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Coherence in the European Neighbourhood Policy (ENP)

A legal and political analysis of the ENPs eastern dimension

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Abstract

The EU's external relations may be viewed as an outcome of member states' as well as EU policies stemming from the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) . This fragmented legal order makes it difficult for the Union to act coherently in the pursuit of its ceaseless goal of speaking with a single voice towards the wider world, thereby asserting its own identity on a world stage (Art. 3 (5) TEU). The European Neighbourhood Policy (ENP) has been designed as a prototype to meet the challenge of coherent policy making. Nevertheless, practice reveals several drawbacks in the ENPs legal and political design as well as a fragmentation of different instruments that deal with the EU's relations with its eastern and southern neighbours. The theoretical aim of erecting a prototype of coherence should therefore not be equalled with the actual promotion of a coherent policy towards certain neighbours. In this vein, the present thesis questions the extent to which the EU's policies towards its eastern neighbourhood contribute towards coherent external action in that region. By drawing on pertinent scholarship, it is argued that the ENPs innovative nature in light of coherence primarily stems from its distinct placing within the TEU. This allows the policy to create a unique hybrid legal nature within and outside the Union's legal order that streamlines soft and hard law instruments towards the common objective of human security. By utilizing the quantitative analysis model of van Vooren (2012), the present thesis seeks to determine the extent to which these propositions regarding coherence can be successfully replicated onto the ENPs eastern dimension. It is claimed that while the Unions policies towards its eastern neighbours are capable of fostering coherence through overcoming the EU's competence divide internally, its effective external application may be hampered by the Union's inability to determine a clear *finalité* on the matter and the policies lack of focus on the countries where the actual on-ground situation requires EU action the most.

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Introduction

The external policies of the European Union (EU) may be viewed as an outcome of its fragmented constitutional order. Member states' and EU's external competences as displayed in the Treaty of the European Union (TEU) and the Treaty of the Functioning of the European Union (TFEU) have to interrelate in order to achieve EU external action. This process leads to complicated interaction procedures which include a large variety of actors, operating with diverging institutional logics. As a result, the Treaties underline the importance of consistent and coherent EU policies in general and external action in particular (Art. 13 (1); 16 (6) or 21 (3)). Despite of this call for coherence, several authors have highlighted the Union's struggle to produce policies that assert its single identity on a world stage (e.g. Cremona & Hillion, 2006). According to van Vooren (2012), this incoherency in EU external action can be seen as a partial cause of the EU's famous 'capability-expectations-gap': The divergence between the increasing expectations towards the Union within and outside the EU and its capacity to actually consent and engage its limited resources towards a clear end – the EU's interests as an external actor (Hill, 1993).

In dealing with the Union's neighbours, the European Neighbourhood Policy (ENP) has been designed as a particular solution to this problem, both legally and politically. It was erected in 'an institutionally, topically and geographically all-encompassing fashion' (van Vooren, 2012, p. 1) aiming to ensure that the Union speaks with a single voice towards its eastern and southern neighbours and thereby contributes to asserting its identity on the world stage (Art. 3 (5) TEU). In that context, the present thesis poses the following research question:

To what extent do the EU's policies towards its eastern neighbourhood contribute towards coherent external action in that region?

In posing this particular research question, the present thesis contributes to the ongoing academic debate about the extent to which the ENP can be seen as an effective solution to the EU's external coherency struggles. The scope of this thesis does not allow for a comprehensive approach, dealing with both, the EU's southern and eastern neighbours. In this vein, the reasons for choosing the ENP's eastern dimension are two-fold: First, after the Arab Spring, academic attention has been less focused on the eastern and more directed at the southern-Mediterranean neighbours. By focusing more on the eastern dimension, this research may contribute to and further future discussion. Second, the eastern dimension is most promising in detecting the newest developments of the ENP in general and with regard to coherence in particular as it has developed more rapidly than its southern counterpart in the past couple of years, with three newly paraphrased Association Agreements (AAs) in 2013-2014.

Before outlining the approach that is followed by this thesis in answering the research question, the subsequent part will give a short overview about the ENPs essence and its establishment. This will underline why the ENP in general and its eastern dimension in particular were worth exploring as a potential solution for the Union's coherency problem – in both geographic as well as substantive terms.
According to Cremona & Hillion (2006), the development of the ENP as such does not come as a surprise, as the need for an overarching and coherent policy framework towards the EU's immanent neighbourhood has been well-established. After the dissolution of the Soviet Union, Partnership and

Cooperation Agreements were offered to the Newly Independent States (NIS) in the 1990s as a weaker alternative to the European Association Agreements that were initiated with the Central and Eastern European Countries (CEECs). Due to significant effort of several southern member states, most notably Spain, the 1995 Barcelona Ministerial Meeting launched the 'Barcelona Process', which established the 'Euro-Mediterranean Partnership' (EMD). One of its core achievements was the establishment of AAs with the Palestinian Authority, Tunisia, Morocco, Israel, Egypt, Algeria and Lebanon. In 1997, the Commission published its famous Agenda 2000 where it was pointed out that an 'enlarged Union will have more direct frontiers with Russia as well as frontiers with Ukraine, Belarus and Moldova' (European Council, 1997). In 1998, the Council argued that 'the EU has the greatest long-term common interests and the greatest need for coherence and effectiveness' with its neighbours (Council of the European Union, 1998). As a result, the first common strategies were drafted on relations with the EU's neighbouring countries: Russia, Ukraine, the Mediterranean and the Western Balkans. However, their aim to facilitate coherence through cross-pillar decision making has not been fulfilled for a variety of reasons, including their strong connection the EU's Common Foreign and Security Policy (CFSP)(Cremona & Hillion, 2006; Van Vooren, 2012).

In response to changing external borders in the framework of the fifth enlargement, the Union thus aimed at creating a new mechanism to widen and deepen its relations with its new neighbours. However, as the initial impetus for neighbourhood policy came mainly from Sweden, Germany and the UK, the ENP was firstly directed towards the eastern neighbours only. In August 2002, Chris Patten, former Commissioner of external relations, and Javier Solana, former High Representative for CFSP, equally proposed in a joint letter to direct the Union's first emphasis on a 'Wider Europe' towards the east (Pattern & Solana, 2002). However, several southern member states, notably France, insisted on broadening the geographic scope of the ENP to include the Mediterranean rim as well. As a result, the current policy includes in total twelve countries: Armenia, Azerbaijan, Egypt, Georgia, Israel, Jordan, Lebanon, Moldova, Morocco, Occupied Palestinian Territory, Tunisia and Ukraine (van Vooren & Wessel, 2014). Consequentially, the ENP can be characterised as a *geographically* all-encompassing umbrella policy. The 2008 war between Russia and Georgia however accelerated and gave substance to individual member states' demands to develop a more clearly defined eastern dimension. As a result, the Eastern Partnership (EP) was launched in 2009 to deepen the relations between the Union and Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. Relations to Belarus were suspended shortly afterwards due to the country's continuous violation of human and fundamental rights (van Vooren, 2012). As a result, the current ENP has *de facto* developed an eastern and a southern dimension (EMD vs. EP). It was argued that the ‚split' between southern and eastern neighbours is likely to further contribute to the policy's overall coherence as it allows for a stronger regional focus to be maintained (Hillion, 2009). Nevertheless, the ENP remains in force as a political umbrella entailing 'all initiatives which share the neighbourhood as their geographical focus and which have certain methodological and financial approaches in common' (van Vooren & Wessel, 2014, p. 542).

The ENP was however not only created as a comprehensive policy in geographic but also in *substantive* terms. That it is conceived as a single-framework policy becomes evident from its legal-institutional set-up as well as its policy contents. The ENP is preliminary enforced through binding contractual agreements (AAs and PCAs) and non-binding Action Plans (APs). In case of the ENPs eastern dimension, these are relatively uniform in structure and content and range thematically from economic cooperation to energy policy, political cooperation and human rights to security matters.

This list in non-exhaustive and incorporates both TEU and TFEU matters under a single policy framework. In addition, the instruments were erected in consultations between the Commission, the Council, the member states and the neighbours. As a result, academic scholars have argued that the ENP as well as its eastern dimension reflect the EU's aim to erect a legal, institutional, geographical and political prototype for coherent external action (van Vooren, 2012).

Nevertheless, practice reveals several drawbacks in the ENPs legal and political design as well as a fragmentation of different instruments that deal with the EU's relations with its neighbours. The theoretical aim of erecting a prototype of coherence should therefore not be equalled with the actual promotion of a coherent policy towards certain neighbours. This in turn leads us once again to the purpose of this thesis, namely to examine the *extent to which the policies of the Union towards its eastern neighbours are promoting coherent external action in that region*. In this endeavour, three sub-questions have been posed and dealt with in chapter 1-3 of this thesis accordingly. The first sub-question reads as following: *What is the meaning of coherence in EU law and policy?* Hence, Chapter 1 conceptualises coherence as the underlying notion of this thesis and illustrates its importance for EU policy making by highlighting its role as a constitutional principle of EU law. Furthermore, an analytical framework for examining coherence is provided that will serve as basis for Chapter 2 and 3, where the actual enquiry into coherence in the ENP will be conducted. As a start into this analysis, the second sub-question was formulated as following: *To what extent is the attainment of the requirement of coherence affected by the ENPs legal base, objectives, methodology and variety of instruments?* The method applied in doing so is a literature review that seeks to inform the reader about the current state of the academic discussion regarding the topic of coherence in the ENP. Thereby, the aforementioned idea of the ENP as a prototype of coherence will be further explained. It will be argued that while the ENPs legal base, objectives as well as it's variety of instruments incline the potential of fostering coherent EU external action, results may be hampered by the inherent paradox of applying pre-accession methodology to a policy that is specifically designed as an alternative to EU membership. These final assumptions are further assessed in light of the ENPs eastern dimension by Chapter 3, which deals with the following sub-question: *To what extent are the policy instruments of the ENP's eastern dimension successful in promoting coherent EU external action?* By using a quantitative content analysis, the third chapter examines the core policy instruments of the EU with its eastern neighbours in order to determine whether these instruments are not only theoretically but also actually a prototype for promoting coherent external action in that region. The main findings will be summarised in a conclusion and streamlined in light of the main research question.

Chapter 1: A theoretical framework for coherence in EU law and policy

Before making some assessment of the ENP and its eastern dimension, one should briefly look at the core legal and political concept of this thesis- i.e., the concept of coherence. Why is it important for an EU policy to be coherent and how can coherence be defined and assessed? It can certainly be viewed as a rather 'elusive notion' (Portela & Rabe 2008, p.2) that entails an 'ambiguous character' (Cremona, 2008a, p.13). Henceforth, one needs to concretely conceptualise what is meant by coherence in the framework of this thesis and establish a concrete working definition thereon. As a result, the present chapter deals with the following sub-question: *What is the meaning of coherence in EU law and policy?* In order to answer the question, section 1.2 sheds more light on the meaning of coherence by contrasting it to the notion of consistency. Section 1.3 takes the definition further by arguing that coherence can be seen as a constitutional principle of EU law, thereby underlying its fundamental status in EU law and policy making. Sub-sequentially, section 1.4 establishes a framework to examine coherence as a legal and political principle, which will serve as the basis of this thesis. The conclusion summarises the findings (section 1.5).

1.2 Consistency or Coherence?

Upon conceptualising 'coherence', an initial problem arises when looking at the different language versions of the Treaties, as they do not refer to the same term. While French, Italian, German, Dutch and other languages use "cohérence", "coerenza", "Kohärenz" or "samenhangend", the English version applies the term "consistency". As pointed out by several authors, the concepts of coherence and consistency imply a distinct legal meaning (Hillion, 2008; Duke, 2011 Koutrakos, 2001; Nuttal, 2005; Wessel, 2000). While consistency is seen as the mere 'absence of contradictions' (Wessel, 2000, p. 1150) the notion of coherence seems to go beyond sheer compatibility by referring to the idea of positive connections through mutual reinforcement of policies, defined as 'synergy' (Gauttier, 2004,p.26). Moreover, consistency is a static concept whereas legal coherence can be defined as a matter of degree. That implies that while legal concepts can be more or less coherent, they cannot be more or less consistent: They are either consistent or not (Tietje, 1997). From a legal point of view, one could thus argue that decisions not meeting the requirements of consistency would run the risk of being nullified while the broader and more flexible nature of coherence permits a more balanced and incremental approach (Wessel, 2000). Accordingly, consistency may be a condition for coherence, but it cannot be judged as being sufficient on its own (Tietje, 1997). As a result, "coherence" sets higher benchmarks for EU policies and is more difficult to grasp and conceptualise than the pure 'absence of contradiction' (Portela & Rabe, 2008).

According to Tietje (1997), it becomes evident that the Treaties refer to the notion of coherence and not, as the English version indicates, merely to consistency. A short analysis of the selected treaty provisions regarding the EU's external relations in the English version of the Lisbon Treaty will assess this statement.
Consistency can be found in many legal iterations throughout the TEU and TFEU. According to Art. 13(1) TEU, the overarching objective of the EU's institutional framework is to 'ensure the consistency, effectiveness and continuity of its policies and actions'. Additionally, the General Affairs Council (Art. 16(6) TEU) as well as the Council and the High Representative shall ensure 'consistency of the Union's external action' (Art. 18(4) TEU; 26(2) TEU). Consistency is further required as a general horizontal prerequisite as '(t)he Union shall ensure consistency between its policies and

activities' (Art. 7 TFEU). A lot of policy fields do then again refer to the consistency requirement in their individual Treaty section (see for instance 121 (3) TFEU on economic policies, 181 (1) TFEU for research and technology or 196 (c) TFEU on civil protection). Moreover, various external policies of the Union explicitly require consistent action (e.g. 212 (1) or 214 (7) TFEU). Arguably the most important article on coherence (Duke, 2011; van Vooren, 2012) is however Art. 21 (3) TEU which reads as follows:

*The Union **shall ensure consistency** between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, **shall ensure that consistency** and shall cooperate to that effect.*

Art. 21 (3) TEU, emphasis added

As one can observe, the Treaty imposes a binding obligation ('shall') on the EU to ensure and respect consistency in its principles and objectives in all its internal and external policies included in the TEU and TFEU (Van Vooren, 2012). On basis of this strong formal presence of the notion of consistency one can indeed support Tietje's (1997) aforementioned statement. The legally binding obligation of Art. 21 (3) moves clearly beyond the mere absence of contradictions by actually requiring the Union to establish internal and external synergies. As such, the provision would be deprived of its *raison d'être* if it were simply for that purpose (Hillion, 2008). According to Koutrakos (1999), the consistency requirement in the TEU should thus be interpreted broadly, so as to imply more than the mere absence of contradictions. Taking the example of ex- Art. 301 EC on sanctions, he argues that the consistency requirement of ex-Art. 3 TEU entails a relationship based on synergy between the Union's different sub-orders. Support for this statement can indeed be found in the judgement of the Court of First Instance in the *Yusuf and Kadi cases*, where it was held that:

*There are therefore good grounds for accepting that, in the specific context contemplated by Articles 60 EC and 301 EC, recourse to the additional legal basis of Article 308 EC is justified for the sake of the **requirement of consistency** laid down in Article 3 of the Treaty on European Union, when those provisions do not give the Community institutions the power necessary, in the field of economic and financial sanctions, to act for the purpose of attaining the objective pursued by the Union and its Member States under the CFSP.*

Case T-315/01; Paragraph 128, emphasis added

Henceforth, the concept of 'consistency' as referred to in the English version of the Treaty should be understood broadly and indeed closer to the notion of 'coherence'.

1.3. The constitutional legal nature of the principle of coherence

The notion of coherence cannot be seen as a new legal concept, as it has been anchored into the Union's primary law prior the entry into force of the Lisbon Treaty (Tietje, 1997; Van Vooren, 2012). The European Single Act (SEA) already stated that the 'external policies of the European Community and the policies agreed in European Political Co-operation must be consistent' with '(t)he Presidency and the Commission (..) ensuring that such consistency is maintained' (Art. 30 (5) SEA). Moreover, ex-Art. 1 TEU of the Maastricht Treaty stated that the Union's 'task shall be to organise, in a manner

demonstrating consistency (..) relations between the member states and between their people'. As a result, a wide and diverse body of academic literature on the legal nature of the principle of coherence has been established over time. In 1997, Tietje stated 'that it seems clear that the notion of coherence is one of the main constitutional values of the EU' (Tietje, 1997, p.211). This statement was confirmed by Wessel (2000, p.1149), who wrote that 'consistency is adopted as the guiding principle of the EU Treaty'. However, Gauttier (2004, p. 40; 24) ascribed no legal nature to the principle of coherence by calling 'into question its constitutional nature' and arguing that 'for the time being, coherence does not designate a specific legal concept'. Moving fast forward more than a decade, van Vooren (2012, p.59) however stated that 'there should no longer be any doubts as regards the constitutionality of the principle of coherence in a unified but diverse legal order'. This contribution should be read in light of the entry into-force of the Lisbon Treaty in 2007. Indeed, the Lisbon Treaty has very much strengthened the notion of coherence by creating the EU with a single legal personality (Art. 47 TEU) (Cremona, 2008a; Van Vooren, 2012). Moreover, the previous paragraph demonstrated the substantive integration of the principle of coherence into the legal iterations post-Lisbon. Recalling the particular formulations of Art. 13 (1)TEU, 21 (3) TEU and 7 TFEU in particular, it has become evident that the notion of coherence must inform all principles that constitute the EU's legal order.

The status of the notion of coherence as a constitutional principle highlights its importance in EU law, which in turn ascribes a mandatory coherency requirement to the Union's policy making process. This proposition holds true not only in terms of the ENP, but for all external and internal EU policies. One should however keep in mind that coherence does by no mean imply efficiency. Therefore, it is outside the scope of this thesis to enquire any causal links between the ENP and actual on-ground effects within the eastern neighbourhood. Nevertheless, it is still important to note that there is a clear relationship between coherence and effectiveness in the sense that an incoherent policy will most likely endure contradictions and thereby affect the policy's success to a considerable extent (van Vooren, 2012). If the Union strives to have an actual impetus in its neighbourhood, it cannot do so without following a coherent approach.

1.4. A framework with three levels

Before determining the degree of coherence of the Union's policy towards its eastern neighbours, this thesis needs to establish a clear working definition. In doing so, one encounters an initial problem: Coherence as a powerful rhetorical symbol is often used as a grand notion to portray one of the most desirable objectives, but often escapes definition. Intuitively, one may describe coherence as a 'good fit' between the different components of an all-encompassing system. But how can coherence be pinned down concretely without granting a too large normative substance on the object that is aimed to be assessed as being either coherent or incoherent? In order to overcome this dilemma, the present paper seeks to utilise the interdisciplinary framework for examining and furthering coherence which was set out by Cremona (2008a). As a result, the following paragraph will depart from more common distinctions such as horizontal or vertical coherence with the view to establishing a more holistic approach. That being said, it is still useful to briefly draw onto the latter definitions in order to highlight how Cremona's (2008a) analytical prism evolves pertinent scholarship.

Similar to the previous paragraphs, a wide range of analytical frameworks have been established to define the notion of coherence. As highlighted above, one can distinguish between negative and positive coherence. The former implies an absence of conflict and contradictions whereas the latter aims to produce positive connections (Hillion, 2008). Secondly, one can differentiate between institutional and material coherence, where the latter decides whether 'the substance of different policies generated by the EU forms part of a coherent whole' while the former refers to 'the degree to which institution(s) operate (..) coherent(ly)' (Christiansen, 2001,p.747). This distinction seems to coincide with what some scholars refer to as 'internal' and 'external' coherence (Portela & Raube, 2008). However, the notion of external coherence is partly contested. While some scholars define it similar to the aforementioned definition of material coherence (Sick, 2001), others have stated that external coherence refers to the uniform treatment of third countries by the Union (Portela & Raube, 2008; Smith, 2001). Nevertheless, the most common definition when it comes to coherence is arguably the distinction between vertical and horizontal coherence. The former seeks to promote coherence between EU and member state action while the latter refers to inter-policy coherence (Cremona & Hillion, 2006).

The fragmentation of these binary definitions confronts legal scholars with a situation *quod capita, tot sensus,* which makes it difficult to apprehend and assess the notion of coherence (Portela & Raube, 2008). As a result, Cremona (2008a) proposed a three level analysis which aims to capture the multi-layered concept of coherence in a more holistic and integrated manner. The first level encompasses *rules which aim to avoid and resolve conflicts* and thus requires legal consistency. Consequently, there is a need for 'rules of hierarchy' (Cremona, 2008a, p. 14). The first level thus focuses on the coherence of the EU's legal order itself and the vertical and horizontal evaluations which are commonly taken in this context (Van Vooren, 2012). On the vertical side, the principle of pre-emption (Art. 4.3 TEU) and the principle of supremacy of the European legal order promote coherence between the Union and the member states. According to van Vooren (2012) and Schütze (2006), the doctrine of pre-emption is logically prior to the principle of supremacy as the former explains when a conflict arises while the latter establishes how that conflict is going to be solved. On the horizontal side, coherence is embedded in Art. 1 TEU which states that the 'two Treaties shall have the same legal value' and Art. 40 TEU which specifically relates to the CFSP by highlighting that the foreign policy provisions shall not be affected the application of other competences in the Treaties and vice versa. The second level of coherence pertains to *ensure effective allocation of tasks between actors and instruments* (Cremona, 2008a). The central legal norm is the principle of conferral, implying that all institutions act within the level of powers conferred to them by the Treaties (Art. 5 TEU). As a result, competence delimitation is crucial. The third and final level comprises the *positive synergy between norms actors and instruments*. This is expressed in Arts. 4 (3), 13 (3) and 21 (3) TEU as they all impose a legal obligation on EU institutions as well as member states to ensure coherence through cooperation. Hence, member states and institutions should aim towards achieving an 'overriding purpose' or 'a greater good' (van Vooren, 2012,p.71). The 'greater good' is defined in Art.3 TEU in general and 21 (1) and (2) TEU in particular. The duty of cooperation as laid out in Art. 4 (3) TEU can be seen as a tool to achieve that objective (Cremona,2008a).

Cremona's (2008a) three-level-framework can thus be summarised into one central definition which will be used as a framework of analysis in the present paper:

To attain coherence between norms, actors and instruments towards a common objective, between them:

a. *conflicts should be avoided and resolved (first level),*
b. *task should be allocated effectively (second level) ; and*
c. *positive synergies should be achieved (third level).*

The fact that this definition facilitates the display of the constitutional and legal nature of coherence while functionally capturing its connection with external policy constitutes it's the mayor advantage. On the one hand, Cremona's definition (2008a) entails the essence of the well-known binary principles which were mentioned in the beginning of this paragraph (e.g. horizontal and vertical coherence). On the other hand, its tripartite character evolves from its binary predecessors by eliminating their inclination towards oversimplification. Cremona's (2008a) definition is thus most promising in dealing with the aforementioned threat of implying a normative substance on the object that is being judged as coherent or incoherent. As a result, the three-level framework serves as a holistic and integrated base for the upcoming analysis.

1.5 Conclusion

The analysis above aimed at displaying the concrete nature and dimension of the notion of coherence. It was established that the concept of 'consistency', as referred to in the English version of the Treaty, should be understood broadly as to imply the achievement of positive synergies. It should thus be viewed as being closer to the notion of coherence. As a result, the attainment of coherent (external) action should be seen as a binding obligation stemming from the treaties (Art. 21 (3)). The importance of coherence in the EU's legal system was further underlined by demonstrating its status as a constitutional principle which informs all norms that constitute the EU's legal order.

In a final step, a framework of definition for the notion of coherence was established. While all definitions bear the risk of implying a normative choice on the content, the one at hand was chosen due to its potential to present a relatively holistic approach. The following inquiry into the coherence of the ENP in general and its eastern dimension in particular will thus be structured by the following framework: To attain coherence between norms, actors and instruments towards a common objective, between them conflicts should be avoided and resolved (first level), task should be allocated effectively (second level) and positive synergies should be achieved (third level).

In line with the present chapter, Chapter 2 will give an overview about the current discourse of coherence in light of the ENP. It will examine the policy's specific features and outline what contributes, what could contribute, and what threatens coherence between norms, actors and instruments.

Chapter 2: Coherence within the ENP

2.1 Introduction

After having conceptualised and defined an analytical framework for the notion of coherence, the present chapter starts the actual enquiry as to whether the EU's policies towards its eastern neighbours are coherent in that region. Due to the fact that the ENP remains in place as an umbrella policy even after the *de facto* regional split in 2009, it is vital to assess the state of coherence of the policy as a whole before turning more concretely at its eastern dimension.

As highlighted in the introduction, the concept of coherence within the ENP has attracted wide academic attention. In this vein, the ENP was characterised as a legal, institutional, geographical and political prototype for coherent external action whose application may however be threatened by several internal flaws (Cremona & Hillion, 2006; van Vooren, 2012). The chapter at hand aims to explain this statement in more detail with the view to informing the reader about the current state of academic discussion on the concept of coherence within the ENP. The approach followed in doing so is consequentially a literature review. It deals with the following sub-question: *To what extent is the attainment of the requirement of coherence affected by the ENPs legal base, objectives, methodology and variety of instruments?* It is argued that the ENPs innovative nature in light of coherence primarily stems from its distinct placing within the TEU (Section 2.2). This allows the policy to create a unique hybrid legal nature within and outside the EU's legal order that streamlines soft and hard law instruments towards the common objective of human security. However, the transfer of large parts of the EU's enlargement methodology to a policy that is primarily designed as an alternative to accession may threaten the ENPs coherent application (Sections 2.3 – 2.5). The conclusion will evaluate the results in light of coherence, using the aforementioned model by Cremona (2008a)[1] (Section 2.6).

2.2 The EU's competence under Article 8 TEU

With the entry into force on the Treaty of Lisbon, the ENP developed an explicit legal grounding in EU primary law through Art. 8 TEU, which reads as following:

1. The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.

2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.

Despite of the absence of an explicit reference to the ENP in Art.8, the phrasing of the provision remarkably resembles the wording of several documents establishing the ENP. According to the Commission's first communication on the ENP - 'the EU should aim to develop a *zone of prosperity and a friendly neighbourhood* (..) with whom the EU enjoys *close, peaceful and cooperative relations*'

[1] Review section 1.4

(Commission, 2003, emphasis added). As a result, one can confidently state that discussions on the ENP have led to the inclusion of an explicit neighbourhood clause into the Treaties (Petrov & Van Elsuwege, 2011). However, Art. 8 TEU is not the first provision that contains the idea to introduce a special legal iteration concerning the Unions relations with its periphery. In fact, Art, I-57 of the Treaty establishing a Constitution for Europe (TEC) is textually identical to Art. 8 TEU. Nevertheless, Art.8 significantly differs from its predecessor with regard to its distinct location. Art. I-57 TEC was included in Part I TEC as the only article of the unique Title 'The Union and its Neighbours' which preceded the Title on EU membership (Title IX), to which it was thus related. By contrast, Art. 8 is embedded into the TEU's 'Common Provisions' including the Union's foundation values, basic objectives and fundamental principles. As a result, Art. 8 TEU lacks formal linkage to any other legal iteration on external actions (Hillion, 2013; Petrov & Van Elsuwege, 2011). The article's inclusion as a specific legal grounding within the TEU, but yet outside from the CFSP, embodies the ENPs all-encompassing character which is intended to remain unaffected by the competence struggle deriving from the CFSP/non-CFSP distinction. Furthermore, its exclusion from provisions dealing with external action suggests that the ENP may be perceived as a policy entailing both external and internal competences. As part of the common provisions, the ENP is thus to be mainstreamed into other policies. Consequentially, the EU's institutions should take the ENP into account when exercising Union competence. If effective, this constitutional integration could significantly contribute to enhancing the degree of coherence of the Union's actions in general and towards its neighbours in particular (Hillion, 2013).

Coherence may further be strengthened by the explicit scope and objectives of Art. 8 TEU. When examining the article's specific wording in more detail, one can observe that the mandatory expression 'shall' entails that the EU is under an explicit obligation to 'develop a special relationship with neighbouring countries'. As a result, Art. 8 may be seen as a legal provision establishing an expressed mandate to act (Hillion, 2013). As such, it significantly differs from enlargement policy, which only prescribes engagement if the applicant fully complies with the Copenhagen Criteria (Art. 49 TEU). By contrast, the decision to engage with neighbours in light of Art.8 TEU is not subject to conditions but compulsory. Only the modalities of the engagement, and thus the strength of the relationship and the actions undertaken, are conditioned to the behaviour of the neighbour (Grabitz, Hilf, & Nettesheim, 2013; Hillion, 2013). Belarus, Syria and Libya may serve as examples to highlight this progress. While being original members of the ENP in 2005, the three countries have been excluded due to non-compliance with the values outlined in Art. 3(5) TEU(van Vooren & Wessel, 2014). Nevertheless, they still receive founding from the European Neighbourhood and Partnership Instrument (ENPI), with the view to promoting these core values (European Commission, 2014a).

Upon further scrutinising the article's language, it becomes evident that the vague and undefined notion of a 'special relationship' highly resembles the 'special privileged links' which characterise AAs according to the ECJ (*C-12/86 Meryem Demirel v. Stadt Schwäbisch Gmüd*). Furthermore, the reference to 'rights and reciprocal obligations' is drawn from Art. 217 TFEU on formal association (Hanf, 2011). On the one hand, this strong resemblance with the lose formulations of Art. 217 may grant Art.8 a similar degree of flexibility which would allow for a variety of bonds with third states. On the other hand, one may question whether Art. 8 (2) TEU can be seen as a legal base for a new type of agreement which is distinct from Art. 217 TFEU (Blockmans, 2011; Grabitz et al., 2013; Hanf, 2011; Hillion, 2013). While several authors have answered this question in the affirmative (Hanf, 2011; Petrov & Van Elsuwege, 2011), van Vooren & Wessel (2014) argue that Art.8 TEU simply

denotes the core objectives of the EU's engagement with neighbouring countries without confirming additional powers upon the Union. The fact that the draft agreements of the EU with Ukraine, Georgia and Moldova are utilising Art. 217 TFEU as a legal base confirms their argument. Art. 8 should thus be seen as a political aspiration and not as a binding competence (Grabitz et al., 2013; Blockmans, 2011). As such, Article 8 goes beyond the aforementioned flexibility criterion of Art. 217 TFEU: Due to the absence of a specific legal base, it encourages the ENP to be constructed effectively within as well as outside the Union's legal order (van Vooren & Wessel, 2014). This epitomises the policies all-encompassing and inclusive nature that draws together all instruments and competences at the Union's disposal to strive for a relationship with a vague, but ultimate *finalité*: 'An area of prosperity and good neighbourliness founded on the values of the Union'. By explicitly referring to 'the values of the Union', Art. 8 is retreating from the language hitherto utilised in the ENP documents, which commonly refer to 'shared' or 'common' values. As such, Art.8 entails a normative shift in EU policy towards the neighbours. It is thereby more consistent with the EU's general interest to be a normative power in that region, 'acting in coherence with its own political foundations, in line with the general prescription of Article 3 (5) TEU' (Hillion, 2013, p.5).

In light of the above, one can argue that Art. 8 TEU entails the potential of contributing towards a more coherent EU policy towards its neighbours. By inclining a binding and transformative mandate to act, the Lisbon Treaty adapted the *nature* of the EU's policies towards its neighbours. Thereby, the direct reference towards the 'values of the Union' (Art. 8 TEU) encapsulates a normative shift that furthers coherence by bringing the EU closer to its general direction of external action in line with Art. 3 (5) TEU. However, the most important step in light of coherence is arguably the inclusion of Art. 8 TEU as a legal provision in the TEU but yet outside from the other provisions on EU external action. Its integration in the TEU's 'Common Provisions' allows the EU to create an all-encompassing policy that remains unaffected by the competence struggle resulting from the CFSP/non-CFSP distinction. However, Art. 8 and its distinct placing go even further than that: As Art. 8 does not serve as a distinct legal base for setting out new agreements, the ENP may be created within as well as outside the Union's legal order. This is turn enables a combination and integration of all instruments and competences at the EU's disposal into a single policy design.

The present section argued that the ENPs legal base may further coherence by enabling the erection of an institutionally and topically all-encompassing policy design. The following sections will scrutinise whether the ENPs methodological design and variety of instruments live up to that promise (section 2.3 & 2.4). It will be argued that while the integration of legal and non-legal instruments into a single policy furthers the ENPs coherent application (section 2.4), it's resemblance to the EU's pre-accession policies bares several methodological drawbacks that are likely to nurture incoherency (section 2.3).

2.3 A methodology inspired by the cohesive EU accession policy

As highlighted in the previous section, the wording of Art. 8 TEU is clearly inspired by Art. 217 TFEU on EU pre-accession (section 2.2). However, the parallels of the ENP and the EU's enlargement policy do not end there (van Vooren & Wessel, 2014). In particular, the methodological framework and the instruments of both policies highly resemble each other. Henceforth, the following section will outline the ENPs most common resemblances with the EU's pre-accession framework. It will be argued that while the EU's enlargement policy certainly entails aspects that further coherence,

several methodological drawbacks arise upon transferring large parts of the EU's accession methodology onto a policy that is primarily designed as an alternative to enlargement.

The Union's accession policy has been developed by the EU's institutions and the member states with the view to preparing candidate countries to becoming members of the Union (Maresceau, 2003). It has been framed as the EU's most successful foreign policy tool, whose efficiency is mainly caused by a unique system of multi-layered conditionality (Kelley, 2006). Remarkably, the EU does not rely on negative conditionality in the sense that candidates are sanctioned if reforms are not conducted. Instead, a unique system of positive conditionality was developed where rewards are either given or withheld depending on whether certain benchmarks were fulfilled (Manners, 2003; Moravcsik & Vachudova, 2002). The policies are then pursued under bilateral a AA, whose importance also lies in its institutional arrangement which facilitates the 'creation of paritary bodies for the management of the cooperation, competent to take decisions that bind the contracting parties' (EEAS, 2001). The AAs with the different candidates are negotiated, initiated and ratified in a common manner which is outlined in Art. 218 TFEU. Alongside these legally binding bilateral agreements, a soft law scheme was established that monitors and guides the reform process for each individual country. In this vein, individual 'accession partnerships' are arguably one of the most central instruments. Being drafted by the Commission in consultation with the candidate, the accession partnerships set a tailor-made scheme aimed at facilitating the adaption of the Copenhagen Criteria. The Commission evaluates the candidate's performance on meeting the required targets in annual progress reports. In turn, the Council establishes on the basis of these reports the evolution and pace of the accession negotiations. In a final step, the Council informs the European Council, acting as the decisive arbiter on the matter (European Commission, 2003; Cremona & Hillion, 2006; van Vooren & Wessel, 2014). Summarising, one can thus state that enlargement requires the legal approximation of the *aquis as a whole* by the candidate country. As the aquis cuts across the EU's diverging legal competences and sub-orders, the very nature of accession entails an integrated and coherent approach. Moreover, enlargement policy comprises a *de facto modus vivendi* between member states as well as EU institutions. Hence, in substantive as well as institutional terms, the pre-accession policy is an integrated mean to establish a common and coherent EU policy towards candidate states (Meloni, 2007).

In contrast, the 'Wider Europe Strategy' of 2003 established the ENP in response to the growing demand to reconsider the Union's different external policies towards neighbours that share an immediate post-enlargement border. Consequentially, the ENP is explicitly designed as an alternative to enlargement. However, its institutional design did not offer substantially new elements but was based on already existing contractual relations between the parties: The PCA with the Eastern Neighbours from the 1990s and the AAs with the Mediterranean Neighbours that were initiated in the 1995 Barcelona Process [2](Kelley, 2006). Future agreements will also be AAs including a Deep Comprehensive Free Trade Area (DCFTA), as indicated in the provisional agreements with Ukraine, Moldova and Georgia. Similarly to the enlargement framework, the importance of these agreements for the ENP lies in their institutional arrangements, which are however not of equal value. AAs establish Association Councils as well as Association Committees, which are endorsed with delivering binding decisions pertaining to the functioning of the agreement. As a result, these decisions form for part of the EU's legal order. The Cooperation Council and Parliamentary Committee established by

[2] Review the Introduction

the PCA are however only allowed to issue legally non-binding recommendations (Lannon & Van Elsuwege, 2004). Therefore, the intended transformation of the contractual agreement between the EU and Moldova, Georgia and Ukraine also upgrades the inter-institutional relationship erected by the agreements. Analogously to the pre-accession methodology, the implementation of the PCAs/AAs is further supported by non-binding instruments, above all APs. Based on prior 'country reports', they were drafted by the Commission in consultation with the Council, the HR for CFSP and in cooperation with the country concerned, while member states were kept informed (van Vooren, 2012). After the approval of the European Council and the following adaption on side of the EU, APs were adopted in the PCA/AA Council with the relevant partner countries, which highlights the crucial role joint ownership is supposed to play within the ENP:

Joint ownership of the process, based on the awareness of shared values and common interests, is essential. The EU does not seek to impose priorities or conditions on its partners. The Action Plans depend, for their success, on the clear recognition of mutual interest in addressing a set of priorities. These will be defined in common consent and will thus vary from country to country.

European Commission (2004, p.8)

Therefore, the drafting of the APs seeks to include increased partner involvement and consultation (Manners, 2003; Del Sarto & Schumacher, 2005). By setting out concrete and customised targets, steps and priorities, APs tailor the ENP more to the individual needs of the neighbouring country in order to avoid 'exporting mechanically an alleged European model of development' (Meloni, 2007, p. 105). As a result, the APs facilitate greater differentiation between the neighbouring countries. Similarly to the individual accession partnerships, the action plans provide a 'benchmark roadmap [that brings] about needed reform' (Solana, 2006). The deepening of the EU's 'special relationship with neighbouring countries' (Art. 8 TEU) is thus subject to the neighbours progress in fulfilling commitments towards strengthening the rule of law, democracy and human rights, market and economic reforms and cooperation on CFSP as well as JHA matters, such as terrorism or migration. As a result, the issues dealt with under the ENP are all-encompassing in nature and involve the projection of EU laws, norms and values as a whole. This process is reminiscent of the admissibility condition of candidate countries: The legal approximation of the Copenhagen Criteria. Indeed, the Commission even evaluates the implementation of the AP as well as the state of the overall EU-neighbour relationship in 'progress reports' and 'country strategy papers'(Cremona & Hillion, 2006; Meloni, 2007). Consequentially, one can detect a clear focus on positive conditionality within the ENPs methodology (Delcour & Tulmets, 2009; Tulmets, 2006, 2007). According to Meloni (2007, p.105), this development is far from surprising: If stability, prosperity and security are the core objectives, legal approximation 'is the instrument *par excellence'* to attain these goals.

It has thus become apparent that the ENP's legal methodology heavily draws on the techniques used during pre-accession. First, the ENP is equally comprehensive in that it encompasses the Union *as a whole.* Secondly, the ENP's institutional set-up reproduces, to a large extent, the institutional collaboration developed in the context of the 2004 enlargement, even though that system has been regarded as being outside the EU's ordinary constitutional *modus operandi.* In particular, both methodologies entail a prime role for the Commission and heavily rely on the institutional arrangements enabled by and incorporate in their underlying contractual agreements. Thirdly, both methodologies involve a combination of legally binding and non-binding instruments to further a progressive and tailor-made approach. Fourthly, the both methodologies employ a system of multi-

layered, positive conditionality through benchmarking and monitoring (Meloni, 2007; van Vooren & Wessel, 2014). However, the extent to which conditionality is applied varies between the two policies. Enlargement policy uses the 'accession carrot' in order to triggers reform in the candidate countries (Balfour & Rotta, 2005). As a result, pre-accession methodology is EU-driven and asymmetric as the criteria to be met by the candidates are unilaterally determined and non-negotiable. By duplication the conditionality principle onto the ENP, the policy turns into an instrument that projects the EU's norms, values and institutional practices onto the Union's periphery. However, in contrast to pre-accession policy, the ENP lacks the powerful leverage of accession which allows the creation of a coercive methodology in the first place (Gebhard, 2010). Consequentially, the Union tries to attract neighbours into following its norms and values by incorporating the principle of joint ownership into the ENP's design. This implies that the policy's methodology should be based on equality and solidarity in the relationship or at least on the idea that the EU as well as the neighbour contribute towards the policy's design. However, the resulting symmetric approach creates an inherent paradox with the asymmetric nature of the conditionality approach described above. Consequentially, the aim to create a joint approach is seriously threatened by the coercive element that is implicit in the use of conditionality, which risks turning the ENP into an asymmetric and EU-driven policy towards its neighbours (Kelley, 2006). Several authors have thus criticised the ENP as being essentially a *unilateral policy* aiming to change and secure the EU's environment without giving appropriate attention to the neighbours needs and preferences (Casier, 2012; Cremona & Hillion, 2006).

As a result, the transfer of the EU's pre-accession methodology into a policy aimed at being an alternative to enlargement is ultimately paradox. According to Lynch (2003) the better the ENP succeeds, the less the policy can legitimate the exclusion of the membership perspective, because with the fulfilment of ENP criteria the conditions for membership are *de facto* being met. Bluntly speaking, if the ENP thrives in the case of countries falling under the scope of Art. 49 TEU, it will create candidates. If membership is excluded, extended political cooperation, a 'stake in the internal market' and access to additional funding schemes are however the only precisely defined long-term goals (Missiroli, 2003; Sasse, 2010). In case of Ukraine, Georgia and Moldova –who have declared EU membership as a strategic objective in the past- these may be achieved if the new AAs including DCFTAs enter into force. In that endeavour, Hill (1993) famously stated that the EU suffers from a 'capability-expectations' gap: The divergence between the increasing expectations within and outside the EU *vis-a-vis* the Union and its capacity to actually consent and engage its limited resources towards a clear end. Upon transferring this statement to the ENP, one may argue that due to the policies incapability to define a clear long-term incentive, most of the neighbours' and some of the EU's/member states' expectation cannot be met. As a result, one may question the ENP's effectiveness, efficiency as well as its overall *raison d'être.* (Hill, 1993; Van Vooren, 2012).

Concluding, one can argue that the aim to transfer a pre-accession methodology onto a policy aimed at being an alternative to enlargement results into several inherent tensions and paradoxes, which compromise the ENP's effectiveness and efficiency. On the one hand, the use of conditionality seriously threatens joint action and turns the ENP essentially into a uniform and asymmetric policy. On the other hand, the exclusion of membership cause the rise of a 'capability-expectations gap' as with the fulfilment of the ENP criteria the conditions for membership are *de facto* being met. The lack of a promising *finalité* that actually creates incentives for neighbours to adhere to the EU's norms and values therefore questions the policies *raison d'être.*

Nevertheless, the focus on pre-accession methodology also entails several features that incline the potential to enhance coherence within the ENP. All policy areas at the Unions disposal are being integrated into a single framework, thereby representing the Union as a whole. Of course, the inclusion of so many diverging aspects could also be an essential source of incoherence in the sense that it may lead to disorganisation of the policy's actions, interests and application. However, the ENPs may overcome this threat of incoherence through a methodological design that avoids internal procedural threats by cutting across the EU's diverging legal competences. The accession methodology is particularly suitable in achieving the latter as it unites the Union, its member states and the third state under a common framework that integrates the divergent legal sub-systems of the EU through the establishment of a common application procedure. As such, the procedural threats that stem from the internal competence divide are simply being bypassed. Consequentially, the EU is – in theory- left with a policy that is all-encompassing in its scope without being negatively affected by the internal competence divide that generally dominates EU external action.

This is where the following section starts, as it explains the instruments with which this all-encompassing scope is implemented and the effects this variety of instruments has on the attainment of coherence within the ENP in more detail (section 2.4).

2.4The hybrid legal nature of the ENP

The previous section has already indicated that the ENP is, similarly to the EU's enlargement policy, based on legal contractual as well as non-binding soft law agreements (section 2.3). The upcoming section uses this observation as a starting point and explains the legal nature of the ENPs diverging instruments in more detail. In this vein, the section at hand will highlight why this mix of policy instruments in general and the use of soft law in particular furthers the ENPs coherent application.

According to Art. 288 TFEU, the Union may use five different instruments to exercise its competences. While regulations, decisions and directives are binding and form part of the Union's legal order, recommendations and opinions are so called soft-law instruments which 'shall have no binding force' (Art. 288 TFEU). Most peculiarly, the ENP has been able to integrate contractual and non-contractual agreements as well as legislative and non-legislative instruments into a single policy and thereby developed a unique hybrid legal nature (Van Vooren, 2009; 2012). While being founded on AAs or PCAs, the ENP has largely been developed and substantiated on a wide range of different soft-law instruments which include but are not limited to: European and Ministerial Council Conclusion, Commission Communications, Strategy Papers, Progress Reports, Memorada of Understanding, Non-papers or Action Plans (Casier, 2012; Cremona, 2008b).The occurrence of soft law in the ENP's legal design is at first sight not surprising. According to van Vooren (2009,p.17), it has become evident that 'most if not all of the Union's internal and external policies' draw on a variety of soft-law instruments to further the policy interests of the actors concerned. As the conclusion of a PCA/AA is a prerequisite for the ENP, one would however assume that the legal commitments stemming from the underlying contractual agreement form the policy's central point of reference. It has however been argued that the ENPs core is rather formed by the APs, as they substantially transforms the legal agreement on which they are based (van Vooren, 2009). As a

result, the following seeks to uncover the particular preference for the soft legal nature of the ENPs main instruments and the consequences this choice has on the policy's overall coherence.

The conceptualization, exercise and usefulness of soft law within EU's legal framework is still very much contested. It goes beyond the scope of this thesis to deal with all aspects of the debate. To highlight just some of the views: Senden (2005,p.109) has argued that the notion of soft law constitutes a *contradiction in terminis* in the sense that 'soft law without legal effect is not law, and soft law with legal effect is hard law'. Thürer (1990,p.232) tries to mitigate the imbroglio by vindicating that soft law can be placed in the midpoint between 'hard law' and 'no law'. According to him, the notion refers to norms in the twilight between law and politics as it expresses 'commitments which are more than policy statements but less than law in its strict sense'. Borchard & Wellens (1989, p.285) go one step beyond this statement by arguing that even though soft law concerns 'rules of conduct which find themselves on the legally non-binding level' they 'have to be awarded a legal scope' by their drafters. In line with this train of thought, Senden (2005,p.112) has proposed the following definition of soft law:

Rules of conduct that are laid down in instruments which have been attributed legally binding force as such, but nevertheless may have certain (indirect)legal effects and that are aimed at and produce practical effects.

Accordingly, one can detect several core elements that constitute soft law: First, soft law entails rules of conduct or commitments of normative nature that invite its addressee to adopt certain behaviour. Second, even though not legally binding, soft law may still contain indirect legal effects. Third, one can observe that it is aimed to generate a practical effect through voluntary compliance (Senden, 2005; Snyder 1994). With regard to the EU in general and the ENP in particular, one should further distinguish between 'EU-inwardly focused documents' such as Commission Communications, or Council Conclusions and 'EU outwardly focused documents' as for instance APs (van Vooren, 2009,p.15). Zooming closer to the ENP, one can confidently state that Senden's definition applies to many if not all underlying soft law instruments. Especially the outward-looking APs aim to 'produce practical effects' in that they 'develop an increasingly close relationship, going beyond co-operation, to involve a significant measure of economic integration and a deepening of political co-operation' (EU-Georgia Action Plan, 2003, p.1). However, in comparison to its hard law counterpart, soft law instruments lack legal certainty and legal force due to their inability to deter non-compliance by actors though legal rule as well as through incurring responsibilities and the resulting possibility for reparations for injuries (Shelton, 2000).

It is however undisputable that these elements are hardly compatible with the ENP's methodological design based on partnership and joint ownership (section 2.3). The ENP thus focuses on voluntary compliance with soft law, thereby achieving its objectives through desired practical effects (Meloni, 2007). The soft law follows the aforementioned substantial rational of achieving indirect legal effects by aiming to practically implement at least parts of the *aquis* in a third country. Even though it lacks durability, the APs soft law character thereby allows for enhanced flexibility and dynamism. Due to the fact that they are more easily replaced and complemented by new ideas or documents, soft law instruments facilitate a learning process of actors and institutions over time (Abbott & Snidal, 2000; Knauf, 2010). Consequentially, they can enhance communication, comprehension and compromise between institutions and actors (Schwarze, 2011). In that sense, it is less difficult to adapt APs to changing political and economic circumstances as its soft law character avoids burdensome and

interminable adaption procedures. If the APs all-encompassing nature would have been transferred to a hard law instrument, the Union, member states and third countries would all be parties to the resulting cross-pillar mixed agreement. As a result, a number of substantial legal procedural questions would have to be clarified: Who will negotiate the agreement? What procedure is to be followed? Where does the responsibility for a breach lie? (Hillion, 2007). In that sense, the negotiations for a binding contractual agreement might be too burdensome from a theoretical and practical perspective. An example would be the inclusion of the notion 'welcoming of Ukraine's European aspirations' which can be found in the EU-Ukrainian AP: Its adaption into the EU-Ukraine AA has been heavily contested for a number of years (van Vooren,2009). This may also stem from the fact that contractual agreements incline the potential of becoming part of the legal order with all its concomitant legal effects. In *C-265/03 Simutenkov* the ECJ gave direct effect to a non-discrimination clause in the PCA with Russia as it had similarly done for AAs in its earlier ruling C-*12/86 Demirel*. Even though the ECJ urged national courts in *C-322/88 Grimaldi* to take soft law into consideration, it is still very much unlikely that APs will at any time be sufficiently clear, precise and unconditional. The General Court confirmed this assumption in *T-258/06 Commission v Germany* where it was argued that soft law cannot produce legally binding effect on third parties and is therefore not pliable for judicial protection. Henceforth, it is easier to formulate substantial, precise and ambitious statements in a soft law instrument due to its mere political nature. Therefore, Abbott & Snidal (2000) argue that soft law instruments are more able to manage uncertainty as they are capable of arranging agreements which are precise but not legally binding. As highlighted in the previous section, the issue of EU-membership is a highly uncertain topic within the ENP (section 2.3). Consequentially, it does not come as a surprise that APs are used to further and transform the objectives set out in the legally binding contractual agreement, as they embody a mean to manage ambiguity as well as different expectations.

Concluding, one can argue that even though soft law is generally said to lack enforceability, legal certainty and durability, it can be used to attain practical effects through voluntary compliance. In the framework of the ENP, APs are remarkably suitable to attain the policy's methodological goals of partnership and joint ownership. In sum, they are a) flexible and dynamic and thereby easier to adapt and modify, b) require less intensive negotiation procedures and are a lot simpler to adopt than contractual agreements c) more precise and substantial due to their political nature and thereby exceptionally promising in managing uncertainty d) do not form part of the EU's legal order. Indeed, these characteristics are ideal to overcome legal procedural and substantial difficulties resulting from the multilevel framework underpinning EU external relations. Additionally, compromise and uncertainty in the EU-neighbour relationship is manageable. Consequentially, the preference for soft law APs instead of binding agreements stems from their ability to overcome internal and external legal and political constraints. Hence, the core benefit of APs is that they allow member states and the EU to achieve actions more coherently, without paying too much attention to the underlying competence divide, while enhancing consent with third parties.

The present section outlined the potential of the ENPs hybrid legal nature to draw together different norms, actors and instruments, and how the inclusion of soft law instruments brought procedural innovation to that end. The upcoming section will take this observation one step further by explaining how these different instruments can be aligned towards a common end.

2.5 The ENP as a coherent human security policy

Section 2.2, 2.3 and 2.4 have already highlighted that the ENPs soft and hard law instruments integrate all external competences at the EU's disposal into a single policy. As a result, the ENP thematically ranges from human rights and the rule of law to economic and social integration or environmental protection (European Commission, 2014b). While an all-encompassing scope is clearly promising for coherence in terms of reflecting a comprehensive projection of the EU's values and objectives as a whole, its vastness may also be a source of incoherence in the sense that it may cause disorganisation of the policy's actions, interests and application (section 2.3). Additionally, academic scholars face an initial problem upon determining the extent of coherence within the ENP: Its vast scope is highly difficult to assess (van Vooren, 2012).One solution that overcomes both problems is the outline of an organising principle, such as a common objective, towards which all interests, values and objectives could be streamlined (Cremona & Hillion, 2006).

The ENP's launch by the Solana/Patten letter of 7th August 2002 has already pinpointed towards the existence of such a common objective:

There are a number of overriding objectives for our neighbourhood policy: stability, prosperity, shared values and the rule of law along our borders are all fundamental for our own security. Failure in any of these areas will lead to increased risks of negative spill-over on the Union.

Patten & Solana (2002, p.1)

As one can observe, the ENP is placed into a strong security grip. Indeed, the focus on security is not an incidental component, but can be traced back to several factors. On the one hand, the terrorist's attacks of September 11th lead to greater concern about terrorism and its links with organised crime. On the other hand, it is also connected with the 2003 enlargement, which placed greater emphasis on securing the newly found EU border to the east. In this vein, Cremona & Hillion (2006, p. 4) have suggested that with regard to the ENP's eastern dimension, 'the concern for security may be traced back to the size, importance and economic potential of the Ukraine as a regional leader'. Thus, when it comes to security, the EU is not only engaged in dealing with present international conflicts in the wider world, but is most vitally concerned with its immanent periphery with the view to securing its own borders. The European Security Strategy (ESS) indisputably confirms the security underpinning of the policies directed at the EU's neighbourhood by placing security into a strong regional footing:

Even in an era of globalisation, geography is still important. It is in the European interest that countries on our borders are well-governed. Neighbours who are engaged in violent conflict, weak states where organised crime flourishes, dysfunctional societies or exploding growth on its borders all pose problems for Europe. (..)The integration of acceding states increases our security but also brings the EU closer to troubled areas. Our task is to promote a ring of well-governed countries to the East of the European Union and on the borders of the Mediterranean with whom we can enjoy close and cooperative relations.

European Council (2003, p. 7-8)

As a result, one can observe a blurring of boundaries between internal and external security whereby the EU's security concerns within its own territory cannot be disentangled from its interest in its periphery:

Over the coming decade and beyond, the Union's capacity to provide security, stability and sustainable development to its citizens will no longer be distinguishable from its interest in close cooperation with its neighbours.

European Commission (2003, p.3)

Hence, Biscop (2010) characterises the ENP as the implementation of one part of the ESS, namely 'Building Security in our Neighbourhood'. Due to the recent uprisings, most notably in Ukraine, security has gained additional momentum in the ENP's framework:

The unstable security situation, (…) underlines the need for the EU to further strengthen its contribution to security in its neighbourhood, thereby also enhancing its own security. (..) The EU, and its Member States through bilateral efforts, have a strong role to play based on the EU's comprehensive approach to external conflict and crises, aimed at preventing and managing conflicts and their causes.

European Commission (2014b, p. 19)

As a consequence, Cremona & Hillion (2006) claimed that security is no longer 'just an aspect of the Common Foreign and Security Policy. Rather it has become a cross-pillar policy in its own rights, creating a potentially more coherent EU external action which integrates the three poles of decision making [member states, EU, EC]'. In this vein, van Vooren (2012) argues that such a 'grand policy design (..) that cuts across institutional and competence boundaries, all focused towards the single objective of security, is surely promising for coherence in external action'. Nevertheless, security must be more narrowly defined in order to attain this objective. Otherwise, security is likely to fail as an operational standard for prioritising actions and decision making within the ENP. As a result, several scholars have argued that the notion of human security, which emerged in the more recent EU discourse, is more useful (Biscop, 2010; Lavenex, 2004; van Vooren 2012). Even though it is also comprehensive, it adds a more normative substance on the final objective of EU external action. The notion is more clearly defined by the 2008 review of the ESS:

Drawing on a unique range of instruments, the EU already contributes to a more secure world. We have worked to build human security, by reducing poverty and inequality, promoting good governance and human rights, assisting development, and addressing the root causes of conflict and insecurity.

European Council (2008), emphasis added

As a result, one can argue that the ENP pursues a *de facto* human security agenda. This choice is validated by the policies greater normative content compared to 'comprehensive security' and by the presence of the concept during the initiation and maturation of the policy by the EU institutions and its member states (van Vooren, 2012). Ferrero-Waldner (2005,p.5) points out that the normative emphasis on human security 'increase(s) coherence in EU external policy since security, human rights and development are inextricably linked'.

However, human security is not being seen as a single objective that can be reached on its own. It is aimed to 'avoid drawing new dividing lines in Europe' by sharing 'the benefits of the EU's 2004 enlargement with neighbouring countries in strengthening stability, security and well-being [prosperity] for all concerned' (European Commission, 2004,p.16; 3). As such, stability and prosperity are the immediate actions that will lead towards fulfilling the overarching objective of human

security (Lynch, 2003; Cremona, 2004). The ENP is a 'framework within which the EU works with its partners towards establishing democracy, strengthening sustainable and inclusive economic development, and building security.' (European Commission, 2014c). Hence, stability refers to democratisation, political reform and good governance and thus mirrors the first Copenhagen criterion. This entails that stability is a pre-condition for democracy in the sense that internal as well as regional stability can be seen as the consequence of political modernisation and democratisation (Casier, 2012; van Vooren & Wessel, 2014). Prosperity is then linked the second Copenhagen criteria. It targets economic reform, the successful transition to a market economy and economic integration. Together, political and economic reforms promise a 'stake in the internal market' whereby gradual reform towards expanding the four freedoms is supposed to achieve stability, prosperity and ultimately human security for the EU as well as the neighbouring countries (Cremona, 2008b). As a result, enhanced economic and political interdependence can be regarded as the underlying means and ends of the policy (Lynch, 2003). However, Meloni (2007) pointed out that the priorities of the EU and the neighbour may well differ. Whereas the EU's central aim is human security, neighbouring countries tend to put greater emphasis on prosperity and/or stability.

Nevertheless, the focus on human security as on overarching concept certainly entails the capacity of fostering coherent EU external action. It offers a solution towards overcoming an initial source of incoherence when encompassing all areas at the Union's disposal: The lack of organisation of EU external action. Moreover, the alignment of objectives makes it easier to assess coherence within the framework of this thesis. It is proposed that synergies between norms, actors and instruments can only be viewed as coherent if they can be aligned towards the human security objective. This proposition will be revived upon analysing the instruments of the ENPs eastern dimension in the following chapter of this thesis (Chapter 3).

2.6 Conclusion: The ENP as a prototype for coherent external policy making?

As outlined in the previous chapter, the EU has been assigned a number of values (Art. 3, 5 (3) TEU) and goals (Art. 21 (3) TEU) upon external policy making (Chapter 1). However, the Union shares these goals and values with its member states and has only been conferred a limited number of competences by Art. 5 (2) TEU to realise them. An external policy such as the ENP is therefore being conducted by a Union composed of legally distinct realms of authority. Consequentially, a coherent ENP inevitably depends on the functioning of legal rules that organise and work around that reality of mutual objectives and divided competences. Therefore, all three levels of coherence should be reflected in the policy's design.

As highlighted in the first chapter, the first level of coherence aims to create legal consistency through *rules which aim to avoid and resolve conflict.* The two central characteristics thereon are inter-policy coherence and vertical coherence through pre-emption and supremacy. The latter is arguably reflected in the dominant role of the Commission in the ENPs methodological design, which pre-empts member states from acting as soon as common rules have been adopted (section 2.3). The former is reflected by the fact that the ENP acts through policies based on the entire set of EU exclusive and shared competences, including competences which are mainly preserved by the member states such as energy, CFSP or police and judicial cooperation. This is partly due to its specific legal grounding outside from the other policies on EU external action through which it circumvents the competence struggle arising from the CFSP-non-CFSP divide. The placing of Art. 8 in the TEU's common provision leaves the ENP with an all-encompassing character that guides various

internal policies towards coherent external action. Additionally, its pre-accession methodology integrates different competences into various legal and non-legal instruments. Especially soft law instruments have said to be particularly flexible, precise and promising in overcoming cumbersome negotiation and adaptation procedures. Within the ENP, APs are therefore arguably ideal to overcome legal procedural and substantial hurdles. They substantially transform the underlying PCAs or AAs as their merely political character helps to further specify and define the action taken according to the principles set out in the contractual agreement. Consequentially, the ENPs legal design also furthers competence delimitation as the interplay between hard and soft seems particularly able to avoid gaps or problematic duplications. This in turn enhances the *effective allocation of tasks between actors and instruments (second level).* Moreover, the ENPs reliance on the institutional arrangements of the PCAs or AAs such as their Cooperation Council surely contributes towards effective task allocation through stimulating cooperation in line with Art. 5 TEU. In a third step, the ENPs policy design also encourages the establishment of *positive synergies between norms actors and instruments (third level).* This result from the fact that the ENP is able to integrate the Union, its member states as well as neighbours into a joint project in a two-folded manner: On the one hand, Art.8 entails an explicit mandate to act for both the EU and its member states in line with their common values and objective as set out in Art. 3 (5), 13 (3) and 21 TEU. On the other hand, the ENPs methodological design equally integrates neighbours in the policy design process through the principle joint ownership. Lastly, the fact that Art. 8 TEU cannot be seen as a distinct legal base for a new neighbourhood agreement facilitates the core organising principle with regard to coherence: An erection of a policy in a legal pluralist manner through a unique hybrid legal nature that seeks to draw together all norms, actors and instruments towards the single objective of human security.

Nevertheless, it has also become apparent that the ENPs policy design entails several inherent flaws that compromise its coherent application. The transformation of pre-accession methodology into a policy designed as alternative to enlargement endangers the ENPs *raison d'être* as the exclusion of membership combined with a weak *finalité* does not grant neighbours a significant incentive for future reform. However, a policy design based on soft law depends on voluntary compliance to achieve practical effects as it is unable to deter defiance and incur responsibilities. As a result, the use of the methodological concept of conditionality to promote and export the 'values of the Union' (Art.8 TEU) may neither be fruitful nor in line with the principle of joint ownership.

Concluding, one can therefore state that the ENPs legal and political design certainly aims to promote the creation of synergies between norms, actors and instruments. In this sense, it is likely that the policy has been particularly planned as a prototype for coherent external action. However, this prototype may be threatened by several systematic internal flaws, such as the lack of membership perspective. But what does this concretely mean for the presence of coherence in the instruments of the reformative eastern dimension? It would certainly be beneficial if some of these flaws were addressed in the newly paraphrased AAs with Georgia, Moldova and Ukraine. As a result, the following chapter seeks to shed additional light on the extent to which the framework of coherence has been applied successfully within the ENPs eastern dimension.

Chapter 3: Coherence as a synergy between norms, actors and instruments

3.1 Introduction

The previous chapter has outlined that the ENP has been constructed in a concentrated effort to create synergies between different policy actions towards the EU's southern and eastern neighbourhood. It has been highlighted *in abstracto* how the ENPs legal and political framework brought procedural and instrumental innovation to that end and which factors may hamper a coherent design. It however fell short in explaining what these results mean *in concreto* for the EU's relationship with its eastern neighbours. The theoretical aim of erecting a prototype of coherence should certainly not be equalled with the actual promotion of a coherent policy towards certain neighbours. The following chapter thus seeks to contribute and add to the results of the second chapter by determining the *extent to which the legal and political instruments of the ENPs eastern dimension were successful in promoting coherent EU external action*. The approach followed in doing so scrutinises the individual APs and AAs of Armenia, Azerbaijan, Georgia, Moldova and Ukraine in a cross- country and cross-instrument comparison. The focus of this chapter is thus a legal and political analysis of the third level of coherence: The extent to which positive synergies between norms, actors and instruments are present in the ENPs Eastern dimension.

In a first step, additional light is put on the political and legal foundations of the EU's relationship with its eastern neighbours (section 3.2). It will be argued that the common development process as well as the relationship between the soft and hard instruments led to relative uniformity in content, structure and overarching objective of the ENPs core instruments. Due to these similarities, the ENPs core instruments are particularly suitable as underlying documents for the chosen research design, a content analysis, whose methodology is outlined in section 3.3. After having laid these foundations, sections 3.4 and 3.5 quantitatively investigate the creation of synergies between norms, actors and instruments. Section 3.6 summarises the findings.

3.2 The legal and political foundations of the EU's relationship towards its Eastern neighbours

The introduction has already given a short overview over the ENPs predecessors and establishment. It became evident that the geographic scope of the ENP was initially constructed on the basis of most imperative concerns connected to the EU's fifth enlargement and sub-sequentially shaped by individual member states' interest towards specific areas (Cremona & Hillion, 2006; van Vooren & Wessel, 2012). The idea of initiating a more clearly defined eastern dimension to the ENP has first been mentioned in a Polish-Swedish non-paper of May 2008, partially in response to the French UMed proposal (Non-Paper, 2008). Due to the 2008 war between Russia and Georgia, the proposal quickly gained high-level political support. The European Council of 19-20 June 2008 had invited the Commission to initiate a proposal on an *Eastern Partnership*, but the Extraordinary European Council of September 2008 made the request to augment this task (van Vooren, 2011). According to the European Commission (2008, p.2), the European Council aimed at 'responding to the need of a clearer signal of EU commitment following the conflict in Georgia and its broader repercussions'. The establishment of the Eastern Partnership is thus inextricably linked to the growing desire of the Russian Federation to strengthen its influence, through military means if necessary, within its

neighbourhood (Hillion, 2009; van Vooren 2011). The Joint Declaration of the Prague Eastern Partnership Summit of 2009 therefore emphasised that the Eastern Partnership seeks to 'accelerate political accession' and carry out 'a clear political message about the need to bolster their course towards reforms' (Council of the European Union, 2009, par. 3).

The creation of an Eastern Partnership was initially not accompanied by instrumental change. Henceforth, in 2009, the EU's bilateral relationships with Armenia, Azerbaijan, Georgia, Moldova and Ukraine were still based on the previously highlighted PCAs, which formed the contractual base of the relationship and APs as the core non-contractual agreements (van Vooren, 2012). However, the Prague Eastern Partnership Summit clearly aimed to accelerate and strengthen political and economic association (Council of the European Union, 2009). It therefore does not come as a surprise that the first AA with Ukraine was completed only two years afterwards (Table 1).

Table 1: Timeline of the core contractual and non-contractual relations

Country	PCA	ENP Action Plan			Association Agenda	Association Agreement		
		Jointly developed	*Adoption by EU*	*Joint Adoption in Cooperation Council*		Completed	Initiated	Signed
Armenia	July 1999	Autumn 2006	13/11/2006	14/11/2006	-	-	-	-
Azerbaijan	July 1999	Autumn 2006	13/11/2006	14/11/2006	-	-	-	-
Georgia	July 1999	Autumn 2004	13/11/2006	14/11/2006	-	July 2013	29/11/2013	-
Moldova	July 1998	Beginning 2004	21/02/2005	22/02/2005	-	July 2013	29/11/2013	-
Ukraine	March 1998	End 2004	21/02/2005	21/02/2005	24/06/2013	December 2011	30/03/2012	Political Section 21/03/2014

Sources: EEAS (2014a; 2014b; 2014c; 2014d; 2014e); van Vooren (2012)

Upon further examining Table 1, it becomes evident that the formation of the ENP's core instruments is relatively synchronised across all eastern European neighbours. Of course, one can detect two key groups: Ukraine, Georgia and Moldova on the one hand and Armenia and Azerbaijan on the other hand. The division of these groups does not only result from the fact that one of them was able the initiate an AA. The negotiations of the EU-Georgia, EU-Moldova and EU-Ukraine AP also started up to two years before the ones with Armenia and Azerbaijan. The pro-longed adoption of the EU-Georgian AP can be explained by the consequences arising from aforementioned Georgia-Russian war.

The pioneer role of Ukraine, followed by Georgia and Moldova does not strike as a surprise as these countries have been particularly pro-European in the last few years and forwarded their desire to eventually join the Union, whereas Armenia and Azerbaijan have been more cautious on that matter (Dannreuther, 2006; Sasse, 2008; Leonard & Grand, 2005). As Ukraine has been the first to announce its European aspiration, its AA has also been initiated a year prior the ones with Moldova and Georgia. It is important to note that the AAs with Moldova and Georgia have not been signed yet, while the EU and Ukraine only signed the political part of the agreement. Consequentially, the parts that have not been signed neither confer any rights nor create any legally binding obligations of

public international law (Chalmers et al, 2011). The signing of just one part of the AA is certainly unusual, but can be interpreted as a reaction to ongoing conflict between Russia and Ukraine. To further the association process, the EU and Ukraine have developed an Association Agenda in mid-2013 which seeks to 'pave the way for the Association Agreement and the Deep and Comprehensive Free Trade Area' (EEAS, 2014f). The Association Agenda replaces the EU-Ukraine AP and therefore similarly constitutes a soft law instrument with all the aforementioned features (see section 2.4).

As a result, the APs with all eastern neighbours, the AAs with Georgia, Moldova and Ukraine as well as the EU-Ukraine Association Agenda have been chosen as the core textual sources to extract inferences about coherence from. The PCAs are left out for a straightforward reason: Their design stems from the 1990s and is thus simply outdated. The APs are much more useful in this regard as they have significantly transformed their underlying PCA by adapting the old contractual agreement to the needs of the new neighbourhood policy. The AAs are the newest contractual instruments of the ENP. Henceforth, they provide a useful addition to the APs non-legal character, so that the hybrid legal nature is reflected within the analysis. Additionally, the AAs - even without being signed yet - are of particular importance when making statements about the future development of the ENPs eastern dimension. Moreover, these three instruments are best suited for the study of coherence due to their internal and external comparability stemming from a) the use of *roughly* the same template and b) the resemblance of the subjects discussed between the three templates (Table 2).

Table 2: Overview of the Structure of the Action Plans with the ENPs Eastern dimension, the EU-Ukraine Association Agenda and the Association Agreements with Georgia, Moldova and Ukraine

ENP Action Plans	**Association Agenda**	**Association Agreements**

Introduction
New Partnership Perspectives
(Priorities for Action)
General objectives and action
Political Dialogue and reform
• Democracy and the rule of law, human rights and fundamental freedoms
• Stability of Institutions
• Judicial reform
• Civil service reform
• Fight against corruption
• Cooperation on foreign and security policy, conflict prevention and crisis management
• Weapons of mass destruction, illegal arms trade
• Fight against terrorism
• Regional Cooperation
• Settlement of internal conflicts
Economic and Social Reform
• Macro-economic policies
• Poverty reduction
• Agricultural development and production
• Functioning Market Economy, economic growth and structural reform
• Sustainable development
• Employment and social policy
Trade related issues
• Trade Relations
	Strategic Part
	Principles and instruments for the implementation of the Association Agenda
	Operational Part
	Political Dialogue and reform
	• Democracy, rule of law, human rights and fundamental freedoms
	• Stability of Institutions
	• Judicial Reform
	• Freedom of Assembly, Association, Expression
	• Fight against corruption
	• Equal treatment and minority rights
	• Foreign and security Policy
	• Regional and international issues, cooperation on foreign and security policy, WMD non-proliferation and disarmament, conflict prevention and crisis management
	• International Criminal Court
	Co-operation on Justice, Freedom and Security issues
	• Protection of personal data
	• Migration
	• Readmission
	• Asylum
	• Border management
	Economic cooperation
	• macroeconomic stability
	• sound public finances
	• financial system and sustainable balance of payments
		Text of the Agreement
		• Preamble
		• Title I: General Principles
		  ○ Human rights, fundamental freedoms, democratic principles
		• Title II: Political Dialogue and Reform, Cooperation in the Field of Foreign and Security Policy
		  ○ Political Dialog
		  ○ Domestic Reform
		  ○ Foreign and Security Policy
		  ○ Conflict prevention
		  ○ Regional stability
		  ○ Disarming, Weapons of mass destruction, illegal arms trade
		  ○ Combatting terrorism
		• Title III: Justice, Freedom and Security
		  ○ migration, asylum and border management
		  ○ organised crime and corruption
		  ○ illicit drugs
		  ○ terrorist financing and terrorism
		  ○ Legal cooperation
		• Title IV: Trade and Trade-related Matters
		  ○ National treatment and market access for goods
		  ○ Trade remedies
		  ○ Technical Barriers to Trade
		  ○ Sanitary and phytosanitary measures
		  ○ Customs and trade facilitation

- Customs
- EU harmonised areas: standards, technical regulations, conformity assessments
- EU-non harmonised areas: restrictions and administration
- Sanitary and phytosanitary issues
- Establishment and company law
- Movement of services
- Movement of capital
- Movement of persons
- Taxation
- Competition and state aid
- Intellectual Property
- Public procurement
- Statistics
- Public financial control
- Enterprise policy

Justice , Freedom and Security

- Border management
- Terrorism
- Migration issues (legal, illegal, readmission, visa, asylum)
- Organised crime, trafficking in human beings, drugs and money laundering
- Police and judicial cooperation

Cooperation in specific sectors: including transport, energy, environment, telecommunications, research and innovation

- Transport
- Energy
  - Convergence with EU Energy objectives
  - Convergence with internal gas and electricity markets
  - Energy networks
  - Energy efficiency and renewables
- Environment
- Communication Technologies, Information Society and media

Regional cooperation

- Information Society, Research and Development, Innovation

People-to-people contact

- Education, training and youth
- Public Health
- Culture

Monitoring

Trade and trade related matters

- Trade in goods
- Rules of origin
- Technical regulations on industrial products, standards and conformity assessment procedures
- Sanitary and phytosanitary measures
- Trade in services, freedom of establishment and investment
- Capital movements and payments
- Public procurement
- Competition
- Intellectual property
- Trade facilitation and customs
- Trade and sustainable development
- Transparency of regulations
- Trade and Regulatory Co-operation

Energy co-operation including nuclear issues

- integration of energy markets
- energy efficiency and security
- nuclear safety

Other cooperation issues:

- Public internal control and external audit and control
- Taxation
- Statistics
- Transport
- Environment
- Industrial and enterprise policy
- Company law, corporate governance, accounting and auditing
- Financial services
- Information society
- Tourism
- Agriculture and rural development
- Fisheries and maritime policy
- Science and technology
- Space
- Consumer protection
- Social co-operation
- Public Health
- Education, training and youth
- Culture
- Sport and physical activity
- Civil society cooperation
- Cross-border and regional cooperation
- Audio-visual
- Participation in Community Programs and Agencies

Resources

Monitoring and reporting provisions

- Establishment, Trade in services
- Current payments and movement of capital
- Public procurement
- Intellectual property rights
- Competition
- Trade-related Energy provisions
- Transparency
- Trade and sustainable development
- Dispute settlement
- General provisions on approximation

- Title V: Economic Cooperation and other sector cooperation*
  - Macro-economic cooperation
  - Economic dialogue
  - Public Finances
  - Employment and social policies
  - Taxation
  - Statistics
  - Energy, Environment, climate action
  - Industrial and enterprise policy
  - Company Law
  - Financial Services
  - Information society
  - Tourism
  - Agriculture, Fishery
  - Public health
  - Education, Training and Youth
  - Culture
  - Civil society
  - Regional development
- Title VI: Financial Assistance, and Anti-Fraud and Control Provisions
  - Financial Assistance
  - Anti-fraud and control policies
- Title V II: Institutional, General and Final Provisions
  - Institutional provisions
  - General and Final Provisions

Annexes to the Agreement

- Part I (Annex I to XV)
- Part II (Annex XVI to XXI)
- Part III (Annex XXII to XXXIV)

Protocols to the Agreement

- Protocol I (Title IV: Trade and Trade-related Matters)
- Protocol II (Title IV: Trade and Trade-related Matters)
- Protocol III (Title VII: Financial Assistance, and Anti-Fraud and Control Provisions)

*In the EU-Georgia AA, Title V is only on Economic Cooperation and Title VI on Other Sector Cooperation whereas the fields are merged into a single Title in the AAs between the EU and Moldova /Ukraine, which is highlighted above. As a result, the order of the priorities mentioned above varies within the three AAs.

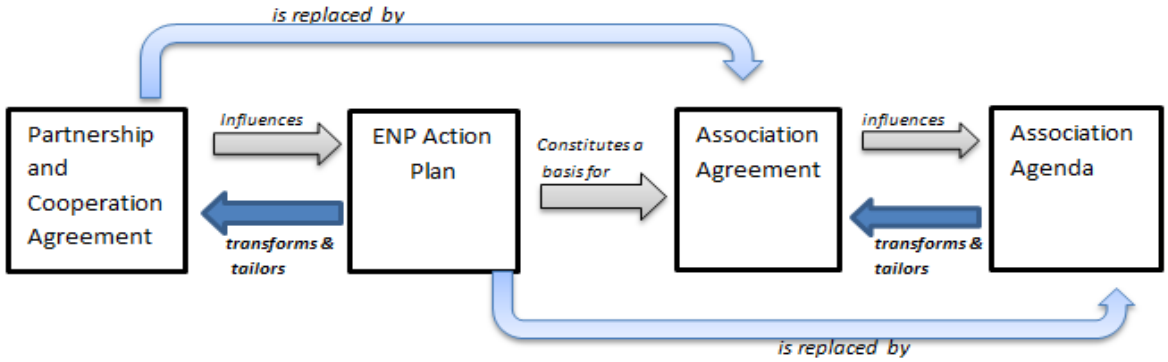
Source: Van Vooren (2012), own analysis

These inter and cross-instrumental similarities in structure and content most likely result from their common formation[3] process at a similar point in time[4] (van Vooren, 2012). Consequentially, one can

[3] Review Section 2.3 for the formation process of ENP Action Plans and Association Agreements

detect a clear intra-instrumental relationship that goes beyond what has been discussed in section 2.3: The APs did not only transform their underlying PCA but also significantly influenced the paraphrasing of the AAs. With regard to the ENPs eastern dimension, soft law is thus not only able to facilitate compromise and establish practical effects, but also incorporates these effects into legally binding iterations[5]. As such, APs also entail a preparatory function for new hard law agreements. The EU-Ukrainian Association Agenda then again transforms, specifies, and tailors these binding iterations in the AA through its soft law character to the country's legal, political and economic situation. Henceforth, one can detect a clear relationship between the soft and hard law instruments of the ENPs eastern dimension (Figure 1).

Figure 1: The relationship between the soft and hard law instruments



Summarising, one can detect a relative uniformity in regard to the content and structure of all the soft law instruments on the one hand and all the hard law instruments on the other hand. These similarities most likely result from their common formation process with regard to time and actors involved. Due to the relationship between soft and hard law instruments, one can detect a relatively high degree of inter-instrumental comparability between contractual and non-contractual agreements. These uniformities do of course not imply equality, as differences may occur once one compares the actual obligations of the different countries. Nevertheless, the intra-and inter-instrumental comparability of the ENPs core documents is highly relevant for the chosen research design, as outlined in the upcoming section (section 3.3).

3.3 Methodology

The present chapter aims to assess coherence as a synergy between norms, actors and instruments. Therefore van Vooren's (2012) concept of measuring the *linguistic strength* with which the AP initiatives are expressed is utilised, modified and extended towards the EU-Ukraine Association Agenda as well as the AAs. The following will thus methodologically draw on a content analysis, which Babbie (2010) describes as the study of recorded human communications. Henceforth, well suited documents are a crucial element for determining valid inferences. The APs, AAs and the EU-Ukraine Association Agenda are highly proficient in this regard. They are bilateral soft or hard law instruments and therefore reflect the hybrid legal nature underlying the ENP. Furthermore, they are the result of consultations and negotiations involving the Commission, the member states, the Council as well as third states. Due to this common formation process, in which the Commission was

[4] Review Table 1
[5] Assuming that the AAs will be signed

firmly in control[6], the instruments were formulated in a comparable diplomatic language and use roughly the same template which seeks to combine all policy areas at the Unions disposal towards the common objective of human security. Additionally, the APs strong role as a preparatory instrument for the AAs led towards high inter-instrumental comparability .This relative uniformity in content, structure and overarching objective makes the content analysis quite powerful: Minor linguistic differences are more likely to matter because of this common inheritance (van Vooren, 2012).

The operationalization of this content analysis codes the documents on a scale of 1 to 5, with 1 standing for a 'very strongly worded provision' and 5 for a 'very weakly worded provision'. The linguistic strength of a provision may actually be best explained by the following two examples taken from the political dialogue and reform section of the EU-Azerbaijan AP (1) and the EU-Moldova AP (2):

(1) Promote education about human rights.

(2) Implement actions foreseen in Moldova's National Human Rights Action Plan (NHRAP) for 2004-2008 (legislative revisions, strengthening of institutional framework and raising of human rights awareness).

The first statement of the EU-Georgia AP has been given a score of 2/5 and is thus viewed as a weakly worded provision in the framework of this content analysis, whereas the second provision has been given a 5/5 and is thus a very strongly worded provision. These scores were attained by a specifically designed, two-step coding process, which can be described as following: First, the introductory word (or in some AA iterations the first verb of the sentence) was coded on the 1-5 scale. In the aforementioned example "promote" gained 3/5 and "implement" 4/5 (Annex 1). As the introductory word is insufficient to make valid statement about the provision as a whole, the actual content is assessed in a second step (-1 or 0 or +1). The EU-Moldova example refers to very concrete commitments that were laid out in a common framework which sets out a time limit for the implementation (2008). Contrastingly, the provision extracted from the EU-Georgia AP refrains from laying down definite commitments and only vaguely refers to 'education about human rights' but leaves the specific content, recipient and time frame open. Henceforth, the analysis of the concrete content downgrades the first example by one point and equally upgrades the second example by one point.

A first threat to this research design is researcher subjectivity. In order to attain more objective results, five different coders from various backgrounds have been selected to assess the introductory words and the mean of their evaluation has been taken for the actual assessment. For the second criterion, namely the actual content of the provision, a panel discussion with three law students has been held. The dictionary of the introductory words as well as further information on the coders is displayed in Annex 1. A second threat to the research design may be the irrelevance of the linguistic differences itself. However, the graphs below are based on 701 provisions across eleven documents. One can therefore argue in line with van Vooren (2009) and conclude that minor linguist differences will be removed in favour of the broader trend that emerges when comparing such a large number of individual provisions.

[6] Review section 2.3

3.4 Coherence as a synergy between norms and instruments

Section 2.5 proposed that synergies between norms, actors and instruments can only be viewed as being coherent if they can be aligned towards the common objective of human security. The present section uses this proposition to assess synergies between norms and instruments. Therefore, section 3.4.1 will indicate a benchmark for assessing coherence which will be quantitatively analysed in section 3.4.2.

3.4.1 A benchmark for coherence

As stated above, the study of coherence nurtures from the ENPs inter-instrumental resemblance and cross-country comparability (section 3.2 & 3.3). These conformities do of course not imply identicalness. A once size fits all approach would neither be helpful nor appropriate in light of the diverse economic, political and legal situations within the EU's eastern neighbourhood. As a result, cross-country differences should be reflected in the policy's underlying political and legal instruments (Tumelts, 2010; van Vooren 2010). However, when analysing these differences in the study of coherence one encounters an inherent dilemma: How much differentiation is legitimate between countries? Or formulated differently: At what point does differentiation turn into incoherency? The upcoming analysis therefore draws on van Vooren's (2012, p.256) definition of a benchmark for coherence:

The benchmark for coherence is then one of 'legitimate differentiation': any differences between the observed levels of partnership between different EU-third country relations (..) must be logically explained by geographic, political or economic reasons.

This in turn also implies that if there is no logical justification for cross-country differentiation, incoherence between norms and instruments will be detected. As stated in the previous chapter, positive synergies can only be achieved if all three aspects align towards the common objective of human security. As a result, legitimate differentiation between countries can only be justified by diversities in light of this common objective. The present chapter therefore utilises the "Positive Peace Index" (PPI) of the Institute for Economics and Peace (IEP) as a proxy indicator of human security. Instead of focusing on the traditional security threats, the PPI 'is a measure of the strength of the attitudes, institutions, and structures of 126 nations to determine their capacity to create and maintain a peaceful society' (Institute for Economic and Peace, 2013, p. 81). Consequentially, '[p]ositive peace is a proxy to measure institutional capacity and resilience or vulnerability against external shocks' as is comprises a 'set of attitudes, institutions and structures which when strengthened, lead to a more peaceful society' (Institute for Economics and Peace, 2013 p.81; 95). The IEP designed the PPI as a composition of 24 indicators with three indicators in eight domains, which are displayed in detail in Annex 2.

The reasons for choosing the PPI in the framework of this thesis is relatively straightforward: The index considerable overlaps thematically with what is included in the ENPs soft and hard law instruments. As a result, the interrelated domains and indicators of the PPI are particularly able to reflect the ENPs human security goal through stability and prosperity. One should however note that while the overlap is substantial, it is not complete. However, the analysis below refrains from manually intervening towards a complete overlap since this introduces a strong element of arbitrariness into the final results (Babbie, 2011; van Vooren, 2012).

Similarly to the coding scheme that was explained in the methodology section (Section 3.3), the PPI's scores range between 1 and 5, with a score closer to 1 representing higher positive peace. Table 3 highlights the PPI score for the five chosen countries in each of the eight domains. The indicators of each domain are listed in Annex 2.

Table 3: Positive Peace Index

Legend: State of peace: very high | high | medium | low | very low

PPI Rank	Country	Overall PPI Score	Well-Functioning Government	Sound Business Environment	Equitable Distribution of Resources	Acceptance of the Rights of Others	Good Relations with neigh-bours	Free flow of information	High Levels of Human Capital	Low Levels of Corruption
60	Georgia	2.917	3.565	2.585	2.528	2.539	3.592	2.898	2.768	4.085
66	Moldova	3.027	4.106	3.778	1.689	3.158	3.009	2.496	2.918	4.228
69	Armenia	3.053	3.942	2.832	1.976	3.620	3.880	2.526	2.836	4.159
72	Ukraine	3.101	4.115	4.394	1.340	3.003	2.884	2.910	2.791	4.498
82	Azerbaijan	3.251	4.255	3.310	1.938	3.553	3.065	3.815	2.924	4.549

Table 3 illustrates that Azerbaijan scores highest (and thus ranks lowest) on the overall PPI scale, followed by Ukraine and Armenia. Georgia and Moldova are evaluated as the countries with highest institutional capacity and resilience by the IEP. In the upcoming analysis, differentiation between the instruments of the ENPs eastern dimension will be valued as legitimate only if they can be explained in light of Table 3. For instance, a greater focus by the EU on Azerbaijan than on Georgia may be legitimate - but not the other way around.

3.4.2 Coherence as a policy synergy

The following aims to determine the extent to which *positive synergies between norms and instruments* have been created. According to the Commission (2003), human rights, democracy and the rule of law are the most fundamental norms on values on which the ENP is built upon. The ESS argues that the promotion of these norms is a core mechanism to attain stability which is in turn one of the two pillars for attaining human security:

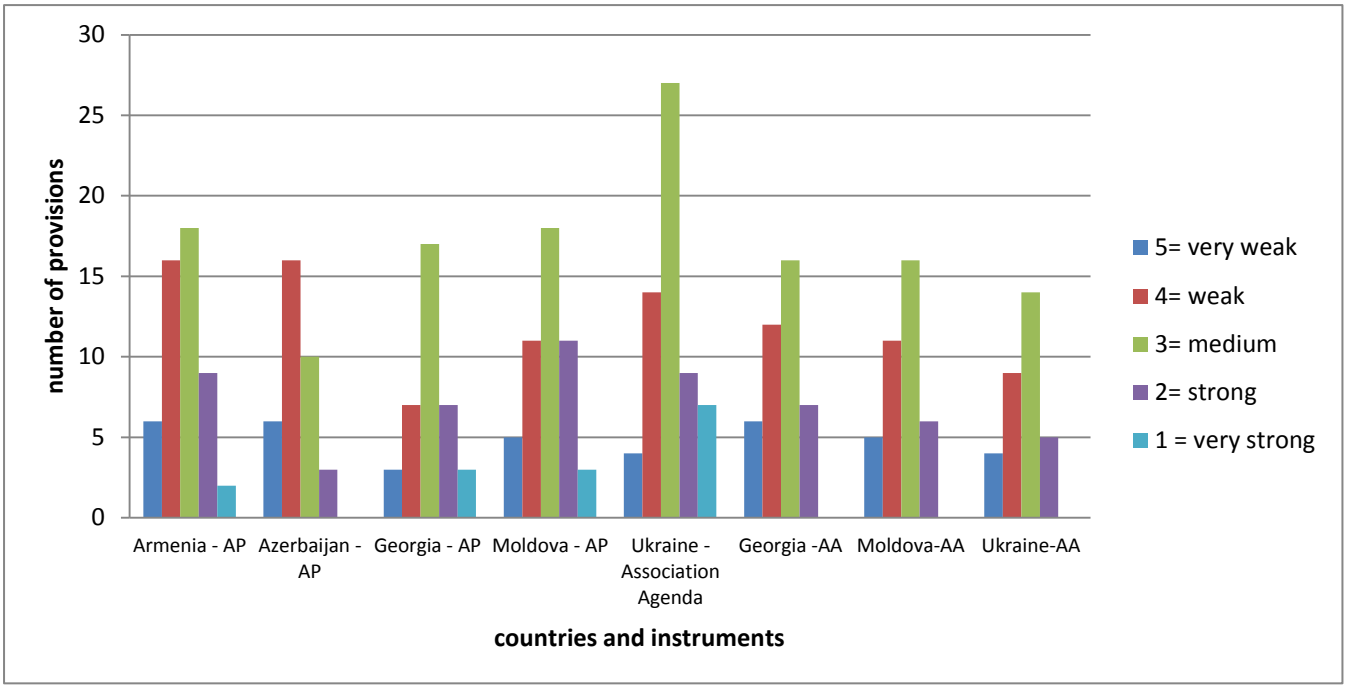
The progressive spread of the rule of law and democracy has seen authoritarian regimes change into secure, stable and dynamic democracies.

European Council (2003, p.1)

While the EU is rhetorically committed towards ensuring respect of human rights, democracy and the rule of law, it has been argued that their active promotion remained largely ineffective (Lavenex & Schimmelpfennig, 2011; Schimmelpfennig & Mayer, 2007). Therefore, the following examines the extent to which the Union is coherent with its norms and its ultimate human security goal through stability and prosperity. The approach followed in doing so it to quantitatively assess the section/title "political dialogue and reform" of the APs, AAs and the EU-Ukraine Association Agenda and evaluates the results in light of the aforementioned *benchmark for coherence*. The choice of section results from the fact that the key provisions pertaining to democracy, human rights and the rule of law appear as a cluster of interconnected initiatives in the political dialogue and reform section. Title I

(General Principles) of the AAs has been included into the analysis with the view to attaining a more holistic picture through thematically aligning soft and hard law instruments (see Table 2). Figure 2 illustrates the trend of the selected provisions in regard to their linguistic strength.

Figure 2: Trend for Political Dialogue and Reform



With the exception of Azerbaijan, all instruments have the highest number of 'medium –strength' provisions, followed by 'weak' ones. Nearly all instruments contain combined more 'strong' and 'very strong' provisions than 'very weak' provisions. The soft law instruments generally contain a higher amount of strongly worded commitments than their hard law counterparts. Indeed, all AAs lack 'very strongly' phrased provisions. The greater presence of initiatives stating a clear and concrete commitment in soft law instruments can be explained by recalling the findings of section 2.4: Soft law instruments are particularly able to trigger a stronger commitment to certain norms and values due to their mere political character. Figure 2 additionally reveals that the AAs very much resemble each other in regard to the distribution of their legal iterations on the strength scale. Consequentially, one can only discover a deviation of 0.04 when comparing their average strength[7]. This results from the fact that the wording in Title II is nearly equal across all three agreements (Table 2). In contrast, one can detect greater variations when comparing the strength-scales of the soft law instruments. This has once again been forecasted by the previous chapter, which highlighted the ability of soft law to produce tailor-made provisions, thereby leading to greater cross-country variations (sections 2.3 & 2.4). In order to evaluate whether cross-country differences in the promotion of norms are coherent in light of the aforementioned principle of legitimate differentiation, one should analyse the APs and the EU-Ukraine Association Agenda in more detail. As a result, Figure 3 compares the average strength of the political dialogue and reform sections of the ENPs soft law instruments with the PPI and its domains of well-functioning government, low levels of corruption and free flow of information. The domains have been chosen due to their ability to

[7] Calculation based on mean value: Georgia = 3,41; Moldova = 3,42; Ukraine = 3,38

reflect the ENPs key norms. According to van Vooren (2012) battling corruption is a major element of the rule of law and therefore appropriate to use as an indication thereon. Similarly, the free flow of information is an important part of a democratic society: Any violation of the freedom of expression entails a violation of human and fundamental rights (Freedomhouse, 2014). Moreover, the rule of law, democratic institution building and the upholding of core human rights are key components of a well-functioning government, which is highlighted in the choice of indicators of the respective domains (Annex 2). The PPI itself indicates the overall state of human security in the respective country.

Figure 3: Strengh-Scale of Political Dialogue and Reform (PDR)

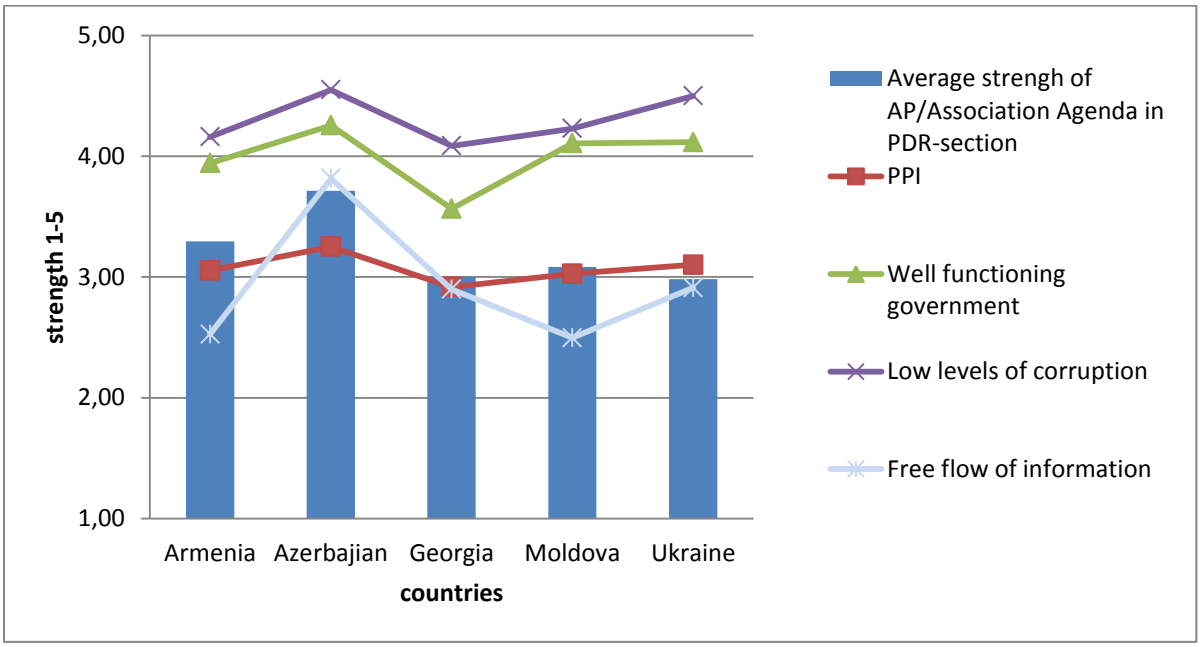


Figure 3 illustrates that the EU's commitment towards its key norms is weakest with regard to Azerbaijan, followed by Armenia. Overall, the most sincere commitment was made in the EU-Ukraine Association Agenda, followed by the APs with Georgia and Moldova. Upon contrasting the soft law instruments, one can therefore detect a clear diverging line between Moldova, Georgia and Ukraine on the one hand and Armenia and Azerbaijan on the other hand. If coherence would have been explained as uniformity, the graph above would simply entail incoherence between the different instruments (van Vooren, 2012). However, the previous section pointed out that incoherence is more complex than that, as a certain country may need more or less action, depending on its state of society (Section 3.4.1). Legitimate differentiation can therefore only be upheld if one can detect a reverse relationship between the score on the 'strength scale' and the PPI and/or its relevant categories. A country that deemed more insecure, unstable, unfree or corrupt (high 'PPI score') prompts stronger initiative in the political dialogue and reform section (low 'strength score'). The country scoring highest on the PPI and all of its relevant dimensions is Azerbaijan. Hence, for the sake of coherence, the EU should strengthen its cooperation with Azerbaijan in order to increase stability within the country. Figure 3 however reveals that the reverse is true: Azerbaijan scores highest and not lowest on the 'strength scale'. Similarly, Georgia, who ranks lowest out of the five countries in terms PPI and its relevant categories, has a relatively low score on the 'strength scale'. Armenia and Moldova rank nearly equal in terms of PPI and its relevant sub-categories. However, these similarities

are not reflected in terms of linguistic strength. While the EU-Moldova AP shows overall a high amount of sincerely and clearly worded initiatives (low score), the EU-Armenia AP contains on average more blurred and vague commitments (high score). Only Ukraine illustrates a proper reverse relationship between PPI and 'strength scale': Scoring the second highest values on the PPI and its relevant sub-categories, its Association Agenda scores lowest on the 'strength scale'.

Consequentially, the EU's commitment towards human rights, democracy and the rule of law is not based on how poor the situation is in a given country. When comparing these differences in the average strength of the provisions with the divergences in time during the negotiation process, one can detect a clear linkage (Table 1). Hence, it seems that the EU has focused on those eastern neighbours that it had an early agreement with as they have articulated a more pro-European' attitude (most notably Ukraine followed by Georgia and Moldova). The Union's relationship with the countries that have shown less affiliation resulted into weaker cooperation. Of course, agreeing on stronger commitment in regard to key norms is probably less burdensome with countries that have a greater aim to enhance their relations with the Union. If the Union would however show a genuine commitment to democracy, the rule of law, human rights and ultimately human security, it would concentrate its commitment stronger towards the countries where the lack of these values is strongest, most notably Azerbaijan. Consequentially, the EU's commitment towards relevant political and democratic norms and reforms and thus the creation of stability in the eastern neighbourhood is (partly) incoherent. This behaviour also negatively affects the aim of attaining more 'secure, stable and dynamic democracies' (European Council, 2003, p.1).

3.5 Coherence as a synergy between actors and instruments

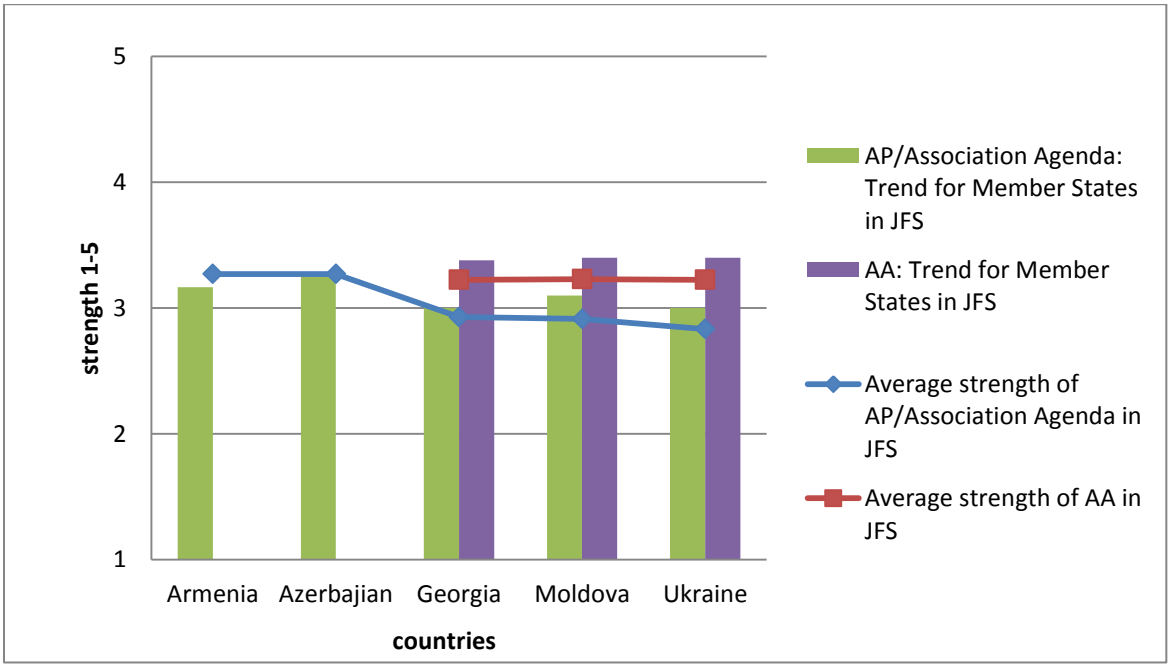
Chapter 2 has outlined the ENPs ability to overcome the competence divide that underpins the EU's external legal relations by integrating the Union, its member states as well as the neighbouring countries under a common umbrella. The goal of this section is to analyse whether the instruments of the ENPs eastern dimension do indeed manage to reflect these synergies between actors and instruments internally (3.5.1) and externally (3.5.1). In a similar vein, it has been shown that the lack of membership perspective or any other promising *finalité* is the prime source of conflict and incoherence (section 2.3). As this knowledge was present prior to the initiation of the new AAs, section 3.5.3 assesses in a final step the extent to which this drawback has been dealt with efficiently.

3.5.1 EU inward-looking perspective

As stated previously, the characteristics of soft law instruments, such as APs, should be ideal to overcome the EU's internal competence divide (section 2.4). Not hindered by procedural and other drawbacks, they were said to create *synergies between actors and instruments* by granting the EU a coherent and single voice towards its neighbourhood (section 2.4 & 2.6). Even though their negotiation process was said to be more burdensome, also mixed agreements, such as AAs, are created to unite both member states and EU legal competences under a common umbrella (Cremona & Hillion, 2006; Heliskoski, 2001). Therefore, the following aims to test quantitatively whether APs, AAs and the EU-Ukraine Association Agenda were indeed able to consolidate the parcelled nature underlying the EU's external action. The approach followed in doing so aims to determine whether a

provision that is linked to an explicit member state competence differs from those that primarily require community action. The section on 'Justice, Freedom and Security' was chosen as it is a policy area which substantially reflects the legal competences of both EU and its member states (van Vooren, 2009). By singling out the provisions that require explicit member state action, it is determined whether a provision is phrased more 'strongly' or 'weakly' depending on whether it was linked to explicit member state competences or not. Member state action was methodologically established through the following key words: "member states"; "national"; "respective/relevant (national) legislation". These words were carefully chosen by the author of this thesis upon assessing the chapter on the basis of Art. 2-6 TFEU. While the focus on specific key words holds a certain level of imprecision, it eliminates the assessment of what would entail a 'competence specific objective', which would lead to a greater level of subjectivity due to the intertwined and disentangled nature the policy area (van Vooren, 2009). Aside from this, this approach holds true because of the specific nature of the 'Justice, Freedom and Security' section. Here, the competence divide between member states and the EU oftentimes necessitates a concrete reference to member state action, whereas this is largely absent in fields that fall under Art. 3 TFEU.
The following trend for member state action is illustrated in Figure 4.

Figure 4: Trend for Member States in Justice, Freedom & Security



The general trend that was observed in regard to Figure 3 also holds true for the Justice, Freedom and Security provisions: Armenia and Azerbaijan are to be distinguished from Georgia, Moldova and Ukraine and APs are generally worded more strongly than the AAs. This development is not only reflected in the average strength lines of the soft and hard law instruments, but in the provisions reflecting specific member state action as well. In addition to that, Figure 4 illustrates that the average strength of the soft as well as the hard law instruments nearly equals the strength of member state provisions across these instruments. Consequentially, the strength of a provision is not influenced by whether it is linked to an explicit member state competence or not. This indicates that the instruments are effective in overcoming the Unions internal legal constraints. Therefore, the relevant actor can solely focus on having its external interests furthered instead of concentrating on

its internal legal ones. As a result, the ENPs aim to reflect a uniform political and legal framework has broadly been effective in regard to its eastern dimension (van Vooren 2009, 2012). From an EU-inward looking perspective, coherence is therefore strengthened through the creation of positive synergies between actors and instruments.

3.5.2 An EU outward-looking perspective

The previous chapter outlined that the ENP was not only designed as a policy to promote coherence between the Union and its member states, but also aims to incorporate and reflect the neighbours interest in the name of reciprocity and multilateralism (sections 2.3 & 2.4).The principle of joint ownership was highlighted as the core mechanism to achieve this aim. However, the strong weighting of the Union's preferences questioned the jointly owned nature of the core instruments, and suggested that the ENP is in fact of an asymmetric nature (Meloni, 2007).The following therefore assesses whether the instruments truly reflect a 'two-way approach' rather than policy that is based on unilateral imposed conditions only. Methodologically, as before, the content analysis draws on a specific set of words aiming to reflect the presence of joint ownership: Exchange, dialogue, share, common, mutual, joint and reciprocal. Van Vooren (2012, p.257) determined these set of indicators by thoroughly studying the preambles of the ENP APs. Nevertheless, the present analysis slightly changes his approach by excluding several terms that deemed unrelated to the concept of joint ownership: Foreign exchange, Exchange Rate, Common Foreign and Security Policy, Common Security and Defence Policy and Common Provisions. Table 4 illustrates the keyword analysis of joint ownership for the APs, AAs as well as the EU-Ukraine Association Agenda.

Table 4: Keyword analysis of Joint Ownership

	Azerbaijan	**Armenia**	**Moldova**		**Ukraine**		**Georgia**	
			AP	AA	Association Agenda	AA	AP	AA
Exchange	29	26	20	90	37	92	22	85
Dialogue	20	18	23	70	27	75	24	75
Share	3	3	2	8	5	12	3	9
Common	3	2	3	27	19	37	2	27
Mutual	3	1	0	75	5	94	1	82
Joint	5	5	6	38	18	42	8	32
Reciprocal	0	0	1	9	1	8	0	10
TOTAL	63	55	55	317	112	360	60	320
Total/ Total word count	**~0.006**	**~0.0057**	**~0.0055**	**~0.0043**	**~0.0124**	**~0.0044**	**~0.0062**	**~0.0046**

Source: van Vooren (2012); own analysis

Table 4 highlights that the key words are occurring throughout all the legal and non-legal instruments under study. Consequentially, the documents prevail at least a rhetorical baseline of commitment towards joint ownership. The total number of key words in the APs and AAs only diverges marginally across the chosen countries (55-62 for the APs and 317-360 for the AAs). In absolute terms, Table 4 thus shows an amplification of indicators from APs towards AAs. Conversely, upon dividing the number of indicators by the total word count of the instruments it becomes apparent that the

relative weight of the indicators diminished within the AAs. In light of the criticised lack of reciprocity, this development cannot be evaluated in a positive light. However, upon comparing the APs with the EU-Ukraine Association Agenda, one can observe a near doubling of joint ownership indicators in the ENPs most recent soft law instrument. When looking at the relative numbers, this augmentation is even stronger. With regard to the establishment of its newest soft law instrument, the EU seems to have taken the negative reviews in light of joint ownership seriously, at least from a rhetorical point of view.

The actual impact of joint ownership is aimed to be determined through a quantitative analysis. Therefore, Figure 5 illustrates whether the provisions containing one or several of the indicators of joint ownership are formulated more 'strongly' or 'weakly' than the provisions that are focused on more EU-imposed conditions. Similarly to the previous figure, the section of Justice, Freedom and Security has been chosen as it tematically centers around security in a common neighbourshood and therefore requires third state involvement.

Figure 5: Trend for Joint Ownership in Justice, Freedom and Security (JFS)

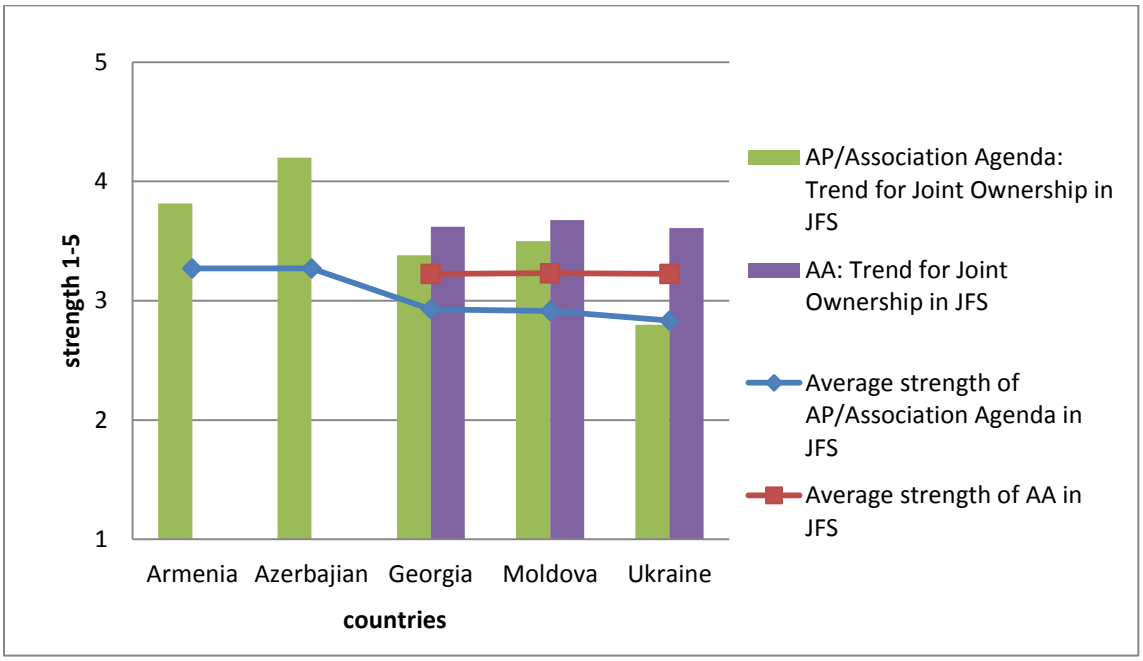


Figure 5 illustrates a very simple trend: Provisions containing an indicator of joint ownership are substantially 'weaker' than provisions that do not contain one of the indicators. The divergence between the jointly owned initiatives and the average strength of the section is generally greater in light of the APs but also hold true with regard to the AAs. This implies that the actions involving third states on an equal and reciprocal basis are merely rhetoric without implying a strong commitment towards enhancing peace, freedom and security. This means in turn that the provisions that strongly emphasise on changing the common neighbourhood are unilaterally imposed by the EU. Hence, their lower score on the strength scale ultimately stems from utilising the principle of conditionality.

The following two examples taken from the EU-Armenia AP dealing with migration and asylum illustrate this point:

(1) Exchange of information and possible cooperation on transit migration;
(2) Implement standard procedures relating to treatment of asylum applications, in accordance with EU and other international standards;

The first example includes the indicator 'exchange' and thus implies that the EU as well as Armenia are equally divulging information. This in turn may however only lead to 'possible cooperation' on migration and is likely to have a very small effect on justice, freedom and security in the common neighbourhood. The second example highlights an EU imposed measure which requests Armenia to implement procedures in line with EU and international standards. This most likely entails a concrete change in the Armenian national legislation and therefore shows a strong commitment towards changing the treatment of asylum application which, if fully implemented, will affect the common neighbourhood. Conversely, Figure 5 illustrates that the EU-Ukraine Association Agenda is a clear outlier in regard to this pattern. The trend for joint ownership nearly equals the average provisions in terms of linguistic strength. In regard to the new soft law instruments, the EU has therefore taken the reciprocity-critique to heart, not only in a rhetoric manner. This glimpse of hope in the study of coherence quickly elapses upon considering that the EU was not able or willing to express similar commitments in in legally binding manner. At present, the ENP can thus be characterises as a strongly asymmetric policy in which the eastern neighbours are treated as inferior partners by the EU.

3.5.3 The drawbacks of coherence in the ENPs eastern dimension: The question of membership

The previous chapter has highlighted that the rise of the 'capability-expectations-gap' through the exclusion of membership perspective can be seen as a fundamental threat to the ENPs coherent application (section 2.3). It has been widely stated that the lack of a promising *finalité* that actually creates incentives for neighbours to adhere to the EU's norms and values questions the policies *raison d'être* (Cremona & Hillion, 2006; Meloni, 2007). As a last step, this analysis will assess in how far these threats have been addressed in the newly initiated AAs with Moldova, Georgia and Ukraine. The approach followed in doing so contrasts and compares the new AAs with the previous ones of the EU with its 'old' eastern neighbours (prior the 2004, 2007, 2013 enlargement). Indeed, all of the previous Association Agreements (EEAs or SAAs) were agreed upon with countries that eventually joined the Union (Table 5).

Table 5: Types of Association Agreements with the EU's eastern neighbours

Country	Type of agreement*	Date	EU accession
Bulgaria	EEA	1995	2007
Czech Republic	EEA	1995	2004
Hungary	EEA	1994	2004
Poland	EEA	1994	2004
Romania	EEA	1995	2007
Slovakia	EEA	1995	2004
Slovenia	EEA	1999	2004
Lithuania	EEA	1998	2004
Latvia	EEA	1998	2004
Estonia	EEA	1998	2004
Croatia	SAA	2005	2013

*EEA: European Agreement establishing Association;
SAA: Stabilisation and Association Agreement Source: Council of the European Union (2014)

The EEAs and the EU-Croatia SAA aimed to assist the respective country's reform process with the view to meeting the criteria for EU membership. Hence, the Preamble of the EU-Latvia EEA recognised 'the fact that Latvia's ultimate objective is to become a member of the European Union and that association through this Agreement will, in the view of the Parties, help Latvia to achieve this objective'. This statement is literally repeated in the other EEAs. The EU-Croatia SAA recalled 'the European Union's readiness to integrate to the fullest possible extent Croatia into the political and economic mainstream of Europe and its status as a potential candidate for EU membership on the basis of the Treaty on European Union and fulfilment of the criteria defined by the European Council in June 1993, subject to the successful implementation of this Agreement'. However, the AAs with Moldova, Ukraine and Georgia transfer a very different message. While acknowledging the partner's 'European aspirations and the European choice' the EU deliberately refrains from addressing the question of membership by incorporating the following initiatives in the respective AAs preambles:

TAKING into account that this Agreement will not prejudice and leaves open the way for future progressive developments in EU-Georgia [EU-Moldova] relations

TAKING INTO ACCOUNT that this Agreement will not prejudice and leaves open future developments in EU-Ukraine relations

By leaving the question of membership perspective unanswered, the AAs with Moldova, Georgia and Ukraine fulfil a very different purpose than its predecessors. Rather than providing an "appropriate framework for the gradual integration (...) into the European Union" (EU-Latvia EEA Art.1), the AAs seek to 'contribute to the strengthening of democracy and to political, economic and institutional stability' (EU-Moldova AA, Art.1). Due to this fundamental difference in nature of the EU-neighbour relations, the new AAs with Georgia, Moldova and Ukraine should offer very different incentives and objectives. If the new AAs simply adopt the accession methodology without giving the same incentive, they would continue to threaten coherence by putting the policies whole *raison d'être* into question (Section 2.3).

The EEAs and the SAA follow *roughly* the same template, which is outlined in Table 6.

Table 6: Overview of the Structure of the EEAs of the 2004 and the 2007 enlargement and the EU-Croatia SAA

European Agreement Establishing an Association	Stabilisation and Association Agreement
Preamble Title I General Principles Title II Political Dialogue • For a for cooperation Title III Movement of Goods • Industrial Products o Customs • Agriculture • Fisheries • Common Provisions o Rule of origin Title IV Movement of Workers, Establishment, Supply of Services • Movement of Worker • Establishment • Supply of Services • General Provisions Title V Payments, Capital, Competition and other Economic Provision, Approximation of Laws • Current payments and movement of capital • Competition and other economic policies o Balance of payments o Protection of intellectual, industrial and commercial property • Approximation of laws Title VI Economic Cooperation • Industrial Cooperation • Investment Promotion and Protection • Industrial standards and conformity assessment • Cooperation in Science and Technology • Education and Training • Energy • Nuclear Safety • Environment • Transport • Telecommunication • Banking, insurance, other financial services and audit cooperation • Monetary Policy • Money Laundering • Regional development • Tourism • Information and Communication • Consumer protection • Customs • Statistical Cooperation • Economics • Drugs Title VIII Cultural Cooperation Title IX Financial Cooperation Title X Institutional, General and Final Provisions	Preamble Title I General principles Title II Political Dialogue • For a for cooperation Title III Regional Cooperation • Cooperation with other countries having signed a Stabilisation and Association Agreement • Cooperation with other countries concerned by the Stabilisation and Association Agreement Title IV Free movement of goods • Industrial Products o Customs • Agriculture • Fisheries • Common Provisions o Rule of origin Title V Movement of Workers, Establishment, Supply of Services, Capital • Movement of Worker • Establishment • Supply of Services • Current payments and movement of capital • General Provisions Title VI Approximation of laws, enforcement and competition rules • Approximation of laws • Competition and other economic policies Title VII Justice and Home Affairs • Reinforcement of institutions and rule of law • Cooperation in the free movement of persons • Cooperation on money laundering and illicit drugs • Cooperation on criminal matters Title VIII Cooperation Policies • Economic policies • Statistical cooperation • Banking, insurance, other financial services and audit cooperation • Industrial cooperation • Tourism • Customs • Taxation • Social cooperation • Education and Training • Cultural Cooperation • Information society • Transport • Energy • Environment • Nuclear Safety Title IX Financial Cooperation Title X Institutional, General and Final Provisions

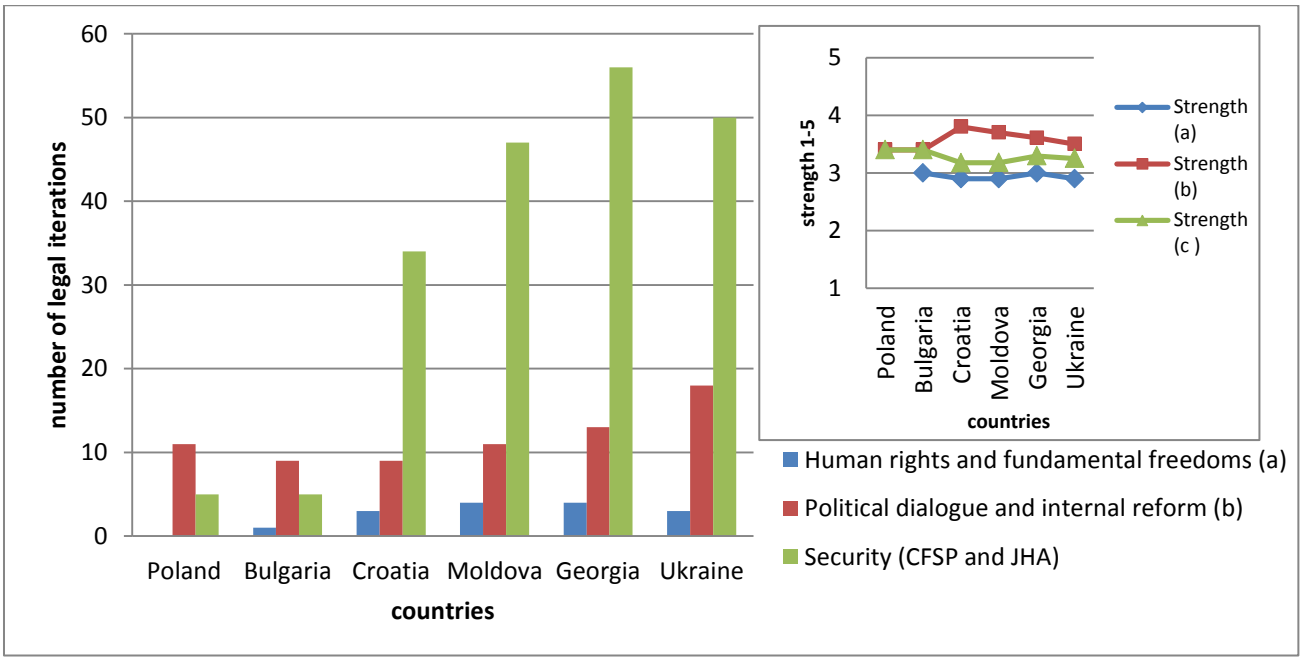
Source: own analysis

The Table illustrates that the EEAs and the EU-Croatia SAA display a high degree of conformity. Additionally, the templates are very similar to the ones of the AAs with Georgia, Ukraine and Moldova (Table 2). The largest correspondence between all three types of international agreements can be found in the Titles facilitating economic cooperation. They establish a free trade area which entails alignment with the Unions fundamental freedoms, as well as regulatory and technical

standards. Moreover, the 'cooperation policies' of the EEA and the SAA very much reflect the Title on 'Economic and Other Cooperation' of the AAs with Moldova, Ukraine and Georgia. Consequentially, they all contain legal rights and obligations in fields ranging from transport, energy and scientific cooperation to the promotion of cultural diversity or education. Furthermore, the EEAs, SAA and AAs 'Institutional, General and Final Provisions' establish a similar framework for association.

Therefore, the largest disparities between these three types of association agreements (AAs, SAAs, EEAs) can be found in the remaining Titles: General Principles, Political Dialogue and Reform[8] as well as in the Justice, Freedom and Security[9]. Figure 6 demonstrates this finding quantitatively with the view to determining whether any real difference can be found between the old (EAA/SAA) and the new (AA) types of association agreements of the EU with its eastern neighbours. The approach followed in doing so is to segment the legal iterations of the aforementioned Titles into three thematic categories: Human rights and fundamental freedoms, political dialogue and internal reform, and security (CFSP & JHA). The categories were designed to thematically reflect all legal rights and obligations made in the three respective sections (General Principles, Political Dialogue and Reform & Freedom, Security and Justice). As a section on JHA is absent in the EEAs, all provisions dealing with security have been extracted from the Titles on economic cooperation in order to ensure a more holistic picture. Poland, Bulgaria and Croatia have been chosen as they represent the EU's 2004, 2007 and 2013 enlargement.

Figure 6: Thematic comparison of the EUs international agreements with candidates (EEAS, SAA) and neighbours (AAs)



The graph shows that all legal agreements contain a relatively similar amount of provisions discussing political dialogue and internal reform. The AA with Ukraine entails an additional article with regard to the formats for political dialogue (Art. 5), which resulted into the marginally higher amount of legal iterations displayed. In terms of linguistic strength, the EEAs comprise a slightly more determined and concrete wording than the other agreements. Nevertheless, the differences in number and strength of the legal provisions are too insignificant to illustrate and facilitate a real divergence

[8] Titled 'Political Dialogue' in EEA/SAA
[9] Titled 'Justice and Home Affairs' in SAA

between the old and the new types of association agreements for political dialogue and internal reform. The second aspect under study, human and fundamental rights, shows slightly more variation. Even though the linguistic strengths of the provisions is nearly equal across the EEAs, SAA and AAs, one can detect an ascending trend from old to new agreements in terms of the sheer number of iterations dealing with the topics. Whereas the EU-Poland EEA only discusses the themes in its preambles, the EU-Bulgaria AA underlines respect for human rights in Art.6. The EU-Croatia SAA as well as the new AAs strengthens their emphasis on the promotion of human and fundamental rights as the legal iterations devoted to the issue nearly tripled. One can thus detect a clear shift of priorities towards human rights and fundamental freedoms in both, the EU's enlargement as well as neighbourhood policy (Art. 8 (1) TEU).

Therefore, the most fundamental difference between the old and new types of association agreements is their emphasis on security. Early EEAs such as the ones with Poland and Bulgaria only address cooperation in money laundering and the fight against drugs in light of economic cooperation (Table 6). The strength-scale illustrates that commitments drawn in this regard were rather weak and imprecise. The focus of the agreement is thus clearly put on economic policies accompanied by political dialogue. The EU-Croatia SAA underlines the rising importance of security in EU external relations. A Title on JHA was established and particular emphasis was put on regional cooperation and conflict prevention (Table 6). However, the AAs with Moldova, Georgia and Ukraine clearly extend the SAAs framework for cooperation in regard to security. On the one hand, its Title 'Justice, Freedom and Security' incorporates cooperation on CSFP as well as JHA related areas. On the other hand, legal rights and obligations on regional cooperation and security reform are additionally included in its Title on 'Political Dialogue and Reform'. Henceforth, one can confidently argue that the EU was trying to put its core objective of (human) security at the centre of cooperation with its neighbours – without dispensing on cooperation and commitment in other policy areas. As a result, the new AAs are more comprehensive and detailed than the EEAs or the EU-Croatia SAA.

This finding is somewhat controversial: If the EEAs and the EU-Croatia SAA are preparing the neighbouring country for EU accession, one would expect that they are much more detailed and demand greater cooperation and alignment with the EU's institutional practices as well as its norms and values. Moreover, one would expect that the asymmetric nature of EU enlargement policy would demand a higher degree of concrete commitment from candidate countries, which would result into significantly stronger worded provisions. However, Figure 6 shows that the strength of the legal iterations of the EU's agreements with candidate and non-candidate countries does not significantly differ. As a result, the new AAs do not only use but even extent the pre-accession framework of the old association agreements. Therefore, one can recall the conclusions of the previous chapter: Upon fulfilling the obligations as set out in the AAs, Ukraine, Moldova and Georgia are *de facto* satisfying the conditions for membership. Even though future developments in the EU-neighbour relationship are specifically left open, the AAs will create potential candidates (section 2.3). Indeed Ukraine, Georgia and Moldova may be regarded as a 'European State which respects the values referred to in Article 2 and is committed to promoting them' and thus in theory 'may apply to become a member of the Union' (Art.49 TEU). By depriving these countries of their perspective while still demanding the same or even a higher amount of commitment and cooperation, the new AAs are not addressing but nurturing the 'capability-expectations' gap. Without granting a sufficient incentive for reform, the aim of creating a stable, prosperous and secure neighbourhood is significantly

threatened. As a result, the creation of positive synergies between actors and instruments is once again endangered.

3.6 Conclusion

This chapter has examined a range of diverse examples that aimed to shed more light on the extent to which the instruments of the ENPs eastern dimension are successful in promoting coherent EU external action. Therefore, the conclusion will shortly review the substantive findings and reflect on the meaning for coherence thereon.

First, the examination of the EU's norms has shown that the EU does not differentiate legitimately in its promotion of norms in the ENPs eastern dimension. The Union's action was not thoroughly connected to how deprived the situation in a given country is, but rather on the extent to which the respective state had acknowledged European aspirations. As the promotion of norms is strongly interrelated with the ENPs aims to maintain stability, successful results are vital for the attainment of the overarching goal of human security. Hence, the EU's failure to promote its fundamental norms with third countries that are actively looking for deep trade relations has far reaching consequences for the success of attaining a more prosper, stable and secure neighbourhood. The trembling of one pillar of the ENPs organising concept of human security, namely stability, therefore endangers the coherence of the policy as a whole.

Second, the analysis of member state involvement showed that the ENPs soft and hard law instruments were able to overcome the Unions internal competence divide. Furthermore, all of the legal and non-legal instruments of the ENPs eastern dimension under study showed a certain baseline of commitment towards joint ownership – at least rhetorically. However, the actual analysis of joint ownership illustrated that the ENP involves its eastern partners too moderately and builds on unilaterally imposed conditions by the Union through the principle of conditionality instead. The resulting one-sided beneficiary threatens the ENPs potential to enhance human security in a common neighbourhood. However, the EU-Ukraine Association Agenda gives a glimpse of hope in the sense that at least the future non-contractual agreements will try to overcome this failure. Nevertheless, at the current point in time, one can state that while the ENP furthers coherence through the creation of positive synergies between actors and instrument internally, it largely fails to do the same externally. This argument is further strengthened when turning once again to the question of membership. The examination of the old and new types of association agreements showed that the ENP not only draws on but even methodologically extends the accession framework. Therefore, a fulfilment of the AAs conditions will eventually produce potential candidates, even though membership status is explicitly left open by the agreement. One may even go as far as arguing that the new AAs deprive the countries of their candidate status on basis of Art.49 TEU. As a result, the ENPs *raison d'être* remains even in the newest contractual agreements far from clear. This in turn threatens once again the coherent application of the policy.

The present chapter has shown that the successful promotion of the principle of coherence in the instruments of the ENPs eastern dimension varies, so that there is no clear-cut, dichotomous 'yes – no answer' to the (sub-) question at hand. This is the starting point of the concluding chapter, which seeks to draw all the results from Chapter 1 – 3 together in order to determine whether the EU's policies towards its eastern neighbourhood contribute towards coherent external action in that region.

Conclusion

The conclusion at hand is divided into two parts. The first part draws together the main results emanating from the three chapters. The second part concentrates on the main research question of this thesis: *To what extent do the EU's policies towards its eastern neighbourhood contribute towards coherent external action in that region?*

The first challenge to examining the research question was to define and conceptualise the meaning of coherence in EU law and policy. Even though coherence is often referred to as one of the most desirable policy goals, it is particularly difficult to demarcate concretely: What is coherent and what is incoherent? What are its causes and how is it perceived? The first chapter of this thesis argued that coherence in EU can be characterised as a constitutional principle of EU law that is accentuated as a mandatory requirement of the Unions external relations policies, such as the ENP, by the Treaties (Art. 21 (3) TEU).
To structure the inquiry into the ENP, Chapter 1 introduced an analytical framework for coherence in EU law and policy which provided a definition of coherence: *To attain coherence between norms actors and instruments towards a common objective, between them conflicts should be avoided and resolved (first level), task should be allocated effectively (second level) and positive synergies should be achieved (third level).* While all definitions bear the risk of implying a normative choice on the content, the one at hand was chosen due to its potential to present a relatively holistic approach: It facilitates the display of the constitutional and legal nature of coherence while functionally capturing its connection with EU external policy. In line with the research question at hand, it thus inclined the greatest potential of seizing oversimplification.

As a result, the three levels of coherence emerged in various forms and shapes throughout the second chapter of this thesis, which examined the extent to which the attainment of the requirement of coherence was reflected in the ENPs legal base, objective, methodology and variety of instruments. In this endeavour, Chapter 2 contained a literature review that reflected the state of the present academic discussion with regard to coherence within the ENP. It was argued that from a wider legal perspective, the ENP presents a distinct and rather thriving example of inter-institutional cross-pillar and cross-actor cooperation to avoid conflict, allocate tasks and achieve positive synergies. Especially the ENPs legal base, objective and variety of instruments were said to entail the potential of fostering coherence within the ENP. The placing of Art. 8 outside from the other policies on EU external action leaves the ENP with an all-encompassing character that is intended to remain unaffected by the competence struggle deriving from the CFSP/non-CFSP distinction. The article therefore facilitates the erection of a policy within as well as outside the Union's legal order. This in turn enabled the integration of contractual and non-contractual agreements as well as legislative and non-legislative instruments into a single policy containing a unique hybrid legal nature. Soft law instruments were said to be particularly suitable in overcoming internal as well as external legal and political constraints. In doing so, cooperation between the Union and its member states is enhanced while the principle of joint ownership seeks to equally integrate neighbouring countries in the policy formation process. Moreover, the policy's vast scope was aligned towards the single objective of human security though stability and prosperity. This in turn offered a mean to overcome disorganisation between different policy fields as a core source of incoherence.

In that sense, the ENP is a model of the EU's external goals (Art. 21 (3) TEU), values (Art. 3 TEU) as well as the mutual duty of cooperation between the Union and its member states (Art. 4 (3) TEU). The policy was therefore described as a prototype for coherent external action. The application of this prototype is however likely be threatened by several internal flaws within the ENPs legal and political design. The transformation of pre-accession methodology into a policy designed as an alternative to enlargement has been outlined as a particular drawback to the ENPs coherent application as it lacks a *finalité* that grants the neighbours a sufficient incentive for future reform. Consequentially, the use of the methodological concept of conditionality to promote and export the 'values of the Union' (Art.8 TEU) may neither be fruitful nor in line with the principle of joint ownership.

While the ENP may be innovative and promising with regard to its procedures and instruments, there was thus no guarantee for coherence in the practical outcome of those actors' collaboration. To investigate this issue, Chapter 3 examined the extent to which the legal and political instruments of the ENPs eastern dimension were successful in promoting coherent EU external action. Therefore, the final propositions of the second chapter were assessed quantitatively by means of a content analysis. The focus of the third chapter was thus a legal and political analysis of the third level of coherence: The extent to which positive synergies between norms, actors and instruments are present in the ENPs eastern dimension. The first part of the third chapter examined the promotion of the ENPs core norms as an expression of its overall human security goal. In doing so, it immediately encountered the indefiniteness enigma of coherence: If coherence goes beyond the sheer notion of uniformity, what is a valid benchmark to test and determine coherence? In this vein, the principle of legitimate differentiation through the PPI index was introduced. A country that deemed more insecure, unstable, unfree or corrupt by the PPI index prompts stronger initiatives in its legal and political instruments to counter these developments. The analysis however showed that the reverse was true: The EU's actions were not thoroughly connected to how deprived the situation in a given country was, but rather to the extent to which the respective state had acknowledged European aspirations. As a result, one could not detect sufficient synergies between norms and instruments in the ENPs eastern dimension. Thereafter, the chapter examined the erection of synergies between actors and instruments on the basis of member state involvement and the principle of joint ownership. It was argued that the policy was successful in overcoming the EU's internal competence divide and able to form a rhetorical baseline of commitment towards joint ownership. In actual terms, the EU was however unable to integrate the neighbours on a reciprocal and equal basis as the ENP's initiatives rather build on unilaterally imposed conditions by the Union through the principle of conditionality. The gap between the neighbours and the EU's perception further widened upon examining how the question of the lacking membership perspective was tackled in the newly found AAs. The simply answer to the question was: Not at all. While membership was explicitly left open, the agreements did not only draw on, but even methodologically extent the accession framework towards the subject of (human) security. As a result, the ENPs *raison d'être* remains even in the newest contractual agreements far from clear. As it stands now, the ENP tends to fuel the accession claims of the Union's eastern neighbours instead of offering a genuine alternative to membership.

These three chapters have highlighted numerous aspects about coherence. However, they did not give a clear-cut affirmative or negative answer to the question as to whether the EU's policies towards its eastern neighbours are coherent in that region. Instead, Chapter 2 and 3 outlined that any aspects of the ENP that was examined in light of coherence had more than one implication.

From a broader legal perspective, the EU's policies towards its eastern neighbours may indeed be seen as a prototype for coherence. There has been undisputable success in coalescing norms, actors and instruments, especially from an EU inward-looking perspective. The Union's policies towards its eastern neighbours have been proven to be especially successful in overcoming the EU's internal competence divide resulting from its fragmented legal nature. Instead of being preoccupied by internal legal constraints, all relevant actors within the Union could focus on having their external policy interest furthered: The alignment of all instruments and capabilities at their disposal to the common end of human security. However, the picture painted from an EU-outward looking perspective was not so rosy. The key problem emerging from both Chapter 2 and Chapter 3 as a cause of incoherence is the EU's inability to agree on the *finalité* of the EU-neighbour relations. Particularly Moldova, Ukraine and Georgia are eligible accession candidates under Art. 49 TEU. Consequentially, there is an outstanding need for the Union to clarify what it can deliver, thereby forming a clear rational for the eastern neighbours in terms of adopting new standards. If the aim is to truly find an alternative to enlargement, a diverging methodology should be applied to build a distinct human security policy in a common neighbourhood. In doing so, the EU should focus on those countries where the on-ground development of human security is most appalling, notably Azerbaijan. The principle of joint ownership may thereby be a key to success, both as an alternative to enlargement and as a distinct mean to achieve human security goals.

In conclusion, the ENP, at least with regard to its eastern dimension, may be seen as an imperfect but nevertheless important mean towards the ultimate goal of achieving a single voice of the Union that coherently promotes its values and interest in the wider world (Art. 3 (5) TEU). This remains true even though there is an ongoing need to counterbalance the policy's drawbacks as described above: The fact that these drawbacks exist does not mean that the policy should simply be abandoned. They rather symbolise the pressing need to address the sources of incoherence by adapting the ENP to the specific needs of its eastern neighbourhood. By aligning the expectations vis-à-vis the EU not only internally but also externally to a common end, the policies towards its eastern neighbours might help the EU to get one step closer to overcoming its famous capability-expectations-gap.

Annex 1: Methodology

The following gives an overview over the coding of the introductory words of the APs, AAs or the EU-Ukraine association agenda. The chosen words have been carefully extracted by the author of this thesis from the sections of the relevant instruments under study. In some legal provisions of the AA this may be the first word of the provision. In the process of coding, five different coders have been provided with the Table below and were asked to rank the words accordingly. The coders have a different sex, field of expertise and employment. The fifth coders (the author of the thesis) as well as the fourth coder have prior knowledge about the ENP, the rest of the coders have either vaguely come across the policy or have never heard of it before.

- Coder 1: Female, 23, Student of International Relations
- Coder 2: Female, 21, Student of Biochemistry and Neuroscience
- Coder 3: Male 23, Student of European Studies with a focus on Economics
- Coder 4: Male, 45, Employee at the German Foreign Ministry
- Coder 5: Female, 23, Student of European Studies with a focus on European Law

Table A1 highlights the collection of introductory words and indicates the mean of the answers of the five coders. For reasons of simplification, the mean has been rounded to the nearest single digit.

Table A1: Introductory words

	5 (very weak)	4 (weak)	3 (average)	2 (strong)	1 (very strong)
Accede to				x	
Accede and implement					x
Accelerate and increase				x	
Achieve			x		
Address effectively			x		
Adopt				x	
Adopt and implement					x
Agree to/on			x		
Align progressively			x		
Further align			x		
Amend			x		
Approximate		x			
Approximate gradually	x				
Analyse jointly		x			
Further advance			x		
Attach importance to		x			
Continue to			x		
Continue and ensure			x		
Continue to draw on		x			
Continue to improve		x			
Continue efforts to			x		
Continue to develop and				x	

implement					
Continue and develop		x			
Cooperate to/ on		x			
Consider	x				
contribute		x			
Enhance cooperation		x			
Closely Cooperate to			x		
Conduct (consultations on)		x			
Combat			x		
Complete			x		
Commit oneself			x		
Recognise and commit			x		
Draw on	x				
Develop		x			
Develop and strengthen			x		
To deepen association		x			
Further develop		x			
Identify and Develop	x				
Develop and introduce		x			
Develop and implement				x	
Effective execution of				x	
Effective dialogue on		x			
Engage		x			
Enhance		x			
Endeavour to enhance		x			
Ensure			x		
Enforce				x	
Establish and revise			x		
Envisage	x				
Helping to ensure		x			
Harmonise			x		
Encourage	x				
Complete the establishment of				x	
Continue efforts to ensure			x		
Counter			x		
Eradication of			x		
Establish			x		
Exchange		x			
Examine		x			
Examine and implement			x		
Explore		x			
Facilitate		x			
Facilitate and support			x		
Fight against			x		
Foster			x		
Giving due regard		x			
Identify		x			
Implement				x	
Fully implement					x

Further implement				x	
Further progress			x		
Fine-tune			x		
Implement and enforce					x
Put in place and implement				x	
Improve		x			
Further improve			x		
Increase		x			
Initiate		x			
Intensify and enhance			x		
Introduce		x			
Invite	x				
Maintain		x			
Make progress		x			
Actively pursue			x		
Promote			x		
Promote and ensure			x		
Provide			x		
Sharing the experience of		x			
Sign, ratify and implement					x
Strengthen			x		
Further strengthen			x		
Increase efforts to strengthen		x			
Enhance and strengthen			x		
Raise the level of		x			
Ratify				x	
Recognise		x			
Recognise and commit oneself				x	
Reform			x		
Reflect		x			
Reinforce			x		
Further reform			x		
Focus on		x			
Reduce			x		
Review		x			
Revision		x			
Respect			x		
Promotion of respect			x		
Respect and promote			x		
Reiterate		x			
Reaffirm		x			
Share		x			
Shall do sth.			x		
Seek to	x				
Sign and ratify				x	
Step up cooperation		x			
Streamline			x		
Strive to establish	x				
Support			x		

Tackle			x		
Taking additional steps		x			
Taking concrete steps			x		
Take gradual steps		x			
Taking significant steps			x		
Taking early steps			x		
Take first steps to implement			x		
Take steps to improve		x			
Identify steps to establish and implement			x		
Taking relevant action			x		
Taking concrete action			x		
Taking into account	x				
Take measures against			x		
Undertake		x			
Work with/towards/together		x			
Work closely with		x			

For the coding of actual content of the provisions (-1, 0, +1), a discussion has been held between the author and 3 other law students. The law students were all specializing in European law and therefore knew about the content of the neighborhood policy.

Annex 2: Positive Peace Index (PPI)

Section 3.4 utilises the PPI in its research design. Table A2 gives an overview over its relevant domains and indicators. For more information on the individual indicators and their weighting please see Institute for Peace and Economics (2013).

Table A2: PPI Indicators

PPI domain	PPI indicator	Weighting	Source
well-functioning government	Government effectiveness	5%	World Governance Indicators, World Bank
	Rule of law	5%	World Governance Indicators, World Bank
	Political culture	5%	Sub-Index, Democracy Index, Economist Intelligence Unit
sound business environment	Ease of doing business	4%	Ease of Doing Business Index, World Bank
	Economic freedom	4%	Heritage Foundation
	Gdp per capita	4%	World Bank
equitable distribution of resources	Life expectancy index loss	4%	Human Development Report, United Nations Development Programme
	Gini coefficient	2%	Economist Intelligence Unit
	Population living below $2/day	5%	World Bank, IEP
acceptance of the rights of others	Hostility to foreigners and Private property rights	3%	Economist Intelligence Unit
	Empowerment index	4%	Cignarelli-Richards Human Rights Dataset
	Gender inequality	4%	Human Development Report, United Nations Development Programme
good relations with neighbours	Satisfaction with community	3%	Human Development Report, United Nations Development Programme
	Regional integration	4%	Economist Intelligence Unit
	Intergroup cohesion	5%	Indices for Social Development, International Institute for Social Studies
free flow of information	Freedom of the press index	4%	Freedom House
	World press freedom index	4%	Reporters Without Borders
	Mobile phones subs per 1000	3%	International Telecommunications Union
high levels of human capital	Youth development index	4%	Commonwealth Secretariat
	Non income hdi	4%	Human Development Report, United Nations Development Programme
	Number of scientific publications	4%	World Bank and UNDP
low levels of corruption	Control of corruption	5%	World Governance Indicators, World Bank
	Factionalised elites	5%	Fund for Peace
	Perceptions of corruption	5%	Transparency International

Source: Institute for Economics and Peace (2013)

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