
Extending EU Area of Freedom, Security and Justice to its Eastern European Neighbourhood¹

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Introduction

How does the EU deal with the identical Justice and Home Affairs (JHA) problems in relations with its Eastern European neighbours - namely Belarus, Moldova, Russia and Ukraine? **The scope of cooperation in the sphere of JHA** between the EU and these countries has grown, as a popular Russian saying goes, *“from a political coin to a political ruble”*. The reasons for this shift have been looked for both in the general evolution of the cooperation patterns² and in the steep growth of this problematique on the EU agenda in general.³ While

¹ An extended version of this paper has been published as “Primus inter Pares? The EU’s Justice and Home Affairs Policies in its Eastern European Neighbourhood”, InBev-Baillet Latour Working Paper Series, KULeuven, (2008).

² Potemkina, O. (2002) “EU-Russia Cooperation in Justice and Home Affairs in the context of Enlargement”, InBev-Baillet Latour Working Paper, UCL; Potemkina, O. (2006) “EU-Russia Cooperation in Justice and Home Affairs”, in The EU-Russia Review, Issue 2 (A report commissioned by the EU-Russia Centre), November 2006.

³ Boswell, C. (2003) “The ‘External Dimension’ of EU Immigration and Asylum Policy”, in International Affairs, Vol. 79, No.3, Pp.619–638; Okolski, M. (2004) “The effects of political and economic transition on international migration in Central and Eastern Europe”, in Massey, D. and Taylor, J. (eds.) International migration: prospects and policies in a global market. Oxford University Press; Tsapenko, I. (2002) “Pod Natiskom Migrantov”, in Vestnik Rossiiskoi Akademii Nauk, Tom. 72, Vypusk 11.

the context for such changes has been provided by the two waves of the last EU enlargement.¹ Remarkably, such state of affairs has been clearly emphasized by the European Commission in the document that since recently is supposed to guide many of the Union's policies in the field of JHA, particularly with regards to migration-related problems:

*As the borders of the EU shift, migratory routes also shift, displacing existing routes or adding new ones. New routes also appear when certain routes are closed off following increased action by enforcement agencies charged with tackling illegal immigration and organised crime. In addition, in recent years migratory flows have increasingly diversified and new migratory flows are emerging alongside traditional and relatively long-standing ones. In this context, migration is more difficult to manage and **Member States increasingly turn to the EU to seek solutions via cross-border dialogue and cooperation with and within the partner regions.***²

In this context problems in the field of justice and home affairs experienced by the EU and its new neighbors might seem identical. However, the enlargement has produced various effects on the EU Eastern neighborhood. And with this inevitability of differentiations as a basic premise, this paper looks at the mechanisms and substance of JHA cooperation pushed forward by the EU in the relations with its so-called “*Eastern European Neighborhood*”. Despite various interpretations of this ambiguous term, this work applies it not only to three Eastern ENP countries – Ukraine, Moldova and Belarus (with reservations in the latter case) – but to Russia as well, because such formula is indicative for the dynamics inherent in the respective cooperation patterns as this work attempts to demonstrate.

The ideas that are put forward in this paper have mostly stem from reflections on three observations. Firstly, there is an opinion that to the analysis of the EU relations with Russia and with Ukraine (Moldova, Belarus) one might

¹ Grabbe, H. (2002) “Stabilizing the East While Keeping Out the Easterners: Internal and External Security Logics in Conflict”, in Lavenex, S. and Ucarer, E. M. (eds.) *Migration and the Externalities of European Integration*, Lexington Books; Jileva, E. (2002) “Larger than the European Union: The Emerging EU Migration Regime and Enlargement”, in Lavenex, S. and Ucarer, E. M. (eds.) *Migration and the Externalities of European Integration*, Lexington Books.

² European Commission. *Applying the Global Approach to Migration to the Eastern and South-Eastern Regions Neighbouring the European Union*, COM (2007) 247 final. Brussels: European Commission, 16 May 2007 (bold is added by the author).

apply the models of competing and unequal powers respectively.¹ Secondly, it has been argued that the EU can hardly use conditionality in its relations with Russia due to such factor as strong interdependence of their relationship and the fact that Russia has made it clear that it does not aspire for the EU membership.² Finally, it has been equally argued that the usage of conditionality, although deemed possible, might be quite problematic even in the EU relations with its other Eastern European neighbors because of the lack of clear membership prospective.³

Moreover, Russia claims to be *Primus inter Pares* among the EU partners – when all of them are equal but some are still more equal than the others. At least this is a conclusion that one might draw from the official rhetoric used both by the Russian and the EU sides. However, if one goes further than that, trying to analyze the actual modes of cooperation and especially the implementation of concrete projects, the picture becomes more blurred and more and more resembles some other masterpieces of the European Union’s external policies.

Therefore it seems quite legitimate to ask if there is *Primus inter Pares* among the EU partners in the JHA cooperation in the region. In other words, what are the lines along which the EU builds its JHA cooperation with ENP countries and with Russia? Are the building blocks of these relations different? What are the concrete mechanisms used by the EU to foster its JHA agenda externally when the political settings of cooperation differ from country to country? And what are the factors leading to the respective cooperation patterns? The relevance of **Belarus, Ukraine and Moldova** for such questions is clear – the particularity that they have compared to each other and to Russia is quite explicit. The ENP component and the concept of “*common spaces*” complicate the situation even further.

¹ Suggested by Prof. Anna Triandafyllidou (College of Europe, Bruges) in a conversation with the author.

² This idea has been repeatedly expressed during the PhD seminar held at the Institute for Central and Eastern Europe and the Balkans, University of Bologna (Forlì Campus) on May 30 – June 1, 2007. Besides, some problems of the EU-Russia relations in this context are well articulated in Balazs et al 2007.

³ Khasson, V. (2006) Regional Challenge in the European Union Relations with the New Eastern Neighborhood, Draft Paper to be presented at the 4th CEEISA conference in Tartu, on the 25–27 June 2006; Vysotskaya, A. (2005) The Limits of the EU’s Structural Foreign Policy in the Context of a New External Border: the Case of Belarus, InBev-Baillet Latour Working Paper Series, KULeuven.

Beyond the Road Map and the Action Plans

Russia

The gradual implementation of the Road Map of the Common Space on Freedom, Security and Justice (adopted in 2005) takes place within the framework of the EU-Russia Partnership and Cooperation agreement. Biannual meetings of the EU-Russia Permanent Partnership Council of Justice and Home Affairs Ministers monitor the overall progress on the way to creation of this Common Space. In addition, informal dialogue and expert level meetings take place. This is a dry formal description of the cooperation. A more nuanced and less shiny picture one can draw using the actual examples of unilateral and bilateral actions undertaken by the partners.

In its recent evaluation of the current state of affairs in the JHA field, the European Commission has once again emphasized that EU-Russia *“strategic partnership is based on common values which underpin EU-Russia relations as enshrined in the Partnership and Cooperation agreement and in the Road Map. They explicitly foresee the strengthening of our cooperation through respect for human rights and fundamental freedoms in the EU Member States and Russia which, being a member of the Council of Europe, must respect the provisions contained in the European Convention on Human Rights.”*¹

Nothing similar to this passage was used for the evaluation of the relations neither with Ukraine nor with Moldova, which clearly indicates that the general tension in the relations with Russia spilled over in the field of JHA and the later has been used as a platform to call for Russia to behave if it wants to continue effective cooperation. Indeed, as it was admitted by a European Commission representative, *“Human Rights are always in the news. Now there is a small change in the quality of the dialogue on Human Rights between the EU and Russia. We have been trying to involve experts in the dialogue instead of having discussions through the media.”*²

However, despite such implicitly negative formulations as in the above cited document of the Commission, despite an instructive tone inherent in many

¹ European Commission. Applying the Global Approach to Migration to the Eastern and South-Eastern Regions Neighbouring the European Union, COM (2007) 247 final. Brussels: European Commission, 16 May 2007.

² From the presentation by Sean Carroll, Head of Press and Information Section of the European Commission representation to the Russian Federation, the “EU study weekend”, Pushkin (Russia), April 28–30, 2007.

of the EU documents related to Russia, as well as frequently one-sided media coverage of the EU-Russia relations, the cooperation in the field of JHA has produced some results positively assessed by the both sides. Undoubtedly, the most visible of them is the conclusion and ratification of the two EU-Russia agreements concerning readmission and visa-facilitation, which entered into force on the 1st of June 2007.¹

This happened strictly in line with the EU priorities defined already in the Road Map and later restated in a European Commission fact-sheet on “EU-Russia common space of Freedom, Security and Justice” in November 2006, which sets the facilitation of travel while fighting illegal immigration as the first policy objective.² The negotiations on the two agreements were initiated in 2003 when the Russian authorities suggested considering a possibility of a visa-free regime and the EU replied with a lower profile offer to conclude a visa-facilitation agreement coupled with a readmission agreement. It was clearly admitted by a Commission representative that “*visa-facilitation was not at all on the EU agenda and it was invented to bargain with Russia to attract it to the readmission agreement*”.³

Long and problematic negotiations culminated in the signature and ratification of the agreements that the Russian Presidential Aid Sergey Yastrzhembskiy optimistically defined as “*a milestone on the way to a visa-free regime*”.⁴ However some independent experts have realistically argued that “*Russia has exchanged an elephant for a small dog, giving in to the European Union and getting in exchange only a symbolic dividend – visa-facilitation procedures that might eventually jeopardize Russian interests simply because the parties*

¹ See Agreement (2006a) Between the Russian Federation and the European Community on Readmission, retrievable from http://www.delrus.ec.europa.eu/en/p_509.htm (accessed on 20 May 2007).

Agreement (2006b) Between the Russian Federation and the European Community on the facilitation of the issuance of visas to the citizens of the Russian Federation and the European Union, retrievable from http://www.delrus.ec.europa.eu/en/p_508.htm (accessed on 20 May 2007).

² See European Commission fact-sheet “EU-Russia Common Space on Freedom, Security and Justice” (November 2006).

³ From the interview with a Commission DG Justice, Liberty and Security official, conducted on 19.04.2007.

⁴ Quoted from “Yastrzhembskiy: Cherez 15 let Rossiya I ES ustanovyat bezvizovyi rezhim” <http://www.rosbalt.ru/2007/10/12/421974.html> (12.10.2007)

will continue to move on the track of further visa-facilitation leaving out a possibility of a visa-free regime".¹

Nevertheless, the two agreements bear a particular importance not only for the EU and Russia but also for the third countries. Firstly, the visa-facilitation agreement does not only bring obvious socio-economic advantages (potential intensification of business and overall human contacts), but also has high political symbolism both for Russian internal politics² and for the whole context of Russia–EU relations. On the 24th of April 2007, at a recent Permanent Partnership Council of JHA ministers (together with the Vice-President of the Commission Franco Frattinni) in Moscow a dialogue between the EU and Russia on a visa-free regime started. However there is no deadline for negotiations.³

Secondly, Russia was the first country that concluded a visa-facilitation agreement with the EU. Before the EU did not have such an experience. However after the agreement has been reached it became hardly possible for the EU to block similar initiatives on the part of other countries.⁴ In other words, being in the first place a reaction to the Russian demand for a visa-free regime, the mechanism of visa-facilitation has eventually become a "natural" conditionality instrument in relations with various countries, in particular with Ukraine and Moldova. It has also been used as a conditionality tool in the negotiation over the readmission agreement with Russia itself, however both the EU and Russian officials are reluctant to admit this, emphasizing the different scope and dynamic of "strategic cooperation".⁵

¹ From the interview with Timofey Bordachev, the Deputy Editor-in-Chief of the Journal "Russia in Global Politics" to the "Radio Svoboda", 26.05.2006.

² The Russian media coverage of the entry into force of the visa-facilitation agreement shows a great deal of importance that Russian government attached to it in terms of "the fight for the interests of Russian citizens" actively supported by most of the Russian population.

³ From the presentation by Sean Carroll, Head of Press and Information Section of the European Commission representation to the Russian Federation, the "EU study weekend", Pushkin (Russia), April 28–30, 2007.

⁴ Emphasized by a representative of the JHA Council in a confidential interview conducted on 21.05.2007

⁵ The inherent conditionality of the EU-Russia readmission and visa-facilitation agreements has been admitted by many of the EU representatives in the interviews with the author.

As to the readmission agreement, one of the EU officials has characterized it as “*the first readmission agreement with a major partner country.*”¹ Another EU representative bluntly stated that “*the both agreements are what the EU was looking for. The EU badly needed this, especially the readmission agreement. It would be very important that Russia implements them properly.*”² Here again when it comes to Russia a problem of implementation seems to worry the EU as the most serious one.

It can indeed be a problem, especially when the criticism of both Russian and some European experts related to the readmission agreement is quite sharp, because it is clear that it is hardly the EU who will be readmitting migrants and that Russia will have to carry a serious burden. Such assessments are relevant for the reason that the flow of illegal immigrants is of course coming either from or through Russia to the EU and not vice versa.³ Nonetheless, the situation for Russia is not as bad as it might seem from such arithmetic.

For the purposes of better implementation of the EU-Russia readmission agreement, the EU initiated a special financial project “*Assistance to the Government of the Russian Federation in Establishing a Legal and Administrative Framework for the Development and Implementation of Readmission Agreement (2006/120-282)*” for the period from February 2007 till January 2009 to be implemented together with the International Organization for Migration.⁴

Moreover, the readmission agreement envisages a transitory period.⁵ Initially Russia will be readmitting only its own nationals and also the citizens of those countries with whom Russia itself has already concluded similar readmission agreements. But in 3 years (by 2010) Russia will be obliged to readmit

¹ From the interview with an official from DG RELEX (Russia unit), European Commission, conducted on 06.06.2007

² From the interview with an official from DG Justice, Liberty and Security, European Commission, conducted on 19.04.2007

³ An approximation given by a Commission official: around 500 000 irregular immigrants every year arrive to the EU via Turkey, Ukraine, Belarus, Moldova and Russia (from an interview conducted on 19.04.2007).

⁴ For the details of the project see: European Commission. Applying the Global Approach to Migration to the Eastern and South-Eastern Regions Neighbouring the European Union, COM (2007) 247 final. Brussels: European Commission, 16 May 2007

⁵ Agreement (2006a) Between the Russian Federation and the European Community on Readmission, retrievable from http://www.delrus.ec.europa.eu/en/p_509.htm (accessed on 20 May 2007).

everybody who illegally enters the European Union from the Russian territory. As it was rightly underlined by a Russian diplomat, “*until that date Russia has to manage to conclude the readmission agreements with the third countries and to create a viable [border] infrastructure*”.¹

Consequently, the conclusion of the readmission agreement with the EU might now be used by the Russian government as leverage in the similar negotiations with the Central Asian countries, and most importantly with Kazakhstan taking into account its vast and porous border with Russia.² This is only one of the examples where some of the security interests of the EU paradoxically coincide with the security interests of Russia or, more accurately, with the security agenda of the Russian government.

Another example is the dynamic processes in the sphere of EU-Russia inter-agencies coordination. More precisely, this is the cooperation that has started developing between the Russian Border Guard Service and a newly created EU agency – FRONTEX. This agency been envisaged to defend the EU external borders but some experts say that it has not been very effective mainly for the reason that this EU agency cannot adequately react to the crisis situations when there is almost no infrastructure, not so much money and not enough experts under the general umbrella of the FRONTEX’s restricted competences.³

Moreover, as it is widely admitted by specialists on border issues, an effective border management is possible only in the context of an effective cooperation with the neighbors. This has also been recognized by the Commission, which stated that “*Effective operational cooperation as foreseen by the Terms of Reference between FRONTEX and the Russian Border Guard Service is important, in particular for promoting best practices in border management*”.⁴

Following this line a representative of a member-state in the Council expressed an opinion that “*primarily the task is to give them [FRONTEX] more*

¹ From the interview with an official responsible for JHA issues at the Russian Permanent Representation to the EU (Brussels), conducted on 04.05.2007.

² In May 2007 a readmission agreement was signed between Russia and Uzbekistan, see Petrachkova, A. (2007) “Slozhnyi Partner”, *Vedomosti*, #41 (in Russian) www.vedomosti.ru/newspaper/article.shtml?2007/03/09/121953

³ An opinion of an official responsible for JHA issues at the Russian Permanent Representation to the EU (Brussels), conducted on 04.05.2007.

⁴ European Commission. Applying the Global Approach to Migration to the Eastern and South-Eastern Regions Neighbouring the European Union, COM (2007) 247 final. Brussels: European Commission, 16 May 2007.

power, money and influence. When FRONTEX starts cooperating with Russia, the both sides have to be involved. At the beginning – exchange of best practices of border management, and then we have to see how the cooperation develops in the future".¹ However, because the EU is always on the way to develop its competences further, its actual policies are mostly reactive and some concrete measures in the cooperation with FRONTEX are still to be taken.

However, the necessity to work together is already a big step forward. As explained by another Council official, *"the quality of EU-Russia cooperation in this field is based on the fact that this is a broad cooperation that takes into account EU interests, Russian interests and mutual interests. Exchange of information between Federal Security Service of Russia and Europol is only one example of such interaction... If the EU cooperates more on one issue it will get more on another one"*.² Such interests-based explanation of cooperation demonstrates how effectively the EU uses conditionality in its relations with Russia without making unnecessary references to this problematic term.

Both the EU and Russia have characterized the common space on FSJ as the best functioning one. Indeed, President Putin's assessment of the dynamics in the framework of the FSJ common space has been highly positive, as he has identified it as an example for other fields of cooperation.³ Nevertheless, there still exist a number of factors that hinder cooperation.

Thus, both parties say that some of the issues that form the common agenda of cooperation in the JHA are significantly politicized and this prevents a lot of positive developments (among the examples are the issue with asylum standards in Russia, the problem of Chechen asylum-seekers in the EU and so on). They also agree that when issues move from the political level to the technical one, than problems are solved faster and in a mutually profitable manner.⁴

And indeed, unfortunately, not all of the areas of cooperation included in the FSJ Road Map enjoy the same (even though relative) success as the sphere

¹ From the interview with a representative of one of the EU member-states in the JHA Council, conducted on 11.05.2007.

² From the interview with Wouter van de Rijt (Principal Administrator, DG JHA, Council of the European Union) conducted on 16 May 2007.

³ Emphasized by an official from DG RELEX (Russia unit), European Commission in the interview conducted on 06.06.2007

⁴ This has been admitted by both a Commission representative and a high-ranking official from the Russian Permanent Representation to the EU in conversations with the author.

of migration management. First things come first, and the security priorities of the EU coupled with the hope of the Russian authorities for a visa-free regime that would put Russia on the equal footing with all the other major partners of the Union, have had a positive effect. Moreover, as it has been bluntly emphasized by one of the Council representatives, *“in security issues it is easier to develop operational measures together”*.¹

Additionally, the fact that countries on the way of migrants to the EU are often becoming not only transit but destination countries as well, explains why the EU is willing to invest in asylum facilities and immigration infrastructure in general in Russia and other countries of the Eastern Neighborhood – the evidence for such investments is provided by particular programs financed fully or partially by the EU and implemented through mediation of various governmental and non-governmental international as well as domestic actors.

But other more sensitive issues such as the improvements in the field of justice in Russia or Russian policy and practice in the field of asylum², the problems of border management and the rights of the Russian speakers in Latvia and Estonia are still on the margins of the actual cooperation either because of Russian or EU member-states reluctant positions respectively.

Neither interdependence nor conditionality can facilitate the search for solutions in the fields where the interests of one party go against the interests of the other, and the both partners wait for each other to move forward while hiding behind meaningless discussions. It is then not surprising to hear how a representative of the European Commission Delegation in Russia, admitted: *“In general I see both the expansion of activities and the expansion of rhetoric. Public discussion tends to focus on the statement “the relation is in trouble”. The rhetoric makes it more difficult to move forward.”*³

¹ From the interview with Wouter van de Rijt (Principal Administrator, DG JHA, Council of the European Union) conducted on 16 May 2007.

² Russia’s reluctance to deal with the issues of asylum has been explained by one of the European Commission officials by the fact that “Russia does not consider them so important”, while another one has not only bluntly criticized Russia for its clumsy asylum policies but also emphasized the fact that “Russia is still a source of asylum-seekers, especially from Chechnya” (from the interviews at the European Commission conducted on 19.04.2007 and 10.05.2007).

³ From the presentation by Sean Carroll, Head of Press and Information Section of the European Commission representation to the Russian Federation, the “EU study weekend”, Pushkin (Russia), April 28–30, 2007.

Ukraine and Moldova

Even though some of the EU officials admitted that a certain sort of conditionality has been used in relation to Russia (readmission and visa facilitation as the most explicit example), it is not recognized on the official level – “*not to frustrate the postulate about strategic cooperation*”.¹ However the term “conditionality” has been widely used while describing the relations with Ukraine and Moldova. Are there sufficient grounds for such terminological sophistications?

As provided by the respective PCAs and the ENP Action Plans, Justice and Home Affairs issues are discussed in depth with Moldova and Ukraine in relevant sub-committees and are also raised at the regular EU–Ukraine JLS ministerial “troika” as well as during meetings of the Cooperation Committee and Cooperation Council. With these two countries, dialogue and cooperation progress at a different pace are based on their capacity, size (particularly relevant in the case of Ukraine) and political context.

Talking about problematic aspects of cooperation with the countries covered by the ENP policies Peter Balazs, former member of the European Commission from Hungary, made a very interesting observation: “*I am afraid that the EU is again inward-looking...But we have to concentrate on external problems. If we look at the Near Abroad then we see changes. European borders are already here... The EU seems to be much more attractive from the outside than from the inside. That is the best time in marriage is to be a fiancé. And our neighbors are in the situation of such a fiancé now. Of course it is important to use tailored approaches to all countries. And specific conditionality is very important here*”.²

And indeed, a representative of the Ukrainian government at the same meeting was very clear asking not to “*look at the ENP through rosy glasses*” and stating that “*Ukraine does not feel well in the same basket with some other countries which are totally different from [it]*”.³ This politically incorrect

¹ From the interview with a former European Commission official (DG Justice, Liberty and Security, external issues) conducted on 21.06.2007.

² Peter Balazs, intervention at the seminar “Towards a New Eastern Policy of the European Union: Eastern ENP and Relations with Russia after the German Presidency”, Brussels, 20.06.2007

³ A diplomat from Ukrainian Permanent Mission to the EU, intervention at the seminar “Towards a New Eastern Policy of the European Union: Eastern ENP and Relations with Russia after the German Presidency”, Brussels, 20.06.2007

statement was made referring to the ENP approach that treats every country in the “ring of friends” in a similar paternalistic manner without accounting for countries’ specifics. Exemplifying successful cooperation of Ukraine with the EU taking place on the normal bilateral track a EU representative referred to ongoing cooperation with FRONTEX and participation in the Galileo project that are seemingly more tangible and important for Ukraine than fuzzy ENP programs. That is why Ukraine would prefer to develop relations with the EU outside of the ENP framework that “*does not empower Ukraine*”.¹

Such reassessment of the ENP made by some of the Ukrainian officials is not strange at all, taking into account that the same move was made by Russia just a couple of years before exactly on the same grounds. The difference is that Ukraine has not refused from membership aspirations. But it is no more willing to be just one of the EU partners in the rigid unifying framework of the ENP when it “*feels more a part of Europe*”.²

What are the major issues in JHA cooperation of the EU with Ukraine and Moldova respectively? The European Commission has clearly prioritized visa-facilitation and readmission agreements.³ A readmission agreement has already been initialed with Ukraine and negotiations have been completed with Moldova. Indeed, visa-facilitation is obviously a major issue for Ukraine, but also for the EU in the context of the last enlargement wave when Romania and Bulgaria joined the Union. On the one hand, the matter is that Ukraine, even though applying no-visa rule to the EU citizens, still keeps the visa regime for Bulgarians and Romanians. So when Ukraine wants to see what it really means to be on the way of strengthening the relations with EU, the Union wants all its citizens to be treated without any discrimination.⁴

On the other hand, there is also an issue of Hungarian, Slovakian, Romanian minorities living on the Ukrainian territory. Playing this card Ukraine insisted to lift the visa barriers at once, while the EU suggested a more moderate scheme. As a result a so-called two-track approach has been adopted: visa-

¹ Ibid.

² From the interview with a Ukraine desk officer, DG RELEX, European Commission, conducted on 21.06.2007

³ European Commission. Applying the Global Approach to Migration to the Eastern and South-Eastern Regions Neighbouring the European Union, COM (2007) 247 final. Brussels: European Commission, 16 May 2007.

⁴ From the interview with a Ukraine desk officer, DG RELEX, European Commission, conducted on 21.06.2007

facilitation agreement would give an easier access to the EU for the particular categories of Ukrainian citizens and additional bilateral agreements between the bordering countries that are EU members and Ukraine will give preferences to the minorities through multi-entry visas. It is expected that visa-facilitation agreement will entry into force at the beginning of 2008. By this time Ukraine should lift visa regime for the Bulgarians and Romanians.

Conclusion of the readmission agreement means that by the time it enters into force (also at the beginning of 2008) Ukraine has to build up institutions and facilities for effective readmission and re-adaptation policies. As it is indicated in recent Commission documents, “*Ukraine clearly faces particular challenges related to its location and size and the nature of its border controls*”¹. That is why an emphasis in the distribution of the Union’s financial support has been made on the capacity-building both in relation to the management of Ukrainian borders (or law enforcement in general) and in increasing Ukrainian cooperation with Moldova and Belarus. The EU has provided Ukraine with 30 million euros for building detention facilities for illegal immigrants, because the existing ones are in awful state and this is negatively assessed from the human rights perspective.²

In the EU–Ukraine readmission agreement there is also a transitory period when Ukraine has to readmit not all illegal migrants who arrived to the EU from Ukrainian territory but only Ukrainian citizens. This transitory clause might help Ukrainian authorities to be better prepared for the flows of readmitted immigrants, but unlike in the case of Russia, this period for Ukraine is going to be 1 or 2 instead of 3 years. The reason for this is that in the framework of the ENP it creates a precedent when all the other countries (and especially the Mediterranean ones) might also ask for transitory periods in their readmission agreements and such situation would collapse the whole readmission system that the EU is trying to build-up.³

Moreover, the EU has been repeatedly emphasizing the existence of the border problems between Ukraine and Russia. Now Ukraine has the readmission agreement with Russia but it has not entered into force yet. Similar problems

¹ European Commission. Applying the Global Approach to Migration to the Eastern and South-Eastern Regions Neighbouring the European Union, COM (2007) 247 final. Brussels: European Commission, 16 May 2007

² From the interview with a Ukraine desk officer, DG RELEX, European Commission, conducted on 21.06.2007

³ Ibid.

exist between Ukraine and Moldova and they are reinforced by the Transnistria tensions. This is the justification that the EU has used while initiating quite a specific project – the EU Border Assistance Mission (EUBAM) on the Moldova–Ukraine border.¹ This project is “*a huge money and fully an EU project although the UN implements it as a contractual party*” and it seems to follow quite the same logic as the EU involvement in the matters of policing of the Ukrainian-Russian border.² Such EU activities, which are indeed the implementation of the quite ambiguous ideas of “remote control”³ have been officially proclaimed as good examples of tackling trafficking and other trans-border organized crime in the region.⁴

A substantial difference between the EU policies towards Ukraine and Moldova on the one hand, and Russia on the other, concerns the ENP countries’ involvement in various structures of international nature in one way or another initiated by the EU. The most interesting example is the so-called *Soderkoping process* that has an official name “*The East-Central European Cross Border Cooperation Enhancement Process*”.⁵ This process looks somewhat mysterious because questions concerning it have puzzled all the EU officials and even many experts in the field – little is known and said about the substance of this project and about the goals it pursues.⁶ Meanwhile it seems to be an extremely relevant project because it might eventually substitute a more famous *Budapest process* in terms of the impact that it might have on the countries

¹ EUBAM Background Note 2007 EUBAM Background Note (2007), retrievable from <http://www.eubam.org/files/200-299/292/Background-note-eng-april.doc> (accessed on 20 May 2007).

² From the interview with a Commission DG Justice, Liberty and Security official, conducted on 19.04.2007.

³ Zolberg, A. (2003) “The Archaeology of ‘Remote Control’,” in Andreas Fahrmeir, Olivier Faron, and Patrick Weil (eds.), *Migration Control in the North Atlantic World. The Evolution of State Practices in Europe and the United States from the French Revolution to the Inter-War Period*, New York: Berghahn Books.

⁴ European Commission. *Applying the Global Approach to Migration to the Eastern and South-Eastern Regions Neighbouring the European Union*, COM (2007) 247 final. Brussels: European Commission, 16 May 2007.

⁵ Ibid.

⁶ Mentioned by Prof. Sandra Lavenex in a conversation with the author; interviews with an official from DG Justice, Liberty and Security, European Commission and with a member of the Finnish Permanent Representation to the EU, conducted on 06.06.2007

covered by its scope and mechanisms that facilitate operational cooperation between various agencies that deal with migration and border problems in all the countries involved.

This process provides training and a forum for comparing national experiences, disseminating best practices and for peer pressure mainly, but not exclusively, on asylum management, between Eastern European countries, some EU member-states (with the Swedish Migration Board in a leading role), the UNHCR and the International Organization for Migration (IOM). For the period from 2004 till 2008 the project has a budget of around 2.6 million euros with about 2.1 million euros provided by the EU under the lines of High Level Working Group on JHA and AENEAS program budgets, to be overseen by DG JLS and EuropeAid.¹ A Secretariat is now based in Kyiv thus emphasizing an importance of Ukraine in the whole endeavor.

Other salient issues in the JHA cooperation are corruption, judiciary and constitutional reforms, drug trafficking. However the problems related to migration and border management remain the EU top priorities, also because that an important share of illegal immigration from the Eastern regions is due to persons who enter the EU legally but overstay their visa and more under the control of networks connected with organized crime and involved in multiform criminal businesses.²

In fact, the fight against illegal immigration became a sort of laboratory and a reservoir of new methods and tools employed by the EU in its other actions within the field of JHA both inside the EU territory and beyond its borders. That is other areas of JHA cooperation have substantially benefited from the “inventions” first introduced and used by the EU institutions and its member-states in the process of creating effecting measures to tackle illegal immigration. One of such tools is definitely the institute of “liaison officers” and twinning experts that are supposed to tackle gaps in legislative and institutional frameworks existing in Ukraine and Moldova mainly through the coordination in the processes of policy-transfer.³

¹ European Commission. Applying the Global Approach to Migration to the Eastern and South-Eastern Regions Neighbouring the European Union, COM (2007) 247 final. Brussels: European Commission, 16 May 2007.

² Ibid.

³ More on policy-transfer see Lavenex, S. (2004) “EU External Governance in ‘Wider Europe’”, in *Journal of European Public Policy*, Vol. 11, No.4, August 2004, Pp.680–700

It is hard to evaluate overall EU cooperation in the sphere of JHA with Ukraine and Moldova because it has obvious successes but it is also suffering from the general fuzzy context of the bilateral and regional interactions.¹ As admitted by a Commission representative, “*Ukraine and Moldova oppose the ENP Action Plans because they are EU products and thus put a lot of obligations on these countries but almost none on the EU. However it is in the nature of our cooperation which is based on the fact that both Ukraine and Moldova want to come closer to the EU and thus they have to adapt*”.²

Reflections on Conditionality and *Interessment*

One quite eagerly explains the effectiveness of some EU policies towards Ukraine and Moldova by conditionality arguments. However how can we conceptualize the relevant success of the EU policies in relations with Russia when it has become so popular to claim that conditionality does not really work in this case? Indeed, to employ the key concepts from contemporary anthropology, at any attempt of the EU to exercise *power* Russia’s immediate reaction is nothing else than *resistance*. Still, to say that Russia is immune to conditionality would be an exaggeration.

Instead, dealing with the theoretically challenging conditionality argument I would like to avoid simplistic generalizations and to stick to the idea of some researchers to differentiate between two scopes of conditionality. One is the enlargement conditionality implying membership and integration in the EU field³, while another is conditionality of a technical sort that has already been used by the EU in some cases of functional cooperation.⁴

Russia is not part of the ENP and that is why it is supposed to be on the separate track of the relations with the EU. There are particular aspects in these

¹ More about problems of region-building and related EU policies see Khasson, V. (2006) *Regional Challenge in the European Union Relations with the New Eastern Neighborhood*, Draft Paper to be presented at the 4th CEEISA conference in Tartu, on the 25–27 June 2006

² From the interview with a Ukraine desk officer, DG RELEX, European Commission, conducted on 21.06.2007

³ Schimmelfennig, F., Engert, S. and Knobel, H. (2003) “Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey”, in *Journal of Common Market Studies*, Vol. 41, No.3, Pp. 495–518.

⁴ Charillon, F. (2004), ‘Sovereignty and Intervention’: EU’s Interventionism in its ‘Near Abroad’, in Carlsnaes et al. Cox, Michael (ed.), 2000, E.H. Carr. *A Critical Appraisal*. London and New York: Palgrave.

relations that stand aside of the EU policies in a wider neighborhood. These aspects have been repeatedly emphasized by both the EU's and Russia's representatives as indicators of cooperation going in line with the "strategic partnership" agenda. Their explicit instances are the EU-Russia visa-facilitation agreement (2006) – the first one concluded by the EU – and cooperation between FRONTEX and the Russian Border Services.¹ However, even a superfluous comparative analysis shows that the developments of EU-Russia relations in the sphere of JHA are not always strikingly different from EU-Ukraine or EU-Moldova cooperation patterns.

Referring to the three main observations mentioned in the introduction, the main assumption in case of such a comparison might be that it allows adopting a model of competing powers for the EU-Russia relations, and a model of unequal powers implying unilateral dominance, hegemony for the EU relations with the European Neighbourhood Policy countries (hereinafter ENPC) to show possible divergent dynamics therein. Indeed, two factors have been emphasized by several EU officials as the ones differentiating the EU-ENPC and the EU-Russia relations. The first one is the well known aspiration of the ENPC to become EU members. The second is the "size" (in all the meanings) of these countries, which "weights" on bilateral relations.²

Hence it seems plausible that the models of symmetrical and asymmetrical relations characterize respectively the EU-Russia and the EU-ENPC cooperation patterns. One may argue that these differences in the nature of the relations between the EU and Russia and between the EU and ENPC are played out in all the fields of cooperation. However the cooperation in the JHA issues represents quite a specific case. This field is not yet fully communitarized inside the EU, it has the attributes of both "high" and "low" politics, and, what is most often emphasized by the researchers, the dynamics of the integration in this field go right to the core of the state sovereignty.³ Therefore, these intertwined factors inevitably affect the patterns that the respective relations might follow.

¹ Emphasized by an official from the DG RELEX, European Commission in an interview conducted on 06.06.2007

² From the interview with the Head of JHA Unit, German Permanent Representation to the EU, conducted on 11.05.2007; from the interview with Ukraine desk officer, DG RELEX, European Commission, conducted on 21.06.2007.

³ See e.g. Lavenex, S. and Wallace, W. (2005) "Justice and Home Affairs: Towards a 'European Public Order'?", in Wallace, H., Wallace, W. and Pollack, M. (eds.) "Policy-Making in the European Union", Oxford University Press, Pp. 457–480.

Coming to the second observation of the introduction stating that EU-Russia relations are characterised by strong interdependence whereas Russia is not aiming for the EU membership, one may describe them as a mechanism of functional cooperation when the both sides define their respective interests and problems and engage in negotiations in order to achieve their goals. At the same time, one might argue that the EU–ENPC cooperation represents rather a case of a unilateral conditionality imposed by the EU just like in relations with the candidate-countries in the pre-accession period. Here the incentives might play a bigger role.

What are those incentives? Ukraine and Moldova, or in a more accurate way, the prevailing parts of their political elites have been repeatedly stating their intentions to join the EU¹ thus aiming to become part of a bigger political entity and a major international actor. Such approach contrasts with an explicit desire of Russia not to associate itself with the EU in any institutionalized way as it was proclaimed already in the Russia’s Middle Term Strategy towards the EU (1999)² and further reinforced by various official statements reacting to the launch of the ENP and the inclusion of Russia in it.

The conditionality, which seems to be working (at least on the level of negotiations) in the case of ENPC, does not produce the same effect in the case of Russia. The mere probability that Ukraine or Moldova in the long-term perspective might become EU members puts these countries in a situation similar to that of Turkey in the last years. The real neighbourhood and the ENP policies are indeed important for the EU relations with Ukraine and Moldova. While Russia is much more interested in concrete benefits that the functional cooperation can have.

Still, as it has been rightly suggested by some scholars and practitioners, it has already become problematic and may appear even more so, to bluntly use conditionality in the EU relations with all the ENPC in the situation when the membership prospective is not there. At the end of the day, as it has been accurately indicated by Licia Simao, countries approached by the ENP “*try to pick up whatever is convenient for them from what the EU offers*”.³ Russia,

¹ For the discussion of Ukraine’s foreign policy priorities see Gatev, I. (2004) “The EU’s New Neighbourhood Policy Towards Ukraine, European Foreign Policy Conference”, LSE, London, 2–3 July 2004.

² The Russian Federation Middle Term Strategy Towards the European Union (2000–2010) http://www.eur.ru/eng/neweur/user_eng.php?func=apage&kid=53

³ Point made by Licia Simao during the PhD seminar “EU and the New Neighbours in Search of a New Relationship”, Forli, 01.06.2007

although not in the framework of the ENP but in that of the common spaces opts for this pattern of cooperation explicitly prioritizing “selective approach to conditionality”.

It seems that the word that would best describe the EU-Russia cooperation on JHA is “differentiation”. This word is not the most used one nor in the official rhetoric neither in the texts of both legally binding and non-binding agreements. However the interviews with the competent officials and with experts from the both sides show that differentiation applies to many aspects of cooperation. At the end of the day it is the differentiation of the EU approach to Russia in various sub-fields of their cooperation that proves to bear fruits. The EU differentiates issues that can be solved by the use of conditionality mechanisms (e.g. readmission and visa-facilitation agreements) from those that demand gradual persuasion of the partner and the use of “interestment” technique.

The process of “interestment” conceptualized by French sociologist Callon¹ implies that an actor gets another actor **interested** in certain aspects of cooperation through demonstrating him that they have mutual interests and that for better results they should work together. The crucial difference with the conditionality approach is that a reactive actor believes that such a suggestion made by the pro-active actor suits his own interest.

These ideas of sociologists and anthropologists coincide with those of some political scientists and international relations scholars who study various dimensions of power. In particular, one may say that the concept of “interestment” and the whole school of the “sociology of translation” fit well with the ideas on structural power and structural foreign policy.² Arguments in support of these ideas have been expressed by one of the EU officials saying that “*the EU needs to be not only harsh, but also soft. You should not only restrict – you should also promote. One needs not only the father but also the mother*”.³

An illustration of an “interestment” technique is the case of the EU-Russia cooperation to tackle irregular migration – by agreeing to adopt some mecha-

¹ Callon, M. (1986) “Some Elements of a Sociology of Translation: Domestication of the Scallops and the Fishermen of St Brieuc Bay” in Law, J. (ed.) *Power, Action and Belief: A New Sociology of Knowledge*, London: Routledge, Pp. 196–233.

² Keukeleire, S. (2002) “Reconceptualizing (European) Foreign Policy: Structural Foreign Policy”, paper presented to the 1st pan-European conference on EU Politics, Bordeaux.

³ From the interview with an official of the DG Justice, Liberty and Security, European Commission, conducted on 10.05.2007

nisms requested by the EU, Russia acquires solid grounds to restrict its immigration policy towards Central Asian states justifying it by the necessity to comply with the EU demands. Eventually, in the overall cooperation process some of the issues have been settled through the use of both conditionality and interestment. A clear example of this is the negotiations over a readmission agreement and their outcome discussed above.

In the EU relations both with Russia and with the ENP countries, there is also another sort of differentiation when political and often bluntly politicized issues are differentiated from the technical ones. This is mostly done through the formal mechanism of functional cooperation, when interaction between parties happen in narrow circles of experts and officials working on particular problems, as well as through informal networking mechanisms widely used by multiple agencies.¹

The “interestment” technique has been also used in relations with Ukraine. The most telling example is provided by the mentioned above measures undertaken by the Ukrainian government to control the Ukrainian-Russian border and a direct EU involvement in this process through liaison officers and twinning support as well as through almost monopolistic participation of the EU private companies providing facilities and equipment for the Ukrainian border guard services. Another case of the same mechanisms in use is the EUBAM project also described above. The existence of such “remote control” projects, no matter successful or not, is based on the interests of both the Ukrainian and Moldovan authorities to have more secure borders and on the effective policy transfer from the EU.

Either due to such successes of the EU policies or because of some failures in other dimensions, there have been calls to adjust the ENP to the format of the Common Spaces or vice versa.² One might argue against such ideas indicating that the Common Spaces have resulted from the mutual efforts of the EU and Russia, that they are the outcome of the negotiations and although not legally binding, they bear “*high political importance*”.³ Whereas the ENP

¹ This is well described by Wichman, N. (2007) “The Intersection between Justice and Home Affairs and the European Neighbourhood Policy: Taking Stock of the Logic, Objectives and Practices”, CEPS Working Document, No. 275, October 2007

² The seminar “Towards a New Eastern Policy of the European Union: Eastern ENP and Relations with Russia after the German Presidency”, Brussels, 20.06.2007

³ From the interview with Wouter van de Rijt (Principal Administrator, DG JHA, Council of the European Union) conducted on 16.05.2007.

is a unilateral policy tool designed and implemented by the EU towards the countries in its “Near Abroad”.¹

Nonetheless, one cannot reject the fact that, for instance, the EU-Russia Common Space on Freedom, Security and Justice is based more or less on the same footing as the ENP Action Plans for Moldova and Ukraine and that implementation measures in both cases often bear particular similarity. Both positive and negative conditionality, as well as a practice of interestment are used by the EU in a process that some call “Europeanization” and others – quasi-imperialism.² This quasi-imperialism might and does provoke serious tensions with Russia, which perceives itself as an important regional player and wants to be *Primus inter Pares* for the EU, but still reacts to the old “carrots and sticks”.

¹ Frederic Charillon has used this term to describe the CEE countries, see Charillon, F. (2004), ‘Sovereignty and Intervention’: EU’s Interventionism in its ‘Near Abroad’, in Carlsnaes et al. Cox, Michael (ed.), E.H. Carr. A Critical Appraisal. London and New York: Palgrave.

² Anderson, J. (2007) “Singular Europe: An Empire Once Again?”, in Armstrong, W. and Anderson, J. (eds.) Geopolitics of European Union Enlargement: The Fortress Empire, Routledge.