus, but this admittedly is limited to projects promoting or facilitating: 1) support for democratisation and civil society via the ENPI thematic programmes 'Democracy and Human Rights' and 'Non-State Actors and Local Authorities Development'; 2) actions to alleviate the consequences of the Chernobyl catastrophe; 3) cross-border cooperation (CBC) and Regional Action Programmes (RAP): Latvia-Lithuania-Belarus, Poland-Belarus-Ukraine and the Baltic Sea Programme; and, 4)

the strengthening and reinforcement of asylum, migration and border management standards via the ENPI thematic programme 'Migration and Asylum', and capacities within the framework of the 'Söderköping Process' (e.g. COM 2004d; 2006b). These programmes are comprised of national, regional, cross-border and thematic components, and until 2007 were mainly funded by the Technical Aid to the Commonwealth of Independent States (TACIS), until they were replaced by the European Neighbourhood Policy Instrument (ENPI). Additional assistance is also provided via the European Instrument for Democracy and Human Rights (EIDHR).

Due to the suspension of political dialogue with Belarus in 1996, cooperation in all areas became rather limited. During the eastward enlargement process and Belarus's political concessions in 2008, the EU renewed its dialogue with Belarus in main policy issues and allowed for ENPI support of projects in Belarus (Council of the EU 2008h). The EU's initiative in launching the Eastern Partnership in 2009, again, invited Belarus to engage in intensified cooperation and established regional fora for the purposes of tackling common challenges and raising issues of mutual interest. Hence, both parties agreed to establish a Human Rights Dialogue on the 17 June 2009 (Council of the EU 2009e) and an Energy Dialogue since 2007.

Furthermore, many projects of mutual interests were funded by the EU, with the aim to improve cross-border cooperation, border surveillance, and refugee protection in Belarus. More specifically, TACIS and ENPI funding covered projects dealing with the: demarcation of the borders with EU member states Poland, Lithuania and Latvia, as well as with Ukraine and the RF, including the improvement of infrastructure and administrative capacities (CBC/ RAP funding); technical assistance for national authorities, local executive and administrative bodies, and judicial and law enforcement bodies (Technical Assistance Information Exchange (TAIEX), Twinning); organisation of immigration control and border management (BOMBEL-1 and BOMBEL-2); implementation of biometric technologies (MIGRABEL); prevention of trafficking of illegal goods and human beings (BUMAD-1, BUMAD-2 and BUMAD-3); management of migration flows at the border and inside the country, with the goal to equip border guards with technical assistance for the fingerprinting of persons detained at the border and the creation of a system of information on migrants' countries of origin (ENEY-3); equipment of border guard training centres; establishment of detention centres for irregular migrants and refugee seekers; implementation of common frontier guard operations with Frontex (ARIADNE); and, lastly, support for Belarus in complying with international standards in their asylum policy and meeting the criteria according to the 1951 Geneva Convention (e.g. removal of procedural

barriers for refugee seekers during the admission for asylum; detention of refugee seekers; application of the safe third country principle in their return policy; and, the social integration of refugees) (AENEAS project 'Strengthening of the Asylum System in the Republic of Belarus) (e.g. COM 2006j: 11ff.; Kalitenya 2011: 119; Paznyak 2003:17f.).

The EU's financial and technical assistance came to be coordinated by the National Coordinating Unit (NCU), launched in 1992. Its mandate was determined by a Decision of the Belarusian Council of Ministers on the 12 August 1997 (Belarusian Council of Ministers 1997), and renewed by the Memorandum of Understanding between the European Commission and Belarus on the 7 March 2008 (COM 2008d). Contributing an amount totalling € 216 million, EU is the single largest donor of assistance to Belarus⁴⁴. The NCU's main tasks are to: assist the Delegation of the European Commission in Minsk in formulating and developing national strategy papers, indicative programmes and action plans; evaluate project proposals; assist and monitor project implementation; and, maintain ties with other donors. EU-Belarus cooperation in the field of financial and technical assistance is guided by a Framework Agreement, signed on the 18 December 2008 (COM 2008c). The Framework Agreement outlines the technical, legal and administrative framework for implementing EU assistance in Belarus.

The implementation of all these projects is done, mainly, by: intergovernmental and international organisations (IO), such as IOM, UNHCR, OSCE, UNDP, IAEA; the national authorities of individual member states and of Belarus (e.g. State Border Guards Committee (SBGC), Department on Migration under the Ministry of Labour, Ministry of Justice and Ministry of Internal Affairs); and, partially by EU agencies such as FRONTEX, EUROPOL or EUROJUST. Additionally, the EU organises regular coordination meetings between donors in order to facilitate the exchange of information regarding individual projects and to adjust their activities (COM 2006j: 15).

In addition to implementing these actions, Belarus also participates in regional dialogues on migration and asylum policies, such as the Söderköping process (established by a Swedish Initiative in 2001 and coordinated by IOM, UNHCR and the Swedish Migration Board 'Migrationsverket') and the Budapest process (established by a German Initiative in 1991 and guided by the ICMPD). Both initiatives aim to provide a framework for countries and other stakeholders to address issues of common concern and exchange information

⁴⁴ Website of the Coordinating Unit for European Union's TACIS Programme in the Republic of Belarus, <http://cu4eu.net/en/>, 12 October 2011

and best practice models on the subject of migration and border management issues between European countries.

For now, the EU-funded implementation and information networks work rather well, and have resulted in a significant improvement in EU-Belarus cooperation since 2008. These funded projects are mainly targeted at securing the common borders between the EU and Belarus, preventing irregular migration, and establishing Belarus as a safe third country for asylum seekers. Regarding visa issues and the readmission of irregular migrants, hardly any progress could be observed, due to a lack of high-level dialogue. The suspension of the political dialogue between the EU and Belarus made it impossible to decide on further steps in these areas. Problems over the issuing of visas have been around at least since the eastward enlargement of the EU on the 1 May 2004, and especially since the extension of the Schengen area on the 21 December 2007. Not only does EU's restrictive visa policy undermine its goals in its regional policy, postulating the need to facilitate people-to-people contacts with its eastern neighbours, but it also prevents improvements of borderland communities' mobility across borders.

Lithuania and Poland issue the most Schengen visas because of their historical, cultural and, of course, geographical positions. However, compared to visa requirements before the eastward enlargement, visa issuance has become rather restricted and tightened for Belarusian citizens. For example, before accession into the EU, Poland maintained a visa-free entry regime for Belarusian citizens (e.g. Kaltineya 2011: 113). Recently, most of the bordering EU member states have eased their requirements for national visas and facilitated border crossings for borderland communities through the use of local border traffic permits (e.g. Interview with Official from the Belarusian Foreign Ministry, Minsk, 8 June 2009). Further, on the 23 September 2003, Poland launched its so-called 'Polish-Card', which provides long-term multi-entry visas for non-Polish citizens whose ancestors are of Polish origin (e.g. *ibid.*: 116). According to Polish statistics, around 900.000 persons in Belarus would be eligible to apply for the Polish Card (e.g. *ibid.*). Furthermore, in 2010, Poland, Latvia, Estonia and Lithuania signed bilateral agreements to facilitate the travel of residents of border areas (e.g. Kaltineya 2011: 123).

"[...] innerhalb der EU gibt es eine Reihe von Staaten die wirklich es begriffen haben, dass die bisherige Visapolitik der EU mit Belarus, ich will nicht sagen falsch war, sondern nicht korrekt war" (Interview with Official from the Belarusian Foreign Ministry, Minsk, 8 June 2009).

While Belarus entered into visa facilitation agreements with the RF in 2007, with the Ukraine and Moldova in 2008, and with Georgia in 2011, there is no such agreement in sight between the EU and Belarus due to their political deadlock. Apart from that, the EU started talks on easing its visa regime with Armenia and Azerbaijan. Belarus, therefore, is the only neighbouring country participating in the Eastern Partnership without a concrete road map on easing Schengen visas for its citizens. Though informal consultations on the simplification of technical requirements for visa procedures began in February 2008, official negotiations have not yet begun (e.g. Policy Association for an Open Society 2011: 7).

However, because of successful cooperation in the areas of border security and migration management, the EU cannot deny visa facilitation for Belarusian citizens in the long run. Furthermore, doing so appears to be counter-productive, as the EU itself formulated the creation of a visa-free regime throughout the participating countries of the Eastern Partnership. Article 3.3 of the Communication from the Commission to the European Parliament and the Council on the EaP-states directly that *“mobility is a key litmus test for engagement with the EU and promoting mobility in a secure environment should be a priority for the EaP”* (COM 2008e: Art. 3.3).

The Council of the EU only recently revised its previous policy on the visa issue – which had become a hostage of conflicts at the highest political level – and reacted to a recommendation by the Commission submitted on the 12 November 2010. Thus, on the 18 February 2011, the Council authorised the Commission *“to open negotiations for the conclusion of an agreement between the European Union and Belarus on the facilitation of the issuance of short-stay visas”* (Council of the EU 2011b).

6.3 Conclusion and Outlook on Further Developments in EU-Belarus Relations: Depoliticised Cooperation as a Chance for Rule Transfer?

2008 marked an important change in EU-Belarus relations. After ten years of restrictive measures and sanctions against the Lukashenko regime, which involved the suspension of all political contacts with Belarus to below ministerial level, their relationship reached a new quality due to Belarus's readiness to agree to some of the EU's requirements. Lukashenko demonstrated his good will by releasing six internationally recognised political prisoners, by declaring Belarus's non-recognition of South-Ossetia's and Abkhazia's independence in direct opposition to its patron, the RF, and by signing an agreement to establish the Delegation of the European Commission in Minsk (e.g. Vieira 2008: 3).

Vieira (2008) and other scholars see Lukashenko's about-face in these issues as an attempt to create a counter-weight to the influence exerted by the RF.

"The official Minsk is interested in the institutionalized expression of the normalization of relations with the EU, first and foremost because it signals to Moscow that, if necessary, alternatives to the foreign-policy orientation on Russia can be found" (ibid.: 4).

Due to Belarus's political concessions, the EU renewed its dialogue in crucial policy issues and extended its major instrument, the ENPI, to include Belarus, in order to initiate several projects of mutual interest (Council of the EU 2008h). A framework agreement, signed in 2008, is the basis for their cooperation, and regulates the implementation of EU assistance in Belarus (COM 2008c). In the EU's recent Eastern Partnership initiative, Belarus received a full invitation to participate, a so-called "*Wild Card*" (Interview with Commission official, Council/Dpt. on JHA, Brussels, 21 April 2009). It was only with the EaP that the EU agreed to shape closer political ties and economic integration, irrespective of whether the countries in question had achieved a satisfactory level of democratic change at that time. In addition to these new political initiatives, both the EU and Belarus agreed to establish a Human Rights Dialogue on the 17 June 2009 (Council of the EU 2009e) and an Energy Dialogue in 2007.

Still, political dialogue remains rather limited, and as of yet there is no fruitful basis for widespread cooperation to speak of. Even though both the EU and Belarus took steps forward in their relations in 2008, the grievances that occurred over the presidential election on the 19 December 2010 caused a new political deadlock. However, by the time of rapprochement in 2008, both agreed to enable technical cooperation in various issues. Several EU-funded projects were launched, and are implemented within networks of: IO's, such as the IOM and UNHCR; national authorities, such as the SBGC; and, specialised agencies of the EU (FRONTEX, EUROPOL) and of EU member states. These implementation and information networks emerged and progressed quite successfully, even though political dialogue was suspended. It has to be emphasised that the role of IO's is of crucial importance for the success of EU-Belarus cooperation. For all intents and purposes, the actions of IO's are seen as non-politicised. Although their actions are mainly funded by EU programmes and, consequently, they tend to act on behalf of the EU's interests, the IO's involved are solely focussed on the projects' technical matters. Hence, the established IO-led implementation and information networks are credible partners for Belarusian authorities. Without these IO's, it would be almost impossible or at least extremely difficult for the EU to deliver assistance to Belarus. Especially international organisations such as the IOM play a crucial role in improving Belarusian standards in

migration management. The EU needs to pay attention to the strategies of the relevant IO's and donors, and forge synergies between them.

The analysis shows that EU assistance was welcomed by Belarusian authorities, as long as it went along with its own interests. Apart from that, however, we see that Belarus is ready to comply with EU norms only when: Belarusian authorities acknowledge the capability of EU norms and legislation to tackle migratory issues; these norms and legislation are coherent with internationally agreed standards, such as e.g. biometric travel documents and asylum policy; and, at the very least, they contribute to the success of other goals, such as e.g. a visa-free regime with neighbouring countries that are member of the EU.

However, EU-Belarus cooperation was partly separated from general political developments described in the EC non-paper 'What the European Union could bring to Belarus' (COM 2006i), and focused much more on the technical details and cooperativeness of the Belarusian authorities, for example in their willingness to curtail illegal immigration, to improve border management practices, etc. This benefits both parties, as no one has to make political compromises.

"Ja, zuerst hatte man auf Isolation gesetzt. Begonnen mit den harten Beschlüssen nach dem Referendum 1994. Dann hat man 5 Jahre gewartet und geschaut, dann für weitere 5 Jahre. Und dann ist man plötzlich zum Schluss gekommen, ach das hat nicht geholfen, wir wollen eine andere Taktik finden. [...] Für uns ist es total unklar gewesen, wie diese Doppelstandards in den Außenbeziehungen angewandt wurden. Von wegen Belarus gehört zu Europa, daher wollen [wir] Belarus nicht mit Aserbaidschan, Kirgisistan und Kasachstan vergleichen" (Interview with Official from the Belarusian Foreign Ministry, Minsk, 8 June 2009).

Thus, separating political dialogue from the fostering of further technical cooperation might be a policy through which the EU could both improve its own security and also exert a certain influence over the Lukashenko regime. Experience gained through current cooperation and EU assistance helps to increase trust between the actors, and will have socialisation effects on the participating bureaucrats (e.g. Raik 2006b).

However, besides the improvement of individual technical issues, real progress in enhancing Belarus's migration management would require the political wills of both sides. For example, in issues of visa facilitation and readmission, there is no solution in sight. The EU has hardly any leverage with which to compel Belarus to undertake any reforms and, furthermore, has no instruments with which to create package deals, as no political contact exists, in which such a deal could be negotiated. Trenin noted in 2005 that:

“the ability to create serious incentives to comply, either positive through ‘carrots’ or negative through ‘sticks’ – or both – is a vital component. [...] If the demand is too all-encompassing, it will be difficult to create a sense of urgency for the target to comply. Finally, a target states’ ability to find other sources of external support to offset the pressure is important” (ibid.: 106).

In addition to the success in implementing standards mainly in border management, document security, and asylum policy, an efficient migration management would require a holistic approach that would engage all countries in the region and link technical aid with foreign policy. Issues such as visa facilitation and readmission, as well as the fights against the trafficking of weapons, goods and human beings and international crime, cannot be tackled on a bilateral basis alone; they also need a political solution (e.g. Custom Union between Belarus, the RF and Kazakhstan). As for visa facilitation, major technical preconditions were implemented through EU assistance in recent years. As of 2012, Belarus is equipped to issue biometric passports, and further projects address the issuance of travel documents and issues of data protection (Policy Association for an Open Society 2011: 3).

In sum, the analysis comes to the conclusion that various information and implementation networks caused improvements in Belarus migration management, and emerged as a good model for rule transfer to authoritarian third countries as long as the cooperation remained less politicised and more technically-driven (e.g. Bosse/ Korosteleva-Polglase 2009a: 150). These soft modes help escape the dilemma stemming from the conditionality logic.

“The EU introduced sanctions against Belarus. In this sense, the EU’s technical aid has been contradictory, but this particular instrument, paradoxically enough, has been and remains the only way to move forward in relations with Belarus” (Vieira 2008: 5).

Despite the discrepancies between Western and Belarusian values and the restrictive measures in force to persuade Lukashenko’s regime to comply with Western values, the EU has a strong interest in creating a functioning relationship with Belarus for various economic, security and political reasons (e.g. Fischer 2009: 18; Bosse/ Korosteleva-Polglase 2009a: 150f.). Furthermore, the EU should raise issues regarding Belarus in its talks with the RF, and look for ways to engage them, for instance, through trilateral meetings on far-reaching issues such as energy, migration management, and trade.

However, the analysis also shows that cooperation guided by these information and implementation networks has a limited scope of action without a political platform capable of advancing this cooperation into further areas. The current legal and institutional set-up

of EU-Belarus relations is rather loose and incapable of tackling issues of a broader range, such as e.g. visa facilitation and/or readmission. Apart from that, the EU presently has little leverage over the Belarusian regime, and cannot enforce reforms against its will. In fact, cooperation only takes place when Belarus sees in it some practical benefits.

7 Conclusion: From Neighbourhood to Integration Policy. Introducing Policy Networks in EU's External Policy to govern beyond its Territorial Limits

The aim of this research project has been to examine the EU's cooperation with its neighbouring countries in the East – Ukraine, Belarus, and the RF – on migration management. In particular, the analysis applied the theoretical framework of EU external governance highlighting different modes of interaction (see section 3.1.3 '*Conclusion: Introducing Institutions to Govern Beyond – Innovation in EU's External Policy*'). Concretely, the study has sought to enhance our knowledge about the distinct modes and instruments applied by the EU to coordinate the approximation of migration standards and norms in its association policies with neighbouring countries. The analytical framework has elaborated on various conditions at the macro-level – Bargaining Power and Credibility – as well as at the micro-level – Cost-Benefit Calculation, Issue Salience and International Normative Pressure (see section 3.3 '*Settings of International Cooperation: Clarification of Contextual Conditions in International Cooperation*').

The aim is to get a better understanding of new styles and forms in EU foreign policy-making. These new styles and forms are characterised by an institutionalised interaction within so-called expert networks of EU agencies, IO's, national and EU authorities and NGOs (e.g. Bauer et al. 2007; Lavenex 2004; Wolff/ Wichmann/ Mounier 2009; Lavenex/ Lehmkuhl/ Wichmann 2009). These sectoral organised networks are launched to coordinate technical assistance funded by the EU.

The institutionalisation and the legalisation of the EU's external relations is a recent phenomenon which has started with the entry into force of PCA's with the RF in 1997 and the Ukraine in 1998 and is continuing with the current negotiations on a New Enhanced Agreement. Other EU initiatives such as the Northern Dimension, the ENP and/or the EaP, as well as MS-initiatives such as the Söderköping and the Budapest Process complement the association policies in the migration policy. The research interest of this study, however, is based on the applied instruments and modes within this institutional and legal framework.

The research interest is to trace the very modes of interactions within this multilayered institutional and legal framework. In addition to the well-established application of conditionality in EU's foreign policy, more and more task-specific policy networks got launched. Some of them have sought to facilitate the communication to foster the

exchange of information and best practices. They have contributed to raising common understanding for collective action problems. Others have focused on implementing concrete projects, road maps and agreements. All of them have had in common to be less political and, as a matter of fact, quite independently from reoccurring political tensions which frequently popped up in the bilateral relations (e.g. Lavenex/ Lehmkuhl/ Wichmann 2009: 21).

As mentioned, the research is done on EU's cooperation with Ukraine, the RF and Belarus. While EU-Ukraine and the EU-RF cooperation have been advancing, EU-Belarus interaction has remained weak due to existing political tension. Unlike the RF Belarus has not sought to become one of the EU's strategic partners. It has also not strong political forces, like in Ukraine, which have embarked on the objective to become a full member of the EU one day.

"As you can see we have two big extremes: a rather elaborated institutionalised interaction with Russia and Ukraine, and cooperation on ad-hoc basis with Belarus, with no specific cooperation" (Interview Commission Official, DG Relex, Brussels 20 April 2009)

"[W]ith Russia it is fully reciprocal and that is something Russia puts attention to it. I would say the EU-Russia relation is special in the context with other eastern neighbours, because it is the biggest neighbour we have. It is the most important strategic partner. I would say both sides try to pursue their own self-interest on the base of a common ground. And there is no forcing against the other side" (Interview Commission Official, DG JFS, Brussels 17 April 2009).

All three countries share their dissatisfaction with the negative consequences of the EU's Eastern enlargement which has implied a divide between West and East. National representatives of these countries have named the Schengen area enlarged in 2007 a 'paper curtain' in the style of the previous 'iron curtain' during the cold war.

The breakdown of the Soviet Union and the revocation of the Warsaw Treaty Organisation of Friendship, Cooperation, and Mutual Assistance (1955-1991), commonly referred to as the Warsaw Pact, created new borders and geopolitical realities between the former satellite states in Eastern Europe and Russia as well as within the former Soviet states. On the one hand, issues of border demarcation and surveillance as well as new visa requirements brought a challenge to established notions of security and mobility in the region. On the other hand, the EU has come to share a common border with states, which it perceived as a threat for EU's security, notably in the fields of irregular migration and

transborder crime. One of the consequences has been that the EU has sought to integrate these neighbouring countries in its migration management policies.

In the following, I will now summarise the main results of the case studies which have focused on following issues within the broad migration area: visa facilitation, readmission, border management and asylum policy. In the final part, I discuss the results in light of my analytical hypotheses.

The first case study has concerned the **EU-RF relationship, a particularly challenging yet central external cooperation framework**. The EU and Russia, both regional powers, have sought to gain influence in Central and Eastern Europe and have competed for leadership. Unsurprisingly, their relation has been marked by suspicion and mistrust. For a long time, the actors have engaged in geopolitical rivalry and experienced diplomatic tension that prevented them from deepening their cooperation.

After a presidency of President Boris Yeltsin that struggled with considerable internal problems, the Putin administration has improved the economic performance of the RF and sought to reinforce the role of the RF's role in IR. The 'reawakening of the bear' has been based on the increasing prices and demands on RF's natural resources. This has filled its foreign policy with a new sense of self-confidence. The EU's dependency on oil and gas supply from the RF, increased by the eastern enlargements in 2004 and 2007, influenced the power relations in favour of the Kremlin. However, the resurrection of the regional power cannot conceal the troubled Russian economy: its exports of manufactured goods to former allies decreased; the old-fashioned industry was not able to compete on the global markets; and, the unsecure legislation and market regulation frightens off FDI's from abroad. As a result, its exports got rather one-sided, as its GDP is dominated by the exports of fuels and mining goods to the European market.⁴⁵

The outcome is thus a mutual dependency between these two markets. Furthermore, the EU is conscious about the intentions of the RF in the previous Soviet states and the role it has played in regional conflicts and in the political and economical development in the common neighbourhood. The RF sees in the EU a strategic partner for its economic and security interests. It is also keen in its technical and financial assistance. In brief, both the EU and the RF are aware of their interdependency and have therefore an interest in cooperation on many policy areas. The potential of cooperation is however not utilised due to mutual mistrust; the EU's politicisation of its policy towards the RF; and, RF's zero-

⁴⁵ Source: World Trade organization (WTO). [Retrieved from <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=RU>, 17 May 2011

sum power game. Their relation is characterised by misunderstanding, resentments, muscle flexing and defiantness.

Several events in the last 10 years have contributed to the fact that EU-RF relations reached a low. On the EU side, several actions affronted the RF administration including the eastern enlargement in 2004 and 2007; extension of the Schengen acquis to Russia's former allies; and EU's policy initiatives – ENP, EaP – in the common neighbourhood; EU's role in the democratic revolutions 2004 in Ukraine ('Orange Revolution') and 2003 in Georgia ('Revolution of Roses'), as well as, EU's support for political opposition in Belarus; and, support for NATO membership in Central and Eastern Europe. The EU, by contrast, was concerned about the RF's 'gas diplomacy', resulting in several gas crisis in Ukraine and Belarus, which affected also consumers in EU member states; Kremlin's consolidation of internal power at the expense of democratic freedom and human rights; the long-standing conflict in Chechnya; the recent conflict with Georgia; and, its support for the independence of Abkhazia and South-Ossetia.

Despite an atmosphere of suspicion, both actors have agreed on the improvement of their dialogue and cooperation. An institutional set up was introduced to coordinate their cooperation and facilitate their interaction. The current EU-RF framework for cooperation is laid down with the PCA, signed in June 1994 and entered into force in December 1997 as the first of this kind. This institutional framework got enriched by the Strategic Partnership (1999), Common Space Initiative (2004) and the Modernisation Partnership (2010). Currently the EU and RF are negotiating on a NEA, which will replace the PCA and should create an extended legal and institutional framework to tackle a broad variety of issues. The legal and institutional framework – introduced by the PCA – and the launched Common Space Initiative provide a well-developed system of bilateral interaction between the different administrations at various levels. The increasing involvement of the RF in EU's and European policy networks enhanced mutual understanding at subordinated hierarchical levels and, in these less politicised circles, created an atmosphere of good-neighbourliness.

The PPC on JHA is the main decisive body in the coordination of EU-RF cooperation on migratory issues including the negotiations on agreements, package deals and compensation measures. It has been a good basis for political dialogue as it guaranteed a structured and regularly interaction. Whereas the PPC set the course on the EU-RF cooperation with the help of jointly formulated objectives, several technical subcommittees – as the joint committee on visa facilitation and readmission, as well as the visa dialogue -

coordinate the implementation of political agreements and materialise them in concrete road maps and/or action-oriented papers.

In contrast to the political dialogue within the PPC, the issue specific committees are composed of high-ranked civil servants of the European Commission, EU member states and the RF. Yet in practice, RF sends either high-ranking officials or diplomats and seeks to keep the autonomy of these networks as narrow as possible (e.g. Interview with Official from the EC Delegation to the RF, Moscow, 28 May 2009). The joint visa facilitation and readmission committee meet bi-annual and are responsible for the implementation of the respective agreements on visa facilitation and readmission. Although, the committees have no central secretariat, a civil servant at the DG JFS carries out the administration of the meetings (e.g. Interview with Official from the EC Delegation to the RF, Moscow, 28 May 2009).

In any case, the implementation of the concrete measures formulated in the road maps and action-oriented papers is done mostly by expert networks, which focus on realising concrete projects. The EU provides via ENPI, TAEIX and the Common Space Facility technical and financial assistance to the RF to comply with the defined goals. These expert networks consist mainly of practitioners from the EU (e.g. FRONTEX, EUROPOL, civil servants of MS) and the RF (e.g. FMS, SBG, Interior Ministry) and are assisted by some IO's (e.g. IOM, ICMPD, UNHCR). In brief, EU-RF cooperation has increasingly taken place within EU-RF networks on the information exchange (e.g. visa dialogue), support for implementing the agreed road maps and, for the visa facilitation and readmission agreement. The FMS – from RF side; and the intergovernmental organisation IOM have been the most important bodies in the coordination of EU-RF cooperation (e.g. Interview with Official from the EC Delegation to the RF, Moscow, 28 May 2009).

The analysis of EU-RF cooperation on migratory issues has shown a clear trend to delegate authority to expert networks to implement agreements agreed at the political level. Additional channels for interaction and cooperation were introduced, which have shifted the cooperation from the political level to issue-specific expert networks. This kind of task sharing has helped to depoliticise the implementation of an agreement and to reduce high salient issues of their technical content. Good examples are the 2005 approved visa facilitation and readmission agreement and the 2007 launched visa dialogue.

In the case of the visa facilitation and readmission agreement, both parties set up a dense framework of cooperation and authorised an expert network (joint visa facilitation and

readmission committee) to materialise it by defining the details. This corresponds to a highly institutionalised and legalised regulatory network with a far-reaching mandate to substantiate legal obligations of the agreement. The visa dialogue was established to provide a forum for examining the conditions for visa-free travel as a long-term prospect and formulate a concrete road map. This information network was defined without a clear date and/or a commitment for a visa-abolition at the end of this process. However, it helped to remove it from the political agenda.

Unlike previous EU's external policies towards candidate countries and other neighbouring countries, which heavily relied on conditionality in all forms, the EU-RF cooperation has had a completely different drive, away from an EU-led coordination to a relationship based on reciprocity and mutual benefit. It was the RF, who denied any form of conditionality by the EU. The RF has wished to be treated as equal rather than being patronised or corrected by the EU. Still the bases of all measures are EU norms and values. Regarding visa liberalisation, the EU set the Schengen acquis as the legal basis for any steps towards a visa-free travel between the EU and the RF. While the legal basis is the EU's legislation, the RF has an important say in terms of timing and speed of reforms. The technical and financial assistance provided by the EU, therefore, is demand-driven due to RF's self-interest to take actions. But, above all, conditionality is still an instrument applied by the EU. Visa liberalisation has been instrumentalised as the EU's most effective incentive to initiate reforms in the RF in the areas readmission, border surveillance and asylum policy. The EU set clear requirements for visa liberalisation by linking the visa facilitation agreement with the agreement on readmission and by formulating a road map to realise visa-free travel.

"... trade off in visa liberalisation, as it is highly politicised in Russia" [(Interview Commission Official, DG JFS, Brussels 17 April 2009)]

In conclusion more and more issues have been treated by non-hierarchical modes of governance. The trend to remove high salient issues from the political agenda and tackle it as technical issues in expert networks is determined by the equal power relationship, on the one hand, and the high mistrust, on the other. The balance of power is a result of mutual dependencies, caused by the interlinked economies and the influence in the joint European neighbourhood. The EU's position as the most prosperous and modern economy is, therefore, challenged by its dependency on RF's energy resources, and its vulnerabilities to instability in the region (e.g. frozen conflicts) and the security threats of transborder crime. The RF, however, is trapped in a zero-sum power game and tries on a case-by-case basis to benefit by demanding concessions from the EU. In that zero-sum

game, the RF is tempted to use its vast energy resources, its specific role in regional frozen conflicts and its influence in the common neighbourhood as a trump card vis-à-vis the West.

As already stressed previously, another factor of influence why the EU-RF political dialogue is below their potential is the lack of trust and credibility. EU's policy towards the RF is perceived by the Kremlin as uncertain and to be driven by a hidden agenda, which, in reality, aims to increase the EU's role in the region at the expense of the RF's influence.

“There is a high lack of trust, but how should we increase our cooperation on a visa free regime without any trust?” (Interview with Olga Potemkina, Institute of Europe at the Academy of Sciences, Moscow, 12 June 2009).

One explanation is that the RF is still trapped in zero-sum logic, where no mutual benefit is possible. Another explanation is the solidarity with the USA and that most of the EU member states are member of the US-led NATO. Apart from that, the EU's initial approach towards the RF was perceived as arrogant. It is true that this initial approach was based on conditionality, similar to what was applied towards the candidate countries in Central and Eastern Europe. The EU wanted to include the RF in their ENP, which was seen as disregarding the RF's historic and current role in the region.

The EU's credibility is also challenged by the decision making on foreign policy issues at the supranational level. Before the entry into force of the Lisbon Treaty, EU's foreign policy was seriously challenged by 27 individual foreign policies. Although the European Commission led negotiations with third countries, when it comes to decision making, the Council – and therefore the member states – are the main decision makers. This may irritate or disappoint the EU's partner states, as it happened with vetoes from Poland and Lithuania on the start of negotiations on a NEA in 2007 and 2008. Several of the new member states from Central and Eastern Europe are relatively sceptical towards the political ambitions of the RF and use the EU as their 'political hostage' to give weight to their demands.

“I had the feeling, that the commission really favoured visa facilitation, but member states try to slowdown the process, or try to keep the status quo” (Interview with (Olga Potemkina, Institute of Europe at the Academy of Sciences, Moscow, 12 June 2009).

Another source of mistrust was related to the divergent expectations on the visa facilitation agreement, which, in the eyes of the RF, didn't bring the easing of visa issuance as expected (Interview with Olga Potemkina, Head of the Department in the Institute of Europe at the Academy of Sciences, Moscow, 12 June 2009).

The level of mistrust has decreased with the years of cooperation. In consequence to increasing interdependencies, both parties have had an interest to harmonise their legislation and have agreed on common rules aimed at establishing more predictable behaviour. Regular interaction and the introduction of common institutions have led to mutual understanding and a tentative rapprochement of interests. The members of the networks got socialised with norms, the procedural logics within this networks and have internalised the modus operandi. Becoming an epistemic community, these bureaucrats are advancing the EU-RF relationship and have driven the expansion of the cooperation (e.g. Interview with Official from the EC Delegation to the RF, Moscow, 28 May 2009).

“There is an intense interaction on a daily basis (every daily contact or at least on a weekly basis). Visa facilitation and readmission is the most intensive one, as we have close institutionalised structure ... [in form of] the joint committee. [...] Border management not, as we have the FRONTEX. [...] But we have some ad-hoc meetings with the Russian [authorities]” (Interview Commission Official, DG JFS, Brussels 17 April 2009).

Because of their positive experience, more and more issues have come onto the political agenda and have been tackled within these networks. What is still missing is the formulation of a common vision of the strategic partnership and on a regional policy for the common neighbourhood.

The second case study has concerned the **EU-Ukraine cooperation**; Ukraine is characterised by a pro-EU policy since 2004. Its governments have voiced the ambition to become member of the EU one day. Their institutional and legal framework is similar to the one of the EU and the RF. A PCA between the EU and Ukraine entered into force in 1998. It introduced a political dialogue (Troika meetings and the PPC on JHA) and technical subcommittees dealing with specific policy issues of e.g. visa, readmission, border management and asylum policy. The information exchange and the implementation of formulated road maps and action-oriented papers have also happened in expert networks. The actors in the established networks are practitioners and experts of EU bodies (COM, civil servants of MS and from EU agencies as FRONTEX, EUROPOL and EUROJUST) and Ukrainian authorities (e.g. SBG, State Committee Nationalities and Migration). A lot of projects were implemented in networks in cooperation with IO's (e.g. IOM, ICMPD, and UNHCR). These IO's are important contractors in assisting the Ukrainian authorities and funded mostly by EU programmes as the ENPI, AENEAS and EUBAM.

Although the EU-Ukraine cooperation is highly institutionalised and legalised and implies a lot of less-hierarchical modes, it is not a relationship on an equal footing. The EU has dominated the cooperation, has set the conditions and has put on pressure the Ukraine to implement reforms and to approximate with the EU's legislation in migration management. The Ukraine has differed from the RF and Belarus in that it has clearly expressed its willingness to integrate into the Western and EU hemisphere. The EU's approach of positive conditionality – copied from the accession process of EU candidate countries – turned out to be successful, as long as it helps to bring the Ukraine closer to the EU. Thus, the EU's bargaining power is rather high and got even higher with the revolutionary coming into power of a pro-Western government in 2004. Ukraine's geopolitical position, being in between the two regional powers EU and the RF, is seen as a burden and a chance at the same time.

After the revolution, Ukraine embarked on the objective of EU integration and had high expectations on an intense cooperation with the EU – probably too high if compared to what the EU was willing or able to offer. The flimsy statements by EU officials on the finalité of their relationship challenged the EU's credibility and hence undermined its governance by conditionality. The EU's credibility as a partner suffered, given that the Ukraine has had the feeling of taking the burden of costly reforms, while missing credible and tangible incentives, not at least the perspective of EU accession. In the last years, the EU did not get clearer on what should be offered to the Ukraine; on the contrary, it disappointed their leaders by dealing with them in ways comparable to all other neighbouring countries. The Ukraine expected to be treated as a potential candidate due to its progress in reforms and its clear foreign policy position. But the EU maintained its 'umbrella' policy for all neighbours, irrespective to their individual characteristics. As a consequence, Ukraine's reform efforts have become less ambitious.

In any case, the cooperation within the established institutions and networks has advanced since 2004 and has been rather fruitful. Similar to RF's cooperation with the EU, most of the cooperation has taken place within issue-specific networks. These networks are limited in action to concrete projects funded by the EU. The advantages of these networks are the limited commitment, the focus on technical than political issues and the autonomy for its participants to work within an agreed framework. In the case of high salient issues, such as the contested abolition of visa requirements for Ukrainian citizens, these networks have been proven to be effective.

The third case study on **EU cooperation with Belarus** shows that, due to political tensions, this relationship is the least advanced. The EU pursued a consistent strategy in its policy towards Belarus since 1996: So long as Belarus violates fundamental rights and neglects democratic principles, the EU will suspend all high-level contacts. The EU formulated conditions in the Non-Paper 'What the European Union could bring to Belarus' (COM 2006a) which Belarusian authorities sought to fulfil in order to relaunch the political dialogue.

In 2008 Lukashenko made a slight turn towards the West, with the purpose to strengthen its position towards the RF. The EU welcomed Lukashenko's about-turn and declared the temporarily suspension of the visa ban against high-ranked Belarusian officials to facilitate the interaction in the course of the new EU regional initiative EaP (Council of the EU 2008). During this short period, the EU provided the basis for cooperation on technical issues by EU funds. In addition to some Troika meetings during these periods, a delegation of the European Commission was established in the country; the National Coordinating Unit (NCU) for EU's aid programmes was renewed by a Memorandum of Understanding on the 7 March 2008 (COM 2008b) and by signing a agreement to define the technical, legal and administrative framework for implementing EU assistance in Belarus on the 18 December 2008 (COM 2008a).

Due the widespread violations of fundamental rights and democratic standards, notably in the context of the December 2010 elections, EU-Belarusian relations got suspended again. However, the expert networks have been maintained. In the meantime, they have implemented several projects. The analysis confirms a twin-track approach in the EU's policy towards Belarus including 'hard' governance through conditionality and 'soft' governance based on information exchange and stimulating reforms by financial and technical assistance within expert networks (e.g. Bosse/ Korosteleva 2009: 159). This new pragmatism comes in response to the fact that EU governance through conditionality has had little effect on Lukashenko's autocratic regime (e.g. Interview with Commission official, DG JFS, Brussels, 17 April 2009).

"So we are really trying to get away from this thinking, we are going one step you are going one step as we see the overall attempt of enabling an intense cooperation around a lot of topics. With Belarus we do targeted projects as we think it is important to be in contact on several issues. [...] And also some of our neighbours states need support on their security demands on their borders. It is a mixture of enlightened self-interest and also to push the Belarusian authorities to reform" (e.g. Interview with Commission official, DG Relex on Belarus and Ukraine, Brussels, 20 April 2009).

What are the reasons for that? While governance by conditionality has hardly brought any progress in the EU-Belarus relations, less-hierarchical modes have contributed to rule approximation and improvements of Belarus' border management and asylum policy.

The EU-Belarus relations are characterised by serious mistrust on the side of the EU, due to the many broken promises and false signals sent by the Lukashenko administration. On the side of Belarus, the reason for the mistrust is related to the opposition of the EU to the way Lukashenko's regime governs and the restrictive measures against him and his senior officials which the EU introduced. The EU's political leverage is rather limited, regardless of the fact that its member states are major trade partner of Belarus. The RF has regarded Belarus as one of its geopolitical priorities and has therefore subsidised its economy and budget by cheap loans and prices for gas and oil far below the prices on the European market.

Thus, in the light of high adoption costs and the high degree of politicisation of policy issues, the EU-Belarus cooperation is limited to issues of shared interest and is not governed by the EU's conditionality. Quite the contrary, Lukashenko is aware that he would risk the stability of his regime if he complies with the EU's conditions; Faced with the choice between two little attractive possibilities, he opted for the RF demand of closer integration into a RF-led economic union. Because of EU's strict conditionality, a political dialogue is not established, which is a prerequisite for the visa facilitation and readmission dialogue. The EU tackles these issues foremost as political and not as technical ones.

"[The Belarusian government] haben versucht ihnen [European Commission] das Problem nahe zu bringen und zu erklären, dass man dieses Thema [visa issuance] aus der politischen Agenda endlich herausnehmen sollte und separate behandeln sollte"
(Interview with official from the Belarusian Foreign Ministry, Minsk, 8 June 2009)

We can conclude the analysis of the EU-Belarus cooperation that the little cooperation, which has taken place, has been constrained to EU funded expert networks or bilaterally between member states and Belarus. This is rooted in the EU's lower bargaining power, the high level of mistrust between them, and the high adoption and political costs for Belarus. The only EU demands that were approved by Belarus were: 1) congruent with its own interest (e.g. improve border surveillance by adopting modern equipment, refurbish Belarus' infrastructure at the border and optimise its travel documents; and/or 2) the EU provided technical and financial aid for Belarus to comply with international norms (e.g. biometric passport, asylum policy). In the case of visa facilitation and readmission there has been little cooperation, as the issue was rather politicised by the EU, and, hence, linked to compliance with EU values in fundamental rights and democratic standards. It

seems that the EU has to put Belarus on the agenda of its dialogue with the RF, if it wants to end the deadlock in its relations with Belarus.

What comes next is to summarise the results in order to answer the first research question “**which instruments and modes are applied in EU’s external governance towards third countries**”. The phenomenon of the institutionalisation and the legalisation of the EU’s Foreign Policy towards the RF, Ukraine and Belarus are empirically substantiated, although the extent differs widely among these three countries. The analysis of the cooperation on migration management has shown that the cooperation between the EU and its neighbouring countries is organised primarily in decentralised networks and along task-specific jurisdictions. They have applied more ‘soft’ than ‘hard’ modes of governance. In the case of Belarus, ad-hoc networks have been the only way to overcome the deadlock in the political dialogue.

The EU and the neighbouring countries have delegated agenda setting, monitoring and enforcement powers to bilateral policy networks; these can be considered as institutions, that define the procedure of cooperation, reduce uncertainties in the cooperation and facilitate the exchange of information to gain the best possible outcome for all members. Presented as a pathway to sectoral integration of third countries in certain EU policies, the analysis has scrutinised the different frameworks of cooperation and has discussed its efficacy in practice. It has investigated the influence of certain conditions on the choice of modes and instruments.

First, a division of tasks can be seen among different levels of international cooperation: Polity, Coordination/Administration and Implementation (e.g. Interview with Official from the EC Delegation to the RF, Moscow, 28 May 2009). At the polity level, the framework of international cooperation has been negotiated by the principle of conditionality (e.g. visa facilitation and readmission agreement). Arrangements at the technical implementation have been made within task-specific networks. Others have had the task to facilitate interaction, share information, promote EU’s norms and rules for policy regulation and formulate common objectives and action-oriented papers (e.g. visa dialogue).

The negotiation process on the visa facilitation and readmission agreement was explicit governed by conditionality. In the case of the costly and unpopular readmission agreement, the framework agreement was negotiated in exchange with the beneficial visa facilitation agreement. The Ukraine and the RF agreed on a package deal in order to facilitate the mobility of their citizens into the EU. The detailed formulation of both framework agreements, however, has happened merely within common regulatory bodies

– the so-called joint committees on visa facilitation and readmission. The indefinite framework agreements have left an astonishingly wide mandate for experts of both countries to define the legal obligations and have contributed to a high level of misunderstanding (Interview with Olga Potemkina, Institute of Europe at the Russian Academy of Science, Moscow, 15 June 2009 and Commission Official from the EC Delegation to the RF, Moscow, 28 May 2009). The implementation of both agreements has suffered from this even if progress has been achieved on technical issues e.g. document security, data protection, readmission procedure.

The highly salient issue of visa liberalisation was further dealt with within the visa dialogue. The visa dialogue is constituted as an information network aimed at creating a visa free zone between the partners in the long term. The network consists of experts of both sides, similar to the joint visa facilitation committee, to exchange information and to define a possible road map with concrete measurements to realise the common goal of a visa free area in the long term. The visa dialogue has recently concluded a definite road map. It has had the advantage focus within the topic of visa-free travel more on technical details than on political considerations.

“My experience is that in this particular field [visa dialogue] cooperation works pretty well. There is a good mutual understanding of each others positions. That we are able to enter into the detail of the issues” (Interview with Commission official, DG Relex, Brussels, 21 April 2009).

In the case of the areas border management and asylum policy, the cooperation is rather technical. The relevant issues are tackled within information and implementation networks. I would conclude, that we might also speak from a ‘division of tasks’, as I would argue, that within information networks, experts from both sides try to formulate common objectives and needed measures, which in a next step get realised by implementation networks. I have to stress, that this causality is not always in case, as most of EU assistance programme have already defined measures they fund. However, EU’s assistance is demand driven and, therefore, its RF’s choice to call on them and to accept EU’s conditions.

“[...] I would out it on the persuasive tactic side. [in the case of] Asylum [policy] is just a repetition of saying ‘there is an international convention, please do that’. There is no room for manoeuvre. [In the case of] border management, this cooperation is rather technical” (Interview with Commission official, DG JFS, Brussels, 17 April 2009).

Secondly, and in addition to the previous paragraphs, EU's use of visa liberalisation as a carrot to reach concessions by associate countries on other policy issues is clearly evidenced by this analysis.

“Der Versuch Personenfreizügigkeit und Visaerleichterung als ‘Incentives’, als ‘Karotten’ zu verwenden, um andere Zugeständnisse zu erreichen. Diese Konditionalität hat taktische und strategische Gründe. Aus diesem Grund ist die EU versucht, diese ‘Karotte’ nicht zu leichtfertig aus der Hand zu geben. Beispiel ist die Verlinkung ‘visa facilitation’ und ‘readmission’. Auch mit der Vision eines ‘Visa-free regimes’, einer Karotte die weit weit weg liegt, versucht man in Themen der Demokratisierung, ‘Human rights’ Zugeständnisse zu bekommen” (Interview with official from the Belarusian Foreign Ministry, Minsk, 8 June 2009)

Thirdly, several specialised IOs (e.g. IOM, ICMPD, UNHCR) run several projects and coordinate certain networks on behalf of the EU's and EU member state's aid programmes (e.g. ENPI, TAEIX, AENEAS). Their main task is to support countries in implementing new standards in migration management, which means approximating third countries' legislation to that of the EU. Additionally, in recent years, an increasing number of projects of EU-led programmes have received financial and technical support from US government bodies. Moreover, the role of international organisations is of incremental importance to the EU's external relations with Belarus. Without any designated relations between the officials of these two actors, legal approximation between the EU and Belarus has been triggered mainly by information and implementation networks under the guidance of the respective international organisations.

Fourth, an aspect, which was highlighted in interviews with experts and state officials, has concerned the people of these networks. The term 'network' implies the inclusion of several actors in the field, including technical experts, bureaucrats, state officials and NGO representative. The research investigated that the networks have been controlled by state officials on the side of the third countries. None of the analysed networks has exhibited an autonomous corps of national experts. The secretariats have been small and officials in those secretariats are often seconded officials.

“The process is always under political control as well the technocratic part gets more and more. The frame will be negotiated by official bodies; where else the technical details get in the following worked out by technocrats” (Interview with Commission official, Council/Dpt. on JHA, Brussels, 21 April 2009).

The degree of institutionalisation in terms of providing a permanent administration of networks has varied. In some cases it has increased over time. The institutional deficits include limited autonomy, competence and commitment to the different networks. They have been showing that there is still a sensitive lack of credibility and trust of the neighbouring countries vis-à-vis the EU.

Figure 34. Summary of Applied Modes in EU's Interaction with Ukraine, RF and Belarus

	Ukraine	Russian Federation	Belarus	
hierarchical	Modes			
	Governance by	visa facilitation agreement	visa facilitation agreement	
	Conditionality	readmission agreement	readmission agreement	
non-hierarchical	Information	visa dialogue	visa dialogue	through IO's projects
	Networks	border management asylum policy	border management asylum policy	border management asylum policy
	Implementation	border management	border management	through IO's projects
	Networks	asylum policy	asylum policy	border management asylum policy
	Regulatory	joint committee for	joint committee for	
	Networks	implementing the visa facilitation and readmission agreement	implementing the visa facilitation and readmission agreement	

The final part will explicitly deal with the initially formulated hypotheses (see section 3.4). By comparing the three countries and four policy issues of migration management under research here, the analysis seeks to identify the factors, that have affected the extent of institutionalisation and/or legalisation of their bilateral cooperation with the EU and, therefore, to answer the question on “why and under what conditions countries agree on a tightened institutional cooperation in IR”.

(H1): The role of bargaining power is emphasised by the realist theory. It is believed to be of central importance in international cooperation. Albeit differences, the EU's bargaining power has been rather low vis-à-vis the three countries Ukraine, the RF and Belarus. Further, EU's policy towards Ukraine and Belarus is also challenged by the second regional power - the RF.

"We have to be realistic on this topic. There is no ultimate instrument, on what we can use to force Russia to do something they do not want to do" (Interview with Commission official, DG JFS, Brussels, 17 April 2009).

The offers of the EU has been less attractive and not promising enough (e.g. Ukraine's membership aspiration). Thus, the formerly successful mode of governance by conditionality – as applied towards candidate countries – has been of less relevance in this setting.

(H2): Related to the bargaining power of a country, the credibility is the second crucial factor. For the RF and Belarus, the EU was not seen as a credible actor. 40 years of cold war have left an atmosphere of suspicion and mistrust which increased by what was seen as an EU's expansionist policy towards Central and Eastern countries and its opposition to their authoritarian regime-character. In addition, the EU has not met RF's and Ukraine's expectation to have a quick visa free regime.

The two factors on the macro level have affected the mode of cooperation as follows:

Because of EU's contested bargaining power and credibility, partner countries have not accepted EU conditionality – apart from attractive package deals as in the case of visa facilitation linked to the readmission agreement. Cooperation has taken place on a more informal, ad-hoc and less binding basis and/or within network governance. Network governance in this sense, has been based on a certain degree of institutional and procedural rules. At the same time, it has kept the legal commitment of the actors low. Thus, the cooperation has become more predictable and has increased the trust over time.

On the micro-level, the adoption costs of required measures, the salience of policy issues and the EU's normative power have been seen as the decisive indicator on the mode of cooperation.

(H3): According to hypothesis three, the expected benefit or rather the promised compensations by the EU have been the crucial preconditions for cooperation. The willingness for cooperation has depended on the determinacy of conditions, the size and speed of rewards, the credibility of threats and promises, and the size of adoption costs (e.g. Schimmelfennig and Sedelmeier 2005: 11f.).

EU's assistance is demand driven. Thus, it depends on the associate country if it calls on assistance for policy reforms or not. On a broad variety of issues, third countries are

welcoming financial and technical assistance from the EU, as EU's experience and knowledge on most of the issues is acknowledged (e.g. biometric passports, asylum policy, border surveillance and data protection).

The cooperation has taken place when the partner country has been interested in its own. An empirical proof has been that EU-funded programmes are demand-driven and therefore the implementation of action-oriented papers has happened on a voluntarily basis. The implementation, however, has taken place mainly within networks of experts and practitioners from the European Commission, EU agencies (FRONTEX, EUROPOL, EUROJUST), EU member states, partner countries⁴⁶ and international and intergovernmental organisations (IOM, ICMPD, UNHCR).

(H4): The cooperation of the EU with its neighbouring countries in Eastern Europe has been seriously challenged by the salience and politicisation of issues. Whereas issues of border surveillance, document security and detention of refugee seekers have not been salient issues, the liberalisation of visa issuance has remained a disputed topic on their agenda (e.g. Interview with Commission Official, DG Relex, Brussels, 22 April 2009). Introducing an institutionalised dialogue on the visa issue has been effective to get out of the dilemma. It has helped to focus in the visa issue on technical measurements and to formulate a road map with more concrete requirements (e.g. Interview with Official from the EC Delegation to the RF, Moscow, 28 May 2009).

"We introduced a road map in 2005 with Russia, which rather increased the cooperation with EU and Russia on JHA issues. There has been a specialisation of cooperation, [in the form of] more practical cooperation" (Interview with Commission official, DG JFS, Brussels, 17 April 2009).

"As supposed to some other areas, issues were discussed on a working level more easily, than on the political level [...] Politicians are not so used to find common solution as they fight for their own position. [...] I think a lot of issues would be easily solved on a technical level" (Interview with Commission official, DG Relex, Brussels, 21 April 2009).

⁴⁶ E.g.: Ukraine: State Border Guard Service (SBGS), State Committee for Nationalities and Religion (SCNR), Department for Citizenship, Immigration and Registration of Physical Persons of Ministry of Internal Affairs, Consular Department of the Ministry for Foreign Affairs, State Department on Approximation of Legislation; Belarus: Border Guards, State Bureau for Passport Issuance, Office for Citizenship and Migration (Mol); Russia: Border Guards, Federal Migration Service (FMS);

Another example of a 'politicisation trap' is the relationship with Belarus. The EU suspended the political dialogue due to Belarus' human rights violation. Therefore, the only way to cooperate has been to bypass the political level and to initiate information and implementation networks which have assisted the Belarus' authorities in improving their policies on migratory issues. This new pragmatism in the EU's Belarus policy has been informed by the EU's perceived need to tackle security threats caused by Belarus lack of migration policies.

The intensity of the politicisation of policy issues has burdened the bilateral negotiations. It has made it difficult to reach a compromise. Both parties have sought to depoliticise salient issues by transforming migration-related issues into technical ones. It was tackled within decentral expert networks.

An obvious evidence of a politicisation of cooperation is laid down in the division of the cooperation within the EaP framework. Four thematic platforms: 1) Democracy, good governance and stability; 2) Economic integration and convergence with EU policies; 3) Energy security; and, 4) Contacts between people. Ukraine and Belarus complained the inclusion of visa issues within the first platform, tackling political issues. In their opinion, visa facilitation should better be tackled in the fourth thematic platform on people-to-people contact (e.g. Interview with official from the Belarusian Foreign Ministry, Minsk, 8 June 2009).

"Europa sieht das Problem [n.b.: visa facilitation] als politisches, wir sehen das eher als technisches und menschliches. Und unser Gedanke ist, wir sollen so schnell wie möglich die Visafrage aus dem politischen Alltag herausnehmen und das auf einem separaten Weg besprechen. Genauso wie wir das im Bereich Energie, Transit, Zollzusammenarbeit und Landwirtschaft handhaben" (Interview with Official from the Belarusian Foreign Ministry, Minsk, 8 June 2009).

(H5): The final factor which the analysis has taken into account has been the pressure of the international community on norm adoption. The impact of this condition on the mode of cooperation has been marginal. In fact, the role of EU as a normative power has come to the fore. Even if the partner countries have sought to reinforce their place in the international community and have committed to international agreement, standards on human rights and migration management, the EU's acquis has been primarily seen as the appropriate role model for reforms. The EU's acquis has been in line with relevant internationally agreed norms and in most cases has played a crucial role in formulating them.

“Take the example of data protection. Data protection is something the EU is proud off. Their acquis is noting to be negotiated with; it is a standard the partner has to fulfil in order to improve their integration towards EU” (Interview with Commission official, Council/Dpt. on JHA, Brussels, 21 April 2009).

It demonstrates on the basis of its market power and its political stability a kind of gravity centre for neighbouring countries (e.g. Emerson/ Noutcheva 2004: 8). Trauner (2008), who analysed Europeanisation processes in Western Balkan states, highlighted the role of the EU for neighbouring countries: *“The EU acts as the reference model for the modernisation of the political, economic and social systems of the state concerned”* (Trauner 2008: 19).

Further, on contrary to the thesis, the EU acted as an agent for international norms and defined several international norms as precondition for and the basis of cooperation (e.g. Council of the EU 2006b; Salminen/ Moshes 2009; EU-RF summit 2005, Art. 18).

“As for the CoE, as far as I understand, one of the main purposes of the EU, when introducing this road map, was to make Russia to sign and ratify the conventions. And so the purpose, the EU succeeded, as Russia ratified many of these conventions” (Interview with Olga Potemkina, Institute of Europe at the Russian Academy of Sciences, Moscow, 12 June 2009).

Thus, the EU rules have been seen as legitimate and useful to increase the efficiency and problem solving capacities of internal policies.

The international normative pressure has not shown any direct impact on the EU's cooperation with third countries, but has affected the cost-benefit calculation for a partner country and has increased the legitimacy of EU's requirements, as long as they are coherent.

(H6/A6): In line with hypothesis six, the analysis has verified less evidence. The period of observance has been too short to substantiate strong results. However, the existing results are supporting anti-thesis six. The introduced institutions, to all appearances, have turned out to be rather stable and have geared a certain extent of autonomy. Therefore I suppose that a further institutionalisation could occur. The reasons have been the output legitimacy through beneficial outcome of the cooperation for all participating actors, as well as the socialisation of common norms, procedures and objectives within the epistemic community.

“In diesen [n.b.: joint visa facilitation and readmission] Komitees kommt es auch zu Sozialisierung und Internalisierung von Normen und Prinzipien. Vor allem in technischen Detailfragen“ (Interview with Commission Official, DG JFS, Brussels, 22 April 2009).

In Ukraine the main events have been the re-election of the pro-Russian President Victor Yanukovych on the 25 February 2010. In Belarus they have been the renewed sanctions against the Lukashenko regime due to repeated violations of fundamental rights and democratic principles in the course of the presidential elections held on the 19 December 2010. But the established institutional and legal framework has remained stable and operative.

“Kooperation ist nun auf eine gewisse Weise institutionalisiert, was sie gewissermaßen unabhängig von Regierungswechseln macht und zu mehr Kontinuität führt“ (Interview with Commission official, DG JFS, Brussels, 17 April 2009).

The introduced institutional set up proved to be resilient and once it has been fixed, it has facilitated a further institutionalisation and legalisation than degrading it.

(H7): This brings us to hypothesis seven. It assumes spill-over effects, as soon as institutions are created to tackle specific policy issues. This functional spill-over has happened primarily in interrelated issues or due to the increasing socialisation of actors arising from their positive experience and/or their satisfaction with previous cooperation (e.g. Interview with Commission Official, DG Relex, Moscow, 22 April 2009). For example: several reforms needs in the areas border management or asylum policy raised by the implementation of the visa facilitation and readmission agreement, as well as, reform needs will also arise from the road map toward further visa liberalisation.

This has brought them to extend their model of cooperation also to other policy issues. Since the first institutional framework introduced by the PCA in 1997 with the RF and in 1998 with Ukraine, the cooperation has experienced an ever deeper institutionalisation by, first and foremost, the ENP and the ‘Four Common Spaces’ initiatives and the ongoing negotiations an new Enhanced Agreement with both countries.

Ongoing institutionalisation responds to two processes: First, the socialisation processes among the respective bureaucracies; and, secondly, the spill-over effects are resulting from tackling interrelated policy issues.

To sum up, the following table illustrate the correlations between the conditions and the modes of governance. Governance by conditionality has been a result of an asymmetry in power, though an actor still must maintain a certain amount of credibility. The more powerful an actor is the more able he is to force its partner to implement desired reforms even if they are costly. If policy issues are not salient and the international community is not exerting pressure, the political costs are minimal and the officials can bargain with rational arguments. They can try to find sufficient compensations for the adoption costs.

A highly institutionalised cooperation – and therefore the introduction of efficient policy networks – is determined by following conditions: 1) the cooperation is of mutual interest; 2) rules and conditions are determinate and agreed by both; 3) technical and financial assistance is certain, sufficient; 4) adoption costs are low or get minimised by EU fund.

In contrary, the preconditions for governance by conditionality – which are 1) rules and conditions are determinate; 2) rewards are certain, high, and quickly distributed; 3) threats to withhold rewards are credible; 4) adoption costs are low; and 5) players with the capacity to exercise veto power is low (e.g. Romaniuk 2010: 64) – are challenged by: 1) EU's political conditionality, which is strongly refused by Belarus and the RF (e.g. human rights and democratic standards); 2) rewards are uncertain, below the expectations of the associated countries and only granted in the long term (e.g. visa liberalisation and Ukraine's EU membership aspirations); 3) EU is because of its dependence on this countries not really in the position to force them and to vocalise threats (e.g. energy supply, negative externalities in security terms); 4) the RF is a crucial intervening factor in EU's relations with Ukraine and Belarus.

The introduction is facilitated by a high degree of politicisation of a policy issue and a given normative pressure by the international community. Both have defined the political costs of any action and therefore have affected the cost-benefit calculation of any decision made by state officials. Again, the level of democracy in a country affects the extent of political costs, depending on public interests. In countries with limited democratic participation and in international isolation, the political costs have been low.

Figure 35. Correlation between Conditions and Modes in International Cooperation

	EU attributes		policy specific characteristics		
	Bargaining Power	Credibility	Cost-calculation	Saliience	Int. Normative pressure
Governance by Conditionality	(++)	(+)	(++)	(-)	(-)
Information Networks	(- -)	(-)	(+)	(++)	(+)
Implementation Networks	(+)	(+)	(-)	(-)	(++)
Regulatory Networks	(-)	(++)	(-)	(-)	(-)

8 Outlook and Implications for Further Research: Breaking New Ground in International Relations?

The analysis contributes to the literature on the EU's foreign policy towards third countries. It improves our understanding how the EU organises its cooperation with third countries. Beyond previous research done in this research area, this analysis has focussed on the determinants affecting the applied modes and instruments of cooperation. Getting a better insight into these factors helps evaluate current instruments in force and assess future models of EU external governance.

Cooperation on migratory issues is a litmus test for how relations with the EU's neighbouring states could unfold in practice, as these issues are loaded with serious tension. By emphasising on the technical aspects of policy issues, the EU's cooperation with third countries has been increasingly depoliticised. It has become facilitated in a wide range of issues. The future development of this less-hierarchical cooperation by task-specific networks is uncertain albeit it has some promises due to the new pragmatism in the EU's foreign policy. Although the value gap between the EU's norms and principles and that of its partner countries is visible, the EU started cooperation on specific policy issues. The previously applied political conditionality did not achieve the expected result. The EU's strategy – from the angle of security threats and economic considerations – has therefore changed as 'any cooperation is better than no one' (e.g. Noutcheva/ Pomorska/ Bosse 2011). Further research has to be done to investigate the possible spill-over effects towards other policy areas as well as the efficacy of the chosen modes. It may answer the

question on: “how and under what conditions could sectoral integration in EU policies through network governance be an alternative to enlargement?”

According to the reoccurring debates on a possible membership of Turkey, it seems to be promising to conduct research on alternative forms of international cooperation and modalities of integration into EU institutions along the lines of this study. Not only Ukraine, Belarus and the South Caucasian States but also the countries of the Maghreb and Mashreq have a different perspective of cooperation, especially in the wake of the transitions in the countries of the ‘Arab Spring’ revolutions. Thus, the institutionalisation and legalisation process of EU’s external governance could be a role model to organise relations with these countries.

The EU has used its normative and economic power to transpose its internal structure, procedures and legislation to expand its regulatory scope to third countries (Interview with Official from the DG Relex on EU-RF relations, Brussels, 24 April 2009). The EU initiatives have aimed to create a regional framework to integrate neighbouring countries into a common area of interest using the EU as the reference model. In the terminology of Smith (1996), this means an extension of its institutional and legal boundary towards third countries. The EU’s approach on norm setting on migratory management (e.g. readmission, border demarcation, local border traffic, visa policy and refugee protection), call for a coordination in a regional context (e.g. EU-Belarus Union, Central Asian countries and borderland communities between Schengen member states and neighbouring countries) (e.g. Interview with Official from the EC Delegation to the RF, Moscow, 28 May 2009).

“If the EU and Russia have a readmission agreement as well as EU and Ukraine have one, it is rather logic that Russia and Ukraine agree on a readmission agreement, as well as with countries beyond” (Interview with Commission official, Council/Dpt. on JHA, Brussels, 21 April 2009).

As was stressed in the conclusion, the EU has to take into account that the RF still plays a central role in the region and is going to play it also in the future. An efficient EU neighbourhood policy, therefore, needs to include the RF in its integrationist project in the common neighbourhood. However, the RF renewed its regional policy to increase its influence in former Soviet and allied states (see also ‘Economisation’ of RF’s foreign policy (Meister 2010)) as well as seeks to integrate former Soviet states into RF-led regional policies as e.g. the Eurasian Union. *“And so the migration policy lays in the focus of this new [n.b.: RF-led integration] framework cooperation”* (Interview with Olga

Potemkina, Institute of Europe at the Russian Academy of Sciences, Moscow, 12 June 2009).

The EU's neighbourhood policy still lacks a clear vision of the 'finalité' of their partnership with associated countries. This weakens the geopolitical position of the EU in the region and thus diminishes the possibility to create an area of security, stability and prosperity. Already in 2002, former President of the EC Romano Prodi formulated such a vision and expressed the EU's willingness to offer widespread integration into EU policies. Prodi described its concept for integration beyond the EU as "sharing *everything with the Union but institutions*" (ibid. 2002). This means the creation of strategic partnerships or an interest community with EU neighbours. In the style of the European Economic Area (EEA) – including the Non-EU member states Iceland, Norway and Liechtenstein – the EU could seek similar agreements and establish analogue institutions with interested neighbouring countries.

9 Appendix

9.1 Modes of Interaction (Lavenex 2008)

			<i>Instruments</i>	<i>Output</i>	<i>Actors</i>
<i>Modes of Interaction</i>	<i>Hierarchy</i>		EC and EU law, precise requirements	Policy transfer	Supranational EU Institutions and Council vis-à-vis 3rd country governments
	<i>Networks</i>	<i>Information-networks</i>	Voluntary Instruments, process-oriented: Data, information, best practices	Coordination	Multilevel: transgovernmental and transnational (including (supra- and subnational actors) Non-State actors: bodies, agencies Private actors
		<i>Implementation networks</i>	Voluntary instruments, process-oriented: Data, information, operational cooperation, capacity building		
		<i>Regulation networks</i>	Voluntary Instruments, process-oriented: benchmarks, common standards		

9.2 Interview List Brussels, Kyiv, Minsk and Moscow

Date	Institution	Department	Topics	Length
Brussels				
17.April '09	Commission	JFS.A.2	International Officer RF	1,5 h
20.April '09	Commission	RELEX.DDG2.E.1	Relations with Ukraine, Moldova	1,5 h
20.April '09	Commission	RELEX.DDG2.E.1	Relations with Belarus	30 min
21.April '09	Council	Council Secretariat	Visa, Frontiers	45 min
22.April '09	Commission	JFS.B3	International aspects of migration and visa policy	1,5 h
22.April '09	Embassy of Belarus	Rep. to the EU	Coop. With the EU on JHA	1 h
23.April '09	Embassy of RF	Rep. to the EU	Coop. With the EU on JHA	1 h
23.April '09	Embassy of Ukraine	Rep. to the EU	Coop. With the EU on JHA	45 min
24.April '09	Commission	RELEX.DDG2.E.1	Relations with RF	1 h
24.April '09	Commission	RELEX.DDG2.E.1	Ukraine, Moldova, Belarus	40 min
Moscow				
26 May '09	EC Delegation		Institutional Framework and General Cooperation	30 min
26 May '09	EC Delegation	Political Section JFS	Cooperation in the Common Space of FSJ	1,5 h
28 May '09	Russian Academy of Sciences	The Institute of Europe	Cooperation at all and specific on Migration Management	1h
29 May '09	Moscow State Institute of International Relations	Law Department		40 min
Minsk				
5 June '09	Belarusian State University	Dean "IR Faculty"		1h
5 June '09	International Non-governmental Association for Scientific Research, Information and Educational Program "Evolutio"	Executive Director		30 min
8 June '09	Ministry of Foreign Affairs	Consular Department		1,5h
8 June '09	EC Delegation			1 h
9 June '09	State Border Guards			1,5 h
9 June '09	State Border Guards			30 min
9 June '09	Ministry for Interior	Dpt. Migration	Visa policy	group interview
9 June '09	Ministry for Interior	Dpt. Migration	Irregular Migration and Refugee Protection	1,5 h
9 June '09	Ministry for Interior	Dpt. Migration	Irregular Migration and Refugee Protection	

9 June '09	Ministry for Interior	Dpt. Migration	Border Management	
10 June '09	IOM	Operations Specialist		45 min
10 June '09	IOM	CT Specialist		30 min
10 June '09	IOM	Programme Assistant		1 h
Moscow				
15 June '09	Academy of Sciences	Prof. Dr. Potemkina		2 h
16 June '09	IOM	Programme Coordinator	Return Policy	1,5 h
17 June '09	IOM		Irregular Migration and Refugee Protection	45 min
18 June '09	Moscow State Institute of International Relations	Law Department		1 h
19 June '09	Embassy of Finland		Visa facilitation	50 min
Kyiv				
01. Sep. '09	IOM	Programme Director		1,5 h
01. Sep. '09	IOM	GUMIRA project manager		40 min
01. Sep. '09	IOM	HUREMAS project manager		30 min
03. Sep. '09	Verkhovna Rada – EU Integration Committee	Borys Ivanovych Tarasiuk, Head of the Committee		1 h
08. Sep. '09	Centre for Peace, Conversion and Foreign Policy of Ukraine (CPCFPU)	Prof. Oleksandr Sushko, Director Deputy	Visa facilitation and readmission agreement	1,5h
09. Sep. '09	Ministry of Justice	Assistant to the Director of State Department		1 h
09. Sep. '09	ICMPD	Liaison Officer		1,5 h
11. Sep. '09	Embassy of Germany	Consulate	Visa facilitation and readmission agreement	2 h
15. Sep. '09	EC Delegation to the Ukraine	Co-Coordinator for Cooperation		1 h
15. Sep. '09	UNHCR	Programme Manager		
16. Sep. '09	Embassy of Sweden	Head of Policy Affairs	Technical assistance	1h
16. Sep. '09	Embassy of Austria	Consulate	Visa facilitation and readmission agreement	1,5 h
17. Sep. '09	EC Delegation to the Ukraine	For asylum, migration, visa and readmission matters		45 h
17. Sep. '09	EC Delegation to the Ukraine	For border management and customs service		30 h
18. Sep. '09	Ministry of Foreign Affairs	Head of Department for European Integration		1 h
18. Sep. '09	Embassy of Sweden			1 h

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Curriculum Vitae

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Education & Professional Experience

- Since November 2011: **Research Fellow**
Institute for European Integration Research,
Austrian Academy of Sciences (OEAW), Vienna
- March 2008 – Nov. 2011: **Ph.D. Student**
University of Vienna, Institute for Political Science
- Oct. 2010 – July 2011 **Research Fellow**
Institute for Advanced Studies (IHS), Vienna
- Oct. 2007 – Sept. 2010: **Postgraduate Programme “European Integration”**
Institute for Advanced Studies (IHS), Vienna
- August/September 2009: **Visiting Fellow**
Konrad-Adenauer Stiftung in Kyiv, Ukraine
- June 2009: **Visiting fellow**
Belarusian State University, IR Faculty, Minsk, Belarus
- May 2009 – June 2009: **Research Fellow**
Moscow State Institute of International Relations (MGIMO),
- Oct. 2003 – Nov. 2007: **Graduate Studies**
University of Vienna, Institute for Political Science
Specification on European Studies, IR, Peace and Conflict
Management, Transformation processes in Eastern Europe
- Sept. 2001 – June 2003: **Undergraduate Studies**
Advertising Academy Vienna, Specification on Market
Communication and Public Relations
- Feb. 2003 – June 2003: **Undergraduate Studies**
Academy for Journalism, Wels, Austria
- Oct. 2000 till June 2001: **Undergraduate Studies**
University of Vienna, Student of Journalism, Communication,
Sciences (major) and Political Science and Philosophy (minor)

Professional Experience

- Nov. 2004 – Oct. 2006: **Project Management, Marketing Analyst, PR-Consultant**
iDream Mediaservices GmbH, Vienna
- Aug. 2003 – Oct. 2004: **Project Management, Marketing Analyst, PR-Consultant**
Advertising Agency TwistAd, member of FMS Event-network GmbH
- March 2001 – Aug. 2001: **Client Service**
Insurance Company “Österreichische Hagelversicherung”

Teaching

- Summer Term 2011: **Qualitative Methods in Social Sciences – Europeanisation of the Austrian Political System**
University of Vienna, Dpt. of Political Science
- Summer Term 2010: **Qualitative Methods in Social Sciences – Europeanisation of the Austrian Political System**
University of Vienna, Dpt. of Political Science

Research

Research Interests

European Integration, Multi-level Governance and Decision-Making in European Union Politics, EU CFSP, European Neighbourhood Policy, External Democratization, Europeanization in Non-EU member states, Transformation processes in Central- and Eastern Europe, EU-Russia relations;

PhD. – Project

“Governing ‘Wider Europe’ in an Interdependent World. Explaining Modes of EU’s External Policy in Migration Management. A Comparative Case Study with Ukraine, Belarus and the Russian Federation.

Master - Project

“The EU as an external Democracy Promoter in post-socialist countries - Analysis of the conditions which determine the selections of instruments and strategies to promote democracy externally”, Oct. 2007, diploma thesis, University of Vienna, Austria

Publications

Zeilinger, Bernhard (forthcoming): *EU's External Policy towards Eastern Europe on Migration Issues.* In: Bachmann, Klaus; Stadtmüller, Elzbieta (ed.): *Shifting Borders in the European Union.* Routledge

Kruse, Imke; Trauner, Florian; Zeilinger, Bernhard (2011): *Values versus Security in the External Dimension of EU Migration Policy: A Case Study on the EC Readmission Agreement with Russia;* In: Noutcheva, Gergana; Pomorska, Karolina; Bosse, Giselle: *Values vs. Security? The Choice for the EU and Its Neighbours.* Palgrave

Zeilinger, Bernhard (2006): *Jugendarbeitslosigkeit im Spannungsfeld unterschiedlicher Bildungssysteme. Ein Vergleich zwischen Österreich und Schweden.* Academic Forum for Foreign Affairs (AFA), Vienna

Conferences / Fieldwork / PhD.-Schools

22-23 November 2010: **“The External Dimension of EU Justice and Home Affairs: Post-Lisbon Governance Perspectives”**

Workshop of the Institute for European Integration Research,
Austrian Academy of Sciences

9-12 September 2010: Panel **“EU external action towards third countries”**

SGIR 7th Pan-European International Relations Conference,
Stockholm

24-26 June 2010: Panel **“Governance and Democratization in the Wider Europe”**

ECPR Fifth Pan-European Conference, Porto

4-5 March 2010: **“Global Governance, Regionalism and the EU: Facing the Emergence of a Multipolar World”**

GARNET Ph.D. Alumni Conference on, Brussels

7-11 December 2009: **“Global Governance, Regionalism and the EU: Changing Interaction with the EU's External Borders”**

9th GARNET Ph.D. School, Wroclaw, Poland

15 May 2009: **“The Internal Security of the EU and Its External Effects”**

EU CONSENT Workshop, Prague

23 April 2009: **“EU Policy on Russia: The Way Forward 2009”**

Conference organised by the European Commission, Brussels

April 2007: **Study travel to Serbia and Bosnia**

with the United Nations Youth and Student Association of Austria to
the embassy of Austria in Belgrade and Sarajevo, Austrian
Development Agency in Serbia, EU-Monitoring Mission in Sarajevo
and EUFOR-Camp Sarajevo

Sept. 2005 – March 2007: **Dep. Secretary General of YES-Austria**

11.-19. September 2006: **International Youth Employment Summit (YES)**

Nairobi, Kenya

14. Aug. – 10. Sept. 2006: **Visiting Fellow**
East African Communities' Organization for Management of Lake Victoria resources (ECOVIC) Uganda Chapter, Jinja, Uganda
- August 2006: **Co-Chair at the Vienna Model United Nations (VIMUN)**
IAEA Committee
- May 2006: **Study Travel to Slovenia**
with the United Nations Youth and Student Association of Austria; Meeting with the ambassador of Austria in Maribor, etc.
- April 2006: **Humanitarian transport**
Mukacevo, Western Ukraine
- August 2005: **Co-Chair at the Vienna Model United Nations (VIMUN)**
UNESCO Committee
- July/August 2003: **Summer School on Cultural Studies**
Institute for Cross Cultural Studies (TICCS), Tamale, Ghana

Grants and Scholarships

- 2007-2010: **Postgraduate Scholarship**
Institute for Advanced Studies (IHS), Vienna
- 2009: **Fieldwork Travel Grant (KWA)**
University of Vienna

Language Skills

German (mother tongue), English (fluent)

Academic Memberships

- Since 2004: Academic Forum for Foreign Affairs (AFA), Vienna
- Since 2007: Austrian Political Science Association (ÖGPW), Vienna
- Since 2007: Institut für den Donauraum und Mitteleuropa (IDM)
- 2009-2010: Network of Excellence on Global Governance, Regionalisation and Regulation: The Role of the EU (GARNET), Brussels