WHEN THE WAR ENDED. PRAGMATIC PROPOSALS TO RESCUE EUROPEAN UNION RELATIONS WITH THE RUSSIAN FEDERATION

CUANDO LA GUERRA TERMINE. PROPUESTAS PRAGMÁTICAS PARA RESCATAR LAS RELACIONES DE LA UNIÓN EUROPEA CON LA FEDERACIÓN RUSA

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Summary: I. MUTUAL INTERDEPENDENCE IMPLIES A STRATEGIC PARTNERSHIP. II. WTO AND PROGRESSIVE HARMONIZATION WITH EU RULES. III. SHARED NEIGHBOURHOOD MANAGEMENT. IV. TOWARDS A STRATEGIC PARTNERSHIP. V. CONCLUSIONS.

ABSTRACT: Relations between the EU and Russia are usually analyzed from a political or economic point of view. There is however not enough thinking on the legal impact of political measures or political consequences of a legal response to complex political socio-economic concerns. This approach will allow partially explain the current disagreements. This research critically analyzes the most ideological positions from both sides and answers to the strategic need for a normalization of this bilateral relationship and its management after the war, as we need a European path to recover security and growth. This contribution concentrates on three main aspects of the EU-Russia relationship: the legal obligations in the field of international trade, the security competition, and the legal consequences of the energy market regulation. In all three, I make proposals for fixing these points of contention. These proposals are not idealistic but based on facts that show the need for a correct relationship with a neighboring State. Thereby, the article contributes to the analysis of the bilateral relationship, not only political and economic but also legal. The article ends with several suggestions for a future new Strategy in the years to come, after reaching a consensus among the EU Member States. Nonetheless, it will provide elements to debate for both, the Commission's Political Priorities and for the European Council Strategic Agenda setting up.

RESUMEN: Es común analizar las relaciones entre la UE y Rusia desde un ángulo político o económico. Sin embargo, no hay suficientes estudios sobre el impacto jurídico de medidas políticas o sobre las consecuencias políticas de una respuesta juridica a problemas politicos o socioeconómicos complejos. Esta aproximación permitirá explicar parcialmente los actuales desacuerdos anteriores a la guerra. Esta investigación analiza

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críticamente las posiciones ideologizadas de las partes y las respuestas ante la necesidad estratégica de normalización de la relación bilateral tras el conflicto, pues evitar que la situación se repita requiere una solución europea para recuperar la seguridad y el crecimiento. Este estudio se centra en tres aspectos destacados de la relación UE-Rusia: las obligaciones en el campo del comercio internationcla, la seguridad y las consecuencias legales de la regulación de los mercados energéticos. Se aportan propuestas para solucionar los aspectos controvertidos en todos ellos. No se trata de propuestas idealistas sino basadas en hechos que muestran la necesidad de una correcta relación con un Estado vecino. El artículo concluye con varias propuestas para una futura nueva Estrategia, tras alcanzar un consenso entre los Estados miembros. En todo caso, se facilitan elementos para el debate tanto para el establecimiento de las prioridades políticas de la Comisión, como para la configuración de la agenda estratégica del Consejo Europeo.

KEYWORDS: EU-Russia relationship, legal concerns, regional integration, neighbourhood, energy market, security

PALABRAS CLAVE: Relaciones UE-Rusia, problemas jurídicos, integracion regional, vecindario común, mercado energético, seguridad

Getting away from the sad daily news about the war in Ukraine, after the Russian invasion, is not easy. The war in Ukraine is proof of poor strategic decision-making and the interests of power over the peace of a country. The exercise of putting rationality above emotionality, although costly, is, however, necessary, to prepare for the future. It requires thinking on the day after and from the perspectives existing for the European Union (EU), Russian Federation and Ukraine. One cannot ignore the intense relations that the EU maintains, as European countries, with Russia and, to a lesser extent, with Ukraine. Most of these relations are paralyzed by the last five packages of sanctions approved by the European Union against persons and companies in the Russian Federation[1], following the use of force by the Russian Federation.

This article falls within the framework of the EU's relations with Russia, in particular, those affecting the countries in the common neighbourhood. Borders studies usually consider borders as a separation/confrontation line, or as a cooperation zone. My perspective follows the last one and makes proposals to use border territories as a cooperation tool, able to deliver security, too.

[1] The first package of sanctions responding to the recognition of non-government-controlled areas of Donetsk and Luhansk, *OJ* L 42I, 23 February 2022; the second package, adopts measures in Belarus and restrictive measures in respect of actions undermining the territorial integrity, sovereignty and independence in Ukraine, *OJ* L 49-53, 25 February 2022; the third package excludes the main Russian banks from the SWIFT system, and prohibits Russian State-owned media broadcast in the EU, *OJ* L 63, 2 March 2022; the fourth package on the full prohibition of transactions with Russian State-owned companies, *OJ* L 87I, 15 March 2022; the fifth package, includes the prohibition of purchase of coal, access to EU ports, road transport, export bans and others, *OJ* L 111, 8 April 2022.

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Relations between the EU and Russia are usually analyzed from a political or economic point of view. There is however not enough thinking on the legal impact of political measures or political consequences of a legal response to complex political socio-economic concerns. This approach will allow partially explain the current disagreements; in the understanding that the armed attack will have legal consequences, independently from the future of ideas to reshape cooperation. It is just the war that should never have been, the source allowing learning from the past mistakes.

Attempts to explain the current state of EU-Russian bilateral relationships, at the lowest level since the end of the Cold War, show the field plenty of mutual reproaches and misunderstandings. The poor relationship, before the war in 2022, is a failure on both sides unable to understand misgivings, mistrust and expectations on the other side and to adopt a pan-European position, free from outside influences, and mutually advantageous.

This research critically analyzes the most ideological positions from both sides and answers to the strategic need for a normalization of this bilateral relationship and its management after the war, as Western and Eastern Europe –Russia included- are Europeans in need of a European path to recover security and growth. Neighbourhoods in the South, in the East, in the Middle East and even in the Arctic, energy dependency, changing alliances and EU security are at stake. This contribution concentrates on three main aspects of the EU-Russia relationship: the legal obligations derived from the WTO regime and the difficult coexistence between EU association agreements and Eurasian Union (EaEU) membership, the security competition, and the legal consequences of the energy market regulation. In all three, I make proposals for fixing these points of contention. Thereby, the article contributes to the analysis of the bilateral relationship, not only political and economic but also legal.

I use a methodology that combines strategic arguments according to the EUGS and an eventual update of this one, and legal outcomes from the incoherence in the EU legal answer to similar problems and circumstances; an "alternative use of the law" that leads to a lack of EU credibility in the international arena and domestic disagreements.

That is why, the article ends with several suggestions for a future EUGS amendment or, eventually, a new Strategy in the years to come, after reaching a consensus among the EU Member States. Nonetheless, it will provide elements to debate for both, the Commission's Political Priorities and for the European Council Strategic Agenda setting up. Even if the Conference on the Future of the EU[2] is already a missed opportunity, and the Strategic

[2] The Conference on the Future of Europe started in Autumn 2020 and should end with a Council common position on 24 June 2022. European Sources Online (ESO), https://www.europeansources.info/record/conference-on-the-future-of-europe-2020-2022/. *The Strategic Compass for Security and Defence. For a European Union that protects its citizens, values and interests and contributes to international peace and security*, was approved by the Council on 21 March 2022, doc.7371/22.

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Compass[3] has taken a short-term view, 2023 would be a good date to assess the consequences of the US politics towards Europe, the economic recovery from Covid-19, the domestic energy needs, and the consequences of the war.

After the unity shown towards the aggression, finding a way to reconcile both, EU interests –economic and strategic- and values –the rule of law- will allow an increase in the EU's international role, and a normalized relationship with Russia that guarantees the peace, improves EU's autonomy and makes a remarkable contribution to the Euroatlantic security, too.

I. MUTUAL INTERDEPENDENCE IMPLIES A STRATEGIC PARTNERSHIP

After the Ukraine crisis in 2014, Russia was the fifth trade partner for EU exports and the fourth for EU imports, including goods and services. Until that moment, the EU was the main market for Russian exports. Because of the mutual sanctions regime following the Crimea's independence and subsequent incorporation into Russia, Moscow derived its trade efforts towards China, even if the EU countries continue to be relevant Russian products' importers and the first investors in Russia[4]. Currently, the new sanctions will increase the exchanges Moscow-Beijing, with negative consequences for both, the EU and the Russian Federation in the medium term.

The legal and institutional framework for the bilateral relations, based on the Partnership and Cooperation Agreement, followed by the four common spaces reinforcing the partnership in home security, justice, freedom and security fields, are nowadays suspended. This hindered regular summits or permanent bodies' meetings[5] and confirmed the end of the, otherwise frustrating, partnership for modernization.

Neighbourhood, energy dependency or shared threats require a necessary good understanding. Moreover, the EU cannot ignore the Russian key role as a UN Security Council permanent member or its military power. Conscious of this, the EU Security Strategy 2003, *A Secure Europe in a Better World*, declared that Russia was an important partner on

[3] *A Strategic Compass for Security and Defence*, approved on 22 March 2022, https://www.eeas.europa.eu/sites/default/files/documents/strategic_compass_en3_web.pdf. The document is negatively impacted by the conflict in Ukraine and follows an approach not focused on ending this one but mainly in a reaction to hardly punish the Russian Federation.

[4] A. GARCÍA-HERRERO and J. XU confirm that Chinese exports are increasingly substituting EU exports on the Russian market, especially in capital-intensive sectors; nonetheless, they highlight that, in investment, China's investments exposure in Russia is limited and remains much less than the EU's. "China's growing presence on the Russian market and what it means for the European Union", Bruegel, November 2019, https://www.bruegel.org/2019/11/chinas-growing-presence-on-the-russian-market-and-what-it-means-for-the-european-union/

[5] Permanent, cooperation or parliamentary cooperation committees and nine subcommittees.

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global and regional issues (Mediterranean, Middle East, Balkans); a key geopolitical and security actor[6]. The 2008 report on the EES implementation, however, nuanced the previous approach with some prevention after the Georgia war. It recognized the deterioration of the EU relations with Russia over the conflict and insists this country should honour its commitments in a way that will restore the necessary confidence. Even though, it keeps alive the idea of a partnership.

Eight years later, after the Maidan crisis and the war in the Donbas leading to Crimea's annexation to the Russian Federation, the current EU Global Strategy (EUGS) takes a turn and considers Russia as a strategic competitor, with which, only relations based on International Law and cooperation for international issues of mutual interest are feasible; implied reference to Ukraine's territorial integrity. In practice, negotiations for visa facilitation were over, the trade relationship was partially affected by sanctions[7] and mistrust is still present in some Member States. The old 1997 Partnership and Cooperation Agreement renewal was suspended before the crisis because of fundamental disagreements on the form and content of it, but also by the refusal of the Baltic countries and Poland, just new EU members. Transborder cooperation continues and is a promising way to build mutually advantageous relationship anew. If the Multiannual Framework 2007-2013 allocated €130 millions for five cross-border cooperation programs, the MFA 2014-2020 allocated €173,7 million to eight programs[8]. The European Instrument for Democracy and Human Rights is open to Russia. The Multiannual Financial Framework 2021-2027 increases the budget to €723 million, for nine programs including Russia (surprisingly Russia was not part of the Nordic Dimension and in the Artic). It remains to be seen what kind of cooperation the deal ending the war in Ukraine will allow.

First, this article will see the Russian position within the WTO and the reaction to the Western efforts to find alternative fora for dominating international trade. Secondly, it will analyse the conflictual approach to the shared neighbourhood and the compatibility between Euroasiatic and European integration processes. Then, it will explain the EU rules on the energy market and their negative impact on Russia's economy. Finally, it will provide some proposals to set a fruitful strategic partnership with the Russian Federation, avoiding contradictions in the way the EU applies its rules to different neighbours, and allowing it to face the actual challenges to European security and prosperity, but also to European values and "way of life". These legal issues are essential to understanding the progressive disengagement between the EU and Russia.

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[6] ESS 2003, "We should continue to work for closer relations with Russia, a major factor in our security and prosperity. Respect for common values will reinforce progress towards a strategic partnership".

[7] Sanctions had an impact on the capital markets access, trade on defence products and dual-use goods, sensitive technologies (energy technologies included) and a ban on new operations to finance Russia by the EIB and EBRD, but did not change essentially Russian position.

[8] CBC programs in Kolartia, Karelia, SE Finland and Russia, Estonia, Latvia and Russia; Lithuania, Poland and Russia; and Baltic Sea cooperation

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II. WTO AND PROGRESSIVE HARMONIZATION WITH EU RULES

The EU (then European Economic Community) participated in GATT, *de facto*, due to its exclusive power over trade policy. Reduction of non-tariff barriers, commercial policy and all commercial aspects of the agricultural policy were brought into GATT. The goal of its participation was to improve market access by unprecedented and far-reaching tariff cuts. *De iure*, it was only after the Uruguay Round – 1986, that the EU became a full member and signed most of its agreements.

Currently, articles 3 and 206 TFEU are clear about the EU's exclusive competence in the customs union, competition, common commercial policy, including the conclusion of tariff and trade agreements on trade in goods and services, and on the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. As such, the EU has been negotiating within the Doha round looking for favourable treatment for goods classed as environmental ones, agreeing to eliminate all agricultural export subsidies, reduce trade-distorting subsidies and lower tariff barriers, slash its overall trade-distorting subsidies (OTDS) by 75%, as the G20 group of the most developed countries were requesting, and supporting an ambitious deal on services liberalization; this was of key interest to the EU because trade in services makes up 75% of its economy.

The EU, as well, strongly supported Russia to join the WTO, even if some EU countries threatened Russia's accession to the Organization.

In 2009, as the Eurasian Customs Union was already set up, Russian Federation considered the entry into the WTO as a customs union block; but it individually became a member on 22 August 2012, after 18 years of negotiations. The legal compatibility of both regimes was carefully analyzed and was addressed by the 2011 Treaty on the Functioning of the Customs Union in the Multilateral System, by which, the WTO agreement becomes an integral part of the legal framework of the Customs Union. As a consequence, WTO rules will prevail over conflicting ECU provisions.

Membership was supposed to open up opportunities in the Russian market for EU investors and exporters alike. Apart from this advantage and others, such as increased transparency, or the removal of political obstacles in trade, like quotas and preferences, there were some points where the Russian position was weak; weakness due to the failure of the modernization and the imposition of the European energy market. As a consequence, Russia's import tariffs would come down, and there would be a limit on export duty levels for a list of essential raw materials. Exporters, particularly the metallurgy and chemical industries that benefit from tariff reductions, were clearly in favour of accession, as well as medium-sized entrepreneurs, who expected improved access to cheaper loans and a wider choice of imported goods.

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Business and political circles linked to agriculture and the automobile, aircraft and space industries were against accession.

Russia accepted WTO entry conditions, mainly an average import tariff ceiling reduction from 10% to 7.8%; that meant the EU savings of 2.5 billion euros a year and new trade worth up to almost 4 billion euros a year. Russia was obliged to modify all of its industrial subsidy programs and adapt sanitary and phytosanitary measures to WTO rules. It also accepted a partial opening of the telecommunications and services, like insurance and foreign banks[9]. The EU was benefiting from Russia's WTO accession, which implied lifting barriers for further trade liberalization between the two sides, including the establishment of a free-trade area and the signing of a new cooperation agreement. It also gave wider access to the Russian market[10], due to Russia's obligation to facilitate entry to its agriculture market and to gradually reduce agricultural subsidies. In some way, trade with Russia would be de-politicized since Russia lost the right to place embargoes ostensibly for safety reasons or to protect Russian customers' health, and possible trade disputes will be settled by arbitration.

The World Bank predicted Russia's profit from WTO membership in the medium and long-term perspective, with a GDP growth of 3% and 11%, respectively, mainly by improving the quality of services and reducing prices on the domestic market. The whole impact of WTO membership would depend on the adaptation of the economy and regions. Nevertheless, the integration was necessary for an intensive reconstruction of the Russian economy[11]. WTO membership would imply increased dependence on the export of raw materials, as the tariffs' decrease would damage domestic production of high value-added products; an enhanced modernization and Hi-Tech Growth, and new opportunities to integrate into international production chains and modernize. On the negative side, Russian companies realized a decrease in their share of the domestic market. The government had to adopt measures to reduce the potential non-compliance with the country's WTO commitments and overcome any negative effects of WTO membership[12]. In the short term, there were economic losses for Russia as a reduction of incomes from import tariffs, a rise in unemployment and worse living conditions for those employed by uncompetitive companies[13].

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[9] Insurance companies were allowed to establish branches nine years after accession and foreign Banks to establish subsidiaries, but the overall share of the Russian market may not exceed 50%.

[10] Data on EU benefits from Russia accession to WTO come from Commissioner for trade, Karel de Gucht, in a speech on 7 September 2012 stated "European exporters will find it easier to access our fourth-largest export market".

[11] KIRSANOV, S., SAFONOV, E., "The consequences of Russia's accession to WTO: conclusions and recommendations", *European Scientific Journal*, June 2014, vol.10, No.16, p.208.

[12] EVSEEV, V., WILSON, R., "WTO Accession: Implications for Russia", *Russian Analytical Digest*, N.119, 2012, pp.11-16, https://css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/Russian_Analytical_Digest_119-2.pdf

[13] i.e. The emblematic Automobile industry AvtoVAZ, the largest car manufacturer in Russia and Eastern Europe survived thanks to the takeover of the 67% of the shares by Renault group. The massive refinancing by the Russian government and the active cooperation with the new shareholders helped the company fix its production problems

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There were, of course, some concrete files that raised the serious concern of the EU, such as the decree on fees for recycling cars[14], the ban on live animal imports, or the trade defence procedures on steel products, commercial vehicles and combine harvesters, are seen as obstacles to free trade to protect Russian production. They led to various anti-dumping cases and safeguard cases.

Russia fulfilled its commitments as a WTO member, even if, as soon as it started to develop the Eurasian Economic Union tariff, the Western pundits were suspicious of the way Moscow applied it, following or not the WTO commitments. The US criticized the lack of transparency of its legal import and export regime and its subsidies, as well as the localization requirements for its State-owned enterprises[15]. Any assessment on this issue is affected by the sanctions approved against Russia after the events in Ukraine, a consequence of the Maidan crisis and after the invasion by Russia.

Several months after the Russian Federation's accession to WTO, in July 2013, talks began between the EU and the US to a Transatlantic Trade and Investment Agreement (TTIP) that was expected to boost both economies and the ones of the rest of the world. Apart from these expectations, negotiations were seen by third countries -mainly by the recent WTO members, China and Russia- as a way of evading the universalism of the WTO rules in favour of a bilateral agreement between both commercial superpowers that would shape, not only their mutual relations but also world trade according to their interests.

This was the first example of EU behaviour outside of the multilateral framework, and ignoring the efforts made by Russian Federation for adapting its rules and uses to the WTO legal framework. Of course, the Union had the right to negotiate this full comprehensive treaty with the US, but its eventual impact could damage other weaker economies.

The implementation of an eventual trade and investment agreement between the EU and the US, discarded, for the time being, would have implied *de facto* a bilateral control of the world trade, an agreement on standards that the rest of the world would have to accept and follow; a "cake distribution" of global trade where only the crumbs will remain for the rest of countries and the most impacted ones would be China and Russian Federation, excluded from TPP and TTIP, respectively.

[14] The European Commissioner K. De Gucht stated that Europe fully supported the basic environmental objective there; but he expressed concerns about the idea of levying fees on imported vehicles alone because this discriminated against European producers and clashed with the most basic WTO rules, https://ec.europa.eu/commission/presscorner/detail/en/IP_12_906.

[15] https://ustr.gov/sites/default/files/Russia-2017-WTO-Report.pdf. The US plained for restrictions on importing US agricultural products based on phytosanitary reasons and technical regulations; this was not due to negative consequences on the global trade regime, but due to competition between the EU and the US.

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III. SHARED NEIGHBOURHOOD MANAGEMENT

Borders' studies traditionally underline the understanding of these areas as confrontation or cooperation ones. I will present the current confrontational approach and support the cooperative one.

The Eastern neighbourhood, for the EU, the Western one for Russia, is not alien to this duality and has been a zone of historical confrontation. During the I World War, Ukraine was the battlefield for Austro-Hungarian Empire, Russian Empire and Poland troops, as well as allied armies. From 1915 to 1917, Armenia suffered the genocide by the Turkish Empire. During the inter-war period, for a short time, Armenia, Azerbaijan and Georgia settled the Transcaucasian Federal Republic after the end of the Russian Empire; but in 1920 they became Soviet Republics. The II World War involved all of them fighting against the III Reich together with the allies, under the Soviet Union. Ukraine was occupied by the Reich and part of the Republic collaborated with it, but the East part of the country was quickly regained by the Soviet troops and fought against the German Army. Moldova was included in the Molotov-Ribbentrop pact; as Germany had no interest in it, the Soviet Union kept the power in the country. Romania accepted its integration into the USSR[16].

During the Cold War, the countries that the EU call Eastern Neighbours, and also Central Asia countries, were Soviet Republics. As such, they specialized in some economic sectors and so contributed, in an organized way, to the growth of the Soviet Union. Ukraine with crop plants and industry, Armenia and Georgia with agricultural products, Azerbaijan with energy, Moldova, minerals; Belarus, minerals, livestock and machinery. Moreover, the independent countries in Eastern Europe had communist governments following Moscow guidelines; and all of them were members of the Warsaw Pact. However, since the end of the Cold War, some countries that for decades have been under the USSR sphere of influence integrated as members of the EU and NATO in organizations of traditional opposite sign. And the Western and Southern Caucasus Soviet Republics were included in the EU European Neighbourhood Policy in 2003 and 2004, respectively.

Not agreeing with the denomination of *shared neighbourhood,* as long as it denotes a certain contempt for all those sovereign countries, and implies a kind of divided ownership, I consider that the *common neighbourhood* term is more respectful of the rights of these countries as independent ones. *Overlapping neighbourhood* is the term chosen by Arakelyan[17].

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[16] Historically, Bessarabia was part of the Russian Empire since the Treaty of Bucharest (28 May 1812) concluding the Russo-Turkish War -1806-1812- against the Ottoman Empire.

[17] ARAKELYAN, L., "The Soviet Union is Dead: Long Live the Eurasian Union!" in Roger E. Kanet and Rémi Piet, eds., *Shifting Priorities in Russia's Foreign and Security Policy*. Aldershot, UK: Ashgate Publishing, 2014

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Currently, the conflictive relationship scenario in this area is twofold: the economic and commercial and the security one. Russia and the EU are competing for having the six countries under their respective leadership ignoring the history and, what most matters, the interest of these countries.

1. Economic and commercial competition

Related to the first, there are currently two competing models: the one proposed by the EU through the ENP and EaP, on one side, and the Eurasian Union, on the other side.

Analyzing the legal instruments establishing a growing relationship with these countries, under the Russian initiative, in 2000 CIS countries transformed it into an international organization, the Eurasian Economic Community (EEC). A special Court was set up for dispute resolution. But Russia continued to rely on bilateral relations, even within the common framework. In October 2007, the Russian Federation, Belarus and Kazakhstan signed the treaty setting up the Eurasian Customs Union (ECU), which offered an integration model within the context of the future Russian accession to the WTO, effective in 2012.

Less than two years later, the EU opened the Eastern Partnership (EaP) to the five Eastern countries bordering the EU. One of the ENP leitmotivs was to avoid new membership applications from European countries after the massive enlargement of 2004, which ended in 2007. The Commission President at that time described perfectly the idea: *everything but institutions*. Therefore, the political aim was to build and consolidate democracy in these countries, a precondition as the partnership is founded on common values. The economic implications were a commitment to adapt to EU rules in exchange for the EU financial support through the European Neighbourhood Instrument. But neither the ENP nor the EaP implied necessarily new agreements. As a legal consequence for these countries, they are progressively adapting domestic law and standards to EU law in opening their markets to EU products and investments. The EaP is the result of a process of the ENP differentiation between the regimes ruling the relationship with the Southern and the Eastern neighbours. It offers post-Soviet States a new formula of interaction with the EU, under common values and rules, mutual interests and commitments. Nevertheless, the ambiguity of the content of the partnership arose worries with Russia, also a EU strategic partner, with major influence in the region[18]. The fact that the initiative for the EaP was Polish and Swedish raised suspicions on the Russian side. The EU's intention with this initiative was to involve the Eastern European and South Caucasian countries in EU policies to integrate them with the European market without Moscow's participation. The signature of the Association

[18] GRTSKIY, I., TRESHCHENCKOV, E., and GOLUBEV, K., argue that Russia influenced the EaP by following the logic of confrontation with the West and they seem to support EU retaliatory measures against Russia's action to consolidate its influence in the post-Soviet space, but said nothing about similar efforts by the EU; en "Russia's perceptions and misperceptions of the EU Eastern Partnership", *Communist and Post-Communist Studies*, vol.47, issues 3-4, 2014, p.375.

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Agreements with the EU would preclude these countries from participating in integration projects with Moscow, putting the six EaP countries in a dilemma. It made Russia clear about the aim of the EaP, even if this was not clear within the EU[19]: undermine the traditional Russian role in the region. An analysis of the Russian reaction to this European proposal cannot forget that the country had huge misgivings about the actual intentions of the EU countries after they recognized, in a majoritarian way, Kosovo's independence, in 2008, pulling apart this region from the traditional Moscow ally, Serbia. Hence, Russia recognized Abkhazia and South Ossetia after the short war caused by Georgia sending the army to these regions. Moreover, since their EU membership, several Eastern European countries vetoed the renewal of the CPA with Russia and promoted a closer link with the Eastern neighbourhood supporting the EaP[20]. These countries took advantage of the Russian role in Georgia to promote an EU narrative preventing Moscow bellicosity; this assessment of trends in Russian policy is underlying the EaP initiative[21].

Russia reacted immediately to the launch of the EaP[22] opposing to the new Association Agreements proposed, in particular with Ukraine. Apart from building the basis for economic integration, association agreements, Russia said, are EU geopolitical instruments; as such, clashing with the Eurasian Economic Union, they are a thorn in the EU-Russia relationship.

The Association Agreements and Deep and Comprehensive Free Trade Areas (DCFTA), concluded in 2014 with Georgia, Moldova and Ukraine sealed this close economic relationship, looking for deepest economic integration. They excluded the possibility of following the engagements within the EaEU, to which, some of them delegated competencies to determine their trade policy. Thereby, the neighbouring countries have to choose one of these competing regional economic integration projects. Through legal approximation, these three countries must incorporate into their legal orders, not only the existing *acquis* but the future EU legislation, not having a say in its drafting. Free movement of labour to the EU is

[19] The objective of the EaP initiative remained unclear to EU itself and was contingent on different priorities, usually determined by the dominating group interests within the Union; see, G. BOYAKHCHYAN, "The EU's Eastern Partnership: Between promises and realities", *Friends of Europe*, 2015, https://www.friendsofeurope.org/insights/the-eus-eastern-partnership-between-promises-and-realities/ .

[20] GRTSKIY, I., TRESHCHENCKOV, E., and GOLUBEV, K., *cit.*, p.378. The authors see a contradiction between the risk derived from the EU enlargement to former USSR republics that brought the EU to its borders, and the cold war approach used to deny the competing interests in the post-Soviet area. Orange and Rose revolutions (2004 and 2003) indeed show that Moscow was a weak actor at that time, more concentrated on its economic problems than in offering an attractive Project to its former republics. Poland and Lithuania vetoed CPA. Russian foreign policy concept didn't exclude the integration of its former Republics to subregional entities without Russia if they promoted good neighbourly relations and stability

[21] KHUDOLEY, K., IZOTOV, A., "Russia and the European Union: partnership and conflict undefined", In Made, V., Sekarev, A. (Eds.), *The European Neighborhood after August 2008*, Republic of Letters, Dordrecht, 2011, p.205.

[22] MOSHES, A., "Russia's European Policy Under Medveded: How Sustainable is a New Compromise?", *International Affairs*, 88, 2012, pp.17-30.

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not included. Moreover, they are exposed to Russian retaliatory measures, such as withdrawal of preferential treatment of the goods for these countries on the Russian market[23].

Russia opposed DCFTA with Ukraine and with other traditional allies such as Armenia, Georgia and Moldova because of the consequences on further integration in the Eurasian Economic Union. Even if these agreements do not prohibit imports of goods not matching EU standards, and the production and export of non-matching goods to non-EU countries, the unification of standards that facilitate the entry of products into the EU market will change trade patterns to the detriment of external trade[24]. A DCFTA requires its members to change many fundamental laws, liberalize major service sectors and adopt EU intellectual property rights. Therefore it became incompatible with any form of association with the ECU. This raised fears of cheaper European products flooding the ECU markets.

Russian opposition to the DCFTA for Ukraine had pragmatic reasons, comparing the economic cost of it to the eventual benefits of joining the ECU; one of them, maintaining the access to the Russian market, mainly for its agricultural products, aviation and shipbuilding industries[25], and the equalization of technological levels to Russian ones, oriented to improve the performance of the Ukrainian economy and avoid the loss of sovereignty the DCFTA involved. The legal explanation of this was the requirement to align with EU rules without voice or vote, whereas the ECU would provide the country with full membership rights and vote. Moreover, an important incentive for Kyiv was the reduced gas price, offered by Moscow[26].

The Armenian refusal to conclude such an agreement moved the EU to offer this country, and Azerbaijan and Belarus tailored formulas of relationship. In this vein, a Comprehensive and Enhanced Partnership Agreement was negotiated by the EU with Armenia, taking into account their other international commitments. And similar agreements are prepared for Azerbaijan and Belarus[27].

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[23] DE MICO, P., "When Choosing Means Losing. The Eastern Partners, the EU and the Eurasian Economic Union", *Study*, European Parliament 2015, http://www.europarl.europa.eu/RegData/etudes/STUD/2015/549026/EXPO_STUD%282015%29549026_EN.pdf.

[24] See KEMBAYEV, Z., "The Court of the Eurasian Economic Union: An Adequate Body for Facilitating Eurasian Integration?", *Review of Central and East European Law*, 41, 2016, pp.342-367.

[25] Military equipment, a big part of the trade with Russia, is not covered by DCFTA; Kembayev, *cit*.

[26] Economic benefits of joining ECU, in Eurasian Development Bank, 'Ukraine and the Customs Union', Centre for Integration Studies, Report 1 (2012). See. Also J. SHERR, "The Mortgaging of Ukraine's Independence", *Chatham House Briefing Paper*, 2010/1, and "How Russia's Relationship with Europe has Evolved", *BBC News*, January 5, 2016, http://www.bbc.com/news/world-europe-35154633.

[27] Am ambitious work plan, *20 deliverables for 2020*, was adopted in 2017. It focused on four areas: a stronger economy, stronger governance, stronger connectivity, and stronger society. See the Joint Communication "Reinforcing Resilience – an Eastern Partnership that delivers for all", 18 March 2020. The measures approaching Belarus had an end after elections in August 2020; see Council conclusions on Belarus, *Doc.11661/20*, 12 October 2020, CFSP/PESC 825.

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These developments had also an impact on Russia as a progressive harmonization with EU rules and standards can make it more difficult to trade with the six countries and jeopardize the Russian attempts to closely integrate their economies within the Eurasian Union.

Once known the essence of the EaP and DCFTA and Russian reaction, on the other side, after the creation of the Eurasian Customs Union (ECU) in 2007, the integration of the post-Soviet space continued with the launching of the Common Customs Tariff, the Eurasian Economic Customs Union, in January 2010, the entering into force of the Eurasian Customs Union Code and, one year later, the internal physical border controls were eliminated. Russian initiatives tended to promote wider integration of its 'near abroad' and present the block as an "attractive club". The first January 2012 the Single Economic Space was inaugurated, including the free trade area treaty, and the Eurasian Economic Court was set up. In July the Eurasian Economic Commission replaced the ECU Commission and in January 2015 started the Eurasian Economic Union[28].

Ukraine would be the most important country to join the EaEU, but it became a battleground for both, the EU and Russia. And currently, it is not realistic to imagine the Ukrainian leaders opting for the EaEU instead of closely integrating with the EU, even if in 2003 Russia, Ukraine, Belarus and Kazakhstan set up the Single Economic Space. The expected equality of votes in the Eurasian Economic Commission made Kazakhstan and Belarus push for a planned expansion to Ukraine.

The engagement towards the countries in its Western neighbourhood, that at the beginning seemed to be a new way to spread Russian dominance in the region[29], showed more seriousness after the establishment of the new Eurasian Economic Commission. The existence of rules on customs valuation, rules of origin, customs procedures, or the removal of internal borders, probe that Russia was offering their neighbours a governance formula competing with the EU's one. The asymmetry of the previous regional groups in favour of Russia was clearly limited once the ECU showed a commitment to supranationalism as certain Commission decisions can be taken by a qualified majority, even if the Russian vote weights 57%, which made Dragneva and Wolczuc talk on a constrained hegemony[30]. The

[28] GRTSKIY, TRESHCHENCKOV and GOLUBEV, "Russia's perceptions and misperceptions of the EU Eastern Partnership", *cit.*, p.380. Current members of the Eurasian Economic Union are Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Russia; Tajikistan signed the treaty on the Eurasian Customs Union and the Single Economic Space; but it does not border a country member of the Customs Union, a precondition for membership, until the accession of Kyrgyzstan. In March 2020 Uzbekistan declared its wish to become an observer.

[29] BUSYGINA, I., FILIPPOV, M., "Democratization is not cost-free", *Vedomosti*, 10 February 2010; DRAGNEVA, R. and WOLCZUK, K. show the decrease of exceptions by 2012 and the legal modifications it implied for ECU member states; in "Russia, the Eurasian Customs Union and the EU: Cooperation, Stagnation or Rivalry?", Chatham House, *Russia and Eurasia Program, Briefing Paper*, 2012/01, p.7, https://www.chathamhouse.org/sites/default/files/public/Research/Russia%20and%20Eurasia/0812bp_dragnevawolczuk.pdf

[30] DRAGNEVA, WOLCZUK, *ibid.*, p.7.

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Eurasian Economic Commission is more equitable as each country has one vote, which implies that Russia can be, theoretically, outvoted[31]. Then, Russia used the ECU and now the EaEU as a "governance-based vehicle" in direct competition with the EU and engaging in a normative rivalry with Brussels which, until now, had the normative monopoly. The progressive institutionalization following the EU model, and the system of rules harmonized with the WTO's ones made more credible the attempts to regional integration in the post-Soviet space, even if the EU model remains more attractive, perhaps because those countries are not so used to experience the pressure as they were from the Russian soft power[32].

As already said, the EU agreements with Ukraine, Georgia, Moldova and Armenia included the creation of a free trade zone with each of the associated countries and impact on the regulatory framework. It proves that EaP was conceived to counteract Russian led initiatives in the post-Soviet space. But the confrontation logic appears also when, the announcement of the conclusion of association agreements moved Moscow to step up the integration process and create a Eurasian Economic Union.

Has this race of Russia and the EU to conquest the hearts of the neighbouring countries any sense? Does it imply for the targeted countries the advantages to choose between two good competing models? Can it be a winner of this competition? My answer is negative. Neither the EU, Russia nor the neighbour countries can obtain any advantage from the two big European actors' competition.

ENP and EaP set the conditions to follow for a domestic economic, political and social change; change supported mainly economically by the Union. The EU self-definition of its role is that it promotes stability in its neighbourhood. However, the experience shows that the countries in the East and South of the Union were more unstable from the beginning of the ENP[33] and other association developments.

The EU offered a fictitious paradise materialized in the European standard of living, when it was only willing to create a free trade zone that benefited EU countries and hurt Ukraine, Georgia or Moldova[34], but without offering membership; an offer that would involve huge outlays and a breakdown of the community's solidarity. They can benefit from visa facilitation agreements and should engage with EU norms and values. Brussels prefered this "merchant tiny engagement", rather than accepting an actual subregional integration system, jointly with Moscow, that would allow both parties to improve economically and be in better conditions to compete and collaborate at the interregional level. And Moscow was too late to

[31] Even if this rule is weakened by the possibility for any dissatisfied member to bring an issue to the Council or to the Eurasian Commission to be decided by consensus. *Ibid*, p.7.
[32] *Ibid*, p.9.
[33] EaP countries' success or failure in 'promoting regional stability through trade agreements and democratic institution-building' PARK, J. (2014) 'The European Union's Eastern Partnership,' *Council on Foreign Relations*, March 14. http://www.cfr.org/europe/european-unions-eastern-partnership/p32577
[34] See Eurasian Development Bank, 'Ukraine and the Customs Union', p. 29.

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offer a model taking into account its neighbour's interests and not just its own benefit under economic or political forms.

One of the main questions to be answered is whether the EU can promote domestic changes beyond its borders. Clearly it did it with candidate countries to which it imposes the progressive harmonization of the normative and institutional framework. In the neighbouring countries, however, the incentive of membership does not exist. Some of them are willing to progressive European integration. For others, it implies national dilemmas when there is an alternative model. Neighbouring countries are not winning, either, as a free trade zone benefits primarily the richest countries participating in it[35]. Their products are not adapted to the EU market and, even if they pass the strict EU controls, their added value is reduced. Manufactured EU products, with high added value, flood local markets and make the local producers sink. Moreover, having the example of Ukraine, the association with the EU makes the possibility to export its production to Russia, the main traditional commercial partner, harder. The result has been a decrease in Ukraine's GDP in the last decade.

If the EU acts merchant-mode, Russia has traditionally played the power game with the six countries in its Western neighbourhood. Thereby, these countries learned very quickly how to survive, having the best from both worlds and keeping their corrupt governments in power.

On the side of the beneficiaries of the EaP or the EaEU, there are also behaviours explaining the failure of the first and the deceleration of the Eurasian Union integration process. The EU initiative implied a political association, plus a free trade area and removal of the existing visa regime. Brussels offered to support reforms but its aim was not to provide membership but to control a southern energy corridor from the Caspian region bypassing Russia[36]. The role of Azerbaijan was essential to reaching this aim. Claiming a normative hegemony, without membership in return is wishful thinking. The EU position was weak to impose business, governance or human rights standards. Moreover, tycoons governed these countries; the priority of these oligarchs was not to implement democratic or economic reforms if this threatens their privileged position.

The invitation to join the Eurasian Economic Union to promote regional trade could have been attractive, but missing Ukraine reduced the attration. As a consequence of the

[35] VAN ELSUWEGE, P. and PETROV, R., "What does the Association Agreement mean for Ukraine, the EU and its Member States?", in A. W. HERINGA (ed.), *Het eerste raadgevend referendum. Het eu-Oekraïne Associatieakkoord,* Montesquieu Institute, The Hague, 2016, pp.71–88. On the legal adaptation, see PETROV and VAN ELSUWEGE, *Legislative Approximation and Application of EU Law in the Eastern Neighborhood of the European Union: Towards a Common Regulatory Space?* London and New York: Routledge, 2014; and PETROV, R.,"The Impact of the EU-Ukraine Association Agreement on Constitutional Reform and Judicial Activism in Ukraine", *Review of Central and East European Law* 43, 2018, pp.99-115. On the EaP focus on regulatory convergence see, DELCOUR, L., *The EU and Russia in Their 'Contested Neighbourhood'. Multiple external influences, policy transfer and domestic change*, Oxon, New York, Routledge, 2017, p.6.
[36] ARAKELYAN, L., "The Soviet Union is Dead: Long Live the Eurasian Union!", *cit*.

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geopolitical panorama, with Western sanctions and the drop in oil prices, the economic growth of the region decreased also[37].

Two other issues work against this competition. First, it is perceived as "a political aggression" against Europe's main Eastern partner, Russia, and divides national societies confronting its population to a choice between the two contenders. Second, doing like currently does, the EU is an obstacle to domestic change instead of a promoter of it. Pushing for better conditions than the ones offered by the Russia-led EaEU, ends any kind of conditionality and ruins the normative EU ambition. The message to some authoritarian regimes and their citizens is of support from the European Union[38].

For the Russian Federation, the panorama is not better. Once the neighbouring societies are divided, a part of them will support Russian initiatives and the other part will strongly refuse them. Rational choice is substituted by ideological one, ignoring the economic interests of both sides.

2. Security competition

The reasons for the evolution, from confrontation to cooperation and subordination and, finally, to competition, are well explained by Arakelyan. This scholar highlights, in particular, the conceptual misperceptions between the EU and Russia as a factor contributing to a geostrategic competition over the post-Soviet space[39]. These misperceptions exist long before the end of the Cold War.

Mackinder's Heartland Theory was dominating the EU's and US visions[40]. It considers the control of vast Central Asian resources as a tool for becoming "the empire of the world". The American theory of containment draws from Mackinder's and justified the action against the hostile power, the Soviet Union[41]. This Cold War mentality was still alive in the nineties when the EU tried to spread its liberal-democratic model to Eastern Europe and South Caucasus; however, it tried to change the traditional trade links very quickly, without creating new regional dynamics in the area and not involving Russia in a strategic partnership, so ignoring its hegemonic pre-eminence in Eurasia.

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[37] GDP fell by 3,2 per cent, according to Stratford ("Why the Eurasian Union Will Never Be the EU", 2016, https://www.stratfor.com/analysis/why-eurasian-union-will-never-be-eu).

[38] As an example, in 2004, the EU lifted sanctions against some Belarusian officers but kept sanctions against Russian companies.

[39] ARAKELYAN, L., *cit*.

[40] MACKINDER, H. J., *Democratic Ideals and Reality: A Study in the Politics of Reconstruction*. New York, NY: Norton and Company,1962, p.150.

[41] SPYKMAN, N. J., *The Geography of Peace*. New York, NY: Harcourt & Brace, 1944, p.43; and GADDIS, J. L., *Strategies of Containment*. Oxford, UK: Oxford University Press, 1982. On the influence on US and European policymakers, see C. CLOVER, "Dreams of the Eurasian Heartland", *Foreign Affairs*, 78, March/April 1999, pp.9-10 and C. J. FETTWEIS, "Sir Halford Mackinder, Geopolitics, and Policymaking in the 21st Century," in *Parameters*, *US Army War College Quarterly*, Summer, Vol.XXX, No. 2, 2000.

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Even if here our focus is on EU-Russia relations, one cannot forget that EU attitude and behaviour have been largely conditioned by the US. Lacking strategic autonomy, usually, the EU has followed the US initiatives, based mainly on US interests, even if the consequences were negative to Europe[42]. One example is the Iraq war, which produced an increase in terrorist activity in Europe. A second example is the strategy towards Russia, applauded by some of the newest Member States but with negative consequences for the Eastern neighbourhood and the EU too.

The cooperative security relation starting at the time of USSR's disintegration was progressively eclipsed as the political recovery of Russia progressed. The vote without veto at the Security Council when Iraq invaded Kuwait seems like a mirage to us today. Russian Federation after the collapse of the Soviet Union decided to support the international institutionalized use of force system within the framework of the United Nations. It didn't veto the main SC resolutions following the unilateral US leadership[43]. There was however no sign of cooperation on the other side and the system worked as long as Russia and the rest followed the US decisions, even the wrong ones. The illegal NATO intervention in Kosovo marked the point of change in Russian attitude that was already brewing since the expansion of NATO and EU to countries formerly under the orbit of the Soviet Union.

After the recognition of Kosovo by the US and most EU countries, the Russian-Georgian war in 2008, showed the Western leaders that Moscow was ready to undertake military actions if needed to prove their right to Eurasia hegemony. The EU institutions, through the then High Representative Solana, warned Georgian President Sakhasvili against any military action on the Russian majority regions of Abkhasia and South Ossetia. He ignored the warning sure as he was that the US, through NATO, and EU countries would support a pro-European small country eager to join European institutions. However, he received no support at all. There were two reasons for this turning their backs on Georgian claims; these institutions and countries knew about his military provocation; second, their policies did not seek tension with Russia, and they did not want to assume the inherent responsibilities of financial and political support for a country for which they did not have a great strategic inclination. NATO will not improve the security of its members supporting Georgia, on the contrary, it would increase the instability and risks associated with a provocation to Moscow. This short war also proved to the neighbouring countries that they could not play mouse and cat anymore with Russia and the Western countries trying to have the best from both.

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[42] HUTTON, G., MORRELL, S., HAYES, J., ("Democracy and Progressive Modernity in Constructions of Community: Europe, the United States, and the Russian "Other'" in V. L. Birchfield, A. R. Young (eds.), *Triangular Diplomacy among the United States, the European Union, and the Russian Federation. Responses to the Crisis in Ukraine,* Palgrave Macmillan, 2018, pp.95-118) explain the similar EU and US reaction, even if their foreign policy stakes were different, because the construction of the Russia 'other' had a Transatlantic, a European and a national basis. FERNÁNDEZ SOLA, N. "Las relaciones de la Unión Europea y Rusia desde la perspectiva rusa", *Cuadernos de Estrategia* n.178, 2015, pp.103-124.

[43] Reaction against Iraq after the invasion of Kuwait, support to the US after 9/11, support for the deployment of US and allied troops in Afghanistan.

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Apart from the NATO expansion to the East, other Western decisions ignored or were clearly against Russia, like the emplacement of a missile defence system in Central Europe, or the gas pipelines in the Caspian Sea region bypassing Russia.

From a security point of view, following the Primakov doctrine, the dominance in Eurasia through military-strategic, economic and political leverage was a high priority. The last try to forge a shared security framework with the West was the 2009 Medveded proposal of a new security treaty covering from Vancouver to Vladivostok, a Helsinki plus treaty[44]. It puzzled European countries and, following the US reaction to refuse it, they decided to put it in a drawer and even don't give any answer to the proposal.

The relationship was eroding in a parallel way with the US and with the EU. The overthrow of the Yanukovich government in Ukraine was the last straw that broke the camel's back to consider NATO expansion a threat to Russian Federation security and the EU and the US as supporting the unconstitutional movement in Kyiv[45]. The EaP was into question after the EU's failed attempts to conclude an association agreement –concluded later-, facilitated Maidan, a change of government, and Russian intervention.

An expansion to former Soviet Republics like Ukraine and Georgia was felt like a "Western" dare against Russian Federation. Since the EU negotiations for an association agreement with Ukraine and the Euromaidan in 2013, the Russian approach to the West changed; from cooperation to competition and political confrontation having as the main scenario the shared neighbourhood.

This crisis that still continues in the Donbas region after eight years is one of the main factors explaining the deterioration of the East-West relations and, in particular, the one between the EU and Russia. The European Union's management of the common neighbourhood is also the basis of the current relationship, just ignoring Russian interests and risks when approaching the neighbouring countries, even creating false membership expectations only

[44] De HAAS, M., *Russia's Foreign Security Policy in the 21st Century: Putin, Medvedev and Beyond*, Routledge, 2010, p.130-134. LOMAGIN, N., "Medvedev's 'Fourteen points': Russia's proposal for a new European Security Architecture", in R. Kanet (ed.), *Russian Foreign Policy in the 21st Century*, Palgrave, 2011, pp.181-202.

[45] MEARSHEIMER, J. J. criticized the US role in peeling the EU away from Russia, "Why is Ukraine the West's Fault", in *The Causes and Consequences of the Ukraine Crisis*, Speech University of Chicago, June 2015, https://www.youtube.com/watch?v=JrMiSQAGOS4,; and recently, "Who Gains The Most From The Ukraine-Russia War & What Could End Putin's Assault", 14 April 2022, https://www.youtube.com/watch?v=XgiZXgYzI84, and "Great Powers Politics in Ukraine", CGTN 16 April 2022, https://www.youtube.com/watch?v=JrMiSQAGOS4.

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possible in some Member States' wishful thinking. The assertive reaction of the Russian President, including its role in Crimea, did not contribute to distention. Even if he reacted to perceived or real aggressions against Russian interests, then and now in 2022, its verbal aggressivity, understood by the EU under the Cold War parameters, warmed up the environment. Instead of praising the democratic steps and the quick economic liberalization in the nineties, once Russia experienced economic growth in the first 2000, the EU countries (and the US) feared a new Russian leadership in the international arena; an autonomous Russian position defending its national interests instead of following the Western decisions mainly at the UN Security Council, as already shown in Syria, or the Sahel following the withdrawal of France from Mali.

In some way, the neighbouring countries suffered from the powers' competition and had to cope with pressures from both sides. Ukraine, with Western support, decided to follow the EU path and suffered from Russian hard power and hybrid war. Armenia and Belarus joined the EaEU but looked for closer ties with the Western, too. In some cases, the frozen conflicts, like the one in Nagorno-Karabakh, were the basis for joining the EaEU.

Today, as in the period since the end of the Cold War, the European Eastern neighbourhood is splattered with frozen conflicts like Nagorno-Karabakh, Transnistria, Abkhasia, South Ossetia and Donbas; conflicts that threaten the security of both, the EU countries and Russia. Consequently, it was in the interests of both sides to find a solution to them, in particular, the disputes in Donbas and the two Georgian separatist regions as both rose as a consequence of the misunderstandings between the Russian Federation and the EU (and the US). A peaceful solution for them would have opened the door for a negotiated end to the previous ones.

Unfortunately, the previous conflicts were not solved, the Minsk II agreements were only partially fulfilled by both sides and, in February 2022, a war started after the Russian attack on Ukrainian territory. Since then, the polarization is extreme and the involvement of the EU countries in sending weapons to Ukraine is proof of rupture and confrontation difficult to overcome and that will require time, money, and the will to find paths to a new *modus vivendi*.

If the commercial field is divided between the EaP and the EAU, now the polarized security field shows also several proposals. One pro-European represented by NATO and, to a lesser extent, by the EU. Another, led by Russia, represented by Collective Security Treaty Organization (CSTO) concluded in 1992, including Russia, Armenia, Kirgyzstan, Tajikistan, Belarus and Kazakhstan. This defence Organization was called to Kazakhstan, in December 2021 when revolts started in several points of the country; opposition according to the Western media, terrorists according to the government. Even, there is a third security proposal, led by China, the SCO uniting Russia and China, with four Central Asian Republics -not Turkmenistan-, and India and Pakistan. Armenia and Azerbaijan are dialogue partners to SCO and Belarus is an observer. Security is only one of its aims, but *de facto* is an important one.

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3. Outcomes from the competition in the common neighbourhood

Summarizing the outcomes from this competition in the common neighbourhood, the Eastern Partnership cannot be said to be a success as the EU wanted to engage these countries in areas of greatest interest such as energy, but didn't take seriously working as an extensive transformative power because it had no concerns on recipients' domestic issues.

EU's aim was to Europeanize its neighbours as a way to improve security (hard, economic, social and political) at its borders. However, the outcome of this process is quite unsatisfactory[46]. First, because of the insufficiency to apply to the post-Soviet countries the variables top-down used to measure Europeanization[47]. There is a need to analyze also aspects on post-Soviet transformation[48]. Most of the studies just consider Eastern partners as recipients and not as active agents who, in turn, can influence others or manipulate the EU. For them, "political and economic transformation" as well as a legal one, is satisfactory only if it fits with the EU desired evolution. They ignore that policy transfer' agents are not only European or national who follow the European guidelines[49]. There are other people involved, States, think tanks, etc, who can carry along different paths of transformation.

Analyzing this topic, one discovers just a superficial Europeanization, i.e. in Ukraine where Government –and elites- wanted more financial support for economic development or just to pay energy debts, but not fighting corruption or open society and democratization[50]. Following Delcour, the parameters for Europeanization should include not only adoption of legal measures, but also application and enforcement, as well as the impact of domestic factors[51].

If the European integration was a way to end confrontation and improve security in Europe gathering countries voluntarily to growing engagements, the EaP and the security links with

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[46] DUFY, C. and THIRIOT, C., "Les apories de la transitologie: quelques pistes de recherche à la lumière d'examples africaines et post-sovietiques", *Rev. Internationale de la Politique Comparée*, 20-3, 2013, p.20.

[47] DELCOUR, *cit.*, p. 7. On the Neighbourhood Europeanization, see also FRANKE, A., GAWRICH, A., MELNYKOVSKA, I., SCHWEICKERT, R., "The European Union's Relations with Ukraine and Azerbaijan", *Post-Soviet Affairs*, 26-2, 2010, pp.149-192.

[48] Unlike the Eastern European countries already EU members, Ukraine and Southern Caucasus were not sovereign countries before the 1990s.

[49] Some scholars like S. LAVENEX ("EU external Governance in Wider Europe", *Journal of European Public Policy*, 11-4, 2004) and J. KELLEY ("New Wine in Old Wineskins: Policy Adaptation in the European Neighbourhood Policy", *Journal of Common Market Studies*, 44-1, 2006) question the analysis through through the lenses of the EU discourse, principles and instruments for enlargement.

[50] On the Zelensky government's attacks to press freedom towards media not under his control since summer 2021, see I. KOSSOV, "How Zelensky's administration moves to dismantle press freedom in Ukraine", *The Kyiv Independent*, 22 January 2022, https://kyivindependent.com/national/how-zelensky-administration-moves-to-dismantle-press-freedom-in-ukraine/

[51] DELCOUR, *cit.*, pp.155-164. MEARSHEIMER 2015 (*cit.*) said export democracy implies a regime change in favour of a pro-Western one.

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the neighbouring countries, just intended to increase stability, produced more division and confrontation in an area of mutual interest.

Some EU decisions continue to stoke the confrontation with Russia and show the inconsistency of the EU normative foreign policy. i.e. the double standard used towards Azerbaijan's human rights violations or Belarus's authoritarian regime, not imposing or lifting economic sanction, and Russia[52].

On the Russian side, its approach considers the EU-Russia relationship as a zero-sum game[53]. During the nineties, when Russia needed strong economic support, the EU tended to concentrate on it, dismissing Russia's geopolitical interests. One decade later, a more proactive Moscow recovered a better economic level and its presence in the post-Soviet space and international arena, in Afghanistan, reacting to the NATO intervention in the Balkans, or Syria. This recovery is, in part, due to the personality of the Russian leader, Vladimir V. Putin. He found the first Western manoeuvres to control former Soviet territories with the support of some countries as Poland[54] or the Baltics, eager to cut off their recent past. He realized that the Russian population attached more importance to regaining Russia's international prominence than to its domestic democratic implementation[55]. EU leaders and US ones were used to work comfortably with a weak Russia after the disintegration of the Soviet Union and reacted to Russian strength demonstrations with suspicion. The idea, cherished by the previous Russian administration, to become a member of the EU and NATO to assure Russian security, was discarded. Instead of that, the main focus of Russia's foreign policy became the protection of the Near Abroad and opposition to NATO and EU expansion to Eastern Europe[56].

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[52] EU Commission Report 2015 and Lilian, end of sanctions to Belarus due to improved human rights; keeping sanctions against Russia for the annexation of Crimea.

[53] PANKOV, V., "Options for the EU-Russia Strategic Partnership Agreement", *Russia in Global Affairs*, n.2, 2008, BUTORINA, O., "ES i Rossiya, Partnerstvo bez Strategii" *Rossiyskiy Sovet po Mezhdunarodnym Delam,* April 25, 2013, http://russiancouncil.ru/inner/?id_4=1763#top-content.

[54] ADAMCZYK, A. (2010) 'The Role of Poland in the Creation Process of the Eastern Partnership,' *Yearbook of Polish European Studies*. No. 13, pp. 195-204.

[55] On the erosion of freedoms, see J. M. OSTROW, G. A. SATAROV, & I. LHAKAMADA, *The Consolidation of Dictatorship in Russia*, Westport, Connecticut, Praeger, 2007. Of course, there is an opposition movement whose magnitude we cannot measure given the constraints for free political expression. But most of the Russian population, mainly in rural areas, doesn't know democracy and the only experience they have at the time of Gorbachev and Yeltsin is a bad souvenir for them as it brought a grave commodity shortage.

[56] ARAKELYAN, L. (*cit.,* p.4-5) and SHERR, J., ("How Russia's Relationship with Europe Has Evolved", *BBC News*, January 5, 2016, http://www.bbc.com/news/world-europe-35154633) underline the Yeltsin administration's idea to integrate the EU and former Soviet countries on a complimentary basis. The 1993 Kozyrev doctrine reflected this position. On liberal and democratic reforms, N. ARBATOVA, 'Horror Mirror: Russian Perception of the Yugoslav Conflict,' in Alexei Arbatov, Abram Chayes. Antonia Handler Chayes, and Lara Olson, eds., *Managing Conflict in the Former Soviet Union: Russian and American Perspectives*. Cambridge, Massachusetts: MIT Press 1997: 462.

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Progress towards Europeanization in countries signing association agreements including a DCFTA with the EU is stagnant or falling. Georgia had a visa-free regime, but its regions Abkhasia and South Ossetia can be accession candidates for the EaEU. Even if it can pursue closer cooperation with the EU, Russia's influence is growing at a moment when the EU (and NATO) is reluctant to continue its expansion. Moldova which was a successful EaP country experienced political instability over a corruption scandal close to the power. The country, between Ukraine and Romania, is politically divided and corruption is widespread. Its elites are not willing to change the political system, and the EU ignores the abuses. So, support for EU declined as citizens associated the EU with the corrupt politicians and seems to favour the Eurasian integration[57]. It is harder to say if Ukraine is a failed or a successful country according to the EaP parameters. With an association agreement with the EU, the democratic transition in the country is doubtful[58]. It is politically and ethnically divided. Moreover, after the 2016 Dutch referendum saying *no* to a political, trade and defence agreement with Ukraine, its citizens feel Europe is unwilling to deeper relations with it. The corruption did not decrease radically, and democratization seems to be paralyzed.

Despite the sanctions against Russia, the Eurasian integration project continues its development. Even, some scholars consider it successful[59]. Armenia is now on the Eurasian integration side and reached an agreement with the EU that makes both integration projects compatible; even the perception in Moldova is more sympathetic to Russia. What is more relevant, during the last ten years, the EU took into account Russia's interest, not only because of its role in the near abroad but also for its fight against international terrorism, its mediator role for keeping the agreement on the Iranian nuclear project, or in Syria. There was a recognition of the Russian Federation as an important international power, at least concerning its near abroad.

The inability of Eastern neighbouring countries and Russia to conclude democratic reforms and the EU's inconsistency in external relations with these countries contributed to the confrontation atmosphere. Therefore, only a new security environment in Eurasia can modify the tense and unprofitable relationship. It will consider the interests of the six countries, not only those of the great powers.

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[57] KOSTANYAN, H., 'Why Moldova's European Integration is Falling?' *CEPS*, 3 March 2016, https://www.ceps.eu/publications/why-moldova%E2%80%99s-european-integration-failing.

[58] TIMTCHENKO, I., "Which way will Ukraine swing", *Foreign Policy*, May 20, 2020, https://foreignpolicy.com/2020/05/20/ukraine-zelensky-corruption-russia-european-union/

[59] ARAKELYAN, L., "EU-Russia Security Relations: Another Kind of Europe," in Roger E. Kanet, ed., *Challenges to the Security Environment in Eurasia*. Houndmills, UK: Palgrave Macmillan, 2017, *cit*.

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IV. TOWARDS A STRATEGIC PARTNERSHIP

Once reviewed different aspects of the difficult relationship between the EU and Russia, this epigraph will concentrate on some steps toward a desirable strategic partnership. The recent Strategic Compass could have been key to this partnership but unfortunately it has been approved under the impact of the war in Ukraine and follows a short-term approach, without the strategic thinking about the future that the EU needs[60].

Usually, energy policy is taken as one of the biggest problems in the bilateral relationship. In a growing atmosphere of hostility, energy is a particular field of contention, as we are witnessing in the measures adopted by the EU following the United States, since the end of February 2022[61]. However, I consider that it can also be an important part of the future partnership. This assessment is based on the mutual interdependence in this field and the pressures from the two big powers, US and China on the EU and Russia[62].

Then, there is a reference to the PCA. The idea I present is that more important than having a new agreement is to pave the path towards a bigger understanding with steps like a peaceful solution of disputes, and the use of legal instruments that allowed neighbours to face the decision to choose a Western or a Eurasian partner.

1. Energy markets as part of the Strategic Partnership

Because of the security implications on States, energy policy is not fully ruled by WTO rules, even if it has an undeniable impact on markets. Apart from trade outcomes and markets benefits, it has a clear geopolitical impact. The EU powers in this area evolved slowly due to these geopolitical implications of energy markets. The EU was acting on energy policy indirectly, namely through its environmental[63], internal market and competition policies, setting conditions for a free energy market and boosting the use of renewable sources. But the Treaty of Lisbon added a new article (art.194 TFEU) on energy, by which it becomes a shared competence where the EU plays a harmonizer role; a teleological one in favour of the

[60] The Conference on the Future of Europe (*cit.*) should have worked on this path but its outcome seems not to be memorable.

[61] DANNREUTHER, R., "EU-Russia Energy Relations in Context", in 21(4) *Geopolitics* (2016), 913–921. The measures on the Russian energy sector were already described as part of the strategy to weaken Russia, its military, economic, political and social system, in AA.VV., *Extending Russia. Competing from Advantageous Grounds*, RAND Corporation, Santa Monica (Ca), 2019.

[62] The US is growing since February 2022 as a gas provider to European countries, including Spain. After the US President visit to Brussels, he agreed with the EU an increase of 68% of US gas exports to decrease de European dependence on Russian gas (*El País*, 25 March 2022). On the other side, China is benefiting from the energy Russia cannot export to the EU, in terms of the amount received and prices.

[63] Current articles 191-193 TFEU enshrine the EU commitment to regional and global environmental protección, namely combating climate change.

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internal market functioning and the protection of the environment. This new legal basis for EU action in the energy policy domain says,

"1. In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between the Member States, to:
(a) ensure the functioning of the energy market;
(b) ensure the security of energy supply in the Union;
(c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
(d) promote the interconnection of energy networks.

2. […] Such measures shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, without prejudice to Article 192(2)(c).

3. […]

This provision can be interpreted as a step towards a common energy policy, allowing the EU to establish measures relating to energy policy. However, Member States continue as masters of the energy policy in order to set the conditions for exploiting resources, deciding the proper balance between different energy sources or the relative weight of each one in the national energy market and guaranteeing the security of energy supply[64]. Of course, on policy areas on which the EU decided to legislate, limited by the Treaty, Member States will not be able to. So, only partly, the EU received the basic control of national energy policy. Moreover, the reference to solidarity in article 122.1 TFEU recognizes special powers to the Council to adopt measures in cases of difficult supply of energy products[65]. This would guarantee some Member States supply energy to others in case of a crisis.

Nevertheless, the EU energy policy is highly politicized; and, as a result of it, its external dimension too. The friction points are the clear precision of the gas needs in Europe in the future, the option for pipelines or LNG and the power EU Member States keep within their hands to rule supply, diversification of sources, and the balances among different sources.

[64] The EU Energy Action Plan 2007-2009 was an example of cooperation among the Member States where they called for the development of a common approach to external energy policy

[65] Article 122. 1. Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between the Member States, upon the measures appropriate to the economic situation, in particular, if severe difficulties arise in the supply of certain products, notably in the area of energy. 2. Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken.

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On the first point, the evaluation of future gas needs by European countries differs or is interpreted differently, depending on who says it. According to the high estimations of the European Network of Transmission System Operators for Gas (ENTSO-G), the EU decided to include as Projects of Common Interest (PCIs) millionnaries projects such as MidCat, the Trans Adriatic Pipeline (TAP) and Fluxys´ LNG terminals, currently refused by the energy regulators[66]. In particular, these three have been excluded from financial support due to environmental considerations and the lack of clear justification of their need. High estimations were done also by EU countries like Germany, and its provider, the Russian Federation, as the basis for building the NordStream 2 (NS2). Some NGOs consider their projections on future gas demands in Europe were consistently over-estimated[67]. The uncontroverted fact is that in the long term, those needs will reduce because of the European support for renewable energy sources. The energy Green Deal[68], having as one of its aims zero emissions of greenhouse gases by 2050, implies a radical decreasing dependence on fossil fuels. Gas demand will however grow for the next 10-15 years during which coal and nuclear will be phased out, even if the Commission has decided in 2022 on the inclusion of nuclear and gas as clean energies for a transitional period[69]. Switching to other fuels than gas will not be easy for the industry at affordable costs. Therefore, the EU import dependency will continue at around 80% of the total consumption.

To cope with the actual needs, the most advantageous option should consider the providers, infrastructure and transportation companies available.

The security supply would be a reason for NS2, given the insecurity in the North African and the Middle East countries -the second source-provider-, and the lack of a capable electricity

[66] The European Network of Corporate Observatories (ENCO) has exposed the underlying interests of various companies; https://www.reuters.com/article/france-spain-gas/update-1-regulators-reject-france-spain-gas-interconnection-project-idUSL8N1ZM5DQ. According to the ENCO's report, four TSO companies own kilometres of pipeline to stretch around the world two and a half times and lobby before the EU to build more and having the European financial support, at the expense –it says- of the climate and communities.

[67] SHERMAN, L., WETTENGEL, J., "Gas Pipeline Nord Stream2 links Germany to Russia, but splits Europe", 16.8.2018, *German Institute for Economic Research*, https://www.cleanenergywire.org/factsheets/gas-pipeline-nord-stream-2-links-germany-russia-splits-europe

[68] European Commission, Communication from the Commission to the European Parliament, the European Council, the Council, the European Ecoonomic and Social Committee and the Committee of the Regions. The European Green Deal,11 December 2019, *COM(2019) 640 final*.

[69] Mainly Germany bets onphasing out coal and nuclear. Other countries, mainly France, continue to use nuclear energy for the time being. See, J. A. VINOIS, T. BROSS, "Russian gas pipelines and the European Union: Moving from a love-hate relationship 'with adults in the room'", *Europe of Energy*, Policy Paper no.247, December 2019, Jacques Delors Energy Center, Notre Europe. See, EU Commission Decision on interim inclusion of gas ans nuclear energy as sustainable, Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives, C/2021/2800, *OJ L* 442, 9.12.2021, p. 1–349, ELI: http://data.europa.eu/eli/reg_del/2021/2139/oj

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connection between Spain and the rest of the EU Member States. The supply was disrupted in January 2009, due to Ukraine's gas non-payment to Russia. It made clear for Germany and others the convenience of avoiding transit countries as a safe alternative.

A second controversial issue is the option LNG represents to pipelines. The first reduces the strategic long term dependence on the provider country, while the second involves permanent infrastructure and usually long-term contracts. Behind this controversial issue, are the interest of LNG producers, mainly the US, interested in having a portion of the European energy market, until now dominated by Russia. Hence the support received by one of the projects within the Three Seas Initiative (TSO) that brings together Rumania, Croatia and Poland. The TSOs have also invested in LNG infrastructures. The support comes not only from political and economic elites but also from academia. All of them see that it will help reduce dependence upon Russia gas and, doing so, the possibilities to undermine European security, and will facilitate increased US LNG exports to Europe, a key US priority[70]. The decision should take into account the different advantages and disadvantages of each one. The pipelines are already built and, if there is a need for a new one or a branch of an existing one, usually the provider invests in it. On the other side, the LNG option is much more expensive and much more polluting and risky, given the long transport and the double process of liquefaction of the gas and re-gasification previous to supply.

EU countries developed a flexible gas transportation network, managed independently from suppliers, linking storage, LNG terminals and countries[71]. Then, diversification may be the most profitable option for Europe as having LNG reduce eventual pressures from Russia, and having direct pipelines from Russia allows less expensive gas competitive with LNG providers thanks to its price.

The aforementioned issues and the differences among the Member States produced an EU legal reaction, mainly on the Nordstream 2 pipeline, but also divergent interpretations of the main EU energy rules. Behind the scene was the future of the Ukrainian gas transmission system and Poland transportation operators. The interpretation of the third natural gas directive and the amendment to this one[72], are controversial. Divergent interpretations by the Member States or by the ECJ show the political and economic interests involved and the

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[70] BLANK, S., "How to advance European security against Russia", *The Hill,* 6/3/2019, https://thehill.com/opinion/international/446569-how-to-advance-european-security-against-russia. See also, J. WETTENGEL, "US warns German companies of possible sanctions over Nord Stream 2", Clean Energy Wire, *Journalism for the energy transition*,14.1.2019, https://www.cleanenergywire.org/news/us-warns-german-companies-possible-sanctions-over-nord-stream-2.

[71] Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010, *OJ L 280,* 28.10.2017, p. 1–56. Each member State relies on three sources of supply and solidarity among them Works in case of an emergency.

[72] Directive 2009/73/EC, *OJ L 211*, 14.8.2009, amended by Directive (EU) 2019/692, 5.6.2019, *OJ L 117*, 3.5.2019.

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energy's geostrategic power. The main problem is the law governing NS2; a legal question with political implications.

The natural gas pipeline NordStream 2 is an underwater pipeline for the transportation of natural gas from Russia directly to Germany. It follows the route of pre-existing Nord Stream twin pipeline underneath the Baltic Sea. The five countries whose territories, exclusive economic zones, are involved gave their consent for the construction. The state-owned Russian Company Gazprom provided up to 50% of the project financing. From the very beginning, the project was controversial. Its supporters consider it could bring reliable and affordable supplies to the country, but its detractors criticized it for political reasons linked to the deviation of the traditional gas flows and the loss of transit fees, and its competitors for commercial reasons as to protect other infrastructures or their own production[73]. The supporters' rationale is the expected growth of gas demand due to the decarbonization process, and the Russian gas is, for them, the most competitive offer, as the closest to the EU territory.

Even if the European Commission would like that all pipelines located wholly or partly in EU territory to be subject to EU rules, the NS2 is not, as the Gas Directive[74] does not set out a legal framework applicable to pipelines to and from third countries, relative to territorial waters and the exclusive economic zone of EU Member States.

Unlike NS2, OPAL onshore pipeline, from Germany to the Czech Republic and Austria, is fully subject to EU rules; it enjoys an exception to the 50% rule on third party access. Gazprom was excluded from the rule of 50% when using the OPAL pipeline for sending gas to Europe. In 2016, the European Commission allowed the Russian company to boost deliveries to Europe through the OPAL pipeline; but Poland, Lithuania and Latvia considered that this decision violated EU Law and went before the EU Court of Justice. They alleged EU energy legislation aims to prevent monopolisation of access to gas pipelines within the Community, but the aforementioned decision did not examine its impact on Poland's energy security. The EU Court of Justice found that the Commission's 2016 decision was taken "in breach of the principle of energy solidarity". The General Court annulled the Commission

[73] The US think-tank, the Atlantic Council supported the opposition to NS2. Behind this position is the interest in exporting American LNG. FRANCIS, D., "Why Nord Stream 2 Isn't just an ordinary pipeline?", March 20, 2018, https://www.atlanticcouncil.org/blogs/ukrainealert/why-nord-stream-2-isn-t-just-an-ordinary-pipeline/; once the completion of the pipeline is clear, the American experts are confident on the *silver bullet* for the EU to strictly apply to Russia the Internal Energy Market (IEM) rules, whose ultimate goal is to create a liquid and flexible environment where gas molecules coming from various suppliers flow no matter their origin, based only on the demand-supply nexus. On the applicability of EU Law to Nord Stream 2, see P. GRAGL, "The question of Applicability: EU Law or International Law in Nord Stream 2?", *Review of Central and East European Law*, vol.44, 2019, pp.117-147.

[74] The European Commission considered this pipeline "could impede the development of an open gas market with price competition and diversified supply to the EU". This risk would only materialize if the EU countries don't have different suppliers, which is not the case for Germany.

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decision as contrary to the solidarity principle[75]. Then, Gazprom can use 50% of the OPAL's capacity but it will not be able to participate in auctions for the remaining capacity. Beyond the legal reasoning, the negative impact on Poland's energy security would consist of a lack of gas supply but it is not enough probed that the election of Gazprom or a different company would harm it. Moreover, the reasoning to affirm that there is a breach of the principle of energy solidarity is not clear. This Court ruling is part of Ukraine's battle to maintain its Russian deliveries through its territory, doing so preventing the construction of Nordstream 2 which bypasses Poland and Ukraine. The ECJ's ruling would force Gazprom to send higher volumes to Europe through Ukrainian pipelines. This reasoning is formally based on legal reasons, but it can just apply to the Russian company, as other providers are not co-owners of onshore pipelines. If the rationale was avoiding Gazprom's monopoly, the outcome only avoids the company using the same pipeline, not the monopoly. Applying the 50% rule to Gazprom, allows other Russian companies to provide the rest? The plea before the Court aims to "make it harder for Russia to use gas deliveries to put pressure on Kyiv", confess one of the Polish lawyers[76].

For Russia, gas pipelines are a major diplomacy tool. A majority of European countries depend on Russian energy imports as the only provider. When the Ukrainian gas company refused to pay its debts to Gazprom, Russia cut off gas supplies to Ukraine and, days later, halted all Russian gas flows via Ukraine. The immediate consequence was a vulnerability feeling in the energy-dependent European countries[77]. The national interests of some countries which joined the EU years after this 2009 crisis, created a distorted narrative presenting Russia as the cause of it.

These reasons convinced the Commission to amend the Directive to ensure that all major pipelines from third countries comply with EU rules and are accessible to other operators[78]. These requirements mark the culmination of the energy internal market. The main, even the single, subject bound by this apparently neutral and general rule is Gazprom; eventually, other Russian companies that export gas to the EU. Therefore, the most suitable source to rule it would be a decision, not a directive.

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[75] Opal Case, Case T-883/16 Poland v. Commission, Judgment 10.9.2019, ECLI:EU: T:2019:567.

[76] *Financial Times* sept.2019, https://www.ft.com/content/b50eb806-d3eb-11e9-a0bd-ab8ec6435630

[77] PIRANI, S., STERN, J., YAFIMAVA, K., "The Russo-Ukrainian Gas Dispute of January 2009. A Comprehensive Assessment", *Oxford Institute for Energy Studies*, NG 27, 2009, https://www.oxfordenergy.org/wpcms/wp-content/uploads/2010/11/NG27-TheRussoUkrainianGasDisputeofJanuary2009AComprehensiveAssessment-JonathanSternSimonPiraniKatjaYafimava-2009.pdf

[78] Third natural gas directive amended by the directive (EU) 2019/692, *cit.* Germany asked for the annulment of this directive and submitted the case to the dispute settlement mechanism of the Energy Charter Treaty.

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In order to avoid an impoverished legal discussion[79], several questions deserve special attention within the general debate about the extraterritorial scope of the EU norms. The first is that the amendement is exclusively an answer to the legal problems raised by Nord Stream 2. Usually, law-making should be a general task whose outcome should be applied to abstract legal subjects. Law-making just for a specific legal subject and close to a legal controversy with this one should be discouraged as a legal technique. The consequence is a politicised implementation of the rule.

The second point is the scope of the EU normative power. The question is whether the EU can rule with effects beyond its territory, including territorial waters? The answer is negative concerning pipelines. In the EEZ, Member States have to authorize activities but they may not refuse it if the activities follow the environmental rules; and offshore import pipelines may be laid in international waters, according to UNCLOS[80]. Moreover, it is doubtful the violation of Member States' powers in the energy field, by the amended directive.

The third point is that Gazprom is paying half of the cost of the pipeline and European private investors, the rest, in the case of Nord Stream. All of them agreed with the current situation of this infrastructure's exploitation. The European Union cannot ignore that energy policy is not an EU exclusive competence and Member States retain the power to decide on the balance of energy sources they choose and the way to assure their energy supply following, of course, the EU guidelines concerning decarbonization targets and free-market competition rules. Gazprom can outcompete any other suppliers in a liberalized market. Any restriction to this competition, just for protecting less competitive producers and higher prices, is not benefiting citizens and is contrary to a free energy market. Asking for increasing competition between gas suppliers is a legitimate aim within the EU. Extending the scope of the EU regulations and directives beyond the EU territory would mean that no foreign investor will be interested in the construction of pipelines reaching the EU if there is no advantage from his investment.

There are different solutions for the EU energy déficit: continue to use mainly Russian energy; follow US suggestions and sanctions; reduce energy imports from Russia and ban the ones from Iran and just buy American liquefied gas from fracking, or make a determined bet on nuclear energy. The last option is not such an option as many countries, especially Germany, are against any use of nuclear power. Using the Middle East or Northern Africa energy is even more volatile and risky than Russian and Iranian markets. The US option is there but it has two big inconveniences: first, its price, including long transportation and the cost of liquefication and further gasification, and, second, it continues the EU dependency on hydrocarbons instead of investing in renewable energy infrastructure. According to the

[79] TURKSEN, U., *EU Energy Relations with Russia: Solidarity and the Rule of Law*, Routledge, London & New York, 2018. Turksen criticized a debate where the substantive and normative issues are somewhat neglected.
[80] VINOIS, J-A., BROS, T., *cit*., p.8.

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new Lisbon Treaty articles on energy policy, it seems more convenient for the EU to save money from energy gas and oil and invest the savings in renewable energy technology.

2. Trends toward a Strategic Partnership

The fields analyzed here are current concerns but can become areas of renewed cooperation if both sides realize how dependent they are on each other. So, I will outline useful trends for an improvement of the bilateral relationship between the EU and Russia, and eventual upgrade. The areas are trade, security, and energy. I will add some ideas on the material support of a new agreement.

An EU-EaEU cooperation agreement. Since its very origin, the EU tried to promote integration within different regions in the world, such as South America, Central America, and the Arab Maghreb Union. It acts with the conviction that the application of its principles of the free market and regional integration must promote economic growth and, therefore, political and social stability. Thereby, instead of promoting competing regional orders in their common neighbourhood, the EU and EaEU should promote gradual cooperation allowing them to recover the commercial exchanges to a level similar to 2011-2012. Following this trend would allow the consolidation of the Eurasian regional integration through the Eurasian Economic Union and, at the same time, the EU will promote this regional order in its Eastern neighbourhood, just as it does in the Southern neighbourhood promoting Maghreb regional integration.

The priority for the Union to promote regional orders, following the EUGS, finds its basis in the convenience of dealing with similar regional Organizations instead of bilaterally with each of their countries when the development level is different and no candidate status is possible or suitable. This is the case for Eastern partners whose economic level is very much lower than the EU's one. They are not ready for open competition within the EU market. A progressive path to bigger convergence is easier within a regional organization, more convenient for the third countries involved and not so expensive for the EU in terms of financial support. Because EU membership is not at stake, there is no need to share values[81], if there is no mutual consent, as the EU is doing with other trade partners.

[81] The current institutional dividing lines across Europe, informed by different *project philosophies,* are not easy to bridge. See, I. Timofeev, "'From Lisbon to Vladivostok' how the notion of a Greater Europe is at risk", *Russia Beyond the Headlines,* 12 December 2014, https://www.rbth.com/opinion/2014/12/12/from_lisbon_to_vladivostok_how_the_notion_of_a_greater_europe_is_at_r_42187.html. On the competition of legal/philosophical perspectives, and Russia's difficult relationship with Europeanization, see J. MARKO debate "Ideological Backlash in Russia: The Roll-back of 1991? Legal and Political Implications", *Rev.Central Eastern European Law*, 2017. The ideological gap can also be perceived in the approach to International Law, L. MÄLKSOO, *Russian Approaches to International Law*, Oxford University Press, Oxford, 2015.

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There are obstacles to the promotion of a regional integration system in the Eastern European neighbours, open to Central Asia countries too. First political ones: the eventual opposition of the Baltic countries and other EU Member States. The firsts denounce Russian pressures, and Russia denounces the hostility and human rights violation of some Baltics towards citizens of Russian origin. Transit through the Kaliningrad oblast is the second issue of concern; however, an interregional association would improve the living conditions in this territory. A different political problem is the misalignment of Member States' bilateral agendas and programs. Even if the 1999 EU Common Strategy on Russia was supposed to provide a common orientation for actions towards Russia, its ambiguity made it useless as a basis for concerted action. A fourth political problem to deeper cooperation between two regional integration organizations is the mutual mistrust, partially due to mutual ignorance of the other's motivation to act. Finally, the biggest political problem is the Ukrainian crisis and war due to the signature of the association agreement with the EU that would jeopardize the Eurasian free-trade zone membership, and the threat Kyiv could join NATO. Since the annexation of Crimea and the war in Donbas, the EU suspended talks on visas and on a new agreement between the EU and Russia, as well as most cooperation programs. It also approved specific measures against Russia concerning access to capital markets, defence, dual-use goods, sensitive technologies, including the energy ones, and new financial operations with EIB and EBRD.

Apart from these political obstacles, there are also others, more technical, concerning standards' harmonization. The DCFTAs imposed technical standards changes on the EaP countries. These changes lead to further distancing from the Russian ones. The adaptation of EaEU weaker economies to the EU standards for having closer economic ties with it, makes Russia fears that European goods flooded the Eurasian market if some of its members also become part of a DCFTA. This problem arose when both regional initiatives went from ambiguity in their aims and tools to specific engagements. Using Delcour words, with the EaP and the ECU/EaEU, the EU and Russia left the soft-law integration paths, which lacked precision and binding character[82]. In fact, ENP would be compatible with the EaEU, or association agreements and even DCFTA compatible with CIS; but DCFTA are not compatible with the EaEU.

Conscious of the economic unequal situation between EU and EaP countries, when countries like Armenia showed their interest in retaining economic ties with Russia and refused Brussels's DCFTA, the EU developed a strategy of slow a more gradual convergence toward a common economic space program. The Comprehensive and Enhanced Partnership Agreements is a new formula, tailored for Armenia, Azerbaijan and Belarus, fully compatible to their commitment to the EaEU. It is tailored because of the exclusion of a DCFTA, the gradual adaptation to EU standards as long as they were compatible with Eurasian ones, and

[82] KEMBAYEV, 2016, *cit.*, p.350. On the EaEU Court, he outlines the setback against a judicial body similar to the CJEU.

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the lack of big conditionality, as almost no common values exist with them[83]. This seems a step in the direction of regional integration promotion. Because of the economic level and the traditional commercial networks, it seems normal that Ukraine, Belarus or Moldova, as well as the Southern Caucasus republics, had the legal possibility to integrate into the Customs Union with Russia. Once reached the trade liberalization among them and reduced essential asymmetries, it will be easier for the EU to agree on a free trade area with the EaEU. Even if some of its members are stepping closer to the EU market.

The big stone in the EU's shoes is Ukraine. The current government played a more balanced game looking for his country's interests; from an economical point of view, a big part of its exports goes to Russia, i.e. military equipment excluded from the DCFTA. A hypothetical accession to the EaEU would imply a raise of its WTO-agreed tariffs and eventual compensation to WTO members. Before the Ukrainian crisis, the Russian position was everything except soft. Or it pays for these compensations, or it imposes economic sanctions against Ukraine if it refuses to join the Eurasian market, and Ukrainian products flood Russia. According to Dragneva and Wolczuk, there is no evidence of this DCFTA negative impact on Russia; but the positive impact depends on the Russian adoption of EU norms[84]. Technically, Russia would be able to introduce anti-dumping tariffs, limiting imports of Ukrainian products or lowering the quotas for them. As punitive measures are precluded due to both WTO membership, extra-legal measures even against WTO rules would be imaginable. Once the association agreement with the EU is in force, its implementation is costly and raises concerns among domestic players. Many oligarchs and businessmen have a big interest in access to the Eurasian Economic Market, which, moreover, does not ask for any democratic conditionality[85]. In this vein, it would eventually be the perfect shelter for some EU members whose regression in democratic achievements, boosted by populist governments, is evident after several years.

Related to the Ukrainian crisis and war is the problem of sanctions against Russia and some economic assets and persons in Ukraine. A de-escalation of the tension asked for a progressive lift of sanctions as Russia and Ukraine covered stages of the Minsk agreements implementation or a new peace agreement. Here again, one should avoid fully blaming Russia for the situation. Although the responsibility for the use of force is Russian, the EU also has a share of responsibility as it denied Russian effective involvement in the process of the EU-Ukraine association agreement negotiation that would have an important impact on

[83] See the work plan, *20 deliverables for 2020*, and the Joint Communication "Reinforcing Resilience – an Eastern Partnership that delivers for all", 18 March 2020, *cit*.

[84] DRAGNEVA, R. and WOLCZUK, K., "Russia, the Eurasian Customs Union and the EU: Cooperation, Stagnation or Rivalry?", *cit*. They highlight the endeavour to undermine the rationale for Ukraine's political association and free trade agreement with the EU.

[85] The continuing preference for a 'pic-and-mix' approach to economic integration is clear in Ukraine since its independence, as shown by DRAGNEVA, R. and DIMITROVA, A. "Patterns of Integration and Regime Compatibility: Ukraine Between the CIS and the EU", in K. Malfliet, L. Verpoest and E. Vinokurov (eds), *The CIS, the EU and Russia: Challenges of Integration,* Basingstoke and New York: Palgrave Macmillan, 2007.

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Moscow and produced a perception of a continuous threat to Russian interests. As well, it is contributing to continuing a dead-end war that only harms Europe. Under the current armed conflict, it is not possible to imagine such a de-escalation path. Only after the war, both sides will be in a position to think about future steps.

The sanctions have been unsuccessful, as they do not change Russia's behaviour about Ukraine, or boost opposition to Putin. They have put the EU in a dead-end situation[86]. What is worse, Russia feels self-sufficient toward the EU and has tried to crash its members' united action. A negotiated solution where both parties share the responsibility and give in to their claims is the only way out. The General Court judgment on 24 September 2019[87] annuls the freezing of funds of seven members of the former Ukrainian ruling class, including V. Yanukovich, former President of Ukraine. The judgment is valuable, first for reviewing the lawfulness of a CFSP decision applying human rights criteria. In this case, the extension of restrictive measures yearly, based on judicial procedures in Ukraine without verifying the respect of procedural rights. Second, in doing so, it sets a limit to the EU sanctioning power. The judgment gives rise to reconsidering the sanctions imposed and to relaxing and, eventually, suppressing the same.

However, the solution to the conflict should be envisaged first, by Ukraine and Russia[88]. Once the foundations for a pacification process in Ukraine had been laid, the issue of regional integration regimes and their compatibility can be addressed properly; notwithstanding this bilateral dispute, the situation in the other EaP countries can be managed as well.

If Moscow accepts some level of legal flexibility too, the two actors, the EU and Russia, would be working in favour of the neighbouring countries and not just using them for geopolitical purposes. Finally, this would be a way to reach the old European dream to have a free trade area from the Maghreb to Vladivostok, but not necessarily imposing EU rules. A better Russian economic level would have the effect of less isolationism and gradual evolution of its political position; which seems impossible in the short run, under the current hostility.

A Pan-European security understanding. In the security field, the competition approach should be changed also by a non-confrontational one, allowing cooperation in areas of mutual

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[86] PATANE, C & DRURY, C., "Russia plays the (triangular) sanctions game", in Birchfield & Young, *cit.,* pp.119-137. They summarize the available options: increasing capital scarcity and the cost paid by the Russian population causing a drop in public support; letting the sanctions drop or making the cost of the sanctions less damaging; maintaining the sanctions because the alternative will be a Putin's victory.

[87] General Court of the European Union, Judgment 24.09.2019, case T-300/18, Yanukovych v. Council, *ECLI:EU: T:2019:685* and seven more cases of Ukraine's former rulers.

[88] SAKWA, R., *Frontline Ukraine: Crisis in the Borderlands*, I.B. Tauris & Co Ltd., London, 2014, pp.238-250. He warns of the difficulties as the core conflict between the West and Russia is not so much about principles, but rather, about the question of who has the right to set them.

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interests like the fight against international terrorism, the openness of EU CSDP missions to Russian participation and, eventually, in the middle term, an Organization able to provide security from Vancouver to Vladivostok.

EU and Russian strategic mistakes made the relationship decline, even before the Ukrainian crisis in 2014. The reasons for the subsequent disagreements and misunderstandings were the European fear of a strong-again Russia, feeling encouraged by the new EU Member States in Eastern Europe; and the US pressure, probably to avoid a *rapprochement* between the EU and Russia against its interest.

Any NATO or CSTO reinforcement can be read as a threat on the other side. However, the existence of frozen conflicts and shared security challenges make clear the need for a collaborative approach to security.

Arakelyan stated that Eurasia needs a different security architecture embedded in broader regional and global dynamics, and will consider the interests not only of Russia, the EU and the United States but also of the six countries. I cannot fully agree with the need for different security architecture, but mainly for agreed measures to reduce tensions and solve frozen conflicts.

Under the current tension, only confidence-building measures are possible. OSCE would be the appropriate framework for this. However, the presence and power of the US become an obstacle to a pan-European security understanding as most of the security threats to Moscow come from the US (withdrawal from disarmament treaties, missile shield in Europe, etc). This is the reason why disarmament talks used to be bilateral and not within the OSCE framework. The Eastern European countries should be the object of such confidence measures. At the same time, a joint effort to solve the frozen conflicts should be developed. However, the requirement for the resolution of the current impasse in EU-Russia relations is a peaceful solution to the Ukrainian conflict.

Continuing involvement in cross-border cooperation, under the EU financial support, is a constructive activity that can help to maintain a link with Brussels and to regularize peaceful cooperation.

A distinguished group of American, European and Russian former officials and think tank experts recommended before the Munich Security Conference 2020 several steps[89] to greater security in Ukraine and the Euro-Atlantic region that can be taken as the foundation for the stability and further integration of the shared neighbourhood region. Restore the Joint Centre

[89] Euro-Atlantic Security Leadership Group (EASLG), Statement, *Twelve Steps Toward Greater Security in Ukraine and the Euro-Atlantic Region*, February 2020. The Atlantic Council published a paper against this proposal, Flawed peace plan for Ukraine doesn't pass muster, 14 February 2020, https://www.atlanticcouncil.org/blogs/ukrainealert/flawed-peace

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for Control and Coordination (JCCC), establishing a military-to-military crisis management dialogue and improving unrestricted access and freedom of movement is a good starting point for confidence-building measures that could facilitate the full implementation of the Minsk agreements. And finally, addressing the problem of missing persons and a demining plan would be necessary in order not only to end the conflict but to gain peace. These measures can be a good starting point.

3. A balanced legal framework for EU-Russia energy relations

Not being an exclusive EU competence, European energy policy should scrupulously respect the division of powers between the national and the supranational levels. Not a few criticisms arose for the ECJ's interpretation of the solidarity principle[90] that clashes that division.

This shared power entails different energy relations of EU Member States with Russia; selective bilateral approaches that undermine a unified normative approach. The most substantive issues in this field are between EU and Member States' competencies, and their political consequences often fall within the CFSP. Thereby, the external energy trade is still a field within national hands. And, as Turksen says, a comprehensive and unified legal framework that governs the EU's external energy trade and security is painfully missing. As long as, at the moment, this external energy policy is mainly a foreign policy decision, the EU rules and its judicial interpretation should respect this division of powers. There is no breach of solidarity when the energy supply is guaranteed thanks to the onshore pipelines and diversification of sources and providers. The Roadmap on energy cooperation EU-Russia 2050 contained useful measures for bilateral cooperation in this field, looking for a slow evolution from Russia's dependence on oil and gas exports to green energy development, without economic detriment. Unfortunately, after the Ukrainian crisis, in 2015, the Commission denounce this policy document.

In summary, the European Union is in a period of reflection about its future after geopolitical changes consolidated and a new economic crisis as a consequence of the covid-19 pandemia. The "geopolitical battle" among big powers, this time the declining US and the elusive and calculating China, is setting the international agenda again. The traditional transatlantic alliance is almost over, in "brain-death" even if the European side insists on its good health, or just on the need for deep amendments. US disconnection from European security but also economic and political relations is evident. Moreover, the EU is still adapting to the Brexit crisis, months after the UK withdrew from the Union. The exit of another Member State is not impossible.

On its side, Russian Federation was forced by the circumstances to strengthen ties with China. The rapprochement with China occurs in a state of need for Russia when the partners impose sanctions and via NATO threatened Russian interests and security. However, as the

[90] TURKSEN, *cit.*, p.3.

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French President Macron pointed out, the alliance with Beijing cannot be durable as long as Chinese hegemony is against Russian national pride.

Under these circumstances, French President stated that Europe should strive in the long term for better relations with Russia; the current sanctions didn't change the Russian behaviour[91].

The past Russian Europeanism, even if difficult, should be recovered. This "return to Europe" took place after the end of the Soviet Union. Gorbachev proposed "the European common house", keeping the soviet political and economic system. His successor, Yeltsin, joined the return to Europe where Russia would live together with the rest of the Continent under a liberal democracy and a market economy[92]. How to understand Europeanization related to Russia? In order to reach fruitful cooperation, Europeanization shall be a process to follow by both sides, the EU and Russian Federation. Legal, political approximation and adjustment cannot be only a process of assimilation to the current EU rules and standards. It should be understood as a way to look for creative formulas allowing mutual understanding, benefits and convenience.

For good outcomes, the three sides, the EU, Russia and the neighbourhood should accept some basic changes.

The EU has to be careful about the imposition of its normative view, even if it has to act according to it, but cannot impose it on third countries, except if these are candidates for membership. It also has to guarantee the security of energy supply to countries such as Poland and Ukraine in the application of the principle of solidarity. The suspicions of EU neighbours towards the Union, even in a different area, can be clearly seen in the reaction of Southern neighbours that, after the Arab springs tend to see the normative imposition as a way of new colonialism. The EU reaction has been clear and it is now more interested in economic growth, security and stability, than in exporting political models. It is clear in the relationship with the Maghreb, especially with Morocco, which is benefiting from successive upgrades in its relation with Brussels even if its achievements in human rights, rule of law or democracy are not evident[93]. This pragmatical approach will be even more productive in the case of the Eastern neighbours and Russia where the chances for a certain Europeanization,

[91] Statement by President E. Macron. "Macron calls for better long-term relations with Russia", *France 24*, 15.2.2020, https://www.france24.com/en/20200215-macron-calls-for-better-long-term-relations-with-russia

[92] TSYGANKOV, A. P., "Finding a Civilisational Idea: 'West', 'Eurasia' and 'Euro East' in Russia's Foreign Policy", *Geopolitics*, 12, 2007, pp.375-399, and SAWKA, R., "Russia and Europe: Whose Society?", *Journal of European Integration*, 33, n.2, 2011, pp.197-214.

[93] The third EUGS report implementation, concerning the Sahel, emphasizes the EU association with the African continent in a variety of fields as strengthening regional cooperation with the Sahel and the integrated approach as a nexus between security and development. It highlights the political association between the EU and G-5 Sahel countries to improve governance, security, stability and anti-terrorist fighting through G-5 Sahel joint force and the three EU missions in the region. It looks for strengthening development cooperation through economic support and the creation of the Sahel Alliance for more and better financial aid and coordination between the EU and the Sahel countries.

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after reaching the modernisation of its productive means and economic improvement, are bigger.

Russia should proscribe the use of sophisticated coercive tools, or cross-domain coercion, as used in Ukraine[94]. Even if sometimes the EU, and especially the US, use these tools, the Union wants to be a normative power. Russia cannot reproduce past models of dominance. Only a more cooperative and equalitarian model is suitable to counterbalance the attractive EU offer.

The neighbouring countries should understand that the time to take benefit from the EU and Russia, exploiting the confrontation between both, is over. They have a hard job to fight against corruption and the management of the public life by oligarchs who make a clean sweep in public and institutions and business.

The way to formalize this new relationship with Russia is indifferent. Even, for the time being, it seems more suitable not to use a very rigid instrument, like a new treaty, a new PCA, until the terms of the agreement were not clear or continue evolving.

The twelve recommendations made by the former officers and experts group to the Munich Security Conference 2020 included four economic and three political steps to be taken to improve the Euro-Atlantic Security providing first for Ukraine's security, including economic security[95]. The first was to advance reconstruction in the Donbas. It continues with a free trade area, the support for a roadmap on sanctions, and address of radiological hazards. The political ones advised a new dialogue among Euro-Atlantic states about building mutual security, support and defining areas of selective engagement between the EU and Russia, and launching a new national dialogue about identity.

V. CONCLUSIONS

The EU did not know how to manage the end of the Cold War and the Soviet Union. It acted arrogantly with Russia and with the Eastern neighbourhood. ENP, as a form of EU external governance, is perceived as a new form of imperialism. The EaP initiative failed to implement the political and economic reforms in its partner States. The two main reasons for this fiasco are two missing elements: the lack of the membership "carrot" and the EU priority of containing Russia in its traditional sphere of influence rather than enhancing closer relations with the neighbouring countries[96]. The proposed reforms were more a benefit for the EU than an advantage for these countries.

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[94] BUSYGINA & FILIPOV, *cit.*, p.49, ADAMSKY, D, "Cross-domain coercion: the current Russian art of strategy", *Proliferation Papers*, n.54, 2015, IFRI Security Studies Center, p.37. Also, BUSYGINA, I., *Russia-EU Relations and the Common Neighborhood. Coercion v. Authority*, Routledge 2018.
[95] Euro-Atlantic Security Leadership Group (EASLG), Statement, *cit.*
[96] ARAKELIAN, L., "EU-Russia Security Relations: …",*cit*., 2017, p.1.

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Moscow's reaction was a growing hostile attitude towards "the West" and a revendication of the Asian traits of the Russian Federation and its hegemony over the "near abroad". To show itself as a great power, Russia shifted its focus to a legal, rule-based domain of integration competing with Brussels as a normative power in a crucial region.

As Arakelyan says, since the beginning of their relations it was clear both partners had different visions about the post-Soviet space. Russia viewed itself as a regional power, whose interests should be taken into account; and the EU considered it just a stepping-stone to the Union's eastward expansion. Today it is easy to realize the EU's lack of consistency in its external relations, the inability of the neighbouring countries to fully embrace democracy, and the hostile reaction from Moscow. By the time the Cold War end, "the end of the history", it was not so clear.

Having this in mind and looking for a more promising future that allows the EU to show itself as a strategic actor, the interregional association proposal would allow each group of countries keeps its own rules but work together towards a progressive harmonization, avoiding the neighbouring countries the trouble of choosing one group or the other. An interregional association is permitted by WTO rules[97] and would fit better with EU proclaimed multilateralism than a bilateral treaty, as TTIP was. It will provide more economic strength to the association as a whole and each of its members, and bigger political weight to the ensemble. Being a flexible system, it would be maintained despite eventual political changes in some neighbouring countries.

A calmer relationship would discharge Russian aggressivity towards the EU, and vice-versa, favouring concentration on mutual dependence and growth; a more conducive environment towards greater openness and respect for the rule of law.

Remarkably, the EU has no stable or formal conventional relationship with its main strategic partners: US, Russia and China. Russia should be an exception to this paradoxical rule for several reasons. The most important one is our shared neighbourhood. Russia is a European country having borders with the EU and an important controversial shared neighbourhood. Any decision concerning these countries should be made in close cooperation with the other side because their stability is our shared stability, too. Moreover, with the aforementioned strategic partners, there is a refusal on their side to conclude any/a new agreement with the EU. The US doesn't like to engage conventionally. The ambitious negotiations for a TTIP wrecked and there are no perspectives for similar ones; even after the change in the US Presidency in 2021, this orientation did not change. The EU has an old agreement with China that rules the bilateral relationship. However, it doesn't fit well with the current Chinese power and the depth of the bilateral exchange. A new one is technically feasible but politically impossible as long as it had to include the democratic clause. However, in the case

[97] The EU already concluded interregional agreements with Mercosur countries and with Central American countries (SIECA).

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of Russia, even if the PCA's negotiations ended because of disagreements on the content and scope of its provisions, there is no *a priori* position against any kind of new agreement. As a European country, it would strengthen the Pan-European position domestically and globally.

The widespread idea in the nineties, after Fukuyama's *The End of History*, according to which the Western was allowed to act in the former Soviet space imposing its order, is no anymore sustainable, especially in a time of US withdrawal and domestic and international weakness.

Discarding the Cold War mentality involves also surpasses the global competition parameters. Instead, the normative convergence approach to the EaP countries, not unilaterally imposed, but agreed upon with Russia could be a promising and very hard path.

This should be the content of a EU Great Strategy. A strategy that emphasizes cooperative security actions, and expands the framework of a large European market. A strategy that puts aside so much resilience and respects the political models of the countries not belonging to the EU; and this, without renouncing its principles and values, and in full respect to international law.

Maybe, the time to play Althusser's way is coming, and the academics, at least, have to be able to separate the science from the ideologies, resisting the imposture of the powers (Spinoza). Enter a new era of communication between the two main neighbours on the European continent can deconstruct the subjectivity and the differences and go behind the EU identity to discover "the other". If the EU and Russia cannot find a universal reason, they will have to find the foundations of common morality in communication and dialogue[98].

[98] LEVINAS, E., *Humanisme de l'autre homme*, St. Clément de Rivière, ed. Fata Morgana, 1972, and *Entre nous. Thinking-of-the-other*, 1st. ed., New York, Continuum, 1998. Habermas, J., *Moral Consciousness and Communicative Action*, MIT Press, 1990.

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