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Law Department

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***The European Neighbourhood Policy:  
A Framework for Modernisation?***

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***Is Bilateralism a Solution?  
The Case of Ukraine***



## Is bilateralism a solution? The case of Ukraine

*Anna Lytvynyuk\**

### Abstract

The 5th of March, 2007 marks the official start of the negotiations on the European Neighbourhood Agreement with Ukraine to replace the existing and expiring in 2008 Partnership and Cooperation Agreement. This new Enhanced Agreement shall become the further legal and political basis for the EU-Ukraine relations. Commissioner Ferrero-Waldner stated on this occasion: “Ukraine has made remarkable progress in democratic and economic reform since the Orange Revolution. The negotiations of the new agreement will bring Ukraine and the EU *yet another step closer together*. The negotiations of a free trade area will deepen our *economic integration*, while further *political cooperation* will advance areas such as democracy, human rights and the rule of law. Ukraine is also a *key energy partner for the EU*, and the new agreement will help us to go further in ensuring energy security, improving energy safety, and environmental standards, and progress towards integration of our electricity and gas markets.”

In these several sentences articulated by the Commissioner Ferrero-Waldner on March 5<sup>th</sup>, 2007 lie the very essence of the newly crafted European Neighbourhood Policy with its ambiguity and uncertainty that fosters the academic and policy-makers’ debate across the EU and beyond. The nascent cause of such a contention on the European Neighbourhood Policy (ENP) lies in the broader question of the EU as a regional actor and more boldly—world actor. If agreed with the many scholars and fell back on the concept of ‘presence’ or ‘actorness’ EU is recognized to have its ‘capacity to act’. EU demonstrates such ‘capacity to act’ in the many areas such as trade, promotion of regional integration, development cooperation, democracy and good governance, human rights, security etc. EU foreign policy takes different forms according to the different classification of the international law subjects it deals with.

The present article reflects on the legal and political understanding of the Commissioner Ferrero-Waldner’s ‘yet another step closer together’, ‘economic integration’, ‘political cooperation’ and ‘key energy partner for the EU’ with reference to Ukraine and in the light of such conceptual dilemmas within the ENP as soft imperialism/civilian power, joint ownership/conditionality/differentiation, bilateralism/multilateralism/ interregionalism. It shows that bilateralism is the most appropriate form of the EU—Ukraine relationship within the ENP. It suggests that for the EU to obtain its recognition as a world actor it needs first most to prove its regional leadership, in particular, in its competition with Russia for the NIS region. This could be achieved through identifying Ukraine as the EU key strategic partner, promoting Ukraine’s regional leadership, enhancing bilateral relations with Ukraine within the ENP with possible establishment of joint institutions with the legally binding decision making capabilities. Thus, bilateralism is the major precondition of the further multilateralism and interregionalism within the NIS geography of the ENP.

**Keywords:** *ENP, SSP, Ukraine, new Enhanced Agreement, international relations, external governance, bilateralism, multilateralism, sector cooperation, energy, environment.*

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## **Is bilateralism a solution? The case of Ukraine**

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### **1. Introduction**

The 5th of March, 2007 marks the official start of the negotiations on the European Neighbourhood Agreement with Ukraine to replace the existing and expiring in 2008 Partnership and Cooperation Agreement<sup>1</sup>. This new Enhanced Agreement shall become the further legal and political basis for the EU-Ukraine relations. Commissioner Ferrero-Waldner stated on this occasion:

*“Ukraine has made remarkable progress in democratic and economic reform since the Orange Revolution. The negotiations of the new agreement will bring Ukraine and the EU yet another step closer together. The negotiations of a free trade area will deepen our economic integration, while further political cooperation will advance areas such as democracy, human rights and the rule of law. Ukraine is also a key energy partner for the EU, and the new agreement will help us to go further in ensuring energy security, improving energy safety, and environmental standards, and progress towards integration of our electricity and gas markets.”<sup>2</sup>*

In these several sentences articulated by the Commissioner Ferrero-Waldner on March 5<sup>th</sup>, 2007 lie the very essence of the newly crafted European Neighbourhood Policy with its ambiguity and uncertainty that fosters the academic and policy-makers’ debate across the EU and beyond<sup>3</sup>. The nascent cause of such a contention on the European Neighbourhood Policy (ENP) lies in the broader question of the EU as a regional actor and more boldly—world actor. If agreed with the many scholars and fell back on the concept of ‘presence’ or ‘actorness’<sup>4</sup> EU is recognized to have its ‘capacity to act’. EU demonstrates such ‘capacity to act’ in the many areas

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<sup>1</sup>“EU-Ukraine start negotiations on new Enhanced Agreement” 03/05/2007, see press release at [http://ec.europa.eu/comm/external\\_relations/ukraine/intro/index.htm](http://ec.europa.eu/comm/external_relations/ukraine/intro/index.htm)

<sup>2</sup> Ibid. Emphasis added.

<sup>3</sup> See for example, M.Cremona, Ch.Hillion, “L’Union fait la force? Potential and Limitations of the European Neighbourhood Policy as an Integrated EU Foreign and Security Policy”, EUI Working Papers, Law No. 2006/39.

<sup>4</sup> C. Bretherton, J. Vogler, “Europe as a Global Actor”, Routledge, London [1999], 5.

such as trade, promotion of regional integration, development cooperation, democracy and good governance, human rights, security<sup>5</sup> etc. EU foreign policy takes different forms according to the different classification of the international law subjects it deals with. B. Hettne and F. Söderbaum name four such different forms:

*“...enlargement in the core area of Europe; stabilization in the so-called neighbourhood area; bilateralism with great powers; and interregionalism with respect to other organized regions. During the last decade interregional cooperation in particular has become an important component of EU foreign policy and external relations.”*<sup>6</sup>

The present article will reflect on the legal and political understanding of the Commissioner Ferrero-Walnder’s ‘yet another step closer together’, ‘economic integration’, ‘political cooperation’ and ‘key energy partner for the EU’ with reference to Ukraine and in the light of such conceptual dilemmas within the ENP as soft imperialism/civilian power, joint ownership/conditionality/differentiation, bilateralism/multilateralism/ interregionalism. It will be shown that bilateralism is the most appropriate form of the EU—Ukraine relationship within the ENP. It will be suggested that for the EU to obtain its recognition as a world actor it needs first most to prove its regional leadership, in particular, in its competition with Russia for the NIS region. This could be achieved through identifying Ukraine as the EU key strategic partner, promoting Ukraine’s regional leadership, enhancing bilateral relations with Ukraine within the ENP with possible establishment of joint institutions with the legally binding decision making capabilities. Thus, bilateralism is the major precondition of the further multilateralism and interregionalism within the NIS geography of the ENP.

## **2. ENP within the EU model of external relations**

European Union is a unique entity to have emerged in the system of international relations and international law. It is a union of 27 European states that functions through its own created system of law which regulates the relationship among the 27 member states through the well-thought system of checks and balances, division of

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<sup>5</sup> EU’s ‘actorness’ in the area of security in the world context is yet to be seen. See on this question R. Whitman, “Road Map for a Route March? (De-)civilianizing through the EU’s Security Strategy” *European Foreign Affairs Rev.*11 [2006], 6—15.

<sup>6</sup> Emphasis added. B.Hettne, F. Söderbaum, “Civilian Power or Soft Imperialism? The EU as a Global Actor and the Role of Interregionalism”, *European Foreign Affairs Rev.*10[2005], 535.

competences and commitment to the Union values and aims. ‘Supranationality’ is a key legal concept when referring to the EU legal order.

The classical doctrine of international law recognizes such main subjects of international law: states, international organizations, nation striving for their independence. European Union due to its existence and ability to conclude international agreements is *de facto* subject of international law albeit not a state or international organization in the conventional understanding of those.

It is up to the EU to decide on its constitutional level the question of the EU legal personality. At the moment EU acts on the world arena as the European Community, the EU and EU member states separately or collectively.

The model of the EU external relations is unique. In exercising its foreign policy EU suggests a model of civilian power, the non-military, mostly economic, means to achieve the Union goals. Many authors believe that the future of international relations, especially in the post-Cold War world, lies within the ‘soft power’ as opposed to military power:

*“Arguments were rehearsed about a change in the structure and substance of international relations that suggested a changing landscape in which civilian forms of power were more appropriate and the EU now more internationally significant.”<sup>7</sup>*

EU is still striving to come up with the nature of its own model of external relations, its place as a regional actor and even world actor. B.Hettne and F. Söderbaum give the definition of the ‘civilian power’ and ‘soft imperialism’ when discussing on the nature of Europe’s global power:

*“...[Civilian power] implies a foreign policy built on the norms promoted internally within the Union (such as social pluralism, the rule of law, democracy and market economy) and on voluntary dialogue and consensus-building with the counterpart. ...[Soft imperialism] refers to an asymmetric relationship, and the imposition of norms in order to promote the EU’s self-*

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<sup>7</sup> R. Whitman, “Road Map for a Route March? (De-)civilianizing through the EU’s Security Strategy” *European Foreign Affairs Rev.*11 [2006], 5.

*interest rather than a genuine (interregional) dialogue as a foundation for sustainable global governance.”<sup>8</sup>*

Depending on the sphere of interest, EU model may vary from civilian power (environment, development) to soft imperialism (security, trade). Now, as we take a look at the issue areas of the ENP we see that they are various and fall under all the three pillars of the EU. Shall the EU choose between the mechanisms of its either civilian power or soft imperialism models, or combine them? The answer to this question is exactly the difficulty EU is facing now while crafting the tools for the ENP especially in the light of the European Security Strategy<sup>9</sup> (ESS). ENP is said to be the “regional implementation of the European Security Strategy, thus reflecting the Union’s ambition to provide coherence in its relations with the outside world”<sup>10</sup>. But whilst providing such coherence with the outside world it is important to keep in mind the multifold nature of ‘security’ itself:

*“It is a long time since security was thought of only in terms of military force. We all know that security is far broader today, that it includes economic, environmental, and social issues. Indeed, non-military threats to security loom much larger in the mind of most people... These non-military security threats are not adequately dealt with by any of our international institutions. ...this is where the European Union must take up the challenge.”<sup>11</sup>*

Economic, environmental, social and other security issues are the areas for the ENP to deal with. It is unlikely that the model of ‘voluntary dialogue’ is possible on those issues in the EU—ENP country relations as we will see below.

In 2004 the EU has invented a new policy—the European Neighbourhood Policy<sup>12</sup> to regulate its relations with its newly acquired, after the enlargement in 2004 and consequently in 2007, geographical neighbours. As much as the EU emphasizes the principles of ‘joint ownership’ and ‘shared values’ in its ENP which the EU and the

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<sup>8</sup> Emphasis added. B.Hettne, F. Söderbaum, “*Civilian Power or Soft Imperialism? The EU as a Global Actor and the Role of Interregionalism*”, *European Foreign Affairs Rev.*10 [2005], 549.

<sup>9</sup> Adopted by the European Council on 12.12.2003, see at: <http://ue.eu.int/uedocs/cmsUpload/78367.pdf>

<sup>10</sup> M.Cremona, Ch.Hillion, “*L’Union fait la force? Potential and Limitations of the European Neighbourhood Policy as an Integrated EU Foreign and Security Policy*”, EUI Working Papers, Law No. 2006/39, 3.

<sup>11</sup> M.Cremona, Ch.Hillion, “*L’Union fait la force? Potential and Limitations of the European Neighbourhood Policy as an Integrated EU Foreign and Security Policy*”, EUI Working Papers, Law No. 2006/39, 5 (footnote 18 (Javier Solana, “*The EU—Russia strategic partnership*”, speech delivered 13 October 1999, Stockholm.)

<sup>12</sup> The text of the policy is available at [http://ec.europa.eu/world/enp/index\\_en.htm](http://ec.europa.eu/world/enp/index_en.htm)

ENP countries are allegedly to share, the ENP still remains a ‘policy’—the EU’s public policy which is a challenge of converting certain aspirations into the specifically implemented policy. Moreover, the ENP is an inter-branch policy and an embodiment of the cross-pillar ESS. Thus, the combination of ‘voluntary dialogue’ and ‘imposition of norms’ (or ‘civilian power’ and ‘soft imperialism’) moulds a new concept, that of ‘external governance’.

The notion of external governance is better applicable when talking about the ENP in the context of the EU external policies. By ‘external governance’ we understand “the extension of parts of the Union’s ‘*acquis communautaire*’ beyond the circle of member states towards their immediate neighbourhood”<sup>13</sup>. As Lavenex points out, ‘external governance’ is a combination of ‘civilian power’ and ‘soft imperialism’:

*“External governance combines a foreign policy strategy geared at stabilization and integration with the attempt to bind third countries to the pursuit of internal policy goals and thereby benefit from the latter’s political and material problem-solving resources.”*<sup>14</sup>

ENP defines the range of countries to fall within this EU policy, the so-called ring of ‘friends’: the North African countries, Middle Eastern EU countries that share the sea coasts and the land border WNIS (Belarus, Moldova, Ukraine).

The ENP is a new policy of the EU which follows the EU’s ‘successful enlargement policy’ and bears a lot of conceptual and technical similarities of the latter<sup>15</sup>.

Although already elaborated, the ENP faces a challenge of its correct choice of tools. The major objectives of the ENP are to provide for the security on its new borders and collaborate with its neighbours in the field of security, economy, democratization, environment, energy etc.

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<sup>13</sup> S.Lavenex, “*EU External Governance in Wider Europe*”, *Journal of European Public Policy* 11:4 August [2004], 681.

<sup>14</sup> *Ibid.*, 694.

<sup>15</sup> More on the similarity of the ENP methodology and that of the enlargement see: M.Cremona, Ch.Hillion, “*L’Union fait la force? Potential and Limitations of the European Neighbourhood Policy as an Integrated EU Foreign and Security Policy*”, *EUI Working Papers, Law No. 2006/39*, 8—18; M.Cremona “*The European Neighbourhood Policy: Legal and Institutional Issues*”, *CDDRL Working Papers, No.25, 02.11.2004*, 4—5; J.Kelley “*New Wine in Old Wineskins: Promoting Political Reforms through the New European Neighbourhood Policy*”, *JCMS, Vol.44 No.1* [2006], 30—34; R. Dannreuther “*Developing the Alternative to Enlargement: The European Neighbourhood Policy*”, *European Foreign Affairs Rev.* 11[2006]: 183—201;



The ENP is a result of an attempt to ‘internalize the disturbances rather than to contain them’<sup>16</sup> and is based on the notion of ‘supranational responsibility in purely national affairs’<sup>17</sup> to be exercised by the EU’s external governance through expanding its legal framework.

Through its external politics in the form of ENP EU wishes to enhance the European citizens’ feeling of European identity as well as to practice its ‘soft power’ model on its ‘neighbourhood’<sup>18</sup>.

While crafting the ENP two models have been looked upon: *multilateralism* and *bilateralism*. The latter has been seen as the most appropriate one to deal with the variety of the EU’s neighbours.

### **3. ENP: Bilateralism vs. multilateralism**

The official relations of the EU with the newly independent state, Ukraine, began on December 2, 1991 with the Declaration of EC on Ukraine. Since that time the legal framework of the EU-Ukraine dialogue has been shaped by the Partnership and Cooperation Agreement (PCA)<sup>19</sup> which came into force on March 1, 1998 and gradually by the EU-Ukraine Action Plan—endorsed by the EU-Ukraine Cooperation Council on February 21, 2005<sup>20</sup>.

Since its independence Ukraine has declared its external policy course towards the EU with the objective of integration. The notion of ‘integration’ is seen differently by the Ukrainian officials than it is seen by the EU. Whereas for Ukraine ‘integration’ means Ukraine’s membership in the EU, for the EU the concept of ‘integration’ has transformed from the ‘integration as an objective of the EU’s enlargement policy towards the ten central-eastern European states’<sup>21</sup> to the European Neighbourhood Policy’s perception of ‘integration’ as in ‘all but institutions’<sup>22</sup> or ‘a wider Europe’<sup>23</sup> concept.

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<sup>16</sup> S.Lavenex, “EU External Governance in Wider Europe”, *Journal of European Public Policy* 11:4 August [2004], 680.

<sup>17</sup> *Ibid.*, 682.

<sup>18</sup> See on this B.Ferrero-Walnder Guest Editorial in *European Foreign Affairs Rev.* 11 [2006] 139—142 “*The European Neighbourhood Policy: The EU’s Newest Foreign Policy Instrument*”, 140.

<sup>19</sup> See the text of the PCA at <http://www.delukr.ec.europa.eu/en/Data/pca-eng.pdf>

<sup>20</sup> See the chronology of the EU—Ukraine bilateral relations at: <http://www.delukr.ec.europa.eu/page4824.html>

<sup>21</sup> Poland, Czech Republic, Slovenia, Slovak Republic, Hungary, Latvia, Lithuania, Estonia, Malta, Cyprus.

<sup>22</sup> R.Prodi, “A Wider Europe—a proximity policy as the key to stability”, speech at the 6<sup>th</sup> ECSA World Conference, 2002.

In 2004 Ukraine has acquired a new geopolitical neighbour in the face of the enlarged EU. This fact had and continues to have tremendous political, economic, social and other implications on both Ukraine and the EU, especially those of the new EU Member States that have geographical borders with Ukraine.

On March 30, 2004 the PCA was extended to the ten new EU Member States, and on May 12, 2004 the Strategy Paper on the European Neighbourhood Policy was adopted<sup>24</sup>.

The logic of the ENP is to promote stability, prosperity and good governance along the borders of the EU. The economic and political development and reforms inside the ENP countries will eventually lead to a better security in the EU neighbouring regions. Such political and economic objectives are set out in the Action Plans with each individual ENP country, also with Ukraine. These Action Plans take into consideration the relevant ‘country reports’ made for each individual ENP country and constitute the further basis of the EU—ENP country bilateral relations *a` la* ‘individual accession partnerships’<sup>25</sup>.

The relations EU—Ukraine have always been of ‘bilateral nature’. This means that common political, economic and other objectives have been collectively reached by Ukraine as well as the EU with a help of specific tools (financial assistance, annual reports and monitoring, ‘twinning programs’ etc). This has proven to incite inside of Ukraine domestic reforms, economic growth and internal and external security. To shift to the form of multilateralism (treating each country of the ENP not separately but in a combination with others, regionally, by means of common forum of discussion and also by regular meetings at many levels and on numerous issues) would have meant a total failure of the ENP.

The reasons for sustaining bilateralism within the ENP are multifold. As said above, the ENP is a specific form, a test-case for the EU model of external governance. This means ‘exporting’ domestic *acquis communautaire* to the ENP countries. Because the ENP borrowed the many enlargement policy techniques, the country reports as well as screening and monitoring of the *acquis* adoption are easier and more

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<sup>23</sup> Commission Communication to the Council and the European Parliament “Wider Europe—Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours”, 11.03.2003, COM (2003) 104.

<sup>24</sup> Commission Communication “European Neighbourhood Policy—Strategy Paper”, 12.05.2004, COM (2004) 373.

<sup>25</sup> M.Cremona, Ch.Hillion, “*L’Union fait la force? Potential and Limitations of the European Neighbourhood Policy as an Integrated EU Foreign and Security Policy*”, EUI Working Papers, Law No. 2006/39, 11.

efficiently enforced on the bilateral basis, through, for example, the annual meetings of the PCA Cooperation Council<sup>26</sup>. Financial assistance and economic incentives, thus, are based on the ENP country's individual progress.

Multilateralism, that is, a model in which the partners (EU and the neighboring countries) meet for regular meetings at many levels and on numerous issues, seemed not to work as means of the EU external relations policy (the past experiences of Göteborg European Council, and even before, the Luxemburg European Conference of 1997 and the Copenhagen European Council Conference of 1993).

Although the neighbors of the EU are grouped into the regions, they are to be 'treated' separately. This is when the Commission talks about the '*differentiation approach*' towards each country in the region. However, when referring to the regions, the ENP regions are to be distinguished clearly from the Western Balkans, which, unlike the former, "have a membership perspective"<sup>27</sup>.

Agreeing with M. Cremona, it seems to be not practical to support the 'global approach' suggested by W. Wallace, to use the same framework for the ENP, because each country is more likely to progress individually faster in terms of its internal domestic economic, political other reforms, secure internal and external justice than being in the same 'boat' with the others and being drawn down by their slow progress and thus fail to benefit from the ENP benefits of shared internal market<sup>28</sup>.

Whereas the European Commission is clear that the ENP has nothing to do with 'membership', and whereas the African countries are, in fact, happy about the ENP, Ukraine has displayed a hint of disappointment with this EU policy and thus the future turn of Ukraine—EU relations. Ukraine has set an ambitious goal of membership in the EU. This goal is of a declarative character by now however. Official Kyiv has repeatedly claimed its wish to join the EU in the future irrespective of Brussel's diplomatic silence to this question.

The 2004—2005 Presidential Elections in Ukraine have stirred some agitation vis-à-vis Ukraine's possible future membership in the EU, but it obviously did not go further than Ukraine's political wishful thinking. Instead, the EU proposed Ukraine the 'ten points' of deeper EU-Ukraine cooperation within the framework of the

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<sup>26</sup> See Art. 85 PCA with Ukraine.

<sup>27</sup> Commission's Third Annual Report on the SAP, COM (2004) 202/2 final, 30 March 2004, 5.

<sup>28</sup> M.Cremona "*The European Neighbourhood Policy: Legal and Institutional Issues*", CDDRL Working Papers, No.25, 02.11.2004, 9.

ENP<sup>29</sup> (adopted by the General Affairs and External Relations Council on February 21, 2005).

The enlargement policy and the ENP policy suggest different incentives. While the first one suggests the EU membership as an incentive, the latter one talks of the ‘high degree of economic and political integration’ as an incentive. Because the ENP covers a variety of countries which altogether have little, if nothing, in common politically, economically or culturally, and is based on the partnership and ‘joint ownership’ principle, it is highly questionable if Ukraine is motivated enough to undergo deep ‘modernisation’ with the EU membership not being a ‘carrot’.

Ukraine was eager to look forward the negotiations of the new enhanced agreement (ENP agreement) where it planned to negotiate the ‘future member’ clause. The EU negotiating mandate made it clear, however, that there could be no talks on membership. Instead, the ‘carrots’ of free trade area (once Ukraine is a member of the WTO), visa facilitation, strengthened partnership on energy, political dialogue on human rights and other incentives were suggested<sup>30</sup>.

The European Commission has come to a conclusion that in its relations with Ukraine EU needs to follow the bilateral framework, enhancing it with a layer of multilateralism in such key geostrategical areas for the EU as justice and home affairs, environment, energy and transport<sup>31</sup>.

Thus, the relations EU—Ukraine can be characterized as bilateral with enhanced sector cooperation that does not exclude multilateralism.

#### **4. ENP: EU—Ukraine sector cooperation and the future models of relations**

Three ‘soft security’ fields constitute “the broader geostrategical background of the recent initiatives on ‘wider Europe’: justice and home affairs (JHA), environment and energy policy.”<sup>32</sup> These fields are also the targeted areas of Ukraine—EU sector cooperation. It is most likely that the future will witness these areas to belong to the EU legal order, rather than exclusively or partially to the national governmental level

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<sup>29</sup> January 31, 2005, see at <http://www.delukr.ec.europa.eu/page4824.html>

<sup>30</sup> “*Negotiations begin on new agreement*”, Bulletin Quotidien Europe No.9381 08.03.2007, 5.

<sup>31</sup> On December 4, 2006 Commission send Communication to the European Council and European Parliament “On Strengthening the European Neighbourhood Policy” COM (2006) 726 final.

see also “*EU/Neighbourhood Policy*”, Bulletin Quotidien Europe No.9319 02.12.2006, 4.

<sup>32</sup> S.Lavenex, “*EU External Governance in Wider Europe*”, Journal of European Public Policy 11:4 August [2004], 681.

of the EU member states. Consequently, the issues “may become a matter of EU external governance if the Union has been granted responsibilities in this area and has the institutional competence to act in external relations.”<sup>33</sup> Already a proposal for a Directive on the protection of the environment through criminal law<sup>34</sup> signals the emergence of the so called ‘European criminal law’ and shows the expansion of the competences of the EU to legislate in the fields traditionally retained for the national legal orders<sup>35</sup>.

The EU—Ukraine cooperation in a sector of justice and home affairs embraces police and judicial cooperation in criminal and civil matters, border controls, the fight against drugs, organized crime and terrorism, as well as asylum and immigration policy<sup>36</sup>. Provisions on these matters lay within the PCA and the Common Strategy of 11 December 1999 on Ukraine<sup>37</sup>.

The most recent Communication from the Commission to the Council and the European Parliament “On Strengthening the European Neighbourhood Policy”<sup>38</sup> contains “proposals to substantially improve the impact of the policy”<sup>39</sup>. Among the measures, suggested to facilitate mobility and manage migration, promote people-to-people exchange, strengthen political cooperation, enhance regional cooperation, financial cooperation, it suggests measures for enhanced cooperation in the mobility and migration and regional conflict resolution sectors<sup>40</sup>.

The same Communication along with the Commission Communication “The General Approach to enable ENP partner countries to participate in Community agencies and Community programmes”<sup>41</sup> proposes “to enhance multilateral and bilateral dialogue with ENP partners in key sectors”<sup>42</sup>, possibly conclude “additional multilateral agreements in energy and transport and strengthen the existing ones”<sup>43</sup>, extend “the EU transport and energy networks to neighbouring countries, as well as

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<sup>33</sup> Ibid., 687.

<sup>34</sup> Brussels, 9.2.2007 COM (2007) 51 final, 2007/0022 (COD). OJ C 180 E of 26.6.2001.

<sup>35</sup> See also the Case C-176/03, and the Judgement of the ECJ of 13.09.2005.

<sup>36</sup> Title IV TEC and Title VI TEU.

<sup>37</sup> OJ EC, 23.12.1999 L 331/1 (1999/877/CFSP).

<sup>38</sup> 4.12.2006, COM (2006) 726 final.

<sup>39</sup> Ibid., 2.

<sup>40</sup> Ibid., 3—4.

<sup>41</sup> COM (2006) 724 final of 4.12.2006.

<sup>42</sup> , COM (2006) 726 final of 4.12.2006, 9.

<sup>43</sup> Ibid.

interoperability”<sup>44</sup>, provide for the ‘neighbours’ participation “in relevant Community agencies and programs”<sup>45</sup>.

As far as the Ukraine—EU cooperation in the energy sector is concerned the legal basis for which is the Article 61 of the PCA, EU constantly reminds its member states to exercise fully and abide by the Memorandum of Understanding on cooperation in the field of energy between the European Union and Ukraine<sup>46</sup>. EU plans to enhance its cooperation with Ukraine in this sector through admitting Ukraine as a member of the Energy Community<sup>47</sup>.

Environment is also the area of EU—Ukraine sector cooperation. Bilateral relations in this area (Article 63 of the PCA) are most likely to be enhanced by the ‘multilateralism’ when Ukraine is to become part of the European Environment Agency. The convergence of the EU and Ukraine’s environmental policies is also dictated by the fact that EU’s environmental *acquis* has now become the model for the regional and international environmental legislation.

By developing its strong policies in the key sector areas of the EU—Ukrainian cooperation Ukraine through the help of the EU has a strong chance of becoming a regional actor (in the post USSR political geography). When strong bilateral EU—Ukraine cooperation gathers its momentum Ukraine has a strong chance of becoming a leader in the multilateral relations within the ENP. This could result in the two possible further consequences. Firstly, it will become possible for the EU to achieve its desired ‘interregional’ or ‘multilateral’ model of international relations and make a further step forward in its pursuit of becoming an ‘actual’ or ‘real’ global actor. EU model of external governance would prove to work and thus a theory of the new type of international relations would once again be supported.

Secondly, for Ukraine the successful bilateral and sector cooperation with the EU within the ENP would mean its political, economic, ideological and legal proximity with the EU through the former’s full implementation of most of the EU *acquis*. This all would be in line with Ukraine’s enjoyment of the free trade area with the EU, common instruments for security, energy, environment, JHA policies with the possibility of the creation of the common decision making body entitled with a

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<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Signed on 1.12.2005.

<sup>47</sup> Preamble of the Memorandum of Understanding on cooperation in the field of energy between the European Union and Ukraine.

legally binding decision making power. Although the ENP has a clear message of the absence of a prospect of accession to the EU it still has a potential, through its mechanisms similar to those of the enlargement policy, of making some of the ENP partners 'ready' to accede to the EU. Such an accession would, actually, be merely 'formal'.

## **5. Conclusion**

This article tried to add to the discussion of the external relations of the EU with a particular focus on the newly crafted European Neighbourhood Policy in the light of the European Security Strategy and on the particular example of Ukraine as the ENP partner. The central thrust of this article has not been to propose or choose from either 'bilateral' or 'multilateral' models of the ENP, but rather to show the interconnection of both and the possible geopolitical aftermath of such an interconnection.

The doctrines and questions of imperialism and civilian power; joint ownership, conditionality and differentiation; bilateralism, multilateralism or interregionalism were once again brought up and examined in the light of the ENP as the EU cross-pillar external policy.

It has been shown that bilateralism is the most appropriate form of the EU—Ukraine relationship within the ENP. It was suggested that for the EU to obtain the recognition as a world actor it needs first most to prove its regional leadership, in particular, in its competition with Russia for the NIS region. Although the idea of Ukraine as the EU key strategic partner and regional leader may for long remain an exercise in futurology, Ukraine's present day urge to concentrate on its sector cooperation with the EU may prompt the possible establishment of joint institutions with the legally binding decision making capabilities. After all, although the ENP remains distinct from the process of EU enlargement, Ukraine's enhanced cooperation with the EU is entirely possible regardless of how its relationship with the EU may develop in the future in the light of Article 49 TEU.