



**Report of the workshop on the
Max Weber Programme and the EUI Department of Law**

23-24 May 2008

***Integration without EU membership in Europe:
models, experiences, perspectives***

Summary

The workshop “Integration without EU membership in Europe: models, experiences, perspectives” was a joint initiative of the Max Weber Programme and the EUI Department of Law (Prof. Marise Cremona). It provided an excellent opportunity to develop a better understanding of existing patterns of integration of third countries with the EU. The speakers – diplomats, judges, professors and researchers from Europe and beyond focused on issues of legal, political and historic nature, such as the limits of the EU enlargement, successes and failures of selected EU external initiatives towards third countries, new developments in the future EU external policies, etc.

With respect to the **concepts and models of integration** without membership the participants of the workshops endeavoured to clarify what is “integration with the EU” for the third country/countries implies and what are its aims? It was agreed that the “integration concept without membership” is not well-defined and agreed among policy makers and academics. In particular, it is important to specify the political and legal means employed fit for the “integration concept without membership” concept.

The issue of the **impact of EU Law and values on the legal order of third countries** remains one of the least studied and problematic in the domain of the EU external relations. The Lisbon Treaty commits the Member States and candidate countries to share common values and to promote them externally. Therefore it is important to understand why and how legal orders of third countries undergo through the process of transition and “Europeanization” under the influence of EU law and values.

Participants of the workshop discussed **objectives and tasks of future contractual relations between the EU and third countries**. The launch of the European Neighbourhood Policy, Euro-Mediterranean Union and the Eastern Partnership poses many practical and theoretical challenges to the nature and design of the future EU contractual frameworks with third countries. Therefore, the discussion during the workshop focused on the membership issue in the EU political agenda, best experiences of the existing EU contractual frameworks which could be applied in the future.

Table of contents

Welcome: Opening address <i>by Prof. R. Marimon and Prof. M. Cremona</i>	5
<i>First Session “Four models of integration without EU membership: present state and evolution scenarios”</i>	
“The European Neighborhood Policy as a framework for modernization and approximation” <i>by Prof. M. Cremona (EUI) and discussion comments by Bart Von Vooren (EUI)</i>	5
“The political and legal framework of the relationships between Russia and the EU” <i>by Prof. Olga Potyomkina (Moscow State Institute of International Relations); and discussion comments by Aaron Matta (EUI)</i>	5
“The relations between the EU and the EEA countries - from market integration to ‘shadow membership?’” <i>by Dr. Tor-Inge Harbo (EUI) and discussion comments by Erik Lagerlof (EUI)</i>	6
“The Swiss ‘bilateral way’- alternative model or no model at all?” <i>by Prof. Christine Kaddous (Uni Geneva) and discussion comments by Andrés Delgado Casteleiro (EUI)</i>	6
<i>Second Session “The impact of EU Law and values on third countries’ national legal orders: comparing national experiences”</i>	
“The impact of the EU <i>acquis</i> and values on the internal legal order of Ukraine” <i>by Prof. Viktor Muraviov (Kiev National University) and discussion comments by Oles Andriychuk (EUI)</i>	7
“The impact of EU values in Russian Law and practice” <i>by Dr. Ekaterina Mouliarova (EUI) and discussion comments by Dr. Ming-Sung Kuo (EUI)</i>	7
“EU Law as a point of reference in the Norwegian legal system” <i>by Justice Karin Bruzelius (Supreme Court of Norway); and discussion comments by Dr. Tor-Inge Harbo (EUI)</i>	7
“Legal Europeanization as Legal Transformation: a Swiss Perspective” <i>by Dr. Francesco Maiani (EUI) and discussion comments by Matej Avbelij (EUI)</i>	8
<i>Third Session “Objectives and tasks of the future contractual relations between the EU and its neighbouring countries”</i>	
“The negotiation of the new Partnership Agreements with Russia” <i>by Dr. Paul Kalinichenko (Moscow State Academy of Law) and discussion comments by Aaron Matta (EUI)</i>	9

“The new EU-Ukraine Enhanced Agreement versus the EU-Ukraine Partnership and Cooperation Agreement: transitional path or final destination?” <i>by Dr. Roman Petrov</i> (EUI) and discussion comments <i>by Rožeta Karova</i> (EUI)	9
“Towards a Framework Agreement in the context of the ‘ <i>bilatérales III</i> ?” by Prof. René Schwok (European Institute, Geneva) and discussion comments by <i>Chantal Delli</i> (Europa-institut, Basel)	9
Closing Statement <i>by Marc Franco</i> (Head of the European Commission Delegation to Russia) and <i>by John Bisshop</i> (Dutch Ministry of Foreign Affairs)	10
Organisers’ conclusions	10

Welcome: Opening address *by Prof. R. Marimon and Prof. M. Cremona*

Prof. R. Marimon introduced the Max Weber Programme and emphasized its interdisciplinary nature. In his opinion the interdisciplinary format of this workshop corresponds to the objectives of the Max Weber Programme. Prof. Marimon emphasized that the issue of integration without membership in specific sectors, like higher education and research, is a perfect example of the integration without membership. Prof. Cremona stressed in her welcome address that the workshop will help to discuss and clarify many urging matters of the today's EU external policy agenda (future of the European Neighbourhood Policy, objectives and contents of the new agreements with the neighbouring countries).

First Session “Four models of integration without EU membership: present state and evolution scenarios”

The EU has developed various models of political, economic, legal and cultural integration with regions and third countries. Among them four specific models deserve a particular attention (European Neighbourhood Policy (ENP), EU-Russia Strategic Partnership, European Economic Area, EU- Swiss bilateral relations) which were discussed in detail in the course of the first session.

**1) “The European Neighborhood Policy as a framework for modernization and approximation”
by Prof. M. Cremona (EUI) and discussion comments by Bart Von Vooren (EUI)**

Reporter focused on two questions: 1) to what extent can integration create a framework for modernization? 2) to what extent does the ENP represent such a framework? Prof. Cremona concluded that the ENP represents a genuine attempt to bridge the gap between the EU and third countries. However, the ENP is not successful in all respects and must be considered as an experiment where selected EU freedoms are shared with third countries. Discussant agreed with the framework posed by reporter. He suggested that the ENP will remain a single policy framework towards the neighbouring countries and contributed on the impact of the Lisbon Treaty might have on the ENP future.

**2) “The political and legal framework of the relationships between Russia and the EU”
by Prof. Olga Potyomkina (Moscow State Institute of International Relations): and discussion
comments by Aaron Matta (EUI)**

Prof. Potyomkina outlined the state of the contemporary EU-Russia relations. She has focused on the most controversial aspects of these relations (growing economic cooperation and declining political convergence). In opinion of Prof. Potyomkina the political partnership between the EU and Russia still has to ripen. The Russian government must accept the necessity of common democratic values as a basis

for the strategic partnership. On the EU side future relations with Russia must improve in quality and get rid of many declarative objectives. Discussant contributed on how contemporary difficulties in relations between the EU and Russia negatively influence the realization of the PCA objectives.

“The relations between the EU and the EEA countries - from market integration to ‘shadow membership’?”

by Dr. Tor-Inge Harbo (EUI) and discussion comments by Erik Lagerlof (EUI)

Dr. Harbo recalled the basic goals and features of the EEA and the historic steps towards development of the EEA system as a channel to cooperate with three countries and as a way of spreading of EC order to EFTA states. The goal of keeping homogeneity along with the autonomy secured through the institutions and decision-making procedures, explains the EEA developments as well as inherent difficulties, like the absence of the EEA Court. Discussant concentrated on the importance of the process of homogeneity as a key pillar of the EEA legal system.

“The Swiss ‘bilateral way’- alternative model or no model at all?”

by Prof. Christine Kaddous (Uni Geneva) and discussion comments by Andrés Delgado Casteleiro (EUI)

Professor Kaddous’ presentation focused on the contractual relations between Switzerland and the EU, which she characterized as “dense and intense”. After providing an historical background for the evolution of such relations, she went on to describe the salient features of the main “bilateral” Agreements: (a) they are “classic” agreements not establishing supranational institution (political or judicial); (b) they often call for the application of the *acquis* or of “equivalence of legislation” by Switzerland; (c) they are static agreements, safeguarding Switzerland’s autonomy (\neq EEA) but also implying the need for permanent negotiations. She then considered whether the Swiss-EU Agreements could constitute a “model”. She stressed, in this respect, that they were an “*accident de parcours*” due to the Swiss rejection of the EEA, and that they constitute a complicated, but overall well-functioning system. She also emphasized that in her view they cannot be seen as a model for third countries: (a) they reflect the special relationship between Switzerland and the EU; (b) they require from the EU a level of flexibility that is apparently less and less forthcoming.

Second Session “The impact of EU Law and values on third countries’ national legal orders: comparing national experiences”

Europe’s common values occupy a prominent place in the EU internal and external policies. After the Lisbon Treaty enters into force EU Member States and countries willing to join the EU will be expected

not only to share common values of Europe but to promote them externally. Therefore the nature and scope of these values deserves a particular attention among academics and decision makers. In particular, the speakers discussed the meaning and correlation between different approaches to the export of EU common values abroad (adaptation, harmonisation, Europeanisation, transformation).

“The impact of the EU *acquis* and values on the internal legal order of Ukraine”

by Prof. Viktor Muraviov (Kiev National University) and discussion comments by Oles Andriychuk (EUI)

Prof. Muraviov analysed the legal means of impact of the EU legal order on the legal order of Ukraine. He argued that the Partnership and Cooperation Agreement between the EU and Ukraine served its purpose to convey many provisions of EU law into legal system of Ukraine. Further, Prof. Muraviov speculated whether case law of the ECJ could be applied by national courts in Ukraine. Discussant contributed on the need to reform the Ukrainian judges’ thinking in applying common democratic and legal values of Europe.

“The impact of EU values in Russian Law and practice”

by Dr. Ekaterina Mouliarova (EUI) and discussion comments by Dr. Ming-Sung Kuo (EUI)

Dr. Mouliarova analysed the issue of common values in the EU-Russian relations. Values which are declared to be common to the partners constitute the European Union and identify this social actor, therefore they cannot be abandoned either in internal nor in external relations, but cannot be enforced. It is not a question of values themselves, but more a question of the methods, instruments, and models for integration. Democracy, respect for human rights and human dignity, non-discrimination, and above all liberty cannot be enforced but can be induced. The dynamics of the EU-Russian relationship shows that there are two segments of the partnership: those including values and beliefs and those which represent interests. These two segments should be approached using different strategies and different methods to enable Europeanization. Discussant commented that the Russia’s issue poses some fundamental challenges to the EU and addressed the fundamental questions in the EU external relations field: why is the EU eager to export fundamental values to neighboring countries? It’s not just peaceful co-existence but instead peaceful co-existence by way of shared values. If so, does it suggest some features of the sphere of influence thinking?

“EU Law as a point of reference in the Norwegian legal system”

by Justice Karin Bruzelius (Supreme Court of Norway): and discussion comments by Dr. Tor-Inge Harbo (EUI)

Justice Bruzelius recalled that through the EEA Agreement, a vast part of EC Law is made into Norwegian legislation, with an overarching goal of homogeneity, and under the supervision of the EFTA

Surveillance authority and Court. Justice Bruzelius stressed the trade-off between a curtailment of national autonomy and important trade advantages. From a legal point of view, the EEA system gives rise to various issues. Since Norway is a dualist country, a specific statute “incorporates” EEA Law in the national legal order, with a “supremacy” clause. As regards homogeneity, the “updating” of the EEA Agreement may be problematic (e.g. in the case of the Directive on Services). As regards interpretation, EEA Law does not fit well with well-established Nordic legal traditions (broadly-worded provisions, enabling for dynamic interpretation, taking into account the *travaux préparatoires*). In this connection, Justice Bruzelius emphasized the importance of ECJ and EFTA Courts rulings, and/or of applying their methods of interpretation when construing EEA Law. Discussant raised the issue of why the relevance of ECJ rulings (post-signature) is apparently more easily admitted by Norwegian Courts than the relevance of EFTA Court rulings – the answer being that in the former case, it is clear that Norwegian Courts are “drawing inspiration”, which is less problematic than acknowledging an obligation.

“Legal Europeanization as Legal Transformation: a Swiss Perspective” by Dr. Francesco Maiani (EUI) and discussion comments by Matej Avbelj (EUI)

Dr. Maiani’s presentation focussed on the concept of “legal Europeanization” that emerges from the Swiss experience. He rejected the notion that “Europeanization” can be characterized, as a general phenomenon, as “transfer” or “export” of norms, and emphasized that it should rather be seen as a process of transformation: in the receiving legal order, it produces something that is more or less similar to, but still different from, EU rules and principles. He also emphasized that such transformation does not only affect positive law, but also legal thinking, and especially the rules of legal interpretation. It produces a tension – which is still unresolved in Swiss Law – between the recognized need to produce “euro-compatible” interpretations of Europeanized Law (i.e. an interpretation that is in conformity with EU Law) and basic notions of the rule of law and of the separation of powers. Discussant emphasized this last point, noting the problematic character of “euro-compatible” interpretation in its most extreme forms, in the light of social/democratic legitimacy of the law. He also stressed that there is a paradox here: the Swiss reject accession to the EU, but to some extent they subject themselves to EU authorities.

Third Session “Objectives and tasks of the future contractual relations between the EU and its neighbouring countries”

Recently the EU undergoes through the reconsideration and enhancement of bilateral relations in several directions each of them represents a considerable challenge to the EU external policy. First, the EU is going to negotiate a new strategic partnership agreement with Russia which is going to bring authoritarian and over protective Russia closer to the EU. Second, the EU is going to sign a new agreement with

Ukraine which is the first among the new generation of the enhanced agreements with its neighbouring countries. To some extent it will serve as a template for future contractual relations with other neighbouring countries.

“The negotiation of the new Partnership Agreements with Russia”

by Dr. Paul Kalinichenko (Moscow State Academy of Law) and discussion comments by Aaron Matta (EUI)

Reporter focused on the nature and objectives of the EU-Russia Strategic Partnership. In his opinion the parties should preserve the mutual strategic partnership acquis (everything what has been achieved in the course of the partnership). Then Dr. Kalinichenko outlined his vision of the future Strategic Partnership Agreement between the EU and Russia. He argued that the new agreement must be distinguished by the enhanced cooperation inside and outside the Four Common Spaces between the EU and Russia and by a new institutional framework. Discussant agreed with proposals of reporter and suggested that the future agreement is likely to be a broad and declarative document to satisfy uncertainty of the both parties.

“The new EU-Ukraine Enhanced Agreement versus the EU-Ukraine Partnership and Cooperation Agreement: transitional path or final destination?”

by Dr. Roman Petrov (EUI) and discussion comments by Rozeta Karova (EUI)

Dr. Petrov informed the participants of the workshop that the future EU-Ukraine agreement occupies a top political agenda in Ukraine and therefore it is seen by the Ukrainian political elite as an indication of the quality of the EU-Ukraine relations. Then reporter compared the outgoing PCA between the EU and Ukraine and the coming new enhanced agreement. He stressed that there is a considerable danger that the future agreement could be outdated very quickly due to its limited objectives and integration depth. Discussant offered an interesting comparative analysis of the EU-Ukraine relations under the framework of the ENP and the EU-Macedonia relations under the framework of the SAP. She suggested that these both processes pursue similar methodology.

“Towards a Framework Agreement in the context of the ‘bilatérales IIP ?’

by Prof. René Schwok (European Institute, Geneva) and discussion comments by Chantal Delli (Europa-institut, Basel)

Professor Schwok noted at the outset that in their present form, the Switzerland-EU contractual relations are “improvised” (no model, no final direction, no comprehensive institutional system). A Framework Agreement (FA) could serve several purposes: (a) improving the present system of mixed committees (pros: rationalization; cons: fear of a “big bazaar” committee disrupting mutual confidence); (b)

establishing a “political dialogue” (pros: solving stalemates, discussing broader political issues; risk: issue-linkages); (c) trading more extensive “decision shaping” for Switzerland against firmer commitments to adopt dynamically the *acquis* along the existing Schengen or Air Transport models (pros: avoiding endless negotiations on slightest details; cons: reopening the controversy on the “colonial” nature of such an agreement). He then passed to consider the feasibility of a FA. He noted that there is no immediate prospect for it, and that in Switzerland it might prove difficult to secure consensus (every new agreement with the EU brings a risk of delegitimization; tendency to a “low key”, technical approach to CH-EU relations from the Swiss Government). He nonetheless stressed that the discussion on the FA is of conceptual significance. Discussant provided additional insights on the difficulties raised by a FA: a single mixed committee might unsettle the balance between the governmental departments involved in the present system; a “quasi-automatic” reception of the EU *acquis* would reduce the autonomy of Switzerland. A FA, in her view, would probably not constitute a viable solution for the Switzerland-EU relations.

Closing Statement

by Marc Franco (Head of the European Commission Delegation to Russia)

After cross-bridging the recent state of the EU external policy Mr. Franco summarised the conclusions of the workshop and outlined his vision of the future developments in the EU-Russia relations and the ENP. In his opinion the ENP will remain a functioning legal and political framework to be employed by the EU in its relations with the neighbouring countries. Many elements of the ENP are likely to be transferred into the EU-Russia Strategic Partnership.

Mr. John Bisshop (Dutch Ministry of Foreign Affairs) referred to the idea of the ENP as a general framework for the relations with the EU non-member states in Europe and reminded that the program exists only for few years and is still searching for the proper instruments and mechanisms of cooperation. He thanked for detailed contributions and concluded that the differences in the Swiss and Norwegian models on one side and political and economic situations in the Eastern Europe on the other side do not allow to apply the same methods in cooperation with every partner and Commission has to work on bringing together the diversity of instruments with the unified idea of cooperation without EU membership.

Organisers’ Conclusions

The workshop has been a success from perspectives of form and substance. It gave plenty of opportunities for experienced and young academics, diplomats and practitioners to express their views on

legal, political and historical ways of the integration of third countries into the EU without claiming a full membership therein. Throughout the discussions the participants approached the consensus that neither of the existing models of integration without membership can be applied within a specific EU external policy (ENP). However, their specific elements could be adapted to the particularities of the bilateral relations between the EU and the neighbouring countries. The new generation of the EU external agreements with Russia, Ukraine and Switzerland must be built on the best experiences of the EU integration policies.