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## Summary

In the aftermath of 1989, the EU has engaged in the promotion of an unprecedented process of policy export. This Paper will first of all introduce the notion of Normative Power, showing that the Union's capacity of action cannot be considered only in traditional terms and that an important expression of its "actorness" in the field of international relations can be captured in terms of rule influence.

It will then claim that Russia is an important test-case for the EU which has started promoting legislative approximation in it already in the mid-1990s, following both coercive and persuasive strategies.

Finally, it will show that there has been legislative approximation in Russia in three policy areas: competition policy, company law and consumers' protection. These were cases of "unintended Europeanisation" where the rule was adopted not in order to comply with EU provisions. Exchange of experts, best practice and familiarity with the EU experience proved crucial in order to induce rule approximation which took place out of a process of deliberation. In the conclusions, the Paper will argue for a system of governance by norms in the European continent where Europeanisation won't mean only EU-isations.

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# Convergence, best-practice and Europeanization: a valuable way to rethink EU-Russian relations?

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## Russia and EU Eastern Neighbours Program

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"We prepare for war like precocious giants and for peace like retarded pygmies"  
*Lester B. Pearson, in his acceptance speech of the Nobel Peace Prize, 1957*

"In the long run there is no statesmanship without generosity"  
*Jean Monnet*

## 1. Introduction

It is a widespread conviction that EU-Russian relations are in trouble. The EU's trade commissioner, Peter Mandelson, claimed in April 2007 that the atmosphere of bilateral relations has reached a "level of misunderstanding or even mistrust we have not seen since the end of the Cold War"<sup>1</sup>. Disagreements over different issues have regularly disturbed the relationship. First of all, there were divergences concerning the issues of transit rights for Kaliningrad, the extension of the PCA to new EU members and the definition of steel export quotas. Then, there were trade disputes over meat and raw timber; concerns over the murders of Vladimir Litvinenko and Anna Politkovskaya; repressions of the manifestations organised by the anti-Putin opposition which coalesced around "Other Russia"; the decision of Czech Republic and Poland to participate to the American Programme of missile defence; Russia's threat to veto UN plans for Kosovo's independence; and, finally, disagreements over the aspiration of Ukraine and Georgia to join the Nato.

In this framework, the postponement of the negotiations for the renewal of the Partnership and Cooperation Agreement (PCA) was the most evident symptom of the difficulty of "the two halves of Europe" to carry on a dialogue in a climate of trust and to redefine, on this basis, the terms of the relationship. For a long time, too many declarations over a presumed "strategic partnership" between the EU and Russia have been able to hide the incapacity of the parties to assume the responsibilities they were formally taking, fulfilling the wide programme of cooperation which was defined in the 4 Road Maps approved in May 2003<sup>2</sup>. However, at present, it is clear that it will be difficult to find more ambitious, but still empty formula to replace the old ones. The choice is now between, on the one hand, the gradual fulfilment of the engagements already taken and, on the other, the re-definition of the relationship on new, less

<sup>1</sup> Speech in Bologna, April 20th 2007, [http://trade.ec.europa.eu/doclib/docs/2007/april/tradoc\\_134525.pdf](http://trade.ec.europa.eu/doclib/docs/2007/april/tradoc_134525.pdf). This statement may prove exaggerated. After all, Russia is not trying to spread an anti-Western ideology around the world. It rather sees itself as a civilised Western country and it wants to be part of international clubs (Barysh, 2007). However, it's a stimulus not to underestimate the challenges ahead.

<sup>2</sup> The EU-Russia summit held on 17 May 2001 established a joint High Level Group (HLG), within the framework of the PCA, to elaborate the concept of the Common European Economic Space (CEES). Later on, at the bilateral summit which took place in St. Petersburg in May 2003, the EU and Russia expressed their intention to reinforce cooperation on a number of issues and included the CEES into a broader project which entails the creation of four Common Spaces in the framework of the PCA: an Economic Space; a Space of Freedom, Security and Justice; a Space of Common External Security; and, finally, a Space of Science, Research, Education and Culture. The idea has been framed so as to provide Russia with a valid alternative to the European Neighbourhood Policy (ENP), as far as this country has decided to stay out of this policy, but the ideas which underpin the whole building are in many cases the same. The Moscow Summit of May 2005 approved the Road Maps concerning the creation of the four Common Spaces, while the Summit which took place in London in October 2005 focused on the practical implementation of these documents.

optimistic terms. However, no one wants to step back and downplay the partnership between the “two halves of Europe”. The relationship is doomed to be strategic for economic and geopolitical reasons, even if no one at the moment knows how to translate this formula into reality. At the same time, no one is able to follow seriously the indications of the 4 Road Maps which should ultimately translate into the creation of 4 Common Spaces: a Common European Economic Space; a Space of Freedom, Security and Justice; a Space of Common External Security; and, finally, a Space of Science, Research, Education and Culture<sup>3</sup>. The result is a state of continuous incertitude on the general terms of the relationship, where different problems which unavoidably emerge in bilateral relations seem disruptive and where trust is continuously declining.

Yet, if we look at what happened in terms of cooperation beyond “high politics”, the conclusions which can be drawn about the development of the relationship are different. To analyse these issues, this Paper will first of all introduce the reader to the notion of Normative Power, showing that the Union’s capacity of action cannot be considered only in traditional terms, but that an important expression of its “actorness” in the field of international relations can be captured in terms of rule influence. It will then claim that Russia is an important test-case for the European Union which has started promoting legislative approximation in this country already in the mid-90s, following both coercive and persuasive strategies. Finally, it will show that there has been legislative approximation in Russia in 3 policy areas which are at the core of the internal market: competition policy, company law and consumers’ protection. It will be argued that these were cases of “unintended Europeanisation” where the rule was adopted not in order to comply with EU provisions. Exchange of experts, best practice and familiarity with the EU experience proved crucial in order to induce rule approximation which took place out of a process of deliberation where national decision-makers were convinced of the usefulness or of the appropriateness of the norm to adopt. Finally, I will contend that even if the negotiations between EU and Russian authorities are apparently stalling, the main ideas which are at the basis of the relation are being realised against all the odds, arguing for a system of governance by norms in the European continent where Europeanisation won’t mean only EU-isations.

## 2. *The EU Normative Power in the aftermath of 1989*

In the aftermath of 1989, Europe, once the core of US-Soviet opposition, became a central arena for changes. As a matter of fact, the end of the Cold War not only triggered a painful period of complex transformations in Eastern Europe, but it also challenged Western European institutions calling them to rethink a system of governance for the entire European continent. In particular, the European Communities, which were set up under a bi-polar

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<sup>3</sup> It’s worth underlining that the Space of Science, Research, Education and Culture may be the only one which is fairly well advanced, thanks to the Bologna Process. Russia participated since the beginning to this process. It shared the main objectives of it and it agreed on the solutions proposed. In a nutshell, Russia was not asked to participate in a process which was already started without its participation. There was co-ownership of the process. As a result, Russia seriously engaged in a complex and expensive reform of its own system in order to comply with main provisions which derive from the participation to the Bologna process.

system, had to face abruptly the question of their *finalité*, just a few years after the re-launch of the economic integration process. In this framework, the Maastricht Treaty was signed and, reinforcing the cohesiveness of the Western part of the continent, it opened the way to unexpected perspectives for the Eastern part of it. No one could imagine at the beginning of the '90s that in less than 15 years 10 countries, which were under more or less direct Soviet influence, could enter into EU's structures. However, the step by step engagement of both parties in a very thick dialogue has led to the definition of ever wider commitments which have then brought to the integration of Eastern Europe into the "Common European Home"<sup>4</sup>.

The accession of these countries to EU' structures triggered a process of policy export which was unprecedented both for its width and for its formulation. The conditions set for the accession of Eastern European Countries, which were posited in 1993 at the Copenhagen European Council, were undoubtedly the most detailed and comprehensive ever formulated. In particular, one of the criteria asked to candidates "the ability to take on the obligations of membership"<sup>5</sup>. In a nutshell, new entrants were invited to adopt the *acquis communautaire*, i.e. the whole body of EU rules, political principles and judicial decisions which – at the time of enlargement in 2004 – was made up of 31 different "chapters", that is nearly 80 000 pages of legislative texts<sup>6</sup>. This was only the start of a vast operation aimed at exporting EU's rules not only to the countries which were or are to be fully included in its structures, but also to a wide range of States well beyond the European continent. In this framework, Russia has been a test case for the European Union which have started sketching a strategy aimed at exporting to this country the *acquis communautaire* already since the mid '90s.

The basis for the engagement of Russia in this process was article 55 of the Partnership and Cooperation Agreement (PCA)<sup>7</sup>. This article claims that an important condition for strengthening the economic links between the two partners is the approximation of legislation and that, to this purpose, "Russia shall endeavour to ensure that its legislation will

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<sup>4</sup> This concept was very fashionable at the beginning of the '90s not only in Central and Eastern European Countries, but also in Russia. Both Gorbacev and Elcin have used it several times in their official speeches, but the idea has lost its attractiveness on the way. It is worth underlining that, in 2003, when the EU launched a new policy to deal with Eastern European neighbours – which was also originally addressed to Russia – it initially employed the concept of "Wider Europe", which somehow reminded of the idea of an existing Common European Home. This formulation has been dropped when the European Neighbourhood Policy was extended to Southern Mediterranean countries.

<sup>5</sup> The other criteria established in Copenhagen asked to candidates "the capacity to provide institutional stability guaranteeing democracy, rule of law, respect and protection of human rights and minorities" and "the existence of a functioning market economy able to cope with competitive pressures".

<sup>6</sup> Recently, in the negotiations with Croatia and Turkey, the *acquis communautaire* has been divided in 35 chapters in order to better "balance" the work, splitting the most difficult chapters, merging other chapters and transferring some issues from one chapter to the other.

<sup>7</sup> The PCA with Russia was signed in June 1994 and entered into force in December 1997. The agreement was established for an initial period of 10 years, with a clause stating that it is automatically extended on an annual basis unless either side withdraws from the agreement. The PCA has, thus, to be renewed before the end of 2007. The PCA could be classified as an entry-level agreement that does not envisage membership, but endorses the interest of both parties in developing further mutual cooperation between the Parties. The PCAs are mixed agreements which go beyond the EC framework and have a clear EU cross-pillar dimension. It means that the PCAs' institutional framework does interpenetrate with the remaining EU pillars: Common Foreign and Security Policy and Justice and Home Affairs (Hillion, 2000).

be gradually made compatible with that of the Community”<sup>8</sup>. The same idea has been later on extended by the European Neighbourhood Policy (ENP)<sup>9</sup> to the countries of the so called “new neighbourhood” which include not only so called Western New Independent Countries (Moldova, Ukraine and Belarus) and, since 2004, Caucasus Countries (Azerbaijan, Armenia and Georgia), but also the Southern Mediterranean Countries (Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestinian Authority, Syria and Tunisia). The ENP argued that also these countries should take on considerably deeper and broader obligations and align with Union norms and Community legislation. In return for concrete progress “demonstrating shared values and effective implementation of political, economic and institutional reforms, including aligning legislation with the *acquis*”, the Commission suggested that the partners should be “offered the prospect of a stake in the EU’s internal market and further integration and liberalisation to promote the free movement of persons, goods, services and capital” (EC, 2003a)<sup>10</sup>.

The issues at stake are of fundamental importance for the development of the European continent and of its neighborhood<sup>11</sup>. The EU is, in fact, promoting a model of “governance by norms” (Laïdi, 2007) which potentially involves not only present and future Union’s members, but also neighbouring countries in a wide process of Europeanisation, spreading well beyond the European continent (Meloni, 2007a). More and more attention is being devoted to this phenomenon in literature. In particular, in 2002, Ian Manners for the first time conceptualized the Union as a “Normative Power” (Manners, 2002) and launched a debate which undoubtedly contributed to our understanding of what is new about the Union and

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<sup>8</sup> Compared to similar clauses on in the European and the other Association Agreements concluded between the EU, the PCA articles doesn’t provide the basis for obligatory, but for voluntary harmonization. The only compulsory obligation is, hence, the one provided in art. 55 to “endeavour to ensure” compatibility, but if an endeavour is not successful Russia could not be accused of not having complied with the PCA.

<sup>9</sup> The ENP was officially launched in 2003, with an initial communication transmitted by the Commission to the Council and to the European Parliament on March 11th of that year (EC, 2003a). This policy has been devised so as to answer to the challenges connected to enlargement and to provide an advanced framework for the relationship with those neighbouring countries which do not have a short term perspective of entering the EU in order not to create “new dividing lines” (ibid., 2003a).

<sup>10</sup> If the EU is trying to present the *acquis* as a tool to ensure the establishment of a single level playing field for economic activities across the European continent, I have argued that explanations in pure economic terms are necessary, but not sufficient to account for the pervasiveness of this process (Meloni 2007a and 2008). As a matter of fact, adopting important chapters of the *acquis communautaire*, Russia would engage not only in negative, but also in positive integration (Tinbergen, 1954), adopting not only “market-making”, but also “market-shaping” measures (Scharpf, 1999 and 1997). I have, thus, argued that the economic discourse has played a great role in view of the engagement of Russia in a process of legislative approximation. However, I consider it as a necessary (in terms of persuasion), but not as a sufficient condition (in terms of reasons which could motivate the choice) to explain why this country should accept to adopt an important part of the *acquis communautaire* (MELONI 2007a and 2008).

<sup>11</sup> The underlying conviction of this Commission document is that if a country has reached an open and integrated market functioning at pan-European level on the basis of compatible or harmonized rules, “it has come as close to the Union as it can be without being a member”. Thus, the provisions of the ENP recall the functional model which was at the basis of the European integration process and make it clear that they are not only about creating a new common market. The other way round – at least officially – the offer of a stake in the European internal market is a tool to promote a new vision for “the development of closer and more coherent relations with the Union’s neighbors over the medium and the long term”. In the words of the President of the European Commission, Romano Prodi, bordering countries will “share everything with the Union, but institutions” (Prodi, 2002). To put it briefly, they will enjoy a new status of “disenfranchised membership” (Kruse, 2003). For further analysis, see MELONI 2007a and 2008.

“what kind of power the EU exercises” (Sjursen, 2006a). The idea that the European Union is a new type of actor in international politics has been for a long time a widely accepted statement<sup>12</sup>. However, previous conceptualisations insisted most of all on the novelty of the instruments used by in order to exert influence in the international arena. Notably, François Duchêne described the entity which derived from the approval of the Treaty of Rome in 1957 as a “civilian power” and he opposed it to traditional “military powers” (Duchêne, 1994).

With the concept of normative power, Manners sought to abandon traditional views of the EU as a state-like entity (either civilian or military), underlining the novelty not only of the instruments, but also of the ends promoted by the Union. He argued that the EU could be better characterized as an ideational power diffusing its model abroad and that normative power could be seen as the ability of the EU to shape the conception of “normal” in world politics. In this way, Ian Manners highlighted another important dimension of the Union’s capacity of action, showing that the EU “actorness” should not be considered only in traditional terms and that the ability to influence the definition of the rules which govern inside and beyond its borders is another important expression of its power. Manners claimed that this capacity ultimately derives from what the EU is, a post-Westphalian entity based on a set of democratic values<sup>13</sup>. As Zaki Laïdi put it, “Europe, which is not a state, has a vested interest in seeing that international relations are governed by norms (...) For Europe knows that it is only by norms and not by force that it can make its voice heard (...) The EU’s preference for norms does not mean it is the only actor to defend them. It rather means that the EU, given the lack of alternative, has the greatest interest in defending them” (Laïdi, 2007: 5-6). In a nutshell, as Great Britain’s current Foreign Secretary, David Miliband, said, Europe – for its very nature – is meant to be a model, not a superpower<sup>14</sup>. Hence, the insistence on the importance of norms<sup>15</sup>.

The concept of normative power has generated a lot of debate. Some authors have pointed to the problems of the increasing militarization of the EU as a potential danger to its capacity

<sup>12</sup> See for example, Richard Rosecrance who pointed out that the EU can be seen as a “New Type of International Actor” as far as its integrating power, relying most of all on economic factors, does not produce “drifting effects” along the Balance of Power Theory (ROSECRANCE, 1998). Rosecrance argued that “in the past (again with the Roman exception) a potential aggressor could always be opposed by 60-75 per cent of world power if the other countries united against him. In the future, however, this may no longer be the case. Under these novel conditions, even political and military power might begin to attract, rather than to repel the others. [...] In this way, centralised economic power could have the long term effect of creating centralised political power. And the centre would be Europe, a new type of international actor” (ibid., 1998: 19). So, if “the Balance of Power seeks to distribute power centrifugally”, the European Union has “centripetal effects in economic terms” (ibid., 1998: 18). This, for the first time in history, made it possible for the EU to expand not only without any significant resistance from third powers, but also with the consent of the countries which were “conquered” by the European ground and which proved even willing to bear the costs of approximation. See also CREMONA, 1998.

<sup>13</sup> In a well-known quote, Manners (2002: 252) argues that: “The concept of normative power is an attempt to suggest that not only is the EU constructed on a normative basis, but importantly this predisposes it to act in a normative way in world politics. It is built on the crucial, but usually overlooked observation, that the most important factor shaping the international role of the EU is not what it does or what it says, but *what it is*”.

<sup>14</sup> The sentence was part of a speech given in Bruges in November 2007 (Laïdi, 2007: 6).

<sup>15</sup> With the end of the Cold War the European Union thought it would be living in a world in which traditional conflicts between states were on the wane, giving way to a logic of interdependence that would call for governance by norms (Laïdi and Lamy, 2002). On the basis of its own experience, the EU anticipated that added rules would provide added stability, that increasing interdependence would entail an increasing demand for global norms (Laïdi, 2007).

to exert a normative power. Others have underlined the inconsistencies between the rhetoric and the practice of the EU, stressing legitimacy aspects. However, few works have focused on the instruments which have been used to induce rule adoption and on the results actually achieved beyond EU borders. The present Paper intends to fill this gap looking at what has happened in Russia in 3 policy areas which are at the core of the internal market<sup>16</sup>.

3. *The EU influence in Russia: conditionality or learning? Legislative approximation in the field of competition policy, company law and consumers' protection*

Since the collapse of the Soviet system, the EU has used both coercive and persuasive tactics with Russia, trying to exert influence through bargaining about conditions and rewards and through the promotion of a patient strategy of persuasion. So, if, on the one hand, the European Union has offered to this country institutional ties, technical and financial assistance and, finally, a stake into the internal market in change of legal approximation, on the other hand, it has promoted a process of socialisation of the parties which has then inspired the definition of the ENP (Meloni, 2008). In particular, the institutional framework established by the PCA allowed the development of an intensive political dialogue, based on a system of regular bilateral institutional contacts<sup>17</sup>, which proved very fruitful. One of the most important achievements was the establishment, at the 7<sup>th</sup> EU-Russia summit held on 17 May 2001, of a joint High Level Group (HLG) to elaborate the concept of the Common European Economic Space (CEES). The main task of the HLG was to discuss the core elements which needed to be put in place in order to create the CEES and to form the basis for an EU-Russia medium/long term co-operation strategy<sup>18</sup>. As previously

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<sup>16</sup> The instruments used by the EU in order to promote legislative approximation have been considered in another Paper (MELONI, 2007a). The paper argued that the "shadow of enlargement" is hampering the capacity to elaborate an independent "vision" for the countries of the new neighborhood, looming over the ENP whose objectives and instruments have to be carefully reconsidered in the new context. In particular, it underlined that the ENP still conceptually relies on conditionality as to the main tool to promote legislative approximation. However, uncertainty as to the ultimate goal of the partnership is hindering the effectiveness of such an instrument which is ultimately based on the possibility to make cost-benefit calculations. At the same time, the coercive element which is implicit in its use seriously undermines the ability of the EU to endorse alternative tools of Europeanisation which are based on the promotion of processes of learning and persuasion and, in the end, on co-ownership.

<sup>17</sup> The EU and Russia made a commitment to hold high level summits twice a year, one in Moscow and one in the capital of the EU member state holding the rotating Presidency of the European Union. Other high level bilateral meetings have been scheduled annually, namely between Ministers (Cooperation Council), Parliamentary Representatives (Parliamentary Cooperation Committee) and senior officials from both sides (Political Directors, Cooperation Committee supported by a network of sub-committees dealing with technical issues). Later on, this system has been improved with the creation of a Permanent Partnership Council (PPC) to allow Ministers to meet as often as necessary and in a variety of formats to discuss specific issues.

<sup>18</sup> A work plan for CEES' activities up to end-2003 was approved in May 2002. The working plan covered areas of mutual interest and suggested practical steps to achieve regulatory convergence. Following a targeted approach, the HLG agreed a list of key issues for work, which reflected the achievements and experience of integration in the EU with the creation of the Single Market. At the bilateral summit which took place in St. Petersburg in May 2003, the EU and Russia included the CEES into a broader project which entailed, as already mentioned, the creation of 4 Common Spaces. Immediately afterwards, in the summit which took place in Rome at the beginning of November 2003, the parties finally presented a Concept Paper on CEES which definitively concluded the work of the HLG. The CEES is defined as "an

mentioned, the CEES was then included into a broader project which entailed the creation of four Common Spaces in the framework of the PCA<sup>19</sup>.

What is worth underlining here is that the gradual but incremental consolidation of bilateral contacts and the enhancement of a complex system of soft institutional design have provided the partners an important tool for coordination which has proved critical in order to promote the partnership. I have argued (Meloni, 2008) that this way of managing the relations between the two partners borrows some elements recalling the Open Method of Coordination (OMC)<sup>20</sup>. The institutionalisation of regular meetings between the EU and the Russian Federation authorities has allowed the creation of a framework for discussion and confrontation which has added new elements of convergence (ibid., 2008). This is an area where the insights of comparative politics and the new institutionalism in organizational behaviour can be usefully combined. The broader argument is that density of inter-action facilitates “policy transfer” across different institutional contexts (Dolowitz and Marsh 2000). Frequent inter-actions in a dense “organisational field” can set in motion processes of “institutional isomorphism” (DiMaggio, Powell 1991) that can account for increasing similarities of regulatory practices (Radaelli 2000a). Moreover, in case of expertise-based policy-making, as the HLG on the CEES, professionalisation creates a shared frame of reference which facilitates convergence. As a matter of fact, national officials are driven by a “reputation game” with their national counterparts. They seek to comply with “best-practice” regulatory standards to maintain their good standing in the professional community (Majone 2000; Eberlein 2003).

In this framework, Russia has engaged in the reform of 3 policy areas which are crucial from an economic point view: competition policy, company law and consumers’

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open and integrated market between the EU and Russia, based on the implementation of common or compatible rules and regulations, including compatible administrative practices, as a basis for synergies and economies of scale associated with a higher degree of competition in bigger markets”. The CEES concept focuses on the need to eliminate obstacles and create opportunities in four main areas: 1. cross-border trade of goods, 2. cross-border trade in services, 3. establishment and operation of companies and 4. movement of persons, in the relevant fields of economic activity. It covers both horizontal and sectoral targets. A number of areas for action have been considered for action: standardisation, technical regulation and conformity assessment, customs, audit and accounting, public procurement, competition, financial services, telecommunications, cooperation in space launching, several branches of industry and agriculture. To make it, the Concept Paper established that the agreed objectives will be transformed into specific goals and actions by way of Action Plans and that a dispute settlement mechanism based on WTO rules will be created to address potential disagreements among the parties. The Action Plans concerning the four Common Spaces were finally approved during the bilateral meeting which took place in Moscow in May 2005.

<sup>19</sup> See note 2.

<sup>20</sup> The OMC, which was codified for the first time during the Portuguese Presidency in 2000, was originally applied in the area of employment and then extended to a wider array of other policy areas. The main institutional ingredients of the OMC are common guidelines, national action plans, benchmarking, peer reviews, joint evaluation reports and recommendations (FERRARA, MATSAGANIS and SACCHI 2002). These ingredients are organized in relatively structured processes which reiterate over time promoting, on the one hand, trust and cooperative orientation among participants and, on the other hand, learning dynamics. Thus, even in absence of hard regulation and sanctions, the OMC creates several incentives for compliance and has a strong potential of influencing partner States (ibid., 2002). The argument I am supporting here is that the OMC has been applied not only to the areas determined by the Portuguese Presidency, but that several elements which characterise it have also been used as a tool to manage EU’s relations with Russia and, then, with neighbouring countries (MELONI, 2008).

protection. I will show that the EU example has played a big role in shaping the laws which have been approved in this country. However, this didn't happen because Russia intended to fulfil the engagements taken in view of the creation of the CEES. There wasn't enough political will to transform the provisions of the corresponding Road Map into a concrete programme of internal reform, but the results which have been obtained by national authorities in terms of legislative approximation are going indeed in the same direction.

### 3.1 Competition Policy

The Russian Federation created a competition authority and a basic law on competition quite early in its transition period. As a matter of fact, the first Russian competition authority was formed in 1990<sup>21</sup>, while the Law "On Competition and the Restriction of Monopolistic Activity in the Commodity Markets" was approved in 1991<sup>22</sup>. Support for competition was expressed in the 1993 Constitution<sup>23</sup>, as well as in other fundamental legislation like the first part of the new Civil Code of the Russian Federation, approved in 1994.<sup>24</sup>

The 1991 Law on Competition was not directly modeled on the law of any other single jurisdiction<sup>25</sup> and, even if it was supplemented over time by a number of other regulations, its weaknesses proved soon numerous (OECD, 2004b). During the '90s, the creation and the protection of competition on domestic markets has not been a

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<sup>21</sup> The body responsible for enforcement of competition law in the Russian Federation was originally called the State Committee of the Russian Federation for Antimonopoly Policy and the Support of New Economic Structures, often abbreviated as GKAP or in English SCAP, and thereafter the State Antimonopoly Committee, or GAK. In 1998 it became the Ministry for Antimonopoly Policy and the Support of New Economic Structures, usually referred to simply as the Ministry for Antimonopoly Policy or MAP.

<sup>22</sup> Law "On Competition and the Limitation of Monopolistic Activity on Goods Markets," 1991, No. 16, Item 499. The law has since been amended eight times by: Law of the RF No. 3119-1 of 24th June 1992; Law of the RF No. 3310-1 of 15th July 1992; Federal Law of the RF No. 83-FZ of 25th May 1995; Federal Law of the RF No. 70-FZ of 6th May 1998, Federal Law of the RF No. 3-FZ of 2 January 2000; Federal Law of the RF No. 196-FZ of 30th December 2001; Federal Law of the RF No. 31-FZ of 21st March 2002; and Federal Law of the RF No. 122-FZ of 9th October 2002.

<sup>23</sup> Article 8. "1. In the Russian Federation, the unity of the economic space, the free movement of goods, services and financial assets, support for competition and the freedom of economic activity shall be guaranteed". Article 34. "1. Each person shall have the right to the free use of his/her talents and property for entrepreneurial and other economic activity not prohibited by law. 2. Economic activity directed toward monopolisation and unfair competition shall not be permitted".

<sup>24</sup> Article 1(3). "Goods, services and financial assets shall circulate freely on the entire territory of the Russian Federation. Restrictions on the movement of goods and services may be imposed in accordance with federal law, if this is necessary in order to provide for safety, protect the life and health of persons, and to protect the environment and cultural values". Article 10 (1). "Actions of citizens and legal entities taken solely for the purpose of causing harm to the other party shall be not be permitted, nor abuse of rights in other forms. The use of civil-law rights for the purposes of restriction of competition or for abuse of a dominant position on the market shall not be permitted".

<sup>25</sup> The 1991 Law on Competition contained several relatively unusual provisions, some of which were designed to meet the special concerns raised by Russia's early stage of economic transition. The competition authority was expected to serve as a general regulator of market behaviours, but its mandate was too large and its enforcement capacities were quite limited. Over the years, the role of the State Committee for Anti-Monopoly Policy and then of MAP increased notably, to the point that the OECD warned about a risk of "overstretching" (OECD, 2004a).

policy priority. However, as the economy was getting more stabilized, there was more emphasis on the promotion of investment and on the need to support broadly-based economic growth. This encouraged the idea that the country needed a new competition law with a strong competition authority. The Ministry for Antimonopoly Policy (MAP) took the lead in drafting a series of amendments in 2002. However, it announced almost immediately after their adoption that the overall structure and content of the competition law was no longer appropriate and that a fundamentally new competition law was needed by the Russian Federation (*ibid.*, 2004a). The MAP began working on this concept. In the meantime, in March 2004, the Russian Government, in the framework of a fundamental restructuring of federal executive bodies, replaced the MAP with a Federal Antimonopoly Service (FAS) with a narrowed focus, but with a notable increase of the status of the national antimonopoly authority (Prosvetov, Shastiko, 2005). Finally, the new anti-monopoly law, the “Law on the Defence of Competition”, was adopted on July 26<sup>th</sup>, 2006<sup>26</sup>. This law owes a lot to the European experience, in the field of both competition rules for undertakings and state aid.

All the main concepts which underlie the European regulation in the field of competition policy have been taken, including the exceptions to the provisions on agreements and concerted practices which restrict competition and abuse of dominant position. How was it possible? There was an evident reason to reform the old law given the evolutions of the market of a country which approved a law on competition in the first years of transition. At the same time, as briefly mentioned, the national economy started growing at a high rate, thanks to the increasing world price of oil and gas with which Russia is richly endowed, but also in relation to a rising confidence of economic actors due to a regained political stability. As a result, a need for “normalisation” started spreading widely across the country. In this framework, the MAP and then the FAS had a wide institutional opportunity for policy advocacy which allowed the anti-monopoly authority to include the reform of the old law on competition as a priority of the Government<sup>27</sup>. However, why did Russian lawmakers refer mainly to the European model when designing the new law their country? When asked this question, Russian experts on competition policy agreed on the fact that the strong position of Anti-Monopoly Authorities in EU countries has been one of the main elements which has induced the FAS to adopt this model, together with familiarity of the experts who have been involved in the elaboration of the new law with the EU experience<sup>28</sup>. The result is a very ambitious piece of legislation which recognizes also the principle of extra-territoriality<sup>29</sup> and which introduces a stronger system of enforcement of the new

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<sup>26</sup> Law No. 135-FZ, dated 26<sup>th</sup> July 2006, published on 27<sup>th</sup> July 2006.

<sup>27</sup> Much of MAP’s competition advocacy in relation to federal policies and legislative measures took place within a very structured set of procedures and relied on its role and functions as defined by official procedures rather than on independent agitation for reform (*ibid.*, 2004a). As a Ministry of the Government of the Russian Federation, the MAP was represented at all sessions of the Government and it had the opportunity to comment on any draft law or draft decree of the Government or general policy change that was discussed. In addition, the MAP took an active part in the formation of the plans that were drafted each year to define the priorities of the Government concerning the drafting of legislation, policy documents and other matters.

<sup>28</sup> This is the result of a series of interviews which have been realised by the author between 2005 and 2006. The list of the experts which have been interviewed may be delivered on request.

<sup>29</sup> Art. 3 (1) of the new Law establishes that: “Provisions of the present Federal Law are applied to agreements which are reached between Russian or foreign persons or organizations outside the territory

regulation which ranges from civil to criminal liability, with a system of fines which is very close to the European one. Some doubts have been expressed on the capacity to enforce the provisions on State Aid, but the effort to regulate such a complex and delicate issue in a country like Russia is a very big challenge which is worth attention from the international community.

### 3.2 Company Law

The long socialist period abolished company law completely from Soviet law. Enterprises formed part of the state bureaucracy, which had abolished the market completely, and contracted within this hierarchy according to tight administrative rules in order to fulfil the state economic plan. Enterprises were juristic persons, but in practice they were only units of the state bureaucracy (Tolonen, 1976). During *perestroika* the tight control of enterprises was eased to give them more economic decision power and private entrepreneurship in small businesses became legal after being criminal for half a century. The first Russian decree on Joint Stock Companies was passed by the Government in December 1990 and the legal personality of enterprises was regulated by a Law on Enterprises approved in the same month, while the foundations of company law were laid down later on in the first part of the Civil Code of the Russian Federation passed on 30 November 1994.<sup>30</sup> Privatization of state enterprises was accomplished on the above-mentioned legal basis. Nonetheless, for a long time, company law was so new in Russia that most of the lawyers did not mention it as part of the Russian juridical system at all. Nysten-Haarala remarked that, still in 1998, while working as a coordinator of a Tacis/Tempus project on “Teaching Comparative Law”<sup>31</sup>: “Every time, when Western specialists use the concept corporate law or company law, the Russian specialists want to remind them that there is no such branch of law in the Russian legal system, but that the question is about the doctrine of juristic persons” (Nysten-Haarala, 2001).

In recent years, Russia has made great efforts in order to modernize the legislation in force in the field of company law. In doing that, it has studied the experience of the EU’s countries and it has borrowed those principles which looked more attractive and which it considered more appropriate in order to have a “modern” legislation (Astapovich *et al.*, 2006)<sup>32</sup>. However, the application of new provisions in the field of

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of the Russian Federation, if in the case of such agreements both the following conditions are fulfilled: 1) the agreements are reached in respect to the basic production assets and (or) intangible assets situated on the territory of the Russian Federation or with respect to stocks (shares) of the Russian business partnership, rights in respect to the Russian commercial organizations; 2) the agreements lead or can lead to restriction of competition in the Russian Federation.

<sup>30</sup> It provides a complete list of possible companies in Russia that closely follow the German model (ASTAPOVICH *et al.*, 2006), determining their legal personality and distinguishing between commercial and non-commercial organizations. Where appropriate, the Code makes references to other legislative acts, most importantly to the Federal Law 208-FZ of December 26, 1995 “On Joint-Stock Companies” and to the Federal Law 14-FZ of February 8, 1998 “On Limited Liability Companies”.

<sup>31</sup> “Teaching comparative law”, JEP 10465-98: a consortium with Pomor State University, Arkhangelsk, Russia; University of Lapland, Rovaniemi, Finland; University of Umeå, Sweden; University of Abertay/Dundee, Scotland.

<sup>32</sup> A Report, commissioned in 2006 by the Russian “National Council on Corporate Governance”, came to the conclusion that: “European law can be implemented without great difficulties and to the advantage of

company law produced effects which proved to be sometimes paradoxical, as a result of the stickiness of previous practices which largely transformed the meaning of a rule developed in a different context. In particular, when considering the operation of markets, the issue of business registration is extremely relevant because it is the presumption for a company to engage in business or other relationships. In the European Union, this issue is dealt with by the First Company Law Directive of 1968 which is also called “Directive on Disclosure of Information”<sup>33</sup>. This provision is so important that the first congress of the Russian Union of Industrialists and Entrepreneurs (RSPP) passed a resolution that suggested bringing the Russian legislation in compliance with this Directive (Shashikina, 2005). As a result, since 2002, the system has been reformed in Russia so as to recall the regulation in force in EU’s countries. In particular, a “one window” concept of registration was introduced which means that where formerly a Russian entrepreneur had to independently gather all necessary documents, permits and authorizations<sup>34</sup>, now all documents are supposed to be transferred to a regional tax inspectorate. Accordingly, all the necessary documents, permits and authorizations are issued together with the Registration Certificate.

The “one window” concept looks remarkably good, as the positive result of the emulation of practices in use in the EU’s countries. However, it has been remarked that it is not so in practice (ibid., 2005). As a matter of fact, if previously the time it took for the package preparation was only dependent on the capacity of the entrepreneur himself to get the necessary documents, now one can only wait until the information is gathered from the tax inspectorate. The result is that the registration may take several months during which the company cannot engage in any commercial activity (ibid., 2005). The Russian legislation establishes a timeframe for a company registration – 5 business days after the documents are accepted for registration by the tax authorities. However, the period within which such a decision must be taken is not indicated. It is only established that such a decision may be taken only after a complete set of documents is gathered. “That is why a small business entrepreneur who has nonetheless managed to register his enterprise and stayed afloat throughout the registration ordeals and met all his debt or whatever other obligations, should be

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the market participants of very diverse countries, in particular taking into account that it was first developed based on the continental system and then turned into a more Anglo-Saxon system, as well as the successful accession of the new member states to the EU. The EU countries include a fair number of countries with a continental legal system, so there should be no problems integrating European law concepts into the Russian corporate law system, which is also continental. Also, the style of making laws in the European Community, which leaves implementation to the national regulator who can then be mindful of the specifics of national legislation and practice, is attractive for Russia”. At the same time the Report highlighted that: “It is necessary to remember that whilst Russian national developments have been similar to developments in European law in a number of areas, in other areas European law developments have been anticipated by national legislation. This is the case for mandatory accounting” (ASTAPOVICH *et al.*, 2006: 11-12).

<sup>33</sup> Following the Directive on Disclosure of Information publication must take place in a printed publication and each country has an official publication readily accessible in every newsstand. These are the so-called Bulletins of Official Announcements.

<sup>34</sup> Specifically: tax registration certificate, certificates of registration with the Russian Pension Fund (RPF) Social Insurance Fund (SIF), Federal Obligatory Medical Insurance Fund (FOMIF), information letter from the State Statistical Committee (SSC), etc.

“ordered for commendation” as was aptly put by President Putin at one of the congresses of the Russian industrialists and entrepreneurs” (ibid., 2005).

The problem of registration in the Russian Federation is not limited to time related problems. Under the First Directive on Disclosure of Information it is required to ensure adequate administrative, judicial or preventive control of documents submitted to the registration authorities of a EU’s member state. In Russia, the tax registration authorities accepting the documents are not obliged to verify the documents as to whether they comply with the Russian law. Furthermore, the documents are not subject to any other control procedures. However, the registration authorities (i.e. the tax inspectorate) have the right to invalidate a company judicially and liquidate it if any non-compliance is identified. Therefore, in practice, if anybody finds out by chance, at any time after a businessman received a registration number, that something was wrong with the documents submitted, the businessman will lose his business (ibid., 2005). Moreover, as in EU countries, also in Russia there is a Unified State Register (USR) of the Federal Tax Service. However, if on the European register one can search by the company name or business segment and obtain full free information about a company, in Russia to obtain free information one should enter: the company name, primary state registration number, state registration number, taxpayer identification number, registration date and period. If any of these data is missing, no information can be obtained by the State Register. Information can be acquired only on a fee-base from JSC Valaam, which has access to all updates in the registry (ibid., 2005)<sup>35</sup>.

### 3.3 Consumers’ protection

The regulation of contractual and other obligations between enterprises, organisations and citizens in the former Soviet Union was contained, in particular, in the Civil Code of 1964. However, civil legislation of that period did not contain special rules connected exclusively with the questions of consumer protection and the regulation of consumer rights in the Soviet system was traditionally missing (Cherstobitov, 2001). As a matter of fact, in the Soviet Union, there were not consumers, but only citizens. This is why a specific legislation was lacking (Zimenikova, 2004). Only during the final days of existence of the USSR, in 1991, a “Soviet Consumer Protection Act” was adopted, but it did not enter into force because of the disintegration of the Soviet Union.

The first piece of legislation which ensured on the territory of the Russian Federation the protection of the rights and of the legal interests of consumers was the Federal Law n. 2300-1 “On consumers’ protection” – so called Consumers’ Protection Act (CPA) – which was adopted on 7<sup>th</sup> February 1992 and which entered into force on 7<sup>th</sup> April

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<sup>35</sup> It is worth underlining a positive aspect in the regulation of entrepreneurship in Russia which was the approval in 2002 of the Code of Corporate Behaviour (CCB). The CCB is available at <http://nccq.ru/site.xp/050054056054124.html>. The CCB was developed by a special task force, which included experts not only with theoretical knowledge, but also with important experience on the field, as well as Russian and foreign companies. The Russian CCB managed to meet the European standards, with “due account of the Russian specific realities” (ibid., 2005). It, thus, represents an important achievement. Yet, the Code is only a recommendation (no. 412/p, 4 April 2002) and not an obligatory regulation, even if its application by some of the most important companies – like, for example, Gazprom and Aeroflot – is a good auspice for its diffusion.

1992. Since then, for the first time in Russia, every citizen who is acquiring goods for personal, familiar or business reasons is defined as a consumer and is protected by the mentioned law (Zimenikova, 2004). The CPA is considered a very sophisticated piece of legislation and the level of protection of consumers' rights recognised by the aforementioned law is judged so high that it "often exceeds the measures codified in Europe" (Nehf, 1993). It has been argued that "the Consumer Protection Act is taken seriously as an instrument to protect consumers and to complement government policy for creating more efficient and competitive market structures" (Reich, 1996) and that the set of remedies established with this law go sometimes "beyond the legal tradition of most EC member countries" (ibid., 1996).

The approval at the beginning of the '90s of a remarkably advanced law in the field of consumers' protection is noteworthy. An interview with the Head of the Committee which was in charge of the elaboration of the above mentioned law, Olga Zimenikova, has allowed me to clarify the conditions under which the afore-mentioned law has been approved<sup>36</sup>. Olga Zimenikova highlighted that, immediately after 1989, she met with Thierry Bourgoignie, the Director of the "Centre de Droit de la Consommation" of the "Université Catholique" of Louvain-la-Neuve who invited her and other colleagues for a series of meetings and conferences in Louvain-la-Neuve. She remarked also that "these meetings, repeated regularly over time, were extremely useful to discuss with experts not only from Belgium, but also from a series of countries of Central and Eastern Europe". So, "when we came back, we started urging for a regulation in the field of consumers' protection" and this is how the committee for the elaboration of the Consumer Protection Act was established. "This experience [the meetings organised in Louvain-la-Neuve] has highly influenced the elaboration of the Consumer Protection Act which allowed us to make use of best practices of Western Europe and of the confrontation with experts from Eastern Europe who had similar experiences at home". As a result, Olga Zimenikova claimed that: "I may say that we have largely drawn on European experience".

An interview with Richard Pritchard<sup>37</sup> – a strict collaborator of Thierry Bourgoignie at the "Centre de Droit de la Consommation" who has followed the activities organized with Central and Eastern European Countries and with Russia in the field of consumers' protection<sup>38</sup> – has allowed me to explore better what happened. Pritchard claimed that "the participation of Russia followed a trip of Thierry Bourgoignie to Moscow. In this occasion, he invited Russian experts – among whom there was Ms. Zimenikova – to join the meetings we had periodically with specialists in this field from Central and Eastern Europe and from Albania"<sup>39</sup>. Richard Pritchard remarked that: "we organized different activities: workshops, conferences, meetings, etc... We paid attention to invite only experts. It wasn't at all a political event. We did not want to convince anybody of a specific solution, but the fact that experts met among them and

<sup>36</sup> The interview has been realised on the 25<sup>th</sup> of March, 2005.

<sup>37</sup> The interview has been realised on the 15<sup>th</sup> of September, 2006.

<sup>38</sup> Richard Pritchard has been vice-Director of the "Consumers Institutions Consumer Policy Programme" (CICPP) which has provided technical assistance on consumer protection to 11 CEECs. The project was financed by Phare first, in 1994, as a subpart of a global programme on standardisation and then, from 1995 to 1997, as an autonomous programme.

<sup>39</sup> The counties involved were Albania, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia.

had the chance to discuss freely helped the transmission of ideas a lot. Experts discussed the problems they had in their home countries and evaluated jointly different possible solutions. The fact that meetings were held regularly allowed them to get to know each other and, after a while, there was a kind of community. Moreover, they met in a place which was uniquely devoted to consumers' rights. There was a kind of inducing context". The result in Russia was the Consumer Protection Act whose provisions allow high standard protection for consumers for what concerns both the safeguard of their economic interests and their health and safety.

It has been claimed that the CPA was a necessary step for reform and a powerful tool for the average citizen, but that it has been under-utilized because Russians have little experience in using the legal system to resolve problems (Auzan, 2001). However, organized consumer advocacy groups have been gradually educating and encouraging individuals to take advantage of new rights and business groups realize that court rulings have consequences that they must respect (Treadwell, Pridemore, 2004).<sup>40</sup> Due to its broad provisions, Russian legislators anticipated controversy over the CPA and therefore expressly prohibited the dilution of consumer rights by subsequent administrative dictates (Nehf, 1993). Recent events concerning the ban against the import of food products from Georgia, Moldova and Poland may lead to a political use of such legislation and of an acquired capacity of the executive to use the provisions concerning food safety with a certain degree of discretion<sup>41</sup>. In any case, the importance of the legislation in the field of consumers' protection and, most of all, of the CPA should not be under-evaluated. What is of particular interest is the process which led to the adoption of such an advanced piece of legislation. It shows that when experts are brought together in a de-politicized context where actors are induced to act out of genuine deliberation, they tend to comply with best practices and even – like in this case – to elaborate more advanced solutions. The components of the Russian committee for the elaboration of the CPA engaged in complex learning and gave to their European counterparts elements for further consideration: an example of learning as a two-way street.

#### 4. Conclusions

This Paper has shown that even if the negotiations between EU and Russian authorities are apparently stalling, the main ideas which are at the basis of the relation are being realised against all the odds. In particular, it has highlighted that, even if

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<sup>40</sup> Other important aspects of consumers' protection, like the support to consumers' association and education on consumers' rights, have not been taken into consideration here, but the country seems to be dynamic in this sense (TREADWELL, PRIDEMORE, 2004).

<sup>41</sup> Between 2005-2006, Russia prohibited the import of wines and spirits both from Georgia and Moldova, as well as of Georgian mineral waters like Nabeghlavi and, most of all, Borjomi which is a very well-known sparkling water often used in Russia as a hangover therapy. Russia banned imports of Polish meat in November 2006, following this up with a complete ban on agricultural products. It banned Polish dairy imports the year before that. Philip Todd, spokesperson for the European commissioner for health and consumer protection, claimed that: "Poland has met all the technical requirements legitimately raised by the Russian authorities. Further measures required by Russia go beyond Poland's powers and go against previous agreements with Russia". This is considered from Poland as the reason to impose a veto for the renewal of the PCA for Russia, see footnote 33, Chap. 2.3.

there hasn't been enough political will in order to transform the provisions of the CEES Road Map into a concrete programme of internal reform and, hence, to include legislative approximation officially into the agenda, there have been important achievements in 3 policy areas which are particularly important from an economic point of view.

In no case did the country introduce the mentioned norms because it intended to comply with EU provisions and to fulfil the engagements taken in view of the creation of the CEES. In Russia the adaptation to the EU rule occurred as the result of a voluntary transfer of policy-making practices either under the influence of an actor who had a particular interest in adopting a legislation which could reinforce its role in the domestic context (competition policy) or as the result of a process of policy learning (company law and consumers' protection), but independently from the fact that the norms adopted were taken from the Community legislation.

In the 3 policy-areas here considered, it was undoubtedly a case of "unintended Europeanisation" which was crucially based on the fact that the EU rule seemed a good example in order to modernize the country. In a nutshell, Russia was not seeking "Europeanisation", but "modernization" and, in doing that, it used the European model because of the crucial role of domestic actors who studied and supported the adoption of rules modelled upon the EU example. Exchange of experts, best practice and familiarity with the EU experience proved crucial in order to induce a process of deliberation which allowed national decision-makers to devise solutions tailored on the needs of the country and inspired by Community legislation.

It is worth reminding that the results achieved were not always positive, as the case of company law shows, because of the difficulty faced in order to translate a series of principles developed in a different institutional context and of the stickiness of previous practices. The translation into the domestic jurisdiction of those norms which seemed more attractive without much effort of adaption produced a "Potemkin Europeanisation"<sup>42</sup>, a Europeanisation *de façade*, where different principles have been included into the domestic legislation, but where the coherence of the overall structure has not always been ensured.

Yet, the trend is set. As Igor Iurgens, the former Chief of the "Russian Union of Industrialists and Entrepreneurs" claimed, "business circles have already developed enough ideas to show political leaders the road towards the creation of an economic space between the EU and Russia"<sup>43</sup>. In this framework, there is an objective interest

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<sup>42</sup> Potemkin villages were the fake settlements built under the direction of the Russian minister Grigori Aleksandrovich Potemkin to fool the Empress Catherine II during her visit to Crimea in 1787. Conventional wisdom has it that Potemkin, who led the Crimean military campaign, decided to build hollow facades of villages along the desolate banks of the Dneper River in order to impress the Catherine II with the value of her new conquests, thus enhancing his standing in the empress' eyes. So, "Potemkin village" has come to mean any hollow or false construct, physical or figurative, meant to hide an undesirable or, in any case, different situation.

<sup>43</sup> At the same time, Yurgens reminded that: "Governments will have the last say, but there is no doubt that business élites from both sides can provide interesting lessons. This cannot bring anywhere without political agreement. The major economic initiatives must be approved at the highest political level. Global modernisation cannot be independent from government policy or contradict it"; <http://www.europesworld.org/EWSettings/Article/tabid/78/Default.aspx?Id=786f9ece-1a87-4bf9-ba23-2d661bc0acb8>.

in defining the rules which govern the economic relationship between the two halves of Europe and, even if EU and Russian authorities have not yet started the implementation of the CEES Roadmap, legislative approximation is already taking place in those sectors which are more important in order to create a common market. It would now be important to give coherence to this process. To do that EU and Russian authorities should consider the possibility of launching a new formula for the governance of the European continent based on the definition of jointly agreed rules.

Until now, Europeanisation has been based on the presumption that new entities joined an already consolidated community, therefore accepting the rules of the game which were already there. In this context, Europeanisation meant essentially EU-isation. Now that it's clear that the borders of the European Union cannot be indefinitely expanded, new recipes have to be found in order to provide an answer beyond membership. In this context, Europeanisation would not simply imply the adherence to a pre-existent entity on EU's terms, but the establishment of a new form of integration on completely new and jointly determined terms.

At the moment, the Russian Federation is an important presence<sup>44</sup> at the table of the European powers who have to decide about the future of the European continent: it is a presence which is inevitably conditioning the definition of any possible formula, but which is very difficult to take into consideration. It is an encumbering, but still virtually ignored partner. However, what is really a stake for this country in the relation with the European Union is not only an access into the "EU's kitchen", that is the European Internal Market, but also an access into the way in which the EU decides of the future of the European continent. That would be the recognition of the strategic character of the partnership and, hopefully, the key to overcome the obstacles which have hampered the development of the dialogue.

The ENP is not satisfactory when it comes to understanding how the EU plans to develop its relations with Eastern European countries, while it is ignoring Russia's enduring role in these regions. If, however, the parties will be able to build a relationship of mutual confidence and understanding, the process of Europeanisation – which, it is worth repeating, is not only "EU-isation" – will provide the basis for the creation of a "Common European Home", making of the EU an inclusive project even without the possibility to further extend its borders.

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<sup>44</sup> The "Stone guest" (in Russian *kamennyi gost*) is the title a romantic tragedy written by Aleksandr Pushkin as part of his four short plays known as the Little Tragedies. The Stone Guest is based on the legend of Don Juan and it was written in 1830 after Pushkin saw the première of the Russian version of Mozart's Don Giovanni.

## REFERENCES

**Astapovich, A., Bestojeva, O., Doeser, W. et al.**, *Corporate reform and harmonisation of Russian and EU Corporate Laws*, The National Council on Corporate Governance, Moscow, 2006.

**Auzan, A.**, *The transformation of Russian political mores*, in Isham, H. (ed.), *Russia's fate through Russian eyes*, Boulder, CO: Westview Press, 2001, pp. 96-124.

**Barysh, K.**, *Russia, realism and EU unity*, CER Policy Brief, available at [http://www.cer.org.uk/pdf/policybrief\\_russia\\_FINAL\\_20july07.pdf](http://www.cer.org.uk/pdf/policybrief_russia_FINAL_20july07.pdf), July 2007.

**Caporaso, J.**, *The European Union and Forms of State: Westphalian, Regulatory or Post-Modern?*, in «Journal of Common Market Studies», 34, 1, March 1996, pp. 29-52.

**Checkel, J.T.**, *Why Comply? Social Learning and European Identity Change*, in «International Organization», 55, 3, 2001, pp. 553-588.

**Checkel, J.T.**, *Compliance and Conditionality*, in «Arena Working Papers», 00/18, Oslo, 2000a.

**Checkel, J.T.**, *Bridging the Rational-Choice/Constructivist Gap? Theorizing Social Interaction in European Institutions*, in «Arena Working Papers» 00/11, 2000.

**Cherstobitov, A.**, *Problems of Consumers Protection in Russia*, in «Juridica International», IV: 530-577, 2001.

**Cohen-Tanugi, L.**, *L'influence Normative Internationale de l'Union Européenne: Une ambition entravée*, Notes de l'IFRI no. 40, Paris, 2002.

**Cremona, M., Meloni, G.**, *The European Neighbourhood Policy: a Framework for Modernisation?*, in «EUI Working Paper», LAW 21/2007, <http://cadmus.iue.it/dspace/bitstream/1814/6976/1/LAW-2007-21.pdf>.

**Cremona, M., Hillion, C.**, *L'Union fait la force? Potentials and limitations of the European Neighbourhood Policy as an integrated EU Foreign and Security Policy*, in «EUI Working Papers», LAW 2006/39, <http://www.cadmus.iue.it/dspace/bitstream/1814/6419/1/LAW-2006-39.pdf>.

**Cremona, M.**, *The European Neighbourhood Policy: Partnership, Security and the Rule of Law*, in Mayhew, A., Copey, N. (eds.), *European Neighbourhood Policy and Ukraine*, University of Sussex, Sussex, 2005, pp. 25-54.

**Cremona, M.**, *The European Neighbourhood Policy: Legal and Institutional Issues*, in «CDDRL Working Papers», 25, 2004, available at <http://cddrl.stanford.edu>.

**Cremona, M.**, *The European Union as an International Actor: The Issues of Flexibility and Linkage*, in «European Foreign Affairs Review», vol. 3, no. 1, 1998, pp. 67-94.

**Diez, T.**, *Europe's Others and the return of geopolitics*, in «Cambridge Review of International Affairs», vol. 17, no. 2, 2004, pp. 325-6.

**Diez, T., Whitman R.**, *Analysing European Integration: Reflecting on the English School*, in «Journal of Common Market Studies», vol. 40, no. 1, 2002, pp. 43-67.

**Diez, T.**, *International Ethics and European Integration: Federal State or Network Horizon?*, in «Alternatives», vol. 22, 1997, pp. 287-312.

**Dimaggio, P., Powell, W.W.**, *The iron cage revisited: institutional isomorphism and collective rationality in organisational fields*, in Powell, W.W., Dimaggio, P., *The new institutionalism in organizational analysis*, University of Chicago Press, Chicago, 1991.

**Dolowitz, D.P., Marsch, D.**, *Learning from abroad: the role in policy transfer in contemporary policy-making*, in «Governance», 13 (1): 5-24, 2000.

**Duchêne, F.**, *Jean Monnet: The First Statesman of Interdependence*, W.W. Norton, London, 1994.

**Duchêne, F.**, *The European Community and the uncertainties of interdependence*, in Kohnstamm, M., Hager, W. (eds), *A Nation Writ Large? Foreign-Policy Problems Before the Community*, London, 1973, pp. 1-21.

**Duchêne, F.**, *Europe's role in world peace*, in Mayne, R. (ed.), *Europe Tomorrow: Sixteen Europeans Look Ahead*, Fontana/Collins, London, 1972, pp. 32-47.

**Eberlein, B.**, *Formal and informal governance*, in Christiansen T., Piattoni S., *Informal governance in the European Union*, Edwar Elgar, Cheltenham, 2003.

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

**Ferrara, M., Matsaganis, M., Sacchi, S.**, *Open method of coordination against povertà: the new EU 'social inclusion process'*, in «Journal of European Social Policy», vol. 12 (3), 2002, pp. 227-239.

**Hill, C.**, *The Capability-Expectations Gap, or Conceptualizing Europe's International Role*, Journal of Common Market Studies, 31, 3, 1993, pp. 305-328.

**Hillion, C.**, *Institutional Aspects of the Partnership Between the European Union and the Newly Independent States of the Former Soviet Union: Case Studies of Russia and Ukraine*, in «37 CML Rev.», 2000, pp. 211-1235.

**Kelley, J.**, *New Wine in Old Wineskins: Policy Adaptation in The European Neighbourhood policy*, in «Journal Of Common Market Studies», 44, 1, March 2006, pp. 29-55.

**Kruse, I.**, *Creating Europe outside Europe: externalities of the EU migration regime*, ECPR Conference Marburg, Submission to Panel 15-5 "Theories of Europeanisation", 18-21 September 2003.

**Ladrech, R.**, *Europeanization of domestic politics and institutions: The case of France*, in «Journal Of Common Market Studies», 32, 1, March 1994, pp. 69-88.

**Laidi, Z.**, *Norms over Force*, Palgrave, Basingstoke, 2008.

**Laidi, Z.**, *The unintended Consequences of European Power*, Cahier Européen no. 05/07, Centre de'Etudes Européennes, Paris, 2007.

**Laidi, Z., Lamy, P.**, *A European Approach to Global Governance*, in «Progressive Politics», 1, 1, September 2002, pp. 1-16.

**Majone, G.**, *The credibility crisis of Community regulation*, in «Journal of Common Market Studies», 2000, 38 (2), pp. 273-302.

**Manners, I.**, *The Normative Ethics of the European Union*, in «International Affairs», 84, 1, January 2008, pp. 45-60.

**Manners, I.**, *The Danish-isation of Europe*, in «Europe's World», Summer 2007, pp. 151-2.

**Manners, I.**, *L'identité internationale de l'Union Européenne: un pouvoir normative dans le jeu politique mondiale*, in Bernhard, A. (ed.) *Europe, puissance tranquille? Rôle et identité sur la scène mondiale*, Brussels, March 2007, pp. 33-49.

**Manners, I.**, *Critical perspectives on European Union Politics*, in Jørgensen, K.E., Pollack M., Rosamond B. (eds.) *Handbook of European Union Politics*, Sage, London, 2006, pp. 77-95.

**Manners, I.**, *European Studies*, in «Journal of Contemporary European Studies», vol. 11, no. 1, May 2003, pp. 67-83.

**Manners, I.**, *Normative Power Europe: a Contradiction in terms*, in «Journal of Common Market Studies», vol. 40, no. 2, June 2002, pp. 235-258.

**Meloni, G.**, *Russia, a case to revise the concept of Europeanisation*, in Gänzle, Muntel and Vinokurov, *Adapting to European Integration? The case of the Russian exclave of Kaliningrad*, Manchester University Press, 2008.

**Meloni G.**, *Is the same toolkit used during enlargement still applicable to the Countries of the New Neighbourhood? A problem of mismatching between objectives and instruments*, in Cremona, M., Meloni, G., *The European Neighbourhood Policy: a Framework for Modernisation?*, EUI, 2007a, <http://cadmus.iue.it/dspace/bitstream/1814/6976/1/LAW-2007-21.pdf>.

**Meloni, G.**, *Who's my neighbour?*, in «European Political Economy Review» (EPER), vol. 4, no. 1, Spring 2007b, [www.eper.org](http://www.eper.org).

**Meloni, G., Montalbano, P.**, *La politica economica della transizione*, in Montalbano P., Triulzi U., *La Politica economica nel contesto internazionale*, Utet, Torino, 2006.

**Meloni, G., Shirov, A., Durand-Lasserre, O.**, *Benchmarking Russian Trade Performance and Competitiveness*, Russian European Centre for Economic Policy, RECEP Reports, Russian European Centre for Economic Policy, Moscow, 2005.

**Meloni, G., Montalbano, P.**, *Economic development and environmental dynamics in the New Member Countries: which compatibilities?*, in Paggi G., *UE e PECO: impatto ambientale dell'allargamento*, Cacucci Ed., Bari, 2004.

**Meloni, G.**, *Russian Federation towards an enlarged Europe*, in «Rivista Internazionale di Agricoltura», no. III, 2003.

**Nehf, J.P.**, *Empowering the Russian consumer in a market economy*, in «Michigan Journal of International Law», 14, 1993, pp. 739-827.

**Nysten-Haraala, S.**, *Russian Enterprises and Company Law*, in «Transition Interim report», International Institute for Applied Systems Analysis, Luxemburg, 2001.

**Oecd**, *Competition Law and Policy in the Russian Federation*, Policy Brief, November 2004a, Paris, available on [www.oecd.org](http://www.oecd.org).

**Oecd**, *Competition Law and Policy in the Russian Federation*, OECD Peer Review, Paris 2004b, available on [www.oecd.org](http://www.oecd.org).

**Prodi**, R., *What the 21st Century holds for EU-Russia relationship*, European Business Club (EBC) dinner, Moscow, 28/05/02, SPEECH/02/237, [http://europa.eu.int/comm/external\\_relations/russia/summit\\_05\\_02/sp02\\_237.htm](http://europa.eu.int/comm/external_relations/russia/summit_05_02/sp02_237.htm).

**Prosvetov**, V., **Shastiko**, A., *Analysis of the currently effective Anti-Monopoly Law in the RF and comparison with the contemporary EU Law. Possible options for increasing the efficiency of its enforcement in Russia. Analysis of Anti-trust legislation and law enforcement in the EU*, Russian European Centre for Economic Policy (RECEP), Moscow, 2005, available at [www.recep.ru](http://www.recep.ru).

**Radaelli**, C., **Schmidt**, V., *Europeanisation, discourse and policy change: mapping the research agenda*, Introduction to workshop n. 3, ECPR Joint Sessions of Workshops, Turin, 22-27 March 2002.

**Radaelli**, C., *Policy transfer in the European Union: institutional isomorphism as a source of legitimacy*, in «Governance», 13, 1, 2000a, pp.757-774.

**Radaelli**, C., *Whither Europeanisation: concept stretching and substantive change*, EIOp on line Paper, 4, 8, 2000b, [www.eiop.or.at/eiop/texte/2000.08a.htm](http://www.eiop.or.at/eiop/texte/2000.08a.htm).

**Reich**, N., *Consumers' Protection in countries of emerging markets: the example of Russia*, in «Journal of Consumer Policy», vol. 19, no. 1, March 1996, pp. 1-43.

**Rosecrance**, R., *The European Union: a New Type of International Actor*, in Zielonka J., *Paradoxes of European Foreign Policy*, Kluwer Law International, 1998.

**Scharpf**, W., *Governing in Europe: effective and democratic?*, Oxford University Press, Oxford, 1999.

**Scharpf**, W., *Balancing positive and negative integration: the regulatory options for Europe*, rscas, 97/4, European University Institute, Florence, 1997.

**Schmidt**, V., *Europeanization and the mechanisms of economic policy adjustment*, EIOp, 2001, on line Papers, 5, 6, [www.eiop.or.at/eiop/texte/2001.006a.htm](http://www.eiop.or.at/eiop/texte/2001.006a.htm).

**Schimmelfennig**, F., **Sedelmeir**, U., *The Europeanization of Central and Eastern Europe*, Ithaca, NY, Cornell University Press, 2005a.

**Schimmelfennig**, F., **Sedelmeir**, U., *The Politics of European Union Enlargement: Theoretical approaches*, New York, NY, Routledge, 2005b.

**Schimmelfennig**, F., **Sedelmeir**, U., *The Europeanisation of Eastern Europe. Evaluating the conditionality model*, Paper for the ECPR workshop on "European Governance and Enlargement", Turin, 2002a.

**Schimmelfennig**, F., **Engert**, F., **Knobel**, H., *Costs, Commitment and Compliance. The Impact of EU Democratic Conditionality on European Nonmember States*, EUI Working Paper, EUI, Florence, 2002b.

**Sciarini, P., Listhaug, O.**, *Single case or unique pair? The Swiss and Norwegian no to Europe*, EUI Working Paper, RSCAS, 1997/25, Florence 1997.

**Sedelmeier, U.**, *Constructing the path to Eastern enlargement: the uneven policy impact of EU identity*, Manchester, UK, Manchester University Press, 2005.

**Shashikina, T.**, *Some aspects of Harmonisation of the EU and Russian legislations regulating Business relationships: Problems and prospects*, Russian European Trends 7, cap. 2, Russian European Centre for Economic Policy (RECEP), Moscow, 2005, [www.recep.ru](http://www.recep.ru).

**Sjursen, H.**, *What Kind of Power?*, in «Journal of European Public Policy», 13, 2, 2006a, pp. 169-18.

**Sjursen, H.**, *The EU as a 'Normative' Power: How Can This Be?*, in «Journal of European Public Policy», 13, 2, 2006b, pp. 235-251.

**Stetter, S.**, *Theorising the European Neighbourhood Policy: Debordering and Rebordering in the Mediterranean*, EUI Working Paper, RSCAS no. 2005/34, 2005.

**Tassinari, F.**, *Security and Integration in EU's neighbourhood. The case for regionalism*, CEPS Working Document n. 226, Brussels, July 2005, available at [www.ceps.be](http://www.ceps.be).

**Tinbergen, J.**, *International Economic Integration*, Elsevier, Amsterdam, 1954.

**Tolonen, J.P.**, *The Economic System of the Soviet Union and its Legal Foundation*, Series A Researches, University of Tampere, Research Center of Social Sciences, 48, Tampere, 1976.

**Treadwell, A.B., Pridemore W.A.**, *Purchasing Power: Consumer Empowerment and Adaptation to Free Market in Russia*, in «Journal of Consumer Policy», 27, 2004, pp. 451-474.

**Tulmets, E.**, *The introduction of the Open Method of Coordination in the European Enlargement Policy: Analysing the impact of the new Phare/Twinning Instrument*, in «European Political Economy Review», 3, 1, Spring 2005a, pp. 54-90, available at [www.eper.org](http://www.eper.org).

**Tulmets, E.**, *The Management of New Forms of Governance by Former Accession Countries of the European Union: Institutional Twinning in Estonia and Hungary*, in «European Law Journal», 11, 5, September 2005b, pp. 657-674.

**Tulmets, E.**, *Adapting the Experience of Enlargement to the Neighbourhood Policy: The ENP as a Substitute to Enlargement?*, in Kratochvil, P. (ed.), *The European Union and Its Neighbourhood: Policies, Problems and Priorities*, Prague, Institute of International Relations, 2006, pp. 29-57.

**Wallace, W.**, *Looking after the Neighbourhood: Responsibilities for the EU-25*, Working Paper of Notre Europe, Groupement d'études et de recherches, Policy Papers 4, 2003.

**Zielonka, J.**, *Europe as Empire: The Nature of the Enlarged European Union*, Oxford University Press, Oxford, 2006.

**Zimenikova, O.N., Ljovchina, T.L., Tobis, V.I., Scherstobitov, A.E.,** *Law on Consumers' Right Protection. Commentary on the Law and on the Practice of its implementation*, Ministry of Russian Federation for Antimonopoly Policy and Support to Enterprises, ISBN 5-7709-0279-5, Moscow [in Russian], 2004.