



**The Eastern Partnership, The Union For The
Mediterranean And The Remaining Need To Do
Something With The ENP**

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The European Union has a long record of rhetorical commitments to foreign policy initiatives, not followed through by national governments or by needed agreement to common policies.¹

William Wallace

ABSTRACT

The questionable practice of conditionality used outside of its initial pre-accession context, the grouping together of countries which have little or nothing in common, and the lack of real incentives for the European Union's neighbourhood partners, as well as a reliance on a range of 'phantom' common values, together suggest that the European Neighbourhood Policy (ENP) is falling short of the ambitious goals originally set for it. This paper summarises the main drawbacks of the ENP and then proceeds to an analysis of the ability of the newly-introduced 'Eastern Partnership' and the 'Union for the Mediterranean' initiatives to remedy the key deficiencies of the policy. The conclusions are discomfiting: instead of targeting the main drawbacks of the policy, new layers are built on the ENP's questionable core, increasing the complexity of the EU's relations with its neighbourhood and sending a signal that, all the pro-active rhetoric notwithstanding, the Union is not ready to be wholeheartedly engaged with the ENP partners.

INTRODUCTION AND THE STRUCTURE OF THE ARGUMENT

The European Neighbourhood Policy (ENP),² is unlikely to fulfil the far-reaching expectations connected with it.³ This is so even notwithstanding the recent

¹ Wallace, William, 'Looking after the Neighbourhood: Responsibilities for the EU-25', *Notre Europe Policy Paper* No. 4, 2003, 7.

² Four key documents outlining the basics of the ENP are the following: European Commission, 'Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours', COM(2003) 104 final, of 11 March 2003; European Commission, 'European Neighbourhood Policy: Strategy Paper', COM(2004) 373 final, of 12 May 2004; European Commission, 'On Strengthening the European Neighbourhood Policy', COM(2006) 726 final, of 4 December 2006; European Commission, 'A Strong European Neighbourhood Policy', COM(2007) 774 final, of 5 December 2007.

³ Literature on the ENP is growing very fast. See, most importantly, Magen, Amichai, 'The Shadow of Enlargement: Can the European Neighbourhood Policy Achieve Compliance', 12 *Columbia Journal of European Law*, 2006, 383. See also Delocour, Laure and Tulmets, Elsa (eds.), *Pioneer Europe? Testing EU Foreign Policy in the Neighbourhood*, Baden-Baden: Nomos, 2008; Zaiotti, Ruben, 'Of Friends and Fences: Europe's Neighbourhood Policy and the "Gated Community Syndrome"', 29 *European Integration* 2, 2007, 143; Sasse, Gwendolyn, "'Conditionality-lite": The European Neighbourhood Policy and the EU's Eastern Neighbours', in Casarini, Nicola and Musu, Costanza (eds.), *European Foreign Policy in an Evolving International System: The Road towards Convergence*, Basingstoke: Palgrave, 2007, 163; Cremona, Marise and Meloni, Gabriella (eds.), 'The European Neighbourhood Policy: A Framework for Modernisation?', *EUI Working Paper Law* 2007/21, 2007; Balfour, Rosa and Missiroli, Antonio, 'Reassessing the European Neighbourhood Policy', *EPC Issue Paper* No. 54, 2007; Cremona, Marise and Hillion, Christophe, 'L'Union fait la force? Potential and Limitations of the European

efforts of the Member States to remedy at least some of the ENP's structural flaws through the recent initiatives of the Union for the Mediterranean and the Eastern Partnership. Characterisation of the ENP as 'the core priority of the EU's foreign policy'⁴ can be taken as proof that the Council, too, can be ironical, given the criticism of the policy in the ever-growing literature exemplifying the policy's poor performance in practice.

The main aim of this paper is to pinpoint the main drawbacks from which the ENP suffers and assess the likely impact of the newly-introduced Union for the Mediterranean and Eastern Partnership initiatives to revitalise the policy. It does this by building on existing Commission 'soft-law' documents and the legal instruments of the ENP as well as to synthesise an analysis of the policy available in the literature. The focus is thus both on the core of the ENP and on the likely success of the recent additions to it.

Over recent years, the EU has added more and more layers to its neighbourhood policy. While the ENP-proper applies to all the partner states concerned, two main vectors of the ENP – the Southern Mediterranean and Eastern Europe (excluding Russia) have developed their own separate multiple layers of policy. In the Mediterranean the ENP co-exists with the Barcelona process (EuroMed: Barcelona 1 and Barcelona 2)⁵, including its

Neighbourhood Policy as an Integrated EU Foreign and Security Policy', *EUI Working Papers Law* No. 2006/39, 2006; Dannreuter, Roland, 'Developing the Alternative to Enlargement: The European Neighbourhood Policy', 11 *European Foreign Affairs Review*, 2006, 183; Kelley, Judith, 'New Wine in Old Wineskins: Promoting Political Reforms through the New European Neighbourhood Policy', 44 *Journal of Common Market Studies* 1, 2006, 29–55; Overhaus, Marco, Maull, Hanns W. and Harnisch, Sebastian (eds.), 'The New Neighbourhood Policy of the European Union: Perspectives from the European Commission, France, Germany, Poland, Ukraine and Moldova', 7 *Foreign Policy in Dialogue* 19, 2006, 757; Smith, Karen E., 'The Outsiders: The European Neighbourhood Policy', 81 *International Affairs* 4, 2005, 757; Del Sarto, R.A. and Schumacher, T., 'From EMP to ENP: What's at Stake with the European Neighbourhood Policy towards the Southern Mediterranean?', 10 *European Foreign Affairs Review*, 2005, 17; Cremona, Marise, 'The European Neighbourhood Policy: Legal and Institutional Issues', *CDDRL Working Paper* No. 25, 2004; Attinà, Fulvio and Rossi, Rosa (eds.), *European Neighbourhood Policy: Political, Economic and Social Issues*, Catania: University of Catania, 2004; Wallace, (2003). The only really optimistic assessment of the ENP to date comes, not surprisingly, from an expert working at the Commission: see Wissels, Rutger, 'The Development of the European Neighbourhood Policy', in Overhaus, Marco, Maull, Hanns W. and Harnisch, Sebastian (eds.), 'The New Neighbourhood Policy of the European Union: Perspectives from the European Commission, France, Germany, Poland, Ukraine and Moldova', 7 *Foreign Policy in Dialogue* 19, 2006, 7.

⁴ GAERC, 'Strengthening the European Neighbourhood Policy. Presidency Progress Report', of 18, 19 June 2007, 1. William Wallace characterised it as an 'afterthought' instead: Wallace (2003), 26. For a summary assessment of EU external relations see Ott, Andrea and Wessel, Ramses, 'The EU's External Relations Regime: Multilevel Complexity in an Expanding Union', in Blockmans, Steven and Łazowski, Adam (eds.), *The European Union and Its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, The Hague, T.M.C. Asser Press, 2006, 19–59; Eeckhout, Piet, *External Relations of the European Union: Legal and Constitutional Foundations*, Oxford: OUP, 2004.

⁵ Building on the Barcelona Declaration of the Euro-Mediterranean conference of Foreign Ministers from the region (27, 28 November 1995, available at <http://ec.europa.eu/external_relations/euromed/bd.htm>) and its update by the Barcelona

most recent update, the Union for the Mediterranean.⁶ In Eastern Europe the ENP is fused with the recently introduced Eastern Partnership⁷ and regional initiatives, such as the Black Sea Synergy.⁸

The goals of all the overlapping layers of policy are ultimately the same; to create a 'ring of friends' around the EU without promising those countries that make up that 'ring' too much (specifically, though not exclusively, EU membership). Each new set of instruments and approaches introduced with the view to achieving these goals does not at the same time cancel the previous ones which have already demonstrated their ineffectiveness. Consequently, while excelling in complexity, the European Union's engagement in its neighbourhood is not growing in substance as far as the goals to be achieved are concerned. The attractiveness of the policy and its ability to introduce real change in the neighbourhood remain truly limited. The same critique can be applied to the instruments employed by the EU in the neighbourhood for the achievement of the goals of the ENP. Successive policy updates leave the main drawbacks of the policy unchanged. The deficiencies of the ENP are not seriously tackled for a number of reasons, mostly related to the lack of a common vision of the neighbourhood among the Member States.⁹ Consequences of this are such that even the leading partner countries are not really enthusiastic about the policy. As the Ukrainian President, Viktor Yushchenko, told the European Parliament, his country 'do[es] not accept the Neighbourhood Policy as an adequate basis of EU-Ukraine relations'.¹⁰ After two major updates of the ENP in 2008 alone, it is clearer than ever that the policy is in drastic need of fundamental reform. The ENP's very starting points need to be deeply rethought.

Euro-Mediterranean Summit of 2005 (27, 28 November 2005, relevant documents available at <http://ec.europa.eu/external_relations/euromed/summit1105/index.htm>), as well as a sophisticated system of legal and political instruments designed to facilitate the achievement of the objectives outlined in the Declarations. For analysis see Attinà, Fulvio, 'The Euro-Mediterranean Partnership Assessed: The Realist and Liberal Views', 8 *European Foreign Affairs Review* 2, 2003, 181.

⁶ See Déclaration commune du sommet de Paris pour la Méditerranée, Paris, 13 July, 2008. See also Liberti, Fabio, 'The European Union and the South Mediterranean Partners: *L'Union pour la Méditerranée*, a French Attempt to Refocus the EU Engagement toward the South', in Delocour, Laure and Tulmets, Elsa (eds.), *Pioneer Europe? Testing EU Foreign Policy in the Neighbourhood*, Baden-Baden: Nomos, 2008, 93.

⁷ See Joint Declaration of the Prague Eastern Partnership Summit, Prague, 7 May 2009; European Council, Annex II to the Presidency Conclusions 'Declaration by the European Council on the Eastern Partnership', Brussels, 19/20 March 2009 (CL09-067EN); Commission's Communication 'Eastern Partnership', COM(2008) 823 final, of 3 December 2008; Commission's Staff Working Document accompanying Communication on the Eastern Partnership, SEC(2008) 2974/3.

⁸ See Commission's Communication COM(2007) 160 final. Besides a geographical overlap, the BSS, which is 'a complementary initiative that would focus political attention at the regional level and invigorate ongoing co-operation process' overlaps with the ENP also in terms of goals and objectives.

⁹ This is illustrated by the whole story of development of the ENP retold *infra*.

¹⁰ As cited by Roman Shpek, Ukrainian Ambassador in Brussels, available at <<http://euobserver.com/?aid=23576>>.

This paper will proceed in the following way. Firstly, a short outline of the development of the ENP will be provided. This story will be used in the first section of the paper in order to expose five main conceptual flaws inherent in the design of the ENP undermining the policy's potential workability. These include the geographical choices lying at the foundation of the policy; the ungrounded presumption of genuinely shared values connecting the EU and the ENP partner countries; the presumption of effectiveness of value-based conditionality in the neighbourhood; the fusion of irreconcilable ideas of co-ownership of the process and conditionality; and the lack of real incentives being offered to partner countries willing to change according to the EU's lead. The first section thus provides an outline of the main structural flaws of the ENP (Section I). The paper proceeds with a brief outline of the main developments that affected the ENP structure in 2008, considering both the Eastern Partnership and the Union for the Mediterranean against the background of the main flaws of the policy as outlined in the first section (Section II).

The mistakes and drawbacks outlined in the paper should be remedied in some way in an attempt to make the policy workable. In tune with Shaw's observation that 'the study of governance in the EU is a constructive rather than a deductive process',¹¹ the last section of the paper contains a very short list of suggestions as to how this can be done. The paper concludes with a call to reform the essence of the ENP which should replace the current approach of adding new layers of policy on top of the existing structures of unsound performance (Section III).

I. THE ENP BEFORE 2008

The ENP story started with the idea of 'Wider Europe', formulated shortly before the 2004 Eastern enlargement as the first response to the challenge of the changing geopolitical reality.¹² The renewed Union emerged as a leading regional actor and was keen to capitalise on this potential. The neighbourhood¹³ changed with the Union itself and the new neighbours lying hundreds of kilometres away from Brussels. New approaches to the potential challenges such a neighbourhood was likely to bring were clearly needed. The Commission recognised this challenge in 2003, stating in its Communication on Neighbourhood that:

Over the coming decade and beyond, the Union's capacity to provide security, stability and sustainable development to

¹¹ Shaw, Jo, 'Constitutional Settlements and the Citizen after the Treaty of Amsterdam', in Neunreither, Karlheinz and Wiener, Antje (eds.) *European Integration after Amsterdam*, Oxford: OUP, 2000, 290, 297.

¹² As presented in the letter (requested by GAERC) by Chris Patten and Javier Solana at an informal meeting of the Foreign Ministers in September 2002.

¹³ This vague term alludes to the majority of the third-countries geographically neighbouring the European Union.

its citizens will no longer be distinguishable from its interest in close co-operation with its neighbours.¹⁴

In dealing with these new neighbours the EU aims to create a 'ring of friends' to ensure stability, prosperity and peace in the neighbouring countries engaged in the process and acting in line with its (the EU's) most fundamental goals.¹⁵ The Commission underlined that the policy designed to cover these countries had to ensure that no new dividing lines emerge in Europe following the big bang enlargement and that the countries neighbouring the Union are all well-governed and prosperous states.¹⁶ The same is stated in the European Security Strategy (ESS):

...our task is to promote a ring of well-governed countries to the East of the EU and on the borders of the Mediterranean with whom we can enjoy close co-operative relations.¹⁷

To achieve this, a long-term approach to the promotion of reform, sustainable development and trade had to be articulated by the EU. The Union recognised that economic, political and security concerns merge together in the neighbourhood, demanding a cumulative approach to their solution. Importantly, the EU equally realised the importance of building economic, political and other ties not only at a bilateral level (between the EU and partner countries) but also horizontally among the partners, thus aiming at promoting growing ties between the partners themselves¹⁸ (at least some of them¹⁹) and also encouraging the partners to undertake their own reforms.²⁰

To include the EU neighbours not covered by already existing comprehensive integration policies and not enjoying any special status at the moment of the formulation of the idea, the 'Wider Europe' could thus only be concerned with *de facto* the least economically developed EU neighbours. After the name change from the 'Wider Europe' to the 'Neighbourhood', this remained intact: the wealthiest as well as the most important neighbours are not

¹⁴ COM(2003) 104 final, 3.

¹⁵ Most broadly conceived, the goals are reflected in Art. 2 EU.

¹⁶ COM(2003) 104 final, 3.

¹⁷ European Council, 'A Secure Europe in a Better World: European Security Strategy', Brussels, December 12, 2003, available at <<http://ue.eu.int/uedocs/cmsUpload/78367.pdf>>. Magen underlines that the ESS and the ENP, 'were developed concurrently and should be read as interrelated initiatives': Magen (2006), 383, 400.

¹⁸ GAERC, 'Strengthening the European Neighbourhood Policy. Presidency Progress Report', of 18, 19 June 2007, section 3.

¹⁹ While promoting co-operation between the Mediterranean partners, the EU's policy towards Eastern European partner states seemed to be somewhat different. For analysis see Delcour, Laure, 'A Missing Eastern Dimension? The ENP and Region-Building in the Post-Soviet Area', in Delcour, Laure and Tulmets, Elsa (eds.), *Pioneer Europe? Testing EU Foreign Policy in the Neighbourhood*, Baden-Baden: Nomos, 2008, 161.

²⁰ COM(2004) 373 final, 9.

covered by the Neighbourhood Policy.²¹ This results in the compartmentalisation of the EU's immediate neighbourhood.²² This concerns, first of all the EEA countries²³ (Iceland, Liechtenstein and Norway²⁴); Switzerland;²⁵ all the micro-states which have bilateral relations with the EU;²⁶ the candidate countries (Croatia,²⁷ Macedonia, Turkey²⁸); the pre-candidate countries of the Western Balkans (Albania, Croatia, Serbia, Montenegro, Macedonia, Bosnia & Herzegovina, Kosovo²⁹); and the EU's two biggest strategic neighbours: the one in Eurasia (the Russian Federation³⁰) and the one across the Atlantic ocean (the United States).

a. Drawback no. 1: geographical choices behind the ENP

The ENP was initially designed to deal with the EU's neighbours in the East of the European continent; namely, Russia, Ukraine, Belarus and Moldova.³¹

²¹ Israel is the only country among the ENP partners with a GDP per capita level comparable with the EU average.

²² The point about the neighbourhood's compartmentalisation is made in the preface to Blockmans, Steven and Łazowski, Adam (eds.), *The European Union and Its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, The Hague, T.M.C. Asser Press, 2006, vii.

²³ For a compelling account see Łazowski, Adam, 'Enhanced Multilateralism and Enhanced Bilateralism: Integration without Membership in the European Union', 45 *Common Market Law Review*, 2008, 1433.

²⁴ See generally on the EEA–EU relations: Łazowski, Adam, 'EEA Countries (Iceland, Liechtenstein and Norway)' in Blockmans, Steven and Łazowski, Adam (eds.), *The European Union and Its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, The Hague, T.M.C. Asser Press, 2006, 95–146.

²⁵ See generally on EU–Swiss relations: Łazowski, Adam, 'Switzerland', in Blockmans, Steven and Łazowski, Adam (eds.), *The European Union and Its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, The Hague, T.M.C. Asser Press, 2006, 147–184.

²⁶ See generally on EU–European micro-states relations: Murray, Fiona, 'Micro-States (Andorra, Monaco, San Marino and the Vatican City)', in Blockmans, Steven and Łazowski, Adam (eds.), *The European Union and Its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, The Hague, T.M.C. Asser Press, 2006, 185–205.

²⁷ Rodin, Siniša, 'Croatia', in Blockmans, Steven and Łazowski, Adam (eds.), *The European Union and Its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, The Hague, T.M.C. Asser Press, 2006, 357–389.

²⁸ Generally on EU–Turkey relations see Lenski, Edgar, 'Turkey (Including Northern Cyprus)', in Blockmans, Steven and Łazowski, Adam (eds.), *The European Union and Its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, The Hague, T.M.C. Asser Press, 2006, 283–313.

²⁹ The special regime designed for the Western Balkans still applies to both Western-Balkan candidate countries: Croatia and Macedonia. On the legal framework existing between the EU and Western Balkans see Blockmans, Steven, 'Western Balkans (Albania, Bosnia-Herzegovina, Croatia, Macedonia and Serbia and Montenegro, Including Kosovo)', in Blockmans, Steven and Łazowski, Adam (eds.), *The European Union and Its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, The Hague, T.M.C. Asser Press, 2006, 315–355.

³⁰ On the legal aspects of the EU–Russian relations see Hillion, Christophe, 'Russian Federation (Including Kaliningrad)', in Blockmans, Steven and Łazowski, Adam (eds.), *The European Union and Its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, The Hague, T.M.C. Asser Press, 2006, 463–497.

³¹ These were the only countries named in the September 2002 letter of Chris Patten (then External Relations Commissioner) and Javier Solana (the High Representative for the CFSP) that

However, such an approach was unsatisfactory for Russia, which sought engagement with the EU on somewhat 'more equal terms',³² and for the Member States traditionally interested in the Mediterranean region. Consequently, the geographical scope of the policy was changed; first of all to exclude Russia from the list of ENP partner states and, secondly, to include the Mediterranean states,³³ thus creating an overlapping policy space in the Mediterranean region, where the Euro-Mediterranean Partnership is being implemented.³⁴ This overlap resulted in substantial confusion, since the Mediterranean component of the EU's foreign policy had already been developed to a great extent through the EuroMed. In the Mediterranean the ENP was building on the existing EuroMed framework where the multilateral component is strong, while in the East of Europe such a multilateral framework was missing.³⁵ The ENP, although concerning a number of countries in different regions, is not a multilateral policy.³⁶

Moreover, the European countries in the East of Europe and the Mediterranean countries have principally different expectations of their enhanced relations with the EU, since European partner states make it absolutely clear that their ultimate ambition is to join the EU as fully-fledged Member States in the future.

lay the foundation of the thinking about engaging the neighbours in a special relationship with the EU. The letter was drafted on the request of the GAERC formulated in April 2002. Some scholars link the initial geographical scope of the policy with the active position taken by Poland (then still a candidate country) *vis-à-vis* the East of the sub-continent. For analysis see Kratochvíl, Petr, 'New EU Members and the ENP: Different Agendas, Different Strategies', contribution to the forum 'The Neighbourhood Policy of the European Union', *Intereconomics*, 2007, 191.

³² Which ultimately resulted in the creation of the 'Four Spaces': first outlined at the EU Russia St. Petersburg Summit in May 2003 and later articulated at the EU Russia Moscow Summit of May 2005 taking the shape of Four Road Maps, available at http://ec.europa.eu/external_relations/russia/intro/index.htm.

³³ Presidency Conclusions, Copenhagen (12, 13 December 2002), §24.

³⁴ Geographically, the ENP partially overlaps not only with the EuroMed, but also with the Black Sea Synergy (BSS) applicable to several Member States, candidate countries and ENP Partners in the Black Sea region. See Commission's Communication COM(2007) 160 final. Besides a geographical overlap, the BSS, which is 'a complementary initiative that would focus political attention at the regional level and invigorate ongoing co-operation process' overlaps with the ENP also in terms of goals and objectives.

³⁵ The Commission 'strongly encourages' multilateralism in the Mediterranean and 'considers' it in Eastern Europe: COM(2003) 104 final, 8. The reasons for such differentiation lying within the realm of *Realpolitik* are clear: Russia considers *blizhneje zarubezh'je* (the 'near abroad') as falling within the scope of its strategic interests and is likely to dominate any integration projects in the region. For the analysis see Delcour (2008).

³⁶ For a critical assessment of bilateralism of the ENP in the light of EU-Ukraine partnership see Lytvynyuk, Anna, 'Is Bilateralism a Solution? The Case of Ukraine', in Cremona, Marise and Meloni, Gabriella (eds.), 'The European Neighbourhood Policy: A Framework for Modernisation?', *EUI Working Paper Law 2007/21*, 2007, 137-146.

The geographical essence of the policy was further altered with the inclusion of the three Caucasian republics (Armenia, Azerbaijan and Georgia³⁷) in 2004.³⁸ Consequently, at the moment, geographically the ENP has the potential to cover 16 states.³⁹ In practice, the involvement of the potential ENP partners varies, since the policy depends on the existing framework of agreements in force between the EU and a given partner as well as the willingness of the partners to participate. It means that some states, such as Belarus and Syria, although included on the list of partners, currently are *de facto* unable to benefit from the policy. Some territories and non-recognised entities *de jure* meaning that, in some cases, geographical parts of some of the ENP partners are not covered by the policy at all.⁴⁰

A legitimate question arises as to what connects all the countries collected under the umbrella of the ENP. The right answer seems to be 'nothing really', besides a land or sea border with the EU and their non-inclusion into other EU programmes designed for richer, or 'more important' partners.⁴¹ Even the fact that they are the EU's neighbours cannot be viewed as a connecting link,⁴²

³⁷ For the analysis of the legal aspects of the EU relations with these countries see Łabędzka, Anna, 'The Southern Caucasus (Armenia, Azerbaijan and Georgia)', in Blockmans, Steven and Łazowski, Adam (eds.), *The European Union and Its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, The Hague, T.M.C. Asser Press, 2006, 575–612.

³⁸ Council Conclusions of 14 June 2004 on the ENP, 10189/04, §12.

³⁹ Now covered: Israel, Jordan, Moldova, Morocco, the Palestinian Authority, Tunisia, Ukraine (ENP Action Plans in force since 2005); Armenia, Azerbaijan, Georgia (ENP Action Plans in force since 2006); Lebanon, Egypt (ENP Action Plans in force since 2007), Algeria (only an Association Agreement in force) and Belarus, Libya and Syria (potential partners).

⁴⁰ These include, for instance Transdniestria, Abkhazia, South Ossetia, Nagorno Karabakh and the occupied territory of Western Sahara (partly controlled by the *Frente Polisario*). Notwithstanding their outcast position in international law, these territories, just like the non-co-operative states unwilling actively to participate in the ENP such as Syria, Belarus and Libya, could benefit from some special loose arrangements ultimately improving and securing the situation in the neighbourhood. Emerson, Noutcheva and Popescu, advocating an 'ENP light' solution for such entities point at the possibility of starting projects in the areas of 'education, culture, civil society building, health sector reform, rural development, poverty reduction, transport and infrastructure development, environment, regional co-operation, people-to-people contacts and fighting human trafficking': Emerson, Michael, Noutcheva, Gergana and Popescu, Nicu, 'European Neighbourhood Policy Two Years on: Time indeed for an "ENP Plus"', *CEPS Policy brief* No. 126, 2007, 20, 21. See also Parmentier, Florent, 'The ENP Facing a *de Facto* State. Lessons from the Transnistrian Question', in Delocour, Laure and Tulmets, Elsa (eds.), *Pioneer Europe? Testing EU Foreign Policy in the Neighbourhood*, Baden-Baden: Nomos, 2008, 203.

An approach of largely ignoring such entities is not entirely new for the Union: a similar situation arises, for instance, in Northern Cyprus which does not benefit from any status under the ENP and which is *de jure* both a part of a Member State (Cyprus, although the application of the *acquis* there is suspended by Art. 1(1) of Protocol 10 to the 2003 Treaty of Accession) and is a responsibility of a candidate country (Turkey, especially after ECt.HR *Loizidou v. Turkey* [1993] App. No. 15318/89).

⁴¹ Arguments have been listed in the literature also in support of the single conceptual framework for policy towards the neighbourhood countries. Nevertheless, it is absolutely clear that differentiation is to play the key role: Wallace (2003), 8, 9.

⁴² On the perceptions connected with the concept of a 'Neighbour' by the partners see Meloni, Gabriella, 'Who's My Neighbour?', 7 *European Political Economy Review*, 2007, 24.

because the very category of 'neighbours' has been artificially created.⁴³ Ironically, only in the context of the Russian Federation (following its refusal to participate in the ENP) has the EU recognised that the EU *itself* is part of Russia's neighbourhood, marking the first 'reciprocal' use of the term 'neighbour' in the context of EU relations with its proximity.⁴⁴

In other words, although a unified policy that applies to all the neighbouring states can be praised in theory, in practice it comes down to trying to unify what cannot be possibly fitted under one roof. In this context, the desirability of the initial unification of the Mediterranean countries covered by the EuroMed and the East-European partners in one policy can be questioned. A direct consequence of the basic choices made with regard to the geographical scope of the ENP is 'the cleavage between South and East [which] runs through all discussions on the ENP at the working and political levels of the EU'.⁴⁵

In the end, as a consequence of the objective differences existing between the (groups of) partners, a policy of differentiation among them has become an absolute necessity.⁴⁶ In this sense, the pro-Mediterranean lobby of Member States which successfully turned a 'Wider Europe' initiative in the East of the European sub-continent into an incoherent and almost random collection of 16 states is to blame for the strange sophistication of the ENP.

The unification of so many different states within the framework of one policy clearly served no goal, since a considerable number of actual neighbours are left outside the ENP anyway, thus making impossible any claims which emphasize the unified approach to the neighbours as the justification for such policy. The change in the geographical scope of the ENP disappointed both some Member States⁴⁷ and some ENP partners,⁴⁸ undermining the policy's potential attractiveness and reducing the level of its support, thus 'dilut[ing] the political value of the new Policy'.⁴⁹ Also the tension between multilateral

⁴³ Balfour and Missiroli (2007), 22.

⁴⁴ COM(2004) 373 final, 6.

⁴⁵ Lippert, Barbara, 'The EU Neighbourhood Policy – Profile, Potential, Perspective', contribution to the forum 'The Neighbourhood Policy of the European Union', *Intereconomics*, 2007, 180, 182.

⁴⁶ The Commission recognised the key role to be played by differentiation from the very beginning of shaping the policy. See e.g. COM(2003) 104 final, 16; COM(2004) 373 final, 8.

⁴⁷ Especially in Poland 'the Eastern Dimension' has been a sensitive issue of foreign policy. See generally Buras, Piotr and Pomorska, Karolina, 'Poland and the European Neighbourhood Policy', in Overhaus, Marco, Maull, Hanns W. and Harnisch, Sebastian (eds.), 'The New Neighbourhood Policy of the European Union: Perspectives from the European Commission, France, Germany, Poland, Ukraine and Moldova', 7 *Foreign Policy in Dialogue* 19, 2006, 34.

⁴⁸ Ukraine and Moldova were both disappointed and surprised at the EU's decision to place them side by side with the Mediterranean partners. See e.g. Solonenko, Iryna, 'European Neighbourhood Policy – The Perception of Ukraine', in Overhaus, Marco, Maull, Hanns W. and Harnisch, Sebastian (eds.), 'The New Neighbourhood Policy of the European Union: Perspectives from the European Commission, France, Germany, Poland, Ukraine and Moldova', 7 *Foreign Policy in Dialogue* 19, 2006, 44.

⁴⁹ Cremona and Hillion (2006), 16.

and bilateral modes of co-operation in the Mediterranean and East European regions covered by the ENP represents a challenge that the EU will have to tackle.⁵⁰ This problem equally stems from the problematic choice of the geographical scope.

In the light of these observations, it did not come as a surprise that the recent initiatives in the neighbourhood are primarily related to the introduction of more differentiation between the Southern Mediterranean and East European vectors within the policy. By reintroducing stronger Southern and Eastern vectors of the policy the EU is merely trying to make up for the initial weaknesses of the policy. The Union for the Mediterranean and the Eastern Partnership created in 2008 can thus both be viewed as attempts to remedy this foundational drawback of the ENP by 're-splitting' the neighbourhood.⁵¹

b. Drawback No. 2: the presumption of shared values

Substantively, the ENP had to cover an extremely broad range of issues, including trade and economic integration, mobility and migration and dealing with regional conflicts. Indeed, the security component has played a leading role,⁵² given the obvious danger of 'disorder spilling across [EU] borders'.⁵³

With several revisions, the ENP has constantly grown in complexity. From the very beginning it was designed to supersede the Pillar structure of the Union and grew constantly, adding an increasing number of largely *ad hoc* legal and political tools designed to ensure its effectiveness.⁵⁴ The reassessment of the ENP and the introduction of the amendments into the existing ENP structures were mostly caused by a realisation that the policy fell short of its ambitious goals and partners' expectations (both on the EU and on the neighbours' sides). Since its formulation in 2003⁵⁵ the ENP has already undergone several revisions.⁵⁶ Amending the policy is easy since it is not based on any specific provision of the Treaties, which makes it very flexible and, legally speaking, blurred. Besides financial limits,⁵⁷ it suffers from almost no

⁵⁰ Emerson *et al.* (2007), 12.

⁵¹ See Section II, *infra*.

⁵² On the analysis of the ENP from security perspective see *esp.* Cremona and Hillion (2006).

⁵³ Wallace (2003), 19.

⁵⁴ See Magen (2006) for a wonderful analysis.

⁵⁵ COM(2003) 104 final.

⁵⁶ See COM(2007) 774 final; COM(2006) 726 final; COM(2004) 373 final; COM(2003) 104 final.

⁵⁷ Regulation (EC) 1638/2006 of the European Parliament and the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument, *OJ L* 310/1, 2006. This regulation covers the financial assistance granted to the ENP partner countries and also to the Russian Federation (see Annex to the ENPI Regulation 'Partner countries referred to in Article 1'). For the first sketch of the instrument as proposed by the Commission see European Commission, 'Paving the Way for a New Neighbourhood Instrument', COM(2003) 393 final, of 1 July 2003.

restraints with regards to dynamics of implementation or subject matter concerned.⁵⁸

Essentially, the policy is largely aimed at uniting the efforts of the EU and the ENP partners to create an area of peace and prosperity surrounding the Union that will benefit all. One cannot help but wonder what could play the role of common ground to bridge the two (or more) worlds the ENP is concerned with. It obviously could not be economic development, military, or any other concrete form of co-operation. The 16 countries on the list of (potential) ENP partners are not just different; the differences between them are at times absolute. Consequently, the Commission chose to play the old card of 'values'. It had been submitted – and optimistically or reluctantly accepted by the partners – that they share with the EU some values of significant importance.⁵⁹ The values approach was deemed to soften the perceived differences between the participants of the ENP and make the move, together, towards certain goals possible. In fact, in order to participate in the policy the ENP partners were supposed to subscribe to the values of the Union, which are also 'common to the Member States'.⁶⁰ It clearly follows from the Commission's statement that the values are shared, 'but apparently only by EU countries'.⁶¹ The amendments introduced by the Treaty of Lisbon only amplify this finding: Article 8 EU, dealing with the EU's relationship with its neighbourhood, states that the 'special relationship [is] founded on the values of the Union'.⁶²

The prescribed values, including, *inter alia*, democracy, the protection of human rights, the free market economy and the Rule of Law, are virtually identical to the Copenhagen political criteria applied in the course of the preparation of the Eastern enlargement and are also rooted in the text of Article 6(1) EU⁶³ and the constitutional traditions of the Member States.⁶⁴ The

⁵⁸ Obviously this only holds as long as the policy does not encroach on the competences of the Member States, functions in line with the principle of Institutional balance, and does not undermine the coherence of the European legal system.

⁵⁹ The Commission formulated these in the following way: 'the Union is founded on the values of respect of human dignity, liberty, democracy, equality, the Rule of Law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination. The Union's aim is to promote peace, its values and the well-being of its peoples': COM(2004) 373 final, 7. The earlier formulation of the list of values on which the policy is based, which is contained in fn. 2 to the Commission's Communication on Wider Europe (COM(2003) 104 final) was slightly different and included 'democracy, respect for human rights and the rule of law, as set out within the EU in the Charter of Fundamental Rights'.

⁶⁰ See COM(2004) 373 final, 7, quoted in the preceding footnote.

⁶¹ Zaiotti (2007), 143, 150.

⁶² Art. 8(1) EU (post-Lisbon numbering), emphasis added.

⁶³ Art. 6(1) EU reads as follows: '[t]he Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States': *Bull. EC* 6-1993, point I.13. For analysis see Hillion, Christophe, 'The Copenhagen Criteria and Their Progeny', in Hillion, Christophe (ed.), *EU Enlargement: A Legal Approach*, Oxford/Portland, OR: Hart, 2004, 19; Kochenov, Dimitry, 'Behind the Copenhagen Façade. The Meaning and Structure of the Copenhagen Political Criterion of Democracy and the Rule of Law', 8 *European Integration online Papers* 10, 2004.

2002 statement by then European Commission President, Romano Prodi, about the need to formulate the 'Copenhagen proximity criteria'⁶⁵ is thus more than a plan for some distant future and is already rooted in the day-to-day functioning of the ENP. All of the Copenhagen political criteria are *de facto* essentially contested concepts⁶⁶ that can mean many things at the same time, and which can also mean nothing, making any assessment of adherence to them difficult.⁶⁷

It is here, in the terrain of values, where the second important drawback in the design of the ENP arises. This is related to the projection of the values of the EU as outlined in Article 6(1) on the partners. This paper is not an argument against universalism. However, the fact that the absolute majority of the 16 countries outlined by the Commission as potential ENP partner states are in fact co-operating with the EU under the auspices of the ENP speaks for the fact that they are viewed by the EU as ultimately adhering to these values. Is it so in practice? Doubts can be plentiful. Anyway, 'this hypothesis was never proved'.⁶⁸ It seems unreasonable to dismiss such doubts as unjustified: the meaning of the Rule of Law, democracy and the protection of human rights in Algeria or in Azerbaijan is clearly not to be compared with that in Finland or Spain. So where actually are the values? Once it has been agreed that values are the common ground on which the policy is built, the dangers related to the discovery that they are not actually adhered to, or even exist, has critical implications for a policy such as the ENP.

Connected to the issue of values are the interests that the partners presumably want to pursue together. The presumption of common values thus not only makes the building of the ENP possible, but also affects the expectations of the EU and the ENP partners, trying to respond to the shared problems related to common interests, thus potentially presenting the absence of values in an even more dangerous light.

⁶⁴ Art. 6(1) EU.

⁶⁵ Prodi, Romano, 'A Wider Europe: A Proximity Policy as the Key to Stability', speech to the 6th ECSA-World Conference, Brussels, 5, 6 December 2002, SPEECH/02/619.

⁶⁶ On this notion see Gallie, William B., 'Essentially Contested Concepts', 56 *Proceedings of the Aristotelian Society*, 1955–1956.

⁶⁷ The EU was facing this problem throughout the whole process of the preparation of the (now) new Member States of Central and Eastern Europe to accession. For analysis see Kochenov, Dimitry, *EU Enlargement and the Failure of Conditionality: Pre-Accession Conditionality in the Fields of Democracy and the Rule of Law*, The Hague /London /New York: Kluwer Law International, 2008; Kochenov, Dimitry, 'The Summary of Contradictions: An Outline of the EU's Main Internal and External Approaches to Ethnic Minority Protection', 31 *Boston College International & Comparative Law Review* 1, 2008, 1.

⁶⁸ Harasimowicz, Andrzej, 'European Neighbourhood Policy, 2004–2006: The Growing Need for Strategy', in Cremona, Marise and Meloni, Gabriella (eds.), 'The European Neighbourhood Policy: A Framework for Modernisation?', *EUI Working Paper Law* 2007/21, 2007, 81, 82.

c. Drawback No. 3: the presumption of effectiveness of value-based conditionality

The shaky values-oriented edifice can still potentially be saved once the outlined values are treated as dynamic and not as static concepts. In other words, aspiring to embrace the values in the future might suffice in order to become a fully-fledged ENP partner country. This is what the Commission seems to indicate: 'the Union's neighbours have pledged adherence to fundamental human rights and freedoms, through their adherence to a number of multilateral treaties as well as through bilateral agreements with the EU'.⁶⁹ In practice this focuses on downplaying the values' importance; no actual adherence, only a pledge is enough.

If it is clear that notwithstanding the fact that all the active partners (Libya, Syria and Belarus excluded) subscribe to the values, the only way for the Union to make sure that they actually play an important role on the other side of the EU external border is to regularly monitor the ENP partners' movement towards the realities which these values embody and to provide the partners with positive incentives for change to ensure that the values are actually embraced. Moreover, those unable or unwilling to move in the stated direction should face the negative consequences of such an unfortunate policy choice. This is, essentially, the core of the idea of conditionality espoused by the Commission in the course of the eastern enlargement preparation. In the eastern enlargement context the EU was faced with a similar task, albeit in a more potentially dangerous form: instead of simply seeking to be surrounded by friends (amid the growing fears of the 'other' beyond the external EU border⁷⁰), the EU had to make sure that in terms of membership accession, going to 'bed with bad guys'⁷¹ would not be the culmination of its Eastern enlargement efforts.

Is value-based conditionality likely to function in the ENP context? If the ENP partners are actually reluctant to pursue democratisation and adhere to the values outlined by the EU, the incentives on offer should be substantial enough in order to compensate for the obvious losses to be suffered by the elites in the countries in question. Practically, it is difficult if not impossible to imagine how substantial such incentives should be in order to incite change in Belarus or Syria for instance. Thus, viewed from a purely practical perspective it seems that the idea of conditionality as entrenched in the ENP is unlikely to promote change in some countries. Here a theoretical distinction made by Tocci, differentiating between 'willing' and 'reluctant' partners, becomes

⁶⁹ COM(2004) 373final, 7.

⁷⁰ Magen (2006), 383, 298 (calling the fear of the neighbours one of the main motivations behind the formulation of the policy).

⁷¹ Klabbers, Jan, 'On Babies, Bathwater and the Three Musketeers, or the Beginning of the End of European Integration', in Heiskanen, Veijo and Kulovesi, Kati (eds.), *Function and Future of European Law*, Helsinki: Publications of the Faculty of Law, University of Helsinki, 1999.

operational.⁷² While countries like Ukraine or Morocco might willingly embrace the values that the EU expects them to subscribe to in the context of the ENP, other states, such as Algeria or Azerbaijan, for instance, are clearly outside the reach of any conditionality policies. Following on from the argument of Magen,⁷³ Tocci is absolutely right in stating that:

[i]f democratisation and human rights call for a redistribution of powers, the legal and institutional installation and protection of rights and the enhancement of political participation, it is unclear how EU relations with states whose entire *modus operandi* often negate these developments, can meaningfully promote these values.⁷⁴

It follows that conditionality is far from being a panacea in the context of building the 'ring of friends'. Indeed, if simple adherence to the EU values lying at the core of conditionality requires nothing less than a regime change, the governments which the EU is trying to turn into friends will never be in the position to comply with any of the EU's demands. Consequently, in such a context, the incentives offered by the Union to reward ENP partners for compliance can be viewed as unfriendly acts, instead of positive engagement. Although trying to build a better relationship with the ENP partners, the EU is likely to be viewed by the governments of the partner countries as pushing them towards regime change: the incentives advocate the ideals of openness, economic liberalisation and the Rule of Law which are largely alien to the majority of the ENP partners, making conditionality not only impractical, but simply unusable as a tool in such a context.

These observations beg for a conclusion that value-based conditionality is non-operational in relations with reluctant ENP partners. This can be clearly demonstrated analytically at a purely theoretical level. In this context, the question about the likely success of conditionality in the EU's relations with the 'willing' ENP partner states naturally arises. While functional in theory, analogy with the application of value-based conditionality by the EU outside of the ENP setting demonstrates quite clearly that, in the case of the willing partners, conditionality is also highly unlikely to be a success. Having failed in the pre-accession,⁷⁵ where the candidate countries were overwhelmingly determined to join the Union and could thus be expected to co-operate with the EU in the most wholehearted manner, when transplanted into the ENP setting where the

⁷² Tocci, Nathalie, 'Can the EU Promote Democracy and Human Rights through the ENP? The Case for Refocusing on the Rule of Law', in Cremona, Marise and Meloni, Gabriella (eds.), 'The European Neighbourhood Policy: A Framework for Modernisation?', *EUI Working Paper Law* 2007/21, 2007, 23, 26–32.

⁷³ Magen (2006), 383, 418, 419.

⁷⁴ Tocci (2007), 23, 29.

⁷⁵ For a compelling analysis see Kochenov (2008) 'EU Enlargement'.

incentives at stake are much more modest,⁷⁶ it seems that value-based conditionality when transplanted from the pre-accession context cannot possibly deliver any of the meaningful results expected of it.⁷⁷ Such transplantation has only resulted in a “shadow of enlargement”, containing diluted versions of enlargement methodologies applied reflexively by the Commission to the new policy context, with little evidence of regard for their appropriateness’.⁷⁸ In the words of Cremona and Hillion:

Transplanting pre-accession routines into a policy otherwise conceived as an alternative to accession and intended to enhance the security of the Union, may [...] undermine both its current effectiveness and its longer-term viability, if not its rationale.⁷⁹

Potentially, however, there are no conceptual considerations that would prove the inoperability of conditionality in such a setting – in sharp contrast with the EU’s relations with the ‘reluctant’ partners. Conditionality *can* govern the relations with the ‘willing’ partners. This is only possible if the mistakes made by the Commission in the course of the pre-accession application of conditionality are remedied before the transplantation of value-based conditionality regulation into the ENP context.⁸⁰

d. Drawback No. 4: the fusion of conditionality and joint ownership of the process

Besides the adoption of values, the partners and the EU were given the opportunity to ‘co-own’ the ENP. The Commission stated that the EU has no ambition to dictate to the partners the directions in which to move,⁸¹ *i.e.* all the most important decisions regarding the development of the ENP are to be taken by all the parties together. It is obvious from the outset that the conditionality idea, which is the only possibility of making elusive ‘values’ work for the Union, is in total dissonance with the proclaimed ‘joint ownership of the

⁷⁶ Kelley (2006), 29, 32. See also Zaiotti (2007), 143, 151; Meloni, Gabriella, ‘Is the Same Toolkit Used during Enlargement Still Applicable to the Countries of the New Neighbourhood? A Problem of Mismatching between Objectives and Instruments’, in Cremona, Marise and Meloni, Gabriella (eds.), ‘The European Neighbourhood Policy: A Framework for Modernisation?’, *EU Working Paper Law* 2007/21, 2007, 97–111.

⁷⁷ For analysis of value-based conditionality in the ENP context as applied also to the ‘willing’ partners see Kochenov, Dimitry, ‘The ENP Conditionality: Pre-Accession Mistakes Repeated’, in Delocour, Laure and Tulmets, Elsa (eds.), *Pioneer Europe? Testing EU Foreign Policy in the Neighbourhood*, Baden-Baden: Nomos, 2008, 105.

⁷⁸ Magen (2006), 383, 390.

⁷⁹ Cremona and Hillion (2006), 26.

⁸⁰ Kochenov (2008) ‘The ENP Conditionality’, 119.

⁸¹ COM(2004) 373final, 8: ‘there can be no question of asking partners to accept a pre-determined set of priorities. These will be defined by common consent and will thus vary from country to country’.

process, based on the awareness of shared values and common interests'⁸² and characterised by the Commission in its 2004 Paper as 'essential'.⁸³ Simply put, either the partners are equal and own the process together, or, conditionality is employed by one of the partners, requiring that others be subject to compliance checks, while also being dependent on the conditionality-related progress findings. The two ideas are thus irreconcilable.⁸⁴

In practice, as was easy to foresee, given the overwhelming asymmetry between the partners, that conditionality thinking prevailed in the ENP context: 'being the biggest stakeholder in the project gives the EU the right to set the agenda, including the main "shared" priorities'.⁸⁵ The awkward attempt of the EU to present a *unilateral policy*⁸⁶, in a perspective that runs contrary to the policy's very essence, by attempting to unite irreconcilable ideas of co-ownership of the process and conditionality made by the authors of the ENP is the fourth main conceptual mistake made by the EU in building up its relations with the neighbourhood.

e. Drawback No. 5: poor incentives offered to partners

The ENP only offers very poor incentives which are unable to interest the partners and generate true change.⁸⁷ Thus, unlike the instruments employed by the ENP (which were largely transplanted from the pre-accession setting), the incentives offered within the framework of the policy are not comparable with those which were on offer within the pre-accession strategy.

The Commission stated that '[t]he aim of the new Neighbourhood Policy is [...] to provide a framework for the development of a *new relationship* which would not, in the medium-term, include a perspective of membership or a role in the Union's institutions'.⁸⁸ The ENP is thus a clear attempt of the EU to postpone the discussion of the *finalités géographiques* of integration to some unknown time in the future. In this way the ENP, at least when applied to East European partners, is very similar to the initial ideology behind the EEA,⁸⁹ as well as the initial approach to Eastern Europe preceding the 1993

⁸² COM(2004) 373final, 8.

⁸³ *Id.* Such approach is also reaffirmed in the 2007 Paper: COM(2007) 774final, 3.

⁸⁴ This point has been made in the literature on a number of occasions, *e.g.* Cremona and Hillion (2006), 20 *et seq.*; Cremona (2004), 22, 23.

⁸⁵ Zaiotti (2007), 143, 150.

⁸⁶ To agree fully with Hillion and Cremona (2006), 21 (emphasis in the original); Wallace (2003), 18 (talking about 'one-sided dependence in an inherently unbalanced relationship'). Scholars noted a large amount of EU self-interest contained in the priorities listed in the ENP instruments, clearly reflecting such unilateral nature of the policy: Smith (2005), 757, 761, 765.

⁸⁷ Tocci (2007), 23; Magen (2006), 383, 411–414 (characterising the incentives as 'both vague and uncertain at best' (at 414)); Dannreuther (2006), 189, 190.

⁸⁸ COM(2003) 104 final, 5, emphasis added.

⁸⁹ Smith (2005), 757, 761.

Copenhagen European Council⁹⁰ and the subsequent pre-accession reorientation of the Europe Agreements.⁹¹ While in the pre-accession process, full membership was on offer, the ultimate prize in the ENP race is the participation in the Neighbourhood Economic Community (NEC).

The ENP is thus entirely decoupled from the eventual accession prospects of the partner countries and is implemented, in the words of the Commission, 'without prejudging how [the partners'] relationship with the EU may develop in the future'.⁹² While it is probably not so important for the ENP partners to the South of the Mediterranean, this is bad news for the East European partners and the countries in the Caucasus, since membership of the EU is among their foreign policy priorities. A very positive element of the ENP in this context is the policy of vagueness.⁹³ While not coupled with the eventual possibility to give accession prospects in the future to those partners who are interested and meet the necessary requirements of Article 49 EU,⁹⁴ it does not mean the closure of the Union's gates to those countries seeking to join. Consequently, good performance in the context of the ENP can be viewed in those countries as the first of a number of steps on the way towards future accession of the Union. This has certainly been the case in Ukraine and Moldova, two of the most active ENP partner states. Given the incentives offered to the ENP partners by the Union, the optimism and active participation of these two East European nations can be explained by a reference to their future membership aspirations, rather than by the success of the existing ENP framework and attractiveness of its incentives.

The jewel in the crown of incentives employed by the Commission in the context of the ENP is the prospective NEC. Not so much is known about it so far, besides the fact that it remains a pure hypothesis. According to the Commission,

The Neighbourhood Economic Community *would* boost trade further among ENP partners via the elimination of both tariffs and non-tariff barriers and by establishing a minimum base for common behind-the-border rules, thereby creating a

⁹⁰ For a concise history of Central and Eastern European countries – EEC relations see Smith, Karen E., *The Making of EU Foreign Policy: The Case of Eastern Europe*, 2nd ed., Basingstoke: Palgrave Macmillan, 2004; de la Serre, Françoise, 'A la recherche d'une *Ostpolitik*', in de la Serre, Françoise, Lequesne, Christian and Rupnik, Jacques (eds.), *L'Union européenne: ouverture à l'Est?*, Paris: PUF, 1994.

⁹¹ Inglis (2000).

⁹² COM(2006) 726final. Some Member States were severely opposed to such decoupling. Particularly Poland argued for the necessity of making a link between the neighbourhood policy and an EU membership perspective: Kratochvíl (2007), 191, 193.

⁹³ It is a positive development, in this respect, that the Commission's Communication on the 'enlargement capacity' does not embrace any strict approach to the EU's future borders. See European Commission, 'Enlargement Strategy and Main Challenges 2006–2007', COM(2006) 649 final.

⁹⁴ Kochenov (2008 'EU Enlargement'), Ch. 1.

common regulatory space. This *would* expand the size of the Common Market, stimulate growth of the ENP partners, and boost productivity through a better exploitation of economies of scale.⁹⁵

Besides the conditional formulation of this blurred perspective it is also known from the Commission's documents that the creation of such an economic community will depend on the "partners' willingness to integrate further",⁹⁶ which means that both the EU and the ENP partners will have to ascertain their willingness to move in this direction in the future. Ultimately, it means that the NEC is *not* a real incentive for the partners to continue on the path of the ENP.

Among more down to earth but equally unrealistic incentives is a notorious 'stake in the Common Market',⁹⁷ which replaced the promise of access to the four real freedoms contained in the original Communication on Wider Europe⁹⁸. This gives rise to a range of questions. What such a stake is likely to mean is not defined and, furthermore, it is also unclear how (and whether) it is possible to cut the Common Market into 'stakes' without fragmenting it.⁹⁹ The Common Market is not a rhetorical entity: it has clear and complex legal meaning. From the definition contained in Article 14(2) EC it follows that:

The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.¹⁰⁰

Add to this the rules on undistorted competition and it becomes clear that fragmenting this all-encompassing concept into a number of stakes is most likely to be an extremely difficult task.¹⁰¹ The Commission indicated, however, that the framework of the ENP allows for closer co-operation with the partners

⁹⁵ European Commission, Non-Paper Expanding on the Proposals Contained in the Communication to the European Parliament and the Council on 'Strengthening the ENP' – COM(2006) 726 final of 4 December 2006, 7.

⁹⁶ *Id.*, 8.

⁹⁷ COM(2004) 373final, 3.

⁹⁸ Indeed, it seems that free movement of goods, persons, services and capital were all included among the policy's promises: COM(2003) 104final, 4, 10. This paper also spoke about the 'stake' in the Internal Market, but accompanied this statement by an explicit reference to the free movement of persons, goods, services and capital.

⁹⁹ On risk of fragmentation of the Common Market as one of the unwanted consequences of the ENP see Dodini, Michaela and Fantini, Marco, 'The EU Neighbourhood Policy: Implications for Economic Growth and Stability', 44 *Journal of Common Market Studies* 3, 2006, 507, 511.

¹⁰⁰ Art. 14(2) EC.

¹⁰¹ For the analysis of the obvious obstacles lying on the way towards the creation of an EU-ENP common market see Escribano, Gonzalo, 'Europeanisation without Europe? The Mediterranean and the Neighbourhood Policy', *EUI Working Paper RSCAS No. 2006/19*, 2006.

in terms of a number of important economic incentives, such as integration within the EU transport, energy and telecommunication policies.¹⁰²

Unlike the blurred nature and doubtful attractiveness of the NEC and the 'stake in the Common Market', the new generation of agreements to be concluded between the EU and those ENP partners which respect and successfully implement the priorities set out in the Action Plans seems to have the potential to become a viable attraction tool. Yet, nothing is known about the likely contents of such agreements. This led the Ukrainian ambassador to the European Union to question their attractiveness.¹⁰³ The Commission promised such agreements would be concluded to mark the next phase of ENP development following the Action Plans and initially called them 'European Neighbourhood Agreements'.¹⁰⁴ Thus a new generation of agreements is something the partners seriously expect from the EU. The first such agreement to be concluded will be the one with Ukraine:¹⁰⁵ the negotiations were launched on 5 March 2007.¹⁰⁶ Initial policy documents laying the foundations of the ENP did not specify precisely the kind of agreements that the ENP Partners could expect. As the EU-Ukraine negotiations demonstrate, even the name of the agreement to be concluded is subject to a dispute. As for the content, it is equally difficult to predict.¹⁰⁷ For the agreement with Ukraine, the actual content of this new document is probably of lesser importance for Ukraine than an indent in the Preamble that would recognise her EU membership aspirations.¹⁰⁸ Ironically, this would be more of a true step forward, compared with the existing legal-political framework of the ENP. This is what Kyiv ultimately expects of the new instrument.¹⁰⁹

¹⁰² COM(2003) 104 final, 10. On energy co-operation see also Commission Communication on the development of energy policy for the enlarged European Union, its neighbours and partner countries, COM(2003) 262 final. On transport in the Southern dimension see Commission Communication on the development of Euro-Mediterranean transport network, COM(2003) 376 final.

¹⁰³ Shpek, Roman, 'EU Neighbourhood Policy through the Eyes of a Neighbour', *EU Observer*, 27 February 2007, available at <<http://euobserver.com/?aid=23576>>.

¹⁰⁴ COM(2004) 726 final. Interestingly, the possibility to conclude such Agreements is not mentioned in 2006 Commission's Communication COM(2006) 726 final. The ongoing negotiations with the Ukraine prove, however, that this is due to the forgetfulness of the Commission, not a policy change reducing the number of incentives available to the ENP partners.

¹⁰⁵ The new agreement will replace the Partnership and Co-operation Agreement with Ukraine now in force (OJ L 49/3, 1998).

¹⁰⁶ The relevant official documents tracing the progress of the negotiations are available at <http://ec.europa.eu/external_relations/ukraine/docs/index_en.htm#progress>.

¹⁰⁷ Hillion's is the only attempt made in the literature to date: Hillion, Christophe, 'A New Framework for the Relations between the Union and Its East-European Neighbours', in Cremona, Marise and Meloni, Gabriella (eds.), 'The European Neighbourhood Policy: A Framework for Modernisation?', *EUI Working Paper Law* 2007/21, 2007, 147.

¹⁰⁸ This would ultimately mean the bypassing of the ENP framework in the long term.

¹⁰⁹ Solonenko (2006), 44, 50.

At present, the EU legal system does not have any specific legal basis for the conclusion of the 'European Neighbourhood Agreements'.¹¹⁰ The Commission is equally unclear regarding the legal nature and contents of the new agreements. It only stated that 'its scope would be defined in the light of progress in meeting the priorities set out in the [Accession Partnerships]'.¹¹¹ This lack of precision notwithstanding, several predictions can be made. First of all, it is likely to be an Association Agreement in the sense of ECJ's ruling in *Demirel*.¹¹² As Hillion rightly emphasised, it would be illogical to expect a lesser degree of co-operation from the new agreement with Ukraine,¹¹³ since the Mediterranean partners already build their relationship with the EU based on Association Agreements.¹¹⁴ Consequently any lesser option is unlikely to be welcomed by Ukraine as a truly 'advanced' relationship which has been promised by the EU in the ENP context. Moreover, any agreement of lesser importance would also 'undermine the coherence of the ENP';¹¹⁵ thus downgrading the intensity of the relationship between the EU and the East European partners compared with the relationship enjoyed by the EuroMed states within the framework of the same policy.

Content-wise, the new agreements are destined to become, in the words of the Commission, 'tailor-made deep and comprehensive free trade agreements (DFTAs), including measures to reduce non-tariff barriers through regulatory convergence'¹¹⁶ and 'should cover substantially all trade in goods and services between the EC and the ENP partner as well as strong legally-

¹¹⁰ Art. 8 of the new EU Treaty as amended by the Treaty of Lisbon (*OJ C* 300/1, 2007), once in force, will change this situation. The Article reads as follows:

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

¹¹¹ COM(2004) 373final, 4.

¹¹² Case 12/86 *Meryem Demirel v Stadt Schwäbisch Gmünd* [1987] ECR 3719.

¹¹³ Hillion (2007), 147, 150. See also Cremona and Hillion (2006), 19.

¹¹⁴ A new Association Agreement will thus be comparable in depth with the Europe Agreements concluded with the East European candidate countries before accession and with the Stabilisation and Association Agreements concluded with several Western Balkan States. For the legal analysis of Europe Agreements see Hoffmeister, Frank, 'Nature and Objectives of the Europe Agreements', in Ott, Andrea and Inglis, Kirstyn (eds.), *Handbook on European Enlargement*, The Hague: T.M.C. Asser Press, 2002, 349 *et seq.*; Inglis (2000); Maresceau, Marc, 'A Legal Analysis of the Community's Association Agreements with Central and Eastern Europe: General Framework, Accession Objectives and Trade liberalisation', in Konstantinidis, Stratos (ed.), *The Legal Regulation of the European Community's External Relations after the Completion of the Internal Market*, Aldershot: Dartmouth, 1996.

¹¹⁵ Hillion (2007), 147, 151.

¹¹⁶ COM(2007) 774final, 4.

binding provisions on the implementation of trade and economic regulatory issues'.¹¹⁷

The conclusion of an Association Agreement means, first of all, that it has to be *legally binding*, and will have the potential to have *direct effect*.¹¹⁸ In other words the ENP framework knowing only one purely legal instrument at the moment besides the foundational bilateral agreements, which is the European Neighbourhood Partnership Instrument (ENPI), will be moving more and more towards a legal framing of the policy, which means less 'soft law' and more clarity regarding the actual benefits offered to the ENP partners and better articulated rules of compliance. The new agreements will mean a lot for the ENP, since they, unlike all the existing conditionality machinery in place (except the ENPI), will fall under the scrutiny of the ECJ. This will partly remedy the situation of legal vacuum and over-flexible construct of the policy at the moment.¹¹⁹

Procedurally, the conclusion of the new agreements is likely to be complicated by the strict requirements of Article 300(2) EC¹²⁰ governing the process of the conclusion of Association Agreements as defined in Article 310 EC.¹²¹ Moreover, given the depth of engagement expected (and promised by the Commission) a 'doubly mixed' agreement can be expected (EC/EU/Member States).¹²² This may also possibly require a concurrent legal basis in the EU Treaty: Article 24 EU. The conclusion of such an agreement, which will require unanimity in the Council, assent of the European Parliament and will also need to be ratified by all the 27 Member States is likely to be complicated to say the least.¹²³ Given the possible difficulties that such ratification is likely to encounter in the Member States (rooted in their different approaches to ENP partners), Cremona and Hillion suggest that an option of bundles of deep sectoral agreements should be explored,¹²⁴ in order to make sure that the Union is able to deliver on its promises, thus fostering the effectiveness of the ENP and disallowing internal complexities to undermine the success of this policy. Furthermore, since the EU-Ukraine agreement will be the first of its kind, it is likely to influence the future instruments concluded with other ENP partners, which certainly increases the importance of the on-going negotiations.

¹¹⁷ *Id.*

¹¹⁸ Case 12/86 *Meryem Demirel v Stadt Schwäbisch Gmünd* [1987] ECR 3719, §14. It should not be forgotten, however, that the provisions of the PCA's can also have direct effect: Case C-265/03 *Igor Simutenkov v Ministerio de Educación y Cultura, Real Federación Española de Fútbol* [2005] ECR I-2579.

¹¹⁹ For the legal argument in favour of giving the ECJ a role to play in the ENP see Zemer and Pardo (2006), 1.

¹²⁰ And, possibly, Art. 300(3) EC.

¹²¹ Art. 310 EC defines such agreements as 'agreements establishing and association involving reciprocal rights and obligations, common action and special procedure'.

¹²² Cremona and Hillion (2006), 20.

¹²³ For a concise legal analysis of important technicalities see Hillion (2007), 147, 152, 153.

¹²⁴ Cremona, and Hillion (2006), 20.

The funds granted under the ENPI also form part of the incentives built into the ENP. For the period 2007–2013 the ENPI made 11.2 billion euro available to finance the programme.¹²⁵ To make the ENP conditionality functional, by making change really attractive for the ENP partners, the amounts allocated have to grow constantly, which realisation is actually reflected in the dynamics of fund allocation. Under the previous programmes 8.6 billion euro was allocated for the period between 2000–2006. The developments in financing the ENP could also be considered more significant, since the ENPI is better tuned to guarantee funds' absorption, which was a problem with the previous financing framework. Moreover, a special ENPI 'Governance Facility' has been established by the ENPI to reward the best performing ENP partners.¹²⁶ Crowning the ENPI system, the Neighbourhood Investment Facility (NIF) has been introduced, with a budget of 700 million euro.¹²⁷

Discrepancies exist between the perceived needs, as outlined by the Commission,¹²⁸ and the funds allocated. Consequently, notwithstanding an increase in the funds allocation which followed the entry into force of the ENPI (compared with the financial assistance programmes previously in force), the actual moneys available for the implementation of the ENP still fall short of the policy's needs, as outlined by the Commission. According to Balfour and Missiroli, the policy is 'seriously under-funded'.¹²⁹

Ultimately, the financial assistance side cannot be viewed as the main incentive offered to the ENP partners within the framework of the policy. Given the nature of the majority of the partner countries and their obvious problems with adhering to the values of the ENP two problems related to the ENPI financial assistance become obvious. First of all, virtually any amount allocated will still not be enough to 'buy' the regime change in the countries concerned, since deep reform touching upon all the spheres of organisation of the state is likely to cost the ruling elites infinitely more. Secondly, all the money allocated (including the money not going to the ENP partner governments directly) still ends up in the economies of the problematic regimes, making them stronger and does not necessarily result in any change or move to bring such partners closer to the practical realisation of the values of democracy, the Rule of Law and the protection of human rights.

A particularly weak point in the EU's relations with the ENP partners is its inability to deliver on the facilitation of people-to-people contacts and the relaxation of visa rules, outlined by the Commission as one of the incentives

¹²⁵ This includes funds for projects in Russia, which is also covered by the ENPI.

¹²⁶ The budget of the Governance Facility amounts to 300 million euro (43 million per year on average): COM(2006) 726 final, 12; COM(2007) 774 final, 10.

¹²⁷ COM(2006) 726 final, 13; COM(2007) 774 final, 10.

¹²⁸ For the initial ambitious expectations see Commission proposal for a Regulation establishing a European Neighbourhood and Partnership Instrument COM(2004) 628final.

¹²⁹ Balfour and Missiroli (2007), 6.

within the ENP framework.¹³⁰ This issue is crucial for the partners, whose citizens' travelling to the Schengen states have always been accompanied by unprecedented bureaucratic difficulties. Unlike the UK, which issues long term multiple entry visas, the Schengen system mostly relies on single entry visas with a very short term of validity. Taking into account the administrative hassle related to obtaining such a visa, the system is totally dysfunctional at the moment, and instead of facilitating legitimate short-term travel it often makes it unattractive, if not impossible. Scholars characterise this state of affairs as the Schengen states' 'gated community syndrome'¹³¹ and criticise the ENP's failure to make any progress on this issue.¹³² Given that studies indicate that little correlation exists between the visa regimes and the fight against illegal immigration,¹³³ the issue of visa rules is more informed by fear of the neighbours than common sense.¹³⁴ Meanwhile, this fear (also present *within* the EU itself in the relations between the 'new' and 'old' Member States¹³⁵) harms the relationship between the EU and the ENP partners. The Commission also acknowledged this, clarifying that 'an enhanced ENP will therefore require a very serious examination of how visa procedures can be made less of an obstacle to legitimate travel from neighbouring countries'.¹³⁶

Besides political (closer ties with the EU) and financial incentives, the ENP partners are offered technical assistance and a possibility to learn the best practices from the EU and the Member States. Just as the candidate countries in the context of the pre-accession did, they benefit from TAIEX (Technical Assistance and Information Exchange), twinning programmes where officials from the EU Member States are seconded to the ENP partner countries to ensure the transfer of know-how and best practices, and are able to participate in numerous Community Programmes and Agencies.¹³⁷ The recent

¹³⁰ All the Commission's Papers mention this incentive.

¹³¹ Zaiotti (2007), 143.

¹³² *E.g.* Zaiotti (2007), 143, 148.

¹³³ Emerson *et al.* (2007), 18.

¹³⁴ Remarkable in this context is the discussion of the flexibility in issuing visas to the participants of the ENP events coming from the partner countries contained in the last Commission's Communication on the ENP (COM(2007) 774 final, 5). If even diplomats shaping the policy can have travelling problems, what is the situation with 'people-to-people contacts' among ordinary citizens?

¹³⁵ Two recent Treaties of Accession allowed for temporary suspension (up to 7 years) of the free-movement rights of European citizens enjoying the status by virtue of possessing a nationality of one of the 'new' Member States. Although these clauses did not concern the suspension of travelling rights of the new European citizens, they were clearly informed by the same fears as the lack of progress within the ENP context in the area of visa and migration issues. See Kochenov, Dimitry, 'European Integration and the Gift of the Second Class Citizenship: The Absence of the Tools within the European Legal System to Combat Temporary Discrimination of European Citizens on the Basis of Nationality Institutionalised by the Acts of Accession', 13 *Murdoch University Electronic Journal of Law* 1, 2006, 209.

¹³⁶ COM(2006) 726 final.

¹³⁷ The list of agencies and programmes open to such participation is quite long and includes, *inter alia*, the European Maritime Safety Agency, European Environmental Agency, European Human Rights Agency, and Galileo Supervisory Authority (all in all 30 Agencies and 34 Community Programmes); European Commission, 'On the General Approach to Enable ENP

Council conclusions on the strengthening of the ENP also proposed the introduction of 'Parliamentary Twinning', aimed at the exchange of knowledge between MPs.¹³⁸ This is something new compared with the pre-accession and can certainly seem attractive. There is room for scepticism, however. Given that a number of ENP partners can be perceived to be badly-managed states leaning towards autocracy, to which life-long, or even quasi-hereditary presidencies and poor human rights protection records serve as perfect illustrations, parliaments do not play important roles everywhere. Consequently, the minimal conditions for the receipt of the European know-how might thus negate the worthwhile nature of such twinning. It should be noted, however, that this observation does not apply to those participants of the ENP with closest relations to the EU, such as Ukraine and Moldova, for example.

From the whole dynamics of evolution of the ENP incentives related to knowledge sharing and opening up Programmes and Agencies to possible ENP partners' participation demonstrates the EU's willingness to make the ENP more attractive. These developments, however positive in practice, stop short of providing the partners with wider opportunities to feel somehow involved with the Community institutions and organs. Emerson, Noutcheva and Popescu mentioned a possibility, in this respect, of opening the doors of the European Parliament and the Economic and Social Committee for observers from the ENP partner countries ready for a more advanced relationship with the EU.¹³⁹

As far as the Mediterranean partners are concerned, the existing framework of Euro-Mediterranean co-operation that lay the foundation for the ENP in the region, overlapping with the latter policy, provided a number of specific incentives designed to meet the needs of the partners in the region. These were first outlined in the 1995 Barcelona Declaration and then revised to become more attractive for the partners in the 2005 Barcelona Declaration. When placed next to the goals and incentives of the ENP the partnership areas of the EuroMed demonstrate striking similarity with the neighbourhood policy, including the achievement of a common area of peace and stability based on respect for human rights and democracy;¹⁴⁰ economic and financial partnership and the creation of a Free Trade Area (FTA)¹⁴¹ with a

Partner Countries to Participate in Community Agencies and Community Programmes', COM(2006) 724 final.

¹³⁸ GAERC, 'Strengthening the European Neighbourhood Policy. Presidency Progress Report', of 18, 19 June 2007, 5.

¹³⁹ Emerson *et al.* (2007), 13.

¹⁴⁰ For the analysis of the effects of the EuroMed and ENP on democratisation see Baracani, Elena, 'From the EMP to the ENP: New European Pressure for Democratisation', 1 *Journal of Contemporary European Research* 2, 2005, 54-66.

¹⁴¹ On the legal analysis of the process of establishment of the FTA see Pieters, Karolien, 'The Mediterranean Countries (Morocco, Algeria, Tunisia, Libya, Egypt, Jordan, Syria and Lebanon)', in Blockmans, Steven and Łazowski, Adam (eds.), *The European Union and Its Neighbours: A*

view to achieving a zone of shared prosperity and, as the third component, social, cultural and human partnership.¹⁴² These areas were reformulated by the 2005 Barcelona Declaration, which assigned a deadline for the creation of the FTA (by 2010) and added education as one of the priorities.¹⁴³

The practical attractiveness of the incentives offered by the EuroMed have been criticised by scholars. The perspective of establishing an FTA, which is unlikely to result in improved economic performance for the region,¹⁴⁴ has been called 'unrealistic and even counter-productive',¹⁴⁵ which suggests a particularly grim picture, given that the economic performance resulting from the structures already in place 'has not led to a notable increase in the pace of economic reforms or an improvement of economic performance'.¹⁴⁶

Ultimately, to return to one of the fundamental mistakes made at the inception of the ENP, the EuroMed and the ENP are uneasy bedfellows – they seem to be too much alike not to harm each other. Consequently, it is not surprising that, as reported by Attinà, 'the launching of the ENP caused discontent in the governments and social sectors of the Mediterranean partners because it changed important aspects of the EuroMed [diminishing the importance of its] multidimensional and multilateral dimension'.¹⁴⁷

Seeing the low level of attractiveness in terms of the incentives offered by the ENP, the Commission has been seeking to improve the system of instruments and incentives within this policy framework with every revision of the policy. The results have been mixed. While some incentives get added, others somehow disappear from the list. The latter is most telling with regard to the four freedoms, which were replaced with the 'stake in the internal market'.¹⁴⁸ So as the security dimension of the ENP grows, the viable incentives offered to the partners in 2003 have been gradually watered down.¹⁴⁹ This is linked in the literature with the increasing role played by the Council in governing the policy. Playing no role in the formulation of the policy in the beginning, the Council reasserted its influence by the time the second Commission's

Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration, The Hague, T.M.C. Asser Press, 2006, 407–425.

¹⁴² 1995 Barcelona Declaration.

¹⁴³ 2005 Barcelona Declaration.

¹⁴⁴ Müller-Jentsch, Daniel, 'Economic Prospects for the Euro-Mediterranean Partnership: Deeper Integration and Trade in Services', *PPMI Paper* (World Bank and European Commission Programme on Private Participation in Mediterranean Infrastructure), 2003, 3.

¹⁴⁵ Balfour and Missiroli (2007), 7.

¹⁴⁶ Müller-Jentsch (2003), 33. There is at least one optimistic account of the EuroMed economic perspectives: Montalbano, Pierluigi, 'The European Neighbourhood Policy: Towards a New EU-MED Partnership?', in Cremona, Marise and Meloni, Gabriella (eds.), 'The European Neighbourhood Policy: A Framework for Modernisation?', *EUI Working Paper Law 2007/21*, 2007, 45–51.

¹⁴⁷ Attinà, Fulvio, 'EU Relations with the Southern Mediterranean Neighbours', *Intereconomics*, 2007, 196.

¹⁴⁸ COM(2004) 373final, 3.

¹⁴⁹ Kelley (2006), 29, 36; Magen (2006), 383, 413.

Communication was drafted in 2004 by insisting that the Member States be fully informed on the conduct of the consultations leading to the adoption of the Action Plans,¹⁵⁰ the participation of the representatives of the Council Secretariat, the Presidency and the High Representative for the CFSP in all the Commission's consultations with ENP partners, the endorsement of the Commission's Country Reports leading to the Action Plans and the involvement of the High Representative for the CFSP in the shaping of the content of the policy at all the stages of monitoring progress.¹⁵¹ Consequently, the 2004 Communication was purged of some of the incentives. In other words, all the attempts of the Commission notwithstanding, the incentives on offer still seem inadequate, and this is unlikely to change with the Council gaining a more important role to play, given its conservatism and the overall negative effects of inter-institutional rivalry, making scholars and policy-makers describe possible alternatives.¹⁵²

Add to this the differences existing between the vision of the ENP espoused by each of the 27 Member States and it becomes clear that the unattractiveness of the incentives on offer has systemic explanations.¹⁵³ It is true, just as it was five years ago when William Wallace wrote it, that 'within the current EU there is no consensus on priorities to be given to the eastern or southern neighbours, or on the trade or financial incentives which should be offered'.¹⁵⁴ Given that the EU itself does not have competences to conduct the ENP without the Member States' consent the differences between the Member States' positions are bound to have important implications, dwarfing the policy's potential.

So when the time is ripe to conclude the European Neighbourhood Agreements, the disagreements between the Member States regarding the desirable directions of ENP evolution could result in a blockage of this important incentive offered to the ENP partners. Given the procedural sophistication which is to accompany the negotiation, signing and entry into force of the new agreements, each of the Member States will have plenty of chances to block their conclusion and entry into force, be it at the level of the Council, where unanimity is required, or during the national ratification process. In fact, the EU promises the partner countries some incentives which are potentially out of its own control, undermining the policy's reliability.

The EU's potential inability to deliver on its own promises, just as its inability to move towards a better set of incentives for the ENP partners can partly be

¹⁵⁰ GAERC Conclusions of 25 April 2005, 8035/05.

¹⁵¹ COM(2004) 795final, 10.

¹⁵² See e.g. Emerson *et al.* (2007).

¹⁵³ For a telling illustration of the differences in the Member States' approaches to the neighbourhood see Natorski, Michal, 'National Concerns in the EU Neighbourhood: Spanish and Polish Policies on the Southern and Eastern Dimensions', in Delocour, Laure and Tulmets, Elsa (eds.), *Pioneer Europe? Testing EU Foreign Policy in the Neighbourhood*, Baden-Baden: Nomos, 2008, 57.

¹⁵⁴ Wallace (2003), 1.

explained by the security dimension of the ENP, which plays an important role in the policy. Agreeing with Zaiotti, the emphasis on security 'not only limits the capacity of the EU to meet the expectations generated by its offer, but also opens the door for imposing on the neighbours further restrictions and a set of onerous obligations'.¹⁵⁵

II. 2008/2009 FACE-LIFT OF THE ENP

By 2008 the ENP, although still very young, needed a significant face-lift. The drawbacks plaguing its attractiveness for the (potential) partners as well as the ultimate possibility to move closer to the achievement of the goals set for it needed to be dealt with. Since any significant upgrades of cross-pillar policies such as the ENP do not depend on the Community institutions alone, the initiative had to come from the Member States.

Ironically, both initiatives, while potentially able to contribute to the face-lift of the ENP, in fact constituted failed attempts to act outside the framework of this policy. Given the drawbacks of the ENP outlined in the previous section it is not surprising that the Member States interested in a qualitative improvement in the dialogue with the partner states were unwilling to build on the potentially dysfunctional foundations of the ENP. Both the Union for the Mediterranean and the Eastern Partnership grew from the attempts to start a radically new phase in the relationship between the EU and particular groups of partner states, thus sidestepping the ENP. While France was championing the Mediterranean vector of EU-neighbourhood relations, Poland and Sweden focused on the Eastern European dimension of the EU's external engagement.

On 6 May 2007 the French President Nicolas Sarkozy came up with a vague plan to start a 'Mediterranean Union', which would incorporate the EU-27, the EuroMed countries and the candidate countries.¹⁵⁶ His vague idea, apparently connected with a desire to sell the new Union to Turkey as an alternative to EU membership in the context of his presidential race,¹⁵⁷ seems to ignore all of the current projects focusing on EU engagement in the Mediterranean region. Moreover, the President came up with his ill-articulated proposal without consulting other Member States and without presenting any real detailed blueprints for the Union.¹⁵⁸ Making no references either to the ENP or to the EuroMed, Sarkozy's initiative clearly aspired to create something new in the Mediterranean region, even though he did not seem to have a clear idea of what exactly.¹⁵⁹ Predictably, this unilaterally proposed, vague project failed to gain the support of other Member States. Germany was especially sceptical of the new blurred initiative. Consequently, as France,

¹⁵⁵ Zaiotti (2007), 143, 151.

¹⁵⁶ On the Union for the Mediterranean story see Liberti (2008), 93 *et seq.*

¹⁵⁷ Liberti (2008), 101.

¹⁵⁸ Which made the German Chancellor Angela Merkel confirm to the Press on 7 December 2007 that 'there will not be a Mediterranean Union as the French President suggested'; as cited in Liberti (2008), 98.

¹⁵⁹ Liberti (2008), 98, 99.

which held the Presidency of the Union at the time, was moving forward with the development of the project, what the other Member States agreed to support was not a new 'Union' but yet another update of the EuroMed – a kind of Barcelona 3. In other words, having a blurred but fully ambitious start, the Union for the Mediterranean ended up flying very low, *de facto* creating little or next to nothing new. France managed to gather all the Heads of State and Governments of the Mediterranean partners in Paris at a 2008 July summit, which adopted a Common Declaration for the Mediterranean on 13 July 2008.¹⁶⁰ According to point 4 of this Declaration, the EU and the partners were starting a 'reinforced partnership – Barcelona Process: a Union for the Mediterranean'. In other words, the initiative did not move away from the ENP, but was rather embedded in it instead. Agreeing with Liberti, 'it is difficult to see at present how [the Union for the Mediterranean] can succeed where its predecessor, the Barcelona Process, has failed'.¹⁶¹ This is especially so, since the newly-launched Union is not at all different from the Barcelona process in substantive terms. Moreover, its goals, as formulated in the first paragraph of the Paris Declaration, are identical to those of the EuroMed and the ENP.¹⁶²

As far as the Eastern dimension of the ENP is concerned, it is worth remembering that initially the ENP as such was conceived of as a policy for the post-Soviet countries of Eastern Europe¹⁶³ interested in deepening their relations with the EU. Paralleling the interest of France, Spain and Italy in the Mediterranean dimension, Sweden together with some new central European Member States and, particularly, Poland, form another camp of Member States, lobbying for the Eastern European dimension of EU foreign policy.¹⁶⁴ They view the European partners as potentially more important, taking into account both their 'Europeanness' in terms of Article 49 EU and their ambition to join the European Union in the future. In fact, the ENP as such, albeit in its initial, purely 'Eastern European' version, partly resulted in the lobbying of the Member States by Poland, then a candidate country.¹⁶⁵ In 2003 the Polish Ministry of Foreign Affairs argued for the recognition of the 'European choice' of East European partners, especially Ukraine.¹⁶⁶

Although the addition of the Mediterranean countries to the initial ENP initiative diluted the policy and disappointed Poland and the Eastern European partner states, it did not change the obvious reality: paraphrasing the Polish Foreign Minister Radosław Sikorski, while Ukraine, Moldova and the rest [among the Eastern European partner states] are 'European Neighbours',

¹⁶⁰ Déclaration commune du sommet de Paris pour la Méditerranée, Paris, 13 July, 2008.

¹⁶¹ Liberti (2008), 99.

¹⁶² 'Transformer la Méditerranée en un espace de paix, de démocratie, de coopération et de prospérité'.

¹⁶³ With an obvious exception of the Baltic States.

¹⁶⁴ Natorski (2008).

¹⁶⁵ Kratochvíl, Petr, 'New EU Members and the ENP: Different Agendas, Different Strategies', contribution to the forum 'The Neighbourhood Policy of the European Union', *Intereconomics*, 2007, 191.

¹⁶⁶ Natorski (2008), 63.

entitled to apply for the membership of the EU, the North African states are 'Europe's Neighbours',¹⁶⁷ potentially enjoying a totally different position in their relationship with the EU and certainly entitled to a separate policy.

With the rising profile of the 'Mediterranean Union' advocated by Sarkozy, Poland and other Member States supporting the Eastern dimension saw a new opportunity to advocate differentiation: if pure ENP is no longer good enough for the Mediterranean, why should it be sufficient for the partners in the East of the European sub-continent? In fact, this is what the new Member States always wanted: to treat different things differently and to ensure that the EU policies for the Mediterranean would be different from the EU policies for the East of Europe. The extension of the EU neighbourhood idea to cover non-European neighbours was a heavy blow to the new Member States' idea of offering articulated membership prospects to Ukraine, Moldova, the Caucasian republics, and, possibly, Belarus.

The larger ENP, framed in such a way under pressure from the Member States interested in the Mediterranean region more than in the East of the European sub-continent was a solution appealing to no-one among the targeted states, overlapping with a pre-existing Barcelona process for the Mediterranean and not offering to the Eastern European post-Soviet states anything they wanted. Consequently, the French proposal on the Mediterranean Union and the Polish and Swedish proposal of the Eastern Partnerships are nothing but the return to the *status quo ante* ENP – and the *de facto* re-tabling of the earlier Polish proposal.

Similarly to the Mediterranean Union, the Polish and Swedish Eastern Partnership proposal was initially intended to be something different from the ENP.¹⁶⁸ Poland and Sweden appeared to be designing a true leap-forward in the EU's relations with some European partners. As has been reported in the press, the Eastern Partnership was perceived to make an offer of EU Membership to the interested partners, able to demonstrate sufficient progress in their reforms.¹⁶⁹

This was not destined to happen, however. While the European Council of 19-20 June 2008 endorsed the proposal, it also stripped it of any substance. Not only was the prospect of membership removed from the list of possible incentives;¹⁷⁰ the Eastern Partnership was also incorporated into the larger ENP framework, effectively killing the well-meant Polish initiative for the second time: analysis of the Commission's Communication prepared in response to the European Council's endorsement of the proposal tabled by Poland and

¹⁶⁷ As quoted in EUobserver, 'Eastern Partnership' Could Lead to Enlargement, Poland Says, 27 May 2008.

¹⁶⁸ On the proposal see Natorki (2008), 62–65.

¹⁶⁹ EUobserver, 'Eastern Partnership' Could Lead to Enlargement, Poland Says, 27 May 2008.

¹⁷⁰ COM(2008) 823 final, 2: '[The Eastern Partnership] is without prejudice to individual countries' aspirations for their future relationship with the EU'.

Sweden demonstrates that the added value of the new partnership compared with the ENP-pure is dangerously close to zero. The same is confirmed by the Declaration adopted by the Prague Eastern Partnership Summit in May 2009.¹⁷¹

In short, both the Union for the Mediterranean and the Eastern Partnership intended to improve the context of the EU relations with its neighbouring states by *not* applying the ENP. The lack of agreement among the Member States regarding the priorities of the EU's engagement in the neighbourhood as well as its potential reach, especially in terms of possible EU membership offers, resulted in dragging both proposals back into the tenets of the ENP, which they were designed to avoid. Regarded in such a light both proposals in question have failed entirely. Instead of offering something really new to the partners, they were effectively turned into the recitation of the mantras of the ENP which they were initially trying to avoid. This story is likely to be repeated *ad infinitum* as long as there is no consensus among the Member States regarding the issue of what to do with the neighbours and/or as long as the competences of the EU are insufficient to conduct the neighbourhood policy which would be at least to some extent self-standing and not entirely dominated by the Member States. Neither of the two factors is likely to change in the near future.

Notwithstanding the fact that the two initiatives at issue did not gain the status of self-standing policies separate from the ENP, with the Prague Declaration even specifically stating that the Eastern Partnership is merely a 'specific Eastern dimension of the ENP',¹⁷² they were not dropped. This has resulted in additional layers of policy and regulation being added on top of the ENP's already existing structures of dubious workability. In order to analyse the potential outcome of such additions in the context of the EU's relationship with its neighbours, it is necessary to view the newly-formulated initiatives in light of the drawbacks of the ENP. Theoretically, should at least one of such drawbacks be remedied by the new initiatives, the EU is better off as a consequence of their introduction.

The drawbacks of the ENP outlined in the first section of this paper include problematic geographic choices that resulted in mixing Eastern European and Mediterranean states under the roof of one policy; the presumption of shared values; the presumption of effectiveness of the value-based conditionality in the neighbourhood; the fusion of conditionality with the idea of 'joint ownership' of the process; and poor incentives offered to the partner states.

Regrettably, the new initiatives fail to remedy any of these drawbacks. Even more, by pretending to introduce something new into the structure of the ENP they make the EU's engagement with the neighbourhood somewhat half-

¹⁷¹ Joint Declaration of the Prague Eastern Partnership Summit, Prague, 7 May 2009.

¹⁷² *Id.*, point 2.

hearted. From now on the EU has to pretend that something new has been proposed, while it has not, and the partner states have to act as if the EU is offering something different, while it does not. The new initiatives have thus resulted in creating a light fog of hypocrisy around the old ENP structures of questionable workability.

As the two new initiatives did not manage to leave the confines of the ENP, the policy coupling both the Mediterranean partners and the Eastern European partners was ultimately left unchanged. As to the degree of differentiation between the two vectors of the ENP, it has been there from the very start and has not been altered with the introduced face-lift. The presumption of shared values is unchanged, as the fundamentals of the ENP, even the most dubious ones, are there to stay.¹⁷³ The value-based conditionality stays, as the ENP is not dismantled. The Prague declaration mentions conditionality again,¹⁷⁴ notwithstanding the fact that it has been abundantly proven in the literature that value-based conditionality can be of no assistance whatsoever in reaching the goals of the ENP.¹⁷⁵ Moreover, although the Commission's Communication on the Eastern Partnerships recites the mantra of joint ownership of the process,¹⁷⁶ it repeatedly refers to the partners' need to prove their ability to move towards the Union, as judged by the Commission. This means that the problematic application of value-based conditionality which can trace its roots back to the pre-accession assessment of, *inter alia*, democracy and the rule of law,¹⁷⁷ remains intact. The same applies to the Mediterranean partners: the EuroMed and ENP framework continues to apply to them, even after the launch of the Union for the Mediterranean, in exactly in the same way as before.

Interesting developments can be noted in terms of providing incentives for the partners. While the Prague Declaration, which largely repeats the Commission's Communication on the Eastern Partnership contains a long list of such incentives,¹⁷⁸ the simple naming of them reveals that *nothing* has been added on the top of the pre-existing insufficient incentives provided in the general ENP framework. In one example the Commission speaks about the conclusion of the Association Agreements,¹⁷⁹ and this is exactly what Ukraine has been negotiating since 2007.¹⁸⁰ Moreover, the Mediterranean partners already have such agreements in place, *i.e.* not offering them to the Eastern European countries would contradict the Commission's claim of universality of the policy, introducing anti-Eastern European bias into the ENP. Importantly,

¹⁷³ The allusion to EU values is present both in the Eastern Partnership Communication of the Commission (COM(2008) 823 final, 3) and the Paris declaration (point 1). See also Prague declaration (point 1).

¹⁷⁴ Prague declaration, point 1.

¹⁷⁵ See Part I(c) *supra*.

¹⁷⁶ Prague declaration, point 1.

¹⁷⁷ For detailed critique see Kochenov (2008) 'EU Enlargement', *passim*.

¹⁷⁸ Prague declaration, points 4–7.

¹⁷⁹ COM(2008) 823 final, 3. Numbered as point 5 in the Prague declaration.

¹⁸⁰ Hillion (2007), 147; see also Part I(e) *supra*.

the Association Agreements are only to be concluded with those partners 'able to take on the resulting far-reaching commitments'.¹⁸¹ In other words, unlike in the case of the Mediterranean partners, among whom even the Palestinian Authority has such an agreement, Association Agreements are not offered to Eastern European partners automatically. The Communication also mentions the Neighbourhood Economic Community and Free Trade Areas.¹⁸² This is an old story, repeated in all the ENP documents since the policy's inception and equally restated in the Prague declaration.¹⁸³ Among positive developments, the Communication makes a reference to the EEA as a possible model for the ultimate outcome of EU-Eastern partners' engagement; albeit in the long-term future. Nothing new is proposed in the areas of migration and visa facilitation.¹⁸⁴ The overall impression upon reading the Prague declaration is that of disappointment. It is very poor, if not empty, with regard to the new initiatives. The incentives it offers are not ultimately different from those offered within the ordinary ENP context.

Among the innovations is the multi-lateral component in the Eastern dimension, requiring deep engagement between the Eastern European partners.¹⁸⁵ It is this that the Prague Declaration and the Commission's Communication are built on. Both are very similar to the EU's policy towards the Mediterranean partners, where the importance of multilateralism has always been emphasised. It is disappointing that the Commission seems to ignore the fact that the Eastern Partners are already covered by the framework of the Commonwealth of Independent States (CIS)¹⁸⁶ and other regional initiatives, such as GUAM,¹⁸⁷ of which no mention is to be found in the Communication. Another innovation is the Comprehensive Institution-Building Programme to be established by the EU to help the partners in their reforms.¹⁸⁸ Given that no standards of institutional capacity exist within the *acquis communautaire*, the likely success of this initiative is doubtful. In the best case-scenario it will merely repeat the EU's engagement with the institution-building undertaken in the central and east European Member States which recently joined the Union in two waves (2004 and 2007). The latter was characterised by very sporadic actions of the Union, resulting in contradictory recommendations given to the countries in question and large-scale promotion of *Potemkin*-style reforms.¹⁸⁹

¹⁸¹ COM(2008) 823 final, 4.

¹⁸² *Id.*

¹⁸³ Prague declaration, point 5.

¹⁸⁴ COM(2008) 823 final, 6.

¹⁸⁵ Prague declaration, point 9 *et seq.*

¹⁸⁶ As a result, the Russian Federation sees its perceived interests in the region undermined. President Dmitry Medvedev has been particularly critical of the Eastern Partnership initiative, pointing to the possibility of 'using this structure as a partnership against Russia'. See his statement to Vesti news channel, available at <<http://www.vesti.ru/doc.html?id=286999>>.

¹⁸⁷ GUAM unites four of the Eastern Partnership States (Georgia, Azerbaijan, Moldova and Ukraine) and has been launched at the Yalta summit of 6–7 June 2001. For more information see the official web-page of the organisation, available at <<http://guam-organization.org/en>>.

¹⁸⁸ Prague declaration, point 6.

¹⁸⁹ For a detailed account see Kochenov (2008) 'EU Enlargement'.

The Commission also promises to study the possibility of limited labour mobility between the EU and the partners, which sounds like a bitter joke in a situation where even the workers of some of the EU's own new Member States do not yet enjoy free movement rights.¹⁹⁰

The EU offered a little bit more money, which seems to be the only real change resulting in the introduction of the Eastern Partnership. Given the observation regarding the likely success of value-based conditionality in the neighbourhood, it is clear that 250 million euro in promised 'fresh funds'¹⁹¹ cannot result in profound reforms, even if increased to 350 million.¹⁹² The main promise and the ultimate incentive (EU membership) which the Eastern European partner countries were waiting for has not been made. They are not considered as likely candidates for accession. Ironically, the promise of accession would be the only move capable of really acknowledging their different position compared with the Mediterranean partners.¹⁹³

As for the Paris Declaration on the Union for the Mediterranean, it seems to contain even less innovations than the Eastern Partnership. Several steps were made towards increased socialisation among the EU and its Mediterranean partners, including the establishment of common institutions.¹⁹⁴ However, given that the powers of the new 'Union' are non-existent and the structure of common institutions, logically, does not include any dispute-resolutions bodies, it is entirely unclear what use can be made of the General Secretariat the Declaration created.¹⁹⁵ Interestingly, as a result of the Ministerial meeting of 3 November 2008, Israel received one of the five posts of Under-Secretary General in exchange for agreeing to the membership in the 'Union' of the Arab League.¹⁹⁶ It will be truly fascinating to follow the work of the new body, given that the decisions are to be taken by consensus¹⁹⁷ and the Paris summit did not even result in a photo opportunity, as certain Arab leaders did not want to be seen in a photo together with an Israeli Prime-Minister.¹⁹⁸

Although the two recent initiatives have resulted in some changes to the ENP, they have not solved any of its problems, but rather have managed to

¹⁹⁰ On this issue see Kochenov (2006) 'European Integration'; Adinolfi, Adelina, 'Free Movement and Access to Work of Citizens of the New Member States: The Transitional Measures', 42 *Common Market Law Review*, 2005.

¹⁹¹ COM(2008) 823 final, 13.

¹⁹² European Commission, MEMO 09/217 'Eastern Partnership', of 5 May 2009. See also <http://www.europa-eu-un.org/articles/en/article_8694_en.htm>.

¹⁹³ Such an acknowledgement has been expected by the Eastern partners. See e.g. The Ministry of Foreign Affairs of Ukraine, 'Komentar Press-Sluzhby MZS Ukrainy shchodo pozpobky skhidnoho vymiru polityky Jevpopejs'koho Sojuzu', of 23 May 2008, available at <<http://www.mfa.gov.ua/eu/ua/news/detail/13105.htm>>.

¹⁹⁴ Paris declaration, points 23–28.

¹⁹⁵ *Id.*, point 23.

¹⁹⁶ As reported by the AFP,

<http://afp.google.com/article/ALeqM5g_zKVV5l13vtVyl4lhqjG5P3m5dA>

¹⁹⁷ Paris declaration, point 10.

¹⁹⁸ Liberti (2008), 99.

complicate the framework of EU relations with the partner states even further. The recent initiatives provide compelling evidence of the Member States' inability to find any common understanding regarding the future of the EU's relations with the neighbourhood.

III. A WAY FORWARD?

Given that as new policies are formulated, the old ones remain running, an increasingly blurred cloud of multiple overlapping legal and political arrangements linking the EU and its immediate neighbours risks reaching the point when complexity and poor articulation will result in the failure of the whole system – an issue which will certainly need to be addressed by the EU in the nearest possible future. It will not be easy to deal with this problem, as the EU itself is powerless and the Member States have demonstrated with abundant clarity that they are totally unprepared to come up with clearly articulated functional neighbourhood policy.

The main problem impairing the functioning of the ENP and its development is not only related to the lack of the Member States' consensus about the role to be played by the Union in the neighbourhood. Another, probably more important problem is related to the fact that at the moment the EU is *de facto* powerless to advance the ENP. To agree with Kratochvíl, there is an obvious tension between 'the Union's self-perception as the *dominant power* and, at the same time, a *benign power* which can transform its neighbourhood by the token of its mere existence and attractiveness'.¹⁹⁹ The strongest incentive for change in the neighbourhood in the EU's arsenal, and probably the only truly functional one, is its very existence, with the prospect of membership open to all the willing European states. At the present stage of EU evolution when its powers to shape the ENP are lacking, depending entirely on the Member States instead, the only truly serious approach to the neighbourhood which is likely to result in real, genuine and concrete transformation of the partner states is to act through the offers of membership of the EU. A simple recognition of the EU membership ambitions of a country can result in a boost of reforms and long-lasting change. The lack of such acknowledgement by the Union affects the reforms in the interested countries in a negative way, bringing disappointment to those countries. Obviously, the Eastern European partners are very far away from the point when they would be ready to become EU Member States. Yet, given that the acknowledgement of European aspirations and a promise to treat the possibility of accession seriously does not oblige the EU to come up with any schedules for accession, while at the same time costing nothing and guaranteeing the commencement of serious reforms, it would be unwise of the EU not to provide the partners with such an acknowledgement.

¹⁹⁹ Kratochvíl, Petr, 'Constructing the EU's External Roles: Friend in the South, Teacher in the East?', in Delocour, Laure and Tulmets, Elsa (eds.), *Pioneer Europe? Testing EU Foreign Policy in the Neighbourhood*, Baden-Baden: Nomos, 2008, 217, 218.

At the same time, the EU is not obliged to behave in an altruistic manner. The objectives of the ENP are clear, and make a lot of sense. The creation of a ring of friends is a reasonable goal. Sticking to it, the most viable strategy is to invest as little as possible in achieving the desired result. If ensuring that a country will not be a cause of instability that might spill-over into the EU's proximity is possible without an offer of membership, such an offer is unlikely to be extended, and rightly so. However, the EU cannot keep up its image of a regional super-power by completely ignoring the aspirations of its neighbours, particularly as the reality today is such that they want to join. Moreover, this is unlikely to change in the foreseeable future. Something has to be offered in return and the ENP was the gift the EU was ready to make. However, to be taken seriously, this gift should not be entirely EU-centred, fully ignoring the partners' needs. A difficult balance has to be struck: a friendly step in the direction of the partners is required of the EU.

The ENP in its present form is not likely to incite positive change in the neighbourhood. It is not by chance that the Member States willing to engage with the neighbourhood seriously seek to do everything in their power to distance their proposals from the policy. This happened at the initial stages of the development both of the Union for the Mediterranean and the Eastern Partnership. The facts are such that the Member States' inability to agree on the broadest-possible policy outline is likely to result in the continuation of the ENP in its present unfortunate emanation. All the initiatives which are likely to work and which are hence more ambitious than the framework of EU-neighbourhood relations which is currently in place, are likely to be struck down by the Member States reluctant to play along. A broader consensus has to emerge.

Before such consensus among the Member States materialises, the attempts to reform the ENP are likely to continue resulting in embarrassment for the Union and disappointment for the partner states. Clearly, the only viable way to engage with the neighbourhood is to deal with the five main drawbacks of the ENP. In practice this means scrapping the policy and redesigning it from scratch.

The new design should not start with seeking uniform approaches to all the states that happen to be in the EU's geographical proximity. A tailor-made engagement with the neighbours is needed, starting not only with the EU's security, migration, and other concerns, but also with the actual needs of the neighbours. If such an approach is adopted, the Commission will not need the propaganda language of values and 'joint ownership' of the process anymore. There will be no need to pretend that Azerbaijan or Egypt is a functional democracy, sharing EU's ideals of human rights and the rule of law. There is absolutely no problem with a pragmatic engagement with the neighbours. By trying to be pragmatic, and yet, invoking its particular ideals which, if applied to the majority of neighbours mean nothing, the EU

diminishes its own principles, harming its image in the eyes of those partners that are genuinely interested in embracing the values outlined.

The same applies to the conditionality idea. Depending on the needs of the partner in question, a clear choice needs to be made whether to apply conditionality, or not. As has been compellingly demonstrated in the literature, conditionality cannot possibly work in the context when the partner states in question do not wholeheartedly embrace the changes promoted by the EU. It means that playing conditionality games with the 'reluctant' partners should stop. With regard to those partners ready to embrace change advocated by the Union, conditionality should remain the norm. It should be made clear in such cases, however, that conditionality means strictly following the shared values and does not entail possible 'joint ownership' of the process.

To make the renewed system workable, the whole ENP context will need to gain a more powerful legal dimension, resulting in the introduction of more reliability and transparency into the system through an increased use of binding legal instruments. This is likely to be of particular importance in the context of dealing with those ENP partners willing to perform, where the level of engagement will be high. As a consequence of such legalisation of conditionality, the level of predictability will rise, increasing the likelihood of compliance both on the EU and the ENP partner countries' sides of the table. Nothing is there to prevent the ENP from developing into a "neighbourhood law" of the EU, marking a new stage in the export of stability and peace to the countries outside of its borders. Such a change is likely to require an increased role to be given in the ENP to the judiciary.

These observations come down to one important conclusion: the ENP in its present form is unlikely to bring the results expected of it and needs to be deeply reformed. Such a reform should go as far as to address the core deficiencies of the ENP. At present, the widely-publicised face-lifts in the style of the Union for the Mediterranean and the Eastern Partnership are utterly counterproductive and lead the Union nowhere.