

Policy Department C
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**INTEGRATION WITHOUT ACCESSION:
THE EU'S SPECIAL RELATIONSHIP
WITH THE COUNTRIES IN ITS NEIGHBOURHOOD**

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**Directorate-General Internal Policies
Policy Department C
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Summary:

This study was inspired by the former Article I-57 of the Treaty establishing a constitution for Europe but is equally pertinent for the provisions on a European neighbourhood policy of the Treaty of Lisbon signed on December 13, 2007 (new Article 7a TUE). The report explores the institutional and policy choices concerning the European Union's relations with the surrounding countries and regions in its neighbourhood. It surveys the current state of the European Neighbourhood Policy (ENP) and, in particular, the perceptions of the partner countries of how the EU contends with a series of political dilemmas. Different models for organising relations with neighbouring countries - pre-accession, the European Economic Area (EEA) and association - are analysed.

The study suggests that in order to conceive of "special relationship" as more than simply a scheme 'in between' association and accession, such a paradigm could be supplemented by another dimension: that of decentred integration.

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Authors: Dimitar Bechev and Kalypso Nicolaidis,
St Antony's College, Oxford University

Contributors: Franziska Brantner, Leila Vignal, Nadiya Kravets
(St Antony's College, Oxford)
José María Beneyto and Julio Crespo MacLennan
(University Institute of European Studies, CEU San Pablo
University, Madrid)

Responsible administrator: Wilhelm Lehmann
Tel.: 42711
wilhelm.lehmann@europarl.europa.eu

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Copies can be obtained through e-mail: claudia.seybold@europarl.europa.eu

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REPORT TO THE EUROPEAN PARLIAMENT

**INTEGRATION WITHOUT ACCESSION:
THE EU'S SPECIAL RELATIONSHIP
WITH THE COUNTRIES IN ITS NEIGHBOURHOOD**

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Dimitar Bechev and Kalypso Nicolaidis
St Antony's College, University of Oxford

Core contributors: Franziska Brantner and Leila Vignal (St Antony's College)
Contributors: Nadiya Kravets (St Antony's College)
José María Beneyto and Julio Crespo MacLennan
(University Institute of European Studies, CEU San Pablo University, Madrid)

EXECUTIVE SUMMARY

The report explores the institutional and policy choices concerning the European Union's (EU) relations with the surrounding countries and regions in its neighbourhood. Our mandate was to identify the potential parameters of a future special relationship as proposed by the Reform Treaty new Article 7a . To put special relationship in perspective, the report surveys the current state of the European Neighbourhood Policy (ENP) and, in particular, the perceptions of the partner countries of how the EU contends with a series of dilemmas. We then assess existing EU models for organising relations with neighbouring countries - pre-accession, the European Economic Area (EEA) and association - and show that all these relations follow the dominant paradigm of linking differentiated *access* to differentiated *convergence*. We suggest that in order to conceive of special relationship as more than simply a scheme 'in between' association and accession, such a paradigm could be supplemented by another dimension: that of *decentred integration*.

In the last part of the report, we map out four distinctive scenarios for addressing these dilemmas. The first two approaches prioritise policymaking efficiency. They entail the piecemeal enhancement of the ENP or, alternatively, its division into an Eastern European and Mediterranean dimensions, distinguished by the presence or absence of an accession perspective over the long run. The second set of approaches conceives of special relationship in terms of future status. On the one hand, the EU could allow, subject to strict conditionality, certain partner countries to participate in only a limited number of its institutions and policies by introducing the notion of variable membership. An alternative scenario foresees the establishment of a new tier of institutions ('European Partnership Area') which would partly emulate the EEA model without a corresponding degree of market access and alignment with the EU's *acquis communautaire*. The report finishes with a series of recommendations to the European Parliament.

Note: This report is based on interviews conducted in a number of EU capital as well as in Egypt, Georgia, Israel/Palestine, Morocco, Turkey and Ukraine.

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LIST OF ACRONYMS

CEE	Central and Eastern Europe
CEPS	Centre for European Policy Studies
CFSP	Common Foreign and Security Policy
ECJ	European Court of Justice
EEA	European Economic Area
EFTA	European Free Trade Agreement
EMP	Euro-Mediterranean Partnership
EMU	Economic and Monetary Union
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood Partnership Instrument
ESDP	European Security and Defence Policy
EU	European Union
EUBAM	European Union Border Assistance Mission
FTA	Free Trade Agreement
OSCE	Organisation for Security and Cooperation in Europe
PCA	Partnership and Cooperation Agreement
TAIEX	Technical Assistance and Information Exchange Facility
TEC	Treaty Establishing the European Community
TEU	Treaty on European Union

Special partner, protector, sponsor, regional hegemon, big brother? How should the relationship between the European Union (EU) and its neighbours be defined and operationalised? The European Parliament rightly concerns itself with strategic thinking to help EU policies better reflect both the fears and hopes of the EU citizens and the expectations of those living outside the Union's borders, especially within the neighbourhood stretching from the Arctic to the Maghreb. The mandate for this report's is to analyse the notion of special relationship originally proposed by Article I-57 of the Treaty Establishing a Constitution for Europe and reintroduced as a new Article 7a into the Treaty on the European Union (TEU) by the Reform Treaty (adopted by the Member States in October 2007) ⁽¹⁾. We note at the outset that the French version refers to 'relations privilégiées'.

In the report, we survey the legal and political implications of Article 7a TEU, both at the macro and micro level. At the macro level, we seek to define the broad strategic options that could inspire the complex web of (special) relationships between the EU and its neighbouring states. At the micro level, we assess the reciprocal rights and obligations, joint actions as well as institutional frameworks that might underpin such relationships. First, the report maps out the dilemmas faced by the EU in dealing with its neighbourhood. We then take a closer look at the ENP's workings, bringing in perspectives from selected target countries. Thirdly, we proceed to critically analyse 'the menu for choice' by juxtaposing the different types of existing arrangements with third countries along the continuum linking access and convergence. We then sketch out the concept of decentred integration to use it as an additional benchmark for a future special relationship. The final two sections put forward four distinctive scenarios for the development of the EU's relations with its neighbourhood, and offer a set of recommendations to the European Parliament.

1. The EU's neighbourhood: dilemmas and challenges

There is little doubt that there is an expectation gap between the EU and its neighbours which has grown over the last few years. The completion of the fifth round of EU enlargement in 2007 has made it necessary to redefine the Union's relations with its eastern fringe as well as with the countries of the Mediterranean. The former Soviet republics in Eastern Europe and the Caucasus want and need more from the EU in light of their close relationship with the new members, their rising democratic aspirations and changing geo-strategic maps. Southern Mediterranean states and populations both fear being relegated to "second class neighbours" and generally feel more uneasily with the overall idea of "neighbourhood" altogether.

Yet for reasons of internal as well as external balance, it would be difficult for the EU to up the ante in the East without doing so in the South. At the same time, the majority of the Union's own publics seem to be experiencing integration fatigue. This is in part because of fear of competition from less prosperous parts of the Union – as illustrated by the obsession with the 'Polish plumber' in France. Publics are therefore all the more resistant to potential competition from beyond the Union, be it Beijing or even Cairo and Kyiv. A recent

¹ Article 7a TEU (as introduced by Article 1 Para 10 of the Reform Treaty): 1). The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation; 2). For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.

Eurobarometer survey indicates that while a majority of EU citizens support the substance of the Union's policy in the neighbourhood, they are weary of its uncertain implications ⁽²⁾.

Some criticise the ENP for seeking to an insurance policy on the cheap. Citizens in both 'old' and 'new' Member States care about issues such as immigration, the environment, energy security and the fight against terrorism which are at the heart of the relationship between the Union and the ENP countries. They believe that the EU should tackle them through engagement with what one could call 'source countries', but at the same time they are concerned about the potential costs of proactive and ambitious policies.

We cannot tell, of course, how deep or permanent such resistance is, and thus how wide is the expectation gap between the publics in the EU and in the neighbouring countries. But it does have implications for designing strategies in this area. EU policymakers must devise a Janus-faced policy which appears to their constituents to discharge goals such as security and border management without membership and, to a lesser degree, without the threat of full competition. Neighbours, on the other hand, generally expect a linkage between EU-set conditions and EU-related status, that is, access to the Union's internal market and eventually institutions. How can the two sets of aspirations be reconciled?

If the broad answer given by EU decision makers is the notion of 'special' or 'privileged' relationship in Article 7a TEU, it falls short on several counts. For one, what can be so 'special' outside the Holy Grail of pre-membership status? The distinction between the two is a question that preoccupies both the countries in question and EU publics. Indeed, how should or could such apparently novel type of relationships be translated into day-to-day policy - a key concern for the European Commission and the Member States' foreign ministries. In particular, how if anything, are the envisaged relationships to differ from existing provisions and policies?

Indeed, what we have for the moment is the European Neighbourhood Policy (ENP) launched in 2003 with the European Commission's communication on 'Wider Europe' ⁽³⁾ and fully developed in May 2004 ⁽⁴⁾. Its principal feature is open-endedness. As EU officials, including Benita Ferrero-Waldner, the Commissioner in charge of External Relations and the Neighbourhood, put it, the policy is 'membership-neutral' in the sense that it assists the partners in implementing EU-compatible reforms but neither offers nor rules out the perspective of future accession. This is a sore spot for the hopefuls in the East as well as some of the new Member States such as Poland or Romania committed to further enlargements. Worse perhaps, it is a deterrent for candidate countries like Turkey against participating in any ENP-related ventures.

² The EU's Relations with Its Neighbours, A Survey of the Attitudes in the European Union, Special Eurobarometer 285/ Wave 67.3 – TNS Opinion & Social, September 2007. According to the survey, only 20 % of the EU citizens have ever heard of the ENP. Furthermore, 63% of the respondents in the EU15 disagree strongly with the proposition that the neighbourhood countries share the same values with the Union. In the new member states, only 36% hold that opinion while 44% believe that values are shared.

³ European Commission, Wider Europe- Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours, Brussels, 11.03.2003, COM (2003) 104 final.

⁴ European Commission, European Neighbourhood Policy Strategy Paper, Brussels, 12.05.2004, COM (2004) 373 final.

Clearly, at least in the short term, an EU expansion beyond the Western Balkans and Turkey is not politically viable given the current process of EU internal consolidation and institutional reform. Therefore, the EU faces the challenge of crafting new types of integration arrangements with the whole range of neighbourhood countries, which stop short of enlargement but go beyond the association or cooperation schemes which are in place at the moment.

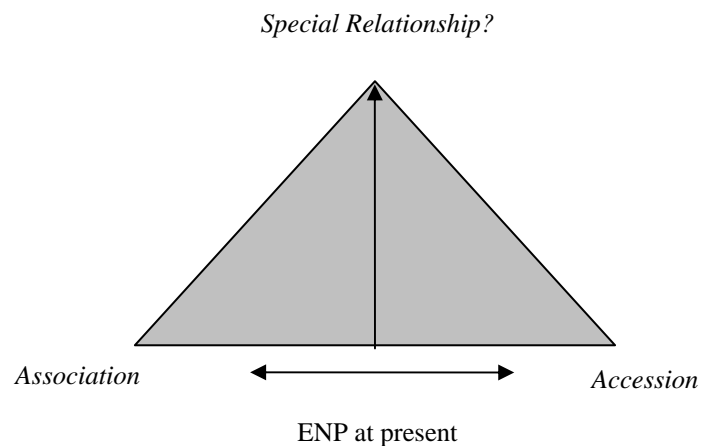
We will argue that ENP itself builds on two pillars, namely the accession process and pre-existing association (or cooperation) agreements, and seeks to chart a middle way between them, while borrowing instruments from both sides. While such a third way allows for plausible denial (as trial lawyers say), e.g. the idea that participation in the ENP is a process developing ‘independently from an EU accession perspective’⁵, the very in-betweenness makes such denial implausible. In fact, the policy can be seen as combining ‘accession-minus’ and ‘association-plus’ features. As the accession process, ENP drives forward a comprehensive and ambitious agenda for domestic political, economic and institutional reform converging towards what is seen to be an ‘EU model’ even when the standards of convergence do not belong to the realm of the *acquis communautaire*. Instruments like twinning are borrowed liberally from the accession toolbox. Like simple association however, target countries are rewarded with ever closer association deals and financial assistance rather than a membership perspective.

In short, it is fair to say that the special relationship under Article 7a TEU is conceived as a *de facto* short term substitutes for accession (whether temporary or structural), which still provides a robust external anchor for the ENP countries. For the partners, the envisaged privileged status is expected to act as an incentive for domestic transformation and cooperation with the EU on strategic issues such as migration, energy security, infrastructure development and environmental protection. For EU publics, to the very existence of this alternative framework can be seen rightly or wrongly as a way to set the final outer borders of the Union.

That the ENP has different significance for different constituencies does not necessarily mean that it is a flawed initiative. In the next pages, we will ask whether a special relationship can be defined which is not simply ‘in between’ the accession and the association policy options (e.g. an ‘association plus’ or ‘accession-minus’ template) but constitutes an altogether different dimension in the EU’s external governance (see Figure I below).

⁵ German Presidency of the Council, Strengthening the European Neighbourhood Policy, Presidency Progress Report, 18-19 June 2007, p. 2 Available at <http://www.eu2007.de/en/News/download_docs/Juni/0628ENP/ENP_en07.pdf>

Figure I: Special relationship as a novel dimension



ENP's potential to develop into a new dimension within the EU's integration toolkit raises a number of crucial questions. First of all, who is to be granted a privileged status which goes beyond association and may comprise some quasi-membership elements? Second, what will be the parameters of a special relationship? Finally, what are the Union's objectives and actual capacity to bring about 'prosperity and good neighbourliness' in its periphery?

First, as regards the 'who' question, we need to ask what is a 'neighbour' – is it a country which shares a common border, or is the definition looser? In effect, the ENP brings together under one framework countries neighbouring the new members to the east and those which are part of the Euro-Mediterranean Partnership (EMP)⁶. Many of those countries, both in the East and in the South, do not (and may not in the near future) qualify for an advanced form of integration into the EU. There are numerous obstacles stemming from the state of their economies, the capacity of their institutions to formulate and implement public policies, and, not least, the shortcomings of their domestic political regimes. If special relationship status was seen as a measure of convergence, the Union would elaborate a set of conditions reminiscent of the Copenhagen Criteria and only the best performing partners would likely be granted this *statut avancé*, to borrow a phrase from the standard lexicon of Moroccan

⁶ EMP was launched in November 1995 at a summit held in Barcelona by the 15 EU members and 12 countries from the southern and eastern Mediterranean (Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, Palestinian Authority, Syria, Tunisia and Turkey). Since the 2004 and 2007 enlargements of the Union, CEE countries have been part of the process, while Libya has observer status since 1999. EMP aims at the promotion of stability, economic integration and cultural dialogue across the two sides of the Mediterranean.

diplomacy. If, on the other hand, special partnership status was seen as a measure of proximity and geostrategic interdependence, then a greater range of countries would qualify.

In this context, Turkey is a burning issue. While its leadership adamantly rule out a 'privileged partnership', it remains a long term possibility, especially if one or more EU Member States fail to ratify the accession agreement. This is why Turkey wants nothing to do with the ENP. Here is the paradox however. In the Turkish context, the connotation of privileged partnership is one of 'less', less than membership. But the impact of such an outcome would be one of 'more' for most other neighbours. This is because, were it to become such a 'partner' instead of 'member', Turkey would no doubt have made great progress on the path of economic and legal integration with the EU, and thus the same level of inclusion into the EU policies and institutions would necessarily be the benchmark for third countries which would have been admitted to some sort of an 'accession-minus' status (e.g. Ukraine, Moldova or perhaps even Israel and Morocco).

Secondly, Article 7a TEU is fairly elusive when it comes to the nature of the agreements and joint actions it mentions in its second paragraph. To start with, the clause enables the EU to pursue such agreements but does not put it under any legal obligation to do so: 'may conclude' as opposed 'shall conclude'. Considering the scope of economic integration, the future bilateral treaties might range from the association agreements signed with certain countries of the Western Balkans (Croatia, Macedonia, Albania and Montenegro, the latter two still subject to ratification) and the Mediterranean to the comprehensive arrangements contained in the European Economic Area (EEA) agreement of 1992. What would be the relationship between any new framework and the already existing contractual relations with the partner countries? Could Article 7a TEU form the legal basis of an 'ENP Plus' as discussed in policy circles and within the European Commission? The key elements would remain the association agreements and the multilateral schemes operating at present. But what would be the added value? Would an enhanced ENP not risk marginalising even further earlier EU initiatives such as the Barcelona Process in the southern Mediterranean? Would a new type of relationship increase synergies or competition between cooperation fora? If multilateral cooperation is to remain part of the Brussels' toolbox as the only way to tackle critical issues such as cross-border infrastructure and environment, how does it survive when it includes partners more special than others?

Third, ENP, in its present shape, hinges on the ability Union's 'soft power' to transform the partner countries while minimising the neo-colonial connotation of the exercise. This depends, in no small measure, on the preparedness, institutional capacity and indeed the political will within the countries in question to meet Brussels' criteria. The experience of Central and Eastern Europe (CEE) has demonstrated how the promise of membership could steer domestic dynamics in the direction of compliance with the EU criteria. Lacking this 'golden carrot', the ENP has to define appropriate incentives for political, economic and institutional reforms. The remoteness of a membership prospect has turned out to be a problem even in countries which are officially considered potential candidates for accession (e.g. the Western Balkans) and it is likely to undermine the effectiveness of the ENP in the coming future. The key challenge for policymakers is to make the integration strategy and the cooperation instruments tied to Article 7a TEU sufficiently credible for the partner countries. At the heart of the ENP is a dilemma: while it must remain conducive to membership in order not to put off partners, it must also be a suitable alternative to accession. The provisions at hand are thus necessarily ambiguous and open to interpretation. On the one hand, as observed by David Phinnemore amongst others, they provide a legal basis with countries 'either not seeking or deemed ineligible for membership'. On the other hand, these clauses

establish a 'second track' of institutional affiliation which can be seen as only a *temporary* alternative to membership for countries that have or might have in the long term the capacity and the will to join the Union (⁷).

This dilemma in turn points to a deeper set of questions ushered in by Article 7a TEU. Could it offer a broader vision for EU's relations with its neighbours which goes beyond the incremental policy approach we observe at present? Is it solely a preventive strategy to halt further enlargement or a first step towards the establishment of a new institutional architecture bringing together EU Member States and neighbours? What are the opportunities and costs associated with a polity-building enterprise on such a scale? Behind this seemingly straightforward dichotomy between policy- and polity-making lies a series of tensions or tradeoffs which any strategic thinking about the neighbourhood must face. Clearly these trade-offs are not about either-or, the EU does not necessarily need to choose, but about emphasis. They include:

- (i) *Hegemony vs. Partnership*: At the heart of the EU's relationship with the countries surrounding it lies a fundamental asymmetry of power. Indeed, the initial labelling of the initiative betrayed this perception on the part of the EU itself: 'Wider Europe' – a Europe expanding in concentric circles centred on Brussels. Even, its successor, the more inclusive concept of 'neighbourhood' still reflects the centrality of the EU in the enterprise, an exercise of a central power 'shaping' or 'managing' its periphery – in this frame Egypt or Ukraine exist as the EU's 'neighbours' rather than as the centre of their own 'world'. It was in part to dispel this connotation that EMP introduced in the 1990s the notion of greater (symbolic) equality or symmetry, even if the instruments attached to the partnership were themselves a function of the fundamental power disparity. This is also why some Mediterranean countries cling to the partnership idea. As one member of the Egyptian elite quipped, 'we are both very ancient civilisations who can gain from working together'. No hint of hierarchy there! The easterners, for their part, dislike the notion of neighbourhood as it assigns them, in their view, to the non-European world. They call for symbolic recognition as potential members of the club rather than a grey zone on its edges.
- (ii) *Conditionality vs. Ownership*: This tension derives from the previous one but manifests itself at a more micro level. The ENP is clearly perceived by partner countries as a European policy to deal primarily with European problems, including the anxiety of its publics regarding enlargement. Yet, as EU actors readily acknowledge - in line with their counterparts in the global aid community - the key to ENP's long-term success is the sense of ownership by the partner governments but also the respective societies. But ownership, at least in the short term, can dilute or dampen the effectiveness of the Union's conditionality based on stringent criteria coupled with incentives. A relationship based on conditionality always lies somewhere on a spectrum between coercion and consent, force and contract. Surely, partners themselves (or rather specific constituencies in the partner countries) may wish to tie their own hands as part of their signalling of commitment to 'reform' – a message we heard very clearly in Georgia for instance. This does not mean they will easily acquiesce to the withdrawal of access linked to conditionality. Replacing

⁷ Phinnemore, D. 'Beyond 25 - the changing face of EU enlargement: commitment, conditionality and the Constitutional Treaty', *Journal of Southern Europe and the Balkans*, Vol. 8, No. 1, April 2006, pp. 7-26.

'negative' by 'positive' conditionality has recently been seen as one way to square that particular circle; but this distinction is only valid when the object of the positive 'reward' is not itself a fixed pie whereby one actor's gain is another's loss. Other avenues for reflection include much more differentiated and negotiated conditions and local triggers.

- (iii) *Bilateralism vs. Multilateralism*: The EU tends to relate to the rest of the world as a hub in a complex web of bilateral agreements, loosely constrained by global multilateral rules. Starting with the EMP in 1995, the EU has tried to create a dynamic of regional multilateralism in its neighbourhood. While commonly associated with the spirit of partnership, ownership and community-building such multilateralism is also hostage to lowest common denominator constraints or more specifically the spill-over of conflict dynamics as with case of the Israeli-Palestinian conflict's impact on the EMP. The question today is to what extent the multilateral spirit can be extended to the whole neighbourhood while much greater emphasis is put on bilateral negotiation in order to engineer convergence with the EU standards. Article 7a TEU could be read as an extension of the logic of bilateralism in search of ever greater effectiveness but such a reading might also further undermine the sense of participation and, even more important for the EU, the notion of even-handedness in granting 'special relationship' status that would obtain in a multilateral setting.
- (iv) *Differentiation vs. Homogeneity*: Here again this tension also has a macro-dimension that is between the overall idea of neighbourhood and that of more circumscribed differentiated communities, but also a micro-dimension pertaining to the specificity of bilateral relations within the overall neighbourhood idea. The language of Article 7a TEU seems to conceive of a single type of special relationship, but the truth is that the ENP brings together a great variety of countries and sub-regions and therefore pursues a systematic policy of differentiation deemed better equipped to match local needs and aspirations. A more homogeneous approach, on the other hand, whether at the level of the entire neighbourhood or involving smaller groups of countries (e.g. Maghreb, Caucasus, Eastern Europe), is more compatible with a strategic outlook geared towards polity-building and perceptions of even-handedness.
- (v) *Functional vs. Geostrategic vision*: Much of the EU agenda in the neighbourhood is shaped by the day-to-day tasks of economic integration and functional cooperation. The basic bargain here is simple, even while its implementation is complex: adoption of standards and compatibility with the EU in exchange of access to the EU's resources, markets and institutions. This chimes with Javier Solana's characterisation of the Union's objective in the neighbourhood as the creation of a ring of well-governed countries. But when, for his part, Romano Prodi speaks of a 'ring of friends' he suggests a rather different vision for the neighbourhood. Being a friend is not wholly synonymous with being a well-governed country. Indeed partnerships aimed at enhancing the EU's energy security, controlling illegal migration and fighting terrorism are possible, and indeed often pursued, with countries falling short of the democratic and governance standards flagged up by the EU. Geostrategic considerations might dictate closer ties with some countries in spite of lack of some elements of functional convergence (say Turkey), while they might dictate looser ties

in spite of functional convergence (possibly relevant one day in Russia's neighbourhood).

We now examine more specifically the ways in which these challenges and tensions play out in the ENP and other frameworks.

2. ENP: the state of play

2.1. ENP as seen from Brussels

In its current shape, the ENP prioritises immediate policy challenges over long-term status issues. The bilateral Action Plans adopted by the EU and the individual partner governments contain a list of reforms to be implemented in the short and the medium (3-5 years) term in the areas singled out in the European Commission's Strategy Paper of 2004:

- political dialogue and domestic reform;
- trade liberalisation and regulatory convergence;
- cooperation in the fields of justice and home affairs;
- energy ⁽⁸⁾, transport, information society, environment and research and innovation;
- and social policy and people-to-people contacts.

Though ownership has been high on the EU's avowed goals, Action Plans are usually perceived as an extension of the EU's traditional panoply of goals and instruments to stabilise its periphery through the projection of its power. Only a few countries, notably Ukraine, Israel and Egypt, have really negotiated at length the priorities and scope of their Action Plans. Driven by Brussels, ENP complements various European Security and Defence Policy (ESDP) actions such as the EU Border Assistance Missions (EUBAM) at the Moldova/Ukraine frontier and in Rafah (Gaza) as well as the EU Special Representative's Border Support Team in Georgia ⁽⁹⁾. The ENP is therefore cast as a form of external governance by the EU rather than joint community-building which was the original vision behind the 1994 Euro-Mediterranean Partnership.

⁸ Special memoranda on energy have been signed with Ukraine, Azerbaijan and Morocco and the EU aims to conclude an energy partnership with Algeria.

⁹ The first seven Action Plans were adopted in 2005 with Jordan, Morocco, Ukraine, Tunisia, Israel, the Palestinian Authority and Moldova. At the end of 2006, the Commission published progress reports covering those countries. The same year the EU negotiated another five action plans (Armenia, Georgia, Azerbaijan, Egypt and Lebanon). The Action Plan with Algeria is currently being negotiated while Belarus, Syria, Libya, though in theory covered by the ENP, have been excluded by it owing to the fact that they do not have contractual relations with the EU at present. In 2007, the new financial instrument (ENPI) came into being which earmarked 12 billion euro over the period 2007-2013 (Council Regulation (EC) 1638/06 of 24 October 2006 establishing the basis of the ENPI). Civil society actors from the ENP countries are also eligible for grants from the European Initiative for Democracy and Human Rights (EIDHR).

While EU officials are not explicit as to its ultimate destination, the ENP has already moved, thanks to the Action Plans, *beyond the association model*. The ENP uses instruments and know-how from the CEE enlargement as demonstrated by the contents and procedures of the Action Plans which draw their inspiration from the Accession Partnerships developed after 1998. The Action Plans, for instance, are monitored on a regular basis by the European Commission which also publishes annual reports. The partner countries are included in the enlargement related twinning exercise (the secondment of Member State's officials to the sectoral ministries and executive agencies in charge of the Action Plans), widely employed in CEE. They also benefit from the European Commission's technical assistance and information exchange facility (TAIEX). In the partner countries, the Action Plans have engaged the functional ministries rather than solely the Ministries of Foreign Affairs as was the case before the ENP. In addition, the EU transformative agenda has brought into the spotlight policy-areas such as administrative and judicial reform which are not part of the model prescribed by the association agreements. All in all, ENP follows the footsteps of the fifth enlargement.

The more far-reaching type of policy convergence promoted by the ENP, however, has not been linked with any substantial gains in terms of participation in the EU's decision-making process. The European Commission has been adamant that the ENP is a set of bilateral relationships which do not fall under Article 49 TEU (enlargement). The Action Plans build on the pre-existing contractual relations (Euro-Mediterranean Agreements and the Partnership and Cooperation Agreements (PCAs) for the former Soviet republics, and therefore formally still fall within the mainstream association, rather than an 'accession minus', model. Still there is a gap between the legal and the political dimension of the ENP. Informally, Commission officials acknowledge that membership hopefuls such as Ukraine have an objective interest in the Action Plans, which while remaining membership-neutral, bring the country closer to meeting the entry criteria spelled out in Copenhagen in 1993 ⁽¹⁰⁾. Since the ENP has borrowed extensively from the enlargement model in its *modus operandi* and scope, some of the Action Plans, if implemented in full, have the potential to bring membership hopefuls to the level of convergence seen in the CEE countries in the mid-1990s, prior to the official launch of the accession negotiations.

2.2. Critical perceptions in the neighbourhood countries

The ambiguous nature of the ENP as a framework *in between* association and accession has been received as a mixed blessing in the target countries. For one, the EU is being accused of not being sufficiently generous in its offers. The launch of the ENP raised expectations in the East which were partly fuelled by various EU actors. This includes the European Parliament which adopted on 13 January 2005, at the height of the Orange Revolution, a non-binding resolution calling for Ukraine to be given 'a clear European perspective, possibly leading to EU membership'. Such signals, muted as they might be, account for the fact that some Eastern partners have demonstrated a significant level of commitment to the institutional and legislative reforms listed in the Action Plans, especially in comparison to the bulk of the Mediterranean countries. Yet expectations and demands vis-à-vis the Union are often unrealistic in light of the political situation inside the EU and the ongoing enlargement towards Turkey and the Western Balkans. Even so, expectations do shape foreign policy.

¹⁰ Interviews at the DG External Relations of the European Commission, Brussels, 10-13 April 2007.

Symptomatically, Ukraine's foreign minister did not attend the ENP summit held in Brussels on 3 September 2007 and was substituted by the ambassador to the EU. This was meant as a signal that Kyiv wants a clear accession perspective and is not interested in broad pan-ENP bodies. In this case, and whatever talk of membership neutrality, the ENP is seen as an alternative to accession. Partners have gained little on issues like free movement of people or access to the EU agricultural market (e.g. for Moldovan or Georgian wines which were excluded from the Russian market in March 2006 are not allowed either in the EU) which leads to widespread frustration. Easterners are also resentful of the fact that the balance within the ENP aid allocation, measured in euro per capita, favours the southern tier.

Another key grievance common in the target countries is that the ENP is too asymmetric and not fit to the local conditions. In the South, the policy is seen as intended for post-communist states of the former Soviet Union. Long-term observers of Euro-Mediterranean relations view the policy as 'pouring old wine in new bottles' in that, compared to the EMP, it neither improves access to the EU market, particularly in sectors such as agriculture or services, nor does it increase financial assistance transfers. Countries like Egypt have been lukewarm towards the ENP, in no small part, because of the fear that the ENP's political conditionality is far more intrusive in the country's domestic affairs. As a result, the Egyptian government negotiated its Action Plan over a long period of time, with the Egyptian political and bureaucratic elites rationalising their acceptance of the EU's transformative agenda with reference to the country's own domestic efforts at economic reform, especially since 2004⁽¹¹⁾.

The asymmetric relationship can result in a sense of disempowerment. In the South, this is related to the fact that interactions with Brussels take place on a one-to-one basis rather than as part of the broader regional format embraced by the EMP. Countries like Egypt regret the demise of the EMP and argue that the notion of partnership is superior to that of neighbourhood in that it eschews, even if only symbolically, the sense of hierarchy and subservience vis-à-vis the EU. As one high-ranking Egyptian official sighed, 'the ENP places Europe at the centre of the relationship as opposed to the Euro-Med framework where the Mediterranean was the centre,' concluding: 'one is a neighbour by geography, one is a partner by will.'

In the East, the sense of disempowerment is rooted in the perception that the EU's preferred strategic partner is Russia. As countries which are part of both sides' 'near abroad' see it, grand bargains between Brussels and Moscow over energy flows and security threaten to undercut their efforts to seek their fortunes westwards⁽¹²⁾. In a similar vein, Palestinian officials allege that the ENP is unjustly rewarding Israel thanks to its exceptional level of economic development and governance capacity, even though the country continually obstructs the peace process. As they see it, the political dimension of conditionality is hostage to geostrategic considerations which favour one side over the other⁽¹³⁾.

¹¹ Interviews with government officials at the Egyptian Ministry of Foreign Affairs and Ministry of Trade, Cairo, 11-20 March 2007.

¹² Interviews in Kyiv, 10-17 March 2007, and Tbilisi, 6-10 May 2007.

¹³ Interviews in Ramallah and East Jerusalem, 13-21 May 2007.

Importantly, the shift towards bilateralism is not seen universally as an instrument to cement EU hegemony. In many instances, it is considered consistent with national interest. ENP has, by and large, been embraced by Israel and Morocco as an opportunity to move beyond what those countries perceive to be the lowest-common-denominator approach of the Barcelona Process, thus improving access to the European markets and gaining privileged status with the Union. As in the East, quasi-enlargement elements such as twinning are recognised as a success. There is hope that the ENP framework is more likely to liberalise the services market or facilitate visa regimes with the EU, as it is not as constrained as the EMP with obligations to multilateralise benefits and access to the EU market. In a nutshell, a number of countries in the South favour the ENP and view it as a step towards a ‘special relationship’ awarded on a case-by-case basis rather than as a ‘one-size-fits-all’ arrangement. Even sceptics like Egypt emphasise the role of the Action Plan as an external anchor for the economic reforms at home. There is, therefore, a measure of support, hence a sense of ownership, for a policy of differentiation and conditionality which provides effective incentives to the frontrunners in the ENP. This includes competition for the financial aid disbursed under ENPI conditional on reform progress.

However, in order to bear fruit and be accepted as legitimate, conditionality must be linked to long-term commitment on EU side too. In all ENP countries, both in the East and in the South, there are voices calling for a status-oriented, rather than incremental, approach. The argument is that the Action Plans would benefit from greater legitimacy if the deal on offer were clearer. For example, Israeli officials interviewed for the purposes of this report consider that the EU demands tend to focus on politically sensitive areas while the pay-offs (technical assistance, admittance to specific EU bodies such as the European Environmental Agency, etc.) have too low a profile to catalyse action. In the context of an incremental policy, gains are spread over the years and they are too negligible or at least politically invisible to make a real difference in changing the actors’ preferences or behaviour (¹⁴).

The situation is similar elsewhere, leading observers to call for giving the ENP a higher political profile. Thus, it would be far off the mark to expect that ENPI or the twinning exercise would solve the Transnistrian question or push the regime in Egypt towards democratic reform. In fact, in March 2007, the parliament in Cairo amended the country’s constitution to extend presidential powers and limit the scope of judicial supervision over elections, a couple of weeks after the adoption of the Action Plan under the ENP. In other cases, governments would welcome more stringent linkages and conditions. Georgian officials and analysts regret that the country’s Action Plan fails to address, in concrete terms, the issues of the frozen conflicts in South Ossetia and Abkhazia. The bottom line here is that a bolder approach linked to status would advance much further the transformative agenda and collective interest of the EU than the ENP does at present. It would surely, however, be more risky and prone to resistance within the EU.

3. ENP in perspective: a typology of EU-third countries integration

If the ENP, at its most fundamental, were not to be only about policy-making efficiency but about future status and therefore the shape of the European polity-to-come one need to take a step back and consider the options which the EU currently has at its disposal. In order to put

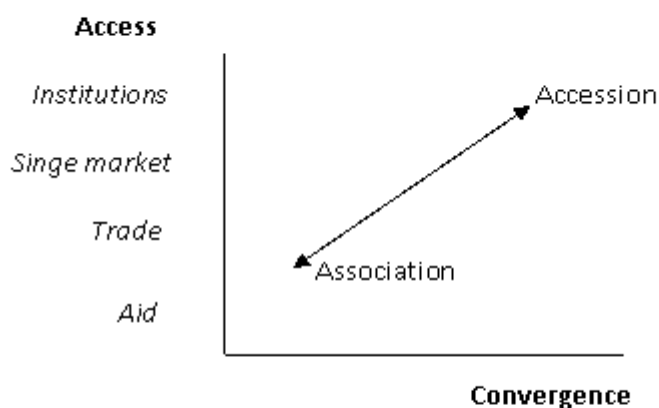
¹⁴ Interviews in Israel, 13-21 May 2007.

the provisions of Article 7a TEU into context we can scrutinise the various existing institutional arrangements with third countries in the EU's proximity along two dimensions:

- First, the extent of **convergence** with the Union's *acquis* (its own laws, regulations or policy instruments) as well more broadly with more or less precise economic and political criteria, conditions or 'standards'. Obviously, the standards used to assess such convergence range from specific technical standards for say product quality, to more qualitative assessments in cases such as professional qualification, to broadly subjective criteria when it comes to the democratic functioning of a country for instance.
- Second, is the extent of **access** to the EU, from aid and other resources, to the single market for goods and services, the labour market and ultimately inclusion into the Union's decision-making process And institutional structures.

We generally expect these two dimensions to be highly correlated: the greater the convergence with EU standards, the greater the access to internal market – and logically but not uncontroversial the greater the participation into the Union's decision-making process. The received wisdom is that the above relationship is linear: the more one converges, the more one integrates and therefore the bigger stake one demands – and is granted - in the Union's institutions. But this is not necessarily the case. The linear progression from socio-economic access and interdependence to access to the decision making which affects the environment for integration is of course at the heart of the tensions associated with the neighbourhood challenge. It is fair to say that with the ENP, the EU aims to increase current degrees of convergence of the partner countries without the corresponding levels of access, especially institutional access. Conversely, the new Member States in CEE may still be excluded from certain policy-areas due to the transition periods in force after 2004/2007 – but are fully represented in the Union's institutions.

Figure II: Access vs. Convergence



Even when convergence and access match in a linear fashion, there are multiple equilibrium points along the continuum, from association (at the bottom left) to membership. The kind of relationship described by Article 7a TEU (and therefore the ENP) currently falls in between. It is a political decision dependent on EU stakeholders and the partners' capacity to define where on the continuum the enhanced ENP and any particular country should be located. The problem described today as 'integration capacity' however signals the fact that there might currently be a limit to 'access' (or 'integration') irrespective of the degree of convergence (or lack thereof) of the partner countries. To put such an enquiry into context we first review the various models of integration between the EU and the third countries in its periphery by placing them on these two dimensions.

3.1. The accession model

Scope of convergence: The accession formula can be summarised in the following way: a maximum degree of convergence leading over time to full inclusion into the EU's market and decision-making process. But of course, convergence itself is not an uncontested notion and its contents have gradually expanded since the beginning of the 1990s. It has been linked with the conditions spelled out by the Copenhagen Council in June 1993 which focus on three areas: political (strength of democratic institutions, rule of law, rights of minorities), economic (the presence of a functioning market economy as well as the candidates' ability to withstand the competitive pressure of the EU market), and institutional (the adoption of the Union's *acquis communautaire*). As an extension of the three criteria the Madrid Council (December 1995) adopted the so-called administrative criterion increasing the scope of the conditions into new policy-areas such as governance reform at the national and local level. Substantive integration proceeds in several discrete stages. The basic fulfilment of the

democratic criterion and the adequate level of implementation of the economic criterion serve as pre-conditions for allowing candidate countries to open membership negotiations ⁽¹⁵⁾. During the accession period the candidates are monitored by the European Commission concerning the adoption of the whole range of EU laws. They are also monitored for reforms in the field of democratisation, economic governance, administrative capacity and the rule of law, *typically falling outside the competences of the Union's institutions when it comes to its internal context*. Therefore, the convergence agenda is now more ambitious than it was during previous waves of enlargement in the 1970s and 1980s. This reflects the fact that the candidates (including the Western Balkans and Turkey) are countries undergoing complex domestic transformation. As they are considered falling short of the governance standards in the 'old' Member States these are required to run an extra mile in their preparation, going beyond the formal prescriptions of the *acquis*. A typical example is judicial reform which is a domain reserved for the individual Member States and not the Union.

Deep-running governance reforms are coupled with extensive harmonisation with EU law. In contrast to previous enlargements in the 1980s, the latest wave took place after the implementation of the Single Market programme of the early 1990s. That means that past and current candidates have had to 'swallow' a bigger share of the Union's secondary law (regulations and directives). Unlike the old members, they have not been given the right to opt out from certain policies. At the end of the process, all CEE countries and the two Mediterranean applicants had achieved a reasonable level of convergence with the *acquis* in its entirety. The most they could achieve were transitional periods in specific policy areas such as environmental protection and agricultural product standards needed for the smoother adaptation to the EU requirements.

As it stands now, the ENP emulates the pre-accession model insofar as it pursues domestic political and administrative reform in addition to partial harmonisation with the *acquis*. For instance, Ukraine's Action Plan (adopted in February 2005) contains priorities such as the continued reform of the criminal, civil and administrative codes and codes of procedure as well as the effective implementation of the rulings of the European Court of Human Rights (Council of Europe). The rationale is the EU's conviction that the target states need to build-up their capacity in order to be able to be integrated meaningfully into the EU market and also have to implement democratic standards pursuant to the principle of political conditionality. All its instruments are geared towards the transformation and capacity-building agenda linked with a more comprehensive notion of convergence with the EU. However, at present, the Action Plans are political documents listing priorities for reform rather than full-blown legal agreements containing mutual rights and obligations. They do serve the aims of Article 7a TEU but do not provide *per se* a legal basis for an enhanced bilateral relationship supplementing the Association/Partnership and Cooperation Agreements concluded prior to the launch of the ENP.

Access: The accession process' institutional set-up reflects the staged progression from association through associate membership (in the interregnum between the signature of the

¹⁵ Membership negotiations were opened in two stages: in 1997 with Poland, Hungary, the Czech Republic, Estonia, Cyprus and Malta, and in 1999 with the rest of the CEE countries, including Bulgaria and Romania. Since 2005, the Union has been conducting membership negotiations with Croatia and Turkey. Macedonia is also recognised as a candidate, while the rest of the Western Balkan countries have the status of 'potential candidates' extended to them by the European Council in Feira (2002).

accession agreement and joining) to full inclusion into the decision-making process of the EU. Initially, the bilateral business between the individual state and the EU is conducted within the following bodies:

- Association Council (¹⁶) (government ministers from the candidate country, representatives of the European Commission and the Member State governments) and Association Committee (meetings at the level of senior officials);
- Joint Parliamentary Committee (involving members of the European Parliament and national parliamentarians).

Accession negotiations, once opened, are conducted by an intergovernmental conference comprising the candidate and representatives of the European Commission and the Member States. It is important to note that during accession negotiations all of the above institutions are charged with coordination or consultation, rather than joint decision-making, functions. The candidate country does not 'negotiate' the contents of the *acquis* but the modes of its implementation into its internal legal system. The candidate country becomes a member with full voting rights in the institutions of the Union. There is an interim period between the signature of the Accession Agreement and its coming into force when representatives of the candidate state is allowed to participate as observers ('active observer status') in the European Parliament and the Council as well as in the European Commission Committees. No such observer status is currently available for the ENP countries, though it is fully consistent with the wording of Article 7a TEU.

3.2. The European Economic Area (EEA) model

Scope of convergence: EEA represents a model of integration which comes very close to full membership as far as the convergence axis is concerned. EEA which as of 2007, comprises the EU-27, Iceland, Liechtenstein and Norway, members of the European Free Trade Association (EFTA), is a free-trade regime based on the 'four freedoms' of the Single Market - movement of goods (excluding agriculture and fisheries), persons, services and capital. The EEA Agreement (in force since 1994) puts an obligation on the three EFTA countries to accept the EU *acquis* including any future amendments and extensions. The trio is not part of the Common Agricultural Policy, the tax harmonisation rules or the external trade relations of the Union. It does, however, participate in the EU Cohesion Policy and contribute to the EU budget (as does also non-EEA Switzerland).

Access: One should also note that currently the three EEA/EFTA countries are more deeply integrated into the Single Market than the CEE member states whose workers face restrictions in the labour markets of a number of 'old' Member States (e.g. Germany and Austria) subject to a transition period. Norway and Iceland are also part of the Schengen area while the new member states are likely to implement the agreement in 2008 (Bulgaria and

¹⁶ In the case of Croatia and Macedonia, Stabilisation and Association Council.

Romania are expected to do so in 2011) (¹⁷). What is different is the level of inclusion into the Union's decision-making process. Although the three EEA/EFTA states are obliged to comply with or transpose the bulk of EU legislation, as non-members, they are not represented in the EU institutions and have a limited say on the Union's policies and legislative output. It was for this reason in the early 1990s that several EFTA members such as Austria, Sweden and Finland chose to pursue full membership in the EU instead of joining the more limited EEA arrangement. For example, EEA associates have no right to vote when community directives and regulations are adopted by the Council as this is a right reserved exclusively for the Member States. The ECJ rulings on the *acquis* have an effect on the territory of the EEA/EFTA countries which, for their part, have no right to appoint judges to the Luxembourg court. Norway, Iceland and Liechtenstein are also involved in the legislative process, unlike any other country outside the Union. What sets them apart from others is that they have a right to *be consulted by the European Commission on legislative proposals related to the Single Market*. This right is not granted to the fourth EFTA member Switzerland which has chosen to stay outside EEA and have its separate special bilateral agreement with the EU.

The EEA case is also distinguished by the presence of an *additional tier of institutions* bringing together the EU and the three EEA/EFTA countries. The arrangement is steered by the EFTA Surveillance Authority in Brussels and the EFTA Court in Luxembourg. During the negotiations of the EEA agreement in 1992 the European Court of Justice (ECJ) issued a special letter to the Council arguing against the initial plans to entrust the European Commission the role of a guardian of the EEA treaty and to give ECJ jurisdiction over disputes arising from it. There is also a Joint Committee comprising the European Commission and the governments of the three EFTA countries which has a consultative function in respect to the alignment with the *acquis*, as well as the EEA Council meeting twice each year. The above bodies go beyond political dialogue and in effect constitute a model of shared governance on the part of the EU and the three EEA/EFTA states.

3.3. The association model

Scope of convergence: Association is based on bilateral agreements focusing on free trade and political dialogue. They also contain conditionality clauses tied to the respect of human rights and democratic standards. This was, in a nutshell, the model espoused by the Europe Agreements concluded with CEE in the early 1990s as well as by the next round of treaties with the southern and the eastern Mediterranean countries included in the EMP. Unlike the Europe Agreements, the EMP ones do not refer to the objective of membership (¹⁸). However, they do entail a certain level of harmonisation with the *acquis* – e.g. in areas like public procurement, customs, transport and telecommunications, financial services. Integration with the EU is intended to proceed parallel with integration at the regional level. Their principal goal is to create a free-trade area across the Mediterranean by 2010 through the bilateral agreements and complementary multilateral measures. The countries which have advanced the most in meeting the EU demands (Jordan, Tunisia, Egypt and Morocco) have signed the Agadir Agreement (2004) to establish a free-trade zone amongst each other). In

¹⁷ Switzerland joined Schengen in 2005.

¹⁸ There are eight such signed between 1995 and 2002, and a further agreement initialled with Syria in 2004 which has not been ratified yet.

the East, the European Commission launched in April 2007 the Black Sea Synergy initiative. It builds on the Organisation of Black Sea Economic Cooperation dating back to the 1990s and aims at fostering cooperation in fields like energy, transport infrastructure and maritime protection amongst the EU, Russia, Turkey and the local ENP countries.

Access: As the Europe Agreements, the EMP association deals foresee liberalisation of trade in industrial goods, yet subject to longer transition periods. The regime for the establishment of natural persons from the EMP countries within the territory of the EU is more restrictive and there are fewer concessions on agriculture. While the EU committed in principle, back in 2004, to fully open its markets for the agricultural products originating from the EMP countries, few specific measures have been taken in that direction. The eastern neighbours have thus far benefited from the PCAs signed in 1998-99 provide for a more limited trade opening in industrial goods. These will expire after the passage of a ten-year period and be succeeded by new association agreements which will provide for deeper integration, possibly going beyond the Europe Agreements concluded with the CEE countries in the early 1990s. Thus, at present, the EMP agreements represent the most advanced form of association: while they are less far-reaching than the Europe Agreements (not in force after 2004/2007) they go further than the PCAs.

As regards institutions, the association model is the most basic arrangement available for organising relations with third countries As such it can only represent the initial step towards the special status under Article 7a TEU, not the special status per se. Association works through various bodies geared towards political dialogue (¹⁹): Partnership/Association Council (ministerial level), the Partnership/Association Committee (senior officials' level) plus its subcommittees, and the Joint Parliamentary Committee. These institutions coordinate the measures required for the implementation of the partnership/association agreements and their additional protocols. In essence, these bodies monitor the adoption of legislative and policy measures anchored in the agreements. Again, their principal function is coordination and/or adjustment to the EU demands rather than joint decision-making. In the context of the Barcelona Process (EMP), bilateral Council/Committee sessions have been complemented by a multilateral track through the annual Mediterranean summits and multiple sectoral meetings at the level of ministers, government officials, NGOs.

3.4. Lessons drawn from the models

As the above mapping exercise illustrates, association is the EU's default option regarding relations with third countries. It is low in terms of both joint decision-making and substantive integration. Thus this model, which has been already been largely implemented vis-à-vis the Mediterranean countries, could hardly serve as a basis of a special relationship setting the strategic framework for the ENP. Any alternative to fulfil the mandate of Article 7a TEU should aim at more advanced forms of participation in the decision-making process (beyond political dialogue) and/or greater degree of market access and convergence with the Union's policies and standards (beyond liberalisation of trade in industrial goods and the domestic adjustments required to achieve that goal). By contrast, both the accession and the EEA models provide for a great degree of substantive integration. The relationship arguably even more asymmetric given that the countries in question have to open their market more

¹⁹ The only exception is the interim Association Agreement with the Palestinian Authority (1997) which does not contain clauses on political dialogue.

comprehensively to EU products and have to take onboard a much larger segment of the *acquis* compared to the association countries. In the context the accession model, asymmetry is overcome at the moment of gaining membership. The reward for asymmetry in the case of the EEA are the opt-outs from certain policies, the role of the EFTA Court and Surveillance Authority in the implementation of the EEA agreement, and the involvement into the Commission's legislative work. One can also argue that what also offsets asymmetry is the fact that all three EEA/EFTA countries (as well as Switzerland) will have a membership perspective should they decide to join the Union as Norway did twice in the early 1970s and the 1990s.

Taken as a whole, the EU has a preference for maximum gains in terms of convergence with its standards. Partner countries, for their part, prioritise access to the EU markets but not necessarily convergence with the democratic, governance and technical standards which are connected with manifold domestic costs. They are keen on obtaining a greater say in the EU decision-making (on top of the vertical axis): through full membership (the Eastern hopefuls), through the enlargement of the EEA (potentially Israel), through gaining an upgraded association status based on individual merit (Morocco), through the empowerment of the multilateral institutions linked with the EMP (Egypt).

Each of these solutions to the problem of asymmetry is a partial fix. They raise a number of further questions. The price for privileged status is heavy-handed EU conditionality which may actually erode any notion of partnership in the short run. Other side effects include differentiation and the reinforcement of the hub-and-spoke tendencies already visible in the ENP. This, in turn, calls into question the Union's attempt at building up a uniform set of relations with the whole of the neighbourhood which would also contribute to the horizontal integration among the targeted countries. By contrast, multilateral cooperation (along the lines of the EMP), is more conducive to the development of joint ownership of substantive integration and is more consistent with the logic of polity-building and co-governance. What it lacks, however, is efficiency and transformative potential. In other words, multilateral approaches are unlikely to move any 'special relationship' beyond the association model.

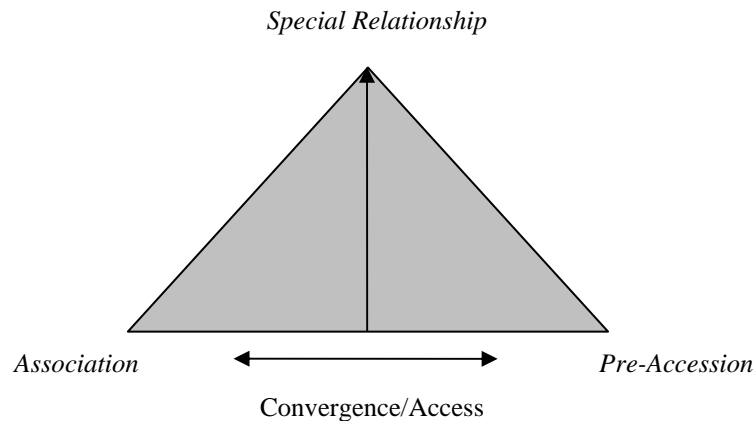
4. Introducing a new dimension: decentred integration

We have explored up to this point how the dominant paradigm of the EU's relations with its neighbours has been to link differentiated access to differentiated convergence in a somewhat linear fashion. And we have mapped out the complex web of countries in the neighbourhood currently linked to the EU by various types of bilateral agreements, sometimes supplemented by a multilateral framework.

But as we have seen, there are limits –either temporary or structural- to this seemingly logical progression from association to accession as a function of the convergence vs. access logic; limits on the convergence side as countries explore (or fail to) their own complicated paths to domestic reform and may we say, modernity; limits on the access side, as the EU currently suffers from 'access fatigue', whether on the 'real' side, that is access to its markets, or on the institutional side –the term integration capacity was simply an inelegant way to express this fact; and limits on the link between the two as possible increased convergence may likely fail to be rewarded with equivalent 'access.'

We believe and hope that ‘access fatigue’ will not last forever, but even if EU citizens found themselves with a new burst of inclusive spirit, countries in the neighbourhood are likely to be uncomfortably stuck ‘in between’ (association and accession) for the times to come. This is where we come back to our initial triangle.

Figure III: Special relationship – adding to the convergence/ access dynamic



If we take the access/convergence baseline as a given, that is obviously we do not deny here that special relationships are indeed ‘in between’, we believe that the EU’s relationship with its neighbours can be enhanced by introducing more explicitly another dimension, our vertical axis, which is about pulling the ENP slightly out of this ‘in between logic’. Convergence and access are both EU-centric by definition: the bargain is about ‘access (to)’ in exchange for ‘convergence (with)’ the EU, and what either of these terms actually mean is defined mainly by the EU itself.

In contrast, this new dimension could be called ‘decentred integration’ and cover approaches that are not bound by the convergence/access bargain, including both on the policy and on the polity-making side. The need for more decentred integration stems from a recognition that convergence and access as they relate to the EU and its member states are not the only measure of cooperation here.

Perhaps more fundamentally, it ought to reflect an increased awareness both in the EU and in the partner countries that criteria or standards of convergence sometimes uncomfortably echo the ‘standards of civilisation’ of a bygone era, as does constrained access to the metropole with its glass ceilings and second-class citizenship. If that were the case, at least in the world of perceptions and historical legacies, it would be up to the EU and its partners jointly to devise modes of relationships that truly express what we can call a ‘post-colonial agenda’, reflecting the simple fact that ours is no longer a ‘European world’, forged by European legal precepts and political imperatives. To be sure, such a state of mind is not about denying the realities of power and the demands of effective policy making, but on the contrary embedding them in their historical context.

Exploring such a new, ‘decentred’ dimension would seem to chime with the language of Article 7a TEU which implies an upgrading of the relationships in question but in a manner that is embedded in a strategic vision rather than ad-hoc decisions. In the context of the ENP, this would bring about more consistency even if the price for consistency may well be a

decrease in the EU's transformative capacity inherent in the differentiation and conditionality toolbox.

Decentring can mean many things and be pursued at several levels:

- (i) *Co-development*: On the side of policy making, special relationships can be seen as 'partnerships for co-development' which may accommodate the EU and its partners' shared strategic goals in innovative ways. Indeed there is a great cohort of people who think hard about 'co-development' and their expertise could be brought in more systematically in the neighbourhood context. Perhaps the most politically salient dimension of co-development has to do with the management of movement of people.

To a great extent, the problem we have with migration in Europe today is that when citizens from 'the periphery' make it to our shores (possibly at the peril of their life), they are reluctant to ever go back home (to visit or try to resettle and reinvest their savings) for fear of never been allowed back in the EU and thus being cut off from family, friends and the elements of the host country culture that they have made their own over the years. Intelligent policy on flows of people should be about organising the back and forth movement of people, temporality and fluidity and creating the right incentives to do so –acknowledging the desirability of 'semigrants' in other words. This includes obviously a much more fine-tuned visa policy where 'rights of entry' pertain to entry here and there, at home as well as 'at host.'

- (ii) *Empowerment*: Such a philosophy of co-development would, in turn, have significant implications on the security front, the fight on terror, as well as on the political front, the accommodation of political Islam and democracy – topics which cannot be addressed in this short report. Suffice to say here that to a great extent it boils down to empowering individuals or groups to do what they decide themselves to do. Help create political, economic and social spaces where standards of development and modernity are negotiated locally rather than shaped in Brussels. An empowerment bias need not be less intrusive than norm-setting per se. For instance, the insistence on the right of association and action for human-rights NGOs or trade unions can be met with more resistance than the direct imposition of substantive standards. In other words, the EU should continue to pursue a policy of conditionality.

Empowerment is intimately linked with co-development when it comes to education and research policy. Neighbourhood countries cry out for help in developing universities, accrediting degrees and training courses and cooperating among themselves to do so. This has been one of the prevalent themes in our discussions in Georgia and Ukraine for instance. This does not mean that visas to send students to the EU countries do not matter hugely in a co-development framework, but these could be fruitfully supplemented by providing avenues to those students to apply their acquired skills upon return, thus empowering 'agents for change' in the partner countries.

- (iii) *Ownership*: despite the very asymmetric relationship between the EU and its neighbours the latter ought to be involved as much as possible in defining the scope and contents of the special relationship under Article 7a TEU. As we have seen, this much is usually stressed in official documents. The last wave of enlargement has

demonstrated that on many occasions EU standards and priorities, e.g. *acquis* in sectors such as environmental protection, can have adverse effects on development if applied prematurely. One important finding from our fieldwork however is that ownership need not necessarily be opposed to conditionality. The challenge rather is for the conditions to be co-owned by local actors, both in the governmental sector and outside it. In Georgia, even officials complained that conditions were not consistently enforced (in time or across partners) demanding in effect that the commitment be shared and contractual in the deepest sense of the term.

- (iv) *Decentralisation*: One of the recurrent themes heard in the capital of partner countries is that of the complexity of the EU and the frustrations associated with dealing with the Brussels' maze. But EU complexity cannot be wished away as it simply reflects the subtle power balancing and the layered inter-state and inter-institutional bargains that have been arrived over time. Decentring away from Brussels is one way to deal with this inescapable fact, but need not always mean away from European governance. In this sense, the local representations of both the EU and its member states could be much more involved in the design, implementation and monitoring of special relationships. Local delegations through their more intimate knowledge of the country and its actors are better able to engage and fine tune as well as listen the partner actors. Their involvement in policy-shaping empowers them in ex-post monitoring which in turns adds to the credibility of policies. This process has recently started and we have observed some of its fruits in the cases of Egypt, Ukraine and Israel. But it could be systematised and extended beyond delegations in innovative ways.
- (v) *Autonomous institutions*: Rules and fora underpinning the relationships need not all emanate from Brussels. Joint institutions, equal rotation, and 'decentred summits' can be devised to reflect greater symmetry in the relationships. Alternative polity-making (see scenario 4 in the following section) is the most radical version of this spirit of decentring. One radical idea has been to create a capital of the Euro-Med partnership in the Mediterranean itself (²⁰).
- (vi) *Status*: The demand for status on the part of the EU's partners has been a *Leitmotif* of our investigation. But we also acknowledge that the access for convergence logic, while fundamentally sound, may reach its limits due both to the 'integration capacity' real or perceived constraints as well as to the drawbacks of 'EU-centrism without membership'. If this is the case, it might be worth thinking of 'status' as a category well decoupled from access and indeed the corollary standards of convergence. There were good reasons in the case of Kosovo to pursue the strategy of 'standards before status' which we will not evaluate here. In the case of neighbourhood countries however, where the issue of 'status' is not as dramatic as that of an aspiring independent state, the question of status or 'polity-building' cannot be relegated to

²⁰ Some have suggested Malta. Kalypso and Dimitri Nicolaidis have also put forward an even more radical decentring idea: a ship criss-crossing the Mediterranean, spending time in ports on both the southern and the northern shore. See 'The EuroMed beyond Civilizational Paradigms' in Emanuel Adler et al. *The Convergence of Civilizations: Constructing a Mediterranean Region*, Toronto: Toronto University Press, 2006.

some long-term endgame. If the EU functions through rewarding convergence with access which ultimately suggests membership, it might do well to explore a different type of status altogether, that of a status of neighbours which relates to polity-building rather than only policy-making. In this spirit, labelling matters. It matters to a country to be considered as a member of some voluntary alliance, union or confederation of countries, with a label and a sense of equality. Simply being Europe's neighbours is a geographical reality and a hierarchical construct, not a political project.

- (vii) *Geopolitical vision*: And finally, decentring might allow us to address better regulatory/technical and geostrategic concerns each in their own right, as well as the priorities of the Mediterranean and East Europeans separately. The geopolitics of the 21st century will not be Euro-centric as the EU becomes increasingly provincialised in an emerging world order of rising powers and shifting balance of power. In this context, the EU's geostrategic interest may very well be to be a part, indeed a driver of a wider strategic community, stretching from 'Gibraltar to Kars' or alternatively overlapping security community. A geopolitical vision is crucial for the EU's future, including in its relations with Turkey, and cannot remain hostage to the hard constraints of regulatory and technical convergence.

5. Beyond ENP: four scenarios for the 'special relationship'

We have seen that the exploration of the new article 7a TEU must start with an analysis of the ENP as the central current approach to the EU's relations to its neighbours. We have also seen that the ENP is a sound and solid base on which to build any such special relationship. The question we are left with is whether and to what extent special relationships can graduate away from the exclusive ENP frame.

We suggest that such a move would require focussing not only on *policy-making* as the ENP does generally well but also on *polity-building* in a more strategic and long term perspective. This matters, we believe, as *status* and symbolic equality clearly matter for the EU's partners/neighbours. And, after all, recent history has demonstrated that "member-state building" is one of the tasks the EU is best fit to accomplish. The question remains, however, member-state of what? Member-state building does not necessarily mean member-state of the EU *per se*, at least in the short run. Instead, it might be possible to envisage other polities of which one may become member. In other words, we suggest to explore the road of integration without accession to the EU while still electing the landscape of polity-building. Obviously, such an exploration ought not to be read as a recipe to avoid EU accession.

Such an exploration, we suggest, requires in turn supplementing (not replacing) the 'in between' character of the ENP bound by the convergence/access logic with an exploration of various forms of decentred integration. Decentering is relevant whatever scenario we consider but is especially relevant if one wishes to emphasise polity-building.

On this basis, we suggest below four scenarios or alternative visions for future relations between the EU and its neighbours. The last three scenarios all suggest alternative ways of going about the polity-building road while building on the existing ENP. They raise questions about the future constitution and shape of the EU or 'Europe' rather than simply aiming at the effective short promotion of stability in its periphery. They each involve different degree or

geographical scope of decentering, alongside the traditional progression along the access/convergence axis:

- First (mainly staying at the base of our triangle) a default scenario based on the pragmatic step-by-step approach followed presently by the European Commission;
- Second (with decentering for a the South) a differentiated vision whereby the ENP serves on one hand as an antechamber for membership for at least some of the eastern partners, and on the other revamps the EMP as the core policy for the Mediterranean countries;
- Third (with more policy decentering), a path whereby Article 7a TEU sets the scene for a novel form of differentiated or modular access to the EU all the way to ‘variable membership’ or ‘quasi-membership’ status for the most advanced ENP states;
- And fourth (radically moving up the decentering dimension), the establishment of a separate tier of political institutions by the neighbours and the EU member-states to create a new “European Partnership Area”.

In short, as depicted by Table 1, scenarios two and four point to different kinds of (partially) “decentred polity-building”, two recentering around the Mediterranean, and four away from the EU altogether; scenarios three and four provide different kinds of “holistic approaches” - the neighbourhood is envisaged as a whole even with differentiation within.

Table 1 : four scenarios for the future

	EU-centred scenarios	Decentred scenarios <i>Polity-building</i>
Tiered scenarios	Scenario 1 Incremental approach (ENP plus)	<i>Scenario 2</i> <i>Decoupling</i> (EMP, Mediterranean Union)
Holistic scenarios <i>Polity-building</i>	<i>Scenario 3</i> <i>Modular Integration</i> (Enlarged EU)	<i>Scenario 4</i> <i>Alternative Integration</i> (European Partnership Area)

5.1. Scenario I: The incremental approach towards an ENP plus.

The present incremental approach can be seen as a way to ‘muddle through’ the challenges in the EU neighbourhood. The key benefit is the policy’s flexibility allowing for differentiation between ‘good pupils’ and laggard countries. As such it has a measure of transformative potential when it comes to the administrative capacity of the partner countries, less so at the level of their political systems or their societies at large. These gains however are and will likely remain rather modest. Witness the case of Ukraine, the flagship country within the ENP, sliding into an ever-deeper political crisis in the course of 2006 and 2007. In more formal terms, incrementalism also means that the provisions of Article 7a TEU would have largely symbolic value and would not bear directly on how relations with the partner countries are structured. The treaty articles governing association (133, 300 TEC) will continue to be of greater relevance. The current Action Plans or their future versions would also continue to be the key vehicle driving forward the process. The end result would be a web of bilateral relations between the EU and the partners characterised with variable degree of intensity in terms of trade integration and legal harmonisation.

Even within this approach, there could also be marginal improvements to achieve more by way of convergence and provide more ample opportunities for improving access to the EU’s market and institutions. Thus the December 2006 Communication by the European Commission to the Parliament and the Council, endorsed by the European Council on 23 June 2007, has listed the following proposals for strengthening the ENP ⁽²¹⁾.

In terms of access to the EU market and policies:

- Deep and comprehensive Free Trade Agreements (FTAs) based, inter alia, on harmonisation with the EU *acquis* or, potentially, mutual recognition of standards, tailor-made for particular partner countries. Notably, the EU is at present negotiating such an agreement with Ukraine whose PCA expires in 2008 ⁽²²⁾.

²¹ The Commission are very much in tune with a lively policy debate launched by think-tanks such as the Centre for European Policy Studies (CEPS) in Brussels and the London-based Centre for European Reform. Both highlight the notion of positive conditionality by rewarding the best performers with additional financial incentives and upgrading their association agreements by including deep free trade onto the agenda. Emerson, M. et al, ‘European Neighbourhood Policy Two Years on: Time Indeed for an ‘ENP Plus’ CEPS Policy Brief 126, March 2007; Grant, C., *Europe’s Blurred Boundaries: Rethinking Enlargement and Neighbourhood Policy*, London, Centre for European Reform, 2006. See also CEPS European Neighborhood Watch reports.

²² At the EU-Ukraine summit on 1 December 2005, the EU leaders ‘reconfirmed the goal of promoting *deep economic integration* [emphasis added] between the EU and Ukraine’.

- Inclusion into EU-supported networks in fields like energy – e.g. by extending the application of the Energy Community Treaty concluded by the EU and the countries of South East Europe, global aviation agreements and others.
- Faster visa application processes for particular groups of partner country nationals; (It is worth adding that over the long run ‘deep free trade’ might entail free movement of labour too.)
- Inclusion in the Bologna Process of educational reform coupled with scholarship programmes;

In terms of participation in the EU’s institutions:

- Extending the opportunity of alignment with Common Foreign and Security Policy (CFSP) declarations on a case-by-case basis to the Mediterranean partners (this was offered to the partners from Eastern Europe back in 2005).
- Participation in EU briefing and coordination meetings at the UN and other global institutions;
- Participation in EU agencies allowing third-country involvement (e.g. the European Environment Agency) and enhanced cooperation with others (e.g. FRONTEX).⁽²³⁾

These proposals follow the logic discussed above of mirroring degrees of convergence with progressively enhanced access - with participation ranging from observer status to participation in decision making to voting and therefore veto power.

Some analysts have suggested to go one step further in the same logic. Charles Grant for instance proposes turning neighbour countries into “security partners” participating actively in CFSP decision making in certain areas short of voting rights. For her part, Barbara Lippert argues in favour of ‘decision-shaping’, as opposed to ‘decision-making’, procedures involving the right to observe and be informed about all stages in the legislative process.⁽²⁴⁾ This would mean, in effect, the emulation of the EEA model as regards its institutional features (if not the depth of policy convergence and market integration). In the same way as EFTA/EEA countries, the neighbourhood countries could be included in the preparatory legislative stages within the Commission’s working groups. It is also conceivable to allow them to be present at the Council’s deliberations on second and third pillar issues of direct relevance.

There are obviously pros and cons. To provide so much of the incentives of access linked to accession to ‘special partners’ while stopping short of decision-making rights in the Council would likely be welcome by those who argue that institutional paralysis is the biggest drawback of enlargement. To make the offer meaningful, the Union would have to ensure that the partners’ representatives have the opportunity to speak during the Council discussions and also be admitted to the deliberations on issues that matter to their country. For example, Ukraine would be far keener to participate in a debate on EU policy towards Russia than on, say, the situation in Aceh or Sierra Leone.

²³ European Commission, Communication on Strengthening the European Neighbourhood Policy, COM(2006)726 final, Brussels, 4 December 2006.

²⁴ Lippert, B. ‘Beefing Up the ENP: Towards a Modernisation and Stability Partnership’, *International Spectator* (Istituto Affari Internazionali, Rome) 2006/4, pp. 85-100.

Such incremental integration and ad-hoc measures would definitely serve the purpose of Article 7a TEU to enhance relations between the EU and its neighbourhood. Similar policies have already born some fruit, as when partner countries have contributed to the EU's ESDP: Morocco sent in 2005 a 130-strong contingent to take part in the ALTHEA peacekeeping operation in Bosnia-Herzegovina.

At the same time, such incremental inclusion presents several problems. Above all, the very structure of the EU as a "linkage machine" makes it hard to give up "packaged access." Can a country participate in costly initiatives when it does not contribute to the EU budget? Is it effective for a country to take part in one phase of a debate in say, the Council, but not for instance in the Parliament? And what of linkages across issue areas if a country is present in some policy debates by not the others?

On another front, such differentiated upgrading of the ENP is bound to increase the differentiation between the frontrunners and the laggards and jeopardise consistency in the name of effectiveness. The special relationship proposed in Article 7a TEU would be an option only for a handful of countries within the neighbourhood. Once this dynamic is in place it becomes almost inevitable that such frontrunners will put forward the status issue and request institutional affiliation which goes beyond the 'association plus' level. This is rooted, in effect, in the quasi-enlargement logic built into the ENP which has the potential to develop its own dynamic. This essentially means that if the EU can avoid the question of status at present it might not be in a position to do so in the mid-term.

To address such demands the EU needs to think about the ENP's ultimate destination and the EEA model is often mentioned as a policy option. This goes back to Romano Prodi's famous remark in 2002 that what the EU offer towards the neighbours is 'everything but the institutions'. However, it is doubtful whether the step-by-step approach could usher in a new version of the EEA. With the possible exception of Israel, no single country will be able to take onboard the *acquis*. Lacking both membership perspective and economic competitiveness the countries in question would not have any incentive to harmonise with EU legislation. An EEA-like arrangement might also be disadvantageous for the EU itself. The neighbourhood countries would put enormous pressure on the EU budget if they take part in the Union's cohesion policy as the EFTA/EEA trio. More generally, the problem of the gap between 'ever closer' policy convergence and (lack of) policy coordination would become magnified with the number of participants. The application of the EEA model would also mean free movement of people which, though economically beneficial for all parties involved, would be politically disruptive. As far as substantive integration is concerned, the EEA template, in other words, runs into difficulty if used to define the long-term aims of Article 7a TEU.

5.2. Scenario II: The decoupling approach: Creating a (Euro)Mediterranean Union

This scenario acknowledges the structural differences that exist between the southern and an eastern tiers of the neighbourhood, and would therefore entail the partial compartmentalisation of the ENP between the two groups of countries. This is not, *stricto sensu*, an alternative to the (partial) enhancement of the ENP proposed by the first scenario and reflected in the European Commission's paper of December 2006. What differs is the strategic horizon.

For the easterners, a decoupling approach would involve recognising one way or another, their aspiration to become EU members at an undefined future moment and thereby link their fortunes more closely with the Copenhagen criteria. That, of course, includes the integration capacity criterion, that is the Union's own preparedness to absorb new members.

Under this scenario, Article 7a TEU would function for some states as a 'pre-pre-accession' stage thus boosting the EU's transformation agenda over time. In the mid-term, this would mean the allocation of even greater financial and human resources in the European Commission and its delegations in places like Kyiv and Chishinau to assist and monitor reforms. Surely, the graduation into such a relationship with the Union should be made conditional on stringent criteria. With the accession perspective, the differentiation principle already present within the ENP could be harnessed even more effectively by the EU to reproduce, again in the long run, the 'regatta' dynamic observed in the CEE, with an even greater emphasis on pre-conditions, given the potential for spillback. At the symbolic level the EU can specify benchmarks to qualify for the status of a 'potential candidate' that was originally established for the Western Balkan countries in 2002.

Though membership perspective is unlikely to be offered in explicit terms to the Eastern European partners, there are some indications that decoupling is on the cards. At the end of 2006, the German Foreign Office floated the notion of 'ENP Plus' targeting the likes of Ukraine. It is commonly accepted that selected ENP countries, meeting the EU's essential political and economic criteria, have to be brought closer to the Union's institutions in order to maximise its leverage. This could be achieved by offering incentives to the respective governments, the society at large and business communities. At a minimum, both the Commission and the think-tank circuit agree that it is essential to keep the 'open door language' as a way to motivate the Easterners and achieve stability along the Union's new borders. According to the optimists, this could also contribute to the resolution of the so-called 'frozen conflicts' in areas such as Transnistria or Abkhazia which have thus far been dealt with rather unsuccessfully by the OSCE. If the membership perspective delivers sufficient level of domestic reform and external stability this should enable the partner countries to appeal to Article 49 TEU at some future juncture.

For Southern partners in contrast, decoupling could mean much more radical decentering including through polity-building centred around the Mediterranean rather than Brussels. This in turn would mean that the EU would be less capable of applying a tough political conditionality compared to the 'pre-pre-accession' context. It would however signal *inter alia* a return to what some at least believe was the vision of the 1990s. This would include the rehabilitation but also rethinking of the EMP, a demand widely shared by both sides - even in the most pro-Barcelona process countries.

Against this backdrop, and for all its flaws, the Mediterranean Union proposed in the first half of 2007 by the French President Nicholas Sarkozy could be seen as a harbinger of a new state of mind and an attempt to rethink the EU's southern dimension. The French plan is very much in flux so little can be said about it before the French 2008 EU presidency. The idea seems to be for such a Union to could bring together around a number of projects (such as the environment or energy), the three main southern Member States and the three Maghrebi countries with at least initially, other interested EU members only participating as observers. The EU would be a member but apparently not the manager of such a Mediterranean Union. But rather than marginalise the EMP such grouping would only be acceptable to other EMP states if it were seen as a kind of laboratory or experiment exploring various forms of

‘reinforced cooperation’ (in the French approach, the southern partners would still benefit from comprehensive association agreements, possibly incorporating elements of deep free trade, CFSP/ESDP cooperation and perhaps even clauses on free movement of people).

Nevertheless, the idea of relaunching the Mediterranean dimension on the basis of cooperation among a small number of Member States and Arab Partners appears problematic in the eyes of many actors in the region. At a minimum, it would certainly be a challenge for the integrity of the EU itself. For instance, how could there be partial liberalisation of the movement of people and visa regimes within the future Mediterranean Union in a pan-EU context framed by Schengen and other agreements? Could a gradual approach be envisaged that would multilateralise specific schemes for the movement of people once they have been tested under a ‘Mediterranean Union’ scheme? These questions are crucial but should not prevent the EP from exploring the idea of building blocks for a revamped EMP.

Most importantly, such a revamped EMP could involve more institutional and policy decentring as a part of a decoupling strategy. To this day, the only EMP institution located on the Mediterranean is the Cairo Anna Lindh foundation for cultural dialogue. This example could be followed by others.

In the end, the main disadvantage of this decoupling scenario is that while resolving the South vs. East tension it would introduce greater institutional complexity in the EU’s relations with the neighbourhood, making it difficult for the Union to elaborate and pursue a coherent strategy. It would also undo the political bargain of 2003-2004, possibly causing friction amongst the Member States. But political bargains can obviously be revisited if a convincing strategic visions as well as material incentives lay so dictate.

5.3. Scenario III: Variable membership in a broad EU

This scenario would build also build on scenario one, but – to simplify- move the signpost “accession” to an earlier stage on the road of convergence. Thus it would involve a more open-ended and functional approach to the question of EU borders then prevails today. The starting assumption here is that the issue of membership in the EU should be striped of its essentialist connotation⁽²⁵⁾. There should be no straightforward response to the question of ‘Europe’s ends’ coming from religion, geography or history. If the EU is not a Christian club, if geographic boundaries are thick, fuzzy and constructed and if historical legacies ought to be about transcending rather than reproducing past conflicts, then there is no deciding *a priori* what are to be the EU’s borders.

At the same time, the EU is a complex, precious and perhaps even vulnerable construct that cannot be expanded without due consideration given to its sustainability. Thus, any future expansion of its membership ought to imply assessing the ‘functions’ that such expansion would fulfil for both current and future members. These functions in turn may vary according to issue areas, to regions considered and to sequencing and timing. Since the EU’s competence is increasingly broad, and its capacity to intervene inside and outside its own borders increasingly asserted, enlargement can no longer be consider as a one-size-fit all

²⁵ See chapters on EU borders in Geremek, B, and Picht, R. (eds), *Visions d’Europe*, Odile Jacob, 2007.

process. The 2004 and 2007 enlargements reflected this reality much more strongly than prior enlargements.

In this broad context, all the neighbourhood countries could theoretically and eventually become ‘members’ of the EU, obviously over a long period of time. Special relationships would be designed in view of the gradual enlargement of the EU to the best-performing countries in the neighbourhood and their gradual integration in the Union’s institutions. But membership would be variable in the sense that acceding countries would be excluded from certain institutions or policies for more or less extended transition periods. Even more radically, the idea of variable geometry could be extended beyond issues such as Schengen or EMU to cover most areas of integration.

To some extent, one could argue that this scenario is quite similar to the kind of ENP plus described under Scenario I including such ideas as security partnerships: both are about variable geometry in a broad pan-European context. The basic difference lies with *status* however and the prospect of membership albeit ‘quasi’ or ‘variable’ membership. In simplistic terms as stated at the outset, there is a continuous spectrum of partial inclusion and access on the line from association to accession and this scenario labels ‘membership’ stages that are still “special relations” in the first scenario.

The basic features of a similar approach have been elaborated in some detail by Andreas Maurer and Max Haerder who name it ‘modular integration’. The elements of their model are as follows:

- Council of Ministers: full participation except in the Councils on Environment, Agriculture and Employment, Social Policy, Health and Consumer Protection
European Commission: no right to appoint commissioners, right of partner country nationals to be employed;
- European Court of Justice: no right to appoint a judge;
- Participation in Schengen;
- Inclusion in the specialised agencies of the Union but no right to nominate citizens to the directorships (²⁶).

Such a bold approach aimed at constitutionalising an EU of concentric circles would obviously constitute a radical departure and thus engender resistance. But its foreseeable benefits might make it worth it, primarily by changing the structure of incentives faced by the partner countries many of whom would consider even second-rate membership as much superior to no membership at all. Some would argue that this scenario would also make the Union’s institutional architecture extremely complex and might affect negatively decision-making processes. Yet, it is fair to note that the EU has not ground to a halt since the last enlargement – in fact it has never been more efficient (²⁷). Institutional effectiveness is not necessarily connected to numbers.

²⁶ Maurer, A. and Haerder, M. ‘Alternatives to Full Membership of the EU’, *mimeo*.

²⁷ Dehousse, R. et al. (eds.), *Elargissement, Comment l’Europe s’adapte*, Observatoire des Institutions Européennes, collection Evaluer l’Europe, December 2006

In this context, Article 7a TEU could serve a very useful bridging function. To be sure, this type of status would go well beyond the limits Article 7a sets out to define and would definitely require yet another amendment to the founding treaties. Bringing in a significant numbers of big and small countries as ‘variable geometry members’ would mean redrawing the balance of voting power in the Council amongst the Member States with all concomitant political contestation. It is hardly conceivable that there should be a new round of treaty revisions introducing ‘variable membership’

More generally, this scenario would definitely affect perceptions and expectations from respective publics and these would need to be managed most carefully. It is worth pointing out that while this approach is not about alternative polity-building, it could lend itself to a great deal of decentring as a way of addressing public perceptions as well as ‘easing the pain’ of such radical enlargement of the EU.

5.4. Scenario IV: European Partnership Area, European Area or Euro-Sphere

Our final scenario borrows both from the second (extending and deepening the logic of polity building and ‘status decentring’) and the third (implementing modular integration but not within the EU per se). To some extent, we might harp back to the idea of a European confederation proposed in 1990 by the then French President Mitterrand –except for the fact that at the time such an idea did not easily apply to the countries whose revolutionary slogan of ‘return to Europe’ did equate ‘Europe’ to the ‘European Union.’ In this case, instead of ‘variable membership’ being about membership of the EU, variable membership would be about membership in another political and economic space, union or alliance which could be labelled in different ways from Euro-sphere to European Area to European Partnership Area.

This path would consist in the building of a new set of institutions bringing together all EU and ENP countries. It is certainly compatible with Article 7a TEU and would provide the backbone of a special relationship with the neighbourhood as a whole rather than solely with individual countries. In some sense, such a multilateral body would be a continuation of the EMP community but with a broader geographical scope. And more importantly, it would entail a radical decentring of special relationships away from the EU-oriented notion of neighbourhood and the institutional management carried out from Brussels. As a polity in its own right, the European Area could have its own council of ministers (with a secretariat),²⁸ sectoral ministers’ fora, expert bodies, parliamentary assembly.

Some will argue that the problem with this scenario based on multilateralism is the danger of returning to the lowest-common denominator approach of the Barcelona Process. While such an ambitious edifice would maximise participation, equality and ownership, the degree of convergence with EU standards and therefore substantive integration would be more modest than under other scenarios. In other words, the logic of polity-building might well call into question the imperatives of policy efficiency. To tackle this problem, the arrangement could continue to be based, as with the other scenarios, on some form of concentric circles and differentiation between the partners.

At the end of the day, economic functional integration, even in the context of a multilateral European Partnership Area, would likely reflect the *acquis* and not another body of standards

²⁸ The first ever meeting of ministers from the EU and the neighbourhood countries took place on 3 September 2007 in Brussels. This forum is likely to be institutionalised in the future.

jointly crafted by the partners. But policy emphasis, working methods, and above all status would be partially freed from the logic of convergence. Such a de-linkage might be especially appealing, given the EU's member states varied approaches to many of the challenges of our time, from social integration to biological ethics. In a world of subsidiarity, there is not always an 'EU standard' to converge to.

A regional polity straddling the neighbourhood area could nevertheless be underpinned by multilateral trade liberalisation. The wide membership of the group would make it unlikely to pursue a deep free trade agenda leading to a demand for differentiation from the more advanced ENP countries. This might mean that in order to bring them on-board in such a multilateral community-building project the EU would have to introduce instruments allowing for deeper integration at the bilateral level, including tailor-made trade agreements, mutual recognition, harmonisation and capacity building. This in turn would not be as problematic as it sounds if the new area was not to be 'without borders' in the EU sense.

In the end, providing neighbours with a status which is different from membership or even quasi-membership would likely help the Union's pursuit of internal consolidation and external relevance but would, no doubt, blunt the ENP, reducing its efficiency as a transformative instrument.

It should be clear to the reader at this point that each approach has strengths and weaknesses related to the basic dilemmas outlined at the outset of this paper (hegemony vs. partnership, conditionality vs. ownership, bilateralism vs. multilateralism, differentiation vs. homogeneity, functional vs. geostrategic vision). No scenario can buy "the right balance" on all these counts. But they should help put these dilemmas in a more concrete policy perspective.

6. Conclusion: five recommendations to the European Parliament

Discussions on the future directions of the ENP are bound to become increasingly salient both within the EU and in the neighbouring countries. Whatever scenario the EU may opt for, the European Parliament must be present in this conversation. Such an involvement would reflect the importance accorded by the EU to expectations from within and from without: we must not forget that the European Parliament's declarations are often followed more closely in non-member countries than by EU publics.

However, we do not think that the Parliament can make its most significant contribution on the small-scale, policy-oriented debates which are very much framed by the Commission along the lines of the first scenario laid out above. Rather, it should turn to the strategic long-term questions regarding the Union's relations with its eastern and southern neighbours, and be regarded so to say as 'the guardian of legitimacy and sustainability.' The comparative advantage of the Parliament is that it can address openly the dilemmas we have discussed and provide space for confrontation between different viewpoints. Though such exchanges should be carried out in cooperation with the Commission and the Council, the European Parliament can afford to be bolder and more provocative. And while institutional capacity may be limited, the Parliament has access to many channels for promoting policy change and engaging different publics, including its recently instituted EP Agora – and perhaps a neighbourhood Agora in the future.

When it comes to the substance of this debate, this report suggests *inter alia*, five recommendations to the European Parliament:

- Recognise: *'Status matters for the partner countries'*

Special relationship should recognise the status aspirations of the neighbouring countries. Short-term policy measures such as the ENP provide only a temporary solution to that challenge. At the symbolical level, the EU should introduce institutional frameworks which signal to the neighbours that they are seen as partners rather than as apprentices when it comes to special relationship. The Union should also find ways to recognise the difference between East and South. This could happen through the third scenario (decoupling) but there are also less radical ways— e.g. through the launch of a multilateral body along the lines of the Barcelona Process for the Eastern partners.

- Decentre: *'We are the neighbourhood of our neighbours'*

There is a way to convince our neighbours of our good faith when we talk of 'partnership' and 'shared ownership': to radically decentre the neighbourhood concept and associated practices away from Brussels. Here, the European Parliament has a key role to play: both through the bilateral parliamentary committees and through multilateral bodies such as the Euro-Mediterranean Parliamentary Assembly or even a future pan-ENP parliamentary institution. At the level of ideas, decentring the 'neighbourhood' means taking the gap between external expectations and EU actions seriously and seeking to picture non European maps. Decentring does not necessarily imply doing away with conditionality but refers to how it is designed and by whom.

- Delink: *'Special relationships are not accession minus'*

It is all very easy to encourage debate (who could be against!), but here is at least one crucial caveat. Pushing the issue of the ENP's *finalité* into the spotlight could open up a Pandora's box and restart the controversy over Europe's borders. This would, no doubt, jeopardise the Commission's step-by-step policy which is already producing some palpable, though arguably modest, results. The most cautious response is for the European Parliament to take the lead on neighbourhood issues if and when the issue of 'Europe ends' is in the spotlight anyway. There is an alternative, however, which is to reframe the issue in such a way so as to sever the link between special relationship and accession, building on the current qualification of 'membership neutrality.' How? For one, the EU should ensure that the offer of special relationship is received as something positive rather than a consolation prize substituting for full membership. This implies that special relationships should address key issues that top the partner countries' agendas such as free movement of people and access to the EU markets, including in agricultural products. This in turn implies that these relationships be presented not as pre- or non-accession but as the advanced dimension of Europe's engagement with the world at large, the testing ground on which to promote a new brand of EU-universalism. The real issue at stake here is Europe's capacity to persuade its neighbours that cooperative polity-building, rather than the build-up of defensive walls, inspires its action – even if positive impacts on curbing migratory flows are welcome by-products.

- De-Turkify: *'The case of Turkey should not hijack the fate of special/privileged relationships'*

Clarifying the relationship between EU-Turkey relations and neighbourhood issues would help entrench such de-linkage, while also enhancing these relations. Indeed, the neighbourhood debate should be effectively divorced from the question of Turkey's accession which has tended to hijack all deliberations on 'privileged partnership'. A special relationship may or may not be on the cards for Turkey down the road, but it is not on the cards today, not should it be until the end of the current accession negotiations has been reached. If that is the case, it will be much clearer to partners that such relationships are not alternatives to membership. Such clarity would in turn reassure Turkey that participating in the ENP ought not to affect its accession bid – on the contrary, proposals for early integration in foreign policy missions and the likes can strengthen its case for 'indispensability'. Otherwise, we are likely to witness the paradox that some neighbours might be more closely associated with the EU in some areas than a Turkey which chooses to pursue exclusively the all-or-nothing logic of accession. The message: accession can be supplemented without being supplanted.

- Open: *'Special relationship is about inclusion'*

One of the key background factors for this report lies with integration fatigue which has been politely translated in institutional terms as integration capacity – or rather lack thereof. And yet, we find that special or privileged partnerships do not come on the cheap. ENP is certainly no low-cost alternative to the enlargement policy if it is expected to pay back dividends to the Union. EU policymakers should realise that the issue of integration capacity is as relevant to the ENP and be prepared to sell the latter to their reluctant electorates. Apart from additional financial and human resources (e.g. through the expansion of the EU delegations in partner countries), this would mean concessions in sensitive areas such as agriculture, free movement of people and access to the Union's decision-making process. The European Parliament could be one of the indispensable institutional channels to convey this message to the EU political elites and publics. Ultimately, neighbours rather than being perceived as potential drains on the EU's integration capacity could be seen as potential contributors to it. Better integration means in particular both more effective and more humane control of flows of people. It means refusing the stark dichotomy between a Europe-fortress and a Europe-refuge. Organising fluidity in the Eurosphere, by facilitating temporary and back and forth movements and investment in the home country would constitute a preventive strategy against extremism and terrorism, more effective than any crackdown in recent history.