



Justice and home affairs and the EU's eastern partners

SUMMARY *The Eastern Partnership (EaP), launched in 2009, is the Eastern dimension of the European Neighbourhood Policy (ENP). It is composed of the EU and six former Soviet Union republics.*

Justice and home affairs (JHA)–related issues have been gaining prominence in the ENP; this is due to the fact that the EU sees its neighbours as both source and transit countries for threats to the EU's internal security, which has been increasingly defined by external factors.

The EU has, in general, more to gain by cooperating on JHA issues than do its Eastern Partners. While in most cases this cooperation has an operational and network–based character, in others the EU pays for its neighbours' compliance by rewarding them with concessions in areas of greater interest to them.

The EU and its eastern neighbours have cooperated through various bi– and multilateral structures. In addition, regional cooperation involving selected countries has been promoted. There are differences in the level of cooperation achieved with individual partners, linked to their respective geopolitical situations.

The European Parliament has adopted numerous resolutions on various aspects of the EaP. Moreover, it is part of the EuroNest Parliamentary Assembly, the parliamentary component of the EaP, established in 2011.



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Context

Strengthening the eastern dimension

Recent years have seen the emergence of a comprehensive policy aimed at strengthening the EU's relations with its Mediterranean and eastern neighbours. The [European Neighbourhood Policy \(ENP\)](#), launched in 2004, has offered the countries concerned increased political association and economic integration, in exchange for undertaking reforms and respecting "shared values", such as democracy and the rule of law. The ENP is a policy distinct from enlargement and the possibility of future accession to the EU is neither accounted for nor precluded.

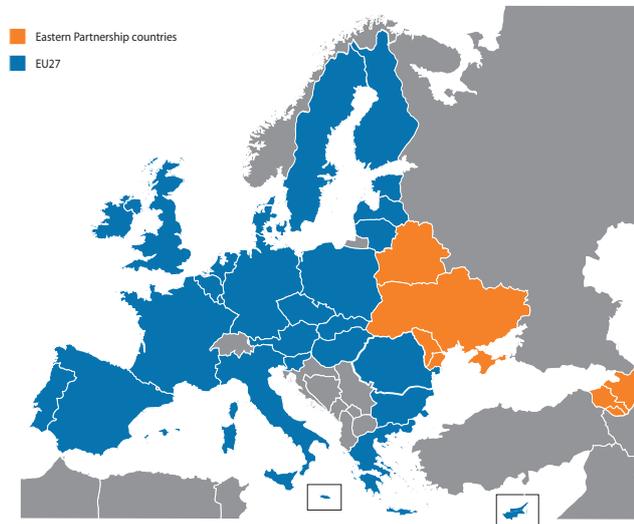
The ENP, which concerns bilateral relations between the EU and each partner country, has been deepened with regional and multilateral cooperation initiatives, such as the Union for the Mediterranean (UfM) and the Eastern Partnership (EaP).

The **EaP** was [launched](#) in May 2009 in Prague. The [proposal](#) to develop this Eastern dimension of the ENP was introduced by Poland and Sweden in the context of the creation of the UfM and the conflict in Georgia. As Poland's Minister of Foreign Affairs Radosław Sikorski put it, the initiative was intended to differentiate "European neighbours" and "neighbours of Europe".¹

The EaP is composed of the EU plus six former Soviet republics including three

neighbouring countries (Belarus, Moldova and Ukraine) and the three South Caucasus countries (Armenia, Azerbaijan and Georgia).

Figure 1. The Eastern Partnership



Source: European Parliament

The weight of JHA issues

The EU has cooperated with the Eastern Partners in various areas pertaining to JHA, including managing migration flows and combating organised crime, drug trafficking and corruption.

The high profile given to these problems in the EaP illustrates not only the EU's perception of our eastern neighbours, but also the place occupied by security-related concerns in EU policies, both internal and external.

The JHA aspects of the ENP

Is the ENP about security?

It has been debated whether the ENP is a socio-economic transformation project similar to enlargement or a "cross-pillar" comprehensive security initiative. But analysts seem to agree that security issues occupy a major position within the ENP.

This seems to be a consequence of the external projection of EU internal policies – which has arguably become a new kind of foreign policy – dubbed the "external dimension" of a policy field. Indeed, such development seems to be particularly

visible in the JHA field, in which cooperation within the EU has, from the outset, also involved third countries. This external dimension of JHA has consistently been justified by the transnational character of security threats.

Both Commission and Council documents, and organised crime reports of EU agencies, point to the primary role that the neighbouring countries play as both source and transit countries of security threats to the EU. One author argues that although the ENP is more than just a security initiative, it has a unifying objective of "extra-territorialising" the management of these threats.²

EU action in the external dimension of JHA has grown steadily in recent years. This is illustrated, on the one hand, by the insertion of JHA cooperation clauses in all agreements with third countries, and on the other hand, by the adoption of external instruments specific to the JHA field (such as a separate Action Plan on JHA for Ukraine).

Moreover, in recent years, the external dimension of JHA has been increasingly based around respect for democracy, fundamental rights and the rule of law. Tensions thus seem inevitable between short-term strategies of supporting repressive actions of partner countries and the long-term strategy of eliminating the root causes of security threats by promoting democracy and the rule of law.³

Asymmetry of interests

Since one of the primary concerns of the ENP is the security of EU citizens, cooperation with the ENP countries on most JHA issues is asymmetric, with the EU having much stronger interests in cooperating than its neighbours.

This raises problems when the EU attempts to govern by conditionality (the use of conditions to be met by its partners) in the way it does with candidate countries. For this to work two basic conditions need to be met; first, a clear *acquis*, supranational

powers and monitoring mechanisms are necessary; then, strong leverage is needed on the EU side to guarantee the compliance of its partners.

Given that the JHA field is "communitarised" only to a limited extent, it lacks a clear *acquis* in the form of transferable legal instruments. In addition, the ENP is different from enlargement in that it cannot offer rewards as attractive as the prospect of membership.

As a result, a large part of JHA cooperation has an operational character and is based on networks (e.g. involving EU agencies, such as Europol). Migration is partly an exception with some space for bargaining due to the neighbouring countries' deep interest in having the EU's borders open to their citizens (see section below).

Figure 2. Asymmetry of interests in various areas of JHA

Interest constellation	Degree of "communitarisation"	
	Communitarised	Less communitarised
Strong asymmetry	Irregular migration	Drugs
Stronger asymmetry	Asylum	Corruption

Source: [S Lavenex and N Wichmann](#), 2009, pp. 90–91.

The EaP structures for cooperation

The Commission's evaluation

The JHA dimension of the EaP has been increasingly important, as illustrated by the 2009 [Stockholm Programme](#), the 2011 [Communication on Cooperation in the Area of JHA within the EaP](#) and the [ensuing Council conclusions](#). The Communication states that enhancing mobility of citizens in a secure and well managed environment remained a core objective of the EaP. The EU and its Eastern Partners have thus been working towards the establishment of a Common JHA Space.

The evaluation of the instruments in place led the Commission to conclude that dialogue and cooperation with the EaP

countries in the area of JHA has already been well developed, and that not much more is needed than consolidating and complementing the existing framework.

Bilateral relations

General

Partnership and Cooperation Agreements (**PCAs**), with related JHA-subcommittees and Human Rights dialogues, have been the main structure for cooperation on JHA issues. The PCAs are supposed to be replaced in the future by Association Agreements (**AAs**). AAs provide for increased cooperation in various areas including foreign and security policy and are aimed at creating so-called Deep and Comprehensive Free Trade Areas (DCFTAs).

Bilateral [Action Plans \(APs\)](#), concluded with each ENP partner, set out a more detailed agenda of reforms with short and medium-term priorities, including in the JHA area.

Migration

The **Visa Dialogue** is a framework to address the conditions for visa liberalisation, providing for short-term, visa-free travel between the EU and a partner country. This is conditional upon implementation of a series of benchmarks specified in a detailed Visa Liberalisation Action Plan.

Moldova, Georgia and Ukraine have gone furthest with migration cooperation, opening visa dialogues and earlier concluding legally binding **Readmission and Visa Facilitation Agreements**. These interrelated agreements are a classic example of a reward granted by the EU for the compliance of a partner country: the latter is given facilitated access to visas in exchange for readmitting irregular migrants who have originated from or transited through its territory.

Mobility Partnerships (**MP**) are yet another framework conceived as a mechanism to facilitate circular labour migration (a form of temporary migration to seek work).⁴ The Commission recommended that the

possibility of entering into a MP be open to all EaP countries.

Organised crime

Europol has entered into [strategic agreements](#) (although they do not allow for the exchange of personal data) with Moldova and Ukraine. Moreover, there has been a longstanding bilateral political dialogue on drugs with Ukraine, and the Polish Presidency in 2011 set up similar dialogues with Armenia, Moldova, Azerbaijan and Georgia.

Regional and multilateral level

An abundance of regional fora have emerged, some of them overlapping in terms of thematic and geographical scope. The [Black Sea Synergy](#), linking the countries around the Black Sea, is one.

Moreover, several multilateral platforms for exchange of information have been established. Three of them address certain JHA issues. Platform 1 includes three panels relevant to JHA, namely the Integrated Border Management Panel, the Panel on the Fight against Corruption and the Panel on Improved Functioning of Judiciary.

Migration

In this area the EU and the EaP countries have been involved in a number of so-called "processes" (See figure 3).

Figure 3. Processes related to migration

The name of the process	Countries involved
Söderköping process	Selected EU Ms and all Eastern Partners
Prague Process	EU MS, South Eastern and Eastern European countries, and Central Asia countries
Budapest Process	Over 50 countries including Australia, Canada, China and USA (having observer status)

Individual partners

Ukraine

Ukraine began its cooperation with the EU with the most advanced JHA programme of any of the group of future ENP members. In

2001 a separate Action Plan on JHA was adopted, the only such plan for the EU's neighbours.

Before the launch of the ENP, EU cooperation with Ukraine mainly concerned cross-border issues including border management and transnational crime. A shift of priorities came with the ENP, as the EU increasingly focused on legal harmonisation in line with international conventions and capacity building in the functioning of the judiciary and the fight against corruption. The AP was revised accordingly in 2007.

The EU and Ukraine have differed in their understanding of "security", the latter being more interested in the settlement of territorial conflicts (also in the context of its prospects for NATO accession, suspended at present) than in the JHA issues covered by the Action Plan. Since 2005 the EU has conducted a Border Assistance Mission to Moldova and Ukraine ([EUBAM](#)) and has been successful in involving Ukraine in conflict resolution in Transnistria, the bordering region of Moldova.

Whereas Ukraine has made many compromises in the JHA field, they have not been met with equivalent rewards. For example visa concessions by the EU were conditional upon signing a readmission agreement; this despite visa-free travel being granted to all EU citizens and the existence of a visa-free regime for Ukrainians in the "new" MS prior to the EU's 2004 and 2007 enlargements. As a consequence, as of 2008, Ukrainian authorities have been less cooperative on JHA issues.⁵ Moreover, following the 2010 presidential election Ukraine has reoriented its foreign policy, putting some distance between itself and the EU. Whereas the negotiations on the Association Agreement have been finalised, EU-Ukraine relations have become strained in recent times as a result of stalled political reforms and the clampdown on opposition leaders.

Republic of Moldova

Despite having only recently started collaborating with the EU on JHA issues, Moldova (alongside Ukraine) has arguably been more responsive to EU cooperation attempts than any other partner. In some cases it has implemented EU demands even before it being asked to do so.

Migration is a field in which cooperation has been particularly successful; not only have readmission and visa facilitation agreements been signed, but the country has also been chosen as a platform for the deployment of pilot migration-related EU initiatives.

Moldova, alongside Cape Verde, was the first country to launch a mobility partnership (MP) with the EU, in which 15 MS have taken part. In reality, however, circular migration between Moldova and the EU has been very limited.

Then, the Common Visa Application Centre was opened in 2007, to which the same number of MS have adhered, with the aim of compensating for the lack of consular representations in Moldova.

In terms of combating corruption Moldova has gone further than neighbouring Ukraine, undertaking to align its anti-corruption legislation with the standards of the [Financial Action Task Force](#).⁶ However, it does not seem to be doing as well in terms

of human rights' protection. This has been illustrated by instances of discrimination by the state condemned in a recent EP [resolution](#).

South Caucasus

The implementation of the EU's policy goals in the South Caucasus, including those related to security issues, is problematic. Firstly, given the absence of membership prospects for Armenia, Azerbaijan and Georgia, the EU's leverage over these countries is limited. Secondly, they lie within the sphere of direct Russian influence and the EU is reluctant to take any action which could be perceived as interference with Russian foreign policy. Thirdly, those countries are preoccupied with state building and territorial integrity and thus differ from the EU in their understanding of "security"; at the same time they are unwilling to cooperate with each other, which is particularly true of Azerbaijan and Armenia, in conflict over Nagorno-Karabakh.

Georgia

The differences between the EU's and Georgia's perspectives on security became apparent with the 2004 rule of law mission to Georgia and the EU's efforts to introduce Integrated Border Management in the South Caucasus.

The aim of the [EUJUST Themis](#) mission was to assist Georgia in reforming its criminal

Figure 4. Instruments of JHA cooperation with EaP countries

Country	PCA (entry into force)	Association agreement negotiations (launched)	Visa facilitation and readmission agreements	Visa dialogue	MP	FRONTEX working arrangement	Europol strategic agreement
Armenia	1999	2010	Negotiations launched in 2012		2011	2012	
Azerbaijan	1999	2010	Negotiations launched in 2012				
Belarus	Signed in 1995, never concluded					2012	
Georgia	1999	2010	2011	2012	2009	2012	
Moldova	1998	2010	2008	2010	2008	2012	2007
Ukraine	1998	Completed in 2011	2008	2008		2012	2009

justice system. However, while the EU was striving for a reform towards a modern system based on the rule of law, Georgian authorities favoured a more repressive approach. Their intention was to restore respect for the state with the eradication of all illegal armed groups.

When building an Integrated Border Management system for the South Caucasus, the EU's primary intention was to increase efficiency in the fight against drugs and human trafficking from Central Asia to Europe. Georgia wished instead to secure its borders in the context of the conflict with Abkhazia and South Ossetia (the approach of Armenia and Azerbaijan was driven by similar considerations). Moreover, Georgia showed preference for cooperation in the Black Sea Synergy, rather than within the South Caucasus region.⁷

Since 2008 the EU has conducted a Monitoring Mission in Georgia (EUMM), an unarmed civilian mission monitoring the situation, established in the context of the conflict in Abkhazia and South Ossetia.

Over the last two years EU-Georgia cooperation has markedly accelerated, in particular with respect to migration issues (see Figure 4).

Belarus

Belarus has been willing to pursue cooperation within the EaP on technical issues. In this vein a policy dialogue on customs, integrated border management and law enforcement has developed, as has cooperation for combating illegal migration and smuggling. In this connection a working arrangement has been signed with FRONTEX.

Overall, however, the participation of Belarus in the EaP has been limited, the country being the only partner which has not signed a PCA with the EU.

The outcome of the EaP in terms of democratisation of the country has been assessed critically, in particular following the

2010 presidential election. Belief remains however that the EaP still has some potential to help trigger reforms in Belarus by supporting civil society.⁸

The EU has supported the protection of refugees and asylum seekers in Belarus through a [Regional Protection Programme](#) (2011-2013), also covering Moldova and Ukraine.

The European Parliament's position

The European Parliament has regularly spoken out on ENP and EaP-related issues, as illustrated by a number of relevant resolutions.⁹

The April 2011 [resolution](#) on the ENP's eastern dimension concerned, among other things, several JHA-related issues. The Parliament recalled that shared fundamental values should remain the main benchmark to evaluate the performance of the partner countries. It further stressed that combating corruption should be a top priority for the EU in its relations with the Eastern Partners.

It also urged the Council and the Commission to ensure that the visa liberalisation offer made to EaP countries is – as far as timetable and content are concerned – at least as generous as those proposed to third countries with which they share borders.

The EP noted stronger EU engagement in security issues in the EU's Eastern neighbourhood with the establishment of the EUBAM in Moldova and the EUMM in Georgia. It recommended, however, that the EU take a more prominent role in the settlement of conflicts in these areas. The EP perspective on the EU's role in conflict resolution in the South Caucasus was presented in a separate [resolution](#).

In its December 2011 [resolution](#) on the review of the ENP, the EP welcomed the concept of a new response to the changing neighbourhood presented by the Commission and High Representative

Catherine Ashton in the aftermath of the Arab Spring. It emphasised the role of mobility partnerships and visa facilitation, stressing once again that the Eastern Partners should benefit from a "privileged EU offer on visa liberalisation in terms of calendar and substance".

The Parliament has also made its voice heard through the [EuroNest](#) Parliamentary Assembly established in 2011 as the EaP's parliamentary component. The Assembly consists of delegations of the EP and of the Parliaments of the Eastern Partners. Following the 2010 presidential election in Belarus, the country's membership was suspended. The Assembly meets once a year, alternatively in an Eastern Partner country and in one of the EP's three places of work.

Main references

[The External Governance of EU Internal Security](#) / S Lavenex and N Wichmann, European Integration, Vol. 31, No. 1. January 2009.

[The Intersection between Justice and Home Affairs and the European Neighbourhood Policy: Taking Stock of the Logic, Objectives and Practices](#) / N Wichmann, CEPS, October 2007.

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Endnotes

¹ Conference with Radosław Sikorski in Brussels, 26 May 2008: "In the south we have neighbours of Europe, in the east we have European neighbours of the EU that – if they fulfil the criteria- will one day be able to apply for membership". Quoted after [What influence does the European Union have in its Eastern Neighbourhood? Assessment and Prospects for the Eastern Partnership](#) / L Delcour, 2012.

² [N Wichmann](#), op. cit. p. 1.

³ Op. cit. p. 5.

⁴ [Circular Migration – a new form of temporary labour migration?](#) / The Radio 1812 website, June 2012. For critical assessment of the MPs signed with Moldova and Georgia see: [Assessing the Mobility Partnerships between the EU and Moldova and Georgia](#) / R Hernández I Sagrera, 2011.

⁵ [Neighbourhood Europeanisation through ENP: The Case of Ukraine](#) / A Gawrich, I Melnykovska and R Schwieckert, JCMS, Vol. 48. No 5. 2010.

⁶ [Moldova: Pioneering Justice and Home Affairs Cooperation With the EU in the Eastern Partnership?](#) / R Hernández I Sagrera, Moldova's Foreign Policy Statewatch, July 2011.

⁷ [The Externalisation of JHA Policies in Georgia: Partner or Hotbed of Threats?](#) / L Di Puppo, Journal of European Integration, 31:1, 2009.

⁸ Civil society has been involved in cooperation within the EaP through the Civil Society Forum established to promote contacts among CSOs and facilitate their dialogue with public authorities. See: [Saving what can be: what the Eastern Partnership could \(still\) bring to Belarus](#) / A Marin, Eastern Partnership Rev. No.3, December 2011.

⁹ Including the 2007 resolution on strengthening the ENP, the 2010 resolution on the need for an EU Strategy for the South Caucasus, the 2010 resolution on the annual report from the Council to the EP on the main aspects and basic choices of the CFSP, as well as a series of resolutions devoted specifically to respective Eastern Partners.