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The European Union and Eastern Europe migration policy convergence beyond Europeanisation: the cases of Russia, Ukraine, Moldova and Georgia

Tesi doctoral presentada per

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Soţiei mele

Als meus pares
i a tota la meva família

This dissertation solely represents the views of its author and cannot in any case circumstances be regarded as the official position of the European Commission.

Abstract

In 2004, the European Union (EU) launched the European Neighbourhood Policy (ENP) to strengthen cooperation in areas such as migration. In particular, the external dimension of the EU migration policy in Eastern Europe (the Eastern Partnership countries and Russia) has been very active and under huge academic scrutiny, mostly with studies claiming that the EU exports its own norms. Yet, this Europeanisation approach does not take into account the interests and capacities of Eastern European countries, as well as their perceptions of legitimacy. A decade after the launch of the ENP, this thesis addresses the question of what norms are actually adopted in the EU-Eastern Europe migration policy convergence. Three models of policy convergence (towards EU norms, towards international norms and towards bilaterally-agreed norms) are identified, depending mainly on the structure of power and perceptions of legitimacy in Eastern Europe. Migration policy convergence is applied to the cases of (I) readmission, (II) visa, (III) border management and (IV) labour migration.

The doctoral dissertation concludes that the EU-Eastern Europe migration cooperation has not consisted in the systematic adoption of EU norms. It argues that the EU primarily has promoted security-related EU norms (readmission agreements and Integrated Border Management). However, due to lack of enough EU leverage and low perceptions of EU legitimacy among the Eastern neighbours, the EU has offered incentives in the field of mobility (visa policy and mobility partnerships). Empirical evidence shows weaknesses in policy convergence to EU norms, consisting mainly in socialisation measures (information exchange and capacity-building). One of the main findings of the thesis is that the EU is actively promoting, in the framework of visa liberalisation, policy convergence towards international norms in the area of rule of law. In fact, norms emanating from the Council of Europe and the United Nations are perceived as more legitimate than EU norms. However, this EU role as norm-transmitter has to be nuanced by the fact that to date the EU has played a relatively limited role in promoting international norms in the area of migrants' rights. Finally, convergence to bilaterally-agreed norms has been the least predominant. A comparison across Eastern European countries shows that the policy instruments adopted are by and large similar for the sake of consistency. Nonetheless, the leverage of each country vis-à-vis the EU has usually shaped more or less favourable conditions for the country. In addition, the perceptions of legitimacy and willingness of each country to come closer with the EU are essential. Overall, Ukraine, Moldova and Georgia are willing countries whereas Russia has built a pragmatic cooperation on migration with the EU, playing a role in the institutionalisation of the migration agenda to Eastern Europe. Finally, the thesis contributes overall to debate on the EU soft power in the Neighbourhood, concluding that the adopted migration policy instruments are much more oriented at promoting security than mobility.

Resumen en castellano

La Unión Europea (UE) presentó la Política Europea de Vecindad (PEV) en 2004 para fortalecer la cooperación en áreas como la inmigración. La dimensión exterior de la política de inmigración de la UE hacia Europa Oriental (Asociación Oriental y Rusia) ha sido muy activa y objeto de numerosos trabajos académicos, en gran parte centrados en afirmar que la UE exporta sus propias normas. Sin embargo, la teoría de europeización no tiene en cuenta los intereses y capacidades de los países de Europa Oriental, así como sus percepciones de legitimidad. Una década después de la puesta en marcha de la PEV, la tesis responde a la cuestión sobre qué normas la UE y Europa Oriental adoptan en la convergencia normativa en materia de inmigración. Se identifican tres modelos de convergencia (hacia normas de la UE, normas internacionales y normas acordadas bilateralmente), en función fundamentalmente de la estructura de poder y de las percepciones de legitimidad en Europa Oriental. La convergencia normativa en política de inmigración se aplica a los casos de (I) readmisión, (II) visados, (III) gestión de fronteras e (IV) inmigración laboral.

La tesis doctoral concluye que la cooperación en política de inmigración entre la UE y Europa Oriental no consiste en la adopción sistemática de normas de la UE. Argumenta que la UE ha promovido fundamentalmente normas de la UE en el ámbito de seguridad (acuerdos de readmisión y Gestión Integrada de Fronteras). Aun así, debido a la falta de poder suficiente de la Unión y a bajas percepciones de legitimidad de la Unión entre los vecinos de Europa Oriental, la UE ha ofrecido incentivos en el ámbito de la movilidad (política de visados y asociaciones para la movilidad). La evidencia empírica muestra debilidades en la convergencia normativa hacia normas de la UE, que consisten en gran parte en medidas de socialización (intercambio de información y formación). Uno de los resultados más significativos de la tesis es que la UE promueve activamente, en el marco de la liberalización de visados, la convergencia normativa hacia normas internacionales en materia de estado de derecho. Las normas que emanan del Consejo de Europa y de Naciones Unidas son de hecho percibidas como más legítimas que las normas de la UE. No obstante, este rol de la UE como transmisora de normas hay que matizarlo por el hecho de que la UE ha jugado hasta la fecha un rol limitado en promover normas internacionales de derechos de los inmigrantes. Finalmente, la convergencia hacia normas acordadas bilateralmente ha sido el modelo menos predominante. La comparativa entre los países de Europa Oriental muestra que los instrumentos adoptados son similares por el objetivo de la UE de ser coherente. Sin embargo, el poder de negociación de cada país con la UE ha dado pie a condiciones más o menos favorables para el país. Además, las percepciones de legitimidad y la voluntad de cada país de acercamiento a la UE son elementos clave. En conjunto, Ucrania, Moldavia y Georgia son países favorables al acercamiento a la UE mientras que Rusia ha construido una cooperación pragmática en materia de inmigración con la UE, influyendo en la institucionalización de la agenda de inmigración con Europa Oriental. Finalmente, la tesis contribuye globalmente al debate sobre el *soft power* de la UE en la vecindad, concluyendo que los instrumentos de inmigración adoptados están mucho más orientados a promover la seguridad que la movilidad.

Resum en català

La Unió Europea (UE) va presentar la Política Europea de Veïnatge (PEV) el 2004 per tal d'enfortir la cooperació en àrees como ara la immigració. La dimensió exterior de la política d'immigració de la UE a Europa Oriental (Associació Oriental i Rússia) ha estat molt activa i objecte de nombrosos treballs acadèmics, en gran part centrats en afirmar que la UE exporta les seves pròpies normes. Tanmateix, la teoria d'europeïtzació no té en compte els interessos i capacitats dels països d'Europa Oriental, així com les seves percepcions de legitimitat. Una dècada després de la posada en marxa de la PEV, la tesi respon a la qüestió sobre quines normes la UE i Europa Oriental adopten en la convergència normativa en matèria d'immigració. S'identifiquen tres models de convergència (envers normes de la UE, normes internacionals i normes acordades bilateralment), en funció fonamentalment de l'estructura de poder i de les percepcions de legitimitat a Europa Oriental. La convergència normativa en política d'immigració s'aplica als casos de (I) readmissió, (II) visats, (III) gestió de fronteres i (IV) immigració laboral.

La tesi doctoral conclou que la cooperació en política d'immigració entre la UE i Europa Oriental no consisteix en l'adopció sistemàtica de normes de la UE. Argumenta que la UE ha promogut fonamentalment normes de la UE en l'àmbit de seguretat (acords de readmissió i Gestió Integrada de Fronteres). Malgrat tot, a causa de la manca de poder suficient de la UE i a baixes percepcions de legitimitat de la UE entre els veïns d'Europa Oriental, la UE ha ofert incentius en l'àmbit de la mobilitat (política de visats i associacions per a la mobilitat). L'evidència empírica mostra debilitats en la convergència normativa envers normes de la UE, que consisteixen en gran part en mesures de socialització (intercanvi d'informació i formació). Uns dels resultats més significatius de la tesi és que la UE promou activament, en el marc de la liberalització de visats, la convergència normativa cap a normes internacionals en matèria d'estat de dret. Les normes que emanen del Consell d'Europa i de Nacions Unides són de fet percebudes com a més legítimes que les normes de la UE. No obstant, aquest rol de la UE como a transmissora de normes cal matitzar-lo pel fet que la UE ha jugat ara com ara un rol limitat en promoure normes internacionals de drets dels immigrants. Finalment, la convergència envers normes acordades bilateralment ha estat el model menys predominant. La comparativa entre els països d'Europa Oriental mostra que els instruments adoptats són similars per l'objectiu de la UE de ser coherent. Tanmateix, el poder de negociació de cada país amb la UE ha donat peu a condicions més o menys favorables pel país. A més a més, les percepcions de legitimitat i la voluntat de cada país d'apropament a la UE són elements clau. En conjunt, Ucraïna, Moldàvia i Geòrgia són països favorables a l'apropament a la UE mentre que Rússia ha construït una cooperació pragmàtica en matèria d'immigració amb la UE, influint en la institucionalització de l'agenda d'immigració amb Europa Oriental. Finalment, la tesi contribueix globalment al debat sobre el *soft power* de la UE al veïnatge, concluent que els instruments d'immigració adoptats estan molt més orientats a promoure la seguretat que la mobilitat.

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Acronyms

ACP: Africa, Caribbean and Pacific Group of States

AFSJ: Area of Freedom, Security and Justice

BENELUX: Belgium, the Netherlands and Luxembourg

CEAS: Common European Asylum System

CEPS: Centre for European Policy Studies

CSO: Civil Society Organisation

CIS: Commonwealth of Independent States

CFSP: Common Foreign and Security Policy

CVAC: Common Visa Application Centre

DCFTA: Deep and Comprehensive Free Trade Agreement

DG: Directorate General

EaP: Eastern Partnership

EASO: European Asylum Support Office

EDPS: European Data Protection Supervisor

ECJ: European Court of Justice

EFTA: European Free Trade Association

EMCDDA: European Monitoring Centre for Drugs and Drug Addiction

ENP: European Neighbourhood Policy

ENI: European Neighbourhood Instrument

ENPI: European Neighbourhood and Partnership Instrument

EPC: European Political Cooperation

ERTA: European Road Transport Agreement

EU: European Union

EUBAM: European Union Border Assistance Mission to Moldova and Ukraine

EEAS: European External Action Service

Europol: European Police Office

Eurojust: Judicial Cooperation Unit of the European Union

FATF: Financial Action Task Force

Frontex: European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

FTA: Free Trade Agreement

GAM: Global Approach to Migration

GAMM: Global Approach to Migration and Mobility

GCIM: Global Commission on International Migration

IBM: Integrated Border Management

ICAO: International Civic Aviation Organisation

ICPS: International Centre for Policy Studies

ICMPD: International Centre for Migration Policy Development

IDP: Internally-Displaced Person

ILO: International Labour Organisation

IOM: International Organisation for Migration

JHA: Justice and Home Affairs

LIBE: Committee on Civil Liberties, Justice and Home Affairs (European Parliament)

MEP: Member of the European Parliament

MGIMO: Moscow State Institute of International Relations

NGO: Non-Governmental Organisation

ODIHR: Office of Democratic Institutions and Human Rights

OSCE: Organisation for Cooperation and Security in Europe

PCA: Partnership and Cooperation Agreement

SBTA: Small Border Traffic Agreement

TACIS: Technical Assistance to the Commonwealth of Independent States

TAIEX: Technical Assistance and Information Exchange Programme

TCN: Third Country Nationals

TEC: Treaty on European Community

TEU: Treaty on European Union

TFEU: Treaty on the Functioning of the European Union

TREVI: *Térrorisme, Radicalisme et Violence Internationales*

UACES: University Association for Contemporary European Studies

UNDP: United Nations Development Programme

UK: United Kingdom

US: United States

UN: United Nations

CHAPTER I. Introduction

1. Introduction

The ENP was as grandiose in its ambition
as it was timid and insufficient in its implementation.
(Lehne, 2014)

The Treaty of Lisbon established that the European Union (EU) 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" (Treaty on European Union - TEU, 2009: article 8.1).[1] In order to implement this objective, the European Neighbourhood Policy (ENP) was launched in 2004, based on the Commission Communication on a Wider Europe (European Commission, 2003a). Academic debate soon emphasised the EU influence and capacity to transform its neighbours, exporting EU rules and standards. In other words, authors contended that the EU soft power in the Neighbourhood was translated into the Europeanisation of neighbouring countries.[2] Despite the literature highlighting the role of the EU as a regional normative power, the ENP was soon criticised for its imperialist and Eurocentric approach (Barbé, 2005).

In 2015, more than a decade after the launch of the ENP, the widespread assumption in the literature of the EU soft power in the Neighbourhood has been called into question. Several authors have been vocal in challenging the alleged influence of the EU in the Neighbourhood. For instance, Lehne (2014) argues that "much of the EU's neighborhood is in turmoil, economic transition has slowed down, and the EU's influence is diminished. It is time for a Copernican revolution in the EU's neighborhood policy. The union is not the center of the universe, and its neighboring states are not satellites but follow their own trajectories. (…) Some want the closest possible relations with the EU; others wish to remain distant."

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[1] See Hanf (2011) for a legal interpretation of article 8 TEU.
[2] On the concept of Europeanisation, see Radaelli (2000) and Börzel and Risse (2000). Chapter III will develop the terminology used in the dissertation.

Likewise, Mikail (2015) claims that "[t]he results (of the ENP) are dubious. The union's top-down approach worked neither with the Eastern Partnership (EaP)[3] countries nor with the countries of the Southern Mediterranean. And the EU still has to figure out how its own Eurocentric considerations can serve countries whose populations are struggling simply to achieve security, stability, and better living conditions." This thesis will shed light into the EU's role in the Neighbourhood in this timely moment of reflection of the effectiveness of the ENP, more than a decade after the policy was put in place, by looking at the actual norms which are part of its cooperation with neighbouring countries.

The EU policies with neighbouring countries have developed in parallel with the process of European integration in the so-called external dimension of a given EU policy area. Among them, the external dimension of the EU migration policy has been one of the most significant and far-reaching policies the EU has developed, notably with the countries of the ENP. Migration policy instruments have been adopted first in the countries neighbouring the EU to the East: the EaP countries and the Russian Federation, which are named 'Eastern Europe' in this doctoral dissertation.[4] These countries have only been neighbouring the Union since the accession of Central and Eastern European countries in 2004 and in 2007.[5] Although at a much slower pace, the external dimension of EU migration policy is also being progressively deployed to the countries of the Southern Mediterranean.

Regarding the policy convergence, or increased assimilation of norms in the EU migration cooperation with the EaP and Russia, predominantly the literature claims that the EU exports its own norms and standards – the *acquis communautaire* to Eastern

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[3] The Eastern Partnership (EaP) initiative was launched under the Czech Presidency at a summit in Prague in May 2009. It constitutes the first attempt to provide both a bilateral and a multilateral framework to the Eastern European neighbours of the Union: Belarus, Moldova and Ukraine, as well as the three South Caucasian Republics (Armenia, Azerbaijan and Georgia). Russia decided not to participate in the initiative, since it perceived it as a mechanism to extend the sphere of influence of Brussels in Eastern Europe. Furthermore, Moscow would have been on equal footing with former Soviet countries as partner in the EaP.

[4] Hereafter referred to as Russia. Lascoumes and Le Galès (2007) define policy instruments as a "device that is both technical and social, that organises specific social relations between the state and those it is addressed to, according to the representations and meanings it carries. It is a particular type of institution, a technical device with the generic purpose of carrying a concrete concept of the politics/society".

[5] The EU Eastern border was extended in 2004 to Estonia, Latvia, Lithuania, Poland, Slovakia and Hungary and in 2007 to Romania. Bulgaria and Croatia are not directly bordering Eastern European countries.

Europe.[6] While the literature has focused on assessing the development of the migration policy instruments, including its scope, accountability and compliance with the protection of fundamental rights, the added value of this doctoral dissertation lies in addressing systematically the policy convergence models of migration policy instruments.

Nevertheless, the thesis will demonstrate with empirical evidence that there is actually quite a more nuanced picture of EU policy convergence with Eastern Europe in the migration field. An analysis of the migration agenda set out between the EU and Eastern Europe reveals that norms emanating from international organisations such as the Council of Europe or the United Nations (UN) are part of the migration cooperation. Moreover, the adoption of bilateral, tailor-made agreements has also been part of migration cooperation between the Union and Eastern Europe. It seems that the assumption that the EU only seeks to promote the *acquis* does not reflect all the measures which are part of the EU migration cooperation. Therefore, this thesis builds on the misfit between the predominant Europeanisation theoretical approach and empirical evidence that shows that the export of EU norms is not always the model followed.

The EU migration policy is currently subject to a broad debate on the orientation it should take in the future, with the adoption of a European Agenda on Migration (European Commission, 2015c). Actually, migration has been identified as one of the priorities of the Juncker Commission.[7] As a consequence, the traditional function of Commissioner for Home Affairs has been reshuffled as Commissioner for Migration, Home Affairs and Citizenship.[8]

The external dimension of the EU migration policy has been articulated under the umbrella of the Global Approach to Migration (GAM) since 2005,[9] which was strengthened with a mobility component in 2011 with the adoption of a Global

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[6] See Knill (2005) on the concept of policy convergence.

[7] The college of Commissioners chaired by President Jean-Claude Juncker took office in November 2014 after the European Parliament elections held in May 2014.

[8] Dimitris Avramopoulos has been holding this position since November 2014. His predecessor was Commissioner for Home Affairs Cecilia Malmström (2009-2014). See Carrera and Guild (2014b) for a detailed analysis of the distribution of responsibilities on migration issues across the members of the Juncker Commission.

[9] See European Commission (2005b) on the vision for the external dimension.

Approach to Migration and Mobility (GAMM).[10] Striking a balance between security and mobility in the external dimension of the EU migration policy has been a challenge since the time the EU started cooperating in the field of Justice, Liberty and Security (JLS). The present thesis will shed light on the extent to which the GAMM provides mobility opportunities for the people of Eastern Europe.

This introductory chapter will present the research design of the thesis, including the relevance of the object of study – the policy convergence between the EU and Eastern Europe in the field of migration -, the objectives and research questions. In the subsequent section, the case studies are presented. Section 4 deals with the methodology applied in the research. To conclude, the chapter presents the structure of the dissertation and some concluding remarks.

2. Research design

2.1 Relevance of policy convergence between the EU and Eastern Europe in the field of migration

The object of study of this doctoral dissertation is the policy convergence between the EU and Eastern Europe in the field of migration. A first consideration to bear in mind is that the EU migration cooperation with Eastern Europe is relatively a nascent policy domain. While the EU started formulating migration policies under the third pillar on Justice and Home Affairs (JHA) of the Treaty of Maastricht, it only started developing an external dimension on migration in 1999 with the entry into force of the Treaty of Amsterdam. An indication of the recent development of the policies is that the first document setting out an EU migration agenda with a country in Eastern Europe was the 2001 EU-Ukraine action plan on JHA (European Union – Ukraine, 2001).

After the demise of the Soviet Union, the EU negotiated partnership and cooperation agreements (PCAs) with Eastern European countries, which are being progressively replaced by association agreements. These new agreements reflect the current state of cooperation between the EU and each country and provide a strengthened legal basis in

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[10] The GAM was launched under British Presidency at the Hampton Court European Council in 2005. Chapter II will further elaborate on the GAM.

order to facilitate the further development of the cooperation. So far, association agreements are provisionally applied in Ukraine, Moldova and Georgia. Chapter II provides an overview of the EU bilateral cooperation framework with Eastern Europe.

The thesis will show how the literature of the external dimension of the EU migration policy has paid particular attention to the link between security and mobility from a normative point of view.[11] Critical normative strands in the literature have analysed the implications of the formulation of an EU migration policy for the protection of fundamental rights and freedoms in the EU, in particular in respect of the visa liberalisation process and of the adoption of mobility partnerships.[12] Albrecht (2002) coined the concept of *fortress-Europe* to refer to the security measures such as visa requirements and increased checks at the EU external border. Actually, both legal and political science works have addressed the protection of fundamental rights in the external dimension of the EU migration policy.[13]

Academic work has also given attention to the process of integration of the EU migration policy *ad intram*, whereas the external dimension has been less explored. However, scholarly work on the external dimension includes a number of reference academic studies.[14]

Furthermore, among the migration policy instruments adopted in third countries, those which are legally binding have been the object of more academic work. While the negotiations on readmission and visa facilitation agreements have been covered broadly in the literature, non legally-binding instruments such as the visa liberalisation process, mobility partnerships and Frontex working arrangements have been less researched.[15]

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[11] As Bigo contends, while there is a lot of activity on security, "il n'en va guère de même pour les droits de la défense en matière judiciaire ou pour une extension à la même vitesse des droits et libertés des citoyens et des étrangers vivant sur le territoire de l'Union" (2009: 331).

[12] The EU visa policy is dealt with in Chapter VI and mobility partnerships in Chapter VII.

[13] See Manero Salvador (2014) and Pacouau (2014) for comprehensive accounts on the protection of fundamental rights in the EU external policies.

[14] See the work of Balzacq (2009), Boswell (2007), Didier, Carrera, Delgado (2010), Esteve (2009, 2010, 2012, 2014), Fajardo del Castillo (2006), García Andrade (2013), Guild and Walker (2010), Guild, Khasson and Mir (2007), Iglesias Sánchez (2012), Kerchove and Weyemberg (2003), Lavenex (2006), Lavenex and Uçarer (2004), Martín y Pérez de Nanclares (2002, 2008, 2012), Pi LLorens (2010, 2014), Olesti Rayo (2008, 2012), Sterkx (2008), Trauner and Carrapiço (2012), Urrea Corres (2012), Wichman (2007) Wolff and Mounier (2012), Zapata-Barrero and Zaragoza (2008) and Zapater Duque (2012, 2014).

[15] On border management, the thesis analyses, besides Frontex (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union) working

The thesis delves into these four policy instruments on equal footing. Its originality lies in putting together a wide range of policy instruments which are part of an overall migration policy agenda. There is so far almost no academic work assessing the links among these policy instruments.

Finally, the dissertation covers not only countries in the Eastern Neighbourhood but also assesses the EU-Russia migration policy convergence. It is worth noting that EU-Russia migration cooperation has not had the same scholar attention as developments in the EaP countries. There is a deficit of scholarly analysis of sector policies in EU-Russia cooperation which is covered by the thesis.

The object of study of the thesis is relevant because of its timeliness. Since October 2013, when a tragedy off the Coast of Lampedusa took the lives of several hundreds of migrants, the number of incidents in the Central Mediterranean has not ceased to increase. The most recent one at the time of writing was on 5 August 2015 just a few miles off the coast of Libya. This showed how far the EU is to have instruments at its disposal to respond effectively to the challenge of migration while providing international protection to refugees. Overall, the thesis will assess broadly the development of an EU common migration policy.

The latest figures in August 2015 bring the total number of refugees and migrants crossing the Mediterranean to a dramatic figure close to 300,000, mainly to Greece and Italy (United Nations High Commissioner for Refugees - UNHCR, 2015). According to the UNHCR, "the vast majority of last week's arrivals were Syrians (…), Afghans (…) and Iraqis (…), confirming that the overwhelming majority of arrivals are likely to qualify for refugee status" (2015).

Since migration cooperation is not a concluded process, it was not an easy task to set the timeframe for analysis. The cooperation indeed evolves and develops quickly. The future research section at the end of the thesis will explore the many possibilities for further research on the external dimension of the EU migration policy. The timeframe

arrangements, the activity of the European Union Border Assistance Mission to Ukraine and Moldova (EUBAM), which is practically under researched to the extent that field work in Odessa was essential for gathering empirical data.

spans from 1999 with the entry into force of the Treaty of Amsterdam to the JHA Council in July 2015, after the adoption by the Commission in May 2015 of a new European Agenda on Migration. Although the EU migration policy with Eastern Europe is still ongoing, the timeframe from 1999 until 2015 allows the validation of the main arguments of the thesis.

The doctoral dissertation is innovative from both a theoretical and empirical perspective. From a theoretical point of view, the dissertation uses an analytical framework that nuances and refines the predominant strands in the literature on policy convergence between the EU and neighbouring countries that focus on Europeanisation as the model to explain relations in a particular sectoral area.

From an empirical point of view, the dissertation makes an analysis on equal footing of the most significant instruments or tools in EU migration policy deployed in Eastern Europe, namely readmission agreements, visa facilitation agreements and the visa liberalisation process, Frontex working arrangements and mobility partnerships.

2.2 Objectives and Concepts

As stated above, the object of study of this doctoral dissertation is the EU migration policy convergence with Eastern Europe. More specifically, four Eastern European countries have been chosen: Russia, Ukraine, Moldova and Georgia. The term of EU migration cooperation refers to the migration policy areas that have been formulated via the adoption of specific policy instruments between the EU and Eastern Europe.

The migration policy areas chosen for this thesis are readmission, border management, visa and labour migration cooperation. The respective policy instruments adopted are readmission agreements, the working arrangements signed between the Frontex agency and the border services of Eastern European countries, visa facilitation and the process aimed at the liberalisation of visas and mobility partnerships.

The empirical analysis concentrates mainly on the process leading to the adoption of the above mentioned instruments. Focusing on the adoption allows us to identify and explain the EU migration policy convergence models with Eastern Europe. The choice

of these four policy areas within the EU migration policy does not mean that areas such as asylum policy and the protection of fundamental rights are not covered in the thesis. Actually, the thesis will give evidence that a policy instrument like for instance the visa liberalisation process encapsulates areas like asylum and the protection of fundamental rights. Academic work has often neglected the cross-cutting nature of many of the instruments adopted by the EU in the field of migration.

In some cases, the dissertation also focuses on the implementation of policy instruments, when this is necessary to understand what instruments in the external dimension of the EU migration policy are actually about, as well as to establish links between different policy tools. This is the case for readmission agreements, presented as a priority or cornerstone in the EU migration policy, and mobility partnerships, a policy tool encompassing a wide range of policy initiatives. While the negotiations on the adoption of these policy instruments continue to be the main focus of the dissertation, it is necessary to also look at how they have been deployed.

The overall objective of the doctoral dissertation is to provide an empirical explanation of the reasons underlying the option for policy convergence between the EU and Eastern Europe in the field of migration. As a first step, the policy convergence pattern will be identified. Then, the factors that explain the EU opted for this particular model will be examined. This analysis contributes to the theoretical approach on Europeanisation of the EU Neighbourhood refining and nuancing the predominant claim that that the EU only seeks to export its EU norms and standards. Building on existing literature on Europeanisation, the thesis applies systematically an analytical framework to identify an explain policy convergence models with Eastern Europe in the field of migration.

At the theoretical level, the main aim of the dissertation is to challenge Europeanisation as the main strand in the current International Relations literature to explain EU migration cooperation with third countries. The dissertation has the objective to contribute to research on what norms and standards are actually being adopted in the external dimension of the EU migration policy.

This thesis provides a comprehensive overview of policy instruments in the field of migration with Eastern Europe. Therefore, at the empirical level, the objective is to shed light on the norms within the policy convergence when the EU and Eastern European countries adopt migration policy instruments. The research carried out is mainly empirical and enables to apply an analytical framework and extract theoretical conclusions with the empirical data.

The term Eastern Europe refers in this dissertation to the countries neighbouring the EU to the East, regardless of the cooperation framework the EU has set up with them. For this reason, the term includes not only the countries participating in the ENP[16], but also Russia, whose cooperation framework with the EU is based on Common Spaces launched at the Saint Petersburg Summit in 2003.

The ENP is at the time of writing being reviewed in view of the adoption of a Communication of the Commission and the High Representative on the ENP planned to be issued in November 2015.[17] In this sense, Gartner (2015) contends that "the priorities of neighbours have shifted, with security a dominant anxiety. Some neighbours have changed their posture, with – for example – Russia now more aggressive, Azerbaijan more assertive in rejecting the EU's demands (…)."

2.3 Research Questions

The thesis follows a deductive pattern. At the theoretical level, it responds to the questions presented below in order to address whether Europeanisation is the predominant policy convergence model in the external dimension of the EU migration policy.

As a first step to the writing of this dissertation, a Master thesis defended in September 2009 focused on policy convergence models identified not on EU migration specific

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[16] Ukraine, Belarus, Moldova, Georgia, Armenia and Azerbaijan are the Eastern European countries participating in the ENP.
[17] The review of the ENP will be examined in Chapter II.

policy instruments but on the agenda towards Eastern Europe.[18] In addition, the Master thesis had the aim to identify the reasons why the EU and Eastern European countries opted for the specific commitments set out in the migration agenda. The actual questions were

- *What are the policy convergence patterns in the EU migration agenda with Eastern Europe?*
- *Furthermore, what are the reasons underlying the adoption of the commitments set out in the migration agenda between the EU and Eastern Europe?*

The Master thesis concluded that the EU and Eastern European countries set out a migration agenda encompassing mainly norms which are not part of the *acquis*. Building on the findings of the Master thesis, the doctoral thesis assesses how the policy commitments have been translated into policy outputs by adopting several policy instruments. The consequences of the adoption are different policy convergence models (dependent variable) which are in turn motivated by several factors (independent variables).

The following questions will be systematically answered for each of the migration policy areas analysed in the thesis:

1. *What are the policy convergence models underlying the adoption of the EU migration agenda with Eastern Europe?*
2. *What are the reasons that have led to the choice of these policy convergence models?*

Empirically, the thesis analyses, from a comparative perspective, four countries in Eastern Europe: Russia, Ukraine, Moldova and Georgia. In light of this analysis, the following third question will be also answered:

3. *What are the differences and similarities in the EU migration cooperation amongst the countries in Eastern Europe?*

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[18] *La agenda de inmigración de la UE hacia los vecinos de Europa oriental: los casos de Rusia, Ucrania y Moldova* was defended at the Universitat Autònoma de Barcelona on 9th of September 2009. The evaluating panel was composed by Prof Esther Barbé, supervisor of this dissertation, Dr Eduard Sagarra and Dr Esther Zapater.

3. Case studies

The thesis deals with four migration policy areas – readmission, border management, visa cooperation and labour migration. For the four of them, the dissertation has identified major policy instruments or tools.[19] These policy instruments constitute the case studies because the object of study of the thesis is policy convergence in each of the policy areas underlying these instruments. The systematic application of the analytical framework leads to a variation of results. In addition, these cases keep a balance of representativeness and relevance among policy areas in the external dimension of the EU migration policy.

Each of the case studies is applied to four countries in Eastern Europe: Russia, Ukraine, Moldova and Georgia. All of them are former Socialist Republics in the Soviet Union and subsequently integrated in the Commonwealth of Independent States (CIS). Nonetheless, Georgia ceased its membership from the CIS officially in 2009.[20] As for Ukraine, it has not ratified the Treaty of accession to the CIS. Actually, armed conflict in Ukraine since 2013 has had a clear impact on Russia-Ukraine relations and the Ukrainian Rada has debated the withdrawal of Ukraine of the CIS.[21]

Brussels has established similar cooperation frameworks with Eastern Europe after the demise of the Soviet Union, which consisted in the signature of PCAs. The first reason why these four countries were selected is all that they have all signed readmission and visa facilitation agreements with the EU. It could be argued that they are the 'most advanced' countries to cooperate with the EU in the field of migration. The successors of PCAs, association agreements, were signed in 2014 and are provisionally applied in Ukraine, Moldova and Georgia.

Nevertheless, the four countries differ in a series of aspects. First, their position in the structure of power in the international system has led to different bilateral relations with the EU. For instance, the position of Russia as a great power has given way to a relation

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[19] Both terms are used interchangeably in the dissertation.
[20] The actual withdrawal of Georgia from the CIS took place in August 2008 after armed conflict with Russia for the breakaway entity of South Ossetia.
[21] Haukkala (2015) suggests that the conflict is the culmination of a 'long-term crisis' in EU-Russia relations linked with the EU's attempt to order pan-European space and Russia's reaction to this attempt.

which puts emphasis on symmetry and reciprocity. Second, the willingness or reticence of neighbouring countries in adopting the EU migration agenda may differ among the four countries. Third, despite differences in migration trends, the four Eastern European countries share demographic contexts characterised by population decline, with low birth rates and an increasingly ageing population.

As the introduction anticipated, Eastern Europe has been chosen because it has been so far the area where the EU has developed a stronger cooperation in the field of migration. This is not surprising if we bear in mind that this is the closest neighbouring region to the Union. Unlike the Southern neighbours, where the Mediterranean Sea acts as a border, Eastern Europe is linked with the rest of the EU with a land border.

In fact, all Eastern European countries face a challenge to manage migration flows to the EU and Russia. As for Ukraine, it is the largest and, arguably, the most important partner of the ENP (Langbein and Wolczuk, 2012: 863). In fact, the name Ukraine means 'border zone' in old Slavic. Millions of Ukrainians emigrated after the fall of the Soviet Union, mainly to the EU and Russia.[22] Furthermore, Ukraine is as Russia also a transit country of migrants coming from Southern Asia (European Commission, 2008b).

Ukraine shares intense ties with neighbouring EU Member States, notably with Poland. Ukrainian and Polish nationals not only benefited from a visa-free regime since 1996 until the accession of Poland to the EU, but maintained an area around the border in which there were deep economic and social exchanges, coined as 'borderlands' (Comelli, Greco and Tocci, 2007).[23] The EU regulated the possibility to keep ties between both sides of the border with the Small Border Traffic Regulation (European Parliament and Council of the European Union, 2006c), which will be analysed in Chapter VI.

In fact, the reintroduction of visas for Ukrainian nationals was a matter of concern in Poland, in what was defined as a "cut through a common cultural homeland" (Lavenex, 2005: 92) or "an exemplary case of the negative consequences of the EU enlargement

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[22] The International Migration Report (2013) highlights Ukraine as one of the countries with the highest number of nationals abroad worldwide.

[23] The Ukrainian city of Lviv, (Polish Lwów), former capital of the Galicia, extends its area of influence beyond the border with Poland.

on the relations between new member states and their Eastern neighbours" (Natorski and Herranz, 2007: 23).[24] The country has been traditionally at the crossroads between the EU and Russia and its foreign policy is characterised by the supporters of major approximation with the EU and those who are in favour of a closer partnership with Russia (Shumylo, 2011). Regarding the armed conflict since 2013 between Ukraine and Russia, Monar points out that it triggered an increase in asylum applications from Ukrainian citizens to the EU Member States of 13 times in 2014 (14,040 according to Eurostat) (2015:1). It remains to be seen how the EU copes with the increased number of asylum applicants from Ukraine.

As regards Moldova, approximately one third of the population lives abroad.[25] The total dissolution of the industry sector after the fall the Soviet Union is one of the reasons behind this huge emigration wave. Moldovans emigrated to Russia and the EU. According to Jaroszewicz and Calus, roughly 10% of its population resides in the EU (300,000 people). Moldova is the country worldwide with the highest dependence on income from remittances. Moldova has been coined as a failed state, due to the lack of *de facto* control of Chişinău over the self-ruled entity of Transtristria, supported by Russia. Some authors like Parmentier have even questioned its viability as a state because of the deadlock in the negotiations for the settlement of the Transnistrian conflict (2003).

In 2009, Moldova was the scenario of political unrest following parliamentary elections won by the pro-Russian Communist party and contested by the opposition. Demonstrators in favour of the opposition called for new elections, arguing fraud in the vote count. Brussels reacted with scepticism to cooperate further with Chişinău (Dura and Gnedina, 2009). However, new elections took place in July 2009, with a majority of seats for the Alliance for European Integration. EU integration became a top priority of the Government. As former Prime Minister Vlad Filat stated: "The Republic of Moldova is a European country from both a historical and cultural point of view, and for sure it will become a member of the European family. We have a clear perspective

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[24] Natorski and Herranz (2007) defined the relations between Ukraine and Poland as 'special relations'.
[25] See Culic (2008) on Moldovan migration to the EU.

in this sense and we are not going to let it go".[26] In 2015, the pro-European coalition in Moldova is in crisis due to corruption scandals in the banking sector, which led to the resignation of Prime Minister Gaburici in June. The civil society platform 'dignity and youth' has organised massive anti-government demonstrations since April 2015 throughout the country.

One element that should be highlighted is Moldova's close relations with a Member State: Romania. Amongst the four countries analysed, Moldova is the only country to share the language and common history with a Member State. Although bilateral relations between Bucharest and Chişinău are generally smooth, the systematic granting of the Romanian nationality to Moldovan nationals is contested by the authorities in Chişinău. In 2015, approximately 500,000 of Moldovan nationals hold also the Romanian nationality, out of a population of 3,500,000 (Jaroszewicz and Calus, 2015). The incentive to obtain the Romanian nationality is very tempting for Moldovans for the opportunity to become EU citizens. This issue will be further examined in Chapter VI.

As regards Georgia, like Moldova the country does not have *de facto* control over territory under its sovereignty. The breakaway regions of Abkhazia and South Ossetia have been out of the control of Tbilisi since the disintegration of the Soviet Union and have led to armed conflicts, in which Moscow has supported the secessionist entities. The conflict in 2008 with Russia was followed by an Extraordinary European Council, whereby the Union set up a full JHA cooperation agenda with Tbilisi (Council of the European Union, 2008e).

Contrary to Ukraine and Moldova, the figures of Georgian nationals abroad are much less significant, to the extent that the International Organisation for Migration (IOM) considers Georgia not to be a country where migration plays a major role.[27] However, 800.000 people left the country after the declaration of independence.[28] Rather, the migration policy in Georgia is focused mainly to the existence of thousands of

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[26] Translation from Romanian. Declaration of Vlad Filat, 8 February 2009, formerly available on website of newspaper *Moldova azi*.

[27] Interview with a policy officer from the International Organisation Migration (IOM), Brussels, May 2009.

[28] Interview with a representative from the Permanent Mission of Georgia to the European Union, Brussels, May 2009. The Georgian diaspora tends to reside in urban areas. For instance, Barcelona is one of the EU cities with the highest Georgian community, although it is not relevant in relative terms when compared to other migrant communities.

Internally Displaced Persons (IDPs) from Abkhazia and South Ossetia, which correspond to approximately 5.4% of the Georgian total population.[29]

Finally, Russia is the largest country neighbouring the EU. Russia is the second country in the world by number of migrants after the United States.[30] Estimations show that one million of regular migrants and three to four irregular migrants are present in the Russian territory.[31] For Russia, the fall of the Soviet Union meant that the numerous populations from former Soviet Republics residing in Russia became suddenly migrants as they were not granted the Russian nationlity. Since then, Russia has also been a destination country for migrants from former Soviet Republics, like Ukrainians and Moldovans.[32] Furthermore, Russia is a major transit country for migrants into the EU.

4 Methodology and sources

This doctoral dissertation falls within the Research and Development project 'EU-IANUS – the EU in an unsettled international system: crisis, polarity and multilateralism', funded by the Spanish Ministry dealing with research and innovation.[33] The analytical framework of the project EUPROX – Coordination, Internationalisation and Europeanisation at the Proximity of the European Union (Mediterranean and Eastern Europe – is applied for the analysis of the EU migration policy convergence with Eastern Europe. Both collective projects have been implemented by the Observatory of European Foreign Policy. The results of the EUPROX includes articles in peer-reviewed journals such as *Cooperation and Conflict* (Barbé *et al.*, 2009a), the *Journal of European Public Policy* (Barbé *et al.*, 2009b) and

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[29] According to the Internal Displacement Monitoring Centre, the figure of IDPs in Georgia is approximately 233,000. See
http://www.internal-displacement.org/europe-the-caucasus-and-central-asia/georgia/ (last accessed on 20 March 2015).

[30] Roughly 7.5% of the Russian total population (11 million people) are considered to be migrants. Most of them come from other countries from the CIS. Data extracted from the United Nations Immigration Report (United Nations, 2013).

[31] Data from presentation by Katerina Egorova, Deputy Head of the Federal Migration Service of the Russian Federation, Moscow State Institute of International Relations - MGIMO, 26 October 2010.

[32] Interview with a representative from the Permanent Mission of Russia to the European Union, Brussels, June 2009.

[33] EU-IANUS (reference number CSO2012-33361) is a Research and Development project funded by the National Research and Development Plan of the Spanish Ministry of Economy and Competitiveness for the period 2013-2016.

the collective book *La Unión Europea más allá de sus fronteras. ¿Hacia la transformación del Mediterráneo y Europa oriental?* (Barbé, 2010).

The doctoral candidate was responsible for JHA policies within the project, contributing to the collective book above mentioned synthesising the results of EUPROX with a chapter written in co-authorship with Orietta Perni and Juan Pablo Soriano.[34] More specifically, the doctoral candidate had at his disposal a four-year predoctoral scholarship.[35] The first phase of the scholarship was conducted at the former *Institut Universitari d'Estudis Europeus - IUEE* (2007-2009) of the Universitat Autònoma de Barcelona whereas the second phase at the *Institut Barcelona d'Estudis Internacionals – IBEI* (2009-2011) as host institution.

As stated above, the main aim of the Master dissertation was to determine the policy convergence models that resulted from the commitments adopted in the EU migration agenda with Eastern Europe as well as the reasons why the EU and Eastern European countries opted for these policy convergence models. For this purpose, the research focused on the analysis of the ENP action plans in the cases of Ukraine, Moldova and Georgia and the Road map for the Common Space on Freedom, Security and Justice in the case of Russia.

As a next step, the writing of the thesis included the following tasks. First, a state of the art of the EU migration policy in Eastern Europe was conducted, with the objective to identify the main elements of the internal and external dimensions of the EU migration policy. Moreover, the elaboration of a literature review of Europeanisation and policy convergence beyond EU borders has been a main component of the dissertation. Third, extensive field work has been conducted. Empirical data from interviews has been a major contribution to the research. Recurring only to the primary sources of the databases of the EU institutions would have not sufficed since the policy developments and processes analysed in the thesis are not fully transparent.

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[34] See Hernández i Sagrera, Perni and Soriano (2010).
[35] The Predoctoral Scholarship was part of the FPI Programme – *Ayudas para la Formación de Personal Investigador* – of the former Spanish Ministry of Innovation and Science.

Field work has mainly consisted in the elaboration of elite semi-structured interviews, as well as participant observation. Regarding the interviews, they were conceived with the aim of reaching a fair, balanced and accurate picture on the adoption of migration policy instruments in Eastern Europe. Elite interviews have targeted the main actors involved in the formulation of the agenda and the subsequent adoption of the policy instruments. The selection of the target interviewees reflects the myriad of actors involved in the process, both from the side of the EU institutions and the Eastern European countries. In all cases, the choice has followed a pattern of representativeness and inclusiveness (see list of interviews at the end of the dissertation) .

Each interview has been tailor-made to the profile of the interviewee, focusing exclusively on their experience or expertise on the migration policy area at stake. As a general rule, the interviews have addressed at a first stage the state of the art of the migration cooperation between the EU and Eastern Europe or a specific Eastern European country. A second set of topics addressed more in detail the adoption of the policy instruments.

The language used in the interviews has been mainly English, with several exceptions in French and Spanish. However, in Moldova, interviews were all conducted in Romanian. In the field work in Russia and Ukraine, when the interlocutor could not speak English, interviews were conducted with the help of an interpreter in the Russian language. The identity of the interviewees has not been revealed in the thesis according to Chatham House rules. In addition, interviews have not been recorded in order to make the interviewee feel more at ease when replying to the questions. Instead, notes were taken to keep track of the information given.

From the EU institutions, interviews were organised with the General Secretariat of the Council of the European Union, the former Directorate General (DG) of Justice Liberty and Security of the European Commission (currently divided into DG Migration and Home Affairs and DG Justice)[36] and DG External Relations (integrated into the European External Action Service – EEAS), representatives from the European Agency for the Management of Operational Cooperation at the External Borders of the Member

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[36] Originally DG Home Affairs and renamed since November 2014 DG Migration and Home Affairs, since migration is a top priority of the Juncker Commission.

States of the European Union (Frontex) and the European Union Border Assistance Mission for Moldova and Ukraine (EUBAM).

Representatives from Member States have also been interviewed in the Permanent Representations in Brussels and in General Consulates in Moscow and in Kyiv. Only the Member States holding the Presidency of the Council of the EU and those with an active role as regards to EU migration cooperation with Eastern Europe have been contacted. Finally, the list of interviewees within the EU institutions includes the EU Delegations to the Eastern European countries. The response rate of all the officials contacted was very high.

From the Eastern European countries, the dissertation includes the input of the Ministries of the Interior, the Ministries of Labour and the Border Guard services of the countries analysed. These are the main implementing bodies of the migration cooperation with the EU. Moreover, the Ministries for Foreign Affairs, as well as their Missions to the EU in Brussels, have been valuable sources of empirical data. They are the interlocutors with the EU institutions and are in charge of coordinating the adoption of the migration policy instruments.

Moreover, the directors of two of the major Civil Society Organisations in Ukraine which deal with the EU integration process were interviewed.[37] Finally, international organisations working in the migration field have also been part of the field work, as long as they are implementing partners of EU financial assistance in Eastern Europe: the International Organisation for Migration (IOM) and the International Centre for Migration Policy Development (ICMPD).

Overall, field work has consisted approximately in one hundred interviews, forty-five conducted in Brussels in 2009 and 2010, seven in Moscow in 2010, three in Warsaw in 2010 (headquarters of Frontex), nine in Chişinău in 2011, three in Odessa in 2011 (headquarters of EUBAM) and twelve in Kyiv in 2011.

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[37] The *Ukrainian Institute for Public Policy* and the *Centre for Peace, Conversion and Foreign Policy*.

The interviews could be elaborated thanks to three Visiting Research scholarships awarded in the context of the predoctoral scholarship. The first and second research stays took place in spring 2009 and 2010 in Brussels, where the doctoral candidate was part of the JHA Section at the Centre for European Policy Studies (CEPS). The third research stay was in spring 2011 in Kyiv, at the International Centre for Policy Studies (ICPS). Interviews in Kyiv, Chișinău and Odessa were conducted during that research stay. In Chișinău, a collaboration with the research centre IDIS − Viitorul − facilitated the establishment of contacts in the Moldovan institutions.

The affiliation to the host institutions was essential to take contact with the interviewees. In this sense, their good reputation among the community made them the ideal platform from which to successfully conduct the field work. In the particular case of ICPS, the institution counts with numerous associated analysts that either work for the Ukrainian Government or in other research institutes. Those contacts were indispensable to contact the Ukrainian authorities. Otherwise it would have been very difficult because contacts are not publicly available and any other channels to access the institutions are usually ineffective.

With regard to the interviews carried out in Moscow and Warsaw, they took place taking advantage of the participation of the doctoral candidate in other activities. In Moscow, the candidate had the opportunity to lecture a course on EU-Russia migration cooperation targeted to officials from the Russian Ministries of the Interior and Foreign Affairs at the Moscow State Institute of International Relations (MGIMO) in October 2010.[38] In Warsaw, the candidate contacted the Frontex agency while attending a conference at Collegium Civitas.[39] The field work on Georgia could not be possible, although it was originally planned. Instead, the Mission of Georgia to the EU was interviewed extensively in Brussels.

As far as the participant observation is concerned, it is worth mentioning that that it was not a priority method used to obtain empirical data. It was only an option if possible,

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[38] The full name of the course was *EU Immigration and Asylum Policies, Border Security: State of Play and Prospects of Russia-EU cooperation on migration*, Moscow State Institute of International Relations (MGIMO), October 2010.
[39] INEX Workshop *Migration and Visa Issues at the EU's Eastern Borders*, Collegium Civitas, 25-26 November 2010.

taking advantage of the possibilities of doing a research stay in Brussels at CEPS. It was especially relevant at the time of the campaign led by the Moldovan Government for visa-free travel. The doctoral candidate attended several meetings of the Delegation of the EU-Moldova Parliamentary Cooperation Committee at the European Parliament[40] as well as informal meetings held by Members of the European Parliament (MEPs). Also as part of my work at the European Commission, the doctoral candidate had the chance to attend meetings from the LIBE and AFET – Foreign Affairs Committees.[41]

Although this method to obtain empirical data was not planned at a first stage, it proved to be efficient to have access to the position of Government representatives at the highest level. Also, the doctoral candidate could attend meetings of CSOs such as the Open Society Institute (OSI) meeting on *Visa liberalisation in Eastern Europe*, held in Brussels in 2010. Unfortunately, the lack of openness to the public of the institutions in Eastern Europe made participant observation not possible outside the Brussels context.

Besides field work, the dissertation has consulted the extensive databases of the EU institutions, in particular the Council register. Both legally and non-legally binding documents have been consulted. Actually, non-legally binding documents are essential to follow the processes of adoption of the policy tools examined in the dissertation. The doctoral candidate has opted for the Harvard referencing style for the reference list since it is practical to facilite reading throughout the text.

Some of the primary documents quoted in the dissertation have been obtained directly from the interviewees at the candidate's request. This is worth mentioning since some of the case studies depended on these documents as in the case of the Frontex working arrangements with the Border Guard Services of Eastern European countries. The documents have finally been published in the Frontex website. Likewise, having had access to non-papers in the negotiations of the mobility partnerships with Moldova and Georgia was crucial for the understanding of the development of this policy isntrument.

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[40] The European Parliament Delegation to the EU-Moldova Parliamentary Cooperation Committee was chaired by MEP Monica Macovei from the European People's Party from 2009-14 and is currently chaired by MEP Andrei Cristea from the S&D Group. Both are from Romania, which shows the importance attached by this Member State to EU relations with Moldova.
[41] LIBE is the acronym for the Committee on Civil Liberties, Justice and Home Affairs and for the Committee for Foreign Affairs of the European Parliament.

The dissertation has also been the object of an extensive literature review of the secondary sources available in the field. On the one hand, from a thematic perspective, the literature on EU JHA policy has been reviewed. With regard to the internal dimension, it has paid attention to the evolution of JHA from an intergovernmental cooperation forum to an EU domain subject to the ordinary legislative procedure under the Treaty of Lisbon. As for the external dimension, the literature from both a geographical perspective (ENP - EaP) and a theoretical perspective (literature on Europeanisation to explain policy convergence models) has been analysed. The literature consulted has been in mainly in English, but also in Spanish, French, German and Romanian.

This dissertation is the result of eight years of research (2007-2015), with full dedication from 2007 to 2011. When elaborating the Master thesis, the candidate could participate in the doctoral school on JHA conducted by Prof Jörg Monar in Strasbourg in June 2008 to present an outline of the PhD project. Second, the candidate also participated in the II World International Studies Conference in Ljubljana in July 2008.

During the remaining period of writing of the doctoral dissertation, the candidate contributed in numerous international academic conferences, presenting papers which were published at a later stage. The most relevant ones are a conference on labour mobility organised by the *Universität Luzern* in September 2009; a conference on EU-Russia cooperation held at the University of Birmingham in November 2009; the University Association for Contemporary European Studies (UACES) annual conferences in 2010 and 2011, in Bruges and Cambridge respectively; a Workshop on migration and visa issues organised by *Collegium Civitas* in Warsaw in November 2010; a conference on EU-Russia cooperation held at the *Universitet Immanuel Kant* in Kaliningrad in December 2010 and in April 2013; the International Conference of Europeanists organised by the Council for European Studies at Columbia University and hosted by IBEI in June 2011; a CIDOB-GRITIM Seminar organised in Barcelona also in September 2011; the EU in International Affairs Conference organised by the *Vrije Universitet Brussel* in May 2012; a presentation on mobility in the EaP at a conference organised by the Polish Institute of International Affairs in June 2013 and a lecture at the Warsaw Euro-Atlantic Summer Academy in the College of Europe (Natolin) in July 2014.

Moreover, the thesis has benefited from the feedback derived from the participation in several doctoral schools and seminars: a doctoral school organised by the *Université Paul Cézanne* (Aix-en-Provence) in October 2009; a CEPS research seminar which took place in Brussels in June 2010; a CEPS training school on visas held in Brussels in February 2011. Finally, the Doctoral candidate took part as a representative from civil society in an intergovernmental conference organised by the Moldovan Government on the implementation of the Stockholm Programme in January 2011 and 2012.

The work presented in the conferences mentioned above has led to publications in peer-reviewed journals such as *European Security*, the *Cambridge Review of International Affairs* and the *Journal of Baltic Studies*, as well as chapters in edited volumes published by Routledge (with Dr Sergio Carrera), Ashgate and Tecnos (collective work of the European Observatory of European Foreign Policy).[42] Moreover, the candidate published an article at the Ukrainian press (*Kyiv* Post) and policy articles assessing the EU-Moldova JHA cooperation in Moldova.

The doctoral candidate has had the opportunity to write two reports as external expert for the LIBE Committee of the European Parliament. In fact, the LIBE Committee funds reports on key JHA issues authored by external experts. The first one is a comprehensive state of the art on EU-Russia JHA cooperation (with Olga Potemkina), presented to MEPs in a hearing in February 2013. The second is a 2014 report on the impact of visa liberalisation on transborder mobility, encompassing the EaP, Russia, the Western Balkans and Turkey.[43]

Finally, in the framework of a traineeship (March-July 2012) at the ENP Sector Coordination Division of the European External Action Service (EEAS), the candidate had the opportunity to present the empirical findings of the dissertation to the members of the Division.

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[42] See Carrera and Hernández i Sagrera (2011) and Hernández i Sagrera (2009; 2011a; 2011b; 2013a; 2013b).

[43] See Hernández i Sagrera and Potemkina (2013) and Hernández i Sagrera (2014).

5. Structure

This section presents and justifies the structure of the dissertation, which is subdivided in eight chapters. Chapter I – *Introduction*, provides a first approximation to the object of study of migration policy convergence between the EU and Eastern Europe. The research design presents the objective and research questions of the dissertation. For each of the countries in Eastern Europe (Ukraine, Moldova, Georgia and Russia), a contextualisation of migration in the country is included. Also, the methodology followed in the thesis is described comprehensively as well as the different phases of the drafting process.

Chapter II – *The external dimension of the EU migration policy within the Justice and Home Affairs domain* gives an overview of the development of the EU JHA policies and, in particular, of the external dimension of the EU migration policy since the Treaty of Maastricht to the present time. The chapter is conceived as a state of the art of the origin, nature, evolution and main elements defining the EU migration policy. In addition, the state of the art includes a review of the cooperation framework between the EU and Eastern Europe, both bilateral and multilateral.

Chapter III – *Beyond Europeanisation: an analytical framework to explain EU migration cooperation with third countries*, presents succinctly the three Europeanisation theoretical approaches that have been most common in the literature to explain the policy convergence models between the EU and third countries. Those have its roots in scholarly work dealing with the adoption of the *acquis communautaire* in the Central and Eastern European countries at the time of the 'big bang enlargement'. Subsequently, these have been applied in literature on the ENP. After this literature review, section 3 introduces the EUPROX analytical framework, which adds convergence towards international norms and towards bilaterally-agreed norms as alternative models to Europeanisation to explain the EU cooperation with Eastern Europe.

The following four chapters constitute the bulk of the empirical part of the dissertation. Each chapter assesses policy convergence for each of the policy areas dealt with in the dissertation, namely readmission (Chapter IV – *EU-Eastern Europe Readmission policy*

convergence), border management (Chapter V – *EU-Eastern Europe Border Management policy convergence*), visa policy (Chapter VI – *EU-Eastern Europe Visa policy convergence*) and labour migration (Chapter VII – *EU-Eastern Europe Labour Migration policy convergence*). Each of the chapters is structured in the same way. First, the chapters start with a section on the policy as such and the legal basis and definition of each of the policy instruments. Second, the policy instruments are systematically analysed in the EU-Eastern Europe migration agenda and the policy output or their adoption in the countries. Finally, in light of the specificities of the policy instruments and the process leading to their adoption, the policy convergence model is identified. Each chapter finalises with a short summary of the main findings.

Lastly, Chapter VIII – *Conclusions* takes stock of the findings on migration policy convergence and develops and synthesise a series of explanatory factors. Finally, some recommendations for future research and reflections on the EU migration policy and Eastern neighbours will be outlined.

6. Summary

This introductory chapter has presented the object of study of the thesis, migration policy convergence between the EU and Eastern Europe. EU migration cooperation is a nascent policy area at EU level, which was partially communitarised with the Treaty of Amsterdam. The external dimension of the EU migration cooperation with Eastern Europe has been developed in particular in the framework of the ENP and the EaP for Ukraine, Moldova and Georgia. The thesis also looks at EU migration cooperation with Russia.

The migration policy areas explored in the thesis are readmission, border management, visa and labour migration. A novelty of the dissertation is that it looks at both legally binding agreements and also soft law policy tools, notably in the fields of border management and labour migration.

The thesis has the objective to provide an empirical explanation of the reasons why the EU and Eastern Europe opt for one or more than one model of policy convergence. The

research questions of what models of policy convergence and what are the underlying reasons behind their choice will be answered in the thesis. In addition, the comparison between three ENP countries (Ukraine, Moldova and Georgia) and Russia will allow drawing conclusions on differences and similarities in the policy instruments that the EU and each of these Eastern European countries have agreed to adopt.

The thesis in framed under the predominant critical normative strands in the literature that claim that the fundamental rights of migrants are not sufficiently upheld in the EU migration cooperation with Eastern Europe. Overall, the thesis will contribute to the timely debate on the EU soft power in the Neighbourhood, more than a decade after the launch of the ENP, by looking into to what extent the EU actually *Europeanises* Eastern Europe in the field of migration.

CHAPTER II. The external dimension of the EU migration policy within the Justice and Home Affairs domain

1. Introduction

The EU migration policy is part of Justice and Home Affairs (JHA), which has become a fundamental domain of EU policy-making in a considerably short period of time. If taking into consideration the relatively open and flexible fashion JHA was regulated in the Treaty of Maastricht, policy output in this field is not at all negligible. For instance, only in 2007, 164 legally and non legally-binding acts were adopted by the EU institutions in the field of JHA. Prof Jörg Monar, one of the leading academics in the EU JHA integration studies, emphasises that this is "the highest number of texts ever adopted in a single year" in a given EU policy" (Monar, 2008: 109). Martín y Pérez de Nanclares claims that the Area of Freedom, Security and Justice (AFSJ) constitutes one of the main areas of EU action (2012: 15).

The EU migration policy is part of the JHA policies and, from constituting an area of intergovernmental cooperation in the third pillar of the Treaty of Maastricht, it was partially integrated at the former EU 'community pillar' with the Treaty of Amsterdam. Finally, the Treaty of Lisbon abolished the pillar structure and granted the European Parliament full participation in the legislative process.

JHA integration at EU level has been underpinned by tensions between an intergovernmental position, defended by some EU Member States, and a communitarising trend, defended by the European Commission (Wolff, Goudappel and de Zwaan, 2011).[44]

The Chapter has been divided into four parts. Section 2 gives an overview of pre-Maastricht intergovernmental cooperation frameworks, like the Schengen agreement. Section 3 assesses the evolution of the external dimension of the EU migration policy.

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[44] Scholarly work has addressed comprehensively the tension between intergovermentalism and integration at EU level in the field of migration (Carrera, 2007a; Cassarino, 2008; Groenendijk, 2005; Guild, 2004a; Olesti Rayo, 2008; Lavenex and Wallace, 2005).

First, the section looks at the provisions from the Treaty of Maastricht to the Treaty of Lisbon. Second, the multiannual programmes setting out the EU migration agenda are analysed. Section 4 goes on to present the framework the EU has developed with Eastern Europe, both bilateral (European Neighbourhood Policy – ENP) and multilateral (Eastern Partnership – EaP). Finally, the chapter concludes with a summary.

2. The origin of Justice and Home Affairs cooperation

JHA became an EU policy with the Treaty of Maastricht. Nonetheless, cooperation in Europe in this field had already been ongoing through various intergovernmental platforms at the initiative of several European countries willing to cooperate. For example, Nordic countries had already abolished border checks between them as early as 1954. An overview of previously existing cooperation frameworks is essential to understand the motivations behind the integration of JHA at EU level. Monar (2001) has defined these frameworks as 'laboratories', highlighting cooperation within the Council of Europe, the *Térrorisme, Radicalisme et Violence Internationales* – TREVI Group and the Schengen agreement. This section provides background and the way intergovernmental cooperation platforms were subsequently integrated at EU.

First, with regard to the Council of Europe, conventions on organised crime, fight against corruption and data protection had been adopted before JHA was integrated at EU level. These norms are the basis for EU cooperation in JHA. Monar mentions in particular conventions on judicial cooperation in criminal matters, which were part of the *acquis* to be adopted during the enlargement process of Central and Eastern European countries (Monar, 2001). Council of Europe norms will be assessed in Chapter VI in the context of the visa liberalisation process.

Second, the TREVI group was created informally in 1976 without a founding agreement. The Group operated within the European Political Cooperation (EPC) until the entry into force of the Treaty of Maastricht. It consisted in an extremely loose form of cooperation which enabled the exchange of views between Member States on issues such as the need for police cooperation in Europe. In this respect, Monar points out that "[m]uch of the substance of the Europol Convention was negotiated" in the framework

of TREVI (Monar, 2011: 750).[45] This exchange of views is part of the tasks of the Europol agency since its creation in 1999.

According to Bigo, TREVI was also intended to show outside European borders that Europe responded collectively to terrorism. In his own words, TREVI was conceived "pour montrer que les gouvernements ne sont pas sans réponse face au térrorisme" (2009: 339). Bigo also pointed out that TREVI was the first forum where the use of biometrics in passports, identity cards and other documents was discussed (2009: 339). Biometrics use physical or behavioural features digitalised to identify individuals.[46]

Third, the signature of the Schengen agreement in 1985 was the most relevant of the three 'laboratories', as it became part of the *acquis* with the Treaty of Amsterdam.[47] The original signatories were Belgium, the Netherlands and Luxembourg (BENELUX), Germany and France. In 1990, the Schengen convention implementing the Schengen agreement was adopted. The Schengen *acquis* constitutes a remarkable example of how the EU integration process can take place at different. While two Member States (the United Kingdom – UK - and the Republic of Ireland) opted not to join the Schengen Area, four non-EU countries (Norway, Iceland, Switzerland and Liechtenstein)[48] chose to sign the Schengen agreement and convention and are as a consequence part of the Schengen Area without being in the EU.

Actually, the suppression of internal border checks has precedents in the BENELUX Union (1948) and the Nordic Passport Union (1954) mentioned above, which is the reason why all the Nordic countries opted to be part of Schengen, in order to keep movement amongst them without internal border checks.[49] On the contrary, the Union which enables movement without checks between the UK and Ireland was the reason why both decided not to access the Schengen Area.

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[45] The first step towards the establishment of the European Police Office (Europol) was an EU Drug Unit created under the Treaty of Maastricht. Europol has its headquarters in the Hague.

[46] Document security is part of the visa liberalisation process and will be dealt with in Chapter VI. See Baldaccini (2008) on the use of biometrics in travel documents.

[47] The Schengen agreement was signed in 1985 in the Luxembourgish village of Schengen, at the time the geographical centre of the European Communities. See Illamola Dausà (2008) for an extensive legal analysis of the Schengen *acquis.*

[48] They are members of the European Free Trade Association (EFTA). Iceland and Norway accessed the Schengen Area in 2001, Switzerland in 2008 and Liechtenstein in 2011.

[49] The Nordic Union refers to the area integrated by the countries of the Nordic Council: Denmark, Finland, Iceland Norway and Sweden. It has been operational since 1957.

The Schengen agreement and implementing convention became part of the *acquis* as an annex protocol to the Treaty of Amsterdam. It seems that the decision that Schengen had to be part of the *acquis* during the accession process of Central and Eastern European countries motivated the inclusion of the Schengen agreement and convention as part of the *acquis* (Council of the European Union, 2000).

Four EU Member States, namely Romania, Bulgaria, Cyprus and Croatia, have not entered the Schengen Area, although they are implementing the Schengen *acquis*. In the case of Romania and Bulgaria, the Parliament voted in favour of their accession to the Area in June 2011, but Germany, the Netherlands and Finland blocked a green light in the Council arguing shortcomings in the fight against corruption and organised crime. Cyprus has not joined the Schengen Area because of the Cyprus issue. Croatia accessed the EU in July 2013 and is still implementing the requirements for joining the Schengen Area.

At this point, it is worth noting weaknesses in the implementation of the Schengen *acquis*, as noted by Sagarra Trias (2011) and Olesti Rayo (2012). For example, in September 2010, EU citizens of Roma origin residing in France were sent back to the countries where they came from (Romania and Bulgaria). The French authorities argued that there were grounds for triggering exception mechanisms stipulated in the Schengen *acquis*, whereby internal border checks are temporarily reintroduced. The measure was criticised as non-compliant with EU law (Carrera and Faure-Atger, 2010). Likewise, several Member States including France, Germany, Italy and Denmark have temporarily reintroduced internal border checks between borders within the Schengen Area.[50]

Besides these already existing cooperation frameworks, Monar (2001) also referred to the 'driving forces' that triggered the development of JHA policies, including the consequences of the freedom of movement of workers in light of the Single European Act in 1986. However, the most relevant 'driving force' has been probably that of some Member States opting to transfer their domestic interests at the EU level. In other words, following up a bottom-up Europeanisation approach, Member States like

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[50] See European Commission (2015d) for an updated account on the implementation of the Schengen *acquis* by Member States.

Germany, Spain and Italy showed interest in integrating the policy so that 'burdens' linked with migration are shared amongst all Member States. This principle of solidarity or burden-sharing is at the heart of EU migration policy, regulated by article 80 of the Treaty on the Functioning of the European Union on the 'principle of solidarity and fair sharing of responsibility, including its financial implications, between Member States in the field of border checks, asylum and immigration' (Treaty of the Functioning of the EU - TFEU, 2009: article 80).

The case of Germany at the beginning of the 1990s is illustrative of this principle of solidarity. Berlin had to tackle a huge increase in the number of asylum-seekers at the time of wars that led to the disintegration of Yugoslavia. In this sense, Lavenex and Wallace contend that "[t]he German concerns and anxieties were a *driving force* in the development of common policies" (2005: 491).[51] This bottom-up approach has been backed by other Member States like Spain and Italy, who have received huge migration flows in the past decade. As Commissioner Avramopoulos stated: [d]ealing with migration cannot be the responsibility of just one Member State (…) it's a shared priority (…) Solidarity needs to stop being a slogan; it needs to become a reality" (Avramopoulos, 2015c). The Commissioner also stated that "[s]olidarity is one of the basic principles of the European Union. It is both a moral and a legal commitment to ensure that Member States stand by each other in times of need" (Avramopoulos, 2015c).

3. From Maastricht to Lisbon: the external dimension of the EU migration policy

3.1. EU migration provisions in the Treaties

According to the Treaty of Lisbon, the area of freedom, security and justice is a shared competence between the EU Union and Member States (TFEU, 2009: art. 4.2.j). As already mentioned, JHA issues were integrated at EU level with the Treaty of

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[51] Emphasis added.

Maastricht (1993).[52] As Monar contends, "EU Justice and Home Affairs have acquired their place among the most extraordinary phenomena of the integration process. There is no other example of a policy-making area which made its way as quickly and comprehensively to the centre of the treaties and to the top of the EU's policy-making agenda (2001: 747-748). Despite the speed in the integration of JHA at the EU level, Member States have traditionally been reluctant to transfer competences in an area closely linked with the exercise of sovereignty.

JHA became the third pillar of intergovernmental cooperation with the Treaty on Maastricht, being the first pillar the 'Community pillar' and the second one the Common Foreign and Security Policy (CFSP). According to Geddes (2003) there were great expectations during the negotiations to integrate in the Treaty the JHA cooperation. This author claims that the creation of the JHA pillar meant the institutionalisation of the intergovernmental cooperation fora examined in the previous section.

However, the provisions in the Treaty of Maastricht gave little room for the development of the external dimension of the EU migration policy. The Commission shared the right of initiative with Member States except in the areas of police and justice cooperation, the European Parliament had a consultative role and the Council adopted legislation on unanimity. Despite the predominant role of the Council in the decision-making process, "the loose intergovernmental structure did not prevent JHA from becoming the most active field for meetings convened under the Council of Ministers in the late 1990s (Lavenex and Wallace, 2005: 493).

With the Treaty of Amsterdam (1999), JHA policies were clearly given an impetus with the establishment of an 'Area of Freedom Security and Justice' (Treaty on European Community - TEC, 1999: art. 61). The EU migration policy was by and large integrated into the first 'Community pillar', under Title IV on 'visas, asylum, immigration and other related policies with the free movement of persons' (TEC, 1999: Title IV). Policies covered included the control of the external borders, asylum, migration and

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[52] See Niemann (2008) for an analysis of the evolution in the Treaties of the EU migration policy. See Geddes (2013) for an account on the institutional and policy developments in the field since the Treaty of Amsterdam. See Eeckhout (2011), Martín y Pérez de Nanclares (2002), Peers (2011b), Peers, Guild and Tomkin (2014) and Pi and Zapater (2010) on EU JHA law.

judicial cooperation in civil matters. Police and judicial cooperation in criminal matters remained under the third pillar under Title VI of the Treaty on European Union (TEU, 1999: Title VI).

Despite the transfer of the EU migration policy to the Community first pillar, a transitional period applied between 1999 and 2004. As a consequence, the Council kept its predominant role in the decision-making process. By contrast, the Parliament continued to have a consultative role. Since 2005, the Commission has the exclusive right of initiative and the Parliament acts as a co-legislator according to the ordinary legislative procedure.

Arguably, the transfer of migration policies to the Community with the Treaty of Amsterdam presents lack of coherence from a vertical, horizontal and institutional point of view.[53] From a vertical point of view, the United Kingdom, Ireland and Denmark[54] may choose not to adopt measures under Title V Part 3 of the Treaty of the Functioning of the European Union (TFEU, 2009: art. 78.3). While the United Kingdom and Ireland may 'opt in' for certain developments if interested, Denmark has an opt-out for all measures under Title V TFEU.

Contrary to the flexibility given to these three Member States, the accession countries from Central and Eastern Europe had to adopt the Schengen *acquis* in its entirety, as Krenzler und Wolczuk (2001) have stressed. The Schengen *acquis* is part of the EU enlargement process and therefore any accession country has to adopt it as a requirement with no options for opt-outs.[55]

From a horizontal point of view, irregular migration has been much more developed than labour migration. Hence, the development of the policy is not balanced according to the policy area. Moreover, it must be pointed out that generally speaking, JHA norms give a broad margin of discretion for further legislation in EU Member States. In other words, they set up minimal standards at EU level.

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[53] Nuttall (2005) conceptualised the coherence in EU policy.

[54] However, Denmark, as a member of the Schengen Area, is bound to future reforms of the Schengen *acquis*.

[55] In May 2015, the potential candidates and candidates for EU membership are the Western Balkans (Albania, Bosnia Herzegovina, Kosovo, Montenegro, Serbia and the former Yugoslav Republic of Macedonia), Turkey and Iceland. The latter decided to put negotiations on hold in 2013.

From an institutional perspective, the coexistence of the ordinary and the unanimity procedures result in the Council having a more influential position than the Parliament in the JHA decision-making process. In some areas such as labour migration and judicial cooperation in civil matters, the unanimity procedure applies. As a result, the Parliament is only consulted when it comes to legislation in these fields.

Contrary to the Treaty of Maastricht, the Treaty of Amsterdam stipulated for the first time provisions on the external dimension of the EU migration policy. Policies such as the readmission of Third Country Nationals (TCNs) irregularly staying or short-term Schengen visas were the first to be formulated. Actually, the conclusion of readmission agreements with third countries has been the only provision of the external dimension of the EU migration policy explicitly regulated in the Treaties (Treaty on European Community - TEC, 1999: art. 63.3).

The Treaty of Amsterdam refers to the 'fight against illegal migration'. At this point, it is relevant to clarify the distinction between the terms irregular and illegal migration. The use of both terms by the EU institutions has been quite controversial. At first, all EU documents referred to 'illegal migration', but gradually they have shifted to the use of the term 'irregular migration'.[56] An irregular migrant could also be a refugee in search of international protection. This is why academia has highly encouraged not using 'illegal migration'. As Carrera argues:

> "It is somehow surprising to see how the EU still continues to use the term 'illegal migration' and verbs like 'fight against' and 'combat' when dealing with the phenomenon of irregular migration. The negative implications inherent in the use of this terminology have often been qualified as granting and ascribing to the people involved a status which implies suspicions and criminality".
>
> Carrera (2007b: 6)

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[56] Nevertheless, there are still numerous EU documents which strikingly refer to 'illegal migration'. In the same vein, many EU officials interviewed refer to 'illegal migration' without making a distinction with irregular migration. See Peña Pérez (2012) on the use of the terminology on 'illegal migration' and Guild on the definition of 'irregular migrant' (2004).

Finally, the Treaty of Lisbon, in force since 1 December 2009, put an end to the 'pillar divide' which underpinned the previous treaties (Monar, 2013: 150),[57] regulating JHA in Title V of the TFEU on an 'Area of Freedom, Security and Justice' on 'policies on border control, asylum and immigration'. The Treaty of Lisbon makes reference to the development of a 'common immigration policy' to manage migration flows efficiently, and that "it prevents illegal migration" (TFEU, 2009: art. 79.1). The ordinary legislative procedure was extended to all policy areas including labour migration.[58] However, despite labour migration is regulated under the ordinary legislative procedure, Member States have the prerogative to decide on the quotas of migrant workers in each of their labour market. Other exceptions include unanimity in the Council in the area of police cooperation. Others have remained a competence of EU Member States, such as the migration integration policy.[59] This is why some authors argue that the Treaty of Lisbon has reflected the institutionalisation of the logic of 'exceptualism' from previous Treaties (Carrera and Geyer, 2007).

With the Treaty of Lisbon, the European Parliament has substantially strengthened its role in external action since it now gives consent to EU international agreements, including in the JHA area, as regulated in article 218.6.a.v of the TFEU (2009).[60] As a consequence, JHA policies gained on legitimacy and accountability or, in the words of Navarro, on 'democratic progress' (2012: 128). However, Lopatin (2013: 740) argues with empirical evidence that the Parliament has increasingly voted in the same line as the Council for a more restrictive position on irregular migration since the introduction of the ordinary legislative procedure in 2005. The author identifies two explanatory factors: the motivation to get legislation adopted in trialogues and the responsibility of Members of European Parliament (MEPs) to be more attentive to the agendas of their Member States (2013: 753).

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[57] In the area of judicial cooperation in criminal matters, the Commission and the European Court of Justice could only exercise their competences fully as of 1 December 2014. See González Alonso (2008) and Pawlak (2009) on the abolition of the pillar system with the entry into force of the Treaty of Lisbon. See Cardwell, Kaunert and Léonard (2012 and 2013), Carrera and Geyer (2007 and 2008), Esteve (2009), Navarro (2012), Peers (2011a) for the changes in the Treaty of Lisbon for the EU migration policy.
[58] See also Martín y Pérez de Nanclares (2008).
[59] The Commission issued a Common Framework for the Integration of Third-Country Nationals in the absence of an EU competence in this policy area in 2005.
[60] On the post-Lisbon role of the European Parliament, see Carrera, Hernanz and Parkin (2013). See also Ripoll Servent (2014 and 2015) and Garzón Clariana (2015) for comprehensive assessments of the role of the European Parliament in JHA.

As Monar (2013: 150) points out, the negotiation and conclusion of EU international agreements is conducted under a single EU legal personality (Treaty on European Union – TEU, article 47) and a single treaty-making procedure (TFEU, 2009: art. 218), with the Council voting by qualified majority. Actually, the external action can be developed on the basis of the doctrine on implied powersm in line with case law of the European Court of Justice ruling on European Road Transport Agreement (ERTA) in 1971 (European Court of Justice, 1971).

By virtue of the ERTA Court ruling,[61] the EU may conclude an agreement with a third country "where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties" (TFEU, 2009: art. 216). In other words, when external action is necessary to achieve an objective defined in the Treaty (EU attributed competence), the EU can conclude an agreement with third countries if the EU competence is not sufficient to achieve the objective. Implied powers for concluding agreements with third countries are a complement that enables the further development of the external dimension of EU policies. Implied powers are regulated in the Treaty of Lisbon regulates (TFEU, 2009: art. 2.2).

The question arises whether the EU has exclusive competence over Member States to conclude these agreements with third countries. In this respect, Monar argues that since EU migration policy is a shared competence between the EU and Member States, both can conclude international agreements, which constitutes a limitation to the EU external action in the migration field (Monar, 2013: 151).

Martín y Pérez de Nanclares (2012, 30) argues that as a consequence of the integration at EU level of the EU migration policy, the doctrine on implied powers is fully applicable to the conclusion of international agreements. The applicability of the doctrine on implied in EU migration policy will be further developed in Chapter IV when dealing with readmission agreements, in Chapter V on border management and in Chapter VII on labour migration.

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[61] The case law originating in the ERTA ruling has been complemented by other cases including the 1/76 (European Court of Justice, 1977).

To conclude this section, it is worth referring to the strong interconnection between the EU migration policy and the EU internal and security policies (Rees, 2008).[62] In line with this argument, Bigo (1994) coined the concept of 'security continuum' to illustrate how there is no boundary between issues such as terrorism or organised crime and migration. In this respect, Trauner and Kruse (2008) emphasise that the speed in the development of the EU migration policy has been linked with the changing perceptions of security and the adoption of an EU security approach.

Table 1: Justice and Home Affairs in EU Treaties

	INTRA EU COOPERATION			EXTRA EU COOPERATION
	Community Pillar (first pillar)		Third pillar	
	Unanimity	Ordinary legislative procedure	Unanimity	
1975				TREVI Group
1985				Schengen Agreement
1990				Schengen Convention
1992			Treaty of MAASTRICHT JHA pillar	
1999	Treaty of AMSTERDAM -Readmission -Border Management -Visas -Asylum -Labour migration -Judicial cooperation in civil matters		Treaty of AMSTERDAM -Police cooperation -Judicial cooperation in criminal matters	Schegen acquis part of Treaty of Amsterdam

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2005	AMSTERDAM -Labour Migration -Judicial Cooperation in civil matters Police cooperation -Judicial cooperation in criminal matters	AMSTERDAM -Readmission -Border Management -Visas -Asylum		
(2009)	LISBON: abolition of the pillar structure - ordinary legislative procedure for all policy areas with exceptions (EU Member States competence to determine labour quotas)			

Source: author's own elaboration

3.2. Setting out the EU migration agenda

The previous section looked at how JHA and in particular migration has been gradually integrated at EU level by analysing the main provisions from the Treaty of Maastricht to the Treaty of Lisbon. In parallel to this evolution, the external dimension of the EU migration policy has developed according to the adoption of multiannual five-year programmes. These programmes are non-legally binding documents in which the Council expresses its policy priorities and guidelines for action in the whole range of policies within JHA for a five-year period.

However, the latest EU document issued on JHA matters does not envisage a five-year period for its implementation. On 13 May 2015, the Commission adopted a European Agenda on Migration, in response to the migration crisis in the Central and Eastern Mediterranean, consisting in a huge increase in the number refugees. High Representative / Vice-President Mogherini and Commissioner Avramopoulos defined the situation in the Mediterranean, which caused hundreds of deaths, as 'dire' (Council of the European Union, 2015b). These incidents triggered a major increase in asylum

applications.[63] In a joint statement, Vice-Presidents Timmermans and Mogherini and Commissioner Avramopoulos said that "[t]he EU is working hard to prevent these terrible tragedies. We have tripled the resources to search and rescue efforts at sea, allowing to rescue over 50,000 people since 1 June 2015" (Timmermans, Mogherini and Avramopoulos, 2015). The Agenda provides the orientations for the EU migration policy in the future.

Prior to the European Agenda on Migration, the EU adopted three five-year programmes for the period 1999-2015; the Tampere Programme (1999-2004), negotiated during Finnish Presidency of the Council; the Hague Programme (2004-2009), adopted under Dutch Presidency and the Stockholm Programme (2009-2014), negotiated under Swedish Presidency. The following paragraphs summarise the main commitments included in the Programmes.

The Tampere European Council in 1999 agreed in October conclusions in line with the Vienna Council in 1998, which sketched the principles of the JHA cooperation (European Council, 1998). The Tampere Programme (1999-2004) was the first attempt to establish a "common EU migration policy" oriented at strengthening cooperation with third countries. The Tampere Conclusions envisaged that "[t]he challenge of the Amsterdam Treaty is to ensure that freedom, which includes the right to move freely throughout the Union, can be enjoyed in conditions of security and justice accessible to all" (European Council, 1999: 2, point 2).

Therefore, a comprehensive and coherent approach between the internal and external dimensions of the EU migration policy was at the basis of the Programme. Point 59 establishes that "[t]he European Council underlines that all competences and instruments at the disposal of the Union, and in particular, in external relations, must be used in an integrated and consistent way to build an area of freedom, security and justice" (European Council, 1999: point 59).

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[63] Monar stresses that in 2014 there was a 44% increase in the number of asylum application to EU Member States in comparison with 2013 (2015:1). In 2015, UNHCR figures show that numbers are dramatically much higher.

In this respect, Monar (2004: 295) contends to justify the importance of the external dimension of the EU migration policy that "in areas such as (…) migration, the effectiveness of internal action often depends to a large extend on parallel external action". Along these lines, Smith (2009) defined JHA as a 'policy space' covering the thematic external dimensions of various internal policies. Likewise, Bertozzi argues that:

> "Europe soon realised (…), that migration management needs to encompass a coherent and comprehensive set of measures covering both the internal and the external dimension. In other words, Europe's political ambitions make it clear that domestic management of migration flows and cooperation with third countries are two sides of the same coin"
>
> (Bertozzi, 2008: 5).

In addition, The Tampere Programme established a Common European Asylum System (CEAS), as a priority in the field of asylum, focused on the adoption of legislation harmonising asylum practices in all EU Member States. Based on the principle of solidarity amongst Member States, one of the priorities of Commissioner Avramopoulos is another amendment to the Dublin II Regulation, which stipulates a system to distribute asylum-seeker applications from the Member States with the highest number of applications to those with fewer asylum applications. Commissioner Avramopoulos recognised difficulties in the implementation of the Regulation and showed readiness for a possible revision after an evaluation in 2016 (Avramapoulos, 2015a).

The Santa Maria da Feira European Council (2000) reaffirmed "its commitment to forging an area of freedom, security and justice as defined at the Tampere meeting" (European Council, 2000: 6). In 2002, the Seville European Council agreed on a shift from the comprehensive approach advocated in the Tampere Conclusions to an EU migration policy focused on security, making efforts towards the reduction of irregular migration flows and the strengthening of border controls. According to Kaunert and Léonard, this move into the realm of security has its roots in a 'major exogenous shock', namely the 11 September 2001 attacks (2012: 417).[64] Paragraphs 33 and 36 of the

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[64] See also Kaunert and Zwolski (2013) on changes in security policies after the 11 of September attacks in the United States.

Council conclusions reflect this focus on security (European Council, 2002). Former Members of the European Parliament (MEPs) summarised this deviation in the priorities of the EU migration policy as follows:

> "Apenas tres años después del Consejo de Tampere, los mismos jefes de Estado y de Gobierno, reunidos esta vez en Sevilla, en la cumbre liderada por el entonces presidente Aznar, lejos de dar el necesario empuje a la política común de inmigración, modificaron la agenda con propuestas de corto alcance orientadas exclusivamente a la 'lucha contra la inmigración ilegal' y establecieron un programa que, en realidad, boicoteaba el desarrollo de la política europea de inmigración, esbozada en Tampere"
>
> (Valenciano and Terrón, 2012).

This focus on security was reflected in the successor of the Tampere programme: the Hague Programme (2004-2009), adopted by European Council in November 2004 (Council of the European Union, 2004c). The security imprint is present throughout the Programme: "The security of the European Union and its member states have acquired a new agency, especially in the light of the terrorist attacks in the United States on 11 September 2001 and in Madrid on 11 March 2004" (Council of the European Union, 2004c: 12). As Balzacq and Carrera underline, "[t]he programme seems to recast the balance between freedom and security in a critical way. The organisation of the text appears to sideline freedom and justice. Indeed, substantial sections of the programme place too much emphasis on provisions related to the security rationale" (2005: 6). [65]

The Hague Programme was adopted in view of a prompt ratification of the 2004 of the failed EU Constitutional Treaty. The main novelty in the Programme was the proposal to create the Frontex agency, which started being operational in 2005. Moreover, the Programme prioritised the EU policy to sign readmission agreements with third countries. However, the Programme neglects any developments on labour migration. Concerning asylum, it planned the creation of European Asylum Support Office (EASO), which was established in La Valletta in 2009.

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[65] This shift to security goals has been dealt with by the securitisation theoretical approach. Securitisation studies applied to the EU migration policy vis-à-vis third countries argue that migrants are perceived as a threat to EU security, resulting in exceptional policies to address it. More specifically, Lavenex and Schimmelfennig define securitisation in the field of migration as "[t]he dynamics by which refugee policy and immigration more generally have been reframed from a humanitarian or, in the other case, economic issue into a potential threat to receiving societies and states" (2008: 312). Se also Huysmans (2000; 2006) and Van Munster on the securitisation of the EU migration policy.

During the period of implementation of the Hague Programme, a Global Approach to Migration (GAM) was conceived at the Hampton Court European Council in December 2005 (Council of the European Union, 2005b). The Commission summarised the migration context that justified the need for a GAM in the following words:

> "In a Europe with no internal borders, the changing demands of an ageing society and a labour market in constant evolution have challenged established assumptions about migration outside the EU. A new global approach is needed so that migration strikes the right balance between the risk of labour market shortages, economic impacts, negative social consequences, integration policies and external policy objectives."

> (European Commission, 2007d: 4-5)

The GAM introduced a parallel track to the multi-annual programmes aimed at bringing back the comprehensive approach to migration presented at the Tampere Programme. However, some scholars voiced their scepticism on the GAM. Collett (2007) argues the Global Approach is mere rhetoric because it has goals such as the establishment of *genuine* partnerships with non-Member States (Council of the European Union, 2005b).[66] According to an officer of the International Organisation for Migration (IOM), the GAM is very difficult to implement since it does take into account differentiation among third countries.[67] However, it should be taken into account that the GAM inspired policy instruments to step up labour migration cooperation such as mobility partnerships. With respect to Eastern Europe, the Commission issued a Communication on particular aspects of the implementation of the GAM in the Eastern and South-Eastern regions neighbouring the EU (European Commission, 2007c).

In the wake of the Arab Spring, the Commission issued a Communication in November 2011 on a Global Approach to Migration and Mobility (GAMM) (European Commission, 2011f). With the goal to "respond to the challenges of changing migration trends" (European Commission, 2011f: 3), the Commission underlines that "it is time to

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[66] Emphasis added. See also Devisscher (2011) on the external dimension of the EU legal migration and the GAM.
[67] Interview with a policy officer from the European Union Regional Representation of the International Organisation Migration (IOM), Brussels, May 2009.

enter a new phase and explore ways to make this strategic approach more efficient and coherent, with more clearly defined objectives" (European Commission, 2011f: 15).

In a nutshell, the GAMM has been since 2005 the umbrella under which the Commission has promoted the development of the EU migration policy. Therefore, it plans the adoption of a comprehensive approach towards migration, not only focused on irregular migration, but also on channels for regular migration such as labour migration.

Finally, the Stockholm Programme (2009-2014) was adopted under Swedish Presidency of the Council in 2009 (Council of the European Union, 2009h).[68] The Commission further developed the Stockholm Programme in an action plan (European Commission, 2010a), which was initially not endorsed by the Council, on the grounds that the Commission proposal was not in line with the Programme (Council of the European Union, 2010d: 3).

In other words, the Council considered that the content of the proposed action plan was 'politicised' and even a '*diktat*' from the Commission.[69] Similarly, some considered that "[t]he Commission made an excessive interpretation of the right of initiative".[70] However, the reason behind this refusal may probably have been the institutional tension between the Council and the Commission right after the entry into force of the Treaty of Lisbon. In an analysis of the policy measures within the action plan, Zapater confirms that a large number of initiatives are not *ex novo*, but rather implementing provisions of the former the Hague Programme (2012: 83; 2014).

Rather, when negotiating the Stockholm Programme, a Swedish representative claims that "[t]he main challenge was to alleviate the disconnection between JHA external relations and JHA in the migration field".[71] Actually, one of the priorities of the Swedish Presidency was the full integration of the GAM in the Programme.[72] This is

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[68] See Council of the European Union (2009c) for the minutes of the conference on the Stockholm Programme in which academia and EU representatives discussed on the content of the Programme.

[69] Interview with a representative from the Permanent Representation of Sweden to the European Union, Brussels, May 2010.

[70] Interview with a representative from the Permanent Representation of Spain to the European Union, Brussels, May 2010.

[71] Interview with a representative from the Permanent Representation of Sweden to the European Union, Brussels, June 2009.

[72] *Idem*.

why explicit references to the external dimension of the EU visa policy and the EU labour migration policy became part of the commitments in the Programme: the "external dimension is crucial to the successful implementation of the objectives of the programme and should in particular be fully coherent with all other aspects of EU foreign policy" (Council of the European Union, 2009h: 73). In fact, as Zapater notes, one of the political priorities of the Programme refers explicitly to the external dimension: 'Europe in a globalised world: the external dimension of freedom, security and justice' (2012: 59). However, the same author contends that the Programme continues to give significant relevance to questions linked with security rather than freedom (2012: 84).

The successor of the Stockholm Programme was not another programme but rather 'Strategic Guidelines for legislative and operational planning within the area of freedom, security and justice', adopted by the European Council on 26-27 June 2014 (European Council, 2014b). According to Monar, the term 'programme' was not used because of the guidelines "clearly do not match any of the previous five-year frameworks in terms of programmatic ambition" (2015: 13). Original plans intended the adoption of another five-year action plan named after the city of Rome during the Italian Presidency of the Council in the second half of 2014. The finally adopted guidelines do not provide a strategy on new measures to be achieved because of the lack of consensus of Member States. Rather, they focus on consolidating the implementation of the already adopted measures. Carrera and Guild argue in this sense that Member States aim at reintroducing integovernmentalism with a 'pre-Lisbon Treaty mindset' (2014a: 1).

Nonetheless, as mentioned above, the Commission adopted a European Agenda on Migration on 13 May 2015. At the March 2015 JHA Council, Commissioner Avramopoulos announced that the adoption of the European Agenda on Migration would be adopted in May 2015 to have a response as soon as possible to the migration crisis in the Mediterranean (Avramopoulos, 2015a). As the Agenda brings together the steps the EU should take "to build up a coherent and comprehensive approach to reap the benefits and addresses the challenges deriving from migration" (European Commission, 2015c: 1).

The European Agenda on Migration has the objective to reinforce the solidarity among EU Member States to deal with migration issues. The agenda stipulates first a set of immediate measures in response of the crisis in the Mediterranean, including strengthening the role of the Frontex agency. The capacity of the agency to coordinate joint operations is planned to be strengthened. Also, the Agenda plans to implement measures in the field of asylum, such as a resettlement programme to offer 20,000 places among EU Member States. The Agenda is articulated in four pillars: reducing the incentives for irregular migration, border management, asylum and legal migration. The focus on irregular migration focuses on criminal networks and smuggling.

The first reaction of Member States to the proposals laid down by the Commission was not enthusiastic. Actually, mostly the Southern EU Member States, gateway of refugees and migrants to the EU, as well as the EU Member States with the highest number of asylum applications lodged (for instance Germany), are pleading for more solidarity. The European Council in June 2015 agreed the relocation of 40,000 people in need of international protection over two years from the main beneficiary Member States (Italy and Greece) to other Member States as well as the resettlement of 20,000 people (European Council, 2015). While Member States agreed to resettle more than 20,000 people at the JHA Council on 20 July 201, they did not succeed in reaching the figure of 40,000 for relocation (Avramopoulos, 2015c).[73]

To conclude this section, it is worth referring to the EU's active role in creating agencies specialising in JHA. The EU institutions have not granted any legal personality to EU agencies. Therefore, they are not subjects of international law (Santos Vara, 2014: 13). Most of them have operational rather than executive competences.[74] This means in practice that agencies have operational capacity to increase harmonisation in a given policy area between Member States. Competence over certain areas, namely border management (Frontex) or police (European Police College – Europol), lies in EU Member States.

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[73] 32,256 were offered by Member States, with the agreement to allocate the remaining 7,744 by December 2015. See Avramopoulos (2015c).

[74] See Carrera, den Hertog and Parkin (2013) and Pi and Zapater (2014) on the EU JHA agencies. See European Commission (2008a) for the strategy issued by the Commission on agencies. See also the results of the research project MAGELS – European agencies map in the area of freedom, security and justice, funded by the Spanish Ministry of Economy and Competitiveness, available at http://www.magels.es/index.php/en/ (last accessed on 15 July 2015).

With respect to EU agencies, the European Agenda on Migration proposes to strengthen cooperation among EU agencies in the field of migration, namely EASO, Frontex and Europol, so that they can complement each other, according to a 'hotspots' approach (European Commission, 2015c: 6). The 'hotspots' approach has the objective to provide a coordinated platform for these agencies so that they can intervene rapidly at EU borders. Table 2 below summarises the legal basis, main functions and the role in the external dimension of the EU migration policy for each of the JHA agencies.

Table 2: EU Justice and Home Affairs Agencies

Agency	Legal basis	Headquarters	Creation	Main functions	Participation in external dimension
CEPOL – European Policy College	Council Decision 2005/681/JHA	Budapest (Hungary)	2005	Training of police specialising in cross-border crime.	Participation of police training institutes from non-Member States (art. 8.2, 2005c).
EMCDDA – European Monitoring Centre for Drugs and Drug Addiction	Parliament and Council Regulation 1920/2006	Lisbon (Portugal)	1995	Provide information about situation of drugs and drug addiction in the EU.	Participation of third countries via working arrangements (art. 21, 2006b).
EU-LISA – European Agency for the Operational Management of large-scale IT systems in the Area of Liberty, Security and Justice	Parliament and Council Regulation 1077/2011	Tallinn (Estonia) Operational management of databases in Strasbourg(France)	2012	Manage EU databases: EURODAC, VIS (Visa Information System), SIS II (Schengen Information System).	Participation of only Schengen associated countries (Iceland, Liechtenstein, Norway and Switzerland) (2011).

Eurojust – Judicial Cooperation Unit of the European Union	Council Decision 2009/426/JAI	The Hague (the Netherlands)	2002	Combat organised crime and improve efficiency of prosecutor services from Member States.	Participation of third countries via operational cooperation agreements, conditional to adoption of EU data protection legislation. (art. 26, 2009e).
Europol – European Police Office	Council Decision 2009/371/JAI	The Hague (the Netherlands)	Operational since 1999. Agency status since 2010.	Combat organised crime and improve efficiency of police services from Member States. Creation of European Cyber Crime Centre in 2013.	Participation of third countries via operational cooperation agreements, conditional to adoption of EU data protection legislation. (art. 23, 2009b).
FRA – Agency of Fundamental Rigths of the European Union	Council Regulation 168/2007	Vienna (Austria)	2007	Obtain data and alyse human rights situation; communication and awareness-raising to citizenship.	Only enlargement countries – signature of stabilisation and association agreements (art. 28, 2007b).
FRONTEX – European Agency for the Management of Operational Cooperation at the external borders of the EU Member States	Council Regulation 2007/2004 (2004b), amended by Parliament and Council Regulation 1168/2011	Warsaw (Poland)	2004	Coordination and operational cooperation of the management of EU external border.	Operational cooperation with third countries via working arrangements (art. 14, 2011b).
EASO – European	Parliament and Council	Valetta (Malta)	2011	Coordinate, support and	Operational cooperation with third

Asylum Support Office	Council 439/2010			strengthen operational cooperation among Member States on asylum. Enhanced role after tragedy in Lampedusa (October 2013)	countries via working arrangements (art. 40.2, 2010).

Source: author's own elaboration

4. Framing the EU migration cooperation with Eastern Europe

4.1 Bilateral cooperation framework

The Treaty of Lisbon (2009) stipulates in article 8 that the EU "develops 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" (TEU, 2009: art. 8).[75]

The EU migration cooperation with Eastern Europe has been articulated mainly through bilateral cooperation with each of the Eastern European countries.[76] At the time of writing, two legally binding cooperation frameworks coexist between the EU and Eastern Europe according to the country: the partnership and cooperation agreements (PCAs) and the new association agreements, which replace the former providing a much more strengthened basis for cooperation. PCAs were concluded with all EaP countries and Russia in the 1990s after the fall of the Soviet Union.[77] They include very vague provisions on JHA cooperation, since they were negotiated before the entry into force of the Treaty of Amsterdam. Therefore, only references to cooperation on irregular migration are included in the agreements.[78]

PCA were concluded for a limited period of ten years. However, PCAs are still in force during the negotiations leading to the signature of the association agreements, which are concluded for an unlimited period[79]. The EU has so far signed association agreements with Ukraine, Moldova and Georgia, where they are provisionally applied (European Union – Ukraine, 2014; European Union – Republic of Moldova, 2014b; European

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[75] See Hanf (2011) for a legal interpretation of article 8 TEU.

[76] There is a notable exception. The EU has not signed so far a legally binding agreement with Belarus, coined as an EU reluctant partner, i.e., a partner which is not in favour of coming closer with the EU (Emerson, Noutcheva and Popescu, 2007), Nevertheless, Belarus is a partner in the Eastern Partnership and Brussels is negotiating readmission and visa facilitation agreements with Minsk.

[77] See the PCAs with Ukraine (European Union – Ukraine, 1998); Moldova (European Union – Republic of Moldova, 1998); Georgia (European Union – Georgia, 1999) and Russia (European Union – Russia, 1997).

[78] Chapter IV will spell out the provisions on irregular migration in the PCAs.

[79] The actual name of the legally binding framework has been object of controversy. Ukraine was against the British proposal to name it 'enhanced agreement' with the EU. (Interview with the Deputy Head of the Permanent Mission of Ukraine to the European Union, Brussels, May 2009). Rather, Ukraine was in favour of simply calling the 'new agreement', in an attempt to avoid the use of denominations proposed unilaterally by the Union.

Union – Georgia, 2014b).[80] The Riga Eastern Partnership (EaP) Summit in May 2015 welcomed the successful start of the implementation of these agreements (Council of the European Union, 2015c: 5). Unlike PCAs, association agreements include a chapter on JHA cooperation, which reflects the importance of migration cooperation in EU relations with Eastern Europe and give more legal certainty to the ongoing JHA cooperation. The EU and the EaP countries included a clause in the association agreements whereby "respect for human rights and fundamental freedoms will guide all cooperation on freedom, security and justice" (European Union – Ukraine, 2014: art. 14; European Union – Republic of Moldova, 2014b: art. 12; European Union – Georgia, 2014b: art. 13.3).

In EaP countries, negotiations on association agreements started in March 2007 with Ukraine. As Lavenex and Schimmelfennig note, "[d]uring 2007 the contours of a future Enhanced Agreement with Ukraine took shape. For the EU, the agreement is a 'flagship project' to demonstrate the ENP's potential benefits" (2008: 155). In the case of Moldova, the negotiations on a new legally binding framework started in January 2010. Finally, the EU started talks with the Georgian authorities in July 2010.

Being the agreements the bilateral legally binding framework of EU relations with Eastern Europe, the ENP is the main policy framework for bilateral relations.[81] After the EU enlargement towards Central and Eastern Europe in 2004 and 2007, the EU launched the ENP with both the Eastern and Southern Neighbourhoods. Brussels designed a new policy towards its neighbours that did not envisage the accession perspective with the Wider Europe Communication (European Commission, 2003).[82]

From the outset, Russia was reluctant to accept being part in the European Neighbourhood Policy, since it made no distinction between the neighbours of the EU.[83] For Moscow, it was unacceptable to be part of a group of states like Ukraine and Moldova, which previously had been part of the Soviet Union and were perceived as

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[80] See Table 3 below for an overview of the state of play of the conclusion of association agreements. Armenia refused to initial the agreement at the Vilnius Summit because it decided to join the Russia-led Customs Union, an alternative to the deep and comprehensive free trade agreements (DCFTAs) negotiated in parallel with the association agreements between the EU and the EaP countries.
[81] See Jeandesboz (2007) and Smith (2005) on the genesis of the ENP.
[82] See also the Commission Communication on a Strategy for the ENP (2004).
[83] See Haukkala (2008b and 2015) and Kobrinskaya (2009) on EU-Russia relations.

belonging to their sphere of influence. As Smith stresses, Russia wanted to be treated "on a more equal basis" (Smith, 2005: 759).

This refusal resulted in the non-participation of Russia in the ENP. Russia declined to participate in the ENP, as it perceived it as a policy that undermined the principle of equality embedded in the EU-Russia strategic partnership and established in the EU-Russia PCA. Furthermore, as Averre points out, "[t]he ENP relies on the acceptance by its neighbours of convergence with the policy's strong normative agenda" (2005: 177).

ENP countries including Ukraine, Moldova and Georgia have all set out their migration cooperation by agreeing on ENP action plans. These are agreed by the two parties on the basis of the principle of co-ownership. Each of the action plans was negotiated with partner countries on a case-by-case basis, adjusting the objectives of the multiannual programmes to the particularities of each neighbouring country, according to the principle of differentiation. Balzacq defines action plans as "[a] commonly agreed framework (i.e., a programme) containing the list of policies upon which the EU and ENP partners decide to cooperate. More decisively, however, action plans condition not only *what to do*, but *how to do* it. In other words, they are both descriptive and prescriptive documents" (2008a: 20). Langbein and Wolczuk have assessed negatively that, despite the ambitious and comprehensive scope of the action plans, that they "still remained a fairy generic document with vaguely worded priorities for action" (2012: 871).

In the aftermath of the Arab spring in 2011, the EU issued a Communication in response of a changing neighbourhood, offering more options for mobility to the Southern Neighbourhood, mirroring the policy instruments already offered to the Eastern Partnership – EaP (European Commission and High Representative, 2011). The GAMM mentioned above was also part of this approach towards the Southern Neighbourhood.

The EU is planning to issue a communication reviewing the ENP in late October or beginning of November 2015, with the aim to adjust the policy to the challenges that since 2013 the Neighbourhood has been facing, such as increased migratory pressures, armed conflict in Ukraine and instability and conflict in the Middle East. The review is

takes the principles of 'differentiation', 'focus' (including in the field of migration), 'flexibility', 'ownership and visibility'. The Council Conclusions in April 2015 reaffirmed "the neighbourhood is a strategic priority and a fundamental interest for the EU" (Council of the European Union, 2015a).

Among the principles outlined above, differentiation is the main object of debate under ENP review process. The lack of specific tools to cope with different situations in the countries has justified the need for stronger differentiation. As Lehne argues, "[t]he concept of a single set of standards and instruments that can be applied across the board in the entire neighborhood has proved unworkable and should be abandoned. Instead, the EU should put together a well-equipped toolbox that supports multiple relationships tailor-made to suit the different ambitions of the partner countries and the interests of the union (2014).

The EU has channelled financial assistance to Eastern Europe via the European Neighbourhood Instrument (ENI)[84] with €15,4 billion for the period 2014-2020 and the European Neighbourhood and Partnership Instrument (ENPI) with € 11,2 billion for the period 2007-2013. Financial assistance to the Neighbourhood supports mainly democracy promotion, strengthening of rule of law and steps towards establishing a functioning market economy.[85]

As regards the ENP in Ukraine[86], it was received with scepticism because of the lack of membership perspective. Light, White and Löwenhardt argued that "Ukrainians are particularly disappointed about this omission from the list of 'pre-ins' announced at the December 1997 Luxembourg European Council and confirmed at the October 1999 Tampere European Council" (2000: 86). Ukraine had expressed its will to become a

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[84] Blockmans looks at the link between EU-Russia relations and EU assistance to Russia (€120 million) through the ENPI (2008), which has mainly consisted in Cross-Border Cooperation Programmes. Moldova received proportionally more technical assistance than any other Eastern European country (Löwenhardt, Hill and Light, 2001: 617). The first financial programme to the EaP and Russia was the Technical Assistance to the Commonwealth of Independent States (TACIS), launched after the fall of the Soviet Union.

[85] The EU has also assisted ENP countries through the Technical Assistance and Information Exchange Instrument (TAIEX), conceived in 1996 only for enlargement countries and then extended to ENP countries in 2006, including Russia. It is a capacity-building programme consisting in the transfer of expertise on EU rules and best practices from EU Member States practitioners to those from ENP countries.

[86] See Herranz-Surrallés (2003) for an overview of EU-Ukraine relations for the 1991-2003 period.

"member of fact and right of the EU" in the Strategy on Integration of Ukraine to the EU (Government of Ukraine, 1998). Nevertheless, a Ukrainian diplomat underlined the fact that the lack of membership perspective does not prevent Ukraine from aligning to the EU *acquis* with "a gradual and sectoral integration", while acknowledging the flexibility of the ENP contrary to the enlargement process".[87]

A point to be highlighted is that the EU-Ukraine migration agenda was set out before the launch of the ENP. First, the Common Strategy on Ukraine, a document identifying the main commitments of the agenda between Brussels and Kyiv, was adopted in 1999 (Council of the European Union, 1999c). In 2001, a specific *ad hoc* action plan on JHA was agreed, which was renewed in 2006 (European Union – Ukraine, 2001 and 2006). The ENP action plan agreed in 2005 clearly specifies that "[a] specific Action Plan on EU Justice and Home Affairs with Ukraine of 10 December 2001 defines the areas for co-operation in this field. (…) [C]o-operation will be based on this EU Action Plan on Justice and Home Affairs with Ukraine (…)" (European Union – Ukraine, 2005: 32).

In order to facilitate the negotiations on the association agreement and complement the ENP action plan (Börzel and van Hüllen, 2014: 1036), an Association Agenda with Ukraine was adopted in 2009 (European Union – Ukraine, 2009), which was updated on 24 June 2013 (European Union – Ukraine, 2013b).[88]

Regarding Moldova, the EU-Moldova ENP action plan was endorsed in 2005 (European Union – Republic of Moldova , 2005). As Tomescu-Hatto and Hatto (2008) argue, the migration agenda was not agreed before because the EU and Moldova did not share borders until Romania's EU accession in 2007. According to a Moldovan diplomat, migration cooperation with the EU shifted from a migration policy aimed at stopping immigration (2002-2005) to a policy focused on migration management.[89] The 'fear of not getting people back' and 'brain drain' has been indeed a constant of the

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[87] Interview with the Deputy Head of the Permanent Mission of Ukraine to the European Union, Brussels, April 2009.
[88] See Petrov (2008b) on the negotiations on the EU-Ukraine association agreement.
[89] Interview with a representative from the Permanent Mission of Moldova to the European Union, Brussels, May 2009.

Moldovan approach to migration.[90] An Association Agenda was agreed in 2014 (European Union – Republic of Moldova, 2014a).

As for Georgia, the ENP action plan was adopted in 2008 (European Union – Georgia, 2008). A Georgian representative emphasised that "[t]here are just things you just accept", referring to the asymmetry in the structure of power relations between Brussels and Tbilisi.[91] Actually, Georgia, unlike countries like Ukraine, received positively the ENP for the opportunities of strengthened cooperation it could lead to, not regretting the lack of membership perspective. An Association Agenda was agreed in 2014 (European Union – Georgia, 2014a).

Contrary to the EaP countries, EU-Russia relations have been as mentioned above characterised by the focus on symmetry and reciprocity. Russia has been coined as "a country with which it is difficult to negotiate and the EU has the problem of acting with one single voice.[92] Since 2007, ten years after the entry into force of the EU-Russia PCA, the EU and Russia are negotiating a new agreement.[93] Negotiations are currently deadlocked as a consequence of the armed conflict in Ukraine and the application of EU sanctions to Russia following the illegal annexation of Crimea. It is worth recalling that tense bilateral relations between Brussels and Moscow have been the cause of other delays in the negotiation of the agreement like conflict in Georgia in 2008 (Kanet, 2009: 9). The JHA chapter in the Agreement has presumably been already agreed since 2010.[94]

Concerning the reasons explaining the difficulty of cooperation between the EU and Russia, Averre (2005: 176) argues that, "in spite of the plethora of agreements, strategies, initiatives and concepts underpinning the relationship, it has become apparent

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[90] Interview with an official from former DG Home Affairs, European Commission, Brussels, May 2010.

[91] Interview with a representative from the Permanent Mission of Georgia to the European Union, Brussels, May 2009.

[92] Interview with an official from former DG External Relations, European Commission, Brussels, May 2010.

[93] Russia has insisted on referring to the term new agreement instead of association agreement, with the aim not to link the agreement with that of the EaP countries. See Emerson (2006) for an assessment on the implications of the negotiation of the association agreement right before the start of the negotiations. Averre (2005), Haukkala (2010; 2015), Hugues (2006), Timmins (2004) and Vahl (2001) analyse the general framework of EU-Russia relations.

[94] Interviews with a representative from the Permanent Mission of Russia to the European Union, Brussels, May 2010 and an official from former DG External Relations, European Commission, Brussels, May 2010.

that there are fundamental difficulties facing Brussels and Moscow". These difficulties have been underlined by Kanet (2009: 4). First, "Russia remains very much a traditional power whose leadership views the world from a power political perspective", whereas the Union has a postmodern view of the international system. Second, EU Member States pursue their own foreign policy towards Russia, which "has attempted to ignore the existence of the EU and has dealt as much as possible with individual EU Member States". Third, another difficulty is that Member States from the enlargement 2004 onwards have a legacy when dealing with Russia as the majority of them were either part of the Soviet Union or were under Moscow's sphere of influence during the Cold War.

In addition, the expansion of the Schengen Area eastwards had "important border implications for Russia" (Potemkina, 2005: 167).[95] First, the transit from the Kaliningrad exclave to the Russian mainland (Potemkina, 2005) was a matter of concern in Moscow.[96] Second, another issue of tension resulting from EU enlargement has been the status of the Russian minority population living in Estonia and Latvia (DeBardeleben, 2005: 2).

The EU-Russia PCA was negotiated right after the dissolution of the Soviet Union. Timmins emphasises that "EU-Russia relations were not viewed as high priorities in either Brussels or Moscow" (2004: 359).[97] The PCA finally entered into force in 1997, establishing a 'strategic partnership' between the EU and Russia (EU – Russia, 1997). However, as Vahl (2001: 2) pointedly suggested, there is an absence of strategic partnership since in a number of issue areas since cooperation has been almost non-existent. In this regard, Timmins (2002: 92) suggested that "pragmatic incrementalism rather than strategic partnership best account for the current state of EU-Russia relations".

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[95] The EU and Russia share 2.500 kms of land border. Russia borders Finland, Estonia and Latvia as well as Poland and Lithuania via the Kaliningrad *oblast*. See European Commission (2001b) for the EU approach towards the exclave of Kaliningrad.
[96] On EU relations with Kaliningrad, see Lopata (2008) and Gänzle and Müntel (2011).
[97] Furthermore, the Chechen conflict prevented the PCA from being ratified until December 1997, when President Yeltsin announced a military withdrawal from the Northern Caucasus. However, an interim agreement was signed in February 1996 that facilitated the implementation of trade clauses in the PCA.

Two years after the entry into force of the PCA, the Council of the European Union endorsed a Common Strategy on Russia in 1999 (Council of the European Union, 1999b). As in the case of the Common Strategy on Ukraine, it was ineffective as it did not envisage how to implement its goals. A Report by the Egmont Institute states that "[t]his unilateral document (the Common Strategy) led to a purely bureaucratic exercise with empty regular reports on implementation" (2006: 2).

In an attempt to give an impetus to the PCA, at the EU-Russia Saint Petersburg Summit in 2003,[98] both the EU and Russia designed a new institutional and non-legally binding framework to strengthen their cooperation, with the launch of 'Common Spaces'. Among them, a Common Space on Freedom, Security and Justice (European Union – Russia, 2003). Smith and Webber highlight, like Timmins (2002), the pragmatic character of cooperation between the EU and Russia under the Common Spaces: "[r]elations had, by the mid 2000, settled on a point of pragmatic cooperation encapsulated in the 'common spaces' (…) a move, in other words, away from the shared values emphasised in the EU's 1999 Common Strategy on Russia" (2008: 83).

The specific measures of the Common Space were set out in the format of a Road Map agreed at the EU-Russia Summit in Moscow in 2005. This Road Map constitutes the first extensive EU-Russia agenda on JHA matters.[99] In this respect, Averre points out "[t]hat the list of areas of possible cooperation (…) is long and impressive, and the progress which has been made is indicative of genuine shared concerns" (2005: 185). In the opinion of a Commission official, the Common Space on Freedom, Security and Justice is "the most important" of the Common Spaces and the EU-Russia JHA cooperation the most flourishing area of cooperation between the EU and Russia.[100] This is indeed so if compared with other policy areas. Russia has shown an eager interest in cooperating with the EU in terms of mobility, as the thesis will further develop.

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[98] The EU-Russia Summit was celebrated on occasion of the 300th anniversary of the foundation of the city of Saint Petersburg.
[99] See Korneev (2012) for an account on the Road Map for the Common Space on Freedom, Security and Justice.
[100] Interview with an official from former DG External Relations, European Commission, Brussels, May 2010. Along the same lines, Pentland (2005: 50) stresses that "the content of relations encompassed by the framework has been richer and weightier than in other cases".

At the EU-Russia Rostov on Don Summit in June 2010, a Partnership for modernisation was launched, which, similarly to the EaP declaration, provided a flexible framework to give momentum to the Common Spaces (Council of the European Union, 2010c). As the then President of the European Council Van Rompuy stated after the Rostov on Don Summit, "[with Russia we [the EU] do not want a 'reset'. We want a 'fast forward'". However, since armed conflict in Ukraine in 2013 and the illegal annexation of Crimea by Russia, the EU decided to impose a set of restrictive measures to Russia, including asset freezes and economic sanctions. EU-Russia cooperation has also been affected by the current situation, as it will further examined.

Table 3: State of play signature EU-Eastern Europe Association Agreements

	Initiation	Signature	Provisional application	European Parliament Consent
Ukraine	30 March 2012	21 March 2014: political provisions 27 June 2014: economic & trade provisions	-Provisional application since 1 November 2014 of certain parts. -Provisional application of trade-related matters planned on 1 January 2016.	16 September 2014
Moldova	29 November 2013 – EaP Vilnius Summit	27 June 2014	1 September 2014	13 November 2014
Georgia	29 November 2013 – EaP Vilnius Summit	27 June 2014	1 September 2014	18 December 2014
Russia	Negotiations on hold	Negotiations on hold	Negotiations on hold	Negotiations on hold

Source: Author's own elaboration

*The ratifying parties for the association agreements are the European Union, the Europe Atomic Energy Community, the 28 Member States and each Eastern European country.

4.2 Multilateral cooperation framework:

After the overview on the bilateral cooperation framework with Eastern European countries, it is worth looking at the multilateral cooperation framework. The Eastern Partnership (EaP) is the main multilateral cooperation framework between the EU and Eastern Europe similarly to the Barcelona Process – Union for the Mediterranean with the Southern Neighbourhood, with the aim of fostering also regional cooperation.[101] The EaP has its origin on a Polish-Swedish proposal presented in May 2008 (Governments of Poland and Sweden, 2008). From the start, the Member States neighbouring Eastern European countries such as the Czech Republic, Poland and the Baltic countries were in favour of the launch of the Partnership.[102] This logic interest has been confirmed by the fact that the EaP summits have taken place during the Council presidencies of these countries.

As part of the ENP, partner countries are those of the Neighbourhood East.[103] However, the participation of Belarus in the initiative was controversial among EU Member States, whereas the Eastern partners were in favour that Minsk took part in the initiative. A Georgian official pointed out that "Belarus should not be left out and isolated. It should be included in the Eastern Partnership".[104] As for Russia, it self-excluded from taking part in the Partnership, as it was the case with the ENP. In a way, Moscow perceived the EaP as a mechanism to extend the sphere of influence of Brussels in Eastern Europe. As an IOM representative ironically put it, "[the Eastern Partnership] is full of EU language. How could Russia sign something it does not know?"[105]

The Declaration of the Prague EaP Summit, adopted in May 2009, set out an agenda with the objectives of deepening of the political association and economic integration of the EaP counties with the EU and the promotion of EU values (democracy, rule of law, respect for human rights and fundamental freedoms). Although there is a section on the 'centrality of multilateral cooperation', the content of the Joint Declaration is mainly

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[101] See European Commission (2011e) for a Communication on JHA policies in the EaP.
[102] Interview with a representative from the Permanent Representation of Hungary to the European Union, Brussels, May 2010. On the origins of the EaP, see Korosteleva (2011) and Longhurst (2009).
[103] Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.
[104] Interview with a representative from the Permanent Mission of Georgia to the European Union, Brussels, May 2009.
[105] Interview with a representative of the EU Regional Representation of the International Organisation for Migration (IOM), Brussels, May 2009.

oriented at strengthening bilateral cooperation. In fact, multilateral cooperation is on a voluntary basis. A Ukrainian representative stressed that "[t]he EaP should have some elements of multilateral cooperation since it shares borders with the countries involved, but should be built rather at an *ad hoc* basis".[106] Similarly, voices in the EU institutions have been pessimistic about the prospects of developing a multilateral framework.[107]

Within the multilateral track of the EaP, which is intended to be a "forum for dialogue and exchange" (European Commission and High Representative, 2015a: 2), the Commission has developed thematic platforms, among them platform 1 on democracy, good governance and stability. A panel focuses on migration and asylum and another one on Integrated Border Management (IBM). Under an IBM flagship initiative, exchanges and training on border management have taken place.[108]

In Ukraine, the Eastern Partnership was not received with enthusiasm.[109] According to a Ukrainian diplomat, "[t]he Partnership does not provide many changes in a context of advanced bilateral cooperation, but it allows the extension and exchange of best practices among the Eastern neighbours". The same diplomat contended that the EaP "[l]ooks smart, good approach with benefits from both sides."[110] These declarations and also the scepticism with which Ukraine reacted to the ENP may indicate that Kyiv has traditionally been keen on deepening bilateral relations with the EU, without the specific objective of fostering regional cooperation.

Three EaP summits at the level of Heads of State and Government have taken place as a follow-up to the Prague EaP summit in 2009. The Warsaw EaP Summit under Polish Presidency of the Council was organised in September 2011 (Council of the European Union, 2011b: 15). The Vilnius EaP Summit in November 2013 was particularly significant because of the situation in Ukraine. It was the venue for the initialling of the EU-Moldova and EU-Georgia agreements. "Enhancing mobility in a secure and well-

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[106] Interview with the Deputy Head of the Permanent Mission of Ukraine to the European Union, Brussels, May 2009.
[107] Interview with an official of the General Secretariat of the Council of the European Union, Brussels, May 2009.
[108] Chapter V analyses Integrated Border Management activities within the multilateral dimension of the EaP.
[109] See Costea (2011) on the Eastern Partnership in Ukraine.
[110] Interview with the Deputy Head of the Permanent Mission of Ukraine to the European Union, Brussels, May 2009.

managed environment" was underlined as a "core objective of the Eastern Partnership" (Council of the European Union, 2013b: 3).

The Riga Summit took place on 21-22 May 2015. The participants reconfirmed the "high importance they attach to the Eastern Partnership as a specific dimension of the European Neighbourhood Policy" and that the Partnership is founded on "shared ownership, responsibility, differentiation and mutual accountability" (Council of the European Union, 2015c: 1). The summit focused on the provisional implementation of the association agreements, pending ratification.

Referring to the annexation of Crimea by Russia, the EU commits in the Joint Declaration to "territorial integrity, independence and sovereignty of all its partners" (Council of the European Union, 2015c: 2). It is worth underlining that the EU and the Eastern partners did not agree on referring to these principles. Allegedly, Belarus and Armenia were against acknowledging the illegal nature of the Russia annexation of Crimea (Kuznetsov, 2015). The Joint Declaration also refers to the territorial integrity of Georgia. The breakaway entities of Abkhazia and South Ossetia signed agreements with Russia in November 2014 and March 2015 respectively, which confirm Russia's control of the entities. The fact that EaP partners like Belarus and Armenia defend the position of Russia in Crimea is a signal of the lack of EU soft power in these countries.[111] In the area of mobility, the participants reconfirmed the principle of the Vilnius Summit that "enhanced mobility of citizens in a secure and well-managed environment remains a core objective of the Eastern Partnership (Council of the European Union, 2015c: 9).

Moreover, two intergovernmental initiatives have been incorporated into the multilateral track of the EaP, namely the Budapest Group and the Söderköping process. The Budapest Group was created in 1993 as a German initiative with the participation of forty European countries, including all Community for Independent States (CIS) members. This cooperation framework is relevant for this dissertation because it includes a special group focused on questions related to migration in Russia, Ukraine

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[111] See Mananashvili and Wilson (2014) on EU soft power in the EaP.

and Moldova. The International Centre for Migration Policy Development (ICMPD) took up the function of the secretariat of the Budapest Group.[112]

The Söderköping Process was launched in 2001 as an initiative of the Swedish Presidency of the Council. It was conceived in order to strengthen cross-border cooperation along all the countries on both sides of the EU Eastern external border since the EU enlargement to Central and Eastern Europe.[113] Its secretariat was hosted by the IOM office Kyiv from 2003 to 2010 and supported by the Swedish Migration Board. According to IOM officials, it is a kind of "think-tank at the high-level to share experiences and best practices in the field of asylum, return and migration, with no technical cooperation taking place".[114] With the launch of the Eastern Partnership in 2009, Sweden suggested the integration of the Söderköping Process as part of the multilateral track of the EaP within the Panel on Migration and Asylum. The Söderköping Process became finally part of the EaP in December 2011.

Besides the EaP, the EU has launched another multilateral initiative in order to foster cooperation with Eastern Europe: the Black Sea Synergy. However, it must be clearly underlined that Black Sea Synergy is not, unlike the EaP, a framework for the formulation of EU policy instruments in the migration field. The Synergy is a platform for its members to promote cross-border cooperation. The Synergy was launched after the accession of Romania and Bulgaria to the EU in 2007, when for the first time the EU borders reached the shore of the Black Sea (European Commission, 2007a). All the countries analysed in the dissertation are members of the Synergy, as they all have direct access to the Black Sea. According to Gazizullin, Lozoviy and Tatarchuk, the Black Sea Synergy is not a "traditional comprehensive political initiative, but is aimed at supporting ongoing regional cooperation, sector-based" (2011: 1-2).

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[112] ICMPD is a major international organisation with fourteen Member States, which implements EU-funded migration management projects in Eastern Europe. For example, the Building Migration Partnerships (BMP) initiative, launched in 2009 by the Czech Presidency as part of the so-called Prague Process, which will be further examined in Chapter VII.

[113] The following countries originally participated in the Söderköping process: Estonia, Latvia, Lithuania, Poland, Slovenia, Hungary, Romania, Belarus, Ukraine and Moldova. Russia and Finland do not take part in the Process.

[114] Interviews with officials from the International Organisation for Migration (IOM) Office in Ukraine, Kyiv, April 2011.

5. Summary

Chapter II has given an overview of the development of the EU JHA policies and, in particular, the development of the external dimension of the EU migration policy since the Treaty of Maastricht to the Treaty of Lisbon. The chapter is a state of the art of the origin, nature, evolution and characteristics of the EU migration policy. In addition, the state of the art includes a review of the cooperation framework between the EU and Eastern Europe, both bilateral and multilateral.

The chapter has argued that before the creation of the third pillar on Justice and Home Affairs in the Treaty of Maastricht, EU Member States cooperated in the field with intergovernmental fora such as the TREVI group, the Council of Europe and the Schengen agreement. In particular, some Member States have been advocating for the integration of migration policies at EU level according to the principle of solidarity among Member States. This is the case for Southern European countries like Spain, Italy and Greece, which are exposed to huge irregular migration flows. Germany also is in favour of a bottom-up Europeanisation because of the huge numbers of asylum seekers.

The EU migration policy was partially 'communitarised', or integrated at EU level, with the Treaty of Amsterdam. However, the chapter has argued that the five-year transition period before the actual 'communitarisation' shows incoherence. The Treaty of Amsterdam also laid the foundations for the development of the external dimension of the EU migration policy, including only references to the conclusion of readmission agreements with third countries.

The EU adopted five-year programmes to set out the agenda in the area of migration for the period between 1999 and 2014. The first multiannual programme was the Tampere Programme, adopted in 1999, which envisaged a comprehensive set of measures aimed at establishing an Area of Freedom, Security and Justice. Nevertheless, the Conclusions of the Seville European Council in 2002 changed the policy objectives from a comprehensive to an EU migration policy more focused on security. The chapter also assesses the GAM and the subsequent GAMM in the wake of the Arab Spring in 2011, as the framework for the development of the external dimension. The chapter also

includes a table with information on the legal basis, functions and role in the external dimension of the EU Home Affairs Agencies (Table 2).

Regarding the bilateral and multilateral framework for EU migration cooperation with Eastern Europe, the chapter has analysed the PCAs and association agreements which are at the time of writing provisionally applied in Ukraine, Moldova and Georgia as the main bilateral cooperation framework. Unlike the PCAs, association agreements have a specific chapter on JHA issues. Table 3 captures the state of play of the association agreements with each of the countries dealt with in the thesis.

The ENP has been the policy to frame bilateral cooperation with Eastern Europe, with the non-participation of Russia. The ENP action plans have set out the agenda for migration cooperation with Eastern Europe. In the specific case of Russia, a Road Map for the Common Space for Freedom, Security and Justice was adopted in 2005 with the purpose of formulating the agenda in migration cooperation. The ENP has been characterised by the principles of differentiation and ownership and it is subject to review in view of the adoption of a Commission Communication in late October or early November 2015.

Concerning the multilateral track, the EaP has allowed the development of thematic platforms with the whole of the EaP countries, with a flagship initiative promoting border management standards, which will be analysed in Chapter V. Other multilateral fora are the Söderköping Process (integrated into the EaP in 2011), the Budapest Group and the Black Sea Synergy.

CHAPTER III. Beyond Europeanisation: an analytical framework to explain EU migration policy convergence with Eastern Europe

1. Introduction

Europeanisation has been the main theoretical approach in the International Relations literature to frame the studies of EU cooperation with neighbourging countries. As argued in Chapter I, there are shortcomings in the current scholarly work to explain policy convergence between the EU and Eastern European in the field of migration.

The aim of this chapter is to present a state of the art of the literature written on Europeanisation and external governance as well as to present the analytical framework of the dissertation. Barbé *et al.* (2009a) identify three different Europeanisation schools: Europeanisation as norm transfer, EU normative power Europe and EU external governance. All of them start from the premise that the relations between the EU and third countries lead to a process of convergence with the norms and structures of the *acquis communautaire*.

However, the thesis proposes an analytical framework encompassing alternative models to explain the relations between the EU and third countries, including norms other than the *acquis* like those emanating from international organisations and also those negotiated between the EU and a neighbourging country. This analytical framework takes into account as explanatory factors the structure of power between the EU and third countries and mutual perceptions of legitimacy.

The chapter begins by assessing critically the Europeanisation theoretical approaches in the literature to explain EU migration policy convergence with third countries. It then presents the analytical framework of the dissertation, including the independent variables (explanatory framework) and dependent variables (models of policy convergence) and the main hypothesis. Finally, the chapter is briefly summarised.

2. Europeanisation as a theoretical approach to explain EU migration cooperation with third countries

2.1. Europeanisation as norm-transfer

Europeanisation is a theoretical approach that claims that the EU 'exports' unilaterally norms emanating from European integration to its neighbouring countries in any given field. Coppieters and Emerson define Europeanisation as a "process in which European rules, mechanisms and collective understandings interact with given domestic structures" (2004: 20).[115]

At this stage, the definition of the term norm should be clarified. It refers in this dissertation to the benchmarks embedded in the policy tools or instruments of the EU migration cooperation with third countries, both legally binding and non-legally binding. This definition is in line with the broad definition of norms by Finnemore and Sikkink, as "standards of appropriate behaviour for actors with a given identity" (1998:891). In light of this definition, examples of norms might be the *acquis communautaire*, international conventions by the Council of Europe or the United Nations (UN).

These norms are the object of the policy convergence in the migration field between the EU and Eastern Europe. Policy convergence is defined in a broad way as "any increase in the similarity between one or more characteristics of a certain policy (e.g. policy objectives, policy instruments, policy settings) across a given set of political jurisdictions (supranational institutions, states, regions, local authorities) over a given period of time" (Knill, 2005: 768).

The Europeanisation theoretical approach has its roots in the studies of European integration, based on an "incremental process reorienting the direction and shape of politics to the degree that European Community political and economic dynamics become part of the organisational logic of national politics and policy-making" (Ladrech, 1994: 69, cited in Barbé *et al.*, 2009a). In other words, this approach conceives that the Union exports the products of European integration to third countries.

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[115] See Vink and Graziano (2007) for an elaborate literature review on Europeanisation studies.

First, it should be recalled that the literature on Europeanisation was first applied to the study of the approximation to EU norms and standards in EU Member States. This process of approximation, for instance with the transposition of an EU directive in the legal system of a Member State, brings as a consequence domestic legal changes to adapt to EU policies. In this sense, the works by Radaelli (2000) and Börzel and Risse (2000) have focused on the analysis of the changes that took place at the internal level in EU Member States as a result of their approximation to EU norms.

In addition, Börzel and Risse are the authors of the classic gradual systematisation of types of Europeanisation impact at the Member States level: 'politics, policy and polity'. From minimal impact in the political debate (politics) to maximum impact at the structural level (polity), going through impact on policies, this three-fold model has been essential to frame the studies of Europeanisation.

Second, Europeanisation was also used to study the adoption of the *acquis communautaire* during the enlargement process of the countries in Central and Eastern Europe.[116] In this respect, Schimmelfennig and Sedelmeier (2005b) propose a theoretical framework to explain the adoption at the internal level of norms of the *acquis*.[117] Their work is based on two variables. First, they refer to the main actor in the adoption process (the EU or accession countries) and second, to the logic of norm adoption – consequences or appropriateness (March and Olsen, 1999).

The variable of logic of consequences refers to the maximisation of rewards, i.e., that the neighbouring country decides to adopt a norm in function of the benefits that it obtains from it. It might be that the EU can offer additional incentives to the candidate country in order for that country to adopt the norm. This variable comes from rational institutionalism. Without a doubt, in the case of the EU enlargement to Central and Eastern Europe, the best incentive was the membership perspective *per se*.

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[116] In 2004, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia joined the EU, followed by Bulgaria and Romania in 2007 and Croatia in 2013.
[117] See Björkdahl (2005) on EU norm transfer to accession countries, in particular to the former Yugoslav Republic of Macedonia.

For instance, with the obligation of candidate countries to adopt the Schengen *acquis* for EU accession, regardless of whether they perceived this norm as legitimate or not, the adoption of this norm is based on a logic of consequences. The candidate countries acted according to a cost-benefit analysis in view of the membership perspective.

As for the logic of appropriateness, March and Olsen (1999) refer to the perception of the accession country that the norm is sufficiently legitimate to be adopted. This variable comes from sociological institutionalism or social constructivism. Both logics will serve as the basis for the independent variables of the analytical framework in the dissertation.

Finally, Schimmelfennig (2009) referred to Europeanisation 'beyond Europe', identifying theoretical approaches to Europeanisation. Besides Europeanisation applied to the enlargement process (Schimmelfennig and Sedelmeier, 2005a; Bauer *et al.*, 2007), he identified more specific studies such as impact of Europeanisation in the resolution of border conflicts (Diez, Sletter and Albert (2006) and Noutcheva, Tocci, Coppieters, Kovziridze, Emerson and Huysseune, 2004). Other specific studies on Europeanisation have been elaborated for instance on the impact of the transfer of rules of the internal market to neighbouring countries (Gstöhl, 2015).

2.2 Normative power Europe

Normative power turned into the most common concept at the academic and also the political levels to refer to the EU position in the international system, capable of transforming its neighbours on the basis of values, norms and rules. This theoretical approach on EU external policy is embedded in the social constructivist literature since it gives particular emphasis to the identity of the EU. Actorness is defined as the "ability to function actively and deliberately in relation to other actors in the international system" (Smith, 2008: 25).

The normative power Europe is built on the assumption that the EU has an international identity of shared principles such as sustainable peace, freedom, democracy, human rights, rule of law, equality, social solidarity, sustainable development and good

governance. Instead of pursuing its objectives on the basis of rationalist cost-benefit analysis, some authors argue that the EU takes foreign policy decisions by virtue of these characteristics. This is an image the EU also promotes in official documents with references to responsibilities of the EU as a 'force for good' (Barbé and Elisabeth Johansson-Nogués, 2008).[118]

The normative power Europe theoretical approach, coined by Ian Manners (2002), contends that neighbouring countries adopt EU norms because of the EU "ability to shape conceptions of 'normal' in international relations" (Manners, 2002: 239) The author is inspired by the study on the conception of the EU as a civil and military power in applying the concept of normative power in a post-cold war period.[119] Manners suggests "to think about the ideational impact of the EU's international identity/role as representing normative power" (2002: 238). In other words, normative power is based on the ability to make others believe that EU values, ideas and norms are the most desired ones. As Manners points out, to believe more in what the EU *is* than in what the EU *does* (Manners, 2002: 252).[120]

Manners considers that the normative base of the Union is constituted by 'principal and secondary norms'. Among the principal ones, Manners includes peace, liberty, democracy, the rule of law and Human Rights, whereas the secondary ones include social solidarity, antidiscrimination measures and sustainable development. According to Manners, an example of principal norm of the EU is the abolition of the death penalty. The EU has indeed taken a strong stance in this matter. The author illustrates how the EU had normative power in Ukraine in this particular matter. Ukraine abolished it in 1999 when in 1996 a total of 167 executions still took place. Other authors like Sjursen have sustained, in line with Manners, that the EU has the ability to shape conceptions of normal to neighbouring countries. This author puts particular emphasis to international law as the source of EU normative power (Sjursen, 2007).

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[118] See Huelss (2012) for the EU's normative power as a promoter of 'good governance'.
[119] The concept of the EU as a civil power is owed to Duchêne (1973), who pointed out the predominantly economic character of EU activity, in detriment to military and security aspects. He was later on criticised by Bull (1982) in his notion of the EU as a military power.
[120] Emphasis added.

The normative power theory has been object of criticism because of its unidirectional character, which assumes third countries adopt the EU norms and ideas, not taking into account that third countries may not be interested in the adoption of EU norms and may also have the leverage not to adopt them.[121] Authors such as Diez (2005) argue that the ability to shape concepts of 'normal' is not exclusive of the EU. In his opinion, the United States could also be considered a normative power. Kavalski argued in this sense that the EU has normative power only to enlargement countries and those with a 'privileged partnership' with the EU (2013: 251). Larsen (2014) added that the importance of the context should not be disregarded when assessing the ability of the EU to exert normative power. Wood (2011) deals with normative power from the perspective of pragmatism. In his view, it is essential to understand relations with Russia (2011: 251), as mentioned in Chapter II (Timmins, 2002; Smith and Webber; 2008).

Other authors have defined the EU as an actor with a hegemonic role in the region. Haukkala (2008a) criticised that the normative power brings the EU to act as a "normative regional hegemon". Diez (2013) takes up Haukkala's contribution to propose the use of the term 'hegemony' instead of 'normative power'. According to him, hegemony adds the dimension of interests to that of norms and expands the understanding of the actors involved in the construction and exercise of normative power (2013: 206).

Fisher Onar and Nicolaïdis have a critical stance vis-à-vis the normative power Europe theory since, in their view, is a 'sophisticated' version of EU-centric narrative', which marginalises the impact of the role of Europe as a former colonial power (2013: 284). Bicchi (2006) contended the EU has civilisation objectives in its policy towards the Neighbourhood and Tassinari argued that the EU hides unilateral policies using a bilateral rhetoric (2005). All these authors stress that policy convergence is not a unidirectional but a bidirectional process.

In response to the criticism, Manners (2013) argued in favour of the continuous utility of normative power to understand the EU role in the international system. Birchfield

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[121] See Whitman (2013) for a literature review on normative power, including the main contributions of the past dècade.

(2013) claims that the normative power is a valid policy framework to empirically assess the link between the internal and external dimensions of EU policies such as migration (2013: 919).

3.3 EU External Governance

With the launch of the ENP, scholarly attention focused on the degree of approximation of neighbouring countries to the EU *acquis*. In this case, Europeanisation has been used to explain the transfer of norms to EU neighbouring countries. The school of external governance deals with the attempt of the EU to transfer its norms and policies to third countries. The concept presents similarities to that of Europeanisation, but includes in addition of the transfer of the *acquis*, the possibilities of participation of neighbouring countries in cooperation networks (Lavenex, 2004 and 2008; Lavenex *et al.*, 2008; Lavenex, 2014). External Governance systematically explores the links between sectoral modes of governance and the scope for flexible integration of neighbouring countries. In line with external governance, Grabbe referred to the EU transformative power in third countries (2006).

According to Barbé *et al.* (2009a), external governance defines the form in which the European Union extends a common system of rules beyond its legal and geographical border (2009: 381). Héritier and Lehmkuhl note that the concept of external governance can be applied in a broader context to include every type of government and different types of hierarchical relations (Héritier and Lehmkuhl, 2008). In this case, it eventually leads to socialisation and not to the adoption of common rules.

Actually, external governance starts with the premise that the Europeanisation theoretical approach outlined above is valid to explain the relations between the EU and enlargement countries, which entail the adoption of the *acquis*. However, the external governance authors claim that the model of relations between the EU and neighbouring countries must be nuanced by the participatory means of the latter in the adoption of the *acquis*. In this sense, they sustain that there are two kinds of norm expansion: those which go beyond the regulation boundaries and those which go beyond the organisation boundaries. While in the first one third countries adopt the *acquis*, in the second one they have the opportunity to participate in the institutions of EU policy-making.

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External governance implies several institutionalised forms of coordinated action between the EU and third countries, which lead to agreements that keep them interrelated. In light of this, Lavenex *et al.* (2008) identify three models of relations between the EU and third countries: cooperation, hegemony and external governance.

Concerning cooperation, they refer to the case-by-case negotiations between the EU and the neighbouring country that do not imply transfer of sovereignty, i.e., the competences of the State to a supranational body. The result of the cooperation model is the signature of bilateral agreements between the parties. In the migration field, the authors highlight the conclusion of readmission agreements as a measure of cooperation. The thesis will argue that the EU readmission policy with Eastern Europe does not constitute a case of cooperation.[122]

As for hegemony/hierarchy, the authors refer to the unilateral transfer of the *acquis communautaire*, in the context of asymmetrical relations between the parties, in which the EU acts as the dominant actor and the third state as a subordinate actor. The paradigm of hierarchical cooperation would be, according to the Lavenex *et al.*, the compulsory adoption by third states of EU norms.[123] Therefore, the most evident of example of hegemony/hierarchy is that of the European Economic Area. Norway, Iceland and Liechtenstein adopt the whole of the trade *acquis*.

As mentioned above, the external governance approach includes the participation in decision-making processes of neighbouring countries and the existence of cooperation networks. It implies thus the expansion of both the regulation and the organisation borders. Lavenex *et al.* (2008) identify three criteria to determine the degree of expansion of the regulation boundaries: scope, intensity and control.

As far as the scope is concerned, from a horizontal perspective, it refers to the spectrum of policy areas that are the object of cooperation between the EU and neighbouring countries. Intensity makes reference to, from a vertical perspective, the degree of depth in which people cooperate in a specific policy area. Lastly, control alludes to the follow-

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[122] EU-Eastern Europe readmission policy convergence will be analysed in Chapter IV.
[123] See Héritier and Lehmkuhl (2008) on hierarchy in cooperation between the EU and third countries.

up mechanisms and the evaluation of the adoption of each policy area, such as Commission reports in the field of migration.

The authors apply the three criteria mentioned above in migration policy, stating that the scope covers a wide range of policy areas, in some of them the cooperation is more intense than others because of a higher or lower commitment of third countries with the *acquis*. Lavenex further added that these cooperation networks promote policy transfer in migration with resistance from third countries to adopt the policy instruments proposed by the Commission (2014: 896). By taking into consideration that third countries may resist to the adoption of policy instruments in the field of migration, this author evolves in the conceptualisation of EU relations with third countries, by moving from a unidirectional to a bidirectional way of conceiving the process of policy convergence.

Besides external governance, Filtenborg, Gänzle and Johansson propose the term network governance, which encompasses the extension of the EU's regulatory scope (rules and policies) as well as the opening-up of pertinent organisational decision-making structures. According to the authors, network governance should promote an inclusive and partner-oriented approach (2002: 338).

In the same vein, external governance studies have also been dealt with from a legal perspective. Petrov (2008a) proposes two ways to explain the 'exportation of the *acquis communautaire* to third countries': substantial exportation (adoption of the *acquis* in third countries) and procedural exportation of the *acquis* (implication of third countries in the procedures of EU decision-making, information exchange and financial assistance). Procedural exportation of the *acquis* is similar to the concept of external governance enabling participation in cooperation frameworks outlined above.

Finally, in their conceptualisation of external governance, Knill and Tosun (2009) define three stages of policy convergence. First, rule selection to refer to the extent to which the EU regulations are taken as a reference in agreements signed by third countries. Second, rule adoption in how far the rule selected for international agreements is also transported in the third countries legislation. This is measured by the ratification of agreements, or adoption by the third countries of documents in line with

EU rules. Finally, rule application measures the extent to which the rules adopted are also transposed at the level of the administration.

3. Analytical framework to explain EU migration cooperation with third countries

With the objective to respond to the research questions about what are the policy convergence models in EU migration cooperation with Eastern Europe and the reasons for the choice of these models, the dissertation draws on an analytical framework stemming from the literature on Europeanisation outlined above. In this sense, the logics of consequences and appropriateness will serve as the basis for the factors or independent variables.

The analytical framework is based on International Relations theory, from rational and sociological institutionalism. Besides, it also draws on theory of European Foreign Policy. Barbé *et al.* (2009a) challenge three premises of the Europeanisation literature: the centrality of EU norms and standards, power asymmetry between the EU and neighbouring countries and not taking into account that the EU is an actor which acts within the international system.

Regarding the centrality of EU norms and standards, the authors argue that cooperation between the EU and neighbouring countries is rather a bilateral process in which the interests and capacities of the East European neighbours also play a role. Hence, the framework goes beyond the unidirectional process of EU norm transfer to third countries, stressing that both the EU and third countries participate in this process. It is a bidirectional process where the leverage of the neighbouring country plays a role in the negotiating process. This role should not be underrated since neighbouring countries may oppose the norms EU promotes and have leverage to shape different policy outputs.

Actually, evidence in the case studies will show the complex interaction between the EU and Eastern Europe, the process of circularity in which both actors take into consideration capacities, interests and perceptions when agreeing on a particular migration agenda. In brief, the cooperation process implies bidirectionality to a major or

lesser extent, whereby both the positions of the EU and the partner country have an influence in policy output in adopting policy instruments. For instance, the EU-Russia Road Map for the Common Space on Freedom Security and the ENP action plans with Ukraine, Moldova and Georgia set out political commitments to which not only the EU but also the partner country formally agrees to. The theoretical framework aims at reflecting this interaction EU – Eastern Europe, absent in the idea of unidirectionality of Europeanisation.

With respect to power asymmetry between the EU and neighbouring countries, it is clear that there is asymmetry between the EU and its Neighbourhood, for instance in the trade sector. However, power asymmetry is neither a factor *per se* that determines EU policies to Eastern Europe, nor the impact of those in terms of police convergence. In the case of Russia, Chapter II emphasised the focus on symmetry and reciprocity in EU-Russia relations.

In addition, the Europeanisation theoretical approach does not take into account that the EU acts within the international system. On the contrary, the analytical framework bears in mind that the EU is an actor which interacts in the international system. This might entail that the Union may act as a transmitter or promoter of norms that emanate from international organisations. Also, the EU may have to face constraints to pursue certain objectives in cooperating with the Neighbourhood.

With these three considerations in mind, Barbé *et al.* (2009a) developed an analytical framework which proposes alternative policy convergence models to Europeanisation. In their own words, "[t]o our mind, while the Union does encourage its partners to harmonise their policies with the EU in a number of fields, policy convergence processes are much less dominated by EU rules and norms than meets the eye" (2009: 379).

Therefore, in the EU migration cooperation towards Eastern Europe, besides the adoption of norms of the *acquis*, the EU may promote, norms emanating from international organisations like the Council of Europe, as well as bilateral norms agreed between the EU and Eastern European countries.

Regarding international norms, these can be both at the global level with UN norms or at the regional level such as with Council of Europe norms.[124] They tend to be perceived by neighbouring countries as more legitimate than EU norms, as they are the result of international negotiations in which neighbouring countries usually participate since in most cases they are members of these organisations.

As regards the convergence towards bilaterally-agreed norms, the EU and the neighbouring country negotiate and agree on norms that regulate specific patterns of 'tailor-made' relations, which adapt to the preferences of the Union and neighbouring countries.

3.1. Independent variables

In order to explain the choice of the three policy convergence models, two independent variables provide arguments for the option for a specific policy convergence model. They stem from two forms of institutionalism: rational and sociological (Schimmelfennig, 2009).

The first variable is the structure of power between the EU and a neighbouring country. This variable comes from rational institutionalism. The variable of logic of consequences (March and Olsen, 1999) links Europeanisation with the incentives that the EU offers to the candidate country. Leverage is defined as the capacity to provide sufficient incentives or disincentives to Eastern partners so that they adopt the norms that the EU is interested in.

Rational institutionalism has a material conception of interests. As a result, it is a variable based on power relations between actors, which can be symmetrical or asymmetrical. It stems from the fact that States define different norms according to the costs and benefits attached to a specific action.

In this way, the candidate country adopts a norm according to the rewards it obtains from it. In other words, rewards and sanctions alter the cost-benefit calculations.

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[124] See Cortell and Davis (1996) for the impact of international norms on the norms adopted by States.

Without a doubt, in the case of the EU enlargement to Central and Eastern Europe, the best incentive was EU accession *per se*. If an actor is powerful enough to disregard EU demands, the offer of incentives becomes crucial for the cooperation to move forward. In other words, the EU may modify the cost-benefit analysis by altering the offer incentives.

As far as incentives are concerned, Herranz (2010) distinguishes between specific and crosscutting incentives. Crosscuting incentives target the strengthening of the legal framework of relations between the EU and the neighbourhood, for example via offering the membership perspective, whereas specific objectives are concrete incentives offered in the context of a specific policy area.

The second variable is the mutual perceptions of legitimacy. With roots in sociological institutionalism, the mutual perceptions of legitimacy conceive the Union and third countries as socialising agents capable of shaping each other's perceptions. It starts from the premise that actors adopt norms when they are convinced that these are legitimate or appropriate enough to be adopted.

Additionally, the degree of identification of the neighbouring country with the EU and the legitimacy that attributes to the EU integration process play a role. If the neighbouring country has EU membership aspirations, it is most likely to grant authority to the EU as promoter of certain norms.

In other words, the mutual perceptions of legitimacy could be defined as the level of resonance of norms proposed by the EU and the normative context in the Eastern European countries. Among the three policy convergence models, convergence towards international norms is the model with the highest perceptions of legitimacy since international norms enjoy a high degree of legitimacy and ownership.

The perceptions of legitimacy can be altered via offering socialisation measures like informal political dialogue and capacity-building and exchange of best practices. For example, the meetings under the multilateral framework of the Eastern Partnership (EaP) at technical level between the EU and neighbouring countries provide

opportunities for exchange of best practices. Thus, they may have an impact on the perceptions of legitimacy in neighbouring countries.

At this point, it is necessary to clarify that the internal coherence of the norms that the EU promotes is integrated in the variable of mutual perceptions of legitimacy. Lack of internal coherence may lead to confusion by Eastern European countries. They may perceive that the EU is acting with double standards when advocating for the adoption of a norm which has not been adopted across all EU Member States. Intraeuropean coherence has its origin in the classical debates on coherence of the EU foreign policy (Nuttall, 2005). In case of lack of intraeuropean coherence, the EU may lose legitimacy when promoting an EU norm.

Finally, another variable to bear in mind is the determinacy of the norm. In other words, the more a norm is concrete and specific,[125] the more likely it will be perceived as legitimate (Roos and Zaun, 2014: 48). Schimmelfennig and Sedelmeier argue that norms need to be specific enough in order to be credible enough for their adoption (2005b).

3.2 Dependent variables

In function of the type of norms that the EU and a neighbouring country agree to promote, the dissertation proposes a systematisation based on three models, which constitute the dependent variables of the analytical framework.

First, as for convergence towards EU norms, it is the model whereby the EU exports partially or totally norms of the *acquis*. Therefore, the goal is that third countries adopt the products of the European integration process. The character associated to this model is that of an ethical or civilising actor that tries to export its own norms.

Convergence towards EU norms is the most demanding of the three models since the *acquis* usually triggers high costs of adoption. This is due to the high level of

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[125] Roos and Zaun refer to norm specificity as "how well norms are defined and understood by actors" (2014: 48).

determinacy of EU norms, since they are part of a highly integrated community of EU Member States at the political and economic level. This model has the risk of low perceptions of legitimacy from neighbouring countries, which may easily perceive the promotion of EU norms as Eurocentric. As a result, the EU leverage depends on the offer of incentives and the ability to persuade about the appropriateness and opportunity of the EU norms promoted.

Second, with respect to convergence to international norms, it implies the total and partial adoption of international norms, which might emanate from universal international organisations such as the UN or regional international organisations like the Council of Europe. In this cooperation pattern, the EU acts as a norm-transmitter or an internationalising agent that favours the adoption of norms already existing at the international level. The EU acts in this cooperation model as a universalist or cosmopolitan actor. An example of promotion of an international norm is the effective implementation of the Geneva Convention and Protocol relating to the status of refugees, which constitute the basis of the international refugee protection regime.

The adoption of international norms by neighbouring countries seems to be *a priori* less costly. This is linked to less specificity of international norms if compared with EU norms. In addition, since these norms have been negotiated by a wider number of countries, neighbouring countries perceive them as more legitimate. Therefore, it is less likely that the Eastern European countries perceive the EU as patronising.

Lastly, convergence to bilaterally-agreed norms is the model whereby the EU and a neighbouring country agree on the adoption of norms that are the result of negotiations between the two actors. Hence, they are tailor-made to the particular context in which they were negotiated, reflecting the outcome of how both parties – the EU and a neighbouring country – accommodate their preferences. A priori this model of policy convergence is the least costly since it is tailored to the interests of the parties and as a result, high perceptions of legitimacy are attached to these norms.

3.3 Hypothesis

The formulation of hypothesis is based on the difficulties the EU encounters when promoting EU norms. A first hypothesis is that, contrary to the predominant strands in the literature that claim that neighbouring countries adopt EU rules and standards, convergence to EU norms is the least likely model to take place. The second hypothesis is linked with the factors that trigger that convergence towards EU norms is the least expected model: lack of enough EU leverage vis-à-vis neighbouring countries and low perceptions of legitimacy of the EU among Eastern neighbours. Table 4 summarises the analytical framework of the dissertation pinning down the main elements of the policy convergence models.

Table 4: Policy convergence models between the EU and third countries

	TYPE OF NORM	EU CHARACTER	INDEPENDENT VARIABLES
Convergence to EU norms	*Acquis communautaire*	Civilising Ethical	-Interests and leverage (convincing incentives) -Mutual perceptions of legitimacy
Convergence to international norms	International norms (universal and regional)	Universalist Cosmopolitan	-Lack of interests and leverage -Mutual perceptions of legitimacy
Convergence to bilaterally-agreed norms	Bilaterally-agreed norms between the EU and a neighbouring country	Pragmatic Accommodating	-Lack of interests and leverage -Lack of mutual perceptions of legitimacy

Source: Author's own elaboration

4. Summary

This chapter has assessed critically the Europeanisation theoretical approaches in the literature to explain EU migration cooperation with third countries. In addition, it has presented the analytical framework of the dissertation, including the independent variables (explanatory framework) and dependent variables (models of policy convergence), as well as the main hypothesis.

First, the chapter has concluded that the Europeanisation theoretical approaches (Europeanisation as norm transfer, normative power Europe and EU external governance) assumes that EU rules are central in EU policy convergence with neighbouring countries and that there is power asymmetry between EU and its neighbours.

Second, the analytical framework by Barbé *et al.* (2009a) challenged these premises and proposes three policy convergence models between the EU and third countries, including in addition to norms of the *acquis* (convergence to EU norms), norms emanating from international organisations (convergence to international norms) and also those negotiated between the EU and a neighbouring country (convergence towards bilaterally-agreed norms). This analytical framework takes into account as independent variables the structure of power between the EU and third countries and mutual perceptions of legitimacy. For example, the EU may alter the structure of power by offering a tempting incentive to neighbouring countries. As regards the perceptions of legitimacy, a neighbouring country may adopt a rule because it perceives it as appropriate or internally coherent.

Third, the chapter has argued that with low EU leverage and low perceptions of legitimacy, the convergence to EU norms is the least likely of the policy convergence models. Rather, convergence will be towards bilaterally-agreed norms which suit the preferences of both the EU and neighbouring countries. When the EU has low leverage but there is an international norm, the EU may opt to promote this norm as it is usually perceived as more legitimate by the neighbouring country. Only when the EU has enough leverage, which may be altered by the offer of incentives, and its rules are perceived as legitimate, the convergence to EU norms may take place. It is worth noting

though that the EU may not be interested in promoting its own rules. The following four chapters will delve into the four migration policy areas and will identify the models of policy convergence for each of them, as well as the explanatory factor underlying migration policy convergence between the EU and Eastern neighbours.

CHAPTER IV. EU – Eastern Europe readmission policy convergence

1. Introduction

Readmission has been the first migration policy area to be developed in the external dimension of the EU migration policy. As this chapter will show, the content of readmission agreements is highly technical and stipulates the conditions for return to their countries of origin of irregularly-staying third country nationals (TCNs).

This is the first of a series of four chapter dealing with external policy instruments in the field of migration. The aim of this chapter is to give an account of the genesis of readmission agreements, delving into its legal basis and the substance of the agreements. The chapter also looks at negotiations of readmission agreements with Eastern Europe and the agreements which have entered into force so far. Particular attention is given to the link of readmission agreements and visa facilitation agreements. This analysis allows identifying the model of policy convergence embedded in readmission cooperation between the EU and Eastern Europe.

The chapter has four main sections. Firstly, it examines the legal basis and content of the readmission agreements. The next section outlines the readmission agenda with Eastern Europe and the output of cooperation in this field. This is followed by an explanation of the policy convergence model in readmission cooperation as well as a summary of the main findings.

2. Genesis of the EU readmission agreements with third countries

According to Coleman (2009), readmission constitutes the cornerstone of the EU migration policy towards third countries. Martín y Pérez de Nanclares refers to readmission agreements as the 'most visible' domain of the external dimension of the EU migration policy (2012: 33). The Council has defined this policy instrument as "essential tools in the fight against illegal immigration" (Council of the European Union, 2011a: 2). The conclusion of the readmission agreements has been the first EU priority when establishing the migration agenda with third countries, in order to tackle

the phenomenon of irregular migration, perceived as a 'threat' to EU security. As Monar puts it: "[t]he key example (of external cooperation) are readmission agreements concluded or under negotiations with several third countries considered to be major countries of origin of illegal immigration" (2004: 398). Readmission agreements have been negotiated before other policy tools, namely those in the areas of border management, visa and labour migration. EU irregular migration policies have been widely studied in the literature, in particular readmission agreements (Navarro Batista (2012), Billet (2010), Phuong (2007), Ilies (2009), Peers (2004), Peers and Rogers (2006), Roig and Huddleston (2007), Sánchez Rozas (2009), Schieffer (2003), Trauner and Kruse (2008)).

It is worth underlining that readmission agreements constitute an *ex post* policy instrument in tackling irregular migration, contrary to border management tools, which are *ex ante* measures. The European Commission defines EU readmission agreements as imposing "reciprocal obligations on the contracting parties to readmit their nationals and also, under certain conditions, third country nationals (TCNs) and stateless persons. They also set out in detail the operational and technical criteria for this process" (European Commission, 2011a: 2).

The International Organisation for Migration (IOM) defines readmission as an "[a]ct by a State accepting the re-entry of an individual (own national, third country national or stateless person), who has been found illegally entering or being present in another State" (IOM, 2011: 79) IOM also defines them as an "[a]greement which addresses procedures for one State to return aliens in an irregular situation to their home State or a State through which they passed en route to the State which seeks to return them" (IOM, 2011: 79). In other words, they regulate the conditions and procedures under which the EU Member States and the third state commit to readmit irregular-staying migrants.

As already indicated in Chapter II, the conclusion of readmission agreements with third countries has been the only tool of the external dimension of EU migration policy explicitly regulated in the Treaties, in article 79.3 of the Treaty on the Functioning of the European Union (TFEU, 2009), which stipulates that "[t]he Union may conclude agreements with third countries for the readmission to their countries of origin or

provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States."

The Council has repetitively reaffirmed the need to develop an irregular migration policy. The Tampere Programme states that "[t]he European Council is determined to tackle at its source illegal immigration" (European Council, 1999: point 23). As stated in Chapter II, the Seville European Council conclusions made a shift to a policy aimed at reducing irregular migration flows, with readmission agreements as the main policy tool to implement this objective (Bigo, 2004 and Cholewinski, 2006). The European Pact on Immigration and Asylum, adopted by the European Council of 15 and 16 October, reaffirmed the basic principle of greater cooperation between Member States and the Commission and the countries of origin and of transit in order to control illegal migration (Council of the European Union, 2008d: part III)

In fact, the readmission of national irregularly staying in another country constitutes an obligation under customary international law. In fact, this is an obligation deriving from State sovereignty over territories and borders, notably the right of a State to decide freely whom to admit and to expel from its territory (Panizzon 2012: 107). Roig and Huddleston suggest that the 1948 Universal Declaration of Human Rights (United Nations, 1948) regulates the right to return to its own country, meaning that it is the obligation of the state to make it possible (2007: 364). The first readmission agreement was signed between Prussia and other German States in 1818 and 1819 (Coleman, 2009: 12). Before being integrated at EU level with the Treaty of Amsterdam, readmission was regulated bilaterally between Member States and a third country, as it the case for countries receiving irregular migration flows like France (Panizzon, 2011 and 2012) and Spain (Fajardo del Castillo, 2006).

The co-existence of EU and Member States readmission agreements has been the object of a broad academic debate on whether the competence to sign them is exclusive of the EU or shared between the EU and Member States, as anticipated in Chapter II. In other words, the EU competence to sign readmission agreements "aroused a lot of attention in the literature given the turf wars it generated between the European Commission and EU Member States" (Wolff, 2014: 71). In practice, Member States have also concluded bilateral agreements with countries with which the EU has negotiated readmission

agreements. As Trauner and Wolff suggest, "Member States prefer to rely on existing bilateral instruments" (2014: 12) rather than on EU readmission agreements. As a result, the co-existence of EU and Member States readmission agreements may lead to duplicity and overlap. In that case, in case of discrepancy between the two agreements, the agreement concluded by the EU will have preference according to the principle of direct effect.

Billet (2010: 47-48) indicates two steps taken by the Council prior to the EU competence to sign readmission agreements was regulated in the Treaty of Amsterdam. First, the Council issued a recommendation in 1994 aimed at limiting the 'disparities' between bilateral readmission agreements concluded by Member States, trying to harmonise the structure and content of bilateral readmission agreements (Council of the European Union, 1994 and 1995). Second, the Council adopted standard clauses on readmission so that the Commission introduces them in association agreements with third countries.

According to the principle of parallelism (Panizzon, 2012: 112), introduced by the Commission v. Council (ERTA-European Road Transport Agreement) jurisprudence (European Court of Justice, 1971: para. 16), the EU holds authority over an issue area whose competence can be implicitly derived from the EU internal powers. García Andrade contends that the "doctrine of implied external competences can easily be applied to immigration policy – so easily, that it contrasts with Member States' refusal to transfer to the EU explicit external powers in this domain" (2013: 267).

A broad interpretation of the doctrine of implied powers concludes that the EU has the exclusive competence to conduct the readmission policy. By way of illustration, Preamble 20 of the Return Directive stipulates that the "objective of this Directive, namely to establish common rules concerning return, removal, use of coercive measures (…) cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level" (Council of the European Union, 2008b).[126] The Directive defends that the EU readmission shall be

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[126] The Return directive, which sets out the procedures for the return of irregular migrants to their countries of origin (European Parliament – Council of the European Union, 2008b) was controversial at

based on arguments of subsidiarity and efficiency (Panizzon, 2012: 125). Subsidiarity is the principle whereby the Union when sharing a competence with Member States acts "only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States (..), but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level" (Treaty on European Union, 1999: art. 5.3). According to Martín y Pérez de Nanclares, because of the explicit competence in the Treaties for the EU to sign readmission agreements, Member States should not conclude any more readmission agreements unless the EU explicitly specifies so (2012: 35).

However, a narrow interpretation of the doctrine of implied powers suggests that the objective necessary to achieve is not to facilitate the return process (Council of the European Union, 2008b: para. 7 of the preamble) but rather the necessity to achieve the objective of a 'common migration policy'. According to Panizzon, this objective can only be achieved with the co-existence of EU and bilateral readmission agreements, since the latter encompass also labour migration aspects which are not covered by EU readmission agreements (Panizzon, 2012: 131).

By way of illustration, the agreements concluded between France and third countries include also provisions on labour migration (Panizzon, 2012: 101).[127] García Andrade notes that "numerous international agreements between countries of origin and countries of destination seek to facilitate admission procedures for legal migrants for the latter, which often face labour shortages in certain sectors" (2013: 266). Navarro Batista brings to the attention that only the EU readmission agreement with Pakistan (European Union – Pakistan) includes provisions of migration and development, in particular the reintegration and wellbeing of readmitted people (2012: 165).[128]

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the time of its adoption. The vote at the European Parliament was subject to debate on the safeguard of the rights of migration in light of the directive.

[127] See Chapter VII for more details on bilateral migration agreements between EU Member States and third countries.

[128] Besides countries in the Eastern Partnership and the Western Balkans, the EU has concluded readmission agreements with Hong Kong and Macau (2004), Sri Lanka (2005), Cape Verde (2013) and Turkey (2014). Hong Kong and Macao have a visa-free regime with the EU. The readmission agreements were conceived so that the "visa regime would not be abused" (Interview with an official from former DG Home Affairs, European Commission, Brussels, April 2009). Chapter VI will assess how the Parliament and the Council amended legislation on visas to prevent the misuse of the visa-free regime with a clause on the temporary reintroduction of visas.

Authors like Monar (2013) and Giuffré argue that, since "competence in the Area of Freedom, security and Justice remains shared, and the EU and Member States continue to pursue their readmission procedures in parallel" (Giuffré, 2013: 80). In other words, the shared competence in the area of JHA allows for the co-existence of EU and bilateral readmission agreements. As a result, it rules out EU exclusivity in signing readmission agreements.

Jaroszewicz brings to the attention the lack of implementing protocols for the EU readmission agreements as a reason for bilateral agreements like the Polish-Ukrainian to be in force (2012: 16). This concern has also been expressed by the European Commission: "the inconsistent application of EU readmission agreements undermines greatly the credibility of the EU Readmission Policy towards the third countries, which are expected to apply the EU readmission agreements correctly" (European Commission, 2011a: 5).

In brief, this narrow interpretation on the doctrine of implied powers argues that shared competence over readmission is a reason for the co-existence of EU and bilateral readmission agreements. Therefore, both and bilateral readmission agreements will remain in place (Panizzon, 2012: 133). Actually, the JHA Council provided clarity on this debate on interpreting the doctrine on implied powers in 1999. The Ministers of EU Member States stated that the existence of both EU and bilateral readmission agreement should continue, thus adhering to the narrow interpretation of the doctrine on implied powers. While acknowledging that "[t]he Community objectives in the field of immigration policy include the repatriation of persons residing unlawfully in a Member State" (Treaty on European Community, 1999: art. 63.3), the Council went on by stating that

> "readmission agreements are not, generally speaking, indissolubly linked with the achievement of the Community objective of "repatriation of illegal residents. Whether this is so must be assessed in each individual case. This also applies to the question of whether distortions can arise for other Member States through a Member State's bilateral readmission agreement with a third State. The Community's responsibility with regard to the conclusion of readmission agreements is therefore not exclusive."
>
> (Council of the European Union, 1999a).

Regarding the content of the agreements, it must be stressed that it is highly technical and procedural. Giuffré concludes that a "crucial aspect of the readmission policy, either at the EU or the Member States level, is that readmission agreements are administrative instruments" (2013: 85). For instance, the agreements stipulate in detail the conditions under which the nationality of irregular migrants should be identified. This has been considered as the most difficult part of the readmission procedure by the European Commission.[129]

The most prominent feature of readmission is a clause that envisages not only the readmission of third country nationals, but also of the nationals who transited through the territory of the country with which the agreements are signed. Stateless people are also subject to the clause. This is a novelty proposed by the EU which goes far beyond the scope of the international principle of the obligation to readmit nationals irregularly staying in the territory of another state.

This transit clause implies that third countries should assist transit migrants readmitted in their territory, "including asylum-seekers, who should be channelled into procedures of assessment of their protection claims" (Giuffré, 2015: 88). The reason why the EU introduced this clause may lie in the need to 'outsource' the review of asylum-seekers. As a result, the clause allows to "reject asylum seekers without examining their claim on the basis that protection is or should be possible in either country or the country in route" (Gammeltoft-Hansen, 2006: 6).

A major controversial issue that has triggered debate is whether the agreements guarantee the protection of refugees and the right to seek asylum in the EU. In fact, the customary principle of *non-refoulement* is a legal barrier to readmission, since it prohibits removing a person from an EU Member State to the country of origin if that person would be persecuted (Panizzon, 2012: 107). Readmission has been criticised because it undermines international protection to asylum-seekers if individual reviews of the standards of protection in countries of origin are not conducted. (Panizzon, 2012: 110).

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[129] Interview with an official from former DG Home Affairs, European Commission, Brussels, April 2009.

In addition, Giuffré argues that the restrictive character of the EU migration policy prevents the legal entry of persons in search of international protection into EU territory (Giuffré, 2013). Martín y Pérez de Nanclares also calls into question the compatibility of readmission agreements with international commitments in the field of asylum and fundamental rights (2012: 36). In other words, measures such as visa requirements may exclude pre-emptively the possibility for refugees to enter the EU. The right to seek asylum is only guaranteed in theory, according to officials from IOM. Tragedies in the Mediterranean have called into question the effectiveness of the EU asylum policy. As Giuffré underlines, "instances of informal practices of border control, especially in situations of emergency and mass influxes demonstrate how the existence of a readmission agreement may boost the use of swift and accelerated identification and return procedures in dissonance with international human rights and refugee law (2013: 79).

Actually, Giuffré clarifies that "readmission agreements do not provide the legal basis for rejecting asylum-seekers, but only facilitate the execution of an expulsion decision". Therefore, the agreements should respect the international obligations of the signatory parties, including refugee law (Giuffré, 2013: 80). In this respect, the Commission faced criticism on the compatibility of readmission agreements with international fundamental rights law by proposing that the agreements contain a 'safeguard clause'. This clause would entail the suspension of the agreements if a readmitting country does not respect human rights (European Commission, 2011a: 12). In this respect, the EU-Russia readmission agreement stipulates a list of international agreements for the protection of fundamental rights, including international protection (European Union – Russia, 2007a: art. 18).

Unsurprisingly, the EU-proposed clause to readmit transit migrants and stateless people was not perceived positively by Eastern European countries. Therefore, the EU, highly interested in succeeding in having this clause in the readmission agreements, came up with an offer of incentives to convince Eastern European countries. For Wolff, the offer of incentives had to be 'clear, credible, sizeable and temporally closed" to allow the signature of readmission agreements" (Wolff, 2014: 75). Martínez San Vicente stresses that the conclusion of readmission agreements required incentives measures (2014:

381), since third countries may even deny readmitting its own nationals (2014: 379). The incentive to counterbalance the burden of the transit clause for third countries was visa facilitation agreements.[130]

However, according to a Commission official, the transit migrants and stateless people clause was 'demonised', since it is not costly, there are very few migrants that meet these conditions and the readmission of transit migrants and stateless people is "even less restrictive than the readmission of the migrants of the contracting party".[131]

The EU has no longer opted to include the transit migrants clause when negotiating readmission agreements. In 2011, the Commission suggested that the clause should no longer be "so widely used" (European Commission, 2011a: 9). Panizzon suggests it is due to criticism from the United Nations High Commissioner for Refugees (UNHCR) that the clause lowers asylum standards or the lack of capacity by third countries to deal with the review and eventual return of transit migrants" (Panizzon, 2012: 116). However, the main element may be the lack of legitimacy and the precedent created by the difficulties in negotiating the agreements.

3. EU readmission agreements with Eastern Europe:

3.1. Readmission agreements in the EU-Eastern Europe agenda

Unlike other migration policy areas, measures to tackle irregular migration and, in particular, the conclusion of readmission agreements, have been widely covered in the EU-Eastern Europe migration agenda. In the case of Russia, although the EU-Russia PCA includes no specific section on JHA, irregular migration is addressed in the agreement. First, article 84 stipulates that "`[t]he parties shall establish cooperation aimed at preventing illegal activities such as: illegal immigration and illegal presence of physical persons of their nationality, taking account the principle and practice of readmission" (European Union – Russia, 1997: art. 84). In this regard, the PCA makes reference to the principle of international law whereby irregular migrants staying in another country have to be readmitted by their country of origin. Since the Treaty of

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[130] Visa facilitation agreements will be assessed thoroughly in Chapter VI.
[131] Interview with an official from former DG Home Affairs, European Commission, Brussels, April 2009.

Amsterdam had not been signed yet, the EU had no competence to sign readmission agreements with third countries. As a result, the PCA makes only reference to the international principle.

Actually, the EU Common Strategy on Russia issued in 1999 was the first document to envisage the conclusion of a readmission agreement between the EU and Russia (Council of the European Union, 1999b: 8) . This is logical since the EU competence in the field of readmission was transferred with the Treaty of Amsterdam. The Road Map for the Common Space on Freedom, Security and Justice includes as measures the conclusion of a readmission agreement. The Road Map also envisages that Russia signs readmission agreements with other countries (European Union – Russia, 2005: 1-2).[132]

Regarding Ukraine, the EU Common Strategy envisages the conclusion of a readmission agreement (Council of the European Union, 1999c: 8). Article 27 of the PCA stipulates that "the Cooperation Council shall examine which joint efforts can be made to control illegal immigration taking account the principle and practice of readmission" (European Union – Ukraine, 1998: art. 27). Similarly, the ENP action plan with Ukraine stresses that there is a "[n]eed for progress on the ongoing negotiations for an EC-Ukraine readmission agreement" (European Union – Ukraine, 2005: 30). Finally, the full implementation of the readmission agreement is also included in the association agreement (European Union – Ukraine, 2014: art. 19.1.a).

As regards Moldova, the PCA includes in article 26 that "the Cooperation Council shall examine which joint efforts can be made to control illegal immigration taking account the principle and practice of readmission" (European Union-Moldova, 1998: art. 26). In the ENP action plan, the country is encouraged to 'criminalise' its migration policy. More specifically, the ENP action plan stipulates "further alignment with domestic legislation with EU standards in order to *criminalise* illegal migration", (European Union – Republic of Moldova, 2005: point 44).[133] The criminalisation of the EU migration policy has been addressed by Bigo (2004), who suggests that the EU migration policy has tended to 'criminalise' migration since the Seville European

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[132] Interview with a representative from the Permanent Mission of Russia to the European Union, Brussels, June 2009.
[133] Emphasis added.

Council in 2002.[134] The EU migration policy was reoriented to an approach based on security, diverging from the principles of the Tampere Programme, as mentioned in Chapter II.

The ENP action plan encourages the parties to "initiate a dialogue on readmission in the perspective of concluding a readmission agreement between Moldova and EU" (European Union – Republic of Moldova, 2005: 30). Finally, the association agreement includes the full implementation of the readmission agreement (European Union – Republic of Moldova, 2014b: art. 15).

To conclude this section on readmission commitments, the PCA between the EU and Georgia refers to readmission in article 75, stressing that "cooperation for the prevention and control of illegal immigration constitutes one of the primary objectives of the Agreement" (European Union – Georgia, 1999: art. 75) article 75. The ENP action plan refers to strengthening the "dialogue and cooperation in preventing and fighting against illegal migration, which could possibly lead in the future to an EC-Georgia agreement on readmission" (European Union – Georgia, 2008: 19). Finally, the EU-Georgia association agreement (European Union – Georgia, 2014b: art. 16.a) stresses the need for the full implementation of the readmission agreement.

3.2. Policy output of EU readmission agreements in Eastern Europe

As stated above, the EU had to offer a tempting incentive to Eastern European countries in order to promote the clause on readmitting transit migrants and stateless people. The offer of easier procedures for the issuance of Schengen visas came up when negotiating the readmission agreement with Russia. Moscow was not convinced to move the negotiations further on readmission unless Brussels offered some mobility in exchange. This is how the negotiations on both the readmission and visa facilitation agreements ended up running in parallel. They started in Brussels in October 2003 and finished with the signature of both documents at the EU-Russia summit in Sochi in April 2006, entering into force in 2007.

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[134] On the issue of 'criminalisation' of irregular migration, see also Cholewinski (2007).

Since then, the visa facilitation regime has been negotiated in parallel with readmission in the countries of the Western Balkans and Eastern Europe. This incentive to counterbalance the burden of the adoption of readmission agreements has ever since been linked with any negotiating mandate on readmission in the countries in the Western Balkans and Eastern Europe. According to Lavenex and Schimmelfennig (2008), this constitutes a 'package deal'. As the authors contend: "the two agreements were the result of long and tedious negotiations and may be considered as a package deal offering very limited liberalisation of travel to the EU in exchange for Ukraine's willingness to take back irregular migrants from the EU, including Ukrainians as well as third country nationals and stateless people" (2008: 157).[135]

The Hague Programme called on the establishment of a link between readmission and visa facilitation, showing the commitment at the highest level to offer the incentive of visa facilitation:

> "The European Council (…) invites the Council and the Commission to examine, with a view to developing a common approach, whether in the context of the EC readmission policy it would be opportune to facilitate, on a case by case basis, the issuance of short-stay visas to third-country nationals, where possible and on a basis of reciprocity, as part of a real partnership in external relations, including migration-related issues (Council of the European Union, 2004c: 18).

In addition to visa facilitation, another tool fostering mobility was negotiated between the EU and Russia prior to the negotiations of the readmission and visa facilitation agreements: the facilitated transit regime offered to Kaliningrad citizens moving to mainland Russia through Lithuanian territory. This was an *ad hoc* solution to the extension of the Schengen area eastwards. The Kaliningrad transit facilitated regime (Council of the European Union, 2003a) entailed a compromise solution to avoid the requirement for Kaliningrad citizens to be in possession of a visa to transit through

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[135] Krauner und Kruse (2008) and Esteve (2012) have also looked at the link between the readmission and visa facilitation agreements. According to a Commission official, linking readmission and visa facilitation is "apparently contradictory, since it does not seem to be logic to facilitate the issuance of visas of the nationals of a country whose irregular migrants are subject to readmission" (interview with an official from former DG Home Affairs, European Commission, Brussels, April 2009).

Lithuania to reach the Russia's mainland.[136] Potemkina (2005: 175) stressed that "EU-Russia relations would have been put at risk had the negotiations about Kaliningrad failed in the face of impending EU enlargement".

At first, the EU did not plan any special arrangement regarding the facilitation of the transit between Kaliningrad and mainland Russia. A letter written by former Commissioners for enlargement Verheugen, for external relations Patten and for Justice, and Home Affairs Vitorino to the Spanish Presidency of the Council (2002) underlined that liberalising the visa regime for Kaliningrad citizens would produce a spill-over effect of 'special regimes' to other countries. They had in mind the possibility that Ukraine would call for keeping the visa-free regime with Poland, Slovakia and Hungary. They also feared a negative reaction of public opinion in the Union, "particularly against the background of growing public anxiety in the EU over migration" (Council of the European Union, 2002a: 2).

However, in 2002 the transit question was raised and negotiations on an *ad hoc* facilitated regime for both rail and road passengers began, becoming operational on 2 July 2003, before the Lithuania's accession to the EU in 2004. The facilitated transit regime has been highlighted as a modest but nonetheless important achievement, as it is the first measure to tackle the consequences of enlargement eastwards (Potemkina, 2005).

According to a Russian official, the EU-Russia readmission agreement was the basis for the negotiation of the agreements with Ukraine and Moldova, which entered into force in January 2008. Representatives from IOM noted that the agreement with Moldova would not be relevant until Romania enters the Schengen Area.[137] This argument seems not to be fully sustained, since many readmission agreements are in force with countries as far as Pakistan (European Union – Pakistan, 2010) and this does not prevent them from being relevant. Sharing borders with the Schengen Area is not a prerequisite for readmission to be in place.

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[136] See Potemkina (2003; 2005) and Lopata (2008) on the Kaliningrad facilitated transit regime. On the Commission vision on Kaliningrad, see European Commission (2001).

[137] Interviews with officials from the International Organisation for Migration (IOM) Office in Ukraine, Kyiv, April 2011.

The agreement with Georgia entered into force in March 2011, after the European Parliament gave its consent. As mentioned in Chapter II, in light of the Treaty of Lisbon the Parliament has to give its consent to all international agreement signed by the EU. The Parliament expressed concerns regarding the respect for fundamental rights of the migrants subject to readmission. The Council and the Commission interpreted these concerns by the Parliament as a risk that could lead Member States to conclude readmission agreements bilaterally instead of EU-wide agreements.[138] According to IOM representatives, the agreement with Georgia would only be applicable for a small number of irregularly-staying Georgian nationals, mainly in the Netherlands.[139]

Despite the similarities in the content of the readmission agreements signed with Eastern European countries, the leverage of those countries vis-à-vis the Union has triggered more or less favourable conditions to each of the countries. Russia, whose relations with the EU are characterised by focusing on symmetry and reciprocity as underlined in Chapter II, succeeded to postpone the implementation of the transit and stateless migrant clause three years after the entry into force of the agreement (until 1 June 2010). (European Union – Russia, 2007a: article 22.3)

In addition, the readmission procedure applied to Russia requires more evidence to prove the identity of the irregular migrant, which means in practice that the actual readmission may not take place or may be delayed. In spite of these favourable conditions, the EU, sceptical that Russia would not comply with the agreement, asked for a clause which stipulated the signature of implementing protocols between Russia and each EU Member State.

The EU – Ukraine readmission agreement also stipulated to postpone the implementation of the transit and stateless migrants clause, in this case for two years (European Union – Ukraine, 2007a: article 20.3). On the contrary, the EU readmission agreements with Moldova and Georgia envisaged the immediate implementation of the transit and stateless migrants clause (European Union – Republic of Moldova, 2007a;

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[138] Interviews with officials from the General Secretariat of the Council of the European Union, the European Commission and Permanent Representations of EU Member States to the European Union, Brussels, May and June 2010.

[139] Interviews with officials from the International Organisation for Migration (IOM) Office in Ukraine, Kyiv, April 2011.

European Union – Georgia, 2011a). This follows the pattern of the readmission agreement signed with the Western Balkan countries, with less evidence to prove identity of irregular migrants to proceed with the readmission procedure and an immediate implementation of the whole agreement.

Overall, the readmission agreements with Moldova and Georgia are more specific and have no gaps regarding the way they should be implemented.[140] Moldova was actually in favour of signing the readmission agreement with the EU because negotiating bilateral agreements with each EU Member States would have been more costly. It is worth pointing out that both Moldova and Georgia do not have diplomatic representations physically in each EU Member State.

The follow-up of the readmission agreements is carried out with biannual joint readmission committee meetings. These are co-chaired by representatives from the European Commission and the relevant services of the Ministries of the Interior in each of the Eastern European countries. Regrettably, the minutes of the discussions of the joint readmission committees are not published.

At this point, the role of international organisations in shaping migration policy instruments (Trauner and Wolff, 2014: 6) and, in particular readmission agreements, should be assessed. In the EU-Eastern Europe readmission cooperation, the International Organisation for Migration (IOM) and the International Centre for Migration Policy Developments (ICMPD) are key players.[141] Wunderlich (2012) assesses the role of IOM as an actor contributing to the implementation of the agreements, as well as the development of socialising networks. On the one hand, IOM is probably one of the least known global international organisations, as it is not a specialised agency of the UN. IOM has 157 Member States and 10 States with observer status, among them Russia. The former Director of the IOM office in Brussels argued in the direction that migration is an "internal issue of Member States" and this is the

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[140] Interview with an official from former DG Home Affairs, European Commission, Brussels, April 2010.

[141] Betts (2011) and Korneev (2011; 2014) have analysed the role of international organisations in the field of migration in areas such as the EU readmission policy.

reason why IOM is not a specialised agency.[142] On the other hand, ICMPD was created in 1999 with eleven Member States at the initiative of Austria and Switzerland. Most of its activity has been targeted to Eastern Europe, but it has also led projects in Northern Africa and in the Middle East. ICMPD has mainly developed activities aimed at providing capacity-building of relevant authorities in neighbouring countries.

Both IOM and ICMPD's activity consists mainly in implementing projects funded by its Member States and also international organisations like the EU. These projects focus on a wide range of migration policy areas, notably readmission, border management and labour migration.[143] Lastly, IOM also carries out research on migration at the global level.[144]

Regarding IOM, its activity in Eastern Europe is intrinsically linked with that of the EU.[145] IOM is in fact the main implementing partner of EU-funded projects in Eastern Europe.[146] Projects have addressed the challenge of the identification of the nationality of the irregular migrant, highlighted as the most difficult part in the readmission procedure. IOM has helped in defining interviews with the aim to identify the nationality of irregular migrants. Therefore, according to Korneev (2013), IOM is an "actor, that, to a significant extent, has shaped the outcome of the EU-Russia migration dialogue" (2014: 888).

Another aspect that should be borne in mind is the the impact of the transit stateless migrants clause in readmission between the EU and Eastern Europe. While it is very

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[142] Interview with the Director of the European Union Regional Representation of the International Organisation for Migration (IOM), Brussels, May 2009.

[143] Chapter VII on labour migration will refer to the role of IOM and ICMPD in the context of mobility partnerships.

[144] The publication of the academic journal *International Migration* and the *World Migration Report* are valuable sources of information to obtain updated data on migration. See a complete list of the IOM publications at http://publications.iom.int/bookstore/index.php?main_page=index&language=en (last accessed 7 June 2015).

[145] Some civil society actors have been vocal in criticising the role of IOM in countries like Moldova, defining the Organisation as a "colonising actor, which attempts against the sovereignty of countries like Moldova. Nonetheless, its activity is justified because of the lack of resources of Moldova" (interview with a representative from the Open Society Institute, Brussels, April 2010).

[146] See for instance the project in Russia *Technical cooperation on migration management and capacity building*: *Assistance to the Government of the Russian Federation in Establishing Legal and Administrative Framework for the Implementation and Development of Readmission Agreements*, available at http://85.21.179.94/activities_techcoop_dira.html (last accessed on 7 June 2015) and projects in Moldova in the website http://www.iom.md/index.php/en/programs/migration-management (last accessed on 7 June 2015).

relevant in the case of Russia and Ukraine, it is not so meaningful in the Moldovan and Georgian cases. Moldova does not issue visas at the border and is not part of any migration routes as it has no common border with the Schengen area, which is also the case for Georgia. The only data for guidance are statistics on readmission published by Eurostat. Actually, the reliability of the data provided has been called into question because Member States usually apply different criteria to count the number of readmitted persons[147].

The readmission procedure provided in the agreements has been applied to a relatively low number of irregular migrants.[148] This calls into question the alleged centrality of the EU readmission policy, which was confirmed at the evaluation of the EU readmission agreements by the Commission (European Commission 2011a). As the Commission suggested, the entry into force of the EU readmission agreements did not result in a rapid growth in the number of individuals readmitted (European Commission, 2011a). Jaroszewicz concludes that "the process of expulsion was already quite unproblematic before. The readmission agreements did not bring any added value in this area" (2012: 15).

Nonetheless, the conclusion of readmission agreements is a *condition sine qua non* in EU migration cooperation with Eastern Europe. The agreements are used as a conditionality tool for policy areas promoting mobility such as the visa and labour migration cooperation. A Commission official stated that, while readmission is still presented as the main EU migration policy tool towards third countries, with development of policies oriented at fostering mobility such as the visa liberalisation process, readmission is actually not the main EU migration policy instrument towards Eastern Europe.

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[147] Interview with an official from former DG Home Affairs, European Commission, Brussels, April 2009.
[148] Figures provided by Eurostat show that in Ukraine, the numbers of persons readmitted has been stable (10,125 in 2014 contrary to 9,970 in 2008); in Moldova, there has been a considerable reduction of the number of persons returned (3,880 persons in 2008 versus 1,230 in 2014); in Georgia figures have doubled (1,715 in 2008 versus 3,530 in 2014) and in Russia they also increased (4,810 in 2010 versus 7,435 in 2014). Statistics include also transit and stateless migrants. The total number of readmitted persons in Ukraine, Moldova, Georgia and Russia account for roughly 11% of the total return decisions taken by Member States.

4. Conclusions on policy convergence

Policy convergence in the field of readmission is towards international norms and also towards EU norms. EU readmission agreements are based on the international obligations of a country to readmit its nationals irregularly staying migrants in another country.

Readmission agreements fall within policy convergence towards international norms. Therefore, it seems difficult to sustain that readmission agreements are a case of bilateral cooperation (convergence towards bilaterally-agreed norms), as Lavenex *et al.* (2008) suggest. Nonetheless, they also incorporate the EU-proposed clause to readmit transit and stateless migrants who went through the territory of the third country. Worth noting is that since the Commission evaluation on readmission agreements in 2011, the transit and stateless migrants clause is no longer part of the EU requirements when negotiating readmission agreements, which shows the weakness of policy convergence to EU norms.

As a result, the policy convergence model underlying the readmission policy of the Union is not solely based on the customary readmission policy at the international level. Rather, it includes the clause on the obligation to readmit transit and stateless migrants. When promoting it in the negotiations on the readmission agreement with Russia, the EU had neither enough leverage nor the perception of legitimacy of Moscow that it was appropriate or correct to include the clause in the agreement. The solution came with the offer of a tempting specific incentive on mobility, the visa facilitation agreement, to convince Russia to move forward with the negotiations on the readmission agreement.

Actually, among the countries in Eastern Europe analysed in the thesis, Russia is the one which attaches less legitimacy to norms coming from the EU. This is due to the lack of membership aspirations and interest in the European integration process. Russia's leverage allowed negotiating more favourable conditions, namely a 3-year delay for the applicability of transit and stateless migrants clause. In addition, Russia's leverage resuted in the need to provide more evidence to prove the identity of an irregular migrant before triggering a readmission procedure. This may lead to delays or less likelihood that irregular migrant will be readmitted. While the readmission agreement

with Ukraine also included a delay in the applicability of the readmission clause (2 years), the agreements with Moldova and Georgia do not include any favourable conditions since they have lower leverage vis-à-vis the EU.

5. Summary

This chapter has looked at the EU readmission policy towards Eastern Europe and, more specifically, at readmission agreements. Readmission agreements are policy instruments which have been presented as the cornerstone of the external dimension of the EU migration policy. The chapter has also emphasised the challenge of readmission when guaranteeing international protection and the right to seek asylum. On readmission, international organisations like IOM and ICMPD have been implementing partners for EU-funded projects to support Eastern European countries in deploying readmission agreements. IOM helps in particular in identifying the nationality of the irregular migrant, which is one of the most difficult parts of the readmission procedure.

Given the duplicity of EU and bilateral readmission agreements, the chapter has delved into the academic debate on whether the EU has exclusive competence to sign readmission agreements. The doctrine on implied powers allows the conclusion of international agreements in order to achieve the EU's objectives. The Council and scholars with a narrow interpretation of the concept of the doctrine on implied powers concluded that since migration is a shared policy and bilateral agreements have a wider scope including also labour migration agreements, the co-existence of EU and bilateral agreements is justified.

Overall, readmission agreements are a policy instrument that promotes the EU security approach. However, empirical evidence has showed that the readmission procedure under the agreement has only been applied to a small number of irregular migrants (according to Eurostat). Therefore, readmission agreements do not have a not meaningful role as an *ex post* instrument to tackle irregular migration. Rather, readmission is a key instrument to secure security-driven EU migration cooperation with neighbouring countries.

CHAPTER V. EU – Eastern Europe Border Management policy convergence

1. Introduction

Among the four migration policy areas analysed in this dissertation, border management has been less explored than areas such as readmission or visa cooperation. Rather than focusing on the external dimension of the EU border management policy, scholarly work has analysed Frontex as an agency. However, the promotion of border management standards in Eastern Europe has been a particularly active policy area.

EU border management cooperation with third countries has been an integral part of the security-driven migration policy that the EU has been leading since the entry into force of the Treaty of Amsterdam. While the readmission policy of the Union has been clearly regulated in the Treaties, as assessed in Chapter IV, the external dimension of the EU border management policy has been developed in a soft fashion with non-legally binding policy instruments.

The lack of integration of the border services at the EU level has not prevented the Union from including in its agenda towards Eastern Europe the promotion of the concept of Integrated Border Management (IBM), which has the objective to reach EU standards on border management. The EU has channelled IBM promotion via two policy instruments in Eastern Europe: the European Agency for Operational Cooperation at the External Border of the Member States of the European Union (Frontex) working arrangements and, in the particular case of Ukraine and Moldova and to Ukraine, the European Union Border Assistance Mission to Ukraine and Moldova (EUBAM).

Being this the state of the affairs, this chapter aims at looking at how border management and in particular IBM has been articulated at EU level and in the context of cooperation with Eastern Europe, analysing and assessing the activity of Frontex and EUBAM in the field. EU border management cooperation is closely connected with other EU policy tools and processes aimed at fostering mobility, namely the visa

liberalisation process and EU mobility partnerships.[149] Due to the lack of transparency of Frontex activity, the chapter draws mainly on extensive field work carried in Frontex in Warsaw, in EUBAM in Odessa, as well as in the Border Services of the Eastern European countries.

The chapter proceeds as follows. First, it begins with a section which outlines the origins of the EU border management cooperation, both at the internal and external levels, and the development of the IBM concept. The second section looks at the legal basis for the policy tools that the EU has at its disposal for IBM promotion, namely Frontex working arrangements and the work of EUBAM. The third section analyses the actual border management in the EU – Eastern Europe migration agenda and its adoption. Finally, the main findings are presented in the summary.

2. Genesis of the EU border management cooperation with third countries

2.1 EU Border management cooperation *ad intram*

When dealing with the external dimension of the EU border management policy, the first element to be borne in mind is that the EU border services are not integrated at the EU level. Consequently, "member states continue to be competent in controlling their external borders (Wolff, 2010: 26). Furthermore, as a Frontex official underlined, "Member States do not want to give up sovereignty (in the border management field), even though there is a need for more cooperation among Member States".[150] Actually, there are huge differences among EU Member States as regards the competences of border services. Most of the law enforcement authorities responsible for border control are actually police officers, except for Finland, Latvia, Lithuania, the Netherlands and Poland, where control at the borders is ensured by military officers (Carrera, 2010: 9).

Article 77 of the Treaty on the Functioning of the European Union (TFEU, 2009) attributes competences to the Union to guarantee control of people and efficient surveillance at external border crossings and gives the Union to competence to establish

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[149] The visa liberalisation process and mobility partnerships will be addressed in Chapters VI and VII respectively.
[150] Interview with a Frontex official, Brussels, May 2010.

a progressive system of IBM. In particular, article 77.1.e emphasises the 'total absence' of controls at the internal borders' (TFEU, 2009). Consequently, Frontex has a hybrid nature, being both intergovernmentalist and supranationalist (Esteve, 2014: 66; Mungianu, 2013: 259). Some have stressed that the role of Frontex has not only been limited to providing technical and operational assistance but consists in performing a more leading role" (Mungianu, 2013: 384). On the contrary, Wolff and Schout conclude that Frontex has built ties between Member States but does not have a major added value (2013: 319). The main contributions to the literature on Frontex have been conducted by Aas and Gundhus (2015); Billet (2013); Esteve (2014); Fink (2012); Léonard (2010); Marín (2011); Mungianu (2013); Quindimil (2012); Santos Vara (2014); Urrea (2007 and 2012) and Wolff and Schout (2013).

With the Schengen Area allowing for movement without internal border checks and encompassing 25 States,[151] the EU has developed gradually a policy oriented at integrating the border guard services of the Member States.[152] Some argue that Frontex is the first step towards the establishment of an eventual European Border Guard Service. The Commission recommended the "support of European Corps of Border Guards", which "[a]t the first stage could exercise real surveillance functions at the external borders" (European Commission, 2002: 20). Furthermore, former Commissioner for Home Affairs Malmström had "identified the creation of a European border guard as one of the most important policy actions to be debated before the end of her mandate" (Carrera, 2010: 1). Finally, this debate did not take place before 2014. However, the European Agenda on Migration plans to further integrate border management, as this chapter will analyse.

In this sense, a European Border Guard Service may seem to be in the making, with steps in that direction such as the launch of the Rapid Border Intervention Teams (RAPIT) (European Parliament and Council of the European Union, 2007).[153] RAPIT has been deployed in entry spots for irregular migration to the EU like the Greek-Turkish border (Pollack and Slominski, 2009). Commissioner Avramopoulos stated at his hearing as commissioner designate before the LIBE Committee that the EU

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[151] On the Schengen Area and *acquis*, see Chapter II.
[152] See Georgiev (2010) on developments towards integrating the EU border management policy at EU level.
[153] Interview with a Frontex official, Warsaw, November 2010.

institutions "should have a debate on the long term development of Frontex and the need and feasibility of creating a true European Border Guard System" (2014: 9).

At the EU internal level, the legal basis regulating border control is the Schengen Borders' Code (European Parliament and Council of the European Union, 2006a).[154] Paradoxically, the Code entered into force after the creation of the Frontex Agency. The Schengen Borders' Code stipulates that border management is a policy area that "should help to combat illegal immigration and trafficking in human beings and to prevent any threat to the Member States' internal security, public policy, public health and international relations" (European Parliament and Council of the European Union, 2006a: recital 6).

This rhetoric reproduces the security-driven rationale that has characterised the EU migration policy. Border management is conceived as a means to reduce irregular migration flows. In that regard, Carrera points out that "the current EU policy on irregular migration legitimise(s) the practice and promotion of a paradigm of control and surveillance, whose implementation (…) opens a series of concerns regarding the principle of legality, transparency and accountability as well as the compliance with human rights and European Community Law on borders" (2007a: 8).

Along the same lines, Pinyol argues that the creation of Frontex is part of a process of 'securitisation' (2012: 44). In this respect, Léonard claims that "the world, including security threats, is socially constructed, which means that it is impossible to ever fully assess whether threats are 'real' or not" (Léonard, 2010: 235). The author suggests that Frontex carries out securitising practices but it is not a securitising actor in itself because it is weak, controlled by Member States and by the European Parliament at the financial level (2010: 247). Aas and Gundhus explicitly state that the policies "directly or indirectly contribute to the precariousness of life" and wonder how EU Member States and agencies have a 'humanitarian self-perception' with these policies (2015: 1).

Criticism on the extraterritorialisation of Frontex activity have been constant in the literature, since in many cases there is no clarification of the legal basis and

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[154] See Chetail (2006) on the Schengen Borders Code. See Council of the European Union (2002b) for the common manual for border guards.

international legal implications of Frontex operations, including working arrangements (Esteve, 2014: 57). Baldaccini (2010) looks in particular at the legal basis of Frontex operations at sea. As Urrea notes (2012: 248), the Council adopted a Decision on surveillance at the maritime borders, which complements the Schengen Borders Code, (Council of the European Union, 2010b). The compliance with the principle of *non-refoulement*, asylum and refugee law is also subject of concern in Frontex operations (Marín, 2011: 481; Rijpma and Cremona, 2007). Fink argues that it is difficult to sustain that Frontex action is technical and non-political (Fink, 2012: 33). Others have challenged the Agency's policing role and respect for the rule of law (Marín, 2011: 468).[155]

In an attempt to give stimulus to the integration of border management at EU level, the European Commission presented a Communication on IBM in 2002. The Commission, aware of the reticence of Member States to move forward in the integration of border surveillance practices, opted for coining this concept.[156] According to the Commission (2002a), IBM allows for "practitioners of the checks at the external borders to come together around the same table to co-ordinate their operational action in the framework of an integrated strategy" (European Commission, 2002: 5).

In line with this Communication, the Council Conclusions in 2006 defined IBM as a concept embedding border control (according to the Schengen Borders' Code), detection of cross border crime and interagency cooperation (Council of the European Union, 2006: 2). The Treaties establish in article 77.1(c) that the gradual introduction of an integrated management system for external borders, without defining specifically what is meant by 'integrated border manafement'. In this respect, Mungianu claims that "in the absence of any definitions, the different provisions constituting legal bases in criminal law, policing, expulsion, customs cooperation and internal security should prevail as *lex specialis* (2013: 366). However, since the introduction of IBM in the Treaties, the European Parliament and the Council can adopt legislation in the field.

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[155] See Del Valle, Acosta and Nijki (2012) on the issue of extraterritorialisation of Frontex operations from the Spanish perspective.
[156] On the IBM concept, see Hobbing (2006 and 2011).

As Wolff contends, IBM "is linked to the development of the EU internal security strategy" (Wolff, 2010: 26). In this respect, Carrera stresses that the "'border management' of the common Schengen regime external border must be 'integrated' and must cover all border-related threats that the EU is supposed to be facing" (2007a: 3), which is stressed in the European Security Strategy (Council of the European Union, 2003b). The author believes that IBM "legitimises and reinforces the practice of security as coercion in the EU external territorial border" (2007a: 27).

Besides, in line with the Schengen Borders' Code, the promotion of IBM and the 'strengthening of security' are intertwined (Frontex, 2011: 8). Similarly, the Commission conveyed that "[t]he security of the external borders of the European Union is an essential subject for European citizens" (European Commission 2002a, 4). In the same vein, the Stockholm Programme defined IBM as an "effective policy to combat illegal immigration" (Council of the European Union, 2009h: 108).

At this stage, it is worth assessing what IBM promotion actually entails. It has consisted mainly in the launch of activities to modernise not only the EU border checks along the EU common border with Eastern Europe, but also the borders between Eastern European countries. The most significant example of IBM promotion is border management cooperation along the Moldovan-Ukrainian border.

The IBM activity of basically modernising border checks has not been absent of criticism. Bigo (2011) highlighted the technologisation through the proliferation of databases and the 'pixelation' of the EU external border via the juxtaposition of border checkpoints. As a result, according to Bigo, the EU appears to be 'an island' surrounded by border checks.[157] Along these lines, Carrera stresses that "[t]echnology, (…) is now presented as the 'ultra-solution' to any imagined threat to the EU's internal security" (Carrera, 2010: 7).[158] The shortcomings of IBM have also been stressed by Monar: "[t]he 'integrated' system clearly continues to suffer from major limitations: There are still substantial coordination and evaluation deficits as well as major constraints

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[157] Speech by Didier Bigo at the Workshop 'Human Mobility and Governance in a Global Context', Fundació CIDOB, Barcelona, 22 September 2011. On the proliferation of databases and the technologisation of the EU borders, see Brower (2007), Geyer (2008) and Bigo and Jeandesboz (2009).

[158] Trauner and Carrapiço define the importance of technologies and large-scale databases as a 'sectoral trend' (2012: 9) which has also included the creation of the agency EU-LISA – European Agency for the Operational Management of large-scale IT systems in the Area of Liberty, Security and Justice.

imposed by the absence of cross-border law enforcement powers pertaining to border guards" (Monar, 2006: 80).

In the context of this technologisation, the Commission presented two initiatives aimed at modernising EU external borders. First, in 2014, the Eurosur Regulation was adopted, establishing rules for the surveillance of the external sea borders under operational cooperation and coordinated by Frontex (European Parliament and Council of the European Union, 2013a).[159] Eurosur allows almost real time exchange of information between countries in the Schengen Area and between these countries and EU agencies, ensuring a communication network. Originally, 19 Schengen members participated and Frontex was tasked to help bring the remaining ones into the system of Eurosur. Second, the proposal on 'Smart Borders' has the objective to record all Third Country Nationals (TCNs) who enter and leave the EU. At the time of writing, it is being discussed in the Parliament and in the Council. The Commission presented this initiative arguing that it would improve border management and plans to submit a revised proposal at the beginning of 2016.

Nonetheless, a EUBAM official argued that, while acknowledging the lack of specificity of the IBM concept, it contributes to set up a gradual process whereby the actors involved cooperate more on border management, developing the grounds for a European Border Guard Service.[160] In 2016, the Commission plans to present a Union standard for border management (European Commission, 2015c: 11). The European Agenda on Migration does not refer specifically to IBM standards but it seems that the Union standard for border management will definitely build on IBM practices and strengthen them.

2.2. The Mechanisms to Promote Integrated Border Management in Eastern Europe: Frontex working arrangements and EUBAM

EU border management cooperation with Eastern Europe has been articulated through Frontex working arrangements and, in the case of Ukraine and Moldova, also via the

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[159] See an in-depth analysis by Rijpma and Vermeulen (2015) on the implications of the adoption of Eurosur.
[160] Interview with the Head of the Analytical and Operational Support Unit, EUBAM, Odessa, April 2011.

work of EUBAM. It should be stressed that border management tools constitute *ex ante* measures to cope with irregular migration, contrary to readmission agreements. Prior to the adoption of EU border management policy tools in Eastern Europe, some EU Member States with interests in the area such as Poland had developed bilateral relations between their respective border guard services and the Eastern European counterparts, via the establishment of focal points of border guards.

Concerning Frontex, it has labelled itself as the 'anchor stone" of IBM (Frontex, 2011: 15). It has been the only actor that has undertaken activities aimed at promoting IBM in the whole of Russia and the Eastern Partnership. It is the EU agency in charge of coordinating operational cooperation along the EU external border. The Regulation 2004/2007 lays the foundations for its creation, stipulating its functions and structure (Council of the European Union, 2004b).[161]

The Agency became operational in 2005 and has its headquarters in Warsaw (Council of the European Union, 2005a). The decision to locate Frontex in Poland has to do with the perception at the time that the activity of the Agency would be much more intense along the EU external Eastern border than on the Southern border. Yet, the activity of the Agency, in particular of its joint operations, has mainly been oriented at irregular migration flows stemming from the Southern Mediterranean[162].

In Eastern Europe, Frontex has deployed, among others, a joint operation along the EU-Ukrainian border named JUPITER. Participation is open for Eastern European countries. For instance, Georgia has participated in four joint operations coordinated by Frontex (European Commission and High Representative, 2015d: 13).

As EU Member States hold executive powers in border management, the Frontex founding Regulation clearly states that "[t]he responsibility for the control and surveillance of the external borders lies with the member states" (Council of the

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[161] The creation of Frontex and the analysis of its functions has been the object of close academic scrutiny (Illamola Dausà, 2008; Jorry, 2007; Léonard, 2009). Furthermore, Neal (2009) has approached the origins of Frontex from the securitisation theory.

[162] Frontex joint operations have been mainly deployed to the Central Mediterranean (Malta and the Italian island of Lampedusa) and the Eastern Mediterranean (Greek coast). See Carrera (2007b) for a comprehensive analysis of Frontex joint operations in the Canary Islands.

European Union, 2004b: article 1.2). In other words, the Agency acts only at the operational level coordinating EU Member States border guard services.

Among Frontex's attributions, it is worth noting the elaboration of risk assessments,[163] capacity-building for border guards and supporting joint return operations. Those are launched in circumstances in which EU Member States require further technical and operational assistance at the external border, in application of the principle of solidarity.[164] In addition, the Agency also conducts research on border control and surveillance.

Finally, it is worth noting that the literature stressed Frontex has shortcomings right from the moment of its inception. Bigo and Guild highlight that Frontex was created before the Schengen Borders' Code came into force (2009: 268). Consequently, the Agency started operating when no EU norm specifying the conditions under which individuals should cross the EU external border was in force. The authors also stress the lack of accountability, with almost no involvement of the European Parliament in the Frontex activities (2009: 268).

Besides little parliamentary scrutiny, Spengeman (2013) also refers to the lack of judicial review by the European Court of Justice, which is essential for the rule of law. On accountability, Buess argues that "Member States' representation on the management boards of European Union agencies can constitute a form of vertical accountability towards domestic democratic institutions" (2014: 95). This would lead to more democratic legitimacy. The Frontex management board is composed by one representative from each Member State and two from the Commission.[165]

The literature has criticised the non-publication of Frontex working arrangements at the time of their signature. Esteve argues that the Agency is opaque and that its activity is not accessible for the public (2014: 63). Urrea also criticised the lack of transparency of

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[163] Risk analysis monitors the irregular migration routes into the EU.
[164] Interview with a Frontex official, Brussels, May 2010.
[165] Busuioc (2012) and Santos Vara (2014: 29) also assess the accountability of EU agencies.

Frontex (2012: 236). The Agency reacted to this criticism by finally publishing them on their website.[166]

An amended Frontex Regulation entered into force in November 2011, strengthening the fundamental rights approach oriented at implementing the Charter for Fundamental Rights and international refugee law (European Parliament and Council of the European Union, 2011b: art. 1).[167] The Frontex amended Regulation introduces the obligation to introduce this approach in the content of capacity-building trainings and seminars (European Parliament and Council of the European Union, 2011b: art. 5). Aas and Gundhus clearly put it, "Fontex is increasingly and actively employing the language of human rights in its training courses for border guards and in its organisational structure" (2015: 14). Quindimil stressed that fundamental rights could become "at least formally" the central axis of the functioning of Frontex (2012: 115).

In the context of negotiations on the amendments, the possibility for Frontex to access personal data was an issue of controversy since the Agency has no law enforcement competences. In this regard, the European Data Protection Supervisor (EDPS) expressed his concern about the lack of clarity in the Commission proposal on the scope of activities where personal data could be processed (EDPS, 2010: 9).

The Commission presented the proposal in February 2010,[168] with a focus on granting a leading role to the Agency in the deployment of joint return operations, being able to control the operational plan in case of need and deciding where the EU Member States experts should be deployed. Also, the Commission proposed that it is compulsory for Member States to contribute with equipment and the possibility for Frontex to have its own equipment. On the other hand, the new Regulation gives Frontex the possibility to fund technical-assistance projects with third countries.

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[166] However, the doctoral candidate could have access to the working arrangements before their publication. A Frontex official interviewed for the thesis disclosed and sent them via email. This shows lack of an overall policy on transparency of access to documents by Frontex.

[167] See also Carrera, Guild, den Hertog and Parkin (2011) for an analysis of the impact of Frontex in the implementation of the EU Fundamental Rights Charter. In this regard, Frontex and the EU Fundamental Rights Agency signed a cooperation arrangement in 2010.

[168] For a thorough analysis on the implications of the proposal amending Frontex, see Amnesty International and European Council on Refugees and Exiles (2010).

More specifically, the amended Regulation institutionalises common core curriculum for border guards, in the framework of capacity-building measures. Launched in 2007, it consists in a compilation of the skills and knowledge that border guards should acquire, with the goal to create a "European culture of border guards of the Member States" (European Commission, 2010d: 6-7). The Schengen Borders Code had already included a recommendation to Member States to "[t]ake account of the common training standards as established and further developed by the Agency" (European Parliament and Council of the European Union, 2006a: art. 16.4).

The EU has tried to harmonise the curriculum for border guards since 2003, when the Centre for Border Guard Training started teaching seminars and courses. The Frontex Training Unit was established in December 2005. Horii claims that "common training and training materials have promoted the sharing of the views of border guards and the creation of a professional community at the European level (2012:158). As a result, the common core curriculum is a measure that promotes socialisation among border guards.

In response to the migration crisis in the Mediterranean, the European Agenda on Migration proposed in May 2015 the "reinforcement and amendment of the Frontex legal basis to strengthen its role on return" (European Commission, 2015c: 10). It remains to be seen if Member States will accept that Frontex is attributed more competences. Regarding the willingness of Member States to expand the activities of Frontex, Esteve observes that, even if at first there was a certain lack of trust by Member States on the work of operational agencies like Frontex, they tend to acknowledge the usefulness of their activities and were in favour to expand its functions and missions (2014: 45).

As for Frontex working arrangements with the relevant border guard services of Eastern European countries,[169] their legal basis is stipulated in article 14 of the Frontex Regulation, which vaguely regulates their content and functions. The article stipulates that the arrangements "shall facilitate the operational cooperation between member states and third countries" (Council of the European Union, 2004b: art. 14). Under the term 'operational cooperation', the arrangements may encapsulate any kind of

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[169] Other EU agencies have signed arrangements framing their cooperation with third countries, such as Europol and Eurojust.

cooperation that might be agreed, with no references to priorities in the cooperation. The Commission only issues a consultative opinion.

The Frontex executive director negotiates with the border authorities in the third country on the basis of the mandate granted by the management board. Fink (2012: 21) explains that "Frontex working arrangements basically aim at establishing a partnership between Frontex and the respective authorities of third countries in order to counter irregular migration by means of border control. The working arrangements envisage cooperation in various fields like risk analysis, joint return operations, Frontex coordinated joint operation, pilot projects, training of border guards and technical cooperation in the field of research and development". Santos Vara stresses that working arrangements cannot be considered international agreements and that their implementation does not entail any international obligation by the EU (2014: 16).

Member States have continued developing their own bilateral cooperation, which leads to a risk of duplicity with the cooperation that Frontex has with a third country (Martín y Pérez de Nanclares, 2012: 39). As Wolff contends, "[t]he multiplication of bilateral agreements between the EU, its member states and third countries to control immigration and co-operate on border management has opened a Pandora box full of legal and political uncertainties" (2010: 29). Illustrative of this is the active cooperation between the Polish and Ukrainian border guard services, although apparently there has been no overlap between their activities.[170] Esteve argues that Member States can allow the participation of Frontex in their bilateral agreements with third countries, including readmission agreements, either implicitly or explicitly (2014: 53).

According to Bigo and Guild, "none of the Arrangements specifies the legal basis on which they were negotiated or agreed" (2009: 273). In fact, contrary to the EU readmission or visa facilitation agreements, the Frontex working arrangements are non-legally binding tools, soft law policy instruments (Esteve, 2014: 46). Therefore, they "shall not be considered an international treaty" (Frontex and Border Guard Service of the Federal Security Service of the Russian Federation, 2006). The EU could, according to the doctrine on implied powers, negotiate international legally-binding agreements on

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[170] Interview with the Deputy Chief of the Department of International Cooperation of the State Border Guard Service of Ukraine, Kyiv, May 2011.

border management. However, the lack of integration of the borders policy at EU level makes it difficult. In addition, Fink has highlighted deficiencies in working arrangements from the perspective of fundamental rights and the rule of law (2012: 20).

This non-legally binding character of the working arrangements has nonetheless been assessed positively by Frontex officials. According to them, it gives more 'room for manoeuvre' and allows for an "individual approach, mutually beneficial for both the EU and the third country, which has led to different speeds in implementation".[171] However, it may pose problems from the perspective of legal certainty and enforcement of the commitments set out in the working arrangements.

As mentioned above, in the case of Ukraine and Moldova, the EU has been promoting IBM also through the EUBAM Mission. Despite the difference in the format of Frontex working arrangements and EUBAM activity, both are comparable since they carry out very similar tasks. Launched in December 2005, its mandate has subsequently been extended every two years. It has its headquarters in the Ukrainian city of Odessa, on the shore of the Black Sea.[172] The EUBAM activity has been mainly focused on assisting and advising on the reduction of irregular migration flows, combating cross-border crime such as trafficking in human beings and corruption, as well as providing know-how in the customs field. Like Frontex, the Mission also carries out joint operations at borders.

Moreover, EUBAM gives advice to the Ukrainian and Moldovan governments in the process of demarcation of their common border. A Joint Ukrainian-Moldovan Commission on Border Demarcation is in charge of the task, facing the difficulties for the conflict in the breakaway region of Transnistria. Most of the common Moldovan-Ukrainian border has been demarcated so far (EUBAM, 2014: 17).[173] In this regard, EUBAM has been involved in the settlement of the Transnistrian conflict and the set-up of confidence building measures between Chișinău and Tiraspol. As a result, the railway services between Chișinău and Odessa via Tiraspol were resumed in 2010.

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[171] Interview with a Frontex official, Warsaw, November 2010.
[172] The headquarters also serve as the EUBAM liaison office for Ukraine. The liaison office for Moldova is in Chișinău. EUBAM has a network of five field offices along the Moldovan-Ukrainian border.
[173] Less than four kilometers of the Transnistrian segment of the common border remained to be demarcated at the end of 2014 (last available data).

The foundations of EUBAM are set in a memorandum of understanding signed between the European Commission and the Governments of Ukraine and Moldova. The memorandum states that the Mission "will promote coordinated action and assist the Governments of the Republic of Moldova and of Ukraine in areas involving border, customs and fiscal matters" (European Commission, Government of the Republic of Moldova and Government of Ukraine, 2005: 1). Like Frontex, the Mission has no executive powers and works closely with its four partners: the Ukraine State Border Guard Service and the Border Guard Service of the Republic of Moldova, as well as the relevant customs services of the two countries.

Assessments on the work of the Mission have been generally positive. An official from the Mission labelled it as "the most efficient international EU mission".[174] Nevertheless, scholarly work has called into question the alleged success of EUBAM. Kurowska and Tallis acknowledged the progress made by EUBAM in border monitoring, but stressed that its contribution to the resolution of the Transnistrian conflict is not fully clear (2009: 63). Finally, the work of EUBAM on both the border and customs services was praised at the EU-Ukraine Summit on 27 April 2015 (European Union – Ukraine, 2015: 5).

Before moving on to the next section, a note should be said on the European Union Special Representative Border Support Team in Georgia (Council of the European Union, 2010a). The Team assists the Georgian Border Police with officials from six EU Member States, also with the aim of implementing IBM standards. Worth mentioning is that the border zones with South Ossetia and Abkhazia are excluded from its scope of action.

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[174] Interview with the EUBAM advisor on IBM, Odessa, April 2011.

3. EU border management cooperation with Eastern Europe:

3.1 Border management cooperation in the EU-Eastern Europe agenda

An analysis of the EU border management agenda, looking at the provisions set out in the European Neighbourhood Policy (ENP) action plans for the Eastern Partnership countries and, in the case of Russia, at the Road Map for the Common Space on Freedom, Security and Justice, reveals that the main measures to be implemented in the field are exchange of data regarding irregular migration flows, as well as capacity-building measures.

Under the multilateral track in the Eastern Partnership, the EU and its partners have launched a flagship initiative on IBM in October 2009. This "is increasingly geared towards supporting partners in fulfilling the conditions for visa facilitation and liberalisation (European Commission and High Representative, 2011: 14). Furthermore, an IBM Panel has been launched also under the multilateral track, in order to share experiences and contribute to the development of the IBM promotion activity (European Commission, 2011b: 20). Under this flagship initiative, EUBAM has provided support (EUBAM, 2011b: 2) and the International Centre for Migration Policy Development (ICMPD) has organised training activities (European Commission 2011b, 11).

As regards the exchange of data on irregular migration flows, the working arrangements include the creation of a database on irregular migration flows and the launch of a dialogue on irregular migration and a debate on statistical data. Finally, the working arrangements also include measures concerning the provision of capacity-building to border guards from Eastern European countries.

The ENP action plans include commitments towards an 'effective' and 'comprehensive' border management (European Union – Moldova, 2005: 4-5; European Union – Georgia, 2008: 18). The revised EU-Ukraine action plan on Freedom, Security and Justice refers in 2006 to the adoption of IBM measures (European Union – Ukraine, 2006: 4-5). Finally, the association agreements with Ukraine, Moldova and Georgia include all also references on IBM (European Union - Ukraine, 2010: 6; European Union – Republic of Moldova, 2010: 6; European Union – Georgia, 2013: 12). As

regards Russia, the Road Map for the Common Space on Freedom, Security and Justice lists commitments on intensifying border management cooperation (European Union – Russia, 2005: 2-3).

3.2. Policy output of EU border management cooperation in Eastern Europe

The Frontex working arrangements are operational with Russia and all the Eastern Partnership countries. Worth noting is that the EU also signed a working arrangement with Belarus, the only Eastern European country which has no contractual relations with the EU. The Frontex Working Arrangement with the Russian Border Guard Service of the Federal Security Service was signed in June 2006 (Frontex – Russian Border Guard Service of the Federal Security Service, 2006). It was the first working arrangement signed by Frontex and according to an official from the Agency "the most developed" of all Frontex working arrangements.[175] Among its activities, it has framed an EU-Russia joint operation along the border between the EU and the Russian exclave of Kaliningrad in 2009. Bigo and Guild argue that most of the cooperation under the working arrangement has been on investing on technological equipment to meet IBM standards (2009: 275). Capacity-building of Russian border guards is not included in the working arrangement, contrary to the purpose to include capacity-building activities in the EU border management cooperation with Eastern Europe.

The working arrangement with Ukraine became operational in 2007. Unlike the arrangement with Russia, it includes the "[d]evelopment of activities in the field of training" (Frontex and Ukraine State Border Guard Service, 2007: 1). The arrangements with the Moldovan Border Guard Service and the Border Police of Georgia were signed in 2008. Both of them also envisage training (Frontex and Border Guard Service of the Republic of Moldova, 2008: 1; Frontex and Ministry of Internal Affairs of Georgia, 2008: 2). A Moldovan official argued that the working arrangement has led to strengthened cooperation on border management, with numerous projects being implemented in Moldova in the framework of the working arrangement.[176] The promotion of IBM in Moldova has been fruitful due to the interest of Chişinău in

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[175] Interview with a Frontex official, Warsaw, November 2010.
[176] Interview with an official of the Border Guard Service of the Republic of Moldova, Chişinău, April 2011.

strengthening its overall migration cooperation with the Union. Indeed, new EU initiatives such as the common core curriculum for border guards have first been implemented in Moldova.

However, the working arrangement with Georgia initially led to fewer results. First, it has to be taken into consideration that Georgia does not share borders with the EU, so that cooperation in border management is not so relevant for the Union.[177] Second, the permanent changes in the Ministry of the Interior in Georgia slowed down the implementation of the working arrangement, as a Frontex official stated.[178] Worth noting is that the Agency has not carried out risk analysis in Georgia, most likely because it has no common border with the EU.

Concerning the EUBAM activity in Ukraine and Moldova on border management, it has consisted in the training of border guards. EUBAM set up a capacity building unit, aimed at coordinating the whole training to the partner services, both in the migration and customs areas. A note should be said on the territory of scope of the Mission. Although the EUBAM geographical scope was originally limited to the Moldovan-Ukrainian border, it has *de facto* been extended to the whole Ukrainian and Moldovan territory. As a result, EUBAM plays a role in all the border management initiatives that take place. As a Ukraine representative put it: "The recommendations of EUBAM are very useful and not limited to the Moldovan-Ukrainian border, but to all over Ukraine".[179] Taking into consideration that Frontex and EUBAM have not concluded a memorandum of understanding specifying the terms of their cooperation, there could be a risk of overlap in their activity.

In Ukraine, EUBAM has been crucial in the implementation of IBM and has, according to an officer from IOM, been the actor which has dealt with most of the border management cooperation.[180] The activity of EUBAM in Ukraine has been has included

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[177] Nonetheless, the former European Neighbourhood and Partnership Instrument – ENPI has funded a project to strengthen border management between Georgia and Armenia (European Commission 2011b, 10).
[178] Interview with a Frontex official, Brussels, May 2010.
[179] Interview with the Deputy Chief of the Department of International Cooperation, State Border Gard Service of Ukraine, Kyiv, May 2011.
[180] Interview with an officer from the International Organisation from Migration (IOM) office in Ukraine, Kyiv, April 2011.

the training of border guards, the transfer of good practices and know-how.[181] Similarly, the "great contribution to the development of IBM of the Mission, implementing funding from the Commission and providing consultation" has been underlined.[182] Similarly, a member of the State Border Service of Moldova highlighted that the Mission was "[t]imely, important and necessary".[183]

When comparing the activity of Frontex and EUBAM in IBM promotion in Eastern Europe, it seems that the EUBAM one has been more far-reaching than that of Frontex, in the particular case of Ukraine and Moldova. Not only has the Mission extended its territorial scope to the whole of Ukraine and Moldova, but it has delivered training in areas such as customs, also part of IBM (Council of the European Union, 2006: 3). As a result, it could be argued that IBM promotion has served as platform for EUBAM to extend it territorial scope well beyond the remits of the common Moldovan-Ukrainian border.

IBM promotion has also led to major institutional changes in countries like Ukraine and Moldova. It must be taken into account that Kyiv and Chişinău have made huge efforts to implement the IBM concept. In this sense, EUBAM noted that IBM has been recognised as "the strategic basis for a national border management strategy, both in Ukraine and in the Republic of Moldova" (EUBAM, 2011a: 16). Kyiv and Chişinău endorsed the IBM concept and adopted action plans implementing it, being the Moldovan action plan more systematised and deeper than the Ukrainian action plan (Government of Ukraine, 2011; Government of the Republic of Moldova, 2011).

Consequently, the Border Guard Services of Ukraine and Moldova have undergone a deep transformation into autonomous bodies to be integrated within the Ministry of the Interior, which is in turn undergoing a deep transformation.[184] Both services have worked for the professionalisation of the staff. The Border Service has been fully professionalised and the border guards have kept their military status. Actually, holding

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[181] Interview with the Deputy Head of the Permanent Mission of Ukraine to the European Union, Brussels, May 2009.
[182] Interview with the Deputy Chief of the Department of International Cooperation, State Border Guard Service of Ukraine, Kyiv, May 2011.
[183] Interview with the Head of the General Director's office, Border Guard Service of the Republic of Moldova, Chişinău, April 2011.
[184] The Ministries of the Interior are shifting from former Soviet military into civilian structures.

a military status is perfectly compatible with a fully professional body. As mentioned above, some EU Member States have opted for keeping the military status of its border guards. The Ukraine State Border Guard Service is considered to be "the most developed body in the context of the European integration of Ukraine, setting up controls according to EU standards.[185] Ukraine has indeed more experience and a wider network of liaison offices in other countries than Moldova, and has a stronger, better-equipped and a better communications system.

4. Conclusions on policy convergence

The policy convergence model in EU border management cooperation with Eastern Europe is towards EU norms, actually those of the IBM. The chapter has showed that IBM lacks specificity and is non-legally binding, since border management is not integrated at EU level. In principle, its aim has been to "maintain a high level of border security (EUBAM 2011, 16). In brief, IBM has consisted in the development of operational and technical cooperation in the border management field with third countries, including exchange of information and best practices. Wunderlich claims that the exchange of best practices between border officers promotes policy transfer (2012). IBM standards actually entail the progressive modernisation of border checks as well as the provision of capacity-building programmes.

Depending on the structure of power between the EU and the Eastern European country, the content of the border management cooperation differs. In other words, the flexible cooperation under the Frontex working arrangements has led to more or less results according to the structure of power relations between the EU and Eastern European countries. The Frontex working arrangement with the Russia border service was the first to be adopted. It has consisted mainly in the modernisation of border checks and did not include any commitment to provide trainings. The symmetry of EU-Russia relations allowed Russia to disregard the EU objective to include capacity-building based on the common core curriculum for border guards. In addition, IBM standards are not part of

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[185] Interview with the Head of the Justice, Liberty and Security Division, Ukraine Ministry for Foreign Affairs, Kyiv, June 2011.

norms underlying the working arrangement. Therefore, policy convergence on border management between the EU and Russia has been towards bilaterally-agreed norms.

On the contrary, the working arrangements with the border services of Ukraine, Moldova and Georgia agree on capacity-building and in the promotion of IBM standards. Moldova has been a pioneer in developing the first Frontex common core curriculum trainings. As a result, working arrangements in EaP countries converge towards EU norms.

Nevertheless, the chapter claims that the structure of power does not suffice to explain the scope of activity of IBM in Eastern Europe. Actually, the development of an IBM strategy is conceived within mobility-related specific incentives in the context of the visa liberalisation process or mobility partnerships. For this reason, in Ukraine and Moldova, IBM is part of a set of benchmarks to be implemented before the abolition of the visa regime. This has led to significant transformations at the institutional level, such as the changes in the Border Guard Services from military to professional autonomous bodies within the framework of the ministries of the interior.

IBM promotion constitutes a tool of conditionality. In other words, the structure of power was modified by offering incentives. In Ukraine, Moldova and Georgia, IBM has been a requirement in the set of benchmarks for visa liberalisation and in the mobility partnerships with Moldova and Georgia.[186]

The second block on migration management in the visa liberalisation action plans with Ukraine, Moldova and Georgia makes reference to the adoption of an IBM strategy, "containing a timeframe and specific objectives for the further development of legislation, organisation, infrastructure, equipment, as well as sufficient financial and human resources in the area of border management" (European Union – Republic of Moldova, 2010: 5; European Union – Ukraine, 2010: 5; European Union – Georgia, 2013: 9). Likewise, the Joint Declarations on EU mobility partnerships with Moldova and Georgia include provisions aimed at strengthening and providing assistance for the implementation of IBM (Council of the European Union, 2008a: 9; 2009e: 5).

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[186] Chapters VI and VII assess policy instruments such as the visa liberalisation process and mobility partnerships, respectively.

5. Summary

This chapter has looked into border management policy towards Eastern Europe and, more specifically, to Frontex working arrangements and the activity of EUBAM to Ukraine and Moldova. The chapter builds on extensive field work on the Frontex and EUBAM activity. The external dimension of EU border management cooperation has recently been developed, in particular through the promotion of the concept of IBM, coined by the Commission in 2002, in an attempt to reach EU standards in the absence of a European border guard service. The chapter argues that, despite the implied EU competence to conclude international legally-binding agreements on border management, the lack of integration of the borders policy at EU level makes it difficult. The chapter refers also to the recent policy commitment in the European Agenda for Migration to establish a Union standard for border management, an opportunity to make further steps towards the integration of border management at EU level.

IBM has been channelled through Frontex working arrangements and EUBAM. These are non-legally binding policy instruments. The content of cooperation under the working arrangements is vaguely formulated. It can lead to fragmentation and even if it gives room for flexibility, there is no guarantee of enforcement of the commitments. Furthermore, as underlined in the chapter, Frontex has no executive powers. Border management continues to be a Member State competence, which results in lowering the leverage of Frontex. Moreover, the fact that the working arrangements are soft law policy instruments also leads to high differentiation in the content according to the third country with which it is agreed. Extensive literature has challenged the EU border management policy towards Eastern Europe. Generally speaking, IBM has been part of the security-driven EU migration policy to third countries.

The chapter has provided evidence about the differences between the two actors that have so far dealt with IBM promotion in Eastern Europe: Frontex and EUBAM. In this sense, the chapter concludes that EUBAM, despite formally dealing only with the Moldovan-Ukrainian border, has managed to promote IBM standards in the whole of the territories of Ukraine and Moldova. Unlike Frontex, EUBAM also provides assistance and advice in the customs field, and has been labelled as the most relevant agent of IBM promotion in Ukraine and Moldova.

CHAPTER VI. EU-Eastern Europe Visa policy convergence

1. Introduction

The EU visa policy is arguably the policy with the highest impact of the external dimension of the EU migration policy. It has been defined as "the major instrument for regulating and controlling the global flow of people" (Mau, Gülzau, Laube and Zaun, 2015: 1192). Bigo and Guild (2003) have defined it as a way to police the 'border prior to the border'. EU visa policy refers to the provisions regarding the conditions for granting or rejecting Schengen short-stay visas. The EU has set up two policy instruments in the visa policy to Eastern Europe: the visa facilitation agreements and the visa liberalisation process.

Whereas visa facilitation consists in the exemption of visas for diplomats and better conditions for the issuance of visas for certain categories of people such as students and researchers, visa liberalisation entails the actual abolition of the visa regime. In the absence of a membership perspective, one of the top priorities of the cooperation between the EU and Eastern Europe is visa liberalisation. The Commission conceives visa liberalisation as merit-based and conditional to the fulfilment of a series of reforms. Whereas the Commission has advocated for a merit-based approach, some Member States within the Council are reluctant to it and in favour of a more political approach.

Being in favour of a political approach is linked with the fact that deciding who enters the territory of a State lies at the heart of sovereignty. This reluctance is also caused by misperceptions of a possible 'migration threat' that would be triggered by a visa-free regime. Some EU Member States believe that visa liberalisation would provoke massive migration of citizens from Eastern Europe to the Union, who would overstay in EU territory when their visas are no longer valid. The Western Balkans' experience in liberalising the visa regime, which triggered a huge increase in the number of asylum-seekers from these countries, mainly from the Roma minority, is a cause of concern in the EU.[187]

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[187] See Özler and Toygür (2011) on how visa liberalisation in the Western Balkans could be applied to other countries such as Turkey. Most of the asylum applications from citizens of the Western Balkans are rejected on the grounds of being unfounded.

Applications from the Eastern Partnership (EaP) and Russia account for approximately 56% of the total number of Schengen visa applications worldwide.[188] Moldova has been the first country in the Eastern Partnership to be granted visa-free travel as of April 2014. Only from April to December 2014, 360,000 or 12% of Moldovan citizens travelled to the Schengen area visa-free (European Commission and High Representative, 2015c: 2).

2. Genesis of the EU visa facilitation agreements and the visa liberalisation process

The establishment of a visa-free regime with the Schengen Area is, according to the representatives from Eastern European countries, the main achievable goal in the absence of a membership perspective, together with Deep and Comprehensive Free Trade Agreements (DCFTAs).[189]

The Treaties do not stipulate any policy instruments for visa cooperation with third countries. The EU has exclusive competence for issuing short-term visas, which are those that allow for up to ninety days travel in the Schengen Area within a six-month period. (TFEU, 2009: art. 77.2.a). The Treaty refers to the common policy on visas and other short-stay residence permits (TFEU, 2009: art. 77.2.a) as subject to the ordinary legislative procedure. The Union also adopted legislation on a uniform format for issuing visas (Council of the European Union, 2008c). However, long-term visas are the competence of each EU Member State.[190] Besides, the EU has set up a Visa Information System with covers information on all the visa applications in all consulates of members of the Schengen Area worldwide (European Parliament and Council of the European Union, 2008a), which came into full operation in October 2014.

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[188] Data from 2012, available at European Commission (2013).
[189] Interview with diplomats from the Permanent Missions to the European Union of Ukraine and Moldova, Brussels, May and June 2010
[190] See Meloni (2005) for the development of the EU visa policy since the entry into force of the Treaty of Amsterdam. See also Finotelli and Sciortino (2013) on the link between visa policies and security-driven migration policies.

The Tampere Programme (European Council, 1999) referred to the continuation of the development of a common visa policy. To that end, it made explicit reference to the strengthening of cooperation among EU Member States consular representations worldwide.[191] In April 2010, the Regulation 810/2009 establishing a Community Code on Visas, popularly known as the Visa Code, entered into force (European Parliament – Council of the European Union, 2009).

The Visa Code aims at creating "a common corpus of legislation, particularly via the consolidation and development of the *acquis*" (European Parliament and Council of the European Union, 2009: point 3). The Code pins down the Schengen Visa procedures and provides legal certainty for the issuance of multiple entry visas (European Parliament and Council of the European Union, 2009: art. 24),[192] the establishment of fifteen days to one month calendar days for consulates to decide on a visa application and the right to appeal a visa refusal.[193] However, the entry into force of the Code has been assessed as having a limited impact in the visa issuance procedure.[194] On multiple entry visas, Fomina, Korneev, Sembaeva, Van Elsuwege and Voynikov (2013) stress that the Visa Code sets out the criteria for granting multiple entry visas, namely proof of 'integrity and reliability' (legal use of previous Schengen visas, sound economic situation) and proof of the need to travel to the EU frequently (European Parliament and Council of the European Union, 2009: art. 24).

The Stockholm Programme underlined that the Visa Code "will create important new opportunities for further developing the common visa policy" (Council of the European Union 2009: 4). Furthermore, the Stockholm Programme called on the Commission to study the possibility to establish a Common Mechanism to issue short-stay visas, aimed at examining the possibilities to introduce criteria linked to individual risk assessment and not nationality risk when issuing visas (Council of the European Union, 2009h: 58).

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[191] See Piernas López (2014) on consular protection for EU citizens after the entry into force of the Treaty of Lisbon.

[192] Multiple entry visas enable citizens from Eastern European countries to use the same visa for more than one entry into the Shengen Area, for a maxim of 90 days within a six-month period. For example, the EU-Russia visa facilitation agreement stipulates that "[d]iplomatic missions and consular posts of the Member States and of the Russian Federation shall issue multiple entry visas" (European Union – Russia, 2007: article 5).

[193] The right to appeal was only effective in April 2011.

[194] Interview with a representative from a civil society organisation in Ukraine, Kyiv, April 2011.

Visa liberalisation entails the abolition of the visa regime with the amendment of the Regulation 539/2001, listing the third countries whose citizens require a visa and those who are exempt from it to cross the external borders on the Union (Council of the European Union, 2001). Both the Parliament and the Council decide on the lifting of the visa regime. The Treaty of Lisbon stipulates that "[t]he Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall determine the third countries whose nationals must be in possession of visas when crossing the external border of the Member States" (TFEU, 2009: art. 100.c.1). Nevertheless, Russia proposed the EU to sign an international agreement regarding the abolition of the visa regime. In any case, the decision requires the amendment of Regulation 539/2001 on the EU side.

In principle, the visa liberalisation process follows a pattern of conditionality whereby Eastern European countries have to fulfil a set of reforms in the area of Justice, Liberty and Security before the visa regime is abolished. First, visa requirements still apply for citizens who are not holding biometric passports. In this case, the visa facilitation agreement still applies for those who are not in possession of biometric passports. Second, the process has no specific deadlines to be accomplished, rather depending on progress in the fulfilment of the reforms.

Visa liberalisation came to the spotlight when the EU decided to lift visa requirements for the citizens of the Western Balkan countries.[195] It should be noted that these countries enjoyed visa-free travel to most EU Member States before the wars that led to the disintegration of Yugoslavia. However, due mainly to the influx of refugees coming from those countries into the Union, EU Member States decided afterwards to introduce visa requirements to citizens of the Western Balkans. The turning point came at the Thessaloniki European Council in 2003, which reaffirmed the European perspective of

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[195] In December 2009, the citizens of Serbia, the former Yugoslav Republic of Macedonia (fYRoM) and Montenegro could travel to the EU visa-free. In November 2010, the citizens of Albania and Bosnia and Herzegovina were definitely exempt of visas. Visa liberalisation with Kosovo is pending. On the visa liberalisation process in the Western Balkans, see European Stability Initiative (2008). This civil society organisation has implemented the Project *Schengen White List*, which campaigns for visa liberalisation in the Western Balkans and afterwards in Eastern Europe.

the Western Balkans (European Council, 2003). The reforms to be fulfilled were set out in each of the road maps proposed by the EU.[196]

In response to the increase in the number of unfounded asylum applications from the Western Balkans after visa liberalisation, the Commission proposed the temporary reintroduction of visa requirements or suspension mechanism under certain conditions as a safeguard clause (European Commission, 2011b: 11). Also, a reciprocity mechanism was suggested when a visa-free third country imposes a visa requirement for EU citizens. The suspension mechanism was introduced as an amendment to Regulation 539/2001 in 2013, to be applied in "an emergency situation, where an urgent response is needed in order to resolve the difficulties faced by at least one member state, and taking account of the overall impact of the emergency situation of the Union as a whole" (European Parliament and Council of the European Union, 2013b: preamble 4).

In addition, the EU has developed, in response to the increase in the number of unfounded asylum applications in the Western Balkans, a post-visa liberalisation monitoring. This allows the Commission to keep track of the state of implementation of the benchmarks in the Road Map on visa liberalisation. Trauner and Manigrassi define it as a new 'lower level instrument' compared with the temporary suspension mechanism (2014: 125).

In the case of Moldova, the possibility to apply for the Romanian citizenship had an impact on the visa liberalisation process. Article 11 of the law on Romanian citizenship allows the possibility of double citizenship for those who were born (or their parents or grandparents) in territories pertaining to Romania from 1916 to 1939.[197] This includes the totality of the territory of the Republic of Moldova and most of Moldovan citizens.

In addition to visa policy instruments, EU Member States have the possibility to negotiate Small Border Traffic Agreements (SBTA) with Eastern European countries.

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[196] The implementation of reforms proved to be difficult. For example, in the field of document security, the introduction of biometrics in passports for citizens of Bosnia and Herzegovina was not an easy task. A total of eleven agencies are authorised to issue passports in the Federation of Bosnia and Herzegovina, one in each of its eleven cantons, plus one in the Republika Srpska.

[197] According to a representative from the Romanian General Consulate in Chişinău, 3 million people lost the Romanian citizenship in 1941. In 2011, 800.000 applications for Romanian citizenship were lodged. Approximately 10.000 citizenships are granted the Romanian nationality every year. See Catana (2007) on the specific issue of double Moldovan-Romanian citizenship.

The Parliament and the Council adopted the Regulation 1931/2006, which stipulates the possibility for citizens living close to the border to cross it in order to facilitate human contacts. The Regulation defines 'local border traffic'[198] as "the regular crossing of an external land border for border residents in order to stay in a border area, for example for social, cultural or substantiated economic reasons, or for family reasons, for a period not exceeding the time limit laid down in this Regulation (European Parliament and Council of the European Union, 2006c: art. 3.3). The area envisaged for local border traffic is thirty to fifty kilometres on both sides of the border.

Local border traffic has been assessed by a Commission official as a 'complement' to visa facilitation.[199] However, given the restricted area of local border traffic, it is according to a Ukrainian Civil Society representative, a "good compensation in the short term. (…) [T]here is a higher incentive to get visa facilitation".[200] Actually, most big cities are not covered by the SBTA.[201] Dubowski, one of the very few scholars to study in depth local border traffic, argues that the instrument "remains outside the main stream of consideration devoted to the EU migration policy *sensu largo*" (2012: 367).

Ukraine has signed SBTAs with Hungary (in force in January 2008), Slovakia (in force in September 2008), Poland (in force in July 2009) and Romania (October 2012).[202] Moldova signed a SBTA with Romania, which entered into force in September 2010. The agreement which was delayed due to in particular the lack of a treaty on border demarcation between Moldova and Romania (Government of the Republic of Moldova – Government of Romania, 2009).[203] Since Georgia does not share the common border with the EU, no SBTAs have been signed between Member States and this Eastern Partnership (EaP) country.

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[198] 'Local border traffic' and 'small border traffic' are used with the same meaning in this doctoral thesis.
[199] Interview with an official from former DG Home Affairs, European Commission, Brussels, May 2009.
[200] Interview with the director of the Centre for Peace, Conversion and Foreign Policy, Kyiv, April 2010.
[201] For example, there is only one big city in Ukraine covered - Uzhhorod - in SBTA signed between Poland and Ukraine in July 2009.
[202] The agreement between Ukraine and Hungary applied a 50 kilometre area on both sides of the border, to cover the presence of both Ukrainian and Hungarian communities. (Interview with the Deputy Head of the Permanent Mission of Ukraine to the European Union, Brussels, May 2009).
[203] Romania is against demarcating the border because it would imply an implicit recognition of the borders set in the Molotov- Ribbentrop Pact in 1939, whereby Bessarabia was transferred from Romania to the Soviet Union. In Moldova, the then Government of the Communist Party set the demarcation of the border as a precondition for the signature of the SBTA. Local border traffic could be agreed when the Coalition on European Integration came to power in May 2009 (Interview with a representative from the Permanent Mission of Moldova to the European Union, Brussels, April 2010).

As for Russia, a SBTA entered into force with Norway in May 2012. The Russia-Poland agreement of December 2011 covers the whole of the Kaliningrad *oblast*, going far beyond the thirty kilometres radius. The Commission recommended also the exception to the Regulation regarding Kaliningrad, in order to prevent an artificial division of the *oblast* (European Commission, 2011d). On the Russian side, an official stated that the agreement is 'useless' because it does not include the Polish city of Gdansk.[204] Russia also signed an agreement with Latvia in 2010.

Finally, Common Visa Application Centres (CVAC) are the first development of the creation of common consular services within the EU delegations abroad, a measure laid down in the Stockholm Programme (Council of the European Union, 2009h: 58).[205] In Eastern Europe, a CVAC was opened in Moldova in 2007.[206] Since many EU Member States are not represented with a consulate in Chişinău, the CVAC opened in order "to facilitate access to Member State consulates after the introduction of visa requirements" (Lavenex and Schimmelfennig, 2008:158).[207] Although there were plans to open a CVAC in Tbilisi, finally it was never set up.[208] According to a Commission representative, the fact that almost each EU Member State has a Consulate in Tbilisi made it not necessary.[209] Table 5 below summarises the legal base, substance, legal character and the actors involved in each of the EU visa policy instruments.

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[204] Interview with a representative from the Permanent Mission of Russia to the European Union, Brussels, June 2009.

[205] Common Visa Application Centres opened in Podgorica (Montenegro), Praia (Cape Verde), Dubai (United Arab Emirates) and Mumbai (India).

[206] The Hungary General Consulate issues visas for 16 countries in the Schengen Area. See the website of the Common Visa Application Centre in Moldova at http://www.cac.md/index_en.html (last accessed on 19 April 2015).

[207] Moldovan citizens had to travel to the main cities in neighbouring countries, namely Bucharest in Romania; Kyiv and Odessa in Ukraine and Istanbul in Turkey in order to lodge their visa applications.

[208] Interview with a representative from the Permanent Mission of Georgia to the European Union, Brussels, May 2009.

[209] Interview with an official from former DG Home Affairs, European Commission, Brussels, May 2010.

Table 5: EU visa policy instruments

Instrument	Legal base	Substance	Legal character	Actors involved
Visa facilitation agreements	Article 77.2.a TFEU on a 'common visa policy'	Visa-free for categories of citizens: lorry drivers, students, researchers -Fixed visa fees -Deadlines for visa issuance -Right of appeal on a visa refusal	Legally binding: international agreement between the EU and a third State	**EU:** -Council signs -Parliament gives consent -Commission negotiates (DG Migration and Home Affairs) **Third State**
Visa liberalisation action plans (Eastern Partnership) / Common steps for visa-free short term travel (Russia)	Article 77.2.a TFEU on a 'common visa policy'	Conditions for the establishment of a visa-free regime: document security; migration, public order and security; external relations and fundamental rights	Non-legally binding action plan proposed by EU to third state	**EU:** -Commission (DG Migration and Home Affairs) negotiates and assesses the adoption and implementation of benchmarks. -Parliament and Council amend Regulation 539/2001 listing countries requiring visas and those exempt from it. **Third state**
Local border traffic agreements	Regulation of the Parliament and the Council 1931/2006	Cross-border travel among the citizens of an EU Member State and a neighbouring country (radius of 30-50 kms. from the border)	Legally binding – international agreement between an EU Member State and a third state	**EU:** -Member state negotiates and signs -EU institutions ensure compliance with Regulation **Third state**
Common Visa Application Centres	Article 77.2.a TFEU on a 'common visa policy'	Consulate of an EU member state issues visas for other members of the Schengen Area	Non-legally binding	**EU:** -Lead consulate of an EU member state **Third state**

3. EU visa policy with Eastern Europe

3.1. Visa cooperation in the EU-Eastern Europe agenda

The liberalisation of the visa regime is part of the agenda set out in all the ENP action plans. In Ukraine, visa liberalisation was already established in the agenda of the JHA action plan adopted in 2001 (European Union – Ukraine, 2001). The declaration on the Prague Eastern Partnership Summit also refers to the goal of visa-free travel in the long-term (Council of the European Union, 2009a). This document is the first where visa liberalisation is made extensive to all EaP countries, including Belarus.[210]

The Stockholm Programme establishes that "[v]isa policy must also be part of a broader vision that takes account of relevant internal and external policy concerns" (Council of the European Union, 2009h: 58). The Programme envisages 'visa liberalisation in a secure environment' as a long term perspective in the ENP (Council of the European Union, 2009h: 79).

In Russia, the road map for the Common Space for Freedom, Security and Justice reaffirmed the importance of people to people contact, through the establishment of a visa-free regime in the long-term. The road map explicitly states that "[i]t was also decided to examine the conditions for visa-free travel as a long-term perspective" (European Union – Russian Federation, 2005: 20).

In the EaP countries, the Ukraine ENP action plan includes the objective to "establish constructive dialogue on visa facilitation" (European Union – Ukraine, 2005) and the EU – Ukraine association agenda calls on actively pursuing "the visa dialogue, developing the relevant conditions, with the long-term perspective of establishing a visa-free regime between the EU and Ukraine, as agreed at the EU-Ukraine Paris Summit of September 2008" (European Union – Ukraine, 2013b: 14).

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[210] The Commission started negotiations on readmission and visa facilitation agreements with Belarus in January 2014, despite the absence of a contractual framework of relations. The mandate to the Commission to start negotiations was already granted by the Council in 2009 (Council of the European Union, 2009f). According to a Belarusian diplomat, the visa facilitation agreement is 'realistic' (Interview with a representative from the Permanent Mission of Belarus to the European Union, Brussels, May 2010).

As for Moldova, the ENP action plan stipulates "a constructive dialogue on visa co-operation between the EU and Moldova, including an exchange of views on possibilities of visa facilitation in compliance with the *acquis* (European Union – Moldova, 2005: 3). Finally, the ENP action plan with Georgia envisages to "establish a dialogue on matters related to the movement of people including on (…) visa issues (European Union – Georgia, 2008: 8).

3.2. The output of the EU visa policy in Eastern Europe

3.2.1 The Visa Facilitation regime

As a first step towards visa liberalisation, visa facilitation was conceived in order to ease the visa application procedure. It has to be stressed that with visa facilitation the issuance of visas still prevails. However, simplified procedures are planned for certain categories of people, among them students, researchers, lorry drivers and business people. It is worth pointing out that since tourists are not eligible for visa facilitation, most visas issued (for example to Russian citizens) are not facilitated, but ordinary visas. Yet, it could be argued that the EU and China agreed also on facilitating conditions for the granting of visas to tourists. (Gromovs, 2008:54). In 2004, Brussels and Beijing signed a memorandum of understanding (European Union – China, 2004) to that effect.

Regarding the legal basis fpr visa facilitation, the Visa Code only refers to visa facilitation agreements in points 26 and 27 (Gromovs, 2008: 12). Apparently, the Council was not in favour of any references on visa facilitation in the Visa Code.[211] Visa facilitation establishes visa fees at thirty-five euro, although these fees increase when Member States outsource the visa issuance procedure to private companies.[212] Other elements of the visa facilitation agreements are a maximum of ten calendar days for consulates to decide on a visa application.

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[211] Presentation by Juris Gromovs "Visa facilitation and visa liberalisation with the European Union: increasing human mobility from third countries?" in the Workshops *Human Mobility and Governance in a Global Context*, Barcelona: Fundació CIDOB, 22th September 2011.

[212] Visas can be lucrative for Member States and for companies to which the visa application process has been outsourced. This is why consulates tend to be against visa liberalisation (Interview with a representative from the Open Society Institute, Brussels, April 2010).

Russia asked for a tempting incentive as a precondition for the negotiations on a readmission agreement with the EU to go further. Since then, visa facilitation agreements have been institutionalised in Eastern Europe as a first step towards a visa-free regime (Averre, 2005).[213] In Eastern Europe, the agreements have so far been adopted with Russia (European Union – Russia, 2007b), Ukraine, (European Union – Ukraine, 2007b), Moldova (European Union – Republic of Moldova, 2007b)[214] and Georgia (European Union – Georgia, 2011b).[215]

In the case of Georgia, the entry into force of the visa facilitation agreement in Russia was an incentive for citizens from the breakaway entities from Abkhazia and South Ossetia to apply for Russian citizenship, so that they could benefit from the agreement. Conflict between Georgia and Russia in 2008 accelerated the launch of a migration agenda with the EU, including the start of negotiations on a visa facilitation agreement.

As in the readmission agreements, the assessment of the implementation of visa facilitation agreements is made via joint committees on the implementation of visa facilitation agreements. On the one hand, officials have assessed so far positively, since "it helps people and facilitates human contacts".[216] However, outsourcing in the visa procedure has been criticised.[217] In addition, civil society organisations stress the degree of discretion of the implementation of the agreements by each Member State.[218] A Ukrainian official pointed out to the fact that some EU Member States 'go too far' when asking for evidence for visa applicants to qualify for a certain category of visa

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[213] Interview with a representative from the Permanent Mission of Moldova to the European Union, Brussels, April 2009.

[214] See Litra (2011a) for a thorough analysis of the implications of the visa facilitation agreement in Moldova.

[215] In the EaP, visa facilitation agreements entered also into force with Armenia and Azerbaijan (2014). The agreements are in force in the Western Balkans except Kosovo. In the Southern Neighbourhood, the Dialogue on migration, mobility and security with the countries on the southern shore of the Mediterranean, in the wake of the Arab spring, offers the possibility to conclude visa facilitation agreements (European Commission, 2011c: 10).

[216] Interview with a representative from the Permanent Mission of Russia to the European Union, Brussels, June 2009; interviews with officials from the Permanent Missions of Russia, Ukraine and Moldova, Brussels, May and June 2010

[217] For instance, Spain outsources the issuance of Schengen visas to an Indian multinational. Furthermore, accredited travel agents' are in charge of lodging the visas applications. (Interview with the Deputy Head of the General Consulate of Spain, Kyiv, April 2011).

[218] Interview with the director of the Centre for Peace, Conversion and Foreign Policy of Ukraine, Kyiv, May 2011.

facilitation.[219] While outsourcing increases administrative capacity, it raises *de facto* the costs of the application process. The updated EU-Ukraine visa facilitation agreement introduced a clause whereby the external service fee shall not exceed 30€ and that Member States "shall maintain the possibility for all applicants to lodge their applications directly at their consulates" (European Union – Ukraine, 2013: article 6.c.5).

With the entry into force of the Visa Code, the agreements have been amended according to the provisions of the Code (European Parliament – Council of the European Union, 2009: point 26). Some of the content of the previously agreed agreements was not in line with the Visa Code, notably as regards the standardisation of visa application procedures. Therefore, the agreements had to be amended. The amendments of the agreements have included more categories of people covered, such as members of Non-Governmental Organisations (NGOs). Other changes are the reduction of the period for the visa procedure and the extension of multiple-entry visas for more citizens. According to officials from Eastern Europe, Eastern European countries are not fully motivated to negotiate the visa facilitation regime as it runs in parallel with the visa liberalisation, which offers a more tempting mobility incentive for reforms. At the time of writing, amended visa facilitation agreements have been concluded with Ukraine (European Union – Ukraine, 2013a) and Moldova (European Union – Republic of Moldova, 2013).

3.2.2 The Visa liberalisation process

The EU launched a framework, the 'visa dialogue', whose aim is to discuss with third countries the way forward towards visa liberalisation. Visa dialogues consist in high level meetings which set out the conditions to be met for the abolition of the visa regime. Visa dialogues have always been launched after the entry into force of the visa facilitation agreement. Commissioner Avramopoulos said the dialogue is "an important driver of reforms in the area of Justice and Home Affairs" (2015b).

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[219] Interview with the Deputy Head of the Permanent Mission of Ukraine to the European Union, Brussels, May 2009.

In Ukraine, the visa dialogue was launched in September 2008. Until the EU presented to the Ukrainian authorities the visa liberalisation action plan, the EU-Ukraine visa dialogue served as a platform for the exchange of views on conditions to be fulfilled for the abolition of the visa regime.[220] As regards Moldova, there was a delay in the launch of the visa dialogue. Due to the political unrest following the parliamentary elections in May 2009, the dialogue was launched only on 15 June 2010.[221] In this sense, a Commission official conveyed that it was "unimaginable to set up a visa dialogue with Mr Voronin in power".[222]

It is worth referring to visa liberalisation in the Western Balkans to understand the process in Eastern Europe. In this case, the EU opted for 'road maps' on visa liberalisation. EU Member States were reluctant to use this term in Eastern European countries, fearing that it would 'imply membership perspective'. That is why they proposed the launch of action plans. Not to use the word 'road map' has been a symbolic and political question". [223]

In the EaP countries, Ukraine, Moldova and Georgia are so far the frontrunners in the visa liberalisation process. Action plans on visa liberalisation were presented to Ukraine, Moldova and Georgia, with the aim to identify all the measures to be adopted and implemented by the countries and set up clear requirements to be achieved (European Union – Republic of Moldova, 2010:2). A comparative analysis with the road maps in the Western Balkans shows that the latter differ with actions plans in Eastern Europe in a number of aspects.

First, unlike the road maps, the action plans are based on a 'two-phased approach'. As Commissioner Malmström put it: "first a set of reforms on legislation and planning and then a second set of more specific benchmarks, covering implementation and reforms on the ground" (Malmström, 2011: 2). This inevitably leads to a slow-down in the process. First-phase benchmarks concern the adoption of the overall policy framework

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[220]   Interview with the Deputy Head of the Permanent Mission of Ukraine to the European Union, Brussels, May 2009. See Weinar, Korneev, Makaryan and Mananashvili (2012) on the results of a survey on the impact of visa liberalisation in Ukraine and Moldova.
[221] See Litra (2011b) on the Schengen visa liberalisation process in Moldova.
[222] Interview with an official from former DG Home Affairs, European Commission, Brussels, May 2009. Vladimir Voronin was President of Moldova from 2001 to 2009 and sought closer ties with Russia.
[223] Interview with an official from former DG Home Affairs, European Commission, Brussels, May 2010.

(legislation and institutions) whereas the second-phase are linked to the full implementation of the measures. Second, the content of the demands is more far-reaching than in the Western Balkans case. Third, the action plans make reference to the 'long-term' character of the process.

In Ukraine, the visa dialogue was initiated after the EU-Ukraine Summit in October 2008.[224] The action plan on visa liberalisation was handed over to the Ukrainian authorities in November 2010 (European Union – Ukraine Visa Dialogue, 2010). Former President Yanukovich stated in January 2011: "I hope that, before the Euro 2012, a visa-free regime with the European Union becomes a reality". The Ukrainian authorities at the time also expressed their intention to reintroduce the visa obligation for EU citizens, if the visa dialogue did not show signs of progress.[225] However, this was never the case. The 17th EU-Ukraine Summit reconfirmed the commitment to visa-free travel (European Union – Ukraine, 2015: 4).

The Commission issued an assessment on the implementation of the action plan by Ukraine on 8 May 2015, stating the progress achieved in 2014 was 'noteworthy', despite the armed conflict with Russia. The Commission recommends Ukraine to fully implement the adopted legislative framework, especially in the areas of asylum, fight against corruption and organised crime, trafficking in human being and anti-discrimination (European Commission, 2015a: 10).

The Commission will report at the end of 2015 on progress with the possibility to make a positive recommendation for visa liberalisation. At the press conference of the Riga Summit, President of the European Council Tusk commended Ukraine and Georgia for progress in meeting the requirements in the action plan and said that he was 'optimistic' about the prospects for both countries to be granted visa-free regime in 2016 (Council of the European Union, 2015d).

In Moldova, after the launch of the Visa Dialogue in June 2010, the action plan on visa liberalisation was presented to the Government by Commissioner Malmström in

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[224] See Paul, Sushko and Stiglmayer (2010) for the visa liberalisation process in Ukraine and the rest of the Eastern Partnership countries.
[225] Kyiv had unilaterally dropped the visa obligation for EU citizens on occasion of the Eurovision song contest, which has held in the Ukrainian capital in 2005.

January 2011 (European Union – Republic of Moldova Visa Dialogue, 2010).[226] Before the launch of the visa dialogue, a Commission official had already publicly stressed that "I am very impressed because there were indeed readiness and commitments at all levels. (…) Moldova meets the political and administrative readiness for the conditions for visa-free travel. (…) Moldova was arguably more advanced than Russia and Ukraine".[227]

In Georgia, the visa dialogue was launched in June 2012 and the action plan was presented to the authorities on 25 February 2013 (European Union – Georgia, 2013). The Commission issued an assessment on the implementation of the action plan by Georgia on 8 May, concluding the progress achieved was significant since Georgia moved to the second phase of implementation of the legislative framework only in October 2014. Whereas Georgia is in line with the requirements, the Commission sees a need for further efforts in the implementation, including information campaigns on what the visa-free travel actually entails (European Commission, 2015b:10).

Regarding the substance of the EU-Moldova visa liberalisation action plan, the EU-Ukraine visa liberalisation action plan and the EU-Georgia visa liberalisation action plan, there are plenty of similarities among them. All have a highly technical content, enumerating four blocks of reforms that need to be fulfilled before the lifting of the visa regime. These blocks of reforms encompass measures to be adopted and implemented in the following fields: document security, migration and border management, public order and security and external relations and fundamental rights.

On document security, international standards emanate from the International Civil Aviation Organisation (ICAO) and contemplate basically the introduction of biometrics (European Union - Ukraine, 2010: 4; European Union – Republic of Moldova, 2010: 4; European Union – Georgia, 2013: 8). Biometrics were introduced in the EU in 2004 for travel documents (Council of the European Union, 2004d). Mitsilegas argues the EU

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[226] Commissioner Malmström presented the action plan on visa liberalisation in the context of the first multilateral conference on JHA ever held in the Eastern Partnership: the International Conference "The Eastern Partners' contribution to the Stockholm Programme: Synergies to improve mobility and strengthen security", Chişinău, Republic of Moldova, 24-25 January 2011. The doctoral candidate participated in this conference as representative of 'civil society'.
[227] Intervention by Jan de Ceuster, former DG Home Affairs, at the European Parliament Delegation meeting of the Joint Parliamentary Committee with Moldova, 12 May 2010.

opted to adopt biometrics in order to align with standards in the United States to secure the visa-free regime. In his own words: "in a clear convergence with the US system, the Regulation calls upon Member States to collect biometric identifiers, comprising the facial image and ten fingerprints, from the applicant" (Mitsilegas, 2010: 47). TREVI had already explored in 1992 the possibility to apply biometrics (Bigo, 2009: 339).

Eastern European countries have criticised that some EU Member States have not introduced biometrics. A Georgian diplomat stated that "Georgia finds the requirement on biometrics irritating as half of Member States have not introduced them yet".[228] As a matter of fact, the EU faces lack of internal coherence when requiring Eastern European countries to introduce biometrics. The action plan stipulated the requirement that also the consulates of Eastern European worldwide have to be equipped in order to issue biometric passports.

In Eastern European countries, Moldova was the first to introduce biometrics in passports and other travel documents to all citizens in 2011. One of the difficulties was to reduce their cost in order to make them more accessible. As mentioned above, only citizens holding biometric passports can travel visa-free. In Ukraine, legislation on biometrics was adopted in 2012 but Ukraine did not start issuing biometric passports until January 2015, when implementing regulations were in place (European Commission and High Representative, 2015b: 15). There was controversy over the way the company won the tender to issue passports.[229]

The second block of reforms is on irregular migration, IBM, migration management and asylum. In the field of asylum, the action plans require the adoption of the 1951 Geneva Convention and Protocol relating to the Status of Refugees (United Nations, 1951 and 1967).[230] The association agreements also include the commitment to the adoption of the Geneva Convention and Protocol (European Union – Ukraine, 2014: art. 16.c; European Union – Republic of Moldova, 2014b: art. 14.b; European Union – Georgia, 2014b: art. 15.b).

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[228] Interview with a representative from the Permanent Mission of Georgia to the European Union, Brussels, May 2009.
[229] Interview with the director of the Centre for Peace, Conversion and Foreign Policy, Kyiv, April 2010.
[230] See European Union - Ukraine, 2010: 6; European Union – Republic of Moldova, 2010: 6; European Union – Georgia, 2013: 12.

Progress in the implementation of the readmission agreement is made conditional to the visa-free regime (European Union - Ukraine, 2010: 6; European Union – Republic of Moldova, 2010: 6; European Union – Georgia, 2013: 11). A footnote in the Moldovan action plan explicitly states that "the full and effective implementation of the EU-Republic of Moldova readmission agreement remains an underlying condition for the continuation of the visa dialogue and is of paramount importance for the establishment of a sustainable visa-free regime" (European Union – Republic of Moldova, 2010: 6).

Similarly, the Eastern Partnership conclusions stress that "[t]he Council reiterates its commitment to promote mobility of citizens of Eastern partner countries through visa facilitation and readmission agreements, and once these are successfully concluded and implemented, to take gradual steps towards visa liberalisation as a long term goal for individual partner countries on a case-by-case basis provided that conditions for well-managed and secure mobility are in place" (Council of the European Union, 2009a: 2). The readmission conditionality in both action plans shows how the EU promotes its irregular migration policy by means of the visa policy.

Integrated Border management is also part of the conditions under the block on irregular migration (European Union - Ukraine, 2010: 5; European Union – Republic of Moldova, 2010: 5; European Union – Georgia, 2013: 10). The action plans refer to the "deepening' of the operational cooperation with Frontex. (European Union - Ukraine, 2010: 5; European Union – Republic of Moldova, 2010: 5; European Union – Georgia, 2013: 10).[231] As assessed in Chapter V, both Moldova and Ukraine have channelled their border management cooperation with the EU through the working arrangement not only with Frontex, but also with EUBAM. This has resulted in the transformation of the State Border Guard Services, which became part of the Ministry of the Interior.

The third block on public order and security calls for the adoption of United Nations and Council of Europe norms in the fight against corruption (including a reference to

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[231] Cooperation between Frontex and the border guard services of Ukraine, Moldova and Georgia has also been stipulated under association agreements (European Union – Republic of Moldova, 2014b: art. 14.f; European Union – Georgia, 2014b: art. 15.c).

the Group of States against corruption – GRECO).[232] GRECO is part of the Council of Europe and has been monitoring the implementation of anticorruption standards since its creation in 1999 (European Union - Ukraine, 2010: 7; European Union – Republic of Moldova, 2010: 8; European Union – Georgia, 2013: 14 and 16). On fight against organised crime, references are also made to the UN and Council of Europe (European Union - Ukraine, 2010: 6; European Union – Republic of Moldova, 2010: 6; European Union – Georgia, 2013: 6).

In addition, the adoption of European Convention on data protection and its Additional Protocol (Council of Europe, 1981 and 2001) are explicitly mentioned (European Union - Ukraine, 2010: 8; European Union – Republic of Moldova, 2010: 9; European Union – Georgia, 2013: 8). The signature of operational working arrangements with Europol and Eurojust is conditional to the implementation of the Council of Europe rules. Measures taken on data protection include that Ukraine entrusted its Ombudsman with responsibility on data protection (European Commission and High Representative, 2015b: 16).[233]

The action plans also refer to reforms in the field of drug trafficking and money laundering. In the field of drug trafficking, the action plans refer to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), the EU agency based in Lisbon which provides statistical data and capacity-building on best practices in drugs and drug trafficking (European Union - Ukraine, 2010: 7; European Union – Republic of Moldova, 2010: 7; European Union – Georgia, 2013: 176).

As regards combating money laundering and terrorist financing, the Moldovan action plan refers to the alignment with the standards of the Financial Action Task Force (FATF), an intergovernmental body set up with the objective to fight against money laundering (European Union - Ukraine, 2010: 7; European Union – Republic of

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[232] The association agreements also make reference to the adoption of relevant conventions in the fight against corruption. See for instance European Union – Republic of Moldova (2014: art. 16.2).
[233] The adoption of data protection rules is also covered by the association agreements (European Union – Ukraine, 2014: art. 15; European Union – Republic of Moldova, 2014b: art. 13.1; European Union – Georgia, 2014b: art. 14).

Moldova, 2010: 6; European Union – Georgia, 2013: 14).[234] Overall, the third block has the highest number of conditions to be fulfilled and therefore its implementation means a "major challenge", according to a civil society representative.[235]

Lastly, the forth block refers to norms on external relations and fundamental rights, including not only the protection of minorities, but also combating hate and ensuring freedom of religion. The adoption of legislation on antidiscrimination triggered controversial debates in public opinion in the EaP countries, as it was the case in Moldova (Gurin, 2011) (European Union - Ukraine, 2010: 9; European Union – Republic of Moldova, 2010: 10; European Union – Georgia, 2013: 21). The EU-Georgia action plan includes on anti-discrimination other norms such as the Council of Europe European Charter for Regional or Minority Languages (Council of Europe, 1992).[236]

The action plans list more international organisations working in the field of human rights and fight against discrimination. First, the United Nations, the Office of Democratic Institutions and Human Rights (ODIHR) from the Organisation for Security and Cooperation in Europe (OSCE), which assists OSCE members in carrying out activities such as election monitoring (European Union - Ukraine, 2010: 9; European Union – Republic of Moldova, 2010: 10; European Union – Georgia, 2013: 21).

Table 6: Benchmarks to be fulfilled in the action plans on visa liberalisation

Block of reforms	**Eastern Partnership action plans on visa liberalisation – Ukraine, Moldova and Georgia**
1- Document security, including biometrics	-ICAO
2- Irregular migration –readmission -Integrated Border Management, -Migration management -Asylum	-Readmission agreement -IBM -Deepening Frontex working arrangement -Asylum: Geneva Convention and Protocol

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[234] The convergence to FATF standards is also reflected in the association agreements with Ukraine, Moldova and Georgia (European Union – Ukraine, 2014: art. 20; European Union – Republic of Moldova, 2014b: art. 18; European Union – Georgia, 2014b: art. 19.2).

[235] Interview with the director of the Centre for Peace, Conversion and Foreign Policy, Kyiv, April 2010

[236] See European Union – Georgia (2013: 21).

3- *Public order and security* -Fight against organised crime -Trafficking in human beings -Fight against corruption -Money laundering and financing of terrorism -Drugs -Data protection	-Council of Europe: organised crime, fight against corruption, Convention and additional protocol on data protection -FATF standards on fight against money laundering
4- *External relations – fundamental rights* -Citizens' rights, including protection of minorities	-Antidiscrimination: protection of minorities ODIHR (OSCE)

Source: Author's own elaboration

Regarding the process of adoption of the action plans, the Moldovan authorities had been working along the lines of a 'preemptive approach', whereby Moldova should approximate to EU standards before the EU formally requested the adoption and implementation of reforms. Moldova claimed that Eastern European countries were in a better position than some of the Western Balkan countries at the time of the road maps were presented.[237] Actually, a representative from a Bosnian civil society organisation explained that Bosnia and Herzegovina relied on a positive assessment by the Commission based on political considerations rather than on progress in implementing the obligations in the road map. According to him, Sarajevo did not react and started implementing the reforms until the Commission issued a negative assessment that triggered a delay in the granting of visa liberalisation.[238] Commissioner Malmström announced in December 2013 that Moldova had fulfilled all the requirements for reforms in the action plan and the Parliament and the Council decided to grant the visa-free regime as of April 2014.

Before visa liberalisation was granted to Moldova, there was uncertainty whether the Council would give the green light based on the technical assessment of the Commission. This technical approach towards visa liberalisation was clearly put

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[237] Interviews with officials of the Ministry for Foreign Affairs of Moldova, Chişinău, April 2011.
[238] Interview with a research fellow at the Centre for Socioeconomic Studies 'Populari', Brussels, May 2010.

forward by Commissioner Malmström: "[p]rogress of the road towards visa free travel will depend solely on achievements of our partner countries" (Malmström, 2011: 2). However, a Swedish representative believed the decision is "in the middle between political and technically-based approach".[239] The General Consul of Spain in Moscow claims that the "visa policy is highly political. It is not based on a 'serious analysis'. There are historical elements, 'phantoms'. It has effects on a residual core of sovereignty".[240]

After this analysis of the norms underlying the action plans on visa liberalisation for Ukraine, Moldova and Georgia, the visa liberalisation process in Russia should be assessed. The visa dialogue was launched in 2007 and has been an important component in EU-Russia relations (Voinikov and Korneev, 2013). However, the negotiations have been put on hold since the illegal annexation of Crimea by Russia in March 2014. The European Council decided in March 2014 to cancel the EU-Russia summit that should have taken place in June to evaluate progress in the visa dialogue (European Council, 2014a).

Being this the state of affairs, the agenda of reforms to be fulfilled for the visa-free regime was laid down in a document on Common steps towards visa-free short-travel (European Union – Russia (2011).[241] Former President of the Commission Barroso stated at the EU-Russia Summit in December 2010 that "[w]e will now start elaborating a list of common steps and the implementation of those concrete steps will open the way for talks on an EU-Russia visa waiver agreement" (Durao Barroso, 2010: 2). Moscow presented a draft agreement on visa liberalisation during the summit, which was rejected by the EU. Russia complained about the 'complexity' of the decision-making process within the EU,[242] insisting on the need to have symmetrical relations (Hernández i Sagrera and Potemkina, 2013).

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[239] Interview with a representative from the Permanent Representation of Sweden to the European Union, Brussels, May 2010.
[240] Interview with the General Consulate of Spain, Moscow, October 2010.
[241] The common steps were only released in March 2013, even if they were agreed in 2011. The parties did originally not agree on publishing the document, showing lack of transparency of the external dimension of the EU migration policy.
[242] Interview with a representative from the Permanent Mission of Russia to the European Union, Brussels, June 2009.

The main reforms to be adopted in light of the Common Steps are practically the same as in the action plans for the EaP. The EU and Russia agree to implement the reforms "on equal footing and within their respective competences". They commit to the full implementation of the readmission agreement and its implementing protocols (European Union – Russia, 2011: 4); to the Geneva Convention and Protocol (European Union – Russia, 2011: 5); to the working arrangements between Frontex and the Russian border service (European Union – Russia, 2011: 6) and to FATF standards against money laundering (European Union – Russia, 2011: 7).

On organised crime, contrary to the action plans with the EaP countries, reference is made to the UN Convention against Transnational Organised Crime (United Nations General Assembly, 2000).[243] In the fight against corruption, like in the action plans, the Common Steps refer to the Council of Europe norms including cooperation in GRECO (European Union – Russia, 2011: 8-9). Finally, the parties commit to the implementation of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe (Council of Europe, 1948).[244]

Despite the commitments outlined above under the Common Steps, the EU's reluctance to fix a date for the visa-free regime discouraged the Russian side and even prompted anti-EU rhetoric in Russia (Hernández i Sagrera and Potemkina, 2013: 12). Russia had in mind the Sochi Olympic Games in February 2014 for the visa-free regime. However, as mentioned above, the EU decided to stop the visa dialogue as a result of the conflict in Ukraine.

Limited progress was made in the implementation of the common steps towards visa-free regime between the EU and Russia. While the EU has focused on the technical character of the reforms, Russia argued the technical requirements had been met and stressed the decision to lift visas. One issue which prevents progress was the compulsory registration process for foreigners in Russia. Since 2007, "it is the receiving

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[243] See also references to the UN Convention against Transnational Organised Crime in the association agreements (European Union – Ukraine, 2014: art. 22.4; European Union – Republic of Moldova, 2014b: art. 17; European Union – Georgia, 2014b: art. 17.2).
[244] See European Union – Russia (2011: 10).

party that should inform the competent authorities about a newcomer for the purposes of better, reliable statistics".[245]

Another aspect is the ridge between EU Member States willing to establish a visa-free regime with Russia and those against it. For example, Spain and Finland have been in favour of the abolition of visas.[246] Spain has been an active promoter of visa liberalisation with Russia. The Spanish General Consul in Moscow claims that "Consulates are a factory of visas. One third of the total visas issued by Spain (450.000) are issued for Russian nationals. In total, more than 6 million Schengen visas were granted to Russian nationals in 2012 (European Commission, 2013). Nevertheless, armed conflict with Ukraine and economic crisis have triggered a decrease in the number of Russian tourists to Spain.

4. Conclusions on policy convergence

Concerning the cooperation pattern in the visa facilitation regime, the EU had not envisaged any specific tool in its visa approach towards third countries. The regime constitutes a pattern of convergence to bilaterally-agreed norms since it is the result of a tailor-made agreement between the EU and Russia. As the Commission explicitly states, the agreements were [t]ailor made, responding to the specific needs of the third country concerned and provide simplification of the short-term visa issuing procedures for certain categories of persons" (European Commission, 2006: 6).

As regards visa liberalisation, within the set of reforms to be fulfilled, the analysis of the benchmarks in the visa liberalisation action plans shows that the EU promotes mainly international norms in the area of rule of law and fundamental rights. In the case of Russia, where "[p]olitically it was not appropriate to propose a Europeanisation agenda, the precondition requirements could be towards internationalisation".[247] The analysis of

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[245] Intervention of Ekaterina Egorova, Deputy Head of the Federal Migration Service of the Russian Federation, MGIMO, 26 October 2010.
[246] The Spanish Presidency of the Council circulated in the first semester of 2010 a non-paper on visa liberalisation with Russia in the Council (Interview with a representative from the Open Society Institute, Brussels, April 2010).
[247] *Idem.*

benchmarks under the Common Steps shows that international norms are clearly spelled out and constitute a powerful incentive for far-reaching reform.

In sum, the analysis has shown that the predominant policy convergence pattern in the EU migration cooperation with third countries has not been that of convergence to EU norms, but that of convergence to international norms. The provisions in the visa liberalisation process are not part of the *acquis communautaire*. The EU has cooperated mainly with Eastern Europe promoting the adoption of already existing norms at the international level. Examples of international norms are in the field of document security (ICAO), the adoption of Council of Europe Conventions and additional protocol on data protection, specific bodies like FATF in the fight against money laundering.

The reason why the EU opts to promote international norms is because they are perceived as more legitimate by Eastern European countries. The EU is aware of the high perception of legitimacy of international norms, in particular those emanating from European regional organisations like the Council of Europe, to which all Eastern European countries are members.

That notwithstanding, the analysis also shows that convergence to EU-norms in Ukraine, Moldova and Russia is also a main component of the requirements in the visa liberalisation process, since the effective implementation of the readmission agreement and the adoption of Integrated Border Management standards are conditional for progress in the visa liberalisation process. As argued in Chapter IV, the readmission agreement constitutes an EU norm. The Commission recognised in the assessment of the implementation of the action plan by Georgia that the country generally complies with best European and international standards (European Commission and High Representative, 2015b:10).

5. Summary

This chapter has shown that visa policy is the instrument with the highest impact of EU migration cooperation with Eastern Europe. The chapter has pointed out that the two-phased approach in the action plans inevitably leads to a slow-down in the process. Furthermore, the action plans contain a much higher number of specific and far-reaching norms than in the Western Balkans. Furthermore, the action plans make the full implementation of readmission agreements and cooperation on border management (IBM promotion and cooperation with Frontex) conditionalal for progress in the visa liberalisation process.

While visa facilitation agreements allow certain categories of citizens to apply for visa without paying fees and ease the visa issuance procedure, visa liberalisation aims at abolishing the visa regime. The chapter has stressed that visa liberalisation is conditional to meeting a series of reforms. In the absence of membership perspective, Eastern European countries perceive it as the main achievable goal. In practice, visa liberalisation entails the amendment of the Regulation 539/2001. The amendments introduced in 2013 which envisage the temporary suspension of the visa-free regime have raised concerns over the sustainability of the visa regime.

Regarding the role of EU institutions, the Commission is responsible for negotiations on the visa facilitation agreements and for the assessment of progress in the implementation of the reforms envisaged in the action plans on visa liberalisation. The Commission advocates for a technical approach to visa liberalisation based on merit. On the contrary, some Member States, regardless of the reports by the Commission on progress in the implementation of reforms, have a political approach.

Overall, EU-Eastern Europe visa cooperation provides mobility subject to strict conditionality in the area of rule of law and fundamental rights, as well as convergence to security-driven policies such as readmission agreements and border management. As a result, visa liberalisation is the most powerful tool of the external dimension of the EU migration policy to introduce reforms in the area of rule of law and fundamental rights.

It is worth recalling that the visa policy instruments developed by the EU to Eastern Europe provide only a little part of mobility. Most of the citizens from Eastern European countries that apply for Schengen visas, notably Russians, are actually tourists who do not benefit from visa facilitation. Also the fixed fees under the visa facilitation agreements are usually higher because of the outsourcing of the visa issuance procedure to companies.

Uneven paths towards visa liberalisation show that the goal to create a 'common' visa policy is far from being achieved. Steps towards the institutionalisation of the visa liberalisation process have been taken, but common consular services are still not in place. The fact that each Member State is responsible for the visa issuance leads to differences in the way the visa applications are handled. Also, long-term visas are a competence of EU Member States. Authors like Jaroszewicz claim that the economic crisis in the European Union is "creating rather unfavourable conditions for the process of visa liberalisation between the EU and the countries of Eastern Europe" (2012: 5)

CHAPTER VII. EU-Eastern Europe Labour Migration policy convergence

1. Introduction

The external dimension of EU labour migration policy has been undoubtedly the least developed of the migration policy areas dealt with in this doctoral thesis. EU labour migration policy has not been fully integrated at the EU level and EU Member States are reluctant to transfer the competence. However, the Commission presented a legal migration package in 2005. In addition, legal migration is one of the pillars of the European Agenda on Migration presented in May 2015. The package included the Blue Card Directive aimed at attracting high-skilled migrants into the EU.

Against this background, it is not surprising that the EU cooperation with third countries in this field is at an early stage of development. The launch of mobility partnerships in 2007, an instrument devoted in principle to the promotion of labour migration with third countries, by deploying circular migration schemes, has given room for broad scholarly analysis. Once more, Eastern Europe has been the area where the EU has developed mostly this policy tool.

The aim of this chapter is to provide an insight to the current state of the development of the external dimension of the EU labour migration policy. Mobility partnerships are the instrument designed by the EU to promote legal channels of mobility between the EU and Eastern Europe. The chapter relies to a great extent on field work to look at policy convergence derived from the adoption of mobility partnerships.

The chapter is structured into four main sections. First, it gives an overview of the genesis of the EU labour migration policy, both at the internal and external levels. This section includes an analysis of the main elements defining mobility partnerships. The next section briefly outlines the negotiations leading to the launch of the partnerships in Moldova and Georgia and examines the prospects for the partnerships to be in place in Ukraine and Russia. The chapter assesses mobility partnerships in light of the empirical analysis. Section four looks at the policy convergence model between the EU and

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Eastern Europe in the field of labour migration. The chapter ends with considerations on the implications that mobility partnerships have for the protection of fundamental rights standards of migrant workers, one of the subjects of debate in the EU labour migration policy.

2. Genesis of the EU labour migration cooperation with third countries

As the introduction has stated, the external dimension of the EU labour policy is the least developed of the four issue areas dealt with in the dissertation.[248] Actually, labour migration is a nascent policy at the EU internal level. While EU Member States have traditionally been reluctant to transfer migration competences at the EU level, this reticence has particularly been relevant in the field of labour migration. Iglesias even claims the external dimension of the EU legal migration policy has been absolutely left behind (2012: 175)

However, with the Treaty of Lisbon, the policy regulating the conditions of entry and residence for EU Third Country Nationals (TCNs) for employment related activities became a competence under the ordinary legislative procedure (TFEU, 2009: art. 79.2.b), which resulted in the abolition of the unanimity rule. However, a Swedish official stressed that "[t]he EU regular migration policy will never be communitarised".[249] As a matter of fact, the labour market access quotas remain a competence of EU Member States, according to article 79.5 of the TFEU (2009).

In this regard, García Andrade is of the opinion that this explicit restriction at the EU internal level constitutes a "restriction on the corresponding implied external competence" (2013: 267). At the same time, the author claims that "it does not seem coherent to conclude agreements with third countries at EU level which are aimed at facilitating the legal admission of their nationals in the absence of truly common rules of admission" (García Andrade, 2013: 273). As an alternative, the author proposes to strengthen coordination between the EU and Member States in the field of legal migration. Mobility partnerships were conceived to serve this purpose (2013: 280).

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[248] See Ryan (2007) for a general analysis of the EU labour migration policy.
[249] Interview with a representative from the Permanent Representation of Sweden to the European Union, Brussels, June 2009.

Contrary to García Andrade, Carrera and Hernández i Sagrera argue that the competence to conclude legally binding agreements applies not only to the readmission policy but it is also extensive to other migration policy areas such as labour migration, in application of the doctrine of implied powers. In their own words: the "[c]alls to develop a common migration policy aimed at ensuring at all stages the efficient management of EU migration flows – interpretation of this article does not exclude the harmonisation and conclusion of agreements on this domain (2011: 106).

Legal migration has also been coined as a *domaine reservé* (Reslow, 2012: 223) because Member States have the control of decision-making and the Commission a limited role as initiator. In addition, the European Parliament and the European Court of Justice are completely excluded (Reslow, 2012), which raises serious concerns regarding accountability.

Very few exceptions of EU law have regulated the conditions for entry and residence of TCNs for the purpose of employment. On the one hand, they encompass the Council Directive 2003/86/EC on the right to family reunification (Council of the European Union, 2003c), as well as the provisions related to employment of Council Directive 2003/109/EC on long-term residents (Council of the European Union, 2004a). On the other hand, they include the Council Directive 2009/50/EC on the recruitment of highly-qualified employees, the popularly called Blue Card Directive (Council of the European Union, 2009d) and the Council Directive facilitating the mobility of researchers from third countries into the Union (Council of the European Union, 2005d).[250]

With respect to the EU labour migration agenda, a legal migration package was proposed by the Commission in 2005 (European Commission, 2005c), in order to adopt a normative framework to address the deficits of an ageing population and the shortage of workers in particular areas.[251] Legal migration is one of the four pillars of the European Agenda on Migration presented in May 2015. The Commission has justified the lack of developments in this field since 2005 on the grounds of high unemployment

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[250] Both the students and researchers directives have been harmonised in a new Commission proposal voted by the Parliament in February 2014 and pending final adoption by the Council.
[251] See Carrera, Guild and Eisele (2014) for a comparative study on the attractiveness of the EU labour market vis-à-vis the US, Canada and other countries.

rates in the EU. The EU has opted for giving preference to highly-skilled workers coming from third countries. The Blue Card Directive envisages the recruitment of qualified migrants in order to increase the skills of the EU labour force. (Guild, 2007). According to an official from the General Secretariat of the Council, it triggers "competition among EU Member States because of the wages' level and because of the level of knowledge. It is pure image and has only a symbolic effect".[252] In principle, Blue Card holders obtain the residence permit in a fast-track procedure and for a five year period.

Another piece of legislation of the EU legal migration package is the Directive on a single permit to reside and work in the territory of an EU Member State, adopted in December 2011 (European Parliament and Council of the European Union, 2011c). Long discussions over the Commission proposal and the need to include a set of rights for the migrant workers took place in the Parliament and in the Council (European Commission, 2007e).[253]

On the one hand, some EU Member States were in favour of including a sort of statute of migrants' rights in the Directive, whereas others opposed to the initiative.[254] On the other hand, the Commission proposal did not include temporary migrants, which were the object of the Commission proposals on a directive on seasonal workers and a Directive on intra-corporate transferees (European Commission, 2010b and 2010c). Finally, the rights to belong to trade unions, to pension, tax benefits and public housing were covered in the directive (European Parliament and Council of the European Union, 2011c).

The directive on seasonal workers was adopted in February 2014 (European Parliament and Council of the European Union (2014a). The negotiations were long because Member States wanted avoid any option for "temporary stays turning into permanent ones" (Monar, 2015: 2). The directive on intra-corporate transferees was adopted in June 2014 (European Parliament and Council of the European Union (2014b). This

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[252] Interview with an official of the General Secretariat of the Council of the European Union, Brussels, May 2009.
[253] See Martín Puebla (2013) for an analysis on negotiations for the adoption of the single permit directive.
[254] Interview with a representative from the Permanent Representation of Spain to the European Union, Brussels, May 2010.

legislation, which allows multinationals to transfer their employees to their subsidiaries in the EU, was also subject to debate in the Council because of the "Member States' concerns about fraud, abuse and circumvention of national control possibilities" (Monar, 2015: 5).

With this lack of development of the EU labour policy *ad intram*, it is not surprising that the external dimension has not been particularly dynamic. Nevertheless, labour migration cooperation has taken place bilaterally between some EU Member States such as France, which have been signing their own non legally-binding agreements with third countries. The *Accords de gestion concertée des flux migratoires et de développement solidaire* (agreements on joint management of migration flows and partnership development),[255] that France is promoting have an impact on the development of the external dimension of the EU labour migration policy. These agreements have "linkages between labour market access and readmission obligations" (Panizzon, 2012: 101). Another example is Spain's cooperation agreements on migration, which allowed Spain to enter into partnerships with five North African countries as part of the so-called 'Africa Plan'.[256]

In addition, these bilateral agreements raise serious concerns on the issue of extraterritoriality, since they entail the exercise of jurisdiction of EU Member States beyond the EU external border (Cremona, 2011). Chou and Gibert have coined the term 'agreement duplicity' to refer to the situation whereby a third country sees no added value in signing an EU Mobility Partnership because previous agreements have been signed bilaterally with EU Member States (2010: 13).

In addition, under the so-called Prague Process referred to in Chapter II, the Building Migration Partnerships (BMP) initiative was launched by the EaP Joint Declaration adopted in Prague in April 2009 (Council of the European Union, 2009a). The International Centre for Migration Policy Development (ICMPD) was chosen as the implementing partner. Poland is currently leading the initiative, which covers a wide range of policy areas, which result in fragmented cooperation without a clear objective.

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[255] In Eastern Europe, France has signed an agreement with Russia. See Government of the French Republic and Government of the Russian Federation (2009).

[256] See Jelen (2013: 386) for information on bilateral agreements with third countries concluded by France and Spain. See also Fajardo del Castillo (2006), Panizzon, (2011) and Ward (2011) .

The initiative is targeted to the countries of the former Soviet Union, including countries in Central Asia, whose migration cooperation with the EU has been weak until now. Its activity has consisted mainly in the provision of capacity-building programmes in the field of border management, in partnership with the International Organisation for Migration (IOM), as well as and migration exploratory missions. A Hungarian representative conceived the BMP as a preparatory venue for the exchange of ideas before the launch of a mobility partnership.[257] Overall, the BMP initiative lacks determinacy, which leads to lack of coherence and possible overlap with other initiatives.

Regarding mobility partnerships, they have been defined by the Commission as "the most innovative and sophisticated tool to date of the Global Approach to Migration" (European Commission, 2009: 4). The Stockholm Programme qualified them as "[t]he main strategic, comprehensive and long-term cooperation framework for migration management with third countries, adding value to the existing bilateral frameworks" and called for their further deployment (Council of the European Union, 2009h: 5). Reslow has defined them as a 'unique sui generis community action' (2010b: 24). Reslow (2014) Esteve defines them as a laboratory to create forms of migration management (2010; 2014: 52) and Iglesias (2012) as an "atypical instrument of external action" (2012: 174).[258]

The rationale behind the promotion of labour migration originates in the difficulties to promote the conclusion of readmission agreements by the Commission. In this sense, the development of the external dimension of the EU labour migration policy could be considered as an incentive to further negotiate the readmission agreements. In other words, a compensatory measure of the burden of signing the readmission agreements in addition to the visa facilitation agreements, which have so far only been signed with Eastern European countries.

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[257] Interview with a representative from the Permanent Representation of Hungary to the European Union, Brussels, May 2010.
[258] See also Triandafyllidou (2009) for an analysis of mobility partnerships.

Mobility partnerships are soft law policy instruments that foster intergovernmental cooperation between participating EU Member States and a third country in the framework of the Global Approach to Migration and Mobility (GAMM). They consist in a strictly intergovernmental framework in which EU Member States agree on migration-related projects with a third country. Hence, EU Member States participation is voluntary and the Commission acts as a coordinating agent in the negotiations and follow-up of the agreed projects between the participatory Member States and the third country concerned. (Carrera and Hernández i Sagrera, 2011). Ward stresses that "[t]he provisions of this Joint Declaration are not designed to create legal rights or obligations under international law" (2011: 146). The European Parliament was almost absent in the negotiations leading to the conclusion of the partnerships and in the monitoring of their implementation.

The Commission's objective is that of "stepping up and exert pressure on Member States' intervention".[259] A Moldovan representative contended that the then Commissioner for Justice, Liberty and Security, Franco Frattini, was personally in favour of developing the partnerships.[260] Furthermore, mobility partnerships have been according to a Commission official the only way to "influence Member States on regular migration, as well as promoting the cooperation at the level of three ministries (Foreign Affairs, Interior and Labour). In this way, the partnerships are an opportunity for Member States to learn more about migration challenges".[261]

The content of the partnerships is supposed to cover aspects of irregular migration, legal migration and migration and development (European Commission, 2005a).[262] In addition, the content depends on the current state of the EU external relations with a third country, as well as the willingness of the third country to accept the cooperation on readmission.

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[259] Interview with an official from former DG Home Affairs, European Commission, Brussels, April 2009.

[260] Interview with a representative from the Permanent Mission of Moldova to the European Union, Brussels, May 2009.

[261] Interview with an official from former DG Home Affairs, European Commission, Brussels, April 2009.

[262] The migration-development nexus is an approach whereby migration can contribute to the socioeconomic development of the countries of origin. Raghuram (2009) provides a critical analysis of this approach.

In this regard, an IOM representative expressed that there is "a mismatch between the Commission's proposal and what EU Member States really want".[263] The Commission has the role of merging the positions of EU Member States.[264] The normative basis of the partnerships is the Commission Communication on 'Circular Migration and Mobility Partnerships' between the EU and Third Countries (European Commission, 2007b). The partnerships were conceived as an instrument to promote circular migration schemes, with the aim to recruit temporarily TCNs to work in a particular field in an EU Member State with the possibility of renewal (Angenendt, 2007 and 2012; Vertovec, 2007; Cremona, 2008).

Circular migration is a term commonly used by international organisations and political fora such as IOM or the Global Commission on International Migration (GCIM) (IOM, 2005; GCIM, 2005). Circular migration refers to the temporary, recurrent movement of people between two or more countries for the purposes of work with the possibility of renewal (IOM, 2005). In this way, circularity opposes to permanent settlement.

The reasons embedded in choosing circular migration are the ageing of the EU working population, the shortage of workers in specific areas and the aim not to replicate the 'guest worker system'.[265] Circular migration should allow a 'triple win' for Member States, the third country and its nationals. The concept has been labelled with scepticism by EU officials as a 'very academic concept'.[266]

The first EU document that referred to the concept of circular migration was the Commission Communication on Migration and Development (European Commission, 2005a). The idea to promote circular migration schemes in the EU relations with third countries was strengthened with a Franco-German initiative in 2006. Nicholas Sarkozy and Wolfgang Schäuble, the French and German Ministers of the Interior at the time, advocated for circular migration as a means to reduce irregular migration into the EU

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[263] Interview with a policy officer from the EU Regional Representation of the International Organisation for Migration (IOM), Brussels, May 2009.

[264] Interview with a representative from the Permanent Mission of Moldova to the European Union, Brussels, May 2009.

[265] Interview with an official from former DG Home Affairs, European Commission, Brussels, May 2010. See Petzl (2010) on guest workers.

[266] Interview with an official of the General Secretariat of the Council of the European Union, Brussels, May 2009 and April 2010. On circular migration, see the work of Zapata-Barrero, Fáundez García and Sánchez Montijano (2009).

(Angenendt, 2007). Both issued a document called 'New European Migration Policy', in order to control 'the migration pressure' from the countries from the Southern Mediterranean (Sarkozy and Schäuble, 2006).

The Franco-German initiative called EU Member States to launch "bilateral partnerships… on the basis of a uniform European treaty (…) [the sum of all such partnerships would result in a European partnership with a large number of countries of origin (Sarkozy and Schäuble, 2006: 5). The document suggested that the Commission should take the lead in the development of such partnerships.

The next step was the introduction of mobility partnerships and circular migration into the Global Approach to Migration (GAM). Subsequently, in December 2006 the European Council made a request to the Commission to include labour migration in the EU external relations, "in order to develop a balanced partnership with third countries to adapt to specific EU Member States' labour market needs" (Council of the European Union 2007a, point 24.a).

Finally, in May 2007 the Commission issued the Communication on circular migration and mobility partnerships (European Commission, 2007b). The EU executive identified the partnerships as "[novel approaches to improve the management of legal movements of people between the EU and third countries" (European Commission, 2007b: 2). In a similar vein, the Council claimed that mobility partnerships were "a novel approach capable of bringing added value to the EU immigration policy (Council of the European Union, 2007a). Finally, the Stockholm Programme called on the Commission to submit proposals on "ways to further explore the concept of circular migration (…) including a wide-range study on how relevant policy areas may contribute to and affect the preconditions for increased temporary and circular migration" (Council of the European Union, 2009h: 62).

With the renewed GAMM in November 2011, the Commission makes no reference to circular migration and stressed the Partnerships are "beyond its pilot phase and should be upgraded and promoted as the principal framework for cooperation in the area of migration and mobility between the EU and its partners, with a primary focus on the countries in the EU Neighbourhood" (European Commission, 2011f: 10).

3. EU mobility partnerships with Eastern Europe

3.1. EU mobility partnerships in the EU-Eastern Europe agenda

The EU has launched in Eastern Europe mobility partnerships with Moldova (2008), with Georgia (2009), with Armenia (2011) and Azerbaijan (2013).[267] Moldova was selected as a pilot case since it was a 'willing EU partner' (Emerson, Noutcheva and Tocci, 2007). A Ukrainian official underlined that "[t]he EU chose Moldova because of its size and the small ratio of immigrants".[268] An IOM representative was of the opinion that since Moldova is a small country, it was not "a problem if it was not successful at the time; not a tremendous challenge".[269]

The Commission was granted the mandate to negotiate the mobility partnership with Moldova by the Council in 2007 (Council of the European Union, 2007a, para.12). With regard to the role of Moldova in the negotiations, Chişinău presumably "had played a big role shaping the mobility partnership.[270] Actually, Moldova had submitted up to three non-papers to the Commission showing its readiness and strong interest in the partnership, the first one submitted only one month after the Commission Communication was issued.[271] It must be highlighted that the first and second non-paper had a strong focus on the establishment of circular migration schemes, whereas the third non-paper made no reference to circular migration.

IOM was presumably involved as an informal actor in the drafting of the second non-paper presented by Moldova. The Organisation had been developing circular migration schemes and has in particular an active office in Moldova. This second non-paper made

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[267] Outside the European Neighbourhood Policy (ENP) framework, a mobility partnership was launched with Cape Verde in 2008. Cape Verde constitutes a special case. The country is not an ENP partner but a member of the Africa, Caribbean and Pacific Group of States (ACP). However, it has a close relationship with Portugal, former colonial power and the EU Member State through which it has channeled its cooperation with the Union. The Commission recommended the launch of negotiations on readmission and visa facilitation agreements with Cape Verde in 2008 (European Commission, 2008c).

[268] Interview with the Deputy Head of the Permanent Mission of Ukraine to the European Union, Brussels, April 2009.

[269] Interview with the director of the European Union Regional Representation of the International Organisation for Migration (IOM), Brussels, May 2009.

[270] Interview with a representative from the Permanent Mission of Moldova to the European Union, Brussels, May 2009.

[271] These three non-papers were not published and therefore they could not be accessed. All references have been obtained from interviews.

explicit reference to IOM as the organisation in charge of the preselection of would-be workers in the recruitment process for circular migration.

According to an IOM officer, the involvement of the Organisation in the mobility partnership has consisted in assisting the third country while preparing for the negotiations and also supporting the Commission, which "needs of someone to get engaged".[272] The director of the IOM Regional Representation to the EU argues that "IOM is accompanying the EU and has an input as an advisor in the implementation process. The EU is following the IOM's recommendations".[273]

Yet, the European Commission was presumably not keen on involving IOM, in order to respect the bilateral relation between the EU and the third country in the signature of a mobility partnership.[274] Nonetheless, the Commission itself finally recognised that "[i]t is also foreseen that local coordination should be extended to other actors (such as NGOs and international organisations) active in migration in the third countries concerned" (European Commission, 2009: 9).

As mentioned above, the third non-paper made apparently no reference to circular migration. The reasons underlying this shift are twofold. First, Moldova was not interested in sending more workers abroad as approximately one third of its labour force is outside the country. Therefore, Chişinău was not interested in circular migration in order to stop brain drain.[275] Second, the EU Member States interested in joining the Partnership were not in favour of the development of circular migration schemes with Moldova.[276]

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[272] Interview with a policy officer from the International Organisation for Migration (IOM), Brussels, May 2009.

[273] Interview with the Director of the European Union Regional Representation of the International Organisation for Migration (IOM), Brussels, May 2009.

[274] Interview with an official of the General Secretariat of the Council of the European Union, Brussels, May 2009; interview with a representative from the Permanent Mission of Moldova to the European Union, Brussels, May 2009; interview with an official from former DG Home Affairs, European Commission, Brussels, April 2009.

[275] Interview with a policy officer from the European Union Regional Representation of the International Organisation Migration (IOM), Brussels, May 2009.

[276] Interview with a representative from the Permanent Mission of Moldova to the European Union, Brussels, May 2009.

The mobility partnership was launched in the format of a non-legally binding Joint Declaration signed in June 2008 (Council of the European Union, 2008a). It is a result of the adoption by Moldova of a 'pre-emptive approach', which consists in taking the necessary steps for adoption of EU requirements before they are requested by the Union. Moldova conceived the partnership as an instrument to come closer with the EU and as a step forward towards the top priority of visa liberalisation.[277]

Finally, fifteen EU Member States signed the mobility partnership.[278] The countries that refused to participate took the decision on different grounds. For instance, in the case of Spain, this was most likely due to the interest of the country in building closer ties with Latin America rather than with Eastern Europe. The Netherlands was not keen on signing the partnership because of lack of a Moldovan community in the country.

The negotiations on a mobility partnership with Georgia started in April 2009.[279] It was the first time that a partnership was deployed in a country where migration does not play a central role. Georgian officials were in contact with their Moldovan counterparts when negotiating the mobility partnership with the EU. According to a Georgian diplomat, the mobility partnership was not launched with Georgia firstly because of the huge opposition demonstration in Tbilisi in 2007 and secondly because Georgia, unlike Moldova, has no common border with the EU.[280]

The EU-Georgia mobility partnership was launched in November 2009 and was signed by sixteen EU Member States (Council of the European Union, 2009g).[281] It should be noted that in a non-paper sent by Tbilisi to the Commission there were almost no

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[277] Interviews with officials from the Permanent Mission of Moldova to the European Union, Brussels, April 2009 and 2010; and of the Ministry for Foreign Affairs Moldova, Chişinău, April 2011.
[278] The EU signatory states were Bulgaria, Cyprus, the Czech Republic, France, Greece, Germany, Hungary, Italy, Lithuania, Poland, Portugal, Romania, Slovenia, Slovakia and Sweden.
[279] The Commission negotiated without success a mobility partnership with Senegal in 2008. According to the former Director of the IOM office in Brussels, this failure is due to most likely the lack of willingness of Senegal to sign the partnership and the fact that some EU Member States, namely France and Spain, had already signed bilateral agreements with Dakar (interview with the Director of the Europea Union Regional Representation of the International Organisation for Migration (IOM), Brussels, May 2009). See also Parkes (2009) on the failure of the negotiations on an EU mobility partnership with Senegal.
[280] Interview with a representative from the Permanent Mission of Georgia to the European Union, Brussels, May 2009.
[281] The signatory EU Member States were Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Estonia, Greece, France, Italy, Lithuania, Latvia, the Netherlands, Poland, Romania, Sweden and the United Kingdom.

references to circular migration. Nevertheless, a Georgian representative conceived circular migration as "a satisfactory tool, as it covers the deficits of the EU labour market".[282] IOM was apparently also active in "assisting and contacting with relevant authorities and exchange of information with the objective of better coordinating irregular migration in Georgia. The Commission was not comfortable with their involvement".[283] However, it seems the involvement was less relevant as in the Moldovan case.[284]

Regarding the partnerships with the rest of the Eastern Partnership countries, the Commission has launched a partnership with Armenia (Council of the European Union, 2011c) and with Azerbaijan (Council of the European Union, 2013a). As for Belarus, the absence of EU contractual relations with Minsk makes the prospects for a partnership unlikely.

Ukraine constitutes a special case. So far, the partnerships have been deployed only in countries of a small size. Despite the initial intentions of the Hungarian Presidency of the Council of the EU to start negotiations with Ukraine,[285] the lack of willingness on the Ukrainian side and among EU Member States has probably been the reason behind the lack of steps taken in that direction. A Ukrainian representative explicitly stated that "[m]obility Partnerships are a general concept – 'nothing'".[286] An IOM officer claimed that "no EU Member State would sign a mobility partnership with Ukraine since it is a major country of origin and transit of immigration flows".[287] Actually, Ukraine is concerned about the demographic decrease it has been suffering and does not envisage labour migration into the EU.[288]

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[282] Interview with a representative from the Permanent Mission of Georgia to the European Union, Brussels, May 2009.
[283] *Idem.*
[284] Interview with an official from former DG Home Affairs, European Commission, Brussels, May 2010.
[285] Interview with a representative of the Permanent Mission of Ukraine to the European Union, Brussels, June 2010.
[286] Interview with the Deputy Head of the Permanent Mission of Ukraine to the European Union, Brussels, April 2009.
[287] Interview with a policy officer from the European Union Regional Representation of the International Organisation Migration (IOM), Brussels, May 2009.
[288] Interview with an officer of the International Organisation for Migration (IOM) in Ukraine, Kyiv, April 2011.

With respect to Russia, the Government perceives mobility partnerships as an instrument for 'developing countries' (Hernández i Sagrera and Korneev, 2012: 10) and as an instrument to exchange experiences which is "not to be considered as an instrument for Russia yet".[289] It is highly unlikely that an EU-Russia Partnership agree on a mobility partnership.

In the context of the Arab spring in 2011, the EU gave an impetus to the mobility partnership as a tool of the external dimension of the EU labour migration policy. In the framework of the Dialogue for migration, mobility and security with the Southern Mediterranean countries (European Commission, 2011c), the Union has also established mobility partnerships with countries in the Southern Neighbourhood. So far, Partnerships have been agreed with Morocco (2013), Tunisia (2014) and Jordan (2014). As the Dialogue stipulates, "[t]he launching of Mobility Partnerships with the southern Mediterranean countries, is a crucial tool, beneficial for both sides to ensure better and more effectively managed migration and mobility" (European Commission, 2011c: 7).[290]

3.2. Policy output of EU mobility partnerships in Moldova and Georgia

The assessment of the actual content of the mobility partnerships with Moldova and Georgia relies mainly on empirical data from interviews since the follow-up of the partnerships has not been fully transparent. The data on the projects implemented is contrasted with the original proposals listed in the annex of the Joint Declarations establishing the partnerships. The aim is to identify the kind of rules embedded in mobility partnerships and whether circular migration schemes have been set up.[291]

In Moldova, four EU Member States have launched circular migration schemes. Projects with Cyprus[292] and on health workers with Italy and Romania were also

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[289] Interview with a representative from the Permanent Mission of Russia to the European Union, Brussels, May 2010.
[290] Carrera (2011) conducted an analysis of the implications of the Commission proposal on a Dialogue for migration, mobility and security with the Southern Mediterranean countries.
[291] See Di Bartolomeo, Makaryan, Mananashvili and Weinar (2012) on circular migration in the Eastern Partnership.
[292] Luxembourg, Bulgaria, Portugal and Italy. The labour migration cooperation between Moldova and Cyprus is worth noting. Both countries signed agreements on the recruitment of migrants and social

implemented.[293] This is a low figure of circular migration schemes if taken into account that fifteen EU Member States participate in the partnership. Actually, in assessing the mobility partnership, the Commission practically did not refer to circular migration activities. Instead of evaluating the implementation of the circular migration schemes, the EU executive provided vague information such as that "some Member States offered to change their national legislation to facilitate circular migration of Moldovan citizens" (European Commission, 2009: 5). In 2014, Moldova and Germany agreed on a project of circular migration for professionals in the health sector (European Commission and High Representative, 2015c: 6).

A project called 'Consolidation of Migration Management Capacities in the Republic of Moldova, the most ambitious project within the partnership, has been implemented by the Swedish Public Employment Service, involving eleven out of the fifteen participating EU Member States (Council of the European Union, 2008a: 10.3 (i)).[294] It has the objective to strengthen the Moldova's capacity to manage labour migration, providing information on legal migration routes and employment opportunities in EU Member States.[295] Overall, the majority of the projects implemented in the framework of mobility partnerships have consisted in capacity-building on migration management to the Eastern European country.

Regarding Georgia, circular migration has been vaguely included in a project involving ten out of sixteen participating EU Member States and, as in the Moldovan case, oriented at 'strengthening capacity to manage labour migration' (Council of the European Union, 2009g: 8).[296] Germany and the Netherlands have also proposed to launch circular migration projects. Interestingly, Germany proposed a project on facilitation the right of residence to Georgian migrants (Council of the European Union, 2009g: 10). In 2014, thirty Georgians were recruited in Germany and twenty-three who

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security (interview with an official from the Ministry of Labour, Social Protection and Family of Moldova, April 2011).

[293] Interview with an official from former DG Home Affairs, European Commission, Brussels, May 2010.

[294] The participating EU Member States in this project were Bulgaria, Cyprus, Hungary, Lithuania, Italy, Germany, Greece, Poland, Romania, Slovakia and Sweden. 3,2 million euro were allocated to the project, whose launch was postponed until May 2010 due to the political unrest in Moldova following the parliamentary elections in April 2009.

[295] See the website of the Project 'Strengthen Moldova's capacity to manage labour and return migration at http://www.legal-in.eu (last accessed on 16 May 2015).

[296] The EU Member States participating in this initiative are the Czech Republic, Denmark, Germany, Greece, France, Italy, Lithuania, Poland and Sweden.

were already in Germany were helped to find a job back in Georgia (European Commission and High Representative, 2015d: 13).

Besides circular migration, both the Joint Declarations with Moldova and with Georgia include a section that enumerates a set of measures related to irregular migration. Actually, in the case of Georgia, the Joint Declaration stresses more the importance of cooperation on irregular migration. First, they agreed on measures on border management such as the adoption of IBM standards. In this regard, they stipulate the improvement of the operational cooperation between the relevant Moldova and Georgia Border Guard Services with Frontex. This is the objective of the working arrangements dealt with in Chapter V. Second, in the field of irregular migration, the partnerships make reference to the implementation of readmission agreements.[297] Third, the Joint Declarations also enumerate the reforms embedded in the visa liberalisation action plans, such as document security.

Finally, the elaboration of extended migration profiles is also envisaged in mobility partnerships. Extended migration profiles are a document pinning down the main elements of the migration situation in the Eastern European countries, with the objective to give the Commission a nuanced picture of the migration context in a particular country. Weinar highlights that migration profiles are not limited to compiling information, but are rather a 'monitoring mechanism' by the EU (2011, 9-10). Extended migration profiles have been prepared by IOM. Other implementing organisations of projects in the mobility partnerships have been the ICMPD,[298] the International Labour Organisation (ILO), the World Bank and the United Nations Development Programme (UNDP).

Positive elements highlighted by Moldovan representatives are the socialisation measures embedded in the partnerships, such as were the exchange of experience and best practices, as well as the capacity-building opportunities.[299] Overall, the analysis shows that circular migration, contrary to the original purpose of the partnerships, has

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[297] Interview with a representative from the Permanent Mission of Moldova to the European Union, Brussels, May 2009.
[298] Interview with an official of the General Secretariat of the Council of the European Union, Brussels, May 2009.
[299] Interviews with representatives at the Permanent Mission of Moldova to the European Union, Brussels, April 2009 and 2010; and in the Ministry for Foreign Affairs of Moldova, Chişinău, April 2011.

not been their main component.[300] In other words, the partnerships barely include circular migration schemes. Rather, they include measures which belong to security-driven migration policy areas such as readmission and border management. Actually, the partnerships have consisted in a myriad of projects, a wide range of initiatives of fragmented cooperation, which has been defined as a 'shopping list' of proposals (Carrera and Hernández i Sagrera, 2011: 106). Likewise, Reslow there is an ineffective duplication of project proposals in the partnerships (2010a: 17).

The Commission itself has recognised the fragmentation of the activities under mobility partnerships. "As the experience has shown, the partnerships risk being a collation of new and already planned activities and additional efforts should be made so that the package offered to a partner is an effective and coordinated offer bringing added-value to existing cooperation" (European Commission, 2009b: 5). A Swedish represented stressed tha the partnerships' success depends on the activities proposed by EU Member States: "[t]he risk of the Associations is that they are what we want them to be (…) They depend on the package of measures which are proposed by EU Member States".[301]

In addition, the non-legally binding nature of the partnerships does not guarantee the enforcement of commitments within the partnerships. Yet, the representatives from Moldova and Georgia interviewed have expressed their conformity with the non legally-binding nature, claiming that it gives room for "more flexibility and manoeuvre, much more than an overwhelming legal package. Overall, we are very satisfied with the flexibility provided".[302] Similarly, a Commission official conceived them as a 'process', in which both 'Member States and the Commission are fertilised".[303] The Commission has stressed that the partnerships can encompass "all measures (be they legislative or practical)" (European Commission, 2011b: 8).

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[300] The Cape Verdean case provides a different picture. Yet, the numerous circular migration schemes between Cape Verde and Portugal is not a result of the launch of the mobility partnership, as circular migration was already in place via bilateral cooperation between the two countries (Council of the European Union, 2008b: 11.4 (i)).

[301] Interview with a representative from the Permanent Representation of Sweden to the European Union, Brussels, June 2009.

[302] Interview with the Deputy Head of the Permanent Mission of Ukraine to the European Union, Brussels, April 2009.

[303] Interview with an official from former DG Home Affairs, European Commission, Brussels, May 2010.

This non-legally binding character has several implications. On the one hand, the partnerships are not subject to independent assessments. Instead, the Commission is in charge of organising biannual task force meetings, which tend to highlight only the positive aspects of the cooperation. In this respect, an IOM representative argues that the Commission assessments are biased.[304] On the other hand, the compatibility of mobility partnerships with the rule of law and the principle of legal certainty is also challenged. The lack of accountability as a result of the non-involvement of the European Parliament in the negotiation process as well as the lack of jurisdiction of the European Court of Justice and EU Member States judiciaries over the partnerships is a matter of concern (Carrera and Hernández i Sagrera, 2011: 106-107).[305]

The protection of fundamental rights of migration workers has been object of analysis from critical normative scholars. More specifically, the temporary character of circular migration has been challenged, arguing it prevents permanent residence, family reunification and social integration (Schneider and Wiesbrock, 2009). The partnerships seek to keep labour migration temporary and for certain categories of workers according to Newland, Rannveig Agunias and Terrazas (2008).

In fact, workers who do not comply with conditions of the circular migration, overstaying in EU territory, face the penalty of expulsion and potentials sanctions whose degree depend on the EU Member State. Rannveig, Agunias and Newland (2007) highlight that circular migration schemes are designed in order to make return enforceable.

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[304] Interview with a policy officer from the European Union Regional Representation of the International Organisation for Migration (IOM), Brussels, May 2009.

[305] For relevant case of law of the European Court of Justice and on the principle of legal certainty, see Craig and de Búrca (2008). See Carrera (2009) for the application of the general principles of EU law in EU immigration law.

4. Conclusions on policy convergence

The underlying model of policy convergence in mobility partnerships is towards bilaterally-agreed norms (capacity-building, management of migration, extended migration profiles, circular migration schemes) and also towards EU security-driven norms (readmission agreements and border management).

The EU is not interested in promoting international norms in the field of labour migration, neither from the Council of Europe nor from the UN – ILO, which aim at protecting rights of migrants.[306] A clear example is the International Convention on the Protection of Rights of All Migrant Workers and Members of their Families (United Nations General Assembly, 1990), which has not been adopted by any of the twenty-eight Member States (Doukouré and Oger, 2007).[307] As a result, "it remains the least popular of the ten core international human rights instruments" (Desmond, 2015: 39). This UN Convention regulates the protection of the rights of anti-discrimination, torture, forced labour, life, freedom of thought and religion of migrant workers.

The Commission encouraged Member States to adopt the Convention back in 1994 since a rights-based approach was necessary to ensure the credibility of the restrictive migration policy (European Commission, 1994: 29). However, the Commission has ever since not repeated the recommendation (Desmond, 2015: 58). By contrast, the Parliament has called on Member States to ratify the Convention in numerous occasions. Desmond signals two reasons for the non-ratification by Member States of the Convention. First, on the grounds that legislation guaranteeing the rights in the Convention is already in place. Second, on the basis that very few states have ratified the Convention so far (2015: 64).

Furthermore, European regional norms such as the European Convention on the Legal Status of Migrant Workers (Council of Europe, 1977),[308] the ILO Convention 143 (International Labour Organisation, 1975: part II) and the European Social Charter

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[306] See Aleinikoff and Chetail (2003) on international norms in the field of legal migration.

[307] See Bonet (1998) and Bosniak (2004) for analysis of the UN Convention on the protection of the rights of migrant workers.

[308] See Guild (1999) for an analysis of the Council of Europe Convention on the Legal Status of Migrant Workers.

(Council of Europe, 1996: art. 19) have not been ratified by the majority of EU Member States. Yet, many of them have implemented key provisions of the content of these conventions in the domestic law of EU Member States (Roos and Zaun, 2014: 62).

In this respect, The Dialogue on Mobility, Security and Migration with the countries of the southern Mediterranean contains a measure aimed at promoting and respecting the migrants' rights, stating that one of the goals of the partnership is "respecting the fundamental rights of any migrants, including those that are nationals of third countries" (European Commission, 2011c: 8).

In addition, EU – Eastern Europe labour migration cooperation provides mobility subject to convergence on EU security-driven policies such as readmission agreements and border management. Overall, the analysis calls into question the goal of the partnerships to provide channels for mobility between the EU and Eastern Europe. Rather, they are an incentive to promote security-driven policies in the fields of readmission and border management. The proposals and commitments of these instruments clearly show that legal migration is not one of its main priorities (Iglesias, 2012: 187). The author stresses that there is *quid pro quo* between the EU labour migration and cooperation against irregular migration and the limited facilitation on labour migration (2012: 188). Iglesias also sees 'danger' that mobility partnerships end up being identified with the external dimension of the EU legal migration (Iglesias, 2012: 193).

5. Summary

This chapter has looked at the EU labour migration cooperation towards Eastern Europe and, more specifically, at mobility partnerships as the policy instrument to promote labour migration. EU labour migration cooperation is at an early stage of development, even if it is subject to the ordinary legislative procedure under the Treaty of Lisbon. In fact, Member States kept the competence to fix quotas of migrants who come to work to the EU. This constitutes an extremely significant limitation to the EU competence of legal migration (Iglesias, 2012: 179). However, the Commission presented a legal migration package in 2005, aimed at facing increasingly ageing population and lack of

skilled workers in the EU. The Blue Card Directive has the objective of attracting high-skilled workers.

Mobility partnerships are soft law intergovernmental tools that allow EU Member States to participate voluntarily in migration-related projects proposed to Eastern European countries. Overall, mobility partnerships result in a myriad of projects of fragmented cooperation. Besides the lack of legal certainty regarding the enforcement of the commitments within the partnerships, the soft law character of mobility partnerships also means that they lack accountability. Scrutiny by the European Parliament is almost inexistent, with no involvement in the negotiating process. If mobility partnerships were legally binding, the Parliament would give its consent. According to the doctrine of implied powers, the EU could negotiate labour migration agreements with neighbouring countries. However, deficiencies in the integration of the labour migration policy at EU level make the option for binding agreements in the field difficult.

Circular migration is an international concept which enables the temporary recruitment of TCNs with the possibility of renewal. Although it was received with scepticism, it was the main component of the Commission Communication on mobility partnerships. Finally, because of the reluctance of Member States and Moldova and Georgia to circular migration, only very few projects were proposed in the field, since the main project was on capacity-building and information on legal migration routes. Scholars have criticised the temporary character of circular migration as preventing integration, family reunification and residence.

In Eastern Europe, mobility partnerships were launched with Moldova with the participation of 15 Member States and Georgia with 16 Member States taking part in it. The chapter has argued that there was reluctance in the EU to launch a partnership with Ukraine because of its size. As for Russia, there was no interest in signing the partnership.

At multilateral level, IOM has been elaborating extended migration profiles of countries in Eastern Europe in the framework of mobility partnerships. To put it simply, the extended migration profiles are complete and updated data on the migration situation in these countries, following a specific pattern, which is the basis for the formulation of

EU policies in each Eastern neighbour. Finally, the chapter has stressed the informal involvement of IOM in the negotiations on a mobility partnership with Moldova and Georgia, assisting the authorities in the countries in drafting non-papers to the Commission on the role of circular migration.

CHAPTER VIII. Conclusions

It is time for a Copernican revolution in the ENP.
The union is not the centre of the universe,
and its neighbouring states are not satellites.
Lehne (2014)

1. Introduction

The objective of this thesis is to explain the migration policy convergence between the EU and Eastern Europe. The previous four chapters have assessed the object of study of policy convergence in migration policy instruments in the areas of readmission, visa, border management and labour migration. This final chapter takes stock of the analysis carried out in the thesis and provides an answer to the research questions regarding the models of policy convergence between the EU and Eastern Europe and the reasons underlying the choice for these models. A comparison between the four countries will also be carried out according to the policy output for each policy instrument.

In other words, the thesis will overall answer the question of what norms and standards are actually adopted in the EU migration cooperation with third countries. Which benchmarks embedded in the policy tools of the EU migration cooperation with third countries are the object of policy convergence? The thesis added value also lies in complementing existing literature on the external dimension of the EU migration policy, putting non-legally binding policy tools on equal footing with legally-binding ones and adding Russia in a comparative analysis with Eastern Partnership (EaP) countries.

This concluding chapter is structured as follows. First, the policy convergence models for each of the policy areas are presented and assessed together, in order to draw conclusions on migration policy convergence between the EU and Eastern Europe (Russia, Ukraine, Moldova and Georgia). This section assesses the reasons for the choice of policy convergence models and also the differences and similarities between the four countries in the dissertation. Therefore, the three research questions of the dissertation are addressed. Second, the thesis presents a series of explanatory factors from the perspective of the policy instruments analysed for each policy area. Horizontal

factors, namely the level of integration of an EU policy area, the tension between security and mobility and the protection of fundamental rights in the EU migration policy are also assessed. The third section presents recommendations for future research in the area of the external dimension of the EU migration policy. Finally, the chapter ends with reflections regarding the common migration policy and the EU soft power in Eastern Europe.

2. EU migration policy convergence with Eastern Europe

The analysis of policy convergence models has shown that the EU migration cooperation with third countries has not consisted in the systematic adoption of norms of the *acquis*, contrary to the widespread Europeanisation literature since the ENP was launched in 2004, which claims that the EU exports the products of European integration to Eastern Europe.[309] In other words, policy convergence or increased similarity towards EU norms is not the most predominant model. The analysis of the model of convergence to EU norms provides a nuanced picture, explaining why some EU rules are adopted and other are left aside, thus challenging Europeanisation as the main policy convergence model.

The reasons why convergence to EU norms is not the most predominant model are numerous. First, the EU has not been interested in promoting norms of the *acquis* such as those related to the free movement of workers. Instead, the Union has opted to promote convergence to EU security-related rules in the field of readmission and border management.

Second, the structure of power between the EU and its neighbours is not asymmetrical *per se*. Therefore, policy convergence is not unidirectional and the interests of Eastern European countries also play a role. The Union does not have enough leverage to lead Eastern European countries towards the adoption of EU security-related rules because it does not offer a convincing set of incentives. The enlargement perspective would have

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[309] See Annex 1 for a summary of all the policy convergence models according to migration policy area and country.

been an essential cross-cutting incentive for countries to move forward with the adoption of the *acquis*. However, the thesis shows that the EU has offered instead specific mobility incentives to convince Eastern European countries to adopt security-related instruments.

Third, the EU faces low perceptions of legitimacy among Eastern neighbours. Therefore, mobility incentives contribute to convince them of the appropriateness to adopt certain EU norms. Lack of intraeuropean coherence, whereby rules promoted by the EU are not fully implemented by Member States, also contributes to lower perceptions of legitimacy. Another element that has an impact on perceptions of legitimacy is the lack of determinacy of EU norms. As Smith contends, "(ambiguity is not boosting the EU (…) Thus a policy based on ambiguity may not produce the effects the EU expects – and will therefore probably last not very long" (2005: 769).

As a result of these reasons, the mobility incentives offered to tackle the lack of leverage and low perceptions of legitimacy are the visa facilitation agreement as a compensatory measure for readmission agreements and mobility partnerships to counterbalance Integrated Border Management (IBM) standards. The evidence shows weaknesses in policy convergence to EU norms, consisting mainly in socialisation measures (information exchange and capacity-building).

Actually, policy convergence towards international norms is rather the most predominent model. The adoption of international norms is perceived as more legitimate than the adoption of EU norms. All international standards emanate from organisations to which Eastern European countries belong, such as the Council of Europe and the United Nations. The EU acts in this case as a norm entrepreneur, norm-promoter or norm-transmitter of existing international norms. One of the most relevant findings of the dissertation is that the EU, in acting as an internationalising agent and under the benchmarks of visa liberalisation, promotes rules in the area of rule of law and fundamental rights.

However, contrarily to this active role of the EU as norm-transmitter, the EU has not been interested in the promotion of international norms in the field of fundamental rights of migrant workers, such as the UN Convention on Protection of Rights of all

Migrant Workers and Members of their Families. Actually, most EU Member States have not adopted these international instruments, so it appears to be coherent that they are not promoted outside the EU.

Convergence to internationally-agreed norms is also the model for readmission agreements, since the readmission of irregularly-staying own nationals in a third country is a principle of international law. Therefore, the thesis concludes that the EU opts for convergence towards international norms in cases of high perceptions of legitimacy and lack of EU leverage.

Finally, convergence towards bilaterally-agreed norms has been the less predominant. The analysis shows that it has been the case for visa facilitation agreements. Also, most of the projects and initiatives under mobility partnerships, aimed at promoting capacity-building, management of migration and some circular migration schemes have been agreed between Member States and Eastern neighbours. In the case of visa facilitation, the EU and Russia opted for convergence towards bilaterally-agreed norms because Moscow had enough leverage to disregard EU rules and had low perceptions of EU legitimacy. Therefore, both opted for a bilaterally-agreed norm, tailor-made and accommodating their specific interests. Regarding iniciatives under mobility partnerships, it is a case of intergovernmental cooperation between EU Member States and EU neighbours, resulting in bilaterally-agreed norms, since labour migration is not integrated at EU level.

Overall, the models of policy convergence confirm the premises that the EU interaction with Eastern Europe is a bidirectional process rather than unidirectional, since Eastern European countries have shown they have leverage to oppose to EU rules and shape new policy outputs. Lavenex (2014) recognised that Eastern European countries had shown resistance to adopt certain EU rules. In addition, the assumed asymmetry between the EU and neighbouring countries is also nuanced, as in the case of Russia's insistence for reciprocity in dealing with the EU. Finally, the findings on models for policy convergence show that the EU acts in the international system, notably as a norm entrepeneur. The two hypothesis outlined in Chapter I, that convergence to EU norms is the least likely model and that this is triggered by lack of EU leverage and low perceptions of legitimacy among Eastern neighbours are validated.

3. Differences and similarities among Eastern neighbours

With regard to the question on differences and similarities among the four countries, the thesis shows policy convergence has led to similar results.[310] The Union has sought to shape similar policy convergence for the sake of consistency of the external dimension of the EU migration policy in Eastern Europe. For example, the readmission – visa facilitation nexus has been institutionalised in the whole of Eastern Europe. Although at different speeds, being Ukraine, Moldova and Georgia are the frontrunners in the EaP in adopting EU migration cooperation policy instruments with Eastern Europe.

However, there are some differences mainly due to the structure of power of each neighbouring country and because of the perceptions of legitimacy of each country, also shaped by the EU aspirations of the country. As regards Ukraine, it has aspirations to come closer to the EU and has been keen on developing strong bilateral relations with the Union. Ukraine has shown leverage in agreeing favourable conditions in the readmission agreement, namely a 2-year delay for the applicability of the transit and stateless migrants clause.

Moldova has been a pioneer in the migration cooperation among the EaP countries. The Moldova's high perceptions of legitimacy and willingness to come closer and integrate with the Union have been especially reflected in the fruitful JHA cooperation between Brussels and Chişinău. Therefore, some authors like Litra (2011c) have labelled Moldova as a 'leader' of cooperation in JHA in the EaP. However, Moldova lacks leverage when negotiating with the EU, as evidenced by the readmission agreement, with no favourable conditions for the country.

Georgia is the frontrunner in EU cooperation with the Southern Caucasus countries. Migration policy convergence is very similar to that of Moldova. The evidence shows that Tbilisi is following the Chişinău path as regards the implementation of the most relevant tools in the migration field. Like Moldova, Georgia has high perceptions of legitimacy of the EU and low leverage.

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[310] See Annex 2 for an overview of policy instruments in the external dimension of the EU migration policy to Eastern Europe and Annex 3 for a summary on the policy output of migration policy instruments between the EU and Ukraine, Moldova, Georgia and Russia.

Regarding Russia, the country has shown leverage and low perceptions of legitimacy vis-à-vis the EU. Proof of leverage of Moscow is that the readmission agreement was negotiated with a 3-year delay for the applicability of the transit and stateless clause and more evidence is needed to prove the identity to trigger a readmission procedure. Convergence to EU norms has almost been absent, with rather convergence towards international norms under visa liberalisation. On border management, there is no reference to adoption of EU IBM standards. Therefore, policy convergence is towards bilaterally-agreed norms.

Overall, the thesis concludes that EU – Russia migration cooperation has been underpinned by pragmatism and the will to foster a sectoral cooperation on migration. This pragmatic approach in EU-Russia cooperation is at the time of writing at a standstill because of the armed conflict in Ukraine, in particular with the suspension of the visa liberalisation process. Russia has indeed led the migration agenda-setting among Eastern European countries, not only in proposing the visa facilitation regime, but also as the first country with which the EU signed a Frontex working arrangement in 2007. There is *a priori* no willingness in Russia to come closer with the EU.

At the multilateral level, the thesis concludes that the International Organisation for Migration (IOM) and the International Centre for Migration Policy Development (ICMPD) have played a key role in implementing multilateral initiatives on border management such as the Eastern Partnership IBM flagship initiative. International organisations have played a role in the creation of socialisation (capacity-building and information exchange) outlined above. The thesis concludes that international organisations on migration in the EU cooperation have played a key role in the implementation of readmission agreements and mobility partnerships.

4. Explanatory factors

In light of the conclusions on policy convergence presented above, a series of cross-cutting explanatory factors can be extracted from the analysis. First, the level of integration of a migration policy tool in the EU has an influence on the policy output. In border management, the establishment of an EU border service would be a major step towards the integration of the policy. Similarly, if the EU labour migration policy would have been more integrated, mobility partnerships would have probably led to more substantial results. Therefore, the thesis concludes that the higher integration at EU level of a migration policy area, the higher the policy output.

Second, depending on the level of integration at EU level, the policy instruments for each migration policy area can be translated into legally or non legally-binding policy tools. In border management, Frontex working arrangements and in labour migration mobility partnerships constitute soft law policy tools, resulting in a much more differentiated and fragmented content. Even if some interviewees in the thesis stressed the benefits of flexibility, it may lead to the non-enforcement of the agreed commitments. Overall, soft law policy instrument can result in lack of coherence and effectiveness of the EU migration cooperation on border management and on labour migration. This lack of coherence is linked with the fact that the more robust a norm is, the more likely it will be adopted.

Third, the thesis concludes that the EU migration cooperation with Eastern Europe focuses much more on security than mobility. Actually, the policy instruments presumably aimed to fostering mobility include measures such as the full implementation of the readmission agreement and the implementation of IBM standards. Mobility policy instruments are only in place provided that they include security-related policies. In other words, they are conditional to progress in the areas of readmission and border management.

The thesis has stressed that striking a balance between security and mobility has been an underlying tension in the development in EU migration cooperation with Eastern Europe. Actually, the concept of mobility encapsulates a much broader range of channels including the right to reside and work in the EU or the participation of the

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Eastern partners in EU programmes on education, youth, culture and research. In this respect, Carrera, Gros and Guild have proposed the adoption of an Immigration Code compiling all existing EU rules and standards in the field of migration, giving priority to the facilitation of mobility (2015: 2).

To conclude, the thesis has also looked at the implications of migration policy instruments for the protection of fundamental rights. The literature has criticised the EU for undermining fundamental rights when adopting security-driven policies. In the field of readmission, international obligations for Member States like refugee protection (principle of *non-refoulement*) and the right to seek asylum have been called into question. In border management, the amendment of the Frontex Regulation in 2011 was aimed at strengthening the protection of fundamental rights.

5. Future research and reflections on the EU migration policy and Eastern neighbours

To begin with, the implementation of the ambitious agenda set out by the Commission in the European Agenda on Migration could be further research. The EU executive envisages presenting proposals that could lead to a substantial integration at EU level of the migration policy, including an amendment of the Frontex Regulation, the Dublin II Regulation in the field of asylum, the adoption of a Union standard for border management and provisions on legal migration. At the time of writing, it remains to be seen how responsive Member States will be and whether they will be willing to move forward.

Regarding the external dimension, the implementation of the policy instruments assessed in the dissertation could be a main area for future research. The provisional application of association agreements in Ukraine, Moldova and Georgia should bring momentum. In this context, the ENP review communication planned for November 2015 will set out the basis for the orientation of the ENP. Future research could focus on widening the geographical scope, both with the rest of the EaP countries (Armenia, Azerbaijan and Belarus) and with the countries in the Southern Mediterranean. Regarding the latter, with the launch of the Dialogue for Migration, Mobility and Security with the Southern Mediterranean countries in May 2011, the Commission

proposed for the first time a comprehensive migration policy to Southern partners, including prospects for mobility. Research on both the Eastern and Southern dimensions would allow a broad comparative analysis.

The preceding paragraphs suggested different areas for future research. Therefore, this thesis is by no means a conclusive study. The question whether the EU will succeed in addressing the refugee crisis from the Middle East in summer 2015 remains unanswered. Monar stressed that external action in EU migration policy is "not just an option, but a necessity" (2013: 147. Vice-Presidents Timmermans and Mogherini and Commissioner Avramopoulos also stressed the need to cooperate to respond to the challenge of migration jointly: "There is no simple, nor single, answer to the challenges posed by migration. And nor can any Member State address migration alone. It is clear that we need a new, more European approach (2015). The planned summit in Valetta November 2015 is a signal of the intention of the Commission to further define this new approach on migration jointly with third countries.

This reflection on the EU response to the refugee crisis is linked with the establishment of a common migration policy as envisaged in the Treaty of Lisbon. Developments have so far been assessed unevely. Geddes argues that since the Treaty of Amsterdam, "it has been possible to speak of a common EU migration and asylum policy with significant development of institutional roles and policy" (2013: 8). However, critical voices suggest there is little progress towards a common migration policy (Lirola, 2010). Smith (2009) contends that JHA is a 'policy space' of scattered policy areas, which are the result of the shared competence. Martín y Pérez de Nanclares argues that there has not been the necessary coordination between the Union and Member States leading to duplicities, lack of information exchange and contradictions (2012: 46).

The refugee crisis could actually be a driver towards a common migration policy since Member States like Germany are invoking the principle of solidarity (Treaty on the Functioning of the European Union, 2009: art. 80) to push for a bottom-up Europeanisation of the migration policy. Also, the European Agenda on Migration aims at establishing a comprehensive EU migration policy. Paradoxically, this crisis may be necessary as an 'integrating power' towards a common migration policy.

Regarding the EU soft power in Eastern Europe, the main conclusion that convergence to EU norms has not been the most predominant and that the EU norms provided are rather weak and of a restrictive nature raises doubts about the EU soft power. According to Popescu and Wilson, "nothing undermines the EU's soft power in the neighbourhood more than the restrictive nature of EU policies" (2009: 128). Difficulties in signing readmission agreements constitute an example of the lack of EU soft power in Eastern Europe.

Going beyond Eurocentric considerations is necessary to build soft power, taking account of the interests and capacities of Eastern European countries. In Eastern Europe, Armenia, Azerbaijan and Belarus are not as keen on coming closer with the EU as Ukraine, Moldova and Georgia. The EU should find ways to increase perceptions of legitimacy and increase the effectiveness of the ENP. With increased differentiation, the revised ENP aims at encouraging the Eastern partners willing to cooperate further while keeping on track those which are less willing.

When it comes to the EU capacity to shape conceptions of normal in Eastern Europe - EU normative power – it could be argued that the EU acts as a promoted of international norms in the area of rule of law in Eastern Europe. However, this is because these norms are conditional for the granting of visa liberalisation, the most relevant specific incentive in migration cooperation between the EU and Eastern Europe. Proposing a solid set of incentives to Eastern Europe is a key element for the continuation of the ENP. The Council Conclusions in April 2015 reaffirmed "the neighbourhood is a strategic priority and a fundamental interest for the EU" (Council of the European Union, 2015a).

EU soft power is not established *per se* and, as this thesis has shown, the norms the EU and its partners opt to convergence with change according to interests, capacities and perceptions of the legitimacy. Hopefully the findings of this thesis will contribute to further academic studies on policy convergence between the EU and neighbouring countries and also for practitioners in the EU and Eastern partners working on migration.

Annexes

Annex 1: EU-Eastern Europe migration policy convergence

	UKRAINE	MOLDOVA	GEORGIA	RUSSIA
READMISSION	INT (obligation readmit own nationals) EU (transit clause: leverage for 2-year delay)	INT (obligation readmit own nationals) EU (transit clause: immediate application and less evidence to trigger procedure)	INT (obligation readmit own nationals) EU (transit clause: immediate application and less evidence to trigger procedure)	INT (obligation readmit own nationals) EU (transit clause: leverage for 3-year delay)
VISA FACILITATION	BIL (agreed between EU and Russia and later applied to EaP)	BIL (agreed between EU and Russia and later applied to EaP)	BIL (agreed between EU and Russia and later applied to EaP)	BIL (agreed between the EU and Russia)
VISA LIBERALISATION	INT (UN and CoE conventions) EU (readmission and IBM)	INT (UN and CoE conventions) EU (readmission and IBM)	INT (UN and CoE conventions) EU (readmission and IBM)	INT (UN and CoE conventions)
BORDER MANAGEMENT	EU (IBM via Frontex and EUBAM)	EU (IBM via Frontex and EUBAM)	EU (IBM)	BIL (border management)
MOBILITY PARTNERSHIPS	N/A	BIL (Member States) EU (readmission and IBM)	BIL (Member States) EU (readmission and IBM)	N/A

Source: Author's own elaboration
EU: convergence to EU norms
INT: convergence to international norms
BIL: convergence to bilaterally-agreed norms

Annex 2: Policy instruments in the external dimension of the EU migration policy to Eastern Europe

Instrument	Normative basis	Substance	Legal character	Participating actors
Readmission agreements	Article 79.3 TFUE	Procedure for return of irregularly-staying migrants to countries of origin or transit	Legally binding agreement between the EU and a third country	UE: -Commission (Directorate General for Migration and Home Affairs) negotiates on behalf of the Council. -Council concludes agreement with third country. -Parliament gives consent to agreement. -Third country
Visa facilitation agreements	Article 77.2.a TFEU on a 'common visa policy'	Visa exemption for categories of citizens: i.a. lorry drivers, students, researchers	Legally binding agreement between the EU and a third country	UE: -Commission (Directorate General for Migration and Home Affairs) negotiates on behalf of the Council. -Council concludes agreement with third country. -Parliament gives consent to agreement. -Third country
Visa Liberalisation action plans (Ukraine, Moldova and Georgia) / Common Steps between the	Article 77.2.a TFEU on a 'common visa policy'	Benchmarks on the reforms conditional for the establishment of a visa-free regime: -Document security -Migration -Public order and	Non-legally binding document agreed between Commission and third country	UE: -Commission (Directorate General for Migration and Home Affairs) in the lead for monitoring implementation of action plan / common steps -Parliament and Council

EU and Russia towards visa-free short-term travel		security -External relations and fundamental rights		adopt amendment to Regulation 539/2001. -Third country
FRONTEX working arrangements	Article 14 Regulation 1168/2011	-Capacity-building on Integrated Border Management (IBM) -Participation of third states in joint border operations	Non-legally binding – *soft law* agreed between Frontex and relevant border guard service in third country	-FRONTEX management board -Management board of the border guard service of a third country
Mobility partnerships	Commission Communication – COM (2007) 248 final	-Readmission -Border Management -Circular migration	Non-legally binding – *soft law* – Joint Declaration between EU Member States participating and a third state	EU: -Commission negotiates -Member States agree on projects to be implemented with third country -Third country

Source: Author's own elaboration

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Annex 3: Policy output of migration policy instruments in Eastern Europe

	Readmission agreement	Visa facilitation agreements	Visa liberalisation process	FRONTEX working arrangements	Mobility partnerships
Eastern Partnership and Russia					
Ukraine	In force since January 2008	In force since January 2008 / amended in July 2013	Action plan launched in November 2010	Signed in June 2007	N/A
Moldova	In force since January 2008	In force since January 2008 / amended in July 2013	Visa-free regime since May 2014	Signed in 2008	Signed in June 2008
Georgia	In force since 2011	In force since March 2011	Action plan launched in June 2012	Signed in December 2008	Signed in November 2009
Rusia	In force since June 2007	In force since June 2007	Common Steps towards visa-free short-term travel agreed in December 2011	Signed in September 2006	N/A

Source: Author's own elaboration

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List of interviews

Permanent Mission of Ukraine to the European Union (Deputy Head)	April 2009
former DG Home Affairs, European Commission	April 2009
Permanent Mission of Moldova to the European Union	April 2009
European Union regional representation of the International Organisation for Migration (IOM)	April 2009
Permanent Mission of Ukraine to the European Union (Deputy Head)	April 2009
Permanent Mission of Moldova to the European Union	April 2010
General Secretariat of the Council of the European Union	May 2009 and April 2010
Permanent Mission of Ukraine to the European Union (Deputy Head)	May 2009
European Union regional representation of the International Organisation for Migration (IOM) (director)	May 2009
former DG Home Affairs, European Commission	May 2009
General Secretariat of the Council of the European Union	May 2009
Permanent Mission of Georgia to the European Union	May 2009
Permanent Mission of the Republic of Moldova to the European Union	May 2009
Permanent Mission of Russia to the European Union	June 2009
Permanent Representation of Sweden to the European Union	June 2009
former DG Home Affairs, European Commission	April 2010
Centre for Peace, Conversion and Foreign Policy (director)	April 2010
Permanent Mission of the Republic of Moldova to the European Union	April 2010
Open Society Institute	April 2010
former DG Home Affairs, European Commission	May 2010
Centre for Socioeconomic Studies 'Populari'	May 2010
former DG External Relations, European Commission	May 2010

Frontex – European Union Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union	May 2010
Permanent Mission of Belarus to the European Union	May 2010
Permanent Mission of the Russia to the European Union	May 2010
Permanent Representation of Hungary to the European Union	May 2010
Permanent Representation of Spain to the European Union	May 2010
Permanent Representation of Sweden to the European Union	May 2010
Permanent Mission of Ukraine to the European Union	May 2010
Permanent Mission of Moldova to the European Union	May 2010
Permanent Representation of Ukraine to the European Union	June 2010
General Consulate of Spain in Moscow	October 2010
Frontex – European Union Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union	November 2010
International Organisation for Migration (IOM) Office in Ukraine	April 2011
EUBAM – European Union Border Assistance Mission to Ukraine and Moldova - Analytical and Operational Support Unit, (Head)	April 2011
EUBAM - EUBAM – European Union Border Assistance Mission to Ukraine and Moldova (Advisor on IBM)	April 2011
Border Guard Service of the Republic of Moldova (Head of the General Director's office)	April 2011
Civil society organisation in Ukraine	April 2011
General Consulate of Spain in Kyiv (Deputy Head)	April 2011
Ministry for Foreign Affairs of Moldova	April 2011
Ministry of Labour, Social Protection and Family of the Moldova	April 2011
State Border Guard Service of Ukraine - Department of International Cooperation (Deputy Chief)	May 2011
Centre for Peace, Conversion and Foreign Policy of Ukraine (director)	May 2011

Ukraine Ministry for Foreign Affairs – Justice, Liberty and   June 2011
Security Division (Head)