

**AMBIGUOUS BORDERS: THE EUROPEAN
COMMISSION AND THE RECONSTRUCTION OF
BORDERS**

by

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ABSTRACT

The thrust of this study is to provide a critical reading of the configuration of borders through the discourse of one of the main institutions of the European Union (EU), the European Commission. My starting point is the observation of multiplication and transformation of EU and European borders as a result of the process of integration. This implies simultaneous processes of de-bordering, border construction and reconstruction. Despite that the overwhelming majority of current research tends to focus on one aspect of these trends at the expense of the others. My premise is that as a supranational institution, the European Commission is ideally placed to provide an empirical illustration of how these processes occurs. It has a vested interest and an ability to promote further integration and therefore, ambiguous border configurations in its discourse highlight current limitations to border transcendence that instead lead to multiplication and transformation of EU and European borders.

The research provides a comprehensive examination of the different types of borders configured by the discourse of the European Commission, thus allowing analysis of how exactly these are articulated. It looks into a number of EU policy areas, border controls, free movement of people, social policy and the European Neighbourhood Policy and, employing the strategy of double reading, examines various Commission documents in the period after the adoption of the Single European Act. The main body of the thesis starts with a theoretical framework, which outlines the most important concepts used in the research, which inform the analysis in the subsequent empirical chapters.

The major finding of the study is that in each of the policy areas examined, there are ambiguous configurations of borders. At the surface, the Commission discourse tends to focus on formulations that imply decreased importance of borders. A critical engagement with the articulations, however, reveals simultaneous construction and reconstruction of EU external and internal borders. This exposes the inherent limitations to border transcendence and allows interrogating how the ambiguous border configurations are articulated. Thus, the major contribution of the research to the relevant academic fields is to provide a rich empirical account of the different ways in

which EU and European borders are configured in Commission discourse and to analyse the Commission contribution to this process.

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LIST OF ABBREVIATIONS

CEECs	Central and Eastern European Countries
DG	Directorate General
EC	European Community
ECJ	European Court of Justice
EEA	European Economic Area
EEC	European Economic Community
EFTA	European Free Trade Area
EMoS	European Model of Society
ENP	European Neighbourhood Policy
ESM	European Social Model
ESRC	Economic and Social Research Council
EU	European Union
EURES	European Employment Services
EURODAC	EU-wide fingerprint database
FRONTEX	External Agency for the Management of Operational Cooperation at the External Borders of the EU Member States
FYROM	Former Yugoslav Republic of Macedonia
GDP	Gross Domestic Product
IR	International Relations
JHA	Justice and Home Affairs
MEMO	Memorandum
OMC	Open Method of Coordination

PHARE	Poland and Hungary: Assistance for Restructuring their Economies
POLSIS	Political Science and International Studies
QMV	Qualified Majority Voting
R&D	Research and Development
SAP	Stabilisation and Association Process
SEA	Single European Act
SIS	Schengen Information System
TCN/ s	Third Country National/ s
TEU	Treaty on European Union
UK	United Kingdom
UN	United Nations
US	United States
USA	United States of America
VIS	Visa Information System
WTO	World Trade Organisation

CHAPTER ONE

BORDERS, INTEGRATION AND THE EUROPEAN COMMISSION

Out of the ruins of the Second World War a unique international organisation was created in Europe, the European Community (EC), which in 1990 was incorporated in the European Union (EU). What set the EC apart from other international organisations was the existence of supranational institutions that in principle¹ in certain cases can propose or implement legally binding decisions even without the consent of all the member states. One such institution is the European Commission, which over the years has contributed to pushing forward the process of European integration. For example, over the issue of migration that traditionally has caused a lot of controversy, the Commission position has been: “Let us try to use a new expression: *EU mobility*.”² This cross-border mobility means that with the lifting of most internal border controls, EU citizens can move as freely within the EU as they can in their own country.³ The Commission stance clearly rejects the fear of being “swamped by foreigners”⁴ because: “The Union’s long experience with free movement shows that it does not lead to mass migration.”⁵

This Commission position concurs with the aims of the Preamble of the Treaty of Rome, which declared that the signing parties are: “Determined to lay the foundations of an ever closer union among the peoples of Europe, Resolved to ensure the economic and social progress of their countries by common action to *eliminate the*

¹ Although de jure this settlement has existed since the Treaty of Rome, as a result of the Luxembourg compromise, de facto it was not really used until the Single European Act in the 1980s.

² Franco Frattini, *Enhanced Mobility, Vigorous Integration Strategy and Zero Tolerance to Illegal Employment: a Dynamic Approach to European Immigration Policies*, SPEECH/07/526, 13.09.2007, p. 2 (emphasis in the original)

³ http://ec.europa.eu/internal_market/top_layer/index_15_en.htm, accessed on 30.06.2009

⁴ Hans van den Broek, *Switzerland and the European Union*, SPEECH/96/132, 24.05.1996, p. 3. Importantly in the speech he refers to other citizens of the EEA. Despite the decades of integration, free movement of workers in the EU can still cause significant debates, as the protests in the UK in the beginning of 2009 clearly showed.

⁵ Ibid.

barriers which divide Europe".⁶ Therefore, from the outset the Founders of the integration process in Europe realised that there is a very important and strong link between integration and borders. If the envisaged "ever closer union" was to be achieved, this would require an alteration in the ways for regulating who is to be allowed in or kept out, and how; the functions performed by borders. The existing divides between the member states have to be replaced with the emergence of a common area. Thus, the example of "EU mobility" can be read as the Commission promoting the opening-up of borders inside the EC/EU, which in turn helps to achieve the goals of European integration. Such an understanding is in tune with one of the most prominent theories of integration, Neo-functionalism, which has long regarded the Commission as the "motor of the integration process".⁷ Furthermore, it concurs with conventional accounts that see the integration process as transcending political, social or economic borders. However, such accounts hold true only when the attention is on the developments inside the European Union, thus leading to decreased significance of internal Union borders. As the discussion in section 2.2.1. illustrates, commentators have on many occasions pointed out that the process of integration in Europe has led to the emergence of a new border at the external edges of the Union. Thus, the integration process is an ambiguous one that overcomes but also constructs new borders.⁸

The construction of borders under integration can be illustrated by pointing out that when immigration from outside the EU is concerned, the Commission has declared much more limited objectives in relation to migration issues: "I therefore clearly and publicly emphasise that this proposal does not allow one single entry to one single immigrant into the labour markets of the European Union. The Commission is clearly not creating a subjective right to immigration. It is simply aiming at harmonising the procedure for admission."⁹ These more modest goals mean that in distinction to the complete opening-up of borders supported in the previous example, in this case, the

⁶ Preamble, Treaty of Rome, available at http://www.unizar.es/euroconstitucion/library/historic%20documents/Rome/TRAITES_1957_CEE.pdf, accessed on 16.02.2009 (emphasis added)

⁷ See for example Chris Shore, *Building Europe – the Cultural Politics of European Identity* (London: Routledge, 2000), p. 3

⁸ Thomas Diez, 'The Paradoxes of Europe's Borders', *Comparative European Politics*, 4: 2/3 (2006), pp. 235 - 252

⁹ Antonio Vitorino, *Asylum is a Right, Economic Migration is an Opportunity*, SPEECH/03/71, 11.02.2003, p. 2. Importantly, in distinction to the example on mobility, which refers to EU citizens, the proposal cited in this quotation refers to non-EU citizens.

result will be more selective. Thus, in this second case the Commission in effect promotes the construction and reconstruction of borders.

Therefore, taken together, these examples show ambiguous and dynamic ways in which the articulations of the European Commission configure borders. Despite that, as this study demonstrates, in the overwhelming majority of cases the explicit enunciations of the Commission pertain to the transcendence of borders. Therefore, in order to uncover the trends to construction and reconstruction of borders it is necessary to engage critically with Commission discourse. This will allow me not only to demonstrate the ambiguous ways in which the Commission configures borders but also to examine how exactly these are articulated. This last point is crucial. Although, as the literature review in the next chapter shows, there has been an acknowledgement of the ambiguous relationship between borders and integration, at present there is still insufficient empirical examination of the way in which this has happened. The present study seeks to contribute in addressing this lacuna in the current academic research.

My goal is twofold. On the one hand the critical examination of Commission discourse enables me to point out how despite the prevalent rhetoric of the Commission of border transcendence, the construction and reconstruction of borders, identified by numerous commentators, has come about. On the other hand, I want to interrogate the exact ways in which borders are configured (i.e. explicitly or implicitly; through erecting/ removing physical or identity borders) and the Commission's contribution to the process.

Such a critical engagement with the bordering practices of the Commission is of paramount importance if we are to get a more accurate and comprehensive understanding of the ways in which the Commission promotion of integration configures borders. Therefore, this research contributes to the empirical and theoretical debates in border and integration studies in several major ways. Firstly, it contributes towards overcoming more simplistic accounts that tend to focus on one side of this interrelation. Very often, as the review of the academic debates in Chapter Two will reveal, scholars tend to concentrate either on the de-bordering or on the border-constructing outcomes of integration, thus down-playing the other one. My project, through the concrete case studies included, demonstrates that these two tendencies are

simultaneous and are inextricably linked. Such an understanding is crucial for a more realistic account of the link between borders and integration.

Secondly, the findings of the study provide insights into the role played by the Commission in the process of border reconstruction. Thus, it is related to one of the primary theoretical debates within Integration Studies – the debate between more Intergovernmentalist accounts and Neo-functionalist accounts. The findings highlight the grounds on which Commission documents justify the need for further integration, thus contributing to decreased importance of internal EU borders. Also, the border construction and reconstruction trends demonstrate some of the important limitations the Commission faces in fulfilling in practice the drive towards decreasing the salience of internal borders in the EU. Furthermore, these trends enable analysis of the factors leading to and the specific ways in which external EU borders are configured in Commission discourse. These border alterations lead to reconfiguration of European borders as well due to the EU being a regional organisation. Thirdly, the detailed examination of Commission documents will allow me to analyse the ways in which various kinds of borders are articulated, thus demonstrating any differences and similarities across the policy areas examined.

Given the complexity of both the integration project and the question of borders, this study specifies a more concrete time frame and issue areas on which it will focus. Such delineation maps out the scope of the research. Although in the section on the methodology of the research in the next chapter I explain in greater detail the reasons behind the choice of each of the above, below I briefly outline the period and the policy areas that are considered in this inquiry.

In this thesis I concentrate on examining the European Neighbourhood Policy (ENP), border controls, free movement of people, and social policy. There are two main reasons for this selection. The first of them is related to borders. Although, as the Literature Review in the next chapter will reveal, there is a growing number of studies dealing with EU borders, they nevertheless tend to focus in their overwhelming majority on several main issues such as Schengen, migration, or the EU's relations with its neighbours. These are all areas that traditionally have been concerned with regulating the relationship of an entity with the outside world and have thus conventionally been associated with borders. Hence, it is no surprise that studies devoted to EU borders are

often related to the EU's external limits. Yet, there are other areas in which Commission documents configure borders that are not usually in the limelight. These can be exemplified by the undertakings in a number of areas related to the completion of the internal market, such as social policy, the free movement of workers, or monetary union. All these are more closely related to the enterprise of economic integration than to "high politics" and therefore are not usually associated with borders. If they are, the focus tends to be on the trend towards decreasing the salience of internal EU borders as a result of the integration process. Thus, as far as Union borders are concerned, there are two types of policy areas – one explicitly related to borders and another much less so. Therefore, I look into two policies that are clearly related to borders (ENP and border controls) and two policies that are not usually directly associated with borders (free movement of people and social policy). Engagement with the former type of policies is necessary due to its salience when dealing with borders, while with the latter because it will provide important new insights.

The second reason for selecting these case studies is related to the Commission. Given the complex governing structure of the EU, the Commission has different powers and responsibilities depending on the issue area.¹⁰ The policies listed above are from different pillars, which will allow seeing how (if at all) this has had an impact on the ways in which Commission documents configure borders. Furthermore, Schengen was moved from the third to the first pillar with the Treaty of Amsterdam. This will make it possible to analyse if the transfer has had any impact on the configuration of borders in Commission documents.

The policy areas examined, however, are diverse in another way as well – they all have been initiated at different points in time. For example, the issues related to the free movement of workers and social policy have their origins in the Treaty of Rome that was signed in 1957. Border controls are more closely related to the cooperation of Interior Ministries that was launched by the Schengen Agreement, signed in 1985, which initially started outside of the framework of the EC. The ENP was only established in the wake of the Eastern Enlargement in 2003. This inevitably poses the

¹⁰ There are three pillars in the governing structure of the EU. The powers and responsibilities of the Commission are greatest in the first one, where the cooperation is supranational and it has the sole power of legislative initiative. In the other two pillars, cooperation is still intergovernmental and the Commission shares its legislative initiative rights with the Council of Ministers.

question of what is the time frame of the research? Given the number of policy areas to be examined, it is not possible to examine each of them from the time they were initiated. Therefore, the way the time frame was decided upon needs to be spelled out. I have focused my study of Commission documents on examination of those issued in the period after 1987 when the Single European Act (SEA) came into force. The reason for this is that this Treaty explicitly aimed at “progressively establishing the internal market ...”¹¹, where the internal market is defined as: “... an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured ...”¹². The SEA is widely regarded as a manifestation of the revival of integration efforts after a long period of stagnation in 1970s. This definition of the internal market shows it clearly aims at diminishing the significance of internal borders, and thus, provides a fertile ground for critical engagement with the integration-borders nexus.

Chapter Two will now develop the theoretical framework that will allow examining how Commission documents configure borders in the next four chapters. To that end Chapter Two provides an overview of the relevant academic debates, focusing more specifically on the existing studies on EU borders, on briefly reviewing the major theoretical approaches to studying borders and on outlining the different positions on the Commission’s role in the process of integration. The aim of these reviews is to present the main developments in the relevant fields and to identify the problems and shortcomings in each of them, which this research addresses. The second section develops the theoretical framework of the research. I present my account of the Commission’s role in the process of integration and reconfiguration of borders, elaborate on my understanding of how borders are created and classify them. This clarifies my understanding of the main terms of the study and the ways they interrelate with each other. The third section presents in detail the methodology of this study – it introduces the double reading technique, the type of Commission documents that are studied and the ways in which the documents were interrogated.

Chapters Three, Four, Five and Six form the empirical part of the investigation by looking at exactly how Commission documents in the various policy areas configure

¹¹ Article 13 of the Single European Act, available at <http://www.unizar.es/euroconstitucion/library/historic%20documents/SEA/Single%20European%20Act.pdf>, accessed on 22.10.2007

¹² Ibid.

borders. *Chapter Three* is devoted to the configuration of borders in the area of border controls. *Chapter Four* deals with the area of free movement of people. These two chapters are instances of Commission documents either striving to open up internal EU borders or being more explicit about the ways in which they configure borders. In that respect, although they are still ambiguous to some extent, they are examples of more straightforward or positive configuration of borders in the documents of the Commission. *Chapter Five* critically examines Commission documents on social policy and *Chapter Six* engages with Commission documents on the ENP. In comparison to the first two empirical chapters these two chapters are instances of much more ambiguous configuration of borders by Commission documents. They provide examples of these documents not only opening up spaces but also of actively closing spaces. Thus, in these two areas the tendencies towards the construction and reconstruction of borders by Commission documents are more pronounced. Importantly, these latter tendencies are not always explicit and can only be unveiled through a reading of Commission documents that relates them with other documents in the same or a different policy area that reveal the inherent contradictions between them and by analysing the silences within the discourses.

The thesis finishes with a *Conclusion Chapter*, which summarises the findings of the study. It highlights that although the articulations of the Commission in all the policy areas emphasise the existence of a common area in the EU, a critical examination of the discourses also reveals enunciations that contribute to construction and reconstruction of borders. Despite this underlying common trend, across the policy areas there are variations along two major lines. Firstly, different types of borders are configured in different fields. For example, while social policy discourse configures primarily identity borders, border controls one deals overwhelmingly with territorial borders. Secondly, the particular contribution of the Commission to the configuration of borders has been different. The Commission has been successful in promoting its more inclusive vision towards highly qualified Third Country Nationals in the Blue Card initiative. This was not the case in the field of long-term visas, however, where Commission articulations merely reproduce already existing settlements. I also argue that although Neo-functionalist accounts can be seen as providing a ground for anticipating Commission's favourable disposition to the construction of EU's external

borders, they do not present an in-depth narrative of how exactly this comes about. This is a serious shortcoming given that the analysis in the empirical chapters shows that in all the policy areas Commission articulations contribute to the construction of the external Union borders.

CHAPTER TWO

BORDER CONFIGURATIONS – A THEORETICAL AND METHODOLOGICAL FRAMEWORK

2.1. Introduction

As I have shown in Chapter One, Commission articulations on controversial political issues display ambiguous configurations of borders. This is in tune with the argument of many EU observers that European integration has led to the construction and reconstruction of borders. One of the most important examples of that is the emergence of the EU's external borders. Despite this observation, at present there is a lack of an in-depth examination into the particular ways in which EU borders are constructed and reconstructed in Commission discourse, which has had a central role in furthering integration and hence, border transformations. The present study seeks to rectify that. Such an engagement will not only provide a much more comprehensive understanding of the ways in which the Commission configures borders but will also allow analysis of the specific ways in which various borders are enunciated. In order to be able to successfully engage with these issues, however, I have to first address core conceptual questions, which is the aim of this chapter, thus laying down the foundations of the empirical part of the study.

This chapter is divided into three main sections. The first one reviews the current academic debates on the effects of integration on EU borders, the main approaches to studying borders and the different accounts of the role played by the Commission in the process of integration. My aim is twofold. On the one hand I want to present the major debates and findings of these studies and on the other to identify issues they do not address exhaustively. Building on these reviews, in the second part I develop my theoretical framework. I present my accounts of what borders are, why and how the Commission can influence the construction of EU borders and analyse the different possible border configurations by the Commission. This clarifies my position, situates it within the wider academic debates and presents the main lines that structure

the analysis in the following chapters. The third section deals with the methodological issues of the research. It explains how the data was selected and collected and how I analysed it.

2.2. Academic Debates on EU Borders and the Commission

There are three main brands of academic literature³ that are pertinent to this research, which I review in this section. These are the debates on the role played by the Commission in the process of integration in the EU, the different approaches to border studies in Political Science and the investigations into the impact on borders of the integration process in the EU.

2.2.1. Studies on EU borders

There are several main ways in which the EU borders have inspired the research of scholars. The first brand is concerned with the multiplication of spaces in Europe. For example Bialasiewicz, Elden and Pinter¹, Balibar², Diez³, Rumford and Delanty⁴ all point to some of the major changes that have led to significant shifts in the organisation of space in Europe and the EU. In a nutshell these are a result of the process of European integration that has led to a redefinition of the relationship between inside (the specific country) and the outside (the arena of international relations) through the transfer of sovereignty from the central state governments upwards towards the institutions of the EU and downwards towards local authorities. The occurrence of such changes is important as a point of departure for my research because the process of the multiplication of spaces logically goes hand in hand with the multiplication of borders, which happens in two main ways. Firstly, the multiplicity of spaces entails a variety of borders (on the same principle on which the increasing number of sovereign states has

¹ Luiza Bialasiewicz, Stuart Elden, Joe Pinter, 'Constitution of EU Territory', *Comparative European Politics*, 3: 3 (2005), pp. 333-363

² Etienne Balibar, 'The Borders of Europe' in Pheng Cheah, Bruce Robinson (eds), *Cosmopolitics. Thinking and Feeling Beyond the Nation* (Minneapolis: University of Minnesota Press, 1998), pp. 216-229

³ Thomas Diez, 'The Paradoxes of Europe's Borders', *Comparative European Politics*, 4: 2/3 (2006), pp. 235-252

⁴ Gerard Delanty, Chris Rumford, *Rethinking Europe. Social Theory and the Implications of Europeanization* (London: Routledge, 2005); Chris Rumford, 'Theorizing Borders', *European Journal of Social Theory*, 9: 2 (2006), pp. 155-169

resulted in an increase of the number of borders). This is a quantitative multiplication of borders. Secondly, the multiplication of spaces leads to multiple borders in a qualitative aspect, which means that in some particular cases the way borders operate has substantially altered in comparison to the way traditional nation-state borders work. Examples of qualitative changes in borders are boundaries emerging as a result of regionalisation and multilevel governance. The qualitative multiplication of borders: "... requires new ways of thinking about the spatiality of politics"⁵ and about the specific nature and functions of contemporary EU borders.

The literature that explores the issues related to the qualitative multiplication of borders is the second brand of studies on EU borders. They are important to this research because they provide different ways of thinking about how EU borders have changed in comparison to traditional Westphalian state borders. This brand of studies tackles the question of how the emerging EU order is best conceived of – as Westphalian, medieval, etc. These studies rest on the argument made by Albert, Jacobson and Lapid that borders and orders are intimately related and therefore should be studied in connection to each other.⁶ According to Albert et. al.: "... acts of bordering (i. e. the inscription, crossing, removal, transformation, multiplication and/or diversification of borders) invariably carry momentous ramifications for political ordering at all levels of analysis."⁷ In a similar vein Kratochwil has argued that: "Changes in the function of boundaries throughout history help to illuminate differences in the nature and patterns of interaction of different domestic and international systems."⁸ The main contribution of this brand of studies to my research is twofold. Firstly, some of these studies elaborate on the kind of political entity the Union is. Secondly, they outline different categories of borders in various orders and from that perspective analyse EU borders.

⁵ Gerard Delanty, Chris Rumford, *Rethinking Europe. Social Theory and the Implications of Europeanization* (London: Routledge, 2005), p. 120

⁶ Mathias Albert, David Jacobson, Yosef Lapid (eds), *Identities, Borders, Orders – Rethinking International Relations Theory* (Minneapolis: University of Minnesota Press, 2001)

⁷ Yosef Lapid, 'Introduction: Identity, Borders, Orders: Nudging International Relations Theory in a New Direction' in Mathias Albert, David Jacobson, Yosef Lapid (eds), *Identities, Borders, Orders – Rethinking International Relations Theory* (Minneapolis: University of Minnesota Press, 2001), pp. 1- 20, p. 7

⁸ Friedrich Kratochwil, 'Of Systems, Boundaries, and Territoriality: An Inquiry into the Formation of the State System', *World Politics*, 39: 1 (1986), pp. 27-52, p. 27

Two of the important contributions that illustrate the debates on the definition of the EC/EU as a political entity are the studies by Caporaso, examining the institutional structure of the Union in light of three stylised forms of state (Westphalian, regulatory and post-modern),⁹ and Schmitter's concluding chapter in "Governance in the European Union"¹⁰, which presents four scenarios as an outcome of the formation of the EU polity, namely *Stato/ Federatio*, *Confederatio*, *Consortio*, and *Condominio*. According to Schmitter the emergent institutional structure of the EU is novel because it: "... opens the way for the institutionalization of diversity – for a multitude of relatively independent European arrangements with distinct statutes, functions, resources and memberships, not coordinated by a single central organization and operating under different decision rules."¹¹ In a similar vein the three types of states examined by Caporaso are chosen because each of them captures some of the important features of the EU and therefore, is a partially accurate representation of it.¹²

A very important conclusion that can be drawn from the findings of studies similar to Caporaso's and Schmitter's is that the traditional, also referred to as Westphalian, way of organising political life is not providing an adequate representation of the manner in which relations are organised in the EU.¹³ This has been put most

⁹ James Caporaso, 'The European Union and Forms of State: Westphalian, Regulatory or Post-Modern?', *Journal of Common Market Studies*, 34: 1 (1996), pp. 29-52

¹⁰ Philippe Schmitter, 'Imagining the Future of the Euro-Polity with the Help of New Concepts' in Gary Marks, Fritz W. Scharpf, Philippe Schmitter, Wolfgang Streeck, *Governance in the European Union* (London: Sage, 1998), pp. 121-150, especially pp. 135-136

¹¹ *Ibid.*, p. 127

¹² James Caporaso, 'The European Union and Forms of State: Westphalian, Regulatory or Post-Modern?', *Journal of Common Market Studies*, 34: 1 (1996), pp. 29-52, p. 34

¹³ The following studies are particularly relevant for outlining some of the underlying features of the Westphalian order: Ron Johnston, 'Out of the 'Moribund Backwater': Territory and Territoriality in Political Geography', *Political Geography*, 20: 6 (2001), pp. 677-693; Peter Taylor, 'The State as Container: Territoriality in the Modern World System', *Progress in Human Geography*, 18: 2 (1994), pp. 151-162; James Caporaso, 'Changes in the Westphalian Order: Territory, Public Authority, and Sovereignty', *International Studies Review*, 2: 2 (2000), p. 1-28; Stephen Krasner, 'Westphalia and All That' in Judith Goldstein, Robert Keohane (eds), *Ideas and Foreign Policy* (London: Cornell University Press, 1993), pp. 235-264; Stephen Krasner, 'Rethinking the Sovereign State Model', *Review of International Studies*, 27: 5 (2001), pp. 17-42; Alexander Murphy, 'The Sovereign State as Political-Territorial Idea: Historical and Contemporary Considerations' in Thomas Biersteker, Cynthia Weber (eds), *State Sovereignty as Social Construct* (Cambridge: Cambridge University Press, 1996), pp. 81-120; John Gerard Ruggie, 'Continuity and Transformation in the World Polity: Towards a Neorealist Syntheses', *World Politics*, 35: 2 (1983), pp. 261-285; Emmanuel Brunet-Jailly, 'Theorizing Borders: an Interdisciplinary Perspective', *Geopolitics*, 10: 4 (2005), pp. 633-649; R. B. J. Walker, *Inside/ Outside: International Relations as Political Theory* (Cambridge: Cambridge University Press, 1995); Tuomas Forberg, 'The Ground Without Foundation? Territory as a Social Construct', *Geopolitics*, 8: 2 (2003), pp. 7-24; A. Kemp, U. Ben-Eliezer, 'Dramatizing Sovereignty: the Construction of Territorial Dispute in the Israeli-Egyptian Border at Taba', *Political Geography*, 19: 3 (2000), pp. 315-344; Daniel Philpott,

succinctly by Ruggie in his famous article “Territoriality and Beyond”. According to him, the EC/EU may be the first “‘multiperspectival polity’ to emerge since the advent of the modern era.”¹⁴ This is a result of the fact that: “... it is increasingly difficult to visualise the conduct of international politics among community members, and to a considerable measure even domestic politics, as though it took place from a starting point [at the time] of twelve separate, single, fixed viewpoints.”¹⁵ Thus, the EU is compared instead to a medieval order in which a: “patchwork of overlapping and incomplete rights of government” existed.¹⁶ What is of paramount importance for this research from the findings of the studies devoted to the fundamental features of the Westphalian order and the possible transformations in it we are witnessing today, is the fact that these two orders configure borders differently.

For the purposes of my analysis I have summarised these configurations as the construction of borders (characteristic of the Westphalian order, which is focused on the control of the central authority over a particular piece of land through delineating the limits of its reach) and the decreased significance of borders (characteristic of the Medieval and the post-modern orders, which are characterised by an overlap of authorities that blurs the distinction between inside and outside).¹⁷ Thus, for me one criterion for classifying different configurations of borders most generally refers to the

‘Westphalia, Authority, and International Society’, *Political Studies*, 67: 3 (1999), pp. 566-589. Some of the studies highlighting the main features of the contemporary world or of the EU that contribute to the erosion of the Westphalian model are: Christopher Rudolph, ‘Sovereignty and Territorial Borders in a Global Age’, *International Studies Review*, 7: 7 (2005), pp. 1-20; James Anderson, Chris Brook, Allan Cochrane, *A Global World?* (Oxford: Open University Press, 1995); Alan James, ‘The Practice of Sovereign Statehood in Contemporary International Society’, *Political Studies*, 47: 3 (1999), pp. 457-473; William Wallace, ‘Europe after the Cold War: Interstate Order or Post-Sovereign Regional System?’, *Review of International Studies*, 25: 5 (1999), pp. 201-223; William Wallace, ‘The Sharing of Sovereignty: the European Paradox’, *Political Studies*, 47: 3 (1999), pp. 503-521.

¹⁴ John Gerard Ruggie, ‘Territoriality and Beyond: Problematizing Modernity in International Relations’, *International Organization*, 47: 1 (1993), pp. 139-174, p. 172

¹⁵ Ibid.

¹⁶ Joseph S. Strayer and Dana C. Munro, cited in Ibid, p. 149

¹⁷ In the literature this different configuration of borders is also often referred to as hard and soft borders. For definition and different usages of the terms hard and soft borders see Jan Zielonka, ‘How New Enlarged Borders will Reshape the European Union’, *Journal of Common Market Studies*, 39: 3 (2001), pp. 507-536, p. 509; Jan Zielonka, *Europe as an Empire – the Nature of the Enlarged European Union* (Oxford: Oxford University Press, 2006); Jan Zielonka (ed.), *Europe Unbound – Enlarging and Reshaping the Boundaries of the European Union* (London: Routledge, 2002); John Gerard Ruggie, ‘Territoriality and Beyond: Problematizing Modernity in International Relations’, *International Organization*, 47: 1 (1993), pp. 139-174; Heather Grabbe, ‘The Sharp Edges of Europe: Extending Schengen Eastwards’, *International Affairs*, 76: 3 (2000), pp. 519-536, p. 527; Klaus Eder, ‘Europe’s Borders: the Narrative Construction of the Boundaries of Europe’, *European Journal of Social Theory*, 9: 2 (2006), pp. 255-271, p. 256 (however, his distinction between hard and soft borders is on the ground of their legal formalisation, not on the relative easiness for their crossing)

relative ease of crossing the border and to its salience. Therefore, when borders are constructed, it becomes more difficult to penetrate them, while on the contrary when borders' significance diminishes it becomes easier to penetrate them.¹⁸

Another way for classifying borders is the distinction by Geddes between territorial, organisational (functional) and conceptual borders. He defines territorial borders as the sites (sea, land, air) of entry at which the sovereign powers of the state to exclude are exercised. This territorial border is a particular instance of a more general type of borders that Cuttitta terms material borders. According to him, they: "... can be marked and physically reproduced on the earth surface".¹⁹ The second type of borders identified by Geddes is organisational (functional), which are the sites where conditions for the membership into the labour market, the welfare state and the national citizenship are specified. The third type, conceptual borders, encompasses a set of concerns centered on notions of belonging and identity to various communities (trans-national, national or sub-national).²⁰ Cuttitta refers to this last type of borders as non-material ones that manifest differences between various kinds of non-material entities, such as dividing lines between ethnic and linguistic groups, cultures or classes.²¹ These distinctions are important because as will be demonstrated below, the debates on EU borders evolve around issues closely related to these basic types of borders.

If one tries to classify EU borders along the distinction of border construction or diminished significance of borders, it is most likely that one will find it highly problematical, if not impossible to pigeon-hole them straightforwardly as either of the two categories. While the Union does indeed display some of the features characteristic of a post-modern/ or Medieval order, as the studies of Caporaso and Schmitter, referred to above, have indicated, it does at the same time possess some of the features of the traditional Westphalian order.

A study that has captured this duality well is Smith's investigation into the interrelationship between the politics of inclusion and exclusion in the EU and the

¹⁸ no desab si noitaitnereffid sihT Heather Grabbe, 'The Sharp Edges of Europe: Extending Schengen Eastwards', *International Affairs*, 76: 3 (2000), pp. 519-536, p. 527

¹⁹ Paolo Cuttitta 'Points and Lines: a Topography of Borders in the Global Space', *Ephemera*, 6: 1 (2006), pp. 27-39, p. 29

²⁰ Geddes' classification and definitions of borders is from Andrew Geddes, 'Europe's Border Relationships and International Migration Relations', *Journal of Common Market Studies*, 43: 4 (2005), pp. 787-806, pp. 789-790

²¹ Paolo Cuttitta, 'Points and Lines: a Topography of Borders in the Global Space', *Ephemera*, 6: 1 (2006), pp. 27-39, p. 29

changing European order.²² What is of particular importance is the fact that this article demonstrates how these two tendencies occur simultaneously as a result of the different policies adopted on various levels in the Union. Despite this, a closer look into the studies devoted to the contemporary EU borders reveals that they in general concentrate on either the dynamics of inclusion, which is consistent with the advent of a post-modern order and decreasing importance of borders, or the dynamics of exclusion that are in synch with the more traditional Westphalian order and its border construction. Below I discuss the major studies related to both trends – decreasing significance of borders and construction of territorial and identity EU borders (see also Table 2.1).

This one-sidedness of the conceptualisation of EU borders is most evident in the ways a number of studies have argued in favour of the construction/ diminished salience of borders that is currently taking place at the external edges of the EU. If during the first decades of European integration the decreasing visibility of borders was directed primarily towards the inside (in the EC itself with the adoption and implementation of the various common policies) at the end of the twentieth century the question of how does or should the EU interact with the rest of the world gained ever increasing importance. Thus, recent debates on borders in EU Studies have been concerned predominantly with this issue as the studies reviewed below show.

One of the prominent contributions to the debate is an article by Christiansen, Petite and Tonra that coined the idea that the borders of the EU are “fuzzy”. According to them, this is a result of the EU's policy of exporting its policies beyond its member states, such as the gradual extension of its Single Market Programme to Central and Eastern Europe. Hence, the article argues that in the current circumstances there is value in moving away from the inside/ outside dichotomy and studying the relations of the EU with its neighbours through the category of “near abroad”. Thus, the article maintains that the boundaries of the polity are not clearly defined.²³ Delanty and Rumford's²⁴ and Lavenex's²⁵ studies on the ENP contribute to the same debate. According to the former

²² Michael Smith, ‘The European Union and a Changing Europe: Establishing the Boundaries of Order’, *Journal of Common Market Studies*, 34: 1 (1996), pp. 5-28

²³ Thomas Christiansen, Fabio Petite, Ben Tonra, ‘Fuzzy Politics around Fuzzy Borders: the European Union's 'Near Abroad'', *Cooperation and Conflict*, 35: 4 (2000), pp. 389-415

²⁴ Gerard Delanty, Chris Rumford, *Rethinking Europe. Social Theory and the Implications of Europeanization* (London: Routledge, 2005)

²⁵ Sandra Lavenex, ‘EU External Governance in 'Wider Europe'', *Journal of European Public Policy*, 11: 4 (2004), pp. 680-700

study this policy represents a blurring of the EU's external border.²⁶ The concept through which the authors propose to think about the European territory is borderlands. For them this term captures the changed nature of the EU's borders, which must be seen less in territorial terms as firmly delineated and fixed and more in terms of new spaces. Thus, borderlands contain core and periphery, members and non-members, global and local, networks and discontinuities.²⁷ Lavenex views the EU's neighbourhood policies as: "... a form of external governance which consists in the (selective) extension of the EU's norms, rules and policies, i.e. its legal boundary, while precluding the opening of its institutional boundary, i.e. membership."²⁸ All these studies present analysis of a particular phenomenon – the fact that the EU is gradually expanding its governance beyond the circle of its member states, which creates ambiguity about the various Union borders.

Another important area of research, which provides information about the decreasing salience of the external EU borders are the contributions concerned with different aspects of Europeaness and European identity in the context of Eastern Enlargement. Typically these studies explore the issue of what constitutes “European values”²⁹ and which of the former Communist countries can be regarded as conforming to them. For example, Mungiu-Pippidi states that: "The borders of Europe might then be traced on the basis of such "values""³⁰ and that the eastern border of the EU (prior to the May 2004 enlargement) "... is not a separator between two identities- the European identity is actually stronger east of the line."³¹ In a similar vein, a study by Pavlovaite explores the dominant discourse on “Europe” in Lithuania from the standpoint that in post-Cold War Lithuania the preoccupation with belonging to Europe is mainly expressed through a desire to become a member of the EU.³² This discourse was typical for the other post-Communists countries that joined the EU in 2004 and 2007 and

²⁶ Gerard Delanty, Chris Rumford, *Rethinking Europe. Social Theory and the Implications of Europeanization* (London: Routledge, 2005), pp. 126-127

²⁷ *Ibid.*, pp. 133-134

²⁸ Sandra Lavenex, 'EU External Governance in 'Wider Europe'', *Journal of European Public Policy*, 11: 4 (2004), pp. 680-700, p. 694

²⁹ An example of a study focused on outlining European values is Ulrich Beck, 'Understanding the Real Europe', *Dissent*, Summer, 2003, pp. 32-38

³⁰ Alina Mungiu-Pippidi, 'Beyond the New Borders', *Journal of Democracy*, 15: 1 (2004), pp. 48-62, p. 54

³¹ *Ibid.*, p. 49

³² Inga Pavlovaite, 'Being European by Joining Europe: Accession and Identity Politics in Lithuania', *Cambridge Review of International Affairs*, 16: 2 (2003), pp. 239-255, p. 239

indeed one of the most contentious issues in Turkey's membership application is its genuine adherence to European values. Such studies can be regarded as contributing towards the decreased importance of identity borders between the EU and its neighbours because they demonstrate the shared values across formal boundaries, which potentially can lead to blurring the distinction between the EU's inside and outside.³³

In distinction to this position, the second type of arguments in studies on the borders of the EU focuses on various aspects of the emergence of new dividing lines. Probably the area where this is most apparent are the various policies related to the implementation of the Schengen provisions. As Grabbe states: "The idea behind softening borders in the Schengen zone is that internal frontiers become soft, while external ones are hard, effectively creating a larger zone of free movement, but one with sharper edges ... so entry to the area is strictly controlled."³⁴ As a result, there is a growing body of literature, whose main contribution in respect to my research is in providing an account of which elements of the Schengen-related policies lead to the construction of EU's borders. Some of this research is focused on the measures for and the effects of the increased control of the external borders of the EU and the ways the EU is consolidating its policies in areas such as immigration and asylum, the fight against organised crime and international terrorism, or other measures aimed at promoting the establishment of an area of freedom, security and justice on the territory of the EU. For example Wouters and Naert,³⁵ as well as Monar³⁶ concentrate on the

³³ Indeed such an outcome is the ultimate goal of the ENP. Therefore, although most of the countries on which this type of studies would have been focused are at present already members of the EU, discourses related to the adherence to the European values by diminishing the differences between various groups of people can lead to easier crossing of borders. At the same time, however, it should be noted that because as I argue, the decreased salience of borders always occurs simultaneously with the erections of borders elsewhere, the studies on Europeaness and European identity are dependent on the articulation of an "Other". In the case of the former Communist countries in Central and Eastern Europe very often this "Other" has been Russia. In that respect this brand of studies can also be regarded as erecting borders (between the former Communist countries and Russia). Nevertheless, as far as the ways in which these studies configure the external borders of the EU is concerned, they promote the view that there is not a significant difference of the value systems of the countries from the two sides of the EU external borders. Therefore, I have classified these studies as contributing towards the diminished visibility of identity borders between the EU and its immediate neighbours.

³⁴ Heather Grabbe, 'The Sharp Edges of Europe: Extending Schengen Eastwards', *International Affairs*, 76: 3 (2000), pp. 519-536, p. 527. A similar conclusion on the effects of the integration in the areas of Justice and Home Affairs (JHA) is reached by Jörg Monar in 'Justice and Home Affairs in a Wider Europe: the Dynamics of Inclusion and Exclusion', ESRC 'One Europe or Several?' Program, Working Paper 07/00, available at <http://www.one-europe.ac.uk/pdf/monarW7.PDF>, accessed on 3.11.2007

³⁵ Jan Wouters, Frederik Naert, 'The European Union and "September 11"', available at <http://www.law.kulauven.ac.be/lir/eng/wp/WP40ed2e.pdf>, accessed on 20.09.2004

legal provisions adopted by the European Union in various aspects of Justice and Home Affairs (JHA). Another area on which the studies of territorial borders of the EU are focused is the Eastern Enlargement of the Union and the migration of the labour force.³⁷ Kostakoupolou has examined the effects of communitarisation of the JHA pillar. Her conclusion is that it gives the member states the opportunity to reinforce the restrictive and law-enforcement approaches towards migration as well as allowing them to impose their security agenda beyond the limits of the EU.³⁸ In a similar vein Huysmans states that: “The Third Pillar on Justice and Home Affairs, the Schengen Agreements, and the Dublin Convention most vividly indicate that the European integration process is implicated in the development of a restrictive migration policy and the social construction of migration into a security question.”³⁹ These are crucial findings that point to the construction of new external borders as a result of European integration.

The securitisation of particular issues on the EU’s agenda is also related to questions of the construction of identity borders. This is a result of the fact that: “... identity politics play a crucial role in both defining the boundaries of any community, and in providing the community with an inner sense of cohesion.”⁴⁰ Ultimately these are achieved through a process of differentiation, which is pertinent especially to those that are “liminal” to the community because it helps to generate abstract principles upon which the community or polity is based.⁴¹ Such a process is also referred to as “Othering”. It leads to the emergence of borders because if someone is identified as “the Other” cooperating with and trusting him/ her becomes much more problematic and difficult to achieve. Some studies have examined various aspects of this process in European politics. For example, Neumann⁴² has explored how the Eastern “Other” has

³⁶ Jörg Monar, ‘Justice and Home Affairs’, *Journal of Common Market Studies*, 1: 42 (2004), pp. 117-133

³⁷ See for example Margit Kraus, Robert Schwager, ‘EU Enlargement and Immigration’, *Journal of Common Market Studies*, 2: 41 (2003), pp.165-181. The issues of migration and the impact of the Eastern Enlargement on the European Social Model will be examined in greater detail in Chapters Four and Five.

³⁸ Theodora Kostakoupolou, ‘The ‘Protective Union’: Change and Continuity in Migration Law and Policy in Post-Amsterdam Europe’, *Journal of Common Market Studies*, 38: 3 (2000), pp. 497-518

³⁹ Jef Huysmans, ‘The European Union and the Securitization of Migration’, *Journal of Common Market Studies*, 38: 5 (2000), pp. 751-777, p. 751

⁴⁰ Cited in Jacinta O’Hagan, *Conceptualizing the West in International Relations – from Spengler to Said* (Basingstoke: Palgrave, 2002), p. 40

⁴¹ *Ibid.*, pp. 47-50

⁴² Iver Neumann, *Uses of the Other – “the East” in European Identity Formation* (Manchester: Manchester University Press, 1999)

been used in the European identity formation; Sztompka⁴³ has investigated the shifting identities and boundaries in the New Europe, while Bilgin⁴⁴ and Pace⁴⁵ have been concerned with the identity dimensions of different aspects of the policies of the EU towards its Southern neighbours in the Mediterranean.

Table 2.1: Major studies related to the construction/ diminished significance of territorial and identity borders of the EU

Configuration of Borders/ Type of border	Territorial	Identity
Construction of Borders	Wouters and Naert; Monar; Kostakoupolou; Huysmans	Neumann; Sztompka; Bilgin; Pace
Diminished Significance of Borders	Christiansen, Petito and Tonra; Delanty and Rumford; Lavenex	Mungiu-Pippidi; Pavlovaite

Thus, the existing research on EU borders shows that as a result of the process of integration, member states' borders have been transformed in a variety of important ways. Furthermore, the literature on this issue provides useful ways of conceptualising borders that will inform the analysis in the following chapters. Two of the most important of the current transformations are the decreased salience of internal EU borders and the emergence of the Union's external borders. These trends, however, pose a new set of theoretical questions, which are paramount to this study: firstly, what is the nature of the "internal EU borders" and their relationship to the national borders of the member states. Secondly, the question of national borders becoming EU borders.

In recent years a number of studies have contributed to the issue of the emerging EU external borders, thus elucidating the issue of national borders becoming EU

⁴³ Piotr Sztompka, *From East Europeans to Europeans: Shifting Identities and Boundaries in the New Europe*, available at <http://scholar.google.com/scholar?hl=en&lr=&q=cache:n3S5oj-5X48J:www.nias.knaw.nl/Ortelius2004.pdf+from+East+Europeans+to+Europeans+%2B+Sztompka>, accessed 13.02.2006

⁴⁴ Pinar Bilgin, 'A Return to 'Civilisational Geopolitics' in the Mediterranean? Changing Geopolitical Images of the European Union and Turkey in the Post-Cold War Era', *Geopolitics*, 9: 2 (2004), pp. 296-291

⁴⁵ Michelle Pace, 'The Euro-Mediterranean Partnership and the Common Mediterranean Strategy? European Union Policy from a Discursive Perspective', *Geopolitics*, 9: 2 (2004), pp. 292-309

borders. Most generally, as Vaughan-Williams summarises, the external EU borders have emerged as a result of the “‘Europeanisation’ of member states’ borders since 1985.”⁴⁶ Thus, the Community law defines the external EU borders as: “*the Member States’ land borders, including river and lake borders, sea borders and their airports, river ports, sea ports and lake ports, provided that they are not internal borders.*”⁴⁷ Several significant features characterise this process. Firstly, while some of the traditional Westphalian functions, such as economic and military maybe declining, the external EU borders are becoming ever more important in the policing of the so-called clandestine international actors.⁴⁸ Secondly, as Axford⁴⁹ and Carrera⁵⁰ argue, although many of the current threats to border security the EU faces are non-traditional, the bulk of the responses are traditional due to the predominance of measures premised on strengthening of the principle of territoriality.⁵¹ Thirdly (and most importantly with respect to the relationship between national and EU borders), the current design of cooperation at EU level is based on the national predominance of the member states.⁵² This is in concurrence with the above definition of the external EU borders and can be exemplified with the recent decisions on the way FRONTEX functions.⁵³ The empirical chapters of this study conform to these arguments and provide evidence of how these features of the external EU borders have been articulated in the discourses of the European Commission in various policy areas.

⁴⁶ Nick Vaughan-Williams, ‘Borderwork beyond Inside/ Outside? Frontex, the Citizen-Detective and the War on Terror’, *Space and Polity*, 12: 1 (2008), pp. 63-79, p. 64

⁴⁷ Cited in Sergio Carrera, ‘The EU Border Management Strategy: FRONTEX and the Challenges of Irregular Migration in the Canary Islands’, *CEPS Working Document*, no. 261, March (2007), p. 5 (emphasis in the original)

⁴⁸ Andreas cited in William Walters, ‘Rethinking Borders beyond the State’, *Comparative European Politics*, 4: 2/3 (2006), pp. 141-159, p. 142

⁴⁹ Barrie Axford, ‘The Dialectic of Borders and Networks in Europe: Reviewing ‘Topographical Presuppositions’’, 4: 2/3 (2006), pp. 160-182, p. 170

⁵⁰ Sergio Carrera, ‘The EU Border Management Strategy: FRONTEX and the Challenges of Irregular Migration in the Canary Islands’, *CEPS Working Document*, no. 261, March (2007), p. 5

⁵¹ Other studies, however, have emphasised the non-traditional elements in the development of the EU’s external borders. See for example, William Walters, ‘Rethinking Borders beyond the State’, *Comparative European Politics*, 4: 2/3 (2006), pp. 141-159.

⁵² This point is made by Sergio Carrera, ‘The EU Border Management Strategy: FRONTEX and the Challenges of Irregular Migration in the Canary Islands’, *CEPS Working Document*, no. 261, March (2007), p. 9 and by Julien Jeandesboz, ‘Reinforcing the Surveillance of EU Borders. The Future Development of FRONTEX and EUROSUR’, *Challenge: Liberty and Security*, Research Paper no. 11, August (2008), p. 3.

⁵³ A good summary of the prerogatives and functioning of FRONTEX can be found in Helene Jorry, ‘Construction of a European Institutional Model for Managing Operational Cooperation at the EU’s External Borders: is the FRONTEX a Decisive Step Forward?’, *Challenge: Liberty and Security*, Research Paper no. 6, March (2007)

Another set of theoretical border-related issues, triggered by the process of integration concerns the internal EU borders. As Delanty argues, internal Union borders are a result of an overlap between old borders and new (often) less visible ones.⁵⁴ In that respect one type of internal EU borders are the old lines demarcating the divisions between the member states of the EU. Today these borders are often seen as having declining importance. This is because they are: “now mostly devoid of military significance, and have also lost their function as trading zones...”.⁵⁵ Although this implies decreasing significance of national borders inside the EU and therefore, a relatively simple relationship between national and internal EU borders, this in fact is not the case. This is so because as Diez argues a basic paradox of European integration is that the decreasing importance of borders inside the European Union is based on the recognition of the national borders of the member states. He refers to this as subversion. Thus, it was possible to progress with European integration only because it implicitly recognised the borders of the member states,⁵⁶ hence guaranteeing their continued existence and significance. This logic has endured and has led in some cases, as the analysis in the empirical chapters show, to the reconstruction of borders inside the EU.

Another type of internal EU borders are new divisions emerging in the Union that exist beyond the national borders of the member states. In distinction to the above internal borders that can be seen as an expression of the intergovernmental thinking in the integration process, these new internal divisions are a result of the normative adherence to the idea of an integrated Europe. According to Blatter, this has inspired the efforts towards the creation of cross-border regions in the EU,⁵⁷ which is embodied in the INTERREG programmes. Another example of internal borders existing beyond the national borders of the member states are the new identities emerging as a result of integration efforts. The current study provides several examples of the articulation of this kind of internal borders in the Commission discourses, such as the distinction

⁵⁴ Gerard Delanty, ‘Borders in a Changing Europe: Dynamics of Openness and Closure’, *Comparative European Politics*, 4: 2/3 (2006), pp. 183-202, p. 192

⁵⁵ *Ibid.*, p. 191

⁵⁶ Thomas Diez, ‘The Paradoxes of Europe’s Borders’, *Comparative European Politics*, 4: 2/3 (2006), pp.235-252, p. 239. Another scholar that asserts the continued “belonging” of borders to particular nations is William Walters. See his chapter in Chris Rumford (ed.), *The Sage Handbook of European Studies* (London: Sage, 2009), pp. 484-507, p. 492.

⁵⁷ Blatter, cited in Barrie Axford, ‘The Dialectic of Borders and Networks in Europe: Reviewing ‘Topographical Presuppositions’’, 4: 2/3 (2006), pp. 160-182, p. 172

between EU nationals and TCNs or the juxtaposition of the supporters and objectors of the social dimension of the internal market.

Therefore, the existing literature on EU borders gives a comprehensive theoretical and empirical account of the main transformations of borders that occur as a result of the process of integration. The major shortcoming of the current studies is that they tend to end up in providing limited and one-sided account of the relationship between borders and integration. This is a grave problem because it prohibits a comprehensive account of the current developments and instead presents a distorted picture. My claim that integration leads simultaneously to the decreasing importance of borders and to the construction of borders means that one of the central concerns of the research is to capture the parallel occurrence of these two processes. This will contribute to the current debates in two main ways. Firstly, it will provide a much more comprehensive coverage of the developments on EU borders through highlighting the simultaneous tendencies towards decreasing the salience of borders and the construction of borders for different types of borders. By doing this, secondly, it will present a much more realistic account of the processes that are currently taking place. This ambition, however, necessitates the development of a way for studying borders. The first step in this journey is to become familiar with the contemporary debates on this matter, which are presented in the next section.

2.2.2. Theoretical approaches to the study of borders

The aim of the discussion in this section is to provide the background on which I will develop a theoretical framework for the examination of the construction of EU borders. In order to do this, I present the main ways in which Border Studies have conceptualised borders and I link the assumptions of these conceptualisations with the broader meta-theoretical debates that have inspired them.

The developments in Border Studies have been influenced by and have followed the general developments in social scientific research. In the last decades it has seen a renewed interest and engagement with ontological and epistemological issues. Simplifying a complex debate, most generally research on social issues can be classified as positivist and constructivist. The tenets of positivism are the view of the unity of science, and therefore the belief that the methodologies of the natural sciences should be

adopted to explain the social world (naturalism); the belief that there is a sharp distinction between facts and values and that facts are theory neutral (objectivism); the conviction that there are regularities in the social world and therefore, deductive and inductive forms of inquiry are relevant in order to develop law-like explanations; the validation of social scientific inquiries through either validation or falsification (empiricist epistemology).⁵⁸ This approach argues that the world exists independently of our knowledge of it. Constructivism "... builds on relativist philosophy of science and interpretivist sociology of knowledge."⁵⁹ Contrary to positivism, for the proponents of this approach there is no direct access to the real world because our knowledge of it depends on understandings that are socially constructed. Therefore, in order to learn about the social world it is crucial to interpret the meanings of social phenomena.⁶⁰

Following these major trends in social scientific research, prior to the 1980s, borders were seen as a given reality. They were above all concrete empirical phenomena,⁶¹ which is why they were defined as a spatial fact that has a sociological impact.⁶² For example Prescott's influential study on boundaries and frontiers sets out to examine the specific aspects of frontiers and boundaries. As far as boundaries are concerned, he is interested in the evolution of international land and maritime boundaries, the disputes associated with them, the internal state borders and boundaries' general effects on the landscape.⁶³ In a similar way the contributors to the "The Geography of Border Landscapes" inquire into the varying impact of political decision-making and ideological differences on the environment at border locations.⁶⁴ Other studies have concentrated on different issues, such as examining the link between

⁵⁸ Steve Smith, 'Positivism and Beyond' in Steve Smith, Ken Booth, Marysia Zalewski (eds), *International Theory: Positivism and Beyond* (Cambridge: Cambridge University Press, 1999), pp.11-44, pp. 15-16

⁵⁹ Emmanuel Adler, 'Seizing the Middle Ground: Constructivism in World Politics', *European Journal of International Relations*, 3: 3 (1997), pp. 319-363, p. 321

⁶⁰ David Marsh, Paul Furlong, 'A Skin not a Sweater: Ontology and Epistemology in Political Science' in David Marsh, Gerry Stoker (eds), *Theory and Methods in Political Science* (2nd ed.) (Basingstoke: Palgrave Macmillan, 2002), pp. 17-41, p. 27

⁶¹ Anssi Paasi, 'Generations and the 'Development' of Border Studies', *Geopolitics*, 10: 4 (2005), pp. 663-671, p. 663

⁶² John Williams, 'Territorial Borders, International Ethics and Geography: Do Good Fences still Make Good Neighbours?', *Geopolitics*, 8: 2 (2003), pp. 25-46, p. 28

⁶³ J. Prescott, *Boundaries and Frontiers* (London: Croom Helm, 1978)

⁶⁴ Dennis Rumley, Julian Minghi (eds), *The Geography of Border Landscapes* (London: Routledge, 1991)

electoral behaviour and borderland ethnic minority patterns⁶⁵ and tracing the effects of border alterations on the borderland and its inhabitants.⁶⁶ Thus, these studies see borders as a fact that is given independently of human actions and examine them utilising various tools modeled after the instruments of enquiry of natural sciences.

However, by the end of the twentieth century, this conceptualisation of borders was increasingly criticised due to its inability to provide a satisfactory account of various important events, such as why in some cases even small changes in state territory and its borders provoke deep emotional reactions and can lead to territorial conflict, while in other cases new borders are not disputed; why sometimes border areas that have been peaceful for a long time can suddenly be transformed into the foci of conflict and provoke even bloodshed; or why governments and public opinion are very often painfully sensitive towards many questions concerning political boundaries. These criticisms provoked new ways of thinking about borders that helped overcoming some of the problems the traditional approaches were facing.⁶⁷

In doing this, since the late 1980s Border Studies have increasingly utilised constructivist understandings and have started to focus on the border's massive visibility in the shaping and controlling of the lives of people and their huge importance for the questions of war and peace.⁶⁸ In distinction to the traditional methods of border studies, these inquiries are based on the presumption that borders as delimiters of sovereignty are constructed and reconstructed in a search for control, linked to the nature of political power.⁶⁹ Thus, these approaches point to the fact that there is a whole social dimension attached to boundary delineation.⁷⁰ Therefore, this type of studies predominantly critically investigates borders as differentiators of socially constructed

⁶⁵ Julian Minghi, 'Voting and Borderland Minorities: Recent Italian Elections and the Slovene Minority in Eastern Friuli-Venezia Giulia', *GeoJournal*, 43:3 (1997), pp. 263-271

⁶⁶ Milan Buffon, Julian Minghi, 'The Upper Adriatic Borderland: From Conflict to Harmony', *GeoJournal*, 52: 2 (2000), pp. 119-127. For a review of the border studies in political geography see Julian Minghi, 'Boundary Studies in Political Geography', *Annals of the Association of American Geographers*, 53: 3 (1963), pp. 407-428

⁶⁷ Vladimir Kolossov, 'Theorizing Borders – Border Studies: Changing Perspectives and Theoretical Approaches', *Geopolitics*, 10: 4 (2005), pp. 606-632, p. 613

⁶⁸ John Williams, 'Territorial Borders, International Ethics and Geography: Do Good Fences Still Make Good Neighbours?', *Geopolitics*, 8: 2 (2003), pp. 25-46, p. 30

⁶⁹ *Ibid*, p. 28

⁷⁰ Michelle Pace, 'The Euro-Mediterranean Partnership and the Common Mediterranean Strategy? European Union Policy from a Discursive Perspective', *Geopolitics*, 9: 2 (2004), pp. 292-309, p. 302

mindscales and meaning.⁷¹ The major tools used by the scholars in this approach are the examination of discursive practices, deconstruction and the use of critical theory.⁷² The contribution they make is to underline the ways in which studying and modeling international politics are also acts of international politics.⁷³ Examples of this type of border research are the works of Paasi⁷⁴ and Newman,⁷⁵ as well as most of the studies reviewed in the previous section. All of these studies provide both theoretical and empirical examples of how these approaches conceptualise borders.

Thus, this discussion shows that there are different approaches to studying borders. These are a result of the ontological assumptions made as well as the different epistemological and methodological tools used for conducting the research. As this review of the various types of Border Studies has shown, the different opinions on these matters have had enormous impact on Border Studies because they have led to the emergence of diverse (sometimes opposing) ways for conceptualising borders. By bringing to the fore these issues of contention and allowing various ways for tackling them, these debates have helped to outline the different characteristics and effects that borders have. Some of the most contentious issues, which emerged out of the positivist – constructivist debates on the study of borders, are questions such as what are borders a result of, which are the most appropriate tools for their examination and where should one look when studying them? Each of these issues should implicitly, if not explicitly, be addressed when conducting border-related research. If all the studies reviewed have addressed these problems in one way or another, these points have to be raised for the present inquiry as well. This is the topic of the following parts of the chapter but before

⁷¹ Henk van Houtum, 'The Geopolitics of Borders and Boundaries', *Geopolitics*, 10: 4 (2005), pp. 672-679, p. 673

⁷² Heather Nicol, Julian Minghi, 'Continuing Relevance of Borders in Contemporary Contexts', *Geopolitics*, 10: 4 (2005), pp. 680-687, p. 680

⁷³ John Williams, 'Territorial Borders, International Ethics and Geography: Do Good Fences still Make Good Neighbours?', *Geopolitics*, 8: 2 (2003), pp. 25-46, p. 37

⁷⁴ See for example Anssi Paasi, 'Boundaries as Social Practice and Discourse: The Finnish-Russian Border', *Regional Studies*, 33: 7 (1999), pp. 669-680; Anssi Paasi, 'Deconstructing Regions: Notes on the Scales of Spatial Life', *Environment and Planning A*, 23: 2 (1991), pp. 239-256; Anssi Paasi, 'Europe as a Social Process and Discourse', *European Urban and Regional Studies*, 8: 1 (2001), pp. 7-28; Anssi Paasi, 'Boundaries as Social Processes: Territoriality in the World of Flows', *Geopolitics*, 3: 1 (1998), pp. 69-88

⁷⁵ David Newman, Anssi Paasi, 'Fences and Neighbours in the Postmodern World: Boundary Narratives in Political Geography', *Progress in Human Geography*, 22: 2 (1998), pp. 186-207; David Newman, 'On Borders and Power: a Theoretical Framework', *Journal of Borderland Studies*, 18: 1 (2003), pp. 13-25; David Newman, 'Boundaries, Borders, and Barriers: Changing Geographical Perspectives on Territorial Lines' in Mathias Albert, David Jacobson, Yosef Lapid (eds), *Identities, Borders, Orders – Rethinking International Relations Theory* (Minneapolis: University of Minnesota Press, 2001), pp. 137-151

addressing these matters, I turn my attention to presenting the last major academic debate relevant to this study.

2.2.3. Debates on the role of the European Commission in the EU integration process

The aim of this section is to work out which would be the most appropriate focus for a project that wants to investigate the way construction and reconstruction of EU borders has occurred. As the discussion so far has shown, one of the most important factors contributing to the transformation of borders that we are witnessing today is the emergence of integration efforts embodied in a unique organisation, the EU. Therefore, in deciding where to focus the study, my premise has been that its findings will be most pertinent if I concentrate on an institution that by its characteristics is distinctive from other international institutions and is bound to promote integration, thus ensuring the continued existence of border constructing and reconstructing conditions. Such an organisation will successfully highlight the unique features of the ambiguous configurations of borders under integration. To achieve this goal, I have to engage with the existing literature on the process of integration in the EU. In order to identify the appropriate object at which to focus the study, I have to draw on research that examines the institutional structure of the Union. Then I outline the major studies on the European Commission. This enables me to present the differing views on the role of the Commission in furthering integration and building on that to explain why I argue that the Commission can influence the integration process and the nature and scope of its input in EU border transformations.

Simultaneously with the practical efforts towards unification in Western Europe in the 1950s the academic field focused on examining the integration process started to develop. Out of the existing research on this issue, the area that is of particular concern for me consists of the studies that examine the institutional structure of the EU. The contributions of scholars, such as Weidenfeld and Wessels,⁷⁶ El-Agraa,⁷⁷ Pinder,⁷⁸

⁷⁶ Werner Weidenfeld, Wolfgang Wessels, *Europe From A to Z* (Luxembourg: Office for Official Publications of the European Communities, 1997)

⁷⁷ El-Agraa (ed.), *The European Union – Economics and Policies* (8th ed.) (Cambridge: Cambridge University Press, 2007)

⁷⁸ John Pinder, *The European Union, a Very Short Introduction* (Oxford: Oxford University Press, 2001)

McCormick,⁷⁹ Dinan,⁸⁰ Peterson and Shackleton,⁸¹ Nugent,⁸² and Hix⁸³ have provided a thorough examination of the institutional structure of the EU. A common line that emerges out of this type of studies is that the major institutions of the Union can be broadly divided into two main categories. Firstly, some bodies, such as the Council of Ministers and the European Council, are conventional and represent above all the interests of the individual member states. Furthermore, the way in which they take their decisions does not differ in any substantial way from traditional methods of negotiations in international relations. Hence, the way in which these institutions operate retains by and large the Westphalian dynamic under which the main building block is the nation-state. Furthermore, for at least some schools of thought such as intergovernmentalists, the nation-state continues to be the ultimate authority because even when decisions that pull its sovereignty are taken, the nation-state explicitly agrees to that. Thus, in theory, nothing outside the legitimate government of the country in question is able to impose on it legally binding decisions. Following the way in which such institutions reach decisions, this kind of EU bodies are referred to as intergovernmental.

The second type of institutions, which are embodied by the European Parliament, the European Commission and the ECJ, are a novel and unique category of organisations. They represent a departure from the supremacy of the nation-state in international relations. They are vested with powers and competences that allow them under specific procedures and in particular areas, to adopt measures that are legally binding for all the countries that are members of an international organisation even if some of these countries did not agree to these measures. These institutions are called supranational institutions. To date, the EU is the international organisation in which supranational institutions are most advanced. This is the most important reason, why the Union is regarded as the most developed instance of regional integration in the world.⁸⁴

⁷⁹ John McCormick, *Understanding the European Union - a Concise Introduction* (2nd ed.) (Basingstoke: Palgrave, 2002)

⁸⁰ Desmond Dinan, *Ever Closer Union: an Introduction to European Integration* (3rd ed.) (Basingstoke: Palgrave Macmillan, 2005)

⁸¹ John Peterson, Michael Shackleton (eds), *The Institutions of the European Union* (Oxford: Oxford University Press, 2002)

⁸² Neill Nugent, *The Government and Politics of the European Union* (3rd ed.) (Basingstoke: Macmillan, 1994)

⁸³ Simon Hix, *The Political System of the European Union* (2nd ed.) (Basingstoke: Palgrave Macmillan, 2005)

⁸⁴ Examples of such claim are Jeppe Tranholm-Mikkelsen, 'Neo-Functionalism: Obstinate or Obsolete? A Reappraisal in the Light of the New Dynamism of the EC', *Millennium: Journal of International Studies*,

The supranational institutions of the EU, in distinction to the intergovernmental ones, ostensibly act in the interest of the whole Community. This is well exemplified by the traditional perception of the European Commission as impartial and neutral.⁸⁵ According to the Treaty of Rome, the Commission has to act: “in the general interest of the Community”⁸⁶ and to be “completely independent in the performance of their duties”.⁸⁷ Importantly, the supranational institutions, such as the Commission, are charged with acting in the interests of the Union as a whole in opposition to intergovernmental institutions protecting the interests of individual member states. This “division of labour” between the various institutions of the EU is a result of the careful balance between ensuring the achievement of the aims of integration and the protection of the autonomy of the member states. The latter is a necessary prerequisite that makes integration possible in the first place. The need to have such a “division of labour” put in place, points to the difficulties in achieving agreed upon targets that any integration effort is likely to face. The responsibilities of each type of EU institutions mean that when differences occur, it is going to be the supranational ones that in protecting the interests of the Union as a whole can be expected to argue in favour of integration, thus also maintaining the existence of crucial conditions that lead to transformation of borders. Thus, the first reason why one can expect supranational institutions, such as the Commission, to promote integration is because of their legal duties under the Treaties of the EC/EU.

Therefore, under conditions of integration, conflicts do not disappear altogether but are resolved in a different way. This issue is explored in greater depth in an early contribution by Haas. He looks into different ways of resolving conflicts and relates them to different levels of integration. His argument is that when integration is more advanced, there is greater possibility to find a solution different from traditional diplomacy’s “lowest common denominator”. According to him, such an outcome is possible when an international body that performs mediatory services to the states

20: 1 (1991), pp. 1-22, p. 1 and Mark Pollack, ‘Delegation, Agency and Agenda Setting in the European Community’, *International Organization*, 51: 1 (1997), pp. 99-134, p. 102

⁸⁵ See for example Neill Nugent, ‘At the Heart of the Union’ in Neill Nugent (ed.), *At the Heart of the Union – Studies of the European Commission* (Basingstoke: Macmillan, 1997), pp. 1-26, p. 13

⁸⁶ Article 157, point 2 of the Treaty Establishing the European Economic Community

⁸⁷ *Ibid.*

involved exists.⁸⁸ As Haas points out, these more advanced types of conflict resolution usually imply the expansion of the mandate of the supranational agency.⁸⁹ It is precisely this link, pointed out by scholars such as Haas, between resolution of disagreements through further integration and the expansion of the mandate of the supranational institutions that constitute a plausible explanation why one can expect supranational institutions to be in support of more integration. Importantly, this predisposition of supranational institutions to promoting integration is acknowledged and accepted even by intergovernmentalist scholars.⁹⁰ Supranational institutions promote integration because such a development is expected to lead to further expansion of their own powers and competences, which is the ultimate goal of every political interaction. Thus, the second reason to expect that the Commission will be promoting further integration and with this decreasing the significance of internal borders, is its self-interest. It is these two reasons that make supranational institutions act in favour of further integration. Hence, I focus my research on the European Commission.

Neo-functionalism has over the years developed an explicit account of how exactly the Commission advocates more integration. This is captured by the notion of “cultivated spillover”. It is one of the three types of spillover identified by Neo-functionalist literature.⁹¹ It provides: “a specific theory of how once created, supranational institutions act as strategic advocates on behalf of functional linkage and deeper/ wider integration.”⁹² In some academic literature, such as the one dealing with public policy, such advocates are labelled “policy entrepreneurs”.⁹³ According to Burns:

⁸⁸ Ernst Haas, ‘International Integration: The European and the Universal Process’, *International Organization*, 15: 3 (1961), pp. 366-392, pp. 367-368

⁸⁹ Haas cited in Mette Eilstrup-Sangiovanni (ed.), *Debates on European Integration* (Basingstoke: Palgrave Macmillan, 2006), p. 95

⁹⁰ See for example, Andrew Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (London: UCL Press, 1999), p. 492. Although Intergovernmentalists accepts this predisposition of supranational institutions to promote integration, they deny (with the exception of the SEA) these institutions’ ability to successfully exercise actual influence towards furthering integration.

⁹¹ For the different types of spillover see Mette Eilstrup-Sangiovanni (ed.), *Debates on European Integration* (Basingstoke: Palgrave Macmillan, 2006), pp. 94-95; Jeppe Tranholm-Mikkelsen, ‘Neo-Functionalism: Obstinate or Obsolete? A Reappraisal in the Light of the New Dynamism of the EC’, *Millennium: Journal of International Studies*, 20: 1 (1991), pp. 1-22, p. 6; Arne Niemann, Phillippe Schmitter, ‘Neofunctionalism’ in Thomas Diez, Antje Wiener (eds), *European Integration Theory* (2nd ed.) (Oxford: Oxford University Press, 2009), pp. 45-66.

⁹² Ben Rosamond, ‘The Uniting of Europe and the Foundation of EU Studies: Revisiting the Neofunctionalism of Ernst B. Haas’, *Journal of European Public Policy*, 12: 2 (2005), pp. 237-254, p. 244

⁹³ See for example, John Kingdon, *Agendas, Alternatives, and Public Policies* (2nd ed.) (New York: Harper Collins, 1995)

“Entrepreneurs aim to induce authoritative political decisions that would not otherwise occur.”⁹⁴ This comes about as a result of the policy entrepreneurs promoting policy proposals and ideas. Some of the important reasons outlined by Kingdon as to why entrepreneurs are willing to invest a wide range of resources (time, money, or reputation,) into this advocacy are personal interests and promotion of their values.⁹⁵

As we have seen above there are strong reasons to expect the European Commission to try to promote further integration. As a result, it will be promoting a particular type of policy proposals and values, which as far as the topic of this study is concerned means that it can be expected to argue in favour of creating a common area in the EU. This is why in Integration Studies the Commission is often referred to as supranational entrepreneur.⁹⁶ In this study the Commission actions regarding the Blue Card initiative are the best example of it performing entrepreneurial activities that promote further integration. As the discussion in section 2.4.1. and the empirical findings in Chapters Three and Five show, functional spillover has also been an important tool used by the Commission in its attempts to promote further integration. As the empirical chapters will demonstrate in detail, when this strategy is employed, at discursive level there are articulations that link the achievement of the goals of the internal market with the development of integration in other policy fields (such as border controls or social policy).⁹⁷

However, the ability of the Commission to successfully exercise independent entrepreneurial leadership is one of the major issues of disagreement between Neo-functionalism and its main theoretical rival Intergovernmentalism. On this matter, some have argued against the position of Neo-functionalists and have maintained that: “supranational organizations such as the European Commission exert little or no causal

⁹⁴ Burns cited in Andrew Moravcsik, ‘A New Statecraft? Supranational Entrepreneurs and International Cooperation’, *International Organization*, 53: 2 (1999), pp. 267-306, p. 271

⁹⁵ John Kingdon, *Agendas, Alternatives, and Public Policies* (2nd ed.) (New York: Harper Collins, 1995), pp. 122-123

⁹⁶ Examples of such studies are Mark Pollack, ‘Delegation, Agency and Agenda-Setting in the European Community’, *International Organization*, 51: 1 (1997), pp. 99-134; Andrew Moravcsik, ‘A New Statecraft? Supranational Entrepreneurs and International Cooperation’, *International Organization*, 53: 2 (1999), pp. 267-306; Neill Nugent, ‘The Leadership Capacity of the European Commission’, *Journal of European Public Policy*, 2: 4 (1995), pp. 603-623

⁹⁷ For a study that briefly reviews the traditional types of spillover and introduces a novel fourth type see Carsten Jensen, ‘Neofunctionalist Theories and the Development of European Social and Labour Market Policy’, *Journal of Common Market Studies*, 38: 1 (2000), pp. 71- 92

influence.”⁹⁸ Some of the most important contributions supporting this position have come from Moravcsik⁹⁹ and Pollack.¹⁰⁰ Ultimately, this is a debate that goes back to the ontological positions of what integration is.¹⁰¹ In my view, the focus of Intergovernmentalist accounts on grand Treaty bargains is too limited an understanding of integration. As such, this position is in danger of not paying attention to other important developments that are indispensable parts of integration.¹⁰² One of the main weaknesses of Intergovernmentalism is that because it regards interests (national interests) as externally given, it cannot provide a satisfactory account of how agenda was set and the decision-making situations were framed.¹⁰³ Therefore, the Neo-functional understanding of integration as a process better captures such developments. This conception emphasises the importance of day-to-day inputs in

⁹⁸ Mark Pollack, ‘International Relations Theory and European Integration’, *Journal of Common Market Studies*, 39: 2 (2001), pp. 221-244, p. 225

⁹⁹ Andrew Moravcsik, ‘A New Statecraft? Supranational Entrepreneurs and International Cooperation’, *International Organization*, 53: 2 (1999), pp. 267-306

¹⁰⁰ Mark Pollack, ‘Delegation, Agency and Agenda-Setting in the European Community’, *International Organization*, 51: 1 (1997), pp. 99-134; Mark Pollack, ‘The Commission as an Agent’ in Neill Nugent (ed.), *At the Heart of the Union – Studies of the European Commission* (Basingstoke: Macmillan, 1997), pp. 109-128; Mark Pollack, ‘The Engines of Integration? Supranational Autonomy and Influence in the European Union’ in Wayne Sandholtz, Alec Stone Sweet (eds), *European Integration and Supranational Governance* (Oxford: Oxford University Press, 1998), pp. 217- 249

¹⁰¹ A presentation of Intergovernmentalists’ and Neo-functionalists’ views of what integration is, goes beyond the scope of this research. The most recent Intergovernmentalist Theory in Integration Studies has been developed in a series of contributions by Andrew Moravcsik. See for example, Andrew Moravcsik, ‘Negotiating the Single European Act: National Interests and Conventional Statecraft in the European Community’, *International Organization*, 45: 1 (1991), pp. 19-56; Andrew Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Ithaca, NY: Cornell University Press, 1998); Andrew Moravcsik, ‘Preferences and Power in the European Community: a Liberal Intergovernmentalist Approach’, *Journal of Common Market Studies*, 31: 4 (1993), pp. 473-524. Neo-functional thinking about integration is exemplified by the contributions in Ernst Haas, *Uniting of Europe: Political, Social and Economic Forces 1950-1957* (Michigan: Ann Arbor, 1996); Leon Lindberg, *The Political Dynamics of European Economic Integration* (Stanford: Stanford University Press, 1963); Philippe Schmitter, ‘Three Neo-Functional Hypotheses about International Integration’, *International Organization*, 23: 1 (1969), pp. 161-166

¹⁰² A good overview of the main criticisms to Intergovernmentalism is offered in Mark Pollack, ‘International Relations Theory and European Integration’, *Journal of Common Market Studies*, 39: 2 (2001), pp. 221-244, pp. 226-227. This study’s position on Intergovernmentalism is especially informed by the criticisms of the constructivist camp developed by Thomas Risse-Kappen, ‘Exploring the Nature of the Beast: International Relations Theory and Comparative Policy Analysis Meet the European Union’, *Journal of Common Market Studies*, 34: 1 (1996), pp. 53-80; Jeffrey Lewis, ‘Is the “Hard Bargaining” Image of the Council Misleading? The Committee of Permanent Representatives and the Local Elections Directive’, *Journal of Common Market Studies*, 36: 4 (1998), pp. 479-504; Wayne Sandholtz, ‘Choosing Union: Monetary Politics and Maastricht’, *International Organization*, 47: 1 (1993), pp. 1-40; Wayne Sandholtz, ‘Membership Matters: Limits of the Functional Approach to European Institutions’, *Journal of Common Market Studies*, 34: 3 (1996), pp. 403-429; Ben Tonra, Thomas Christiansen (eds), *Rethinking European Union Foreign Policy* (Manchester: Manchester University Press, 2004)

¹⁰³ Thomas Diez, ‘Riding the AM-Track through Europe; or, the Pitfalls of a Rationalist Journey through European Integration’, *Millennium Journal of International Studies*, 28: 2 (1999), pp. 355-369, p. 363

integration, which: “stress that the enmeshment of member states in the larger framework of integration changes their identities, limits their institutional choices through path-dependencies, and accordingly strongly influences their interest formation”.¹⁰⁴ In such an understanding, the Commission does not only (as explained above) have a good reason to promote further integration but is also well placed to do so. In the next section, I elaborate on exactly how the Commission can promote its preferred option, thus contributing to the transformation of EU borders.

This Neo-functionalist argument provides a compelling case in favour of the expectation that the Commission will favour and is able to promote decreased salience of internal EU borders. Nevertheless, from the point of view of border configurations it has a serious flaw. Due to Neo-functionalism’s concern with explaining integration, this theory is understandably focused on providing an account of the internal developments in the EU. Thus, the major findings of Neo-functionalism are related to elucidating transformations of internal EU borders. The theory, however, gives much less detail on the developments at the external EU borders. Indeed, it anticipates the emergence of dividing lines at the outer edges of the Union but does not contain more in-depth analysis on the issue. I elaborate on that matter in section 2.3.2.

Despite their disagreements on issues, such as the definition of integration and the ability of the Commission to exert independent influence, the studies referred to above share an important commonality. As I pointed out, they agree that the institutional structure of the EU prompts the Commission to try to increase its own powers. This will lead it to support further integration and decreased significance of internal borders. This, however, brings to the fore the issue of the study’s understanding of borders.

2.3. Towards a Theoretical Framework of the Study

In this section I aim to develop the theoretical framework that will enable me to demonstrate the inherent ambiguity in the way in which Commission discourse configures EU borders and as a result of that also transforms European borders. This will inform the empirical parts of the study. Achieving this requires me to advance my

¹⁰⁴ Ibid., p. 360

positions on the academic debates reviewed above and my understandings of some terms and issues core to this study, such as borders, or discourse. Therefore, in this section, I spell out my stance on the core debates on borders and the European Commission presented above. I elaborate on how I perceive borders, analyse how the Commission influences border constructions and building on these, work out the different ways in which the Commission can configure various borders under integration.

2.3.1. What are borders?

This study sees borders not as an independent reality existing beyond people's knowledge of it but as socially constructed phenomenon. As the discussion in the Literature Review section has shown, one of the fundamental disagreements between the two major camps in Social Sciences is over the existence of an independent reality beyond our knowledge. On this issue, constructivists argue that reality as such is created through the social interaction of everyone involved. Berger and Luckman were among the first to explain this process. According to them, the interactions between agents and/or structures lead to gradual habituation of human activity. The reason for this is the fact that the overwhelming majority of the different activities have to be performed more than once and in fact very often occur on a regular basis. Recurrent activities are habituated because this allows their performance with making fewer efforts and with spending less time. However, a society will not be able to function effectively if each individual has a unique habituation of his/ her activity. Therefore, in order to enable the faster performance of routine actions, it is necessary for actors to reciprocally habituate certain types of actions. This is what leads to the establishment of social practices. The latter are habituated activities that have been accepted as the way for performing certain tasks in a particular group. Over time this acceptance of the social practices leads to their institutionalisation because this becomes the uniform and unchanging (or difficult to change) way for performing certain actions.¹⁰⁵ This acceptance can also be called "normalisation". It is when a social practice has been successfully normalised that it starts to be taken as an objective reality. Thus, what positivists regard unquestioningly as a reality, has a very important history according to

¹⁰⁵ Peter Berger, Thomas Luckman, *The Social Construction of Reality* (London: Allen Lane The Penguin Press, 1967), pp. 71-72

constructivists. This history is related to the question of discursive struggles, which I look into below.

Importantly, as Berger and Luckman underline, the institutions created during the process of habituation, are objectively given to the individual in the sense that they exist over and beyond him/ her, they appear as given, difficult to change, and self-evident.¹⁰⁶ The reason for that is the fact that institutions are results of social interaction. Therefore, no single actor can be influential enough to be able to modify and transform institutions alone. The end result will always be an outcome derived from the activities of all the parties involved in the process and in that sense, it is not entirely subjective for anyone of them.

Following this reasoning, I regard borders as created in a process of social interaction¹⁰⁷ that gives rise to specific social practices of inclusion and exclusion. Such social practices of inclusion and exclusion are also often referred to as “bordering practices”. As the review of the current research on EU borders has demonstrated, at the moment there is a very strong trend towards the construction of new types of borders as a result of the process of integration. Therefore, the bordering practices in the Union are also undergoing significant changes. They are characterised, for example, by a shift in the way, in which traditional inclusion/ exclusion along the lines of national-states is replaced by novel inclusion/ exclusion dynamics, such as between EU member states/ non-EU members. Importantly, this transformation also leads to a change in the meaning of borders. Today EU borders are often located in places different from their positions in the first half of the Twentieth century. Furthermore, there are modifications in the way inclusion and exclusion is implemented in practice.

This change is another point on which constructivists criticise positivists. In distinction to the aim of the latter to find laws that hold true over space and time, which requires constancy and implies an essence of the object under investigation (i.e. borders), according to constructivists, the meaning of things changes over time.¹⁰⁸ Thus,

¹⁰⁶ Ibid., pp. 76-77

¹⁰⁷ For constructivists social interaction takes place at all levels, i.e. between ordinary citizens or between national and EU elites. Given that my data is formed primarily of Commission documents, my research is focused at the elitist level of border configuration. A collection of studies that examine the “border work” of citizens is Chris Rumford (ed.), ‘Space and Polity’, *Special Issue*, 12: 1 (2008).

¹⁰⁸ Michel Foucault was among the first to develop this argument, which runs through all of his contributions. See for example, Michel Foucault, *Discipline and Punish: the Birth of the Prison*

they argue that the meaning of things: “is conferred by historically specific systems of rules.”¹⁰⁹ Hence, for constructivists it is of central importance to be able to interrogate the ways in which meanings are created. They do this by advancing the concept of discourse. This notion has gained an ever-increasing importance in Social Sciences in the last decades. However, this growing popularity of the term has been accompanied with a proliferation of the ways in which it is employed.¹¹⁰ The employment of the term in this study follows the way it is understood by post-structuralists. For me discourse refers: “to historically specific systems of meaning which form the identities of subjects and objects.”¹¹¹ In these systems: “meaning depends upon a socially constructed system of rules and significant differences”.¹¹²

Since above I explained why and how the system of rules is socially constructed, the crucial question now becomes how exactly these significant differences function. An account of this process is indispensable for understanding the mechanisms through which borders are transformed. The post-structuralist account builds upon the earlier structuralist work of Ferdinand Saussure. Post-structuralists follow his argument that every sign consists of a signifier (the word used) and a signified (the object that the signifier denotes). Thus, the meaning of a sign (a word) is a result of the difference between this word and other words. For example, the meaning of “fork” is a result of it NOT being a “spoon”, a “knife” or a “ladle”. Post-structuralists, however, disagree with Saussure’s view that there is a neat correlation between a signified (the object) and a signifier (the word).¹¹³ Instead, they argue that there is not a clear or stable relation between a signified and a signifier. This can be exemplified well with the existence of metaphors, which use the same signifier to refer to different signifieds. The reason for

(Harmondsworth: Penguin, 1979); Michel Foucault, *Madness and Civilization: a History of Insanity in the Age of Reason* (Abingdon: Routledge, 2001)

¹⁰⁹ David Howarth, Yannis Stavrakakis, ‘Introducing Discourse Theory and Political Analysis’ in David Howarth, Aletta Norval, Yannis Stavrakakis (eds), *Discourse Theory and Political Analysis* (Manchester: Manchester University Press, 2000), pp. 1-23, p. 2

¹¹⁰ The following studies offer good summaries of the different ways in which discourse is understood in Social Sciences: Margaret Wetherell, Stephanie Taylor, Simeon Yates (eds), *Discourse as Data – a Guide for Analysis* (London: Sage, 2001); Elinor Scarbrough, Eric Tanenbaum (eds), *Research Strategies in the Social Sciences – a Guide to New Approaches* (Oxford: Oxford University Press, 1998); Ernesto Laclau, ‘Discourse’ in Robert E. Goodin, Philip Pettit (eds), *Companion to Contemporary Political Philosophy* (Oxford: Blackwell, 1995), pp. 431-437; Ruth Wodak, Michael Meyer (eds), *Methods of Critical Discourse Analysis* (London: Sage, 2001)

¹¹¹ Foucault cited in David Howarth, *Discourse* (Buckingham: Open University Press, 2000), p.9

¹¹² Laclau and Mouffe cited in *Ibid.*, p. 8

¹¹³ This brief summary of the arguments of Saussure is based on Terry Eagleton, *Literary Theory – an Introduction* (2nd ed.) (Oxford: Blackwell, 1996), p. 110

this absence of a stable relation between signified and signifier is that nothing derives its meaning from outside this interplay between signifiers. This has two important repercussions, according to post-structuralists. Firstly, as Derrida shows, it is not possible to define anything outside language – every definition ultimately depends on other words. Secondly, all meaning is relational, i.e. it is based on particular structuring of the relations between different words.¹¹⁴ Furthermore, post-structuralists argue that there is always something more than what is expressed in a particular text. This “more” resides in the resistances that the text encounters, in the unexpected ways in which the terms it employs are interpreted, in the unassimilated shifts in surface significations that reveal them to have hidden depths.¹¹⁵ Therefore, they claim that the meaning of a text is always contingent upon other texts. They refer to this as intertextuality.¹¹⁶

Hansen’s elaboration on the relational nature of meaning is crucial in developing an understanding of how meaning is created in discourses. According to her, the production of meaning is a result of the simultaneous occurrence of two processes, which she refers to as differentiation and linking. Linking is the positive process of spelling out the particular characteristics of the signifier in question (i.e. fork), while differentiation, is the negative process of delimiting the signifiers that are not the signifier in question (i.e. spoon, knife, ladle).¹¹⁷ Due to the impossibility of defining anything outside of the interplay between signifiers it is possible to construct different meanings for the same signifier. These different meanings are an outcome of the application of different processes of linking and differentiation with regards to the same signifier. For example, the signifier “meat” can be (and is) linked and differentiated in a variety of ways (i.e. linked with nutrition, health, strength, power or butchering, torturing, waste of resources, unnatural food for humans and differentiated with fruits and vegetables). Each of these two systems of linking and differentiation represents a

¹¹⁴ In Madan Sarup, *An Introductory Guide to Post-Structuralism and Post-Modernism* (2nd ed.) (London: Harvester Wheatsheaf, 1993), pp. 32-38; Terry Eagleton, *Literary Theory – an Introduction* (2nd ed.) (Oxford: Blackwell, 1996), pp. 110-116

¹¹⁵ William E. Connolly, *Identity/ Difference – Democratic Negotiations of Political Paradox* (London: Cornell University Press, 1994), p. 38

¹¹⁶ See for example Chris Brown, ‘“Turtles All the Way Down”: Anti-Foundationalism, Critical Theory and International Relations’, *Millennium: Journal of International Studies*, 23: 2 (1994), pp. 213-236, p. 224

¹¹⁷ Lene Hansen, *Security as Practice – Discourse Analysis and the Bosnian War* (London: Routledge, 2006), p. 19. It should be noted that although in this section I have employed Hansen’s elaboration of the process of production of meaning, linking and differentiation that she refers to were first developed by Laclau and Mouffe in their notion of equivalence.

particular discourse on the signifier in question, in our case meat, and produces a specific meaning of it (in the first case it is a positive one, contributing to humans' well-being, while in the second case the meaning is negative, associated with harmful or unpleasant activities and results). This possibility to have different representations on one and the same issue is the reason why post-structuralists regard discourses as inherently unstable, although they are highly structured.¹¹⁸

Furthermore, this instability of discourses also makes them political. As Laclau and Mouffe have argued in their groundbreaking work, politics has primacy over other issues, such as economy.¹¹⁹ Thus, post-structuralists see the various systems of social relations as: "articulated sets of discourses, [which] are always political constructions involving the construction of antagonisms and the exercise of power."¹²⁰ The successful exercise of power leads to hegemony. It: "is achieved if and when one political project or force determines the rules and meanings in a particular social formation ... the concept of hegemony centres on which political force will decide the dominant forms of conduct and meaning in a given social context."¹²¹ Thus, a hegemonic discourse is one that is successful in stabilising the relationships of linking and differentiation between signs. Nevertheless, even hegemonic discourses, due to the inherent instability referred to above, cannot completely suppress alternative representations. If the alternative representations are based on assumptions opposing these of the hegemonic discourse or if they in any other way advance understandings incompatible with it, they have the potential to present a serious challenge to the hegemonic discourse. In Discourse Theory, such a rivalry is called antagonism. It occurs at the margins of every social system, where the forces that are excluded in the process of formation of a particular discourse contest it and strive to advance an alternative representation.¹²²

In summary, according to post-structuralist discourse theorists, although discourses use signs to designate things, they are: "irreducible to the language ... and to

¹¹⁸ Ibid., pp. 20-21

¹¹⁹ Laclau and Mouffe cited in David Howarth, *Discourse* (Buckingham: Open University Press, 2000), p. 104

¹²⁰ Ibid.

¹²¹ David Howarth, 'Discourse Theory' in David Marsh and Gerry Stoker (eds), *Theory and Methods in Political Science* (1st ed.) (Basingstoke: Macmillan, 1995), pp. 115-133, p. 124

¹²² David Howarth, Yannis Stavrakakis, 'Introducing Discourse Theory and Political Analysis' in David Howarth, Aletta Norval, Yannis Stavrakakis (eds), *Discourse Theory and Political Analysis* (Manchester: Manchester University Press, 2000), pp. 1-23, p. 9

speech” alone.¹²³ Instead, post-structuralists are concerned with how regular bodies of ideas and concepts produce knowledge about the world.¹²⁴ Thus, in their interpretation, the term “discourse” becomes an all-encompassing concept, which uses language as the primary tool for its analysis but is not concerned with language per se. Instead, post-structuralists are focused on the enabling/ disabling of specific conducts by the articulations that language makes possible. Importantly, due to the inherent instability of discourses and their political nature, pointed out above, there will always be competing discourses on one and the same sign. Following these post-structuralist ideas, for me the term discourse has a wide meaning and refers to structured systems of signs that create knowledge about the world. Therefore, for me discourses are formed not only by language but include a broader number of signs. Despite that, language has a primary position among other signs because ultimately it is by communicating through language that the meaning of the other signs becomes intelligible. This is why in this research I have focused on examining texts in a narrow depiction.

As I said above, the meaning of borders has been transformed during the process of European integration. This is expressed in the advance of new bordering practices, through discourses of inclusion and exclusion. Importantly, following the logic of post-structuralist discourse theorists, there are multiple ways in which the relationship between the new forms of inclusion and exclusion in the Union have been articulated. Furthermore, given the argument about the primacy of politics, the various agents involved in formulating the different discourses on EU borders, will all try to promote their own preferred vision. At any given point in time, however, the ways in which inclusion/ exclusion issues in the Union are resolved, is some kind of mixture between the articulations advanced by the various agents involved. This is due to the fact that, as Berger and Luckman argue, no one is influential enough to decide single-handedly on the matter.¹²⁵ This interaction between the agents involved in EU border transformations is expressed in the various relevant discourses.

One such discourse is that of the Commission. Following Berger and Luckman’s argument and the argument about intertextuality, it is bound to reflect the on-going

¹²³ Michel Foucault, *The Archeology of Knowledge* (London: Routledge, 2006), p. 54

¹²⁴ David Howarth, ‘Discourse Theory’ in David Marsh and Gerry Stoker (eds), *Theory and Methods in Political Science* (1st ed.) (Basingstoke: Macmillan, 1995), pp. 115-133, p. 116

¹²⁵ See p. 44 above

struggles between the actors involved on how the inclusion/ exclusion issues in the EU should be settled. Therefore, on questions of further integration and opening up spaces within the EU, the Commission displays an overriding tendency to act cohesively in support of them for reasons that I explained above. Nevertheless, in its discourse other influences and opinions will be expressed as well. Because of that, overall, I do not regard the Commission discourse as belonging to a particular actor or institution. The only sense in which this discourse can be seen as the Commission's is because the overwhelming majority of the documents that I study, as I explain in section 2.4.2. below, are issued by the Commission. Hence, I do not assume that there is a single actor behind this discourse. It expresses a plurality of voices. Thus, the bordering practices articulated in the Commission discourse will inevitably be affected by the enunciations on border matters of other interested parties. Moreover, because of the possibility to have various representations on the same issue, the discourses on borders advanced by different players can be expected to contain significant differences in their articulations. This diversity of voices is an important reason why discourses are ridden by contradictions. As the analysis in the empirical chapters shows, Commission discourse is no exception, which in turn creates ambiguities in the ways it configures EU borders.

My contention is that as a result of the process of European integration European and EU borders have been transformed. This transformation, however, is not objectively given and does not reflect independent reality where borders have essential characteristics and can be defined in a value-free way. Instead, the current EU borders are an outcome of the struggle between different visions of how the inclusion/ exclusion issues should be solved. Furthermore, importantly, one should take into account that these different visions will tend to emphasise different configurations of borders, thus, constructing specific representations of how have borders been transformed. For example, the Commission tends to emphasise the construction of common spaces in the EU, thus implying that there is a tendency to de-bordering. It is only through examination of discourses that these visions and representations can be unveiled and studied. This analysis is carried out in the empirical parts of the study. However, if I am going to focus on how Commission discourse configures borders, I have to spell out how I think the Commission is able to exercise important influence on the bordering

practices in the policy areas under investigation. I also need to specify what types of borders the Commission is able to influence and how it does that.

2.3.2. How does the Commission influence EU border-constructions?

As I showed in the Literature Review, the question of whether the Commission is able to exercise independent influence over the process of integration in the EU is a highly contested one. Given the close link between borders and integration, this argument is central to the study because it relates directly to the Commission's ability to sway the struggles on bordering practices in its preferred direction. Therefore, an investigation into the ways in which borders are configured in the discourse of the Commission requires me to show how the Commission is able to exercise significant influence over the negotiation of the EU bordering practices. In this section, I address this issue.

Following the position of Neo-functionalists, my contention is that the Commission is able to perform entrepreneurial functions and therefore, it can influence the way EU borders are configured. Such an ability of the Commission, however, is dependent on a particular understanding of "integration" as a process. Under such a perception, the capacity of the Commission to advance its preferred positions derives from what Nugent has referred to as "a strategic position"¹²⁶ of the Commission in the institutional architecture of the EU. As I outlined briefly in Chapter One, the empirical part of the study investigates four policy areas – border controls, free movement of people, social policy and ENP. As the empirical chapters show, the Commission has contributed to the configuration of all the major types of borders (internal, external, territorial, or identity). This is an evidence for the far-reaching repercussions of the articulations of the European Commission. Nevertheless, as a result of the pillar structure of the EU, the powers and competences of the Commission in these areas are different. Thus, the scope of the Commission influence in the configuration of borders varies. The Commission is most influential in the areas that fall under the first pillar (border controls, free movement of people, and some social policy issues) where its main responsibility is to be legislation initiator. In the first pillar it is the only institution that performs this function. In other policy areas (ENP, border controls prior to 2001),

¹²⁶ Neill Nugent, 'The Leadership Capacity of the European Commission', *Journal of European Public Policy*, 2: 4 (1995), pp. 603-623, p. 612

in which the Commission is the implementer of the EU policies, its influence is smaller. It is sometimes regarded as the bureaucracy, the public administration body of the Union responsible for “the implementative, delegative part of the central government.”¹²⁷ This is because in accordance with the duties it is charged with under the Treaty of Rome, it scrutinises the transposition and implementation of primary treaty articles and secondary legislation into the national law of the member states. If there are delays or incorrect transposition of EU legislation, the Commission can take the member state responsible to the ECJ. Also, the Commission manages the EU budget.¹²⁸

It is through using these prerogatives that the Commission influences the decision-making system in the second and third pillars. Although such influence is bound to fall short of setting the long-term trends and norms,¹²⁹ it still allows room for exercising discretion. For example, as Coombes argues: “administrative decisions may involve deciding whether or not to enforce particular regulations on the basis of the facts of the case, applying policy to particular circumstances, or interpreting a policy which is expressed only in very general terms.”¹³⁰ Importantly, by utilising such implementation prerogatives, the Commission has in some cases managed to enhance its standing on non-first pillar issues, which has put it in a good position to sway the decision-making. For example, its management of the Community budget has been of crucial importance for the establishment of the Commission as an actor in Community foreign policy in its own right. Even under the European Political Cooperation the Commission was the one responsible for the conception and management of Community aid programs. Partly it is as a result of the Commission having performed these responsibilities that the Western Economic Summit Meeting in July 1989

¹²⁷ David Coombes, *Politics and Bureaucracy in the European Community* (London: George Allan and Unwin Ltd, 1970), p. 116

¹²⁸ The summary of the executive functions of the Commission is based on Simon Hix, *The Political System of the European Union* (Basingstoke: Palgrave Macmillan, 2005), p. 40. For a more thorough analysis of the implementation role of the Commission, especially regarding the spending programmes of the EU see Roger Levy, ‘Managing the Managers: the Commission’s Role in the Implementation of Spending Programs’ in Neill Nugent (ed.), *At the Heart of the Union – Studies of the European Commission* (Basingstoke: Macmillan, 1997), pp. 203-225.

¹²⁹ For such arguments see for example, Simon Hix, *The Political System of the European Union* (Basingstoke: Palgrave Macmillan, 2005), esp. Ch. 2 and David Coombes, *Politics and Bureaucracy in the European Community* (London: George Allan and Unwin, 1970)

¹³⁰ David Coombes, *Politics and Bureaucracy in the European Community* (London: George Allan and Unwin, 1970), p. 237

entrusted the Commission with the coordination of international assistance efforts to Poland and Hungary. Subsequently the program was extended to other Central and Eastern European Countries (CEECs). According to Nuttall, the role the Commission played in the events in Europe in 1989 and early 1990s “conferred on it greater political weight”.¹³¹ Thus, even on issues that currently fall outside of the first pillar, the Commission has over the years managed to secure an important place for itself.

Therefore, by using the different kinds of prerogatives it is charged with, the Commission can exercise its influence through various means, thus also contributing to the transformation of EU borders. Nevertheless, it is on first pillar issues that the Commission is in the best position to exercise its leadership. The various ways through which the Commission gains its leverage are well summarised in the contributions of Nugent¹³² and Pollack.¹³³ Some of the important powers they identify are that the Commission is able to set the agenda for the decision-making process in the EU; it is charged with ensuring the proper functioning and development of the common market, it is the first point of contact regarding ideas and initiatives, it is a leading repository of knowledge and expertise about EU policies, it is widely regarded as the “conscience” of the Union.¹³⁴ Following these findings about the ways in which the Commission is well placed to influence the process of renegotiating the EU bordering practices, below I outline the main ways in which this happens. I pay particular attention to the different types of Commission influence in the various pillars under which the policy areas under investigation in this study fall. This outlines the main mechanisms through which the Commission influences the configuration of EU borders.

So far I have argued in favour of the following points. Firstly, that as a result of integration (among other things), borders are being transformed. Secondly, I have

¹³¹ Simon Nuttall, ‘The Commission: the Struggle for Legitimacy’ in Christopher Hill (ed.), *The Actors in Europe’s Foreign Policy* (London: Routledge, 1996), pp. 130-147, p. 143

¹³² Neill Nugent, ‘At the Heart of the Union’ in Neill Nugent (ed.), *At the Heart of the Union – Studies of the European Commission* (Basingstoke: Macmillan, 1997), pp. 1-26; Neill Nugent, ‘The Leadership Capacity of the European Commission’, *Journal of European Public Policy*, 2: 4 (1995), pp. 603-623, Neill Nugent, *The European Commission* (Basingstoke: Palgrave, 2001)

¹³³ Mark Pollack, ‘Delegation, Agency and Agenda-Setting in the European Community’, *International Organization*, 51: 1 (1997), pp. 99-134; Mark Pollack, ‘The Commission as an Agent’ in Neill Nugent (ed.), *At the Heart of the Union – Studies of the European Commission* (Basingstoke: Macmillan, 1997), pp. 109-128; Mark Pollack, ‘The Engines of Integration? Supranational Autonomy and Influence in the European Union’ in Wayne Sandholtz, Alec Stone Sweet (eds), *European Integration and Supranational Governance* (Oxford: Oxford University Press, 1998), pp. 217- 249

¹³⁴ Neill Nugent, ‘The Leadership Capacity of the European Commission’, *Journal of European Public Policy*, 2: 4 (1995), pp. 603-623, pp. 605-613

advocated an understanding of integration as a process that implies a continuous, day-to-day involvement and effects of it. Thirdly, an understanding of borders as a social construction that is an outcome of the struggles of the various ways in which inclusion/exclusion issues are resolved. These battles are expressed through discourses of various actors, one of which is the European Commission. Following the above definition of integration, the Commission, which is sometimes referred to as “the heart of the Union”¹³⁵ is advantaged when it comes to advancing a particular way for settling the struggles over inclusion/ exclusion in the EU.

The major way in which this comes about is by the Commission setting the agenda for the decision-making process. Pollack makes a distinction between formal and informal agenda setting. The former refers to the existing constitutional and legal arrangements, while the latter is the ability to define issues and present proposals that can gain the support of the final decision-makers.¹³⁶ As far as the formal agenda-setting function of the Commission is concerned, according to Pollack, the Commission: “may, under certain circumstances, enjoy considerable agenda-setting power ... namely in those circumstances where it enjoys the exclusive right of initiative ...”¹³⁷ Thus, a major way in which the Commission can resolve inclusion/ exclusion disagreements in its preferred directions is on those issues that fall under the first pillar where it has exclusive right to propose legislation. In practice other institutions (such as the Council of Ministers) have important input in the formulation of the official proposals, which among other things involves bargaining between institutions on the inclusion of their preferred policies in the official legislative proposals in various policy areas.¹³⁸ Despite that, the formal powers of legislative initiative vested in the Commission inevitably give it a strong starting point in this process.

Perhaps from the point of view of the formal agenda-setting powers of the Commission this is most obvious through the fact that being the sole legislation initiator allows the Commission in the words of Nugent to have a: “very significant impact on what policy issues are considered by the formal decision-takers, in what terms they are

¹³⁵ See for example the title of Neill Nugent (ed.), *At the Heart of the Union – Studies of the European Commission* (Basingstoke: Macmillan, 1997)

¹³⁶ Mark Pollack, ‘Delegation, Agency and Agenda-Setting in the European Community’, *International Organization*, 51: 1 (1997), pp. 99-134, pp. 121-128

¹³⁷ *Ibid.*, p. 124

¹³⁸ Leon Lindberg, Stuart Scheingold, *Europe’s Would-be Polity* (New Jersey: Prentice-Hall, 1970), pp. 87-98 provide a good illustration of that.

considered, when they are considered, by whom they are considered, and with what receptivity they are considered.”¹³⁹ Thus, following the reasoning of Neo-functionalists, in the renegotiation of the bordering practices in the areas of free movement of people, border controls (after 2001), some aspects of social policy, the Commission can facilitate the decreased salience of internal borders by wording its proposals in a particular way, by submitting them at time, which is favourable for their acceptance and subsequent adoption, or by framing a specific issue as related to achieving the aims of the single market. As the analysis in the empirical chapters of the research will show, the employment of such tactics can be easily seen in the discourse of the European Commission.

The second way, in which the Commission can influence the renegotiations of EU bordering practices concerns the adoption of decisions that fall under the other two pillars where the Commission does not enjoy exclusive rights of initiative. In these areas, the Commission can sway the decision-making in its preferred direction by utilising its powers in informal agenda setting. Even scholars that are in general quite skeptical on the ability of the Commission to successfully perform an entrepreneurial role, such as Pollack, acknowledge this. According to him, the Commission is particularly well placed to set the agenda informally: “the Commission has no monopoly over informal agenda setting, but it may nevertheless have a comparative advantage over other potential agenda setters, such as member governments or private actors.”¹⁴⁰

It does that by carrying out the other functions it is charged with. Overall, these functions are rooted in the Commission’s role as an implementer of EU’s policies, which is its major role in the second and third pillars. As a result of the Commission being involved very closely in the day-to-day running and administration of these policy areas through carrying out the decisions that are taken and through executing its monitoring and budget managing responsibilities, it acquires knowledge, which is much bigger in its width and depth to the knowledge on these issues of the other major institutions of the EU. This is why Nugent talks about the Commission as being a

¹³⁹ Neill Nugent, ‘At the Heart of the Union’ in Neill Nugent (ed.), *At the Heart of the Union – Studies of the European Commission* (Basingstoke: Macmillan, 1997), pp. 1-26, p. 23

¹⁴⁰ Mark Pollack, ‘Delegation, Agency and Agenda-Setting in the European Community’, *International Organization*, 51: 1 (1997), pp. 99-134, p. 126

leading repository of knowledge and expertise about EU policies¹⁴¹ and possessing: “extensive technical expertise and a fund of information about the content and impact of EU policies”.¹⁴² This puts the Commission in a very advantaged position in the sense that it is the most likely actor to be asked for advice on any of the current or future policies in the EU. In turn, this allows the Commission to try to push ahead by putting on the formal agenda any propositions that it may deem appropriate.

Furthermore, as I explained above, given the Treaty provisions and its own self-interest, it is to be expected that the suggestions and plans the Commission comes up with will be in favour of promoting further integration, hence, diminishing the significance of internal EU borders. Such an expectation is further justified by the widely held belief in the Commission itself that it has a duty to incite integration. As Ludlow argues: “the function of *animateur* permeates the whole structure and ethos of the institution”.¹⁴³ Therefore, the Commission can and does set the agenda even in the areas of the ENP or border controls prior to 2001 where it does not enjoy any formal powers to do this. The continuous linkage in Commission documents just after the adoption of the SEA of border control issues with free movement exemplifies this. This linkage pushed for inclusion of border controls into the formal framework of the EC/EU. I look into this matter in greater detail in Chapter Three.

The Commission is, therefore, in a good position to successfully sway the decision-making process in the EU, on both first pillar and second and third pillar issues in favour of further integration and hence, creating common spaces in the EU. This process, however, as Neo-functionalists correctly expected, in fact has ambiguous effects on EU’s borders. Namely, simultaneously with the decreased significance of internal EU borders, it leads to the emergence of the Union’s external borders. According to Schmitter this expectation is a result of the initial presumptions of Neo-functionalists that the process of integration will eventually lead to the emergence of: “a supranational state with most of the generic features of the national states it was

¹⁴¹ Neill Nugent, ‘The Leadership Capacity of the European Commission’, *Journal of European Public Policy*, 2: 4 (1995), pp. 603-623, p. 608

¹⁴² Neill Nugent, *The European Commission* (Basingstoke: Palgrave, 2001), p. 210

¹⁴³ Ludlow, cited in Neill Nugent, ‘The Leadership Capacity of the European Commission’, *Journal of European Public Policy*, 2: 4 (1995), pp. 603-623, p. 610 (emphasis in the original)

supposed to transform”.¹⁴⁴ This assumption of the “end-state” is exemplified by the persistent efforts in early integration research to reach a conclusion on what should this process lead towards¹⁴⁵ as well as the main characteristics of integration provided by the founding fathers of Neo-functionalism. For example, Lindberg has defined as one of the conditions for political integration the development of *new central institutions and central policies*¹⁴⁶ and Haas expected that under integration, in the long-term, the loyalties and expectations of the populations would transfer from the nation-states to the larger supranational entity.¹⁴⁷ Thus, overall, the end result envisaged by Haas is: “more than a pluralistic security community and less than a political community, defined as the successful pluralistic-democratic state writ large.”¹⁴⁸

Under these assumptions it is hardly surprising that Neo-functionalists did not foresee the disappearance of nationalism as guaranteed under integration.¹⁴⁹ This is because as Schmitter correctly hypothesises once nation-states have reached an agreement to integrate, they will be compelled to adopt common policies towards third countries not involved in this endeavour. He refers to this process as externalisation and suggests that the more successful the efforts towards cooperation are, the greater the external challenges are likely to be.¹⁵⁰ Thus, Neo-functionalist literature envisages that supranational institutions, including the Commission, will represent a centralised upgrading of common interests in a way very similar to a bigger nation-state.¹⁵¹ Therefore, arguably they anticipate the firmer position of the Commission with regards to the external EU borders and the ambiguous effects on borders by integration. Section 2.2.1. has demonstrated in practice this ambiguity.

¹⁴⁴ Philippe Schmitter, ‘Neo-Neofunctionalism’ in Thomas Diez, Antje Wiener (eds), *European Integration Theory* (1st ed.) (Oxford: Oxford University Press, 2004), pp. 45-74, p. 69

¹⁴⁵ A famous article that engages with this problem is Donald Puchala, ‘Of Blind Men, Elephants and International Integration’, *Journal of Common Market Studies*, 10: 3 (1972), pp. 267-284

¹⁴⁶ Leon Lindberg, *The Political Dynamics of European Economic Integration* (Stanford: Stanford University Press, 1963), p. 7 (emphasis added)

¹⁴⁷ Haas cited in Wayne Sandholtz, John Zysman, ‘1992: Recasting the European Bargain’, *World Politics*, 42: 1 (1989), pp. 95-128, p. 98.

¹⁴⁸ Ernst Haas, ‘The Study of Regional Integration: Reflections on the Joy and Anguish of Pretheorizing’, *International Organization*, 24: 4 (1970), pp. 607-646, p. 631

¹⁴⁹ See Idid, p. 645 and Ernst Haas, ‘International Integration: The European and the Universal Process’, *International Organization*, 15: 3 (1961), pp. 366-392, pp. 391-392

¹⁵⁰ Philippe Schmitter, ‘Three Neo-Functional Hypotheses about International Integration’, *International Organization*, 23: 1 (1969), pp. 161-166, p. 165

¹⁵¹ Ernst Haas, ‘International Integration: The European and the Universal Process’, *International Organization*, 15: 3 (1961), pp. 366-392

Nevertheless, Neo-functionalists do not explicitly interrogate what this ambivalence will mean for the developments at the external EU borders. Thus, there is a lack of detailed analysis of the Commission contribution to the processes at the outer edges of the Union. One of the contributions of the present study is to fill this gap. I argue that the Commission has facilitated the emergence of salient external EU borders through the following main means. Firstly, it has accepted and used the assumptions on which certain EU policies are based. Secondly, it has utilised spillover in support of further cooperation at EU level and towards harmonisation of the legal provisions of the member states. Thirdly, the Commission has advanced the emergence of common identity in the EU through articulations of the “Other” and common treats to the Union. All of these contribute to the emergence of EU’s external borders by sharpening the distinction between the Union and other parts of the world. Furthermore, following the varying competences of the Commission discussed above, in some policy areas it plays a more independent role, while in others it is more a passive supporter of the preferences of other EU institutions. The empirical chapters provide detailed empirical illustrations of these claims.

Despite my argument that the Commission can exercise independent influence in the decision-making process in the EU and hence have an input into the configuration of borders, in doing this it also faces important constraints. Pollack has contributed significantly in outlining them.¹⁵² As a result, according to Lequesne: “... the EU Commission agents can mobilise specific resources in order to behave as “policy entrepreneurs” in the EU polity with a certain degree of autonomy from the national governments ... this policy entrepreneurship is also constrained by endogeneous and exogeneous factors which make the Commission dependent on the national governments in the EU polity.”¹⁵³ In practice, however, it is very difficult to examine these constraints because as Pollack points out, the Commission is prone to anticipating

¹⁵² Mark Pollack, ‘Delegation, Agency and Agenda Setting in the European Community’, *International Organization*, 51: 1 (1997), pp. 99-134; Mark Pollack, ‘The Commission as an Agent’ in Neill Nugent (ed.), *At the Heart of the Union – Studies of the European Commission* (Basingstoke: Macmillan, 1997), pp. 109-128; Mark Pollack, ‘The Engines of Integration? Supranational Autonomy and Influence in the European Union’ in Wayne Sandholtz, Alec Stone Sweet (eds), *European Integration and Supranational Governance* (Oxford: Oxford University Press, 1998), pp. 217- 249

¹⁵³ Christian Lequesne, ‘The European Commission: a Balancing Act between Autonomy and Dependence’ in Karlheinz Neureither, Antje Wiener (eds), *European Integration after Amsterdam – Institutional Dynamics and Prospects for Democracy* (Oxford: Oxford University Press, 2000), pp. 36-51, p. 37

the reaction of the Council to its proposals and to tailor them accordingly.¹⁵⁴ However, this situation poses a bigger problem when the Commission discourse is perceived as having a single author. If one understands it as expressing multiple voices, this becomes less important because by definition the discourse is prone to external influences. It is not expected to be completely coherent. In fact, to a large extent, the ambiguous configuration of borders in Commission discourse is a result of the contradicting tendencies that are promoted by various actors. In the present study, this is best illustrated in the Chapter on Free Movement of People. Although in this policy area the Commission discourse promotes the emergence of a common space in the EU, it only manages to achieve this at the expense of establishing some categories of people that still do not have complete freedom of movement in the EU.

The question of the Commission anticipating the Council reactions to its proposals and adjusting them accordingly also brings to the fore another crucial issue that has to be addressed. If that is the case, I have to spell out why in the empirical chapters I interpret the silences and contradictions in Commission discourse as constructing borders. Alternatively, these silences and contradictions can be interpreted in a much more positive way as the Commission wanting to go further but currently having to make concessions, which are only tactical. The reason for my interpretation is that regardless of Commission's intentions or long-term aims, on a discursive level, its current articulations give rise to a particular system of inclusion and exclusion and in that respect still recreate (rather than completely dispose of) borders. This is well exemplified by the Blue Card initiative, discussed in section 4.5.1., which envisages the right of highly qualified TCNs to move within the EU for work purposes. Although this can create a precedent in allowing TCNs to benefit from rights currently reserved only for EU citizens, Commission discourse achieves this at the expense of establishing a distinction between qualified and non-qualified TCNs, which in effect draws a dividing line between them.

This discussion shows that the Commission is not only an actor that due to its responsibilities under the Treaties of the EC/EU and its self-interest can be expected to promote further integration. In fact, arguably, it can (although under certain conditions)

¹⁵⁴ Mark Pollack, 'Delegation, Agency and Agenda Setting in the European Community', *International Organization*, 51: 1 (1997), pp. 99-134, p. 110. Hix also makes this argument in Simon Hix, *The Political System of the European Union* (2nd ed.) (Basingstoke: Palgrave Macmillan, 2005), pp. 53-57

sway the decision-making process in the EU in its preferred direction. Even more importantly, as I have argued above, this is the case not only for first pillar issues, where the Commission's powers are strongest, but also for matters that fall under the second and the third pillar, where the leverage of the Commission is weaker. Taken together, these constitute very strong reasons for examining the Commission contribution in the construction and reconstruction of EU borders. Having presented an account of how I see borders in the previous section, and here outlined the main mechanisms through which the Commission configures borders, the next issue I have to look into is what exactly are the different kinds of borders that the Commission can construct and reconstruct in its discourse. Also, I have to elaborate on how exactly are these various types of borders constructed in the discourse of the Commission. These are the questions I deal with in the last part of the Theoretical Framework.

2.3.3. What borders does the Commission discourse configure?

In this section, my goal is to develop the framework that will guide the analysis in the empirical part of the study. I want to present a classification of the various types of borders that can be constructed or reconstructed in the discourse of the Commission. It is along this differentiation of borders that the analysis of Commission documents in the following chapters is structured. Furthermore, in this part, drawing on the arguments developed above, I elaborate in detail how each of these borders is created, thus providing the background that informs the subsequent interpretation of the discourse of the Commission in the empirical part of the research.

In this study I classify borders along two main lines. Firstly, as discussed in section 2.2.1., following Geddes there is a distinction between territorial (physical), functional and conceptual (identity) borders.¹⁵⁵ Secondly, in distinction to the majority of the studies reviewed above that tend to emphasise either the decreased salience of borders or the erections of new dividing lines, I analyse three major possible outcomes on the borders of the member states as a result of the process of European integration. Each of these trends can be manifested on territorial, functional or identity borders.

Firstly, increased cooperation can lead to the decreased salience of previously existing borders between the member states of the Union, thus creating a new common

¹⁵⁵ See p. 24 above for a definition of each of these types of borders (territorial, functional and identity).

space in the EU. In the empirical chapters, I refer to this trend as “de-bordering” or decreased salience of borders. For territorial borders this tendency is manifested through allowing access to the territory of the member states without formalities. The de-bordering tendencies in the Commission discourse are articulated predominantly through formulation of measures removing the existing obstacles to movement. As such, they facilitate movement on the territory of the EU by dismantling previously existing physical borders between the member states. In a somewhat similar way, de-bordering for functional borders involves reducing the administrative requirements and the necessary bureaucratic procedures for gaining access to different sites, such as the labour markets of other member states. For identity borders de-bordering is characterised by the construction of a common identity of the population of the EU. There are two main ways in which the discourse of the Commission constructs common identity in the EU - firstly, through down-playing the differences between the member states of the EU and secondly, through continuous references to inclusive words, such as the pronouns “our”, “ours”, “we”, which point to the existence of common historical traditions, civilization, experiences, thinking, perceptions, current challenges and so on and the labeling of contemporary undertakings as “common action” or “joint endeavour”.

Secondly, as Diez points out, the process of de-bordering in the EU is taking place when the focus is on the inside of the EU. However, this simultaneously erects new borders on the outside.¹⁵⁶ It is this creation of a new outside border for the EU, which I mean when I talk about border-construction and border reconstruction. To the extent that the borders of the member states do not disappear completely, one can talk about border reconstruction. However, due to the fact that the new borders that are established at the outer edges of the Union are also the limits of an international actor in its own right, it becomes meaningful to talk about border-construction. In the empirical parts of the study, I refer to this process as the construction of the external borders of the EU.

For territorial and functional borders this is manifested through the emergence of new regimes regulating the entry into the territory, labour market or welfare state of the Union and its member states for third country nationals. The main way in which the

¹⁵⁶ Thomas Diez, ‘The Paradoxes of Europe’s Borders’, *Comparative European Politics*, 4: 2/3 (2006), pp.235-252, p. 236

discourse of the Commission constructs the external borders of the EU is through articulating some kind of common threat for the Union and building on this, its discourses argue in favour of various undertakings that are deemed necessary and capable for addressing this danger. The articulation of threat is also core to the construction and reconstruction of identity borders. Following post-structuralists, identity borders emerge as a result of articulations of “Self” and “Other”. The reason for this is that the function of identity is twofold – internally to define the community, and externally, to differentiate between the community and the outside. Thus, these articulations contribute to the drawing of boundaries which describe who may be included and who may be excluded. O'Hagan outlines this process well. It involves two interrelated occurrences. One of them is the process of defining collective identity. This is achieved through a perception of shared norms, beliefs, institutions, values and goals. The other one, which according to post-structuralists is crucial, is differentiation. It is the concept of the “Other” that provides the axis on which acceptable and unacceptable political activities and identity are constructed. Thus, political identity often emerges with greater clarity when the polity confronts the individual whose inclusion is ambiguous. This helps to generate abstract principles upon which the community or polity is based.¹⁵⁷ Hence, Campbell argues: “... the constitution of identity is achieved through the inscription of boundaries that serve to demarcate an “inside” from an “outside”, a “self” from an “other”, a “domestic” from a “foreign””.¹⁵⁸ Thus, the discourse of the Commission constructs the external identity borders of the EU through articulations that create perceptions of what does and what does not belong to the EU.

Thirdly, the Commission discourse can reconstruct internal borders inside the EU.¹⁵⁹ In section 2.2.1. I outlined the major types of internal borders in the EU. In this study, the term “internal EU border” denotes a situation, in which contrary to the traditional aims of integration striving to establish a common space between the member states, certain aspects of various Union policies lead to the creation of divisions either between the EU member states or between various other entities inside the Union.

¹⁵⁷ Jacinta O'Hagan, *Conceptualizing the West in International Relations – from Spengler to Said* (Basingstoke: Palgrave, 2002), p. 40, and pp. 47-50

¹⁵⁸ David Campbell, *Writing Security – United States Foreign Policy and the Politics of Identity* (2nd ed.) (Manchester: Manchester University Press, 1998), p. 9

¹⁵⁹ For a discussion on EU internal borders see Peter-Christian Müller-Graff, ‘Whose Responsibility are Frontiers?’ in Malcolm Anderson, Eberhard Bort (eds), *The Frontiers of Europe* (London: Pinter, 1998), pp. 11-21

I view the former as a result of incomplete integrative measures, which in effect recreate the distinction between the member states and point to the continued existence and significance of their national borders. Furthermore, because the integration efforts also affect groups of people inside the EU, new internal functional and identity borders also emerge. Therefore, integration can result in incomplete de-bordering in the EU when differences between the member states may persist and when new divisions are created within the EU population. These new borders, however, are quite likely to take different forms in comparison to the situation prior to the initiation of integration efforts. For territorial and functional borders the reconstruction of an internal border arises if as a result of cooperation in the Union different categories of people emerge in terms of their rights and regime to access the territory or labour markets and welfare states of the EU member states. Namely, despite the Commission rhetoric about the creation of an area without internal barriers there are still categories of people that face obstacles for their free movement in the Union. The reconstruction of identity internal borders is a consequence of the emergence of certain categories of people as an “internal Other” from the articulations of the Commission, thus creating a division within the EU population.

The concept of an “internal Other” is another term grounded in post-structuralism. As I elaborated above, they argue that because of the dense texture of any theory or discourse complete fixity of meaning is impossible. Derrida has demonstrated this argument through deconstruction. Thus, post-structuralists maintain that within each discourse there are possibilities to defer and disrupt indefinitely its claim to sufficiency and closure. Crucially, for post-structuralists these disruptions are internal to the discourse.¹⁶⁰ These disruptions mean that within every discourse there will be internal inconsistencies and contradictions. The emergence of “Internal Other” is one instance of such inconsistencies and contradictions. In this case, it occurs when a part of the population of the EU is articulated in the discourse of the European Commission as possessing qualities concurrent with the qualities attributed to the “Other” for the Union. Such articulations contribute to the reconstruction of the internal divisions in the Union because they obstruct the establishment of a perception of sameness within the population of the EU.

¹⁶⁰ Derrida cited in William E. Connolly, *Identity/ Difference – Democratic Negotiations of Political Paradox* (London: Cornell University Press, 1994), p. 50

Thus, overall, in the empirical chapters of the study I analyse the ways in which Commission articulations configure EU and European borders along two main lines. Firstly, I ask: do they contribute to the emerging of a common space in the area in question, thus leading to a decreased salience of borders or do they instead contribute to the construction of an internal or external border? Secondly, I look into whether this configuration refers to a territorial, functional or identity border through the construction of unification/ distinction. Given the wide variety of policy areas in which the Commission is involved, the over sixty years of existence of the EC/EU and the different ways to interpret Commission documents, I have to present my account of the time-frame of the study, the reasons for choosing these four policy areas and the ways in which I interrogated the Commission documents. These form the methodology of the study.

2.4. Methodology of the research

In order to be able to provide a detailed account of how integration efforts have led to ambiguous configurations of borders in Commission discourse, I have to do two main things. Firstly, I have to demonstrate that despite the explicit overwhelming focus only on de-bordering in Commission documents, these articulations have contributed to the emergence of new borders and to the reconstruction of old ones. Secondly, I need to analyse the specific contribution of the European Commission in this process. The question is, however, how can these two issues be studied? The aim of this part is to provide an answer to these questions by explaining the methodology of the research. In order to do this, it has to address the following main issues: what is the time-frame of the research; what are the policy areas under investigation; why did I choose this particular period and policies; which documents will form the empirical material for the research; according to what criteria were they selected; and how will I analyse them? Effectively, I have to elaborate on how I gathered and analysed the information forming the bulk of the research. However, prior to that I look into the time frame and policy areas of the study.

2.4.1. Why this period? Why these Policy areas?

My research examines the discourse of the European Commission in the period after the adoption of the SEA in 1987. The period under investigation in this study is limited due to the large amount of documents that have to be examined. The second half of the 1980s is a good starting point for this investigation because this period has been acknowledged as a time when the integration efforts gained new impetus. As a result, various kinds of borders have been constructed and reconstructed, thus providing a fertile ground for the empirical analysis. Given this importance of the SEA for the study, below I provide a brief outline of the core ideas and aims of the single market with the aim of providing the necessary background for the subsequent references in the examined documents. In terms of the goals of this initiative, I focus specifically on the articulations that clearly configure borders.

The Single Market Initiative's ultimate goal is through economic liberalisation to establish the conditions that will allow for the most efficient use of the factors of production. This is exemplified by the Introduction of the Commission White Paper on the Internal Market, which stipulates that one of the objectives of this endeavor is "ensuring that the market is flexible so that resources, both of people and materials, and of capital and investment, flow into the areas of greatest economic advantage."¹⁶¹ In this sense the efforts towards the establishment of the single market represent a continuation of the logic upon which the Treaty of Rome was founded. However, the 1980s Initiative went a step further than the Treaty of the EC. Through its provisions for the adoption of measures towards the removal of physical, technical and fiscal barriers to the movement of factors of production, it made it more difficult for member states to resort to protectionist policies. Examples of such policies are the high number of non-tariff barriers to trade that existed between the members of the Community during the period after the creation of the customs union.¹⁶² Furthermore, at the time, these liberal ideas represented not only the logic upon which the integration project in the EC was founded but also were in tune with a way of thinking that was becoming increasingly popular in some parts of the world, the New Right. As Gamble explains in detail, the Neo-liberal economic ideas formed a very important part of the belief system of the Thatcher

¹⁶¹ European Commission, *Completing the Internal Market*, COM (85) 310 final, 14.06.1985, p. 7

¹⁶² Ibid.

government in the UK.¹⁶³ Thus, the single market appealed to both pro-integration member states as well as those that supported Neo-liberal ideas.¹⁶⁴

Out of these ideas arose formulations that became enshrined in the 1985 Commission White Paper and the subsequent SEA.¹⁶⁵ Most important of these, in light of the topic of this study, is an articulation with an important potential to configure borders. The SEA defines the internal market as: “an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured ...”¹⁶⁶ The White Paper goes into more detail of what unifying the EC, subsequently the EU, market entails: “Member States will agree on the abolition of barriers of all kinds, harmonisation of rules, approximation of legislation and tax structures, strengthening of monetary cooperation and the necessary flanking measures to encourage European firms to work together.”¹⁶⁷ These articulations mean that in essence, the establishment of the single market is a goal that will result in the emergence of a common space in the EC/EU. This is what the above formulation in the SEA implies. In turn, as the citation of the White Paper shows, this aim will be achieved through undertaking measures that make less important different kinds of borders between the member states. Thus, the configuration of borders under the single market articulations is that previously existing borders between the states participating in the integration in Europe become less salient.

The SEA and the resulting project of an internal market became crucial points in the process of integration in Europe because as Wallace argues: “it fits Community philosophy, it suits the doctrinal preferences of the current British Conservative government, and it would draw in its train a mass interconnections with other fields of action.”¹⁶⁸ Tranholm-Mikkelsen and George provide more details on the last point. For example, according to George: “Functional spillover was clearly at work in the way that the economic objectives of the EC pushed it in the direction of also taking over some of

¹⁶³ Andrew Gamble, *The Free Economy and the Strong State* (Basingstoke: Macmillan, 1988), esp. Ch. 2

¹⁶⁴ For an exploration of the reasons why other EC member states, besides the UK, supported the single market see Stephen George, *Politics and Policy in the European Community* (2nd ed.) (Oxford: Oxford University Press, 1991), pp. 161-162

¹⁶⁵ For a good and concise overview of the period of reinvigoration of the integration efforts in the EC and the innovations contained in the SEA see Jeppe Tranholm-Mikkelsen, ‘Neo-Functionalism: Obstinate or Obsolete? A Reappraisal in the Light of the New Dynamism of the EC’, *Millennium: Journal of International Studies*, 20: 1 (1991), pp. 1-22, pp. 10-12

¹⁶⁶ Article 13, Single European Act

¹⁶⁷ European Commission, *Completing the Internal Market*, COM (85) 310 final, 14.06.1985, p. 6

¹⁶⁸ Helen Wallace cited in Stephen George, *Politics and Policy in the European Community* (2nd ed.) (Oxford: Oxford University Press, 1991), p. 161

the responsibilities for social policy from the member states.”¹⁶⁹ And Tranholm-Mikkelsen argues that: “a functional link is created between the internal market and the Community’s environmental policies.”¹⁷⁰ However: “The most obvious examples, perhaps, are the consequences of the plans for the abolition of physical frontiers.”¹⁷¹ I also show in Chapter Three that there is a strong trend in Commission discourse towards linking the efforts in the two areas.

Thus, the SEA and its project for the internal market is a good starting point for an inquiry into the ambiguous configuration of borders by the discourse of the European Commission because it has the potential to provide rich empirical examples of border transformations. This happens in two main ways. Firstly, it obviously is an endeavor towards the construction of a common area where previous borders between the member states should become less important. Secondly, the observed functional linkage between the original areas encompassed under the SEA (which are economic) and other fields (such as environment, social policy and so forth) is very important because it has led to furthering the integration efforts in these other fields. As such, the transformation of borders has been extended to these other areas as well, making them also eligible for investigation. Furthermore, in the light of the focus of my study, the European Commission played a very active role in the internal market initiative. According to George, for example: “the Commission played a promotive and facilitating role in getting the government to realize the dimensions of the problem ... and the possible role of the EC in supplying a solution ... It manipulated a conjunction of international and domestic circumstances to push forward the process of European integration ...”¹⁷² This is crucial because it means that when the internal market was initiated, the Commission had a leading role to play. The Commission promotion of the SEA coupled with its aim

¹⁶⁹ Ibid., p. 216

¹⁷⁰ Jeppe Tranholm-Mikkelsen, ‘Neo-Functionalism: Obstinate or Obsolete? A Reappraisal in the Light of the New Dynamism of the EC’, *Millennium: Journal of International Studies*, 20: 1 (1991), pp. 1-22, p. 13

¹⁷¹ Ibid., p. 12. Arne Niemann, Philippe Schmitter illustrate this argument in relation to the development of cooperation under Schengen in ‘Neofunctionalism’ in Thomas Diez, Antje Wiener (eds), *European Integration Theory* (2nd ed.) (Oxford: Oxford University Press, 2009), pp. 45-66, p. 58

¹⁷² Stephen George, *Politics and Policy in the European Community* (2nd ed.) (Oxford: Oxford University Press, 1991), p. 163. For other studies that make the same claim see for example Jeppe Tranholm-Mikkelsen, ‘Neo-Functionalism: Obstinate or Obsolete? A Reappraisal in the Light of the New Dynamism of the EC’, *Millennium: Journal of International Studies*, 20: 1 (1991), pp. 1-22 and Wayne Sandholtz, John Zysman, ‘1992: Recasting the European Bargain’, *World Politics*, 42: 1 (1989), pp. 95-128, esp. p. 96

of creating a frontier-free area leaves the impression that the Commission is a champion of liberalisation and decreased importance of borders. Importantly, this is an impression, which in the vast majority of cases, the Commission discourses reinforce themselves. They achieve this by using a language that puts the emphasis on inclusiveness and mobility. However, this is rarely (if ever) the whole story. Often, for different reasons, which I explore in this study, the Commission discourses contribute to the construction and reconstruction of internal and external borders as well. Therefore, it will be of interest to examine the role it has played in the configuration of borders in the policy areas under consideration in this study, which were invigorated after the second half of the 1980s.

This active role of the Commission is coupled with another important development under the SEA, which constitutes the third reason why I think this period is a good starting point for my investigation. This Treaty increased the powers of the supranational institutions of the EC (the Commission and the Parliament). As far as the Commission is concerned, there was an increase in the issues covered by qualified majority voting (QMV). As Tranholm-Mikkelsen has argued, this demonstrates a change in the institutional balance of power in the EU: “The Commission has been able to exploit the publicity surrounding the 1992 project and has obtained some leverage in its dealing with the Council.”¹⁷³ These increased powers of the Commission are important in light of the focus of the study because they imply that it has strengthened its ability to successfully sway the decision-making process in the EU. Hence, a focus on the period after the adoption of the SEA is beneficial in terms of the increased ability of the Commission to act independently (at least in theory).

This leads to the second major issue that I have to address in this section: what are the reasons for choosing to focus the study exactly on these four policy areas that I have concentrated on? Although ultimately, every decision of that sort is at least partially arbitrary, overall, my major aim in deciding which policies are going to be included was to attain a good balance and comprehensive coverage in analysing the two key terms of the study, the European Commission and borders. The four policy areas conform to these goals for two main reasons. Firstly, the policy areas that I examine in

¹⁷³ Jeppe Tranholm-Mikkelsen, ‘Neo-Functionalism: Obstinate or Obsolete? A Reappraisal in the Light of the New Dynamism of the EC’, *Millennium: Journal of International Studies*, 20: 1 (1991), pp. 1-22, p. 12

the empirical part allow me to simultaneously attain balanced and comprehensive information for both the European Commission contribution in the construction of EU borders and to cover the configuration of multiple borders. I have already dealt with aspects of the issue of case studies selection in previous sections of the study. As I explained in detail in section 2.3.2., one of the advantages of this selection of case studies is that it spans the pillar structure of the EU. As I showed, the Commission has different prerogatives and powers under the various pillars. Hence, an examination of the configuration of borders in the Commission discourse in the four policies will allow analysis of existing differences and similarities in the trends in these bordering articulations.

This pillar structure of the EU is very important from a methodological point of view in relation to the decision to examine border controls and free movement of people as two separate policy areas in two different chapters. As the discussion in Chapters Three and Four shows, in essence the subject matter of these two policy areas is the same, dealing with matters of free movement of individuals. However, as the overviews of the development of each of these policies show, the particular issues they are dealing with evolved in radically different ways. While from its inception free movement of people was incorporated into the EEC, cooperation on border controls-related questions developed much later and started off outside Community cooperation efforts. Therefore, the Commission has had differing powers and prerogatives in the two areas. This makes it interesting to investigate whether there are significant differences in the ways its discourse in each of the fields configures borders and if yes, how exactly they are articulated. Another reason for examining these issues in separate chapters is that the types of borders they configure are different. While border controls relate predominantly to territorial borders, free movement of people is linked with the configuration of different type of borders, functional borders. In that respect, the overall selection of the four case studies provides examples of the configuration of all the three main types of borders and also looks into how developments in the EU affect the configuration of borders through its relationships with its external partners. As some of these external partners are in Europe, this has repercussion on the configuration of European borders as well.

The second major reason why these four areas are a good mix for examining the configuration of borders is the understanding of the term “border” I employ in this study. As I argued in section 2.3.1. for me borders are social constructs that are created by human interactions. Therefore, even (or perhaps most of all) one of the most important dividers in politics, the borders between states, are a result of countless practices of inclusion and exclusion, some of which are not always thoroughly examined. As scholars such as Agnew¹⁷⁴ and Taylor¹⁷⁵ have argued, the state can be viewed as a container that regulates (and therefore constructs borders) along all the major types of human relations (social, economical, cultural). Thus, one should expect that the process of integration would affect all these types of relations and importantly, that bordering practices will be influenced as well. The review of the literature on EU borders shows that there has been an important scholarly discussion about European values, which is related to at least some of the above human relations. Nevertheless, the studies that I reviewed do not explicitly engage with the configuration of borders for all of these relations. The selection of case studies allows me to overcome this weakness of the existing research. Namely, I can engage not only with the issues that are usually associated with borders (which are also very important) but also with issue areas that are constitutive to the normalisation of the bordering practices but which are not usually widely scrutinised. I achieve this by looking at both policy areas that are unequivocally border-related (ENP and border controls) as well as fields, where borders are not directly implicated (social policy, free movement of people). Thus, with the issues that I discussed in this section, I have narrowed down the focus of the research significantly. However, as a next step, I have to address the question of selection of the primary material that is going to be included.

2.4.2. Data Collection

In order to be able to analyse how Commission discourses configure EU borders and to critically engage with these configurations, I need to perform two consecutive steps. Firstly, I need to reconstruct the discourse on EU borders in each policy area;

¹⁷⁴ John Agnew, ‘The Territorial Trap: the Geographical Assumptions of International Relations Theory’, *Review of International Political Economy*, 1: 1 (1994), pp. 53-80

¹⁷⁵ Peter Taylor, ‘The State as Container: Territoriality in the Modern World System’, *Progress in Human Geography*, 18: 2 (1994), pp. 151-162

secondly, I have to advance a critical reading of these discourses. The account how I will carry out the second step is presented in the last section of this part. Below I outline how I will perform the first step.

To reconstruct the discourse on borders in the policy areas under investigation, I need to read European Commission texts in each of these areas and aim to reconstruct the common themes, objects and categories¹⁷⁶ around which the bordering practice/s in each one of them converge. This allows me to present my interpretation of the socially constructed meaning of inclusion/exclusion implied by the discourse and elaborate on the rules created by this discourse through the activities it enables or outlaws. Building on this, I advance my interpretation of the ways in which borders are configured within the discourse in question. My expectation is that the documents of the Commission create an impression of the decreased significance of borders as a result of the process of European integration. This is because the topics on which these discourses are explicit are issues such as common policies, measures for overcoming national differences, various unification activities. Furthermore, this configuration of the decreased significance of borders is likely to be captured by different terms that employ the word “European”, thus implying the emergence of a common space in the EU. Therefore, overall the articulations in these policies contribute to for example, enabling easier movement within the EU as a result of abolishing intra-EU border-controls, accepting professional qualifications and diplomas from a member state in all other members and so forth, which effectively decreases the salience of borders.

In conducting discourse analysis one of the crucial questions is which documents the analysis is based on; in my case - which Commission texts exactly am I going to read? Why exactly these ones and not others? Answering these questions requires looking back at the aims of the research because ultimately the reasons for choosing the specific selection of documents lie in the goals of this study. It sets out to critically engage with the Commission discourses on EU borders and to investigate the Commission contribution to their construction and reconstruction. Therefore, in order to be able to analyse these issues I need to gather information about the following: what are Commission discourses on borders; what are the Commission policies and priorities

¹⁷⁶ These are suggested in Jean Carabine, ‘Unmarried Motherhood 1830-1990: a Genealogical Analysis’ in Margaret Wetherell, Stephanie Taylor, Simeon Yates (eds), *Discourse as Data – a Guide for Analysis* (London: Sage, 2001), pp. 267-310, p. 281

regarding EU borders; how do Commission proposals configure the Union's borders; what new rules do these proposals establish; how do the discourses in each of the policy areas construct and reconstruct borders?

In order to be able to collect data about the priorities of the Commission in the relevant policy areas I examine the following main kinds of documents: Green and White Papers,¹⁷⁷ and European Council and Presidency Conclusions (such as these at Tampere, Lisbon, Thessaloniki). These help me define the scope of the objectives and priorities, thus giving me ideas about which the areas where I can expect high Commission activity are, and focusing my search. Importantly, these documents form the initial phases of the decision-making process of the EU. It is in these types of documents that overall objectives or new initiatives are formulated and aired. Thus, these texts allow me not only to attain information about the policy priorities but also to get a glimpse of the areas that are becoming prominent on the agenda, and hence, where formal legislative action can be expected. This is of crucial importance, given that one of the aims of the study is to engage critically with the role of the Commission in the construction and reconstruction of EU's borders. In that respect it is important to have an idea of the contents of Council and Presidency Conclusion even though they are not Commission documents. If Green and White Papers expose the thinking of the Commission in the initial stages of decision-making, the Conclusions formalise the accepted goals by making them official priorities for the Union. Therefore, by engaging with all these documents I can analyse any concurrences and differences between the thinking of the Commission and the future policy directions agreed upon at EU-level.

Nevertheless, overall the study has had a limited ability to investigate the specific origins of border-related policy proposals (i.e. are they promoted by the Commission, by the European Parliament or by the Council). Partly this is due to the fact that such investigation requires a genealogical analysis, which goes well beyond the primary aim of the research. Furthermore, as I argued in the previous section, in tune with post-structuralist understandings, in practice things are always intertextual. This

¹⁷⁷ The former aim at gathering different opinions on a specific policy issue, while the latter contain proposals for Community action in a specific area and are used as vehicles for its development. A list of the Commission's Green Papers is available at http://europa.eu/documents/comm/green_papers/index_en.htm, accessed on 5.01.2008 and of the Commission's White Papers – at http://europa.eu/documents/comm/white_papers/index_en.htm, accessed on 5.01.2008

means that it is difficult to pinpoint one source of origin for a particular idea or policy proposal. Thus, in the Commission discourse the various visions will be expressed. Despite that, the institutional structure of the EU allows making assumptions about the general trends of the positions on particular proposals that the main EU actors are likely to adopt as a result of their self-interests. These help to moderate to a large extent this limitation and allow presenting a plausible account of the origins of specific policy proposals that are examined in the research.

The preliminary reading will point out the major areas where I need to collect Commission documents in order to reconstruct the discourse of the Commission. The bulk of the documents I collected are Commission Communications¹⁷⁸ (COM¹⁷⁹ and SEC¹⁸⁰ documents). I complete further my basis of documents through including speeches by Commission officials on issues relevant to the studied policy areas.¹⁸¹ These texts include all the major policy proposals and positions of the Commission and therefore are a good way of making sure I have not missed out something important in the process of reconstructing the discourse.

As this overview of the documents on which I base my analysis shows, overall, I have aimed to refrain as much as possible from using non-Commission issued documents. Despite that, I have had to include European Council and Presidency Conclusions that have issued landmark decisions and objectives in the policy areas under consideration. The reason for sticking to this more narrow definition of Commission discourse (rather than one that looks into Commission discourse expressed in documents issued by other EU institutions, for example) is that it has the advantage of providing a clear boundary for delimiting the discourse I am studying. Thus, I achieve a higher consistency and a better comparability between the documents

¹⁷⁸ These can be accessed through EUR-Lex, the portal to European Union law, available at <http://eur-lex.europa.eu/en/index.htm>, accessed on 5.01.2008

¹⁷⁹ The COM documents are the proposed legislation and other Commission Communications to the Council and/ or other institutions and their preparatory papers.

¹⁸⁰ The SEC documents are internal documents associated with the decision-making process and the general operation of Commission departments.

¹⁸¹ For example the speeches of the Commission's officials on the ENP are available at http://ec.europa.eu/world/enp/speeches_en.htm, accessed on 5.12.2007 and on the Area of Freedom, Security and Justice - at <http://europa.eu/rapid/searchResultAction.do?search=OK&query=justice&username=PROF&advanced=0&sortBy=date&beginDate=01/01/1999&guiLanguage=en>, accessed on 5.12.2007. A database, where Commission speeches are stored for all EU policy areas is Rapid Press Release, available at <http://europa.eu/rapid/>, accessed on 19.05.2009

considered. At the same time, as a result of the inter-penetration of texts, I will nevertheless still be able to trace some of the non-Commission influences in its documents. In order to get an idea about the ability of the Commission to attain adoption of the policy proposals it issues, I look into their status in the decision-making machinery of the EU.¹⁸² These steps in reconstructing the Commission discourse allow me to get a complete picture of the issues considered not only in terms of their content but also in relation to their adoption, thus ensuring accurate analysis. Once I have executed this process of reconstruction, I am in a position to provide my interpretation of the actions these proposals enable, those that become impossible, as well as of how these discourses configure borders.

Ultimately, the information gathered about the discourse of the European Commission in the policy areas allows me to analyse its contribution to the reconstruction of EU borders. Furthermore, the documents I collect in the different policy areas are going to be comparable to each other because all types of documents I intend to collect and examine are available for all the policy areas in question, i.e. Communications and speeches and landmark Council decisions that have defined the objectives. Therefore, I build my analysis on the basis of the same types of Commission documents.

The main Commission-produced documents that are not included in this study (these are Registers, which offer access to the internal documents – Commission Meetings, Work Programmes, C documents, Committee Deliberations, Expert Groups, Application of Community Law, Codecision; General Publications; Audiovisual Service¹⁸³) are related either to the internal working of the Commission or are aimed at the General Public. The former have been excluded because the information they are anticipated to provide will give more inside knowledge into the day-to-day run of this institution and I do not consider this as pertinent to the aim of the present study. The latter are an inherent part of the reconstruction of borders by the Commission because they are aimed at the wider public inside and outside the EU and as such can facilitate the process of normalisation of the discourses. However, the goal of critically

¹⁸² The status of policy proposals can be tracked at <http://ec.europa.eu/prelex/apcnet.cfm?CL=en>, accessed on 16. 04. 2009. This is the portal that is monitoring the decision-making process between EU institutions.

¹⁸³ http://europa.eu/documents/comm/index_en.htm, accessed on 3.12.2007. On the same web site links provide access to more details on each of these types of documents.

examining the way Commission articulations configure EU borders can be performed satisfactorily without detailed analysis of these documents for two main reasons. Firstly, the bordering configurations in these documents will follow the configurations articulated in the Commission documents that I examine because the information disseminated to the general public is intended to give the ordinary citizen easily understandable information about the EU. Secondly, by analysing the bordering configurations in speeches of Commission officials I have already included aspects of how the Commission relates to the general public. Therefore detailed analysis of Commission documents aimed at the general public goes beyond the scope of this research.

2.4.3. Data Analysis

The materials collected during the empirical research are analysed in two main ways. Firstly, a critical reading of the discourses of the Commission is advanced using the strategy of double reading, which: "... allows to bring to the surface features of discourse which normally are allowed to remain submerged."¹⁸⁴ Building on this, secondly, I analyse the Commission contribution to the reconstruction of the EU's borders. More specifically on the second point, after the second reading of the Commission documents is performed, I am concerned with whether there is still only a trend towards decreased significance of borders in the discourse in question. A finding that points to the construction and/or reconstruction of EU borders through Commission discourses will clearly indicate ambiguous configurations of borders in these articulations. Crucially, this is contrary to the trend Commission documents to be explicit only about the diminished importance of borders. It will show the current limitations for the decreased salience of borders, which lead to the construction and reconstruction of borders. Furthermore, it will make possible evaluations of the reasons why these limitations occur. Given the complex decision-making structure of the EU and intertextuality it is of interest for me to analyse to what extent the borders configured in the Commission discourse are actually actively promoted by the Commission itself. In order to do this, I pay particular attention to the articulations concerning the current decision-making system of the EU and pose the question does

¹⁸⁴ Chris Brown, 'Turtles All the Way Down': Anti-Foundationalism, Critical Theory and International Relations', *Millennium: Journal of International Studies*, 23: 2 (1994), pp. 213-236, p. 222

the Commission support it or does it advocate change in it. Also, I trace whether the Commission has been successful in securing adoption of its proposals. Taken together these analyses will allow me to provide a detailed account of how the Commission has contributed to the ambiguous process of border transformation under integration in the EU.

One of the aims of this study will be to show how despite the rhetoric of the European Commission about integration (which traditionally is associated with decreased significance of borders), a more careful consideration of the relevant texts and their interrelation with other policies involved in the same processes brings to the fore issues that effectively construct borders (albeit of different kinds from traditional state ones). The latter usually go unnoticed and unacknowledged by the discourses of the Commission but the method of double reading allows bringing them to the fore by critically engaging with the relevant discourses.

In this method, the first reading presents the discourse under scrutiny in the most faithful way and based on this it gives it the most favourable interpretation possible.¹⁸⁵ Taking the position of the author and representing what the intention of the text is achieves this. In that respect the first reading mimics the discourse in question. The second reading, however, places the discourse within a wider context and shows how the meaning produced by the specific discourse is interrelated (is affected by and affects) other discourses. Therefore, the meaning produced by a particular discourse is contingent upon other discourses,¹⁸⁶ which need to be taken into account as well. Thus, in the second reading I am not looking at the authoritative voice in the text but rather try to identify the breaks in the argument, the spots in which the assumptions made within the text are problematic.

So, in all the policy areas that I have examined, my initial aim was to reconstruct at face value how the relevant Commission documents configure EU borders. In the empirical chapters this is done simultaneously with the process of reconstruction of Commission discourse in each policy area, which was explained in the previous part. In the second reading, however, the aim is to demonstrate that when the wider framework is taken into account there are border-producing articulations in these discourses, which

¹⁸⁵ David Howarth, *Discourse* (Buckingham: Open University Press, 2000), p. 45

¹⁸⁶ Richard Ashley, 'Untying the Sovereign State: a Double reading of the Anarchy Problematique', *Millennium: Journal of International Studies*, 17: 2 (1988), pp. 227-262, pp. 231-233

usually are not given the necessary attention. There are two main ways in which this can be revealed. Firstly, such a situation can be the result of contradictions and inconsistencies between aspects of different policies of a particular institution. Therefore, it can be expected that these contradictions can be identified within the Commission articulations in the different policy areas. For example, some of the arguments used by the Commission in its discourse on Enlargement can be read as constructing the EU's border in the context of the ENP. Secondly, an important indicator of the inconsistencies of the discourses consists of its silences, absences. These are issues that are not present in the discourse although one may reasonably expect them to be covered by it.¹⁸⁷ These absences, however, are of paramount importance because their mere existence points to a de facto inconsistency of the discourse. For example, in a discourse framed as free movement of workers one would not be content to see measures aimed at opening up borders to refer only to Union citizens. In practice the silence on the free movement of third country nationals' workers of such a discourse does create a border between these two categories of people. This points to a rupture in the discourse itself because it obstructs the achievement of its declared aims.

In order to ensure the smooth performing of the technique as well as the compatibility of the findings it is useful to develop a list of questions for reading the documents. For the first reading, the analysis is conducted through posing the following questions:

1. What aims does the Commission have in the given policy area?
2. How are these aims justified? What is the rationale behind them?
3. How are these aims going to be achieved?
4. How do these actions configure EU internal/ external borders?

For the second reading, I am looking for:

1. Are there any inconsistencies and contradictions in the Commission discourse?
2. Are there any silences within the current discourse, which make the achievement of the stated aims problematic?

¹⁸⁷ Jean Carabine, 'Unmarried Motherhood 1830-1990: a Genealogical Analysis' in Margaret Wetherell, Stephanie Taylor, Simeon Yates (eds), *Discourse as Data – a Guide for Analysis* (London: Sage, 2001), pp. 267-310, p. 285

3. Do these breaks in the discourse contribute to the configuration of the EU internal/ external borders?

Thus, the double-reading technique allows me to address one of the core questions of this research by highlighting the way in which ambiguous configurations of borders have been articulated in the discourses of the European Commission. It shows that on the surface these discourses tend to emphasise only the transcendence of borders as a result of the process of European integration. The account presented with the second reading helps to restore the balance by pointing to the border-producing configurations in the discourse of the Commission.

This analysis also enables me to demonstrate how the Commission contributes to the construction and reconstruction of EU's borders. It allows me to elaborate on what I see as the reasons for these configurations, thus signaling the main constraints for decreasing the importance of internal EU borders as well as the main ways in which its external borders are enunciated under a process of integration. Ultimately, this dissection allows me to point out not only the main ways through which the European Commission creates and recreates borders in/ of the EU but also to show any distinct features of this process in each of the policy areas examined.

2.5. Summary

In this chapter I developed the framework for the analysis in the empirical part of the research. I started with a review of the relevant academic debates on EU borders, Border Studies and the role of the European Commission in the integration process. There are two major shortcomings of the current research on EU borders. Firstly, it tends to focus on one particular aspect of border developments (the decreasing significance of borders or the emergence of borders). As I have maintained, in distinction to such an approach, I consider those two processes as occurring simultaneously. Therefore, I argue in favour of developing a way for studying them in accordance with such an understanding. I presented my view of how to achieve this in the following parts of the chapter. Inspired by the arguments of a particular approach to Border Studies, I claimed that borders are social constructions that change under the development of new inclusion/ exclusion practices and that they can be studied through examining the

discourses on these bordering practices. This issue is related to the second shortcoming of the existing literature as well. The overwhelming majority of academic research is examining issues related to Enlargement, the external borders of the EU more generally or European values. I, however, noted that bordering practices are also taking place in other spheres of human relations (i.e. social, cultural and so forth). Thus, it is of paramount importance to also examine the discourses of inclusion and exclusion in EU policy areas that are not traditionally associated with borders. Also, inspired by the debates on European integration, I identified the European Commission as the institution that is best suited to concentrate on in this research. I explained that due to the institutional structure of the EU and its self-interest, the Commission could reasonably be expected to promote further integration, thus contributing to the decreased salience of internal borders and the construction of external EU borders. I also provided my argumentation why I think the Commission can successfully sway the decision-making process in the EU despite the arguments of some scholars against such ability. This enabled me to outline the main mechanisms and the scope of Commission ability to influence the configuration of EU borders.

The addressing of all of these issues allowed me to engage with the tools for performing my analysis. I will study Commission documents in four EU policy areas (border controls, free movement of people, ENP, social policy) in the period after the adoption of the SEA. In order to expose the ambiguous configurations of borders by Commission discourse, I will employ the double-reading technique, which allows to critically interrogate texts and to analyse the inconsistencies and silences in them. The analysis is structured along two main lines. On the one hand, I investigate whether Commission discourses contribute to the decreased salience of borders or promote the construction and reconstruction of EU external and internal borders. On the other hand, I interrogate if these configurations refer to territorial, functional or identity borders. In the following chapters I perform these analyses in practice, starting with the issue of border controls.

CHAPTER THREE

BORDER CONTROLS – THE EXPLICIT CONSTRUCTION OF EU EXTERNAL BORDERS

3.1. Introduction

As we have seen in section 2.2.1., there is one border-related issue that has received overwhelming attention – the Schengen Treaty, its developments and effects on the borders of the member states and of the EU. The focal point of the cooperation under Schengen is the facilitation and eventually the lifting of internal border controls between the participating countries. As such, in this policy area, it is above all territorial (physical) borders that are being configured. As was shown, currently the problem that attracts significant attention is the argument of many of these studies that as a result of Schengen, a new border, very often characterised as difficult to penetrate, has arisen on the edges of the Union. This is often referred to as the development of “fortress Europe”. Given the focus of this research, my attention is centred on the role of the European Commission in the process of erecting EU’s external borders. As far as this problem is concerned, my central argument is that in accordance with the expectations of Neo-functionalists, the discourse of the Commission has facilitated the construction of “fortress Europe”. This is a result of the Commission undertakings on border controls, which have not only contributed to the construction of a common space in the EU but also to the emergence of salient external edges of the Union. This comes about as a result of Commission articulations that in effect promote the establishment of the particular external borders of the EU we have today. The idea of “fortress Europe” also points to the conclusion that despite the efforts towards the abolition of internal border controls in the Union, the existing regime for free movement of people under Schengen has created new categories of persons and for some of them, there are still physical obstacles for their movement across the borders of Schengen-participating states. Therefore, my second core claim is that cooperation under Schengen has contributed to the reconstruction of internal borders in the EU. Given the evolution of cooperation in this area, the Commission cannot be regarded as having played a pivotal role in this

reconstruction. Instead, it is rather a result of the limited powers of the Commission to overcome the reservations of the member states, which has led to a reproduction in its discourse of articulations that give rise to internal borders in the Union. In this chapter, I examine in detail the discourse of the European Commission on border controls, so that I substantiate these claims.

In order to do this, the chapter is divided into three main sections. The first one aims to provide a general background of the development of Commission discourse in the field of border controls. The second one looks in detail into the articulations, which clearly configure borders. On the one hand those that contribute to the diminished importance of borders between the EC/EU member states and on the other hand, those that lead to the establishment of new borders at the external edges of the Union. The third section investigates the inconsistencies and silences in Commission discourse on border controls that reconstruct internal borders in the EU rather than lead to their decreased salience.

3.2. An Outline of the Development of Cooperation under Schengen and Commission Discourse on it

I start my investigation into the way in which Commission discourse on border controls configures borders by briefly outlining the major developments in this issue area. The matters it deals with are central to a field of fundamental concern for the European integration project – the freedom of movement, which has its origins in the Founding Treaties and their subsequent amendments. Nevertheless, border controls itself was not an area included in the cooperation under the Treaty of Rome. This was the case because the clause concerning the freedom of movement of people in 1957 talked only about the freedom of movement of workers and was not encompassing other categories of people, such as pensioners or students.¹ Thus, in the first decades of European integration, the free movement of people has been interpreted in a narrow way. As a result, until the mid-1980s there was no framework under which to develop cooperation on border controls. This issue became prominent on the agenda only with the signing of the Schengen Agreement in

¹ Article 48, esp. point 1, of the Treaty Establishing the European Economic Community

1985. Its aim was to abolish formalities at the borders of the participating member states. As such, it could contribute towards the achievement of the SEA aim of creating an internal market through establishing in practice the conditions allowing the free circulation of the factors of production, including people. Despite this clear link between the two areas, their regulation was completely different. While the SEA was within the EC, for a long period the cooperation on issues related to border controls was advanced through intergovernmental cooperation of some of the EC member states under Schengen. This has had important repercussions for the powers the European Commission has had in this field. In this section I aim to briefly outline the major turning points in the evolution of cooperation on border controls, to point out the changes that have occurred in the powers given to the Commission in this field, to identify the main articulations that contain border configurations and the categories of people constructed through the discourse on border controls.

3.2.1. Major turning points in the evolution of cooperation on Border Controls and the powers of the European Commission in the field

Cooperation on border controls as an issue area forms a part of integration efforts undertaken in the field of JHA. Border controls play an important role for facilitating the achievement of the goal of providing freedom of movement for people within the territory of the EC/EU. As an issue area it is very closely related to the adoption of measures in a number of JHA policy fields – immigration, asylum, police, border-management, visa policy, and more recently, more intensified cooperation in the sphere of the judiciary. From the mid-1970s on-wards there have been several multilateral forums aimed at undertaking actions in these areas at European level.² In 1985, five EC members signed the so-called Schengen Agreement, which bound them to abolish identity controls of individuals at their common land borders. It is from this landmark decision that the current efforts towards abolishing internal border controls in the EU originate. This aim was

² For a brief outline of these various initiatives see for example Emek Uçarer, ‘Justice and Home Affairs’ in Michelle Cini (ed.), *European Union Politics* (Oxford: Oxford University Press, 2005), pp. 294-311, p. 297 (box 19.2). See also Andrew Geddes, ‘International Migration and State Sovereignty in an Integrating Europe’, *International Migration*, 39: 6 (2001), pp. 21-42, pp. 23-27

confirmed at several European Council Meetings, in October 1986, April 1987, December 1987, and June 1988. There the member states' Ministers responsible for immigration issued declarations that set the objective of "easing and ultimately abolishing" frontier formalities between EC countries.³ Such provisions have later been enacted through proposals of the Commission, signed by the Parliament and the Council in April 2004,⁴ that provide that: "Member states shall grant Union citizens and their family members, irrespective of their nationality, leave to enter their territory with a valid identity card or passport. No entry visa or equivalent formality may be imposed on Union citizens."⁵ This is how in these early days of cooperation in this issue area, the abolition of border controls was envisaged.

As I said above, the abolition of intra-Community border controls is linked to facilitating the freedom of movement of people. Importantly, this connection is clearly argued in Commission documents. For example, according to the Commission, not only do border controls initiatives have the same aim – free movement of persons between the countries concerned but also: "This aim is one of the cornerstones of the single market to be completed by 1992."⁶ Thus, this articulation clearly links border controls (which at the time was a cooperation area outside the scope of Community competence) to one of the fields central to the EC's integration project – the establishment of the internal market. The latter is unequivocally a policy field falling within the prerogatives of supranational governance. As a result of such linking, among other things, border controls have gradually attained a more important role within the integration project, which has led to their progressive inclusion within the EC/EU framework. This trend was further strengthened with Part Two of the Treaty of the European Union, which establishes citizenship of the Union, which guarantees every EU citizen the right to move and reside on the territory of the member

³ See European Commission, *On the Abolition of Controls of Persons at Intra-Community Borders*, COM (88) 640 final, 7.12.1988, p. 4

⁴ http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=165821, accessed on 24.04.2009

⁵ European Commission, *Proposal for a European Parliament and Council Directive on the Right of Citizens of the Union and Their Family Members to Move and Reside Freely within the Territory of the Member States*, COM (2001) 257 final, 29.06.2001, Article 6, point 1

⁶ European Commission, *On the Abolition of Controls of Persons at Intra-Community Borders*, COM (88) 640 final, 7.12.1988, p. 2

states.⁷ This constitutes an extension of the right of workers of one EC member state to undertake employment in another.⁸ Furthermore, it has enabled the undertaking of further actions that abolish border controls between EU member states.

Despite its link with freedom of movement, as a result of its initial development in intergovernmental cooperation, border controls have had a unique dynamic in terms of participating countries, their obligations and the prerogatives of the European Commission. First of all, to this day not all EU member states apply the Schengen Convention and its provisions in the same way. As a result of the fact that the areas of cooperation covered under the Convention are directly related to very sensitive issues on which national states usually preserve their sovereignty, not all EC/EU members wanted to participate fully in the Convention. The UK, Ireland and Denmark for various reasons have sought and negotiated opt-outs of their full implementation of Schengen's provisions. They have subscribed to the freedom of movement of nationals of the member states but have retained national border controls for citizens of non-EC/EU countries. This is one of the reasons why cooperation on this issue is "a striking example of differentiated integration within the EC."⁹

Furthermore, over the years, some non-EC/EU members have been associated with cooperation in this area. These are Iceland, Norway and Switzerland, which together with the EU member states constitute the European Economic Area (EEA). As a result, despite the significant achievements towards reducing the salience of some borders between the member states of the EC/EU, the established regime has not unequivocally led to the diminished importance of borders and has in fact resulted in the construction of a rather complex system regulating the movement of people within the EC/EU territory and even beyond it. Nevertheless, the history of cooperation on these issues shows an important trend not only towards the gradual decrease of the significance of some important internal

⁷ See Part Two Citizenship of the Union in the Maastricht Treaty, pp. 5-6, available at <http://www.eurotreaties.com/maastrichtec.pdf>, accessed on 28.07.2008

⁸ See Article 48 of the Treaty Establishing the European Economic Community, p. 51, available at http://www.unizar.es/euroconstitucion/library/historic%20documents/Rome/TRAITES_1957_CEE.pdf, accessed on 28.07.2008

⁹ Desmond Dinan, *Ever Closer Union – an Introduction to European Integration* (3rd ed.) (Basingstoke: Palgrave Macmillan, 2005), p. 563

borders between the member states but also towards the progressive communitarisation of legislation in the field and the increasing powers of the European Commission.

Despite that, as I explained in Chapter Two, because of the intergovernmental origins of cooperation in this field, the Commission has had restricted powers in JHA issues in comparison to its prerogatives in the first pillar. In turn, this means that for the longest part of the period under consideration in this study, the Commission has had limited ability to successfully overcome reservations of the member states on various issues. It has been charged mainly with implementing decisions of the Council and has not advanced (with the notable exception of the linking between the internal market and JHA) readings that pose significant challenge to the member states' preferences. In this way, Commission discourse on border controls has by and large reproduced the configuration of borders of the Council. This issue is especially important for the reconstruction of internal borders, where some of the articulations reflect this distribution of power and point to the inability of the Commission to overcome opposition of the member states. It is also evident in the first reading, where some of the undertakings at the external EU borders, such as FRONTEX were proposed by the member states and were only partially modified by the Commission.

Given the constitutive nature of decisions regarding the powers of the Commission in a particular area, it should come as no surprise that the turning points in the development of border controls are often related to the Founding Treaties and their subsequent amendments.¹⁰ The first clear manifestation of the above trend after the initial steps undertaken in this issue area in the second half of the 1980s was the inclusion of cooperation on JHA as the so-called "third pillar" in the Treaty of Maastricht in 1992. This step meant that for the first time since its inception, cooperation in this field was formally a part of the European integration framework. Nevertheless, the stipulations of the Maastricht Treaty indicated that JHA was still cooperation based on intergovernmental, rather than supranational principles. As such, the role of the European Commission was limited. The key decision-making body was the Council of Ministers and in distinction to its unique role

¹⁰ For example, Kostakopoulou has adopted a three-phase periodisation, which is concurrent with the one I present here. See Theodora Kostakopoulou, 'The 'Protective Union': change and Continuity in Migration Law and Policy in post-Amsterdam', *Journal of Common Market Studies*, 38: 3 (2000), pp. 497-518, pp. 497-498

of legislation initiator on first (community) pillar issues, in the third pillar the Commission was sharing this right with the EU member states.¹¹ Despite this restricted role for the Commission, as I will show in the next section, there were some important policies undertaken in the sphere of border controls.

The second important constitutional development in this field in the 1990s came with the adoption of the Treaty of Amsterdam in 1997. The most important innovation under the Treaty's provisions in connection to third pillar issues was the transfer of a number of policy areas, such as visa and asylum, directly related to border controls from the third to the first pillar.¹² Thus, in effect Schengen was incorporated into the EC framework. In practice this was achieved through a protocol to the Amsterdam Treaty. It also stipulated for the non-EU Schengen member states' (the Iceland and Norway) association with the implementation of the Schengen acquis and its further development.¹³ As a result of the provisions of the Amsterdam Treaty, the decision-making process on matters such as visas, asylum and immigration was transformed. This transformation, however, was to take its full effect only after an initial transitional period of five years.¹⁴ During this time, the decision-making was to stay essentially intergovernmental with the Council of Ministers acting unanimously and the Commission sharing the right to legislative initiative. Only after these five years, was the more fully-fledged supranational decision-making to take effect with the Commission gaining the exclusive right to initiate legislation.¹⁵

¹¹ This summary is based on Emek Uçarer, 'Justice and Home Affairs' in Michelle Cini (ed.), *European Union Politics* (Oxford: Oxford University Press, 2005), pp. 294-311, p. 299. However, the Commission did not get shared right to initiate legislation in the areas of judicial co-operation in criminal matters, customs and police co-operation.

¹² For more details on the changes made to JHA at Intergovernmental Conferences in the period 1996-2004 see Arne Niemann, 'Dynamics and Countervailing Pressures on Visa, Asylum and Immigration Policy Treaty Revision: Explaining Change and Stagnation from the Amsterdam IGC to the IGC for 2003-04', *Journal of Common Market Studies*, 46: 3 (2008), pp. 559-591

¹³ Art. 6 of the Protocol Integrating the Schengen Acquis into the Framework of the European Union

¹⁴ As Sterkx points out, however, in 2004 the European Council decided to postpone the official application of this provision until 1 April 2005. See Steven Sterkx, 'The External Dimension of EU Asylum and Migration Policy: Expanding Fortress Europe?' in Jan Orbie (ed.), *Europe's Global Role – External Policies of the European Union* (Aldershot: Ashgate, 2008), pp. 117-138, p. 118 (in footnote 5)

¹⁵ These are a consequence of the provisions on these matters in Art. 2, point 15 of the Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts

Thus, the Treaty of Amsterdam contributed towards creating the conditions for more streamlined decision-making on some JHA issues. However, it also created a peculiar situation where part of the matters falling within the JHA cooperation were dealt with through supranational decision-making rules, while another part remained intergovernmental. This was therefore only a partial success for the supporters of the communitarisation of JHA policies because of the absence of conditions allowing for the all-out simplification of the existing regime of border controls (amongst other things). Hence, it is hardly surprising that in recent years one of the recurring themes in the Commission discourse on freedom of movement-related issues is the current decision-making structure and the problems associated with it.¹⁶ Nevertheless, such a development is probably best interpreted as an indication of the gradual spillover effect where over time the number of issues included in the first pillar incrementally increases and as a result, the areas of supranational decision-making where the Commission has important input into the legislative proposals rises. As far as the above-mentioned Commission articulations are concerned, they can be read as an indication of the promotion of its support for further integration and harmonisation of the current rules and procedures.

Furthermore, these developments also indicated the growing importance of Union cooperation on issues traditionally dealt with by Interior Ministries. This was confirmed by the meeting of EU leaders in Tampere in 1999, which was devoted exclusively to discussing JHA matters. It “signalled the member states’ political commitment to achieving real progress in the areas of asylum and immigration policy, border controls, and police and judicial cooperation.”¹⁷ It was at the Tampere meeting that the idea of the creation of an “area of freedom, security and justice” envisaged by the Amsterdam Treaty was given a more concrete essence. Furthermore, together with the earlier articulations of the establishment of an “area without internal frontiers where the freedom of movement is

¹⁶ See for example European Commission, *Area of Freedom, Security and Justice: Assessment of the Tampere Programme and Future Orientations*, COM (2004) 401 final, 02.06.2004, pp. 3-4; European Commission, *Strengthening Freedom, Security and Justice in the European Union: Report on the Implementation of the Hague Programme for 2005*, MEMO/06/252, 28.06.2006, pp. 1-2; European Commission, *Implementing the Hague Programme: the Way Forward*, MEMO/06/254, 28.06.2006, p. 6; European Commission, *From SIS to SIS II*, MEMO/05/188, 01.06.2005, p.1

¹⁷ Desmond Dinan, *Ever Closer Union – an Introduction to European Integration* (3rd ed.) (Basingstoke: Palgrave Macmillan, 2005), p. 572

guaranteed”, it constitutes one of the two most important articulations in Commission discourse that configure borders. It is to these and the main policies associated with them that I now turn my attention to.

3.2.2. Two main bordering articulations in the Commission discourse on border controls and policies stemming from them

The establishment of an area without internal frontiers was the dominant articulation used in Commission discourse on border controls in relation to the configuration of borders in the period from the mid 1980s to the adoption of the Treaty of Amsterdam. As we saw above, it stems from the efforts towards the establishment of the internal market in the EC/EU. However, as I discuss in detail in the next section, it was repeatedly linked in Commission discourse with the undertakings in the field of border controls. Nevertheless, given the delicate nature of the issues at hand as well as the way cooperation on the matter has developed, the Commission has adopted the position that: “Community legislation in this field [is to] be applied only to those cases where the legal security and uniformity provided by Community law constitutes the best instrument to achieve the desired goal. This would mean therefore that large scope would be left, at this stage, to cooperation among Member States notwithstanding the fact that the Commission should be permitted to participate, even on an informal basis ... with a view of ensuring compliance with the before mentioned objectives.”¹⁸ This position reflects the powers the Commission had at the time in this field. This is the main reason why during that period, some of the important policy decisions were negotiated at intergovernmental forums, where the Commission did not have significant input.

The most prominent examples of undertakings in the area of border controls during the period in question are the Dublin Convention on Asylum and the External Borders Convention. Although characterised by lengthy ratification procedures, these Agreements managed to put some of the important foundations of European level cooperation in the areas concerned. Despite the limited role given to the Commission at that time, within the

¹⁸ European Commission, *Communication on the Abolition of Controls of Persons at Intra-Community Borders*, COM (88) 640 final, 7.12.1988, p. 6

scope provided for it by the Schengen Convention and the EC Treaties, there were still some important proposals it made. These are dealing with the following main issues: the abolition of border controls at intra-community borders¹⁹ and the establishment of the right to travel freely within the Community,²⁰ as well as the right to reside in another member state for EU citizens,²¹ the establishment of a uniform format for Community visas,²² and the Community policy on immigration.²³ These allow summarising the main areas related to border controls as measures directed towards implementing the provisions of freedom of movement of persons and residence within the EC/EU, immigration and asylum policy, common visa policy, border control and management.

The second major period in the development of border controls-related issues starts with the adoption of the Treaty of Amsterdam in 1997. At that point a new main articulation that configures borders was advanced – the establishment of “an area of freedom, security and justice”, which was added as a new objective of the EU.²⁴ The way in which this articulation configures borders follows the same logic as the one of the area without internal frontiers, which I explained above. In tune with the meaning given to the establishment of “an area without internal frontiers”, the Presidency Conclusions of the Tampere European Council define the newly proclaimed area of freedom, security and justice as one where the right to move freely throughout the Union is ensured.²⁵ However,

¹⁹ European Commission, *Communication on the Abolition of Controls of Persons at Intra-Community Borders*, COM (88) 640 final, 07.12.1988; European Commission, *Abolition of Border Controls*, SEC (92) 877 final, 08.05.1992

²⁰ European Commission, *Proposal for a Regulation Determining the Third Countries whose Nationals Must be in Possession of a Visa when Crossing the External Borders of the Member States*, COM (93) 684 final, 10.12.1993; European Commission, *Proposal for a Council Directive on the Right of Third-Country Nationals to Travel in the Community*, COM (95) 346 final, 12.07.1995

²¹ European Commission, *Proposal for a Council Directive on Voting Rights for Community Nationals in Local Elections in their Member State of Residence*, COM (88) 371 final, 11.07.1988; European Commission, *Amended Proposal for a Council Directive on Voting Rights for Community Nationals in Local Elections in their Member State of Residence*, COM (89) 524 final, 17.10.1989

²² European Commission, *Proposal for a Council Regulation Laying Down a Uniform Format for Visas*, COM (94) 287 final, 13.07.1994

²³ European Commission, *Policies on Immigration and the Social Integration of Migrants in the European Community*, SEC (90) 1813 final, 28.09.1990

²⁴ Article 1, point 5 of the Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, p. 7, available at <http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf>, accessed on 29.07.2008

²⁵ Tampere European Council, *Presidency Conclusions*, p. 2, available at http://www.europarl.europa.eu/summits/tam_en.htm, accessed on 08.07.2008

according to the Commission, the new concept enshrined in the Amsterdam Treaty goes beyond the previous goals. It: “aims to give “freedom” a meaning beyond free movement of people across internal borders. It is also freedom to live in a law-abiding environment in the knowledge that public authorities are using everything in their individual and collective power (nationally, at the level of the Union and beyond) to combat and contain those who seek to deny or abuse that freedom.”²⁶ These aims can be read as a result of the gradual inclusion of new policy areas in the first pillar and of the increase of the number of areas in which the Commission has the power of legislative initiative. However, they can also be regarded as an expression of spillover effects, where integration and the decreased salience of internal borders move to new fields. As a result, the Commission discourse on JHA in this period often contains documents that are not directly linked to undertaking measures directed towards the establishment of the free movement of persons (which is concerned mainly with the freedom and security part of the area envisaged) but which are dealing instead with dismantling borders in the sphere of justice. Although there is a clear link between the first two and the third issue, the Commission documents aimed at creating the area of justice overall do not talk about border controls. Therefore, I have not examined in detail these articulations in the chapter.

The increased number of areas of concern is evident in the priorities outlined in the Commission documents. These are contained in the bi-annual Scoreboards, in which the Commission reviews the progress achieved on the Tampere Programme towards the establishment of the area of freedom, security and justice.²⁷ For example, the Scoreboard from the second half of 2003 enlists the following main areas of action: common EU asylum and immigration policy, genuine European area of justice, Union-wide fight against crime, policy on internal and external borders, visas, implementation of Article 62 of the EC Treaty, converting the Schengen acquis, citizenship of the Union, cooperation against drugs, stronger external action.²⁸ After the expiration of this Programme, a new one was

²⁶ European Commission, *Towards an Area of Freedom, Security and Justice*, COM (1998) 459 final, 14.07.1998, p. 5

²⁷ For a Table containing the full details of the Scoreboards issues until 2007 see http://ec.europa.eu/justice_home/doc_centre/wai/scoreboard_en.htm, accessed on 30.11.2007

²⁸ European Commission, *Biannual Update of the Scoreboard to Review the Progress on the Creation of an Area of “Freedom, Security and Justice” in the European Union*, COM (2003) 812 final, 30.12.2003

adopted – the Hague Programme, which formulates some of the policy areas slightly differently in comparison to the 2003 Scoreboard.²⁹ The detailed examination of the way in which Commission discourse configures borders in the areas listed in this document is presented in the next two sections. Although it spans documents related to a variety of these priorities, the issues most heavily related to border controls are the implementation of EU citizenship rights in practice, the fight against crime and terrorism, asylum and immigration, border management and visas. Therefore, my main focus has been to examine the configuration of borders in the documents on these issues.

As the presentation of the main policy areas related to border controls shows, an important distinction that arises from the discourse on these issues is the differentiation between nationals of EC/EU member states and nationals of non-EC/EU states.³⁰ This division can be traced even in the documents predating the Treaty of the European Union but with its adoption it became formalised and even more widespread. This is due to the establishment of the EU citizenship (referred to above), which confers certain rights to individuals holding the nationality of one of the Union's member states. A by-product of this, however, is the inevitable construction of another category of people, usually referred to as Third Country Nationals (TCNs) who because of their lack of EU citizenship cannot enjoy certain rights.³¹

Importantly, it is exactly the developments at EC/EU level that have created this situation. This is significant because it has allowed the Union member states to employ restrictive measures over border controls at its outer edges.³² Thus, the development of EU level cooperation allowed member states to achieve their domestic policy objectives while

²⁹ See European Commission, *The Hague Programme: Ten Priorities for the Next Five Years. The Partnership for European Renewal in the Field of Freedom, Security and Justice*, COM (2005) 184 final, 10.05.2005, pp. 4-7

³⁰ The latter are referred to as Third Country Nationals (TCNs) in the rest of the thesis.

³¹ A notable exception in this respect is the category of TCNs, who are family members of an EU citizen. This category of people enjoys a number of rights, including in the area of free movement within the territory of the EU. Another type of TCNs that have rights coming closer to these conferred upon EU citizens are TCNs who are long-term residents in one of the EU member states. I look into these in more detail in the next chapter, Free Movement of People.

³² For arguments along these lines see for example Gallya Lahav, *Immigration and Politics in New Europe – Reinventing Borders* (Cambridge: Cambridge University Press, 2004); Andrew Geddes, 'International Migration and State Sovereignty in an Integrating Europe', *International Migration*, 39: 6 (2001), pp. 21-42

avoiding the legal and political constraints that they would have faced at the national level.³³ Huysmans attributes the emergence of this restrictive regime to the two core assumptions that have guided the cooperation at EC/EU level, namely that illegal movements (including of people) happen primarily at the border and that the free movement of people is constituted by abolishing intra-Community border controls. According to him both assumptions are contestable.³⁴ Nevertheless, they have informed policy-making, which unsurprisingly under these circumstances has meant that under the process of European integration, migration is constructed as a security question.³⁵ As a result of such assumptions, the efforts at EU level have been towards fortifying the borders through the adoption of restrictive measures at the external edges of the Union.

As den Boer argues this occurred because the Commission and the member states' governments accepted and reproduced this thinking. Eventually, this resulted in these ideas acquiring the status of knowledge beyond the realm of the contestable.³⁶ This claim is significant for the present study because it indicates a logic opposing the one that has inspired the efforts for the single market. In tune with the developments anticipated by Neo-functionalists, it implicates the Commission in the blatant construction of EU's external borders. At the same time, according to Geddes, the supranational institutions: "have done their best to push towards harmonization and to make existing harmonization as expansive as possible."³⁷ For example, as Boswell maintains, after 1997 the Commission has utilised its new powers and has put forward a number of proposals and has developed new methods for monitoring harmonisation.³⁸ Thus, regarding the first reading, the

³³ Andrew Geddes, 'International Migration and State Sovereignty in an Integrating Europe', *International Migration*, 39: 6 (2001), pp. 21-42, p. 28

³⁴ Jef Huysmans, 'The European Union and the Securitization of Migration', *Journal of Common Market Studies*, 38: 5 (2000), pp. 751-777, p. 759. Other studies make the same argument. See for example Jörg Monar, 'The Dynamics of Justice and Home Affairs: Laboratories, Driving Factors and Costs', *Journal of Common Market Studies*, 39: 4 (2001), pp. 747-764

³⁵ Jef Huysmans, 'The European Union and the Securitization of Migration', *Journal of Common Market Studies*, 38: 5 (2000), pp. 751-777

³⁶ Den Boer cited in Arne Niemann, Phillippe Schmitter, 'Neofunctionalism' in Thomas Diez, Antje Wiener (eds), *European Integration Theories* (2nd ed.) (Oxford: Oxford University Press, 2009), pp. 45-66, p. 59

³⁷ Geddes cited in Terri Givens, Adam Luedtke, 'The Politics of European Union Immigration Policy: Institutions, Salience and Harmonization', *Policy Studies Journal*, 32: 1 (2004), pp. 145-165, p. 151

³⁸ Christina Boswell, *European Migration Policies in Flux – Changing Patterns of Inclusion and Exclusion* (Oxford: Blackwell, 2003), p. 110

Commission has a Janus-faced role in the field of border controls. On the one hand, it argues in favour of further harmonisation which contributes to the decreased importance of borders inside the EU. On the other hand, it accepts and promotes the argument that illegal movement happens primarily at the borders, which makes it to push towards strengthening the external borders of the Union. This leads to the erection of a new border at the outer edges of the EU. In the next section I present a detailed account of how the Commission discourse on border controls has articulated the assumptions that have guided the efforts under Schengen as well as its position on further harmonisation in this policy field. These are also the main articulations that configure borders. Following the distinction between EU/non-EU nationals, the presentation is also divided into interpreting documents dealing with EU citizens and documents dealing with non-EU nationals.

3.3. Decreased Importance of Intra-Community Borders and the Construction of the External Union Border through Commission Discourse on Border Controls

The area of border controls is a unique one in comparison to the rest of the policy areas examined in this thesis because it is the only one that contains references to the EU's external border that construct it openly but maybe even more importantly it does so unapologetically. On the contrary, as I will show below, in this policy area, perhaps more than in any other one included in this thesis, the Commission discourse provides rational argumentation for the need of an external EU border. Therefore, in this chapter I examine the decreased salience of internal borders and the construction of the EU's external border in one section. In the field of border controls, both of these tendencies are easily noticeable from the Commission discourse. Therefore, in tune with the differentiation made in Chapter Two, I classify them as first reading.

3.3.1. De-bordering tendencies

In this section I focus on examining in detail how the discourse of the European Commission has promoted the decreased salience of borders between the member states. In

doing this I build upon the above-discussed issues. I present the measures articulated in Commission discourse that are aimed at achieving in practice the establishment of the areas without internal frontiers and of freedom, security and justice. These are classified along the lines of the rights of EU citizens to movement and residence within the territory of another member state; the current regime for free movement of TNCs and the establishment of European identity. Also I show the grounds on which the Commission has advocated these policies. The rationale presented in its documents concurs with the arguments of Huysmans and Geddes that the Commission has promoted harmonisation as a way of achieving the goal of free movement of people in the EC/EU.

As I said above, one of the important reasons for the successful increase of cooperation in the field of border controls has been the functional spillover to this policy from the single market. The Commission discourse strongly promotes such thinking. This is articulated through linking the achievement in practice of the goals of the SEA with the abolition of intra-Community border controls. The rationale advanced in Commission documents has been that without lifting intra-Community border controls, the goals of the SEA cannot be achieved. For example, the Commission's stance has been that the achievement of the goal of establishing the single market requires all checks and formalities at internal Community borders to be abolished because: "the continued existence of just one of them would undermine the political objective laid down"³⁹ in the SEA. Thus, for the Commission: "One of the essential aspects of any internal market is *the right of any person lawfully in that market to move freely to any point therein in order to obtain goods and receive services there*. In other words, an internal market ... cannot function properly if the movement of persons within it is hampered. It will be unable to offer all the economic benefits that can be expected of the integration of national markets ... if some people are prevented from, or have difficulty in, moving in that market ... But the economic disadvantages are just as tangible when the obstacles to movement within the internal market stem from legal disparities which lead to the introduction of procedures and controls

³⁹ European Commission, *Abolition of Border Controls*, SEC (92) 877 final, 08.05.1992, p. 8

which in turn prevent or impede the movement of persons.”⁴⁰ The Commission interprets this concept as a Community-wide market that operates under conditions equivalent to those of a national market.⁴¹ Thus, the full benefits expected from the single market can only be achieved if everyone on the territory of the Union can move freely within the whole of it. The fulfilment of this requirement is only possible, however, if certain measures are undertaken in the area of border controls. Importantly, according to the Commission, the way to guarantee this is very specific. Allowing the single market to function along the provisions of national markets is: “an objective that goes beyond the mere easing of frontier controls”; it is a goal that necessitates internal frontier controls to be abolished.⁴² This articulation is crucial because it promotes a radical change in the way the movement of production factors between the member states is regulated. It argues in favour of complete eradication of national border controls, which is a position that dents deeply into state sovereignty.

Thus, these Commission articulations clearly promote the adoption of ideas that, if accepted, will require a higher involvement and importance of the EU-level institutions. Hence, such articulations increase the relative powers of the supranational institutions. As a result, this position was bound to encounter resistance from the member states. This resistance is not completely overcome even at the time of writing because as I said above, some member states have opted-out of certain Schengen provisions on border controls. Nevertheless, as the discussion below shows, the Commission has over the years managed to secure acceptance and implementation of some of its radical interpretations.

Another way in which the European Commission has advocated the decreased salience of internal borders for movement of persons in recent years, is on the grounds of the increased importance EU citizens attach to issues related to it and their understanding that action undertaken at EU level provides the appropriate way to respond. According to Commissioner Franco Frattini: “... we have expectations from our very own EU citizens to

⁴⁰ European Commission, *Proposal for a Council Directive on the Right of Third-Country Nationals to Travel in the Community*, COM (95) 346 final, 12.07.1995, p. 4 (emphasis in the original)

⁴¹ European Commission, *Abolition of Border Controls*, SEC (92) 877 final, 08.05.1992, p. 8

⁴² European Commission, *Communication on the Abolition of Controls of Persons at Intra-Community Borders*, COM (88) 640 final, 07.12.1988, p. 5

fulfil. “Eurobarometers” and other polls continue to indicate that if there is one policy area in which EU citizens ... are in favour of a common, an EU, approach, than it is that of combating organized crime and terrorism ... It is therefore ... our citizens expectation that the prevention and the fight against such cross-border organized crime can no longer be tackled merely at the national level, but instead can only be addressed effectively with a cross-border, common EU approach: indeed this is an area in which Europe not only can but *should* make the difference!”⁴³ Importantly, this articulation also promotes explicitly action at supranational level, which is the level where the Commission has greatest leverage. The increased importance of border controls-related issues in recent years is further reflected in the following data: 17 per cent of all legislative proposals of the Commission are in the area of freedom, security and justice⁴⁴ and according to Commission Vice-President Frattini: “Almost one in five of all major Commission initiatives concern Justice, Freedom and Security.”⁴⁵

As such, the main themes in the rationales for decreasing the importance of borders between EU member states boil down to economic reasons and popular requirements. By themselves these are not unique for this policy area alone because similar reasons are used to justify action towards diminishing the significance of borders in other policy areas, as the analysis in the other empirical chapters of this thesis shows. What is distinctive about this particular policy area, however, is the specific way in which the de-bordering trend is articulated in the discourse of the European Commission. In contrast to the social policy, where the decreased importance of internal EU borders is attained primarily through the construction of a common European identity, in the area of border controls the de-bordering tendencies in the Commission discourse are articulated predominantly through formulation

⁴³ Franco Frattini, *Speech at the Inauguration of Mr Ratzel as Director of Europol*, SPEECH/05/297, 24.05.2005, p. 2 (emphasis in the original). For other documents containing similar ideas see for example: Franco Frattini, *Inauguration Speech of the Frontex Agency*, SPEECH/05/401, 30.06.2005, p. 2; Franco Frattini, *Declaration on Terrorism*, SPEECH/05/487, 07.09.2005, p. 2; European Commission, *Commission Presents Comprehensive Counter-Terrorism Package*, IP/05/1166, 21.09.2005, p. 2; Franco Frattini, *Responses to the Threat of Terrorism and Effects on Communities*, SPEECH/05/718, 24.11.2005, p. 2

⁴⁴ European Commission, *From Tampere to Tampere: Commission Responds to EU Citizen's Demands to Build up Europe as an Area of Freedom, Security and Justice*, IP/06/848, 28.06.2006, p. 1

⁴⁵ European Commission, *The Hague Programme – Scoreboard Shows for 2006 Both Good Progress and Unacceptable Delays in Area of Freedom, Security and Justice, and Underpins the Need to End EU-Pillar Structure in This Area*, IP/07/1005, 03.07.2007, p. 1

of measures removing the existing obstacles to movement (i.e. the need to attain visa or the necessity to pass through customs and police formalities at the borders of a member state). As such, they facilitate movement on the territory of the EU by dismantling previously existing physical borders between the member states.

The Commission understanding of physical borders can be derived from the following quotation: “If the Community is to become a genuine internal market and if this market is to operate under the same conditions as a national market, physical frontiers must be abolished. This means the abolition of all controls, formalities, procedures, checks, examinations, inspections, etc. ... at internal frontiers, just as there are no border controls between regions in national markets.”⁴⁶ The Commission advocates that this will dismantle: “... all obstacles to the operation of the common market arising from the existence of internal frontiers [which] must be eliminated by 31 December 1992 at the latest”.⁴⁷

The articulations of the Commission on the abolition of physical borders contribute to the further undermining of previously existing divisions. They acknowledge that the achievement of a genuine area allowing for the free movement of people will not be possible if within it member states continue to make a differentiation in the nationality of the person exercising their right of free movement within the EC/EU: “The complete abolition of physical frontiers for individuals exercising their right of freedom of movement necessarily implies the complete abolition of controls on all individuals who cross internal borders, irrespective of their nationality.”⁴⁸ This formulation is not only an expression of the Commission’s understanding of how the political objective of creating the internal market is to be achieved but importantly, it is also one that implies that the formal distinction between member states’ nationals and TCNs when they exercise their right of free movement within the Schengen territory should be made redundant. In turn this undermines the national borders of the participating member states because they lose their previously existing ultimate control over the entries to and exits from their territories if the persons crossing the border come from a Schengen-participating member state.

⁴⁶ European Commission, *Abolition of Border Controls*, SEC (92) 877 final, 08.05.1992, p. 9

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*, p. 12

Importantly, this also concurs with the Commission understanding presented above of how the internal market should function in terms of free movement of people.

An analysis of the documents of the European Commission shows that it has achieved further progress towards implementing its understanding. This is evident in the position of the Commission that free movement of persons must not be confined only to workers from another member state, but has to encompass non-economically active nationals of the Community as well as citizens of non-member countries.⁴⁹ Over the years, the Commission has made some important proposals that have contributed towards the implementation in practice of the basic principles advanced by it, thus contributing towards the dismantlement of physical borders between the member states and the de-bordering of the EU territory. These include a variety of proposals on concrete measures that concern the freedom to travel within the Schengen territory of TCNs and the rights of residence anywhere in the EU of its citizens.

A good illustration of how this is done in respect to EU nationals can be provided with three Commission documents on the issue.⁵⁰ As I said above, in the years following the SEA the set of rights conferred to nationals of the member states as well as the scope of people that enjoy them expanded. More specifically: “These extended rights are contained in three Directives adopted on 28 June 1990 on the right of residence of students, retired persons and other non-economically-active persons.”⁵¹ Importantly, the Commission Report on the Implementation of the Directives on the Right of Residence deals with the transposition process and measures of the three Directives of all the member states, including those that have negotiated opt-outs (UK, Ireland and Denmark) from their participation in certain Schengen measures. As such, this discourse contributes to the decreased salience of the national borders of all the member states and constructs a border-

⁴⁹ Ibid., p. 10

⁵⁰ I do not provide here an analysis of a higher number of Commission documents because the right to residence, which is articulated together with the right to movement within the territory of the EU is intrinsically related to the issue of free movement of people. As such, I will provide a detailed analysis of the configuration of borders of Commission documents on these matters in the next chapter.

⁵¹ European Commission, *Report on the Implementation of Directives 90/364, 90/365, 93/96 (Right of Residence)*, COM (1999) 127 final, 17.03.1999, p. 2

free area encompassing the whole territory of the EU. As I show later, this is not the case with respect to the abolition of internal Union borders, if they are crossed by TCNs.

Despite this de-bordering discourse of the Commission, according to the Report of the High-Level Panel on the Free Movement of Persons, there are still: “persistent obstacles to the right to move and reside freely in the territory of the Member States,” which are of the following main types: “continued existence of checks at internal frontiers, shortcomings in administrative practices and legislative deficiencies.”⁵² Furthermore, according to the Commission the: “step-by-step extension has meant ... that beneficiaries have been compartmentalized in a way that is no longer in keeping with modern forms of mobility or with the establishment of citizenship of the Union.”⁵³

In order to address these obstacles and thus reduce further the existing border controls over EU citizens within its territory, the Commission has sought to develop: “a single set of rules on free movement”.⁵⁴ To that end in 2001 it adopted a proposal that aimed to review and facilitate the exercise of the right of free movement for EU nationals and their family members. The Council and the Parliament subsequently adopted this proposal in April 2004.⁵⁵ The clauses of the proposal contribute to the de-bordering in the Union in two main ways. Firstly, these clearly show the Commission’s aim to continue to promote free movement for these categories of people that were not entitled to it under the initial provisions of the Treaty of Rome: “The development of mobility of students, researchers, those undertaking training, volunteers, teachers and trainers is recognized as a political priority of the European Union.”⁵⁶ Secondly, it introduces a number of important innovations with regard to previously existing law. One of them is the codification of a complex corpus of legislation and extensive case law of the ECJ into a single, simple legal instrument. This makes the right to free movement more transparent and easier to apply.

⁵² The quotation and the typology are from European Commission, *Communication on the Follow-up to the Recommendations of the High-Level Panel on the Free Movement of Persons*, COM (1998) 403 final, 01.07.1998, p. 2

⁵³ *Ibid.*, pp. 8-9

⁵⁴ *Ibid.*, p. 2

⁵⁵ http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=165821#364809, accessed on 21.04.2009

⁵⁶ European Commission, *Proposal for a European Parliament and Council Directive on the Right of Citizens of the Union and Their Family Members to Move and Reside Freely within the Territory of the Member States*, COM (2001) 257 final, 29.06.2001, Preamble, point 4

The other modifications are the creation of a single legal regime for free movement and residence for all categories of Union citizens, the improvement and facilitation of the exercise of the right of residence through the extension of family reunification rights, the introduction of autonomous right of residence for family members, or the reduction of administrative formalities.⁵⁷ All in all, these provisions will contribute to further reduction of previously existing formalities at the borders, hence leading to less border controls. Thus, these articulations of the European Commission clearly contribute to the decreased salience of borders inside the territory of the Union. Furthermore, importantly, they show that the Commission has consistently aimed to promote and implement its interpretation of the areas without internal frontiers and freedom, security and justice. It does that by extending the provisions for free movement to cover an ever-wider number of categories of people.

This trend is continued in the second main category of Commission documents that promote decreasing importance of internal borders. These are the undertakings in the field of establishing the right of TCNs to travel freely inside the EU through abolishing controls at the internal borders. This is directly related to the Commission understanding, presented above, that if the political objectives of the internal market are to be achieved, it will be necessary to go beyond mere easing of border controls and instead create an area where people can circulate freely irrespective of their nationality. This requires actions at EC/EU level that allow physical controls of TCNs previously exercised at national borders of member states to be disposed of. There are two major fields in which the Commission has undertaken actions that contribute to this aim – the establishment of a EU regime for entry into its territory and the undertaking of measures that will ensure the security of this area. These have led to the creation of common visa policy, the establishment of EU-level information systems (Visa Information System – VIS and Schengen Information System – SIS) and in more recent years a more pronounced trend towards common management of the external Union borders.

⁵⁷ As summarised in European Commission, *Enhancement of Free Movement and Residence Rights for EU Citizens: a New Milestone in EU Integration Process*, IP/06/554, 02.05.2006 and European Commission, *The Directive on the Right to Move and Reside Freely in the Union/ Seven Million European Citizens Already Live in Another Member State*, MEMO/06/179, 02.05.2006

A brief outline of the Commission discourse in each of the above will show that the aims pursued straightforwardly abolish border controls between Schengen-participating member states. Prior to the entry into force of the Schengen Agreement in 1995, the right of entry and residence of TCNs even for a short period was: “governed by Member States’ domestic laws, which are neither harmonized nor coordinated.”⁵⁸ This is a situation that clearly clashes with the principles of the internal market upheld by the Commission. Therefore, it adopted a Directive proposal that stipulates that: “Member States shall grant third-country nationals ... the right to travel in the territories of the other Member States ...”.⁵⁹ In order to enable the implementation of this right, in the same proposal the Commission advocated the acceptance of the principle of equivalence between residence permits issued by member states and visas and the principle of mutual recognition of visas. The latter, however, can only be applied if there are “harmonized criteria applicable to the issue of visas, that is to say to visas valid for the whole Community.”⁶⁰ Thus, according to the Commission: “the objective of Article 100c(1) of the EC Treaty [is the] complete harmonization of visa policies.”⁶¹ The Commission, however, eventually withdrew this proposal.⁶²

Despite that, several Commission documents envisaged different measures contributing to the achievement of its aim. There has been a proposal for a regulation that sets out the uniform format for the visas issued by the member states,⁶³ a Communication that listed the TCNs who need a visa when crossing the external borders of the Union and those that are exempted from this requirement,⁶⁴ a proposal for a Directive establishing a

⁵⁸ European Commission, *Proposal for a Council Directive on the Right of Third-Country Nationals to Travel in the Community*, COM (95) 346 final, 12.07.1995, p. 5

⁵⁹ Article 1, point 1 in *Ibid.*, p. 21

⁶⁰ The quotation and the principles are from *Ibid.*, p. 6

⁶¹ *Ibid.*, p. 18

⁶² European Commission, *Withdrawal of Commission Proposals*, COM (2001) 763 final/2, 21.12.2001, p. 30

⁶³ European Commission, *Proposal for a Council Regulation Laying Down a Uniform Format for Visas*, COM (94) 287 final, 13.07.1994; European Commission, *Proposal for a Regulation of the European Parliament and of the Council Amending the Common Consular Instructions on Visas for Diplomatic Missions and Consular Posts in Relation to the Introduction of Biometrics Including Provisions on the Organization of the Reception and Processing of Visa Applications*, COM (2006) 269 final, 31.05.2006

⁶⁴ European Commission, ‘Communication in Application of Council Regulation (EC) No 539/2001 of 15 March 2001 Listing the Third Countries Whose Nationals Must be in Possession of Visas when Crossing the External Borders and Those whose Nationals are Exempted from that Requirement’, *Official Journal of*

general consistency of the provisions regulating the free movement of TCNs within the EU and guaranteeing the same interpretation of the requirements for the various categories of TCNs across the member states,⁶⁵ and a proposal establishing a Community Code on visas.⁶⁶ The first of these proposals was adopted in April 1995,⁶⁷ the Commission in March 2006 withdrew the third one,⁶⁸ the second one has been accepted but the list of countries has changed several times since the initial proposal was made and the last one is still pending final decision at the time of writing.⁶⁹ Despite this mixed overall success on the acceptance of Commission proposals on these matters, in general the Commission has managed to attain an acceptance of the main principles it has supported. Nowadays, as a result of various provisions, even TCNs can travel within the territory of Schengen-participating countries with much fewer formalities. This is a sign that over the years the Commission as the representative of the common interests has managed to secure agreement on practical issues, such as the common lists of TCNs that need visas when entering the territory of Schengen.⁷⁰ These make some of the aims of SEA and Tampere a reality, thus establishing a common space between the territories in question.

Another strand of measures that imply a similar configuration of borders are those adopted by the Commission with the objective of ensuring the abolition of intra-Community border controls at a high level of security. The most prominent amongst them

European Communities, C 363/21, 19.12.2001, pp. 21-30. This List has subsequently been amended but has retained the same principles.

⁶⁵ European Commission, *Proposal for a Council Directive Relating to the Conditions in which Third-Country Nationals Shall Have the Freedom to Travel in the Territory of the Member States for Periods not Exceeding Three Months, Introducing a Specific Travel Authorization and Determining the Conditions of Entry and Movement for Periods not Exceeding Six Months*, COM (2001) 388 final, 10.07.2001

⁶⁶ European Commission, *Proposal for a Regulation of the European Parliament and of the Council Establishing a Community Code on Visas*, COM (2006) 403 final, 19.07.2006

⁶⁷ See http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=101280, accessed on 21.04.2009

⁶⁸ European Commission, *Outcome of the Screening of Legislative Proposals Pending before the Legislator*, COM (2005) 462 final, 27.09.2005, p. 9. The Communication does not make the reason for the withdrawal of this proposal explicit, thus it is not possible to establish what exactly the grounds on which it was deemed inconsistent with the Lisbon objectives are.

⁶⁹ See http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=194509, accessed on 21.04.2009

⁷⁰ For more details on the initial stage of developing Commission proposals on common visas see Jörg Monar, 'The Dynamics of Justice and Home Affairs: Laboratories, Driving Factors and Costs', *Journal of Common Market Studies*, 39: 4 (2001), pp. 747-764, esp. p. 751

have been the proposals in relation to the VIS and SIS I and II, EURODAC⁷¹ as well as the gradual establishment of common management of the external borders of the Union through FRONTEX⁷² or the joint maritime patrols in the Mediterranean Sea. In Commission discourse the various information exchange systems are articulated as an expression of compensatory measures necessary for the improvement of cooperation and coordination between the authorities of the member states in order to guarantee the internal security in the area of free movement.⁷³ VIS, for example: “shall improve the administration of the common visa policy, the consular cooperation and the consultation between central consular authorities ...”⁷⁴, while the External Agency for the Management of Operational Cooperation at the External Borders of the Member States (FRONTEX): “will coordinate/ assist the competent services of Member States responsible for implementing Schengen acquis on control of persons at the external borders ...”⁷⁵

Importantly, at least for some of the above measures (such as FRONTEX), the initiative for their establishment was not with the Commission but with the Council. However, as a study by Neal shows, in the case of FRONTEX the Commission has not only accepted and reiterated the aims that guided its establishment but also had important input during the process of negotiating the exact details of the envisaged body.⁷⁶ Nevertheless, as the research on FRONTEX shows, in the early stages of negotiating the

⁷¹ In European Commission, *EURODAC Guarantees Effective Management of the Common Asylum System*, MEMO/05/214, 21.06.2005, p.1, EURODAC is defined as the EU-wide fingerprint database for the comparison of the fingerprints of asylum seekers and illegal immigrants.

⁷² According to its web site, FRONTEX strengthens the freedom and the security of the citizens of the EU by complementing the national border management systems of the member states and actively promotes the cooperation among border related law enforcement bodies responsible for the internal security at EU level. See http://www.frontex.europa.eu/more_about_frontex/, accessed on 21.04.2009

⁷³ Some studies have focused on how different compensatory measures are framed as security issues, while others have argued that any such measures have limited ability to provide the sought-after complete security within the frontier-free area. See respectively Jef Huysmans, *European Identity and Migration Policies. Socio-Economic and Security Questions in a Process of Europeanisation*, paper prepared for the Annual BISA Conference held at the University of Durham, 16-18 December 1996 and Didier Bigo, ‘Frontiers and Security in the European Union: the Illusion of Migration Control’ in Malcolm Anderson, Eberhard Bort (eds), *The Frontiers of Europe* (London: Pinter, 1998), pp. 148-164

⁷⁴ European Commission, *Proposal for a Regulation of the European Parliament and of the Council concerning the Visa Information System (VIS) and the Exchange of Information between Member States on Short Stay-Visas*, COM (2004) 835 final, 28.12.2004, p. 1

⁷⁵ European Commission, *Basic Facts about the External Borders Agency*, MEMO/05/230, p.1

⁷⁶ Andrew Neal, ‘Securitization and Risk at the EU Border: the Origins of FRONTEX’, *Journal of Common Market Studies*, 47: 2 (2009), pp. 333-356, esp. pp. 339-341

cooperation at the EU's external borders, the Commission was supporting operationally independent European Border Guard. Such a position is in tune with Neo-functionalists' expectations. This, however, was not the preference of the member states.⁷⁷ In that respect, the establishment of FRONTEX is a good example of the merit of approaching Commission discourse as a result of complex interactions during which decisions are negotiated discussed in Chapter Two. Once a particular settlement is reached, it has wider repercussions, which in this case are related to the configuration of borders in Commission discourse. Therefore, I regard the Commission as being directly involved in (although maybe not always driving) the articulations of measures, which I interpret as contributing towards the creation of the supranational administration of the area of free movement.⁷⁸ The de-bordering trend in each of them as well as in their combination is in allowing to put in place an order that makes it possible to lift controls at national frontiers, thus establishing a unified space where people can move without having to face any formalities, delays or checks. This emergence of a supranational administration functions along two main lines.

Firstly, the databases (SIS, VIS, EURODAC) establish the conditions for exchange of information between the relevant authorities of the member states. Importantly, this still leaves the operational responsibilities primarily with the individual national authorities and the Commission continues to have limited involvement. Nevertheless, Commission discourse shows that it has promoted the establishment of these systems. According to former Commission Vice-President Frattini: "The Commission's role is to propose EU legislation corresponding to the needs of our common area of security and justice. Our aim is to give the relevant national services suitable tools for efficiently pursuing and

⁷⁷ See for example, Johannes Pollak, Peter Slominski, 'Experimentalist but not Accountable Governance? The Role of Frontex in Managing the EU's External Borders', *West European Politics*, 32: 5 (2009), pp. 904-924, pp. 908-909; Julien Jeandesboz, 'Reinforcing the Surveillance of EU Borders. The Future Development of FRONTEX and EUROSUR', *Challenge: Liberty and Security*, Research Paper no. 11, August (2008), p. 12; Helene Jorry, 'Construction of a European Institutional Model for Managing Operational Cooperation at the EU's External Borders: is the FRONTEX a Decisive Step Forward?', *Challenge: Liberty and Security*, Research Paper no. 6, March (2007), p. 2.

⁷⁸ Systems, such as VIS, SIS, etc. are important because as Huysmans has argued, the technologies of border controls are not simply instruments for controlling movement but also shape the particular modalities for conducting free movement in Jef Huysmans, 'A Foucauldian View on Spill-over: Freedom and Security in the EU', *Journal of International Relations and Development*, 7: 3 (2004), pp. 294-318. A later version is available in Jef Huysmans, *The Politics of Insecurity – Fear Migration and Asylum in the EU* (London: Routledge, 2006), ch. 6

prosecuting ... to set up frameworks for exchange of information. This is an area where action at the European level can bring clear benefits.”⁷⁹ Also a memorandum describes the development of SIS II as: “indispensable so that the new Member States can connect to the system and the Schengen area without internal border control can be extended ...”⁸⁰ Such articulations can be read as the Commission utilising the means at its disposal for harmonisation through promoting measures contributing to achieving its declared aim of abolishing internal border controls.

Secondly, measures such as the joint maritime patrols and FRONTEX provide opportunities for colleagues from different member states to work side-by-side. One outcome of such a practice can be the unification of working practices and the exchange of professional information and procedures. All of these in medium to long-term can contribute to the emergence of a common European space as a result of the decreasing internal differences within the EU. Also, importantly, these practices are different from the ways in which Commission discourse envisages the achievement of the diminished importance of national borders in other policy areas. For example, as I will show in Chapter Five, in social policy, the main way this is promoted is through establishing benchmarks and exchange of best practice. Arguably, the practices in the field of border controls can deliver results faster because they require a more direct and intense interaction between the professionals involved.

There is one significant difference in relation to the configuration of borders in these Commission documents and those decreasing the significance of borders for EU citizens. While, as I pointed out above, the provisions for the former are applicable to all member states and in that respect they result in affecting the whole territory of the EU, the latter do not apply in the same way on the whole area of the Union. The Commission provisions on border control-related documents for TCNs usually contain a clause devoted to the applicability to the UK, Ireland and Denmark.⁸¹ This is a consequence of the

⁷⁹ Franco Frattini, *The Fight against Terrorism*, SPEECH/05/474, 02.09.2005, p. 5

⁸⁰ European Commission, *Schengen: from SIS to SIS II*, MEMO/05/188, p. 1

⁸¹ See for example European Commission, *Proposal for a Regulation of the European Parliament and of the Council Concerning the Visa Information System (VIS) and the Exchange of Information between Member States on Short-Stay-Visas*, COM (2004) 835 final, 28.12.2004, p. 3; European Commission, *Proposal for a Council Directive Relating to the Conditions in which Third-Country Nationals Shall Have the Freedom to*

constitution of cooperation in this policy area. As such, these in practice constitute an area of this policy, where internal borders have not been dismantled completely and therefore, there still are physical obstacles to the free circulation of people as a result of the persistent existence of border controls. Namely, the opt-outs allow the principle of non-discrimination on grounds of nationality for all categories of people, upheld by the Commission, to not be applied in its entirety, thus recreating previously existing divisions but changing the way they work for novel, different types of people. However, in distinction to other instances of the construction of borders by Commission discourse when the Commission was not the one that initiated a particular bordering articulation such as FRONTEX, on this issue the Commission has not promoted this situation. Thus, I do not discuss it in greater detail in the section devoted to the reconstruction of internal borders in this policy area by the Commission discourse. Despite the differences in the borders constructed by the Commission discourse on border controls towards EU citizens and TCNs, they share one important commonality – they contribute to the decreased salience of borders between the member states participating in Schengen and construct a common European space.

Besides de-bordering through the abolition of physical barriers, which is constructed by the above articulations, the undermining of internal EU frontiers is also achieved by articulations that construct European identity within the area without internal frontiers/ of freedom, security and justice. Although not as strong a line in the discourse in this policy field as in some others (social policy), there are still articulations that can be interpreted as contributing towards the emergence of a common identity. There are two major themes in the discourse that have this effect – the EU citizenship as promoting the feeling of belonging into the Union and the necessity to develop mutual trust and enhance cooperation between the member states as a prerequisite for the successful achievement of the aims of the areas of free movement. These can be illustrated with the following examples, respectively: “Guaranteed permanent residence for Union citizens who have

Travel in the Territory of the Member States for Periods not Exceeding Three Months, Introducing a Specific Travel Authorization and Determining the Conditions of Entry and Movement for Periods not Exceeding Six Months, COM (2001) 388 final, 10.07.2001, p. 8; European Commission, *Proposal for a Regulation of the European Parliament and of the Council Establishing a Community Code on Visas*, COM (2006) 403 final, 19.07.2006, p. 13

chosen to settle long-term in another Member State strengthens *the feeling of holding a common citizenship ...*⁸²; “... these rights are becoming an integral part of the legal heritage of *every citizen* of the European Union ...”⁸³ and “This implies reinforcing the existing mutual trust with Member States ... For the fight against terrorism - and also organized crime – to be effective, the exchange of information between law enforcement authorities ... between different Member States is vital.”⁸⁴ The flip side of all the articulations examined so far, however, is that they simultaneously contribute to the construction of new external borders at the outer edges of the Union.

3.3.2. *The construction of EU’s external borders*

I said that Schengen is also directly associated with the so-called “fortress Europe”. As Huysmans’ and den Boer’s studies have argued, this fortress has emerged because EU institutions have continuously maintained that the aims of the SEA and Tampere can only be achieved if they are accompanied by compensatory measures at the external borders of the EU.

The Commission has been no exception to that trend. In fact, this is a recurring articulation in its documents. I will illustrate the reasoning on which such thinking is based with the following two examples. According to a memorandum from 2005: “The creation of an area where people can circulate freely should never represent a loss in terms of security for the Member States”.⁸⁵ Another document provides more details on this logic: “Free movement of persons within the Schengen area ... requires action to counter security deficits caused by the abolition of border controls as perpetrators of criminal acts are

⁸² European Commission, *Proposal for a European Parliament and Council Directive on the Right of Citizens of the Union and Their Family Members to Move and Reside Freely within the Territory of the Member States*, COM (2001) 257 final, 29.06.2001, Preamble, point 14 (emphasis added)

⁸³ European Commission, *Communication on the Follow-up to the Recommendations of the High-Level Panel on the Free Movement of Persons*, COM (1998) 403 final, 01.07.1998, p. 2 (emphasis added)

⁸⁴ Franco Frattini, *The Hague Programme: Our Future Investment in Democratic Stability and Democratic Security*, SPEECH/05/377, 23.06.2005, p. 3

⁸⁵ European Commission, *SIS II: Commission Presents a Set of Proposals for Enlarging the Schengen Area to the New Member States*, IP/05/651, 1.06.2005, p. 1

equally able to move as freely as law abiding citizens. Impunity caused by obstacles to cooperation must be removed.”⁸⁶

Because of this perception of a loss of security, it is argued that the actual achievement of the aim of free movement of people will not be possible without: “Solidarity, mutual trust and shared responsibility between Member States [which] is a key requirement in an area without internal borders ...”⁸⁷ As a result of such thinking, the Commission has come to promote the idea that the efforts towards the establishment of the area without internal frontiers and subsequently of the area of freedom, security and justice should be accompanied directly by a: “flanking measure to the free movement of persons with respect to external border controls”.⁸⁸ In the Commission’s view such measures should: “provide the legislative base for establishing the agreed rules for crossing the external borders in which all Member States can have confidence.”⁸⁹

Thus, the construction of the external EU border is grounded on the security perception that there are dangers to the common European space, which can be addressed if the necessary steps are taken at the external edges of the Union.⁹⁰ Although there has not been substantial change in the way these dangers are formulated, there have been slight alterations in the accents. While 15-20 years ago the aim was sometimes formulated more generally, as: “to enable threats to public policy and public security to be eliminated in the Member States”,⁹¹ currently, the most prominent threats, according to the documents of the Commission, are terrorism, organised crime and illegal immigration. This can be well

⁸⁶ European Commission, *Schengen Area – the Commission Proposes to Facilitate Cross-Border Surveillance and “Hot Pursuit” between Member States*, IP/05/970, 19.07.2005, p. 1. The same ideas are also expressed almost 20 years earlier in European Commission, *On the Abolition of Controls of Persons at Intra-Community Borders*, COM (88) 640 final, 7.12.1988, p. 32

⁸⁷ European Commission, *On Policy Priorities in the Fight against Illegal Immigration of Third Country Nationals*, COM (2006) 402 final, 19.07.2006, p. 3 (emphasis in the original)

⁸⁸ European Commission, *On a Common Policy on Illegal Immigration*, COM (2001) 672 final, 15.11.2001, p. 11

⁸⁹ European Commission, *Proposal for a Regulation Determining the Third Countries whose Nationals Must be in Possession of a Visa when Crossing the External Borders of the Member States*, COM (93) 684 final, 10.12.1993

⁹⁰ For a study that deconstructs this common understanding see Didier Bigo, ‘Frontier Controls in the European Union: Who is in Control?’ in Didier Bigo, Elspeth Guild (eds), *Controlling Frontiers – Free Movement into and within Europe* (Aldershot: Ashgate, 2005), pp. 49-99

⁹¹ European Commission, *Proposal for a Regulation Determining the Third Countries whose Nationals Must be in Possession of a Visa when Crossing the External Borders of the Member States*, COM (93) 684 final, 10.12.1993, p. 15

illustrated with the statement that: “The Union and the Member States must respond *together* in the fight against organized crime and terrorism, but also in the management of migration flows and the control of external borders.”⁹² This is because “Terrorism and organized crime will remain a constant threat in the coming years.”⁹³ and the perception that there is “mounting migratory pressure at the EU’s external borders.”⁹⁴ which require measures to “stop illegal immigration and to combat those who organize it.”⁹⁵ Thus, given these articulations, it can be concluded that the Commission endorses fully the logic that has led to the adoption of restrictive measures at the external EU borders.

Such articulations contribute to the construction of the external border of the Union because they promote the understanding that as a result of the commonality of the problems, a common response is necessary. Commission documents tap into this to promote the idea that: “The creation of an area of freedom, security and justice requires all Member States to effectively apply common rules. The common security system is only as strong as its weakest point.”⁹⁶ This understanding promotes the construction of the external EU border in two important ways – through constructing a common identity and through providing a rationale for common action at the Union level. The construction of common identity comes about as a side effect of internalising the understanding of mutual dependence that leads to the development of a feeling of solidarity, a “we-feeling”, which in turn constructs a common European identity. The latter, establishes the ground on which the perception that: “the creation of an area in which persons may move freely should be accompanied by measures with respect to external border controls, asylum and

⁹² European Commission, *Building an Area of Freedom, Security and Justice*, MEMO/07/271, 03.07.2007, p. 1 (emphasis added). For other Commission documents referring to these threats see for example European Commission, *Strengthening the European Union as an Area of Freedom, Security and Justice*, available at http://ec.europa.eu/justice_home/fsj/intro/fsj_intro_en.htm, p.2, accessed on 08.07.2008; European Commission, *Towards an Area of Freedom, Security and Justice*, COM (1998) 459 final, 14.07.1998, p. 7; European Commission, *Proposal for a Framework Decision on Exchange of Information under the Principle of Availability*, MEMO/05/367, 12.10.2005, p. 1; European Commission, *A Strategy on the External Dimension of the Area of Freedom, Security and Justice*, COM (2005) 491 final, 12.10.2005, pp. 4-5

⁹³ European Commission, *Implementing the Hague Programme: the Way Forward*, MEMO/06/254, 28.06.2006, p. 4

⁹⁴ European Commission, *On Policy Priorities in the Fight against Illegal Immigration of Third Country Nationals*, COM (2006) 402 final, 19.07.2006, p. 2

⁹⁵ European Commission, *On a Common Policy on Illegal Immigration*, COM (2001) 672 final, 15.11.2001, p. 25

⁹⁶ *Ibid.*, p. 10

immigration”⁹⁷ is advanced. The adoption and implementation of measures on these matters has led to the construction of a new regime that is enacted through putting in place physical obstacles to the free crossing of the external borders. The discourse of the Commission on this matter has two important features that are significant in terms of the thrust of this research – the first is related to the way the external border operates and the second to the way it is constructed within the Commission discourse.

The construction of the EU’s external border in the field of border controls is closely related to the establishment of Union citizenship. This citizenship defines a new area, the EU territory, as a place where certain rights, including freedom of movement without border controls can be exercised. The limit of applicability of these rights is where the external border lies. As explained above, every EU citizen has the right to enter the territory of the Union. Non-EU citizens, however, do not have the same right, even when possessing a visa.⁹⁸ It is this distinction in rights as well as the concrete measures undertaken for regulating the regime for entry into the EU territory that has constructed the external border of the Union.

As I pointed out above, the Commission has had limited ability to exercise independently any significant influence due to the particular way in which the cooperation in this issue area has evolved and to the powers it has commanded. However, I also said that the Commission as one of the supranational institutions of the Union has consistently promoted, within its powers, further harmonisation and as extended as possible cooperation. For example, in 1992 in a Communication subsequently examined by the Council and the European Parliament,⁹⁹ the Commission points out the problems that the intergovernmental framework creates and puts forward its position on the issue of abolition of border controls for individuals: “The work undertaken in the intergovernmental framework creates a problem of coherence with that carried out in the Community framework ... For the Commission this ambiguity could not bring into question the scope

⁹⁷ European Commission, *Proposal for a Regulation of the European Parliament and of the Council Establishing a Community Code on Visas*, COM (2006) 403 final, 19.07.2006, p. 36

⁹⁸ European Commission, *Proposal for a Council Directive on the Right of Third-Country Nationals to Travel in the Community*, COM (95) 346 final, 12.07.1995, p. 17

⁹⁹ From http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=103668#113617, accessed on 24.04.2009

of Article 8 A which imposes itself on the text of an intergovernmental convention ... Article 8a provides for the effective abolition by 31 December 1992 of all controls applied at internal frontiers ... the Commission as guardian of the Treaty, will have to ensure that this obligation is fulfilled and hereby declares that it is resolutely determined to use all legal and political means at its disposal to ensure that the work program stemming from Article 8a is carried out in full.”¹⁰⁰ In a similar way more recently, the Commission has referred to the length and difficultness of the decision-making process in JHA as an impediment to successful action¹⁰¹ and has argued in favour of the abolition of the pillar structure and the extension of the Community method to the whole JHA under the Constitutional Treaty.¹⁰²

Through their references to the complications posed by intergovernmental cooperation, these clearly indicate a position advocating further integration and determination to utilise all the competences at its disposal to achieve this. However, one of the outcomes of such undertakings is the emergence of external EU borders. For example, the documents of the European Commission promote this thinking: “A frontier-free area demands a common policy on freedom to travel in the territory of the Member States ... There is accordingly a need for a Community provision relating to persons who plan on moving within the frontier-free area ...”¹⁰³ Consequently, the control exercised over the crossing into the territory of the member states constitutes the establishment of the external border of the Union. Besides EU citizenship, this is achieved through measures in a number of other fields – visa, asylum application or border management – “... the creation of an area in which persons may move freely should be accompanied by measures with respect to external border controls, asylum and immigration.”¹⁰⁴

¹⁰⁰ European Commission, *Abolition of Border Controls*, SEC (92) 877 final, 08.05.1992, p. 6

¹⁰¹ Franco Frattini, *The Fight against Terrorism*, SPEECH/05/474, 02.09.2005, p. 5

¹⁰² European Commission, *Area of Freedom, Security and Justice: Assessment of the Tampere Programme and Future Orientations*, COM (2004) 401 final, 02.06.2004, p. 3 and p. 5. For a similar argument see also Antonion Vitorino, *Migration as a Resource to be Managed for the Mutual Benefit of Sending and Receiving Countries*, SPEECH/03/417, 18.09.2003, esp. p. 5

¹⁰³ European Commission, *Proposal for a Council Directive Relating to the Conditions in which Third-Country Nationals Shall Have the Freedom to Travel in the Territory of the Member States for Periods not Exceeding Three Months, Introducing a Specific Travel Authorization and Determining the Conditions of Entry and Movement for Periods not Exceeding Six Months*, COM (2001) 388 final, 10.07.2001, p. 5

¹⁰⁴ European Commission, *Proposal for a Regulation of the European Parliament and of the Council Establishing a Community Code on Visas*, COM (2006) 403 final, 19.07.2006, p. 36

The undertakings in these different fields share the aim of establishing the concrete conditions for entry into the territory of the Schengen-participating states and hence constitute the border controls exercised at the newly established external territorial borders of the EU. For example, according to the Commission, the common visa policy has to establish a body of common legislation. Among other things it should assure the harmonised application at operational level of practices and procedures to be followed by the diplomatic missions and consular posts of the member states when processing visa applications.¹⁰⁵ One of the overarching goals of the efforts in the field of common asylum policy is to establish standards applicable throughout the Union: “The purpose of the proposal for a directive on minimum standards on procedures in Member States for granting and withdrawing refugee status is to establish in the short term a minimum level of harmonisation of the rules applicable in the matter in the Community ... At a second stage, the definition of a common procedure implies restricting the possibilities for options in the areas where the first stage allows a degree of flexibility or the possibility of derogating from certain provisions.”¹⁰⁶

The articulations of the Commission show that common legislation and procedures in both policy areas have to address very similar problems, termed respectively “visa shopping”¹⁰⁷ and “secondary movement”¹⁰⁸ – the opportunity for TCNs to exploit any existing differences in national regimes for entry into the territory of a member state and from there through using the frontier-free area in the EU to move to the territory of other Union members whose national legislation would not have allowed them entry. This is well

¹⁰⁵ Ibid., p. 38

¹⁰⁶ European Commission, *Communication to the Council and the European Parliament Towards a Common Asylum Procedure and a Uniform Status, Valid Throughout the Union, for Persons Granted Asylum*, COM (2000) 755 final, 22.11.2000, p. 8

¹⁰⁷ See for example European Commission, *Proposal for a Regulation of the European Parliament and of the Council Amending the Common Consular Instructions on Visas for Diplomatic Missions and Consular Posts in Relation to the Introduction of Biometrics Including Provisions on the Organization of the Reception and Processing of Visa Applications*, COM (2006) 269 final, 31.05.2006, p. 2 and European Commission, *Proposal for a Regulation of the European Parliament and of the Council Concerning the Visa Information System (VIS) and the Exchange of Data between Member States on Short-Stay Visas*, COM (2004) 835 final, 28.12.2004, p. 1

¹⁰⁸ See for example European Commission, *Communication to the Council and the European Parliament Towards a Common Asylum Procedure and a Uniform Status, Valid Throughout the Union, for Persons Granted Asylum*, COM (2000) 755 final, 22.11.2000, p. 7

exemplified with the following statement from the common visa policy: “Member States could not be expected to recognize visas granted by each other without a minimum harmonization. Otherwise the Member States would lay themselves open to the abusive practice of “visa shopping”.”¹⁰⁹ The discourse of the Commission shows that the achievement of the goals of these policies in practice has taken the form of providing detailed guidelines on a number of technical issues, such as requirements of the uniform formats for visas and lists of countries whose nationals should have visas when entering the Union, the procedure for issuing them, the organisation of member states’ external representations in the sphere of common visa policy and setting up standards for receiving asylum seekers, and processing their applications as well as the procedure for granting and withdrawing asylum in the common asylum policy. Other measures advanced in the Commission discourse in the area of common visa policy are co-location¹¹⁰ and the establishment of common application centers for visas. The common application centers are envisaged as: “a first step towards the future European common consular service.”¹¹¹ In April 2007 the first Common Visa Application Centre was open in Moldova.¹¹²

As I explained in the previous section, all of the above measures can be read as contributing to the internal de-bordering in the EU. However, at the same time, they also construct a new border, one at the outer edges of the Union - the external EU border. In this

¹⁰⁹ European Commission, *Proposal for a Regulation Determining the Third Countries whose Nationals Must be in Possession of a Visa when Crossing the External Borders of the Member States*, COM (93) 684 final, 10.12.1993, p. 43

¹¹⁰ European Commission, *Proposal for a Regulation of the European Parliament and of the Council Establishing a Community Code on Visas*, COM (2006) 403 final, 19.07.2006, p. 62 defines co-location as occurring when staff from diplomatic and consular missions of one or more member states process the applications addressed to them at the diplomatic post and consular mission of another member state and share the equipment of this member state.

¹¹¹ European Commission, *The Hague Programme: Ten Priorities for the Next Five Years. The Partnership for European Renewal in the Field of Freedom, Security and Justice*, COM (2005) 184 final, 10.05.2005, p 6. For other documents advancing measures towards this aim see European Commission, *Building an Area of Freedom, Security and Justice*, MEMO/07/271, 03.07.2007, p. 6; European Commission, *The Hague Programme Ten Priorities for the next Five Years*, MEMO/05/153, 10.05.2005, p. 6; European Commission, *“Common Visa Application Centres” and Introduction of Biometrics in Visa Information System (VIS) will Reinforce Internal Security and Facilitate Legitimate Travelling to EU*, IP/06/717, .02.06.2006; European Commission, *Opening of a “Common Visa Application Centre” in Moldova*, MEMO/ 07/153, 25.04.2007, p. 2. Common application centers are a result of the pooling together in one building of the staff of diplomatic posts and consular missions of two or more member states in order to receive the visa applications.

¹¹² European Commission, *Opening of a “Common Visa Application Centre” in Moldova*, MEMO/07/153, 25.04.2007; European Commission, *The First EU “Common Application Centre” Opens in Moldova*, IP/07/561, 25.04.2007

policy field, given the concrete measures articulated in the Commission documents, it can be concluded that the external border is constructed mainly through putting in place modified physical obstacles to the entry of TCNs into the territory of the Union. As such, overall, the nature of most of the measures in question does not represent a qualitatively new development but is rather a modification of tools employed by individual nation-states. An important exception from this rule, however, is the very intensive exchange of information under the VIS, SIS and EURODAC databases between the relevant authorities of the member states. It has as one of its aims: “to facilitate checks at external border checkpoints and within the territory of the Member States”.¹¹³ To that end: “A joint list of persons to whom the Member States shall refuse entry to their territories shall be drawn up on the basis of national notifications...”¹¹⁴ Without a doubt such information exchange has become possible as a result of the technological advances in the last few decades. However, it can be quite safely guessed that the scale of the information transferred, in terms of the number of countries involved in the exercise as well as the amount of data loaded, is going to be at levels higher than the average rate for international exchange of information on security-related issues. Such density will not only be an indication for the decreased importance of intra-Community borders but will also contribute to the construction of the Union’s external border in two main ways. Firstly, through marking the area beyond which such intensive co-operation does not occur. Secondly, through a clear dividing line between those individuals that do not need their details to be uploaded into the databases (EU citizens, TCN - members of the family of EU citizen, TCNs that do not need visa to enter the territory of the Union) and those that do. The category of TCNs (those that need visa to enter the EU) is also the one that most clearly feels the newly constructed EU external border as difficult to penetrate from the outside. This is the main reason why the

¹¹³ European Commission, *Proposal for a Regulation of the European Parliament and of the Council Concerning the Visa Information System (VIS) and the Exchange of Data between Member States on Short-Stay Visas*, COM (2004) 835 final, 28.12.2004, p. 7. For similar thinking see also European Commission, *EU’s Biometric Database Continues to Ensure Effective Management of the Common European Asylum System*, IP/07/1347, 18.09.2007, p. 1; European Commission, *Eurodac: a European Union-wide Electronic System for the Identification of Asylum-seekers*, MEMO/06/334, 19.09.2006; European Commission, *Schengen: from SIS to SIS II*, MEMO/05/188, 01.06.2005

¹¹⁴ European Commission, *Proposal for a Regulation Determining the Third Countries whose Nationals Must be in Possession of a Visa when Crossing the External Borders of the Member States*, COM (93) 684 final, 10.12.1993, p. 27

overwhelming majority of existing studies on Schengen, as the Literature Review has shown, refer to the new regime as creating the “fortress Europe”.

As this discussion has shown, the major contribution by the Commission towards the construction of the EU’s external border in the field of border controls has been twofold. On the one hand it has been promoting greater harmonisation of the existing practices: “The Commission considers that the various provisions in force on the movement of third-country nationals in the territory of the Member States need an overall approach to establish general consistency and guarantee that the requirements for the various categories of third country-nationals are interpreted in the same way.”¹¹⁵ On the other hand, it has been supporting and facilitating more cooperation between the relevant authorities of the member states. One example of this is the Commission’s proposal (adopted by the Council in October 2006)¹¹⁶ on the establishment of a mutual information procedure on national measures taken in the areas of asylum and immigration that can affect other member states. According to Franco Frattini this mechanism: “will enhance trust among Member States and will facilitate, through mutual information, the adoption of coordinated approaches to solve questions of mutual interest.”¹¹⁷ Therefore, according to the Commission: “The purpose of this exchange of views is to facilitate the identification of problems of common interest ...”¹¹⁸

The above clearly shows that in the field of border controls, the Commission often makes references to the EU’s external borders. Although a side effect of the decreased salience of borders inside the Union is the construction of its external borders, in the field of border controls, the discourse of the Commission does that in a very explicit way. This sets it apart from the discourses in other policy fields. As I will show in the next chapters, in other policy areas the construction of external borders comes as a result of the

¹¹⁵ European Commission, *Proposal for a Council Directive Relating to the Conditions in which Third-Country Nationals Shall Have the Freedom to Travel in the Territory of the Member States for Periods not Exceeding Three Months, Introducing a Specific Travel Authorization and Determining the Conditions of Entry and Movement for Periods not Exceeding Six Months*, COM (2001) 388 final, 10.07.2001, p. 4

¹¹⁶ See European Council, *Decision on the Establishment of a Mutual Information Mechanism Concerning Member States’ Measures in the Areas of Asylum and Immigration*, 2006/688/EC, 05.10.2006

¹¹⁷ European Commission, *Commission Proposes a Better Exchange of Information on National Migration and Asylum Policies in the Union*, IP/05/1251, 12.10.2005, p.1

¹¹⁸ Ibid.

interrelation and inconsistency in the way issues in different policy areas are tackled (like in the ENP) or has to be deducted from the Commission discourse on the policy area in question (social policy). In the field of border controls, however, as the above discussion shows, the Commission very often explicitly makes references to the “external border/s” of the Union. In that respect, the construction of these borders is going to be contained in any attempt to recreate the discourse of the Commission in this field. Thus, I have classified it as belonging to the first reading, according to the methodological differentiation made in Chapter Two. This leaves only the analysis of the construction of internal borders in the EU by the Commission discourse on border controls for the second reading, which is presented in the next section.

3.4. The Construction of Internal Borders in the EU through Commission Discourse on Border Controls

Despite these configurations of borders in the Commission discourse on border controls, an analysis of its documents reveals that the opposite trend that contributes to the reconstruction of internal borders in the EU is still present. Below I present a detailed account of how this takes place. As in the other policy areas examined in this thesis, internal borders are reconstructed through the existence of contradictions and silences in the Commission discourse. In this policy area, three things stand out in particular. Firstly, the examined silences and contradictions contribute to the construction of border controls for one specific group of people, TCNs and do not affect EU nationals. Secondly, the reconstruction of internal territorial borders in the EU through Commission discourse in this policy area is a result of the limitations for the Commission in the institutional structure of the EU rather than a product of its own pursuits. As I explained in section 3.2.1., the intergovernmental nature of cooperation on border controls lasted until mid-2000s during which time particular patterns of solving border controls issues were established. These established approaches have tended, on certain issues, to emphasise the role of member states, which is normal for intergovernmental cooperation. However, because of path-dependency they still determine the trajectory of cooperation on border controls. As

Lavenex argues: “Although the Treaty of Amsterdam has shifted asylum and immigration from the intergovernmental third pillar to the Community pillar ... intensive transgovernmentalism still prevails ... limiting the scope for defining a common European asylum system”.¹¹⁹ This has left the Commission with little space for manoeuvring and has meant that over the years, its discourse has had to reproduce the agreed upon solutions, and as such contribute, to the reconstruction of internal borders in the EU. Thirdly, following the differentiation of types of internal borders outlined in section 2.2.1., the internal border articulated in this policy field is along the old dividing lines demarcating national divisions between the member states of the EU.

3.4.1. Absences from the discourse: common visa policy is for short-stay visas only

The first main way in which Commission discourse is involved in the reconstruction of internal borders in the EU is through the articulation of provisions that envisage the harmonisation of conditions for issuing visas for entry into the EU’s territory only for short stays.¹²⁰ Therefore, the common visa policy, which as I argued above contains a number of measures that imply de-bordering, in fact has the shortcoming that overall, it only deals explicitly with stays for up to three months. Thus, it does not tackle openly the issuing of visas for entering EU territory for longer stays. This was the case especially during the period prior to the signing of the Treaty of Amsterdam. Hence, although the articulations on this matter that I examined above have made significant contributions towards abolition of border controls in the EU for TCNs, currently not all border controls for TCNs are completely unified. The conditions for issuing visas for long stays into the territory of the member states remain by and large a prerogative of the relevant authorities of the state in question. This creates the conditions for the re-emergence in Commission discourse of references to “member states’ national legislation”. On one level, this clashes directly with the aims of the common visa policy because it goes against the proclaimed aim of

¹¹⁹ Sandra Lavenex, ‘The Europeanization of Refugee Policies: Normative Challenges and Institutional Legacies’, *Journal of Common Market Studies*, 39: 5 (2001), pp. 851-874, p. 854

¹²⁰ As Bigo and Guild clarify, the issue of long stay visas is only in the process of incorporation into the EU law. Thus, they also follow this division of visas into long and short stay ones in Didier Bigo, Elspeth Guild, ‘Policing at a distance: Schengen Visa Policies’ in Didier Bigo, Elspeth Guild (eds), *Controlling Frontiers: Free Movement into and within Europe* (Aldershot: Ashgate, 2005), pp. 233-263, p. 261

establishing an area where individuals can move freely within EU territory without border controls at intra-community borders. On another level, the common visa policy should be taken to mean all types of visas (short and long stay) and therefore, references only to short stay visas fall short of covering all visas that reasonably can be expected to be included. As such it is an example of the reconstruction of internal borders in the EU. Therefore, the absence of articulations, in the overwhelming majority of Commission documents, that contain explicit provisions for long-term visas to the EU are an important silence, which make it possible to recreate the divisions between the member states on a certain level. In turn, this is an example of the continued existence of non- unified border controls.

A few further examples will illustrate this point. Under the provisions of the common visa policy: “A Member State shall not require a visa issued by its own authorities of a person applying to stay for *a short time* within its territory who holds a uniform visa.”¹²¹ The EU Code on visas defines uniform visa as a visa that is “valid for the *entire* territory of the Member States.”¹²² Also, a person, holding a residence permit of a member state is entitled to enter the territory of other members for short stays.¹²³ These provisions unequivocally have de-bordering effects on internal border controls because they allow TCNs to cross the borders of Schengen-participating states for short stays (up to three months) with a visa/ residence permit issued by any of the other Schengen member states. The logical consequence of the qualifications contained in these provisions, however, is also the stipulation that: “Persons who propose to stay in a Member State other than for a short time shall enter that State under the conditions laid down in its national law”.¹²⁴ Therefore: “Visas for stays exceeding three months shall be *national* visas issued by one of

¹²¹ European Commission, *Proposal for a Regulation Determining the Third Countries whose Nationals Must be in Possession of a Visa when Crossing the External Borders of the Member States*, COM (93) 684 final, 10.12.1993, p. 32 (emphasis added). This is the case during the first three months of validity of the long-stay visa.

¹²² European Commission, *Proposal for a Regulation of the European Parliament and of the Council Establishing a Community Code on Visas*, COM (2006) 403 final, 19.07.2006, p. 41 (emphasis added)

¹²³ European Commission, *Proposal for a Regulation Determining the Third Countries whose Nationals Must be in Possession of a Visa when Crossing the External Borders of the Member States*, COM (93) 684 final, 10.12.1993, p. 25

¹²⁴ *Ibid.*, p. 26

the Contracting Parties in accordance with its national law.”¹²⁵ For TCNs who are not subject to visa requirement, the Schengen Implementing Convention states that each member state has the right to extend an alien’s stay on *its* territory beyond three months in certain circumstances.¹²⁶ Given these provisions it should come as no surprise that even as late as mid 2000s, the proposals of the Commission on common visa policy, which are still through the EU decision-making process,¹²⁷ talk about short-stay visas: “entry for an intended stay in that Member State or in several Member States of a duration of *no more than three months in total*”.¹²⁸ Also they state that further legal instruments will be needed to assure: “the exchange of data on long stay-visas which are not concurrently valid as short-stay visas by the VIS; this would need further political orientation in view of the absence of a common *acquis* for such visas.”¹²⁹ These, however, are only two examples of the recent manifestations of a trend in the Commission discourse on visas.¹³⁰

This trend indicates that in this discourse the Commission does not talk about common long-stay visas.¹³¹ Therefore, I classify that as a silence in its articulations. As the reference to the lack of an *acquis* for long-stay visas in the quotation above indicates, the reason for this absence is that currently there is no EU-level agreement for the issuance of

¹²⁵ Article 18, Convention Implementing the Schengen Agreement (emphasis in the original). This stipulation is repeated in Council of the European Union, *Regulation on Freedom of Movement with a Long-Stay Visa*, (EC) No 1091/ 2001, p. 2

¹²⁶ Article 20 (2), Convention Implementing the Schengen Agreement (emphasis in the original)

¹²⁷ http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=194509, accessed on 24.04.2009

¹²⁸ European Commission, *Proposal for a Regulation of the European Parliament and of the Council Establishing a Community Code on Visas*, COM (2006) 403 final, 19.07.2006, p. 41.

¹²⁹ European Commission, *Proposal for a Regulation of the European Parliament and of the Council Concerning the Visa Information System (VIS) and the Exchange of Information between Member States on Short-Stay-Visas*, COM (2004) 835 final, 28.12.2004, p. 2

¹³⁰ Other examples of key Commission documents referring only to short-stay visas are: European Commission, *Proposal for a Regulation of the European Parliament and of the Council Amending the Common Consular Instructions on Visas for Diplomatic Missions and Consular Posts in Relation to the Introduction of Biometrics Including Provisions on the Organization of the Reception and Processing of Visa Applications*, COM (2006) 269 final, 31.05.2006, particularly p. 5; European Commission, *Proposal for a Council Regulation Laying Down a Uniform Format for Visas*, COM (94) 287 final, 13.07.1994, p. 4; European Commission, *Proposal for a Regulation Determining the Third Countries whose Nationals Must be in Possession of a Visa when Crossing the External Borders of the Member States*, COM (93) 684 final, 10.12.1993, p.24

¹³¹ A very rare example of a Commission document referring explicitly to “long-term visas” is European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third Country Nationals for the Purpose of Paid Employment and Self-Employed Economic Activities*, COM (2001) 386 final, 11.07.2001, p. 4

long-term visas. Hence, this silence in the Commission discourse is because of the limits of the Commission to go beyond certain point. Currently it has no legal grounds on which to step in order to attempt to promote harmonisation. Despite that, as the discussion in Chapter Four shows, in recent years the Commission has been at the forefront of the efforts to harmonise and facilitate the movement of TCNs in the EU for work purposes. This is exemplified by the adoption of several proposals that provide for more favourable conditions for entry and residence for TCNs for work purposes. These imply the crossing of intra-EU borders and as such are related to the issue of border controls. Therefore, these articulations can be read as potentially facilitating the establishment of a common policy on long-term visas in the future. Nevertheless, currently these documents do not talk explicitly about “long-term visas”. As I discussed in Chapter Two, this may be due to the Commission anticipating the reactions of the Council. Therefore, this silence in its discourse is probably best interpreted as a result of a realistic calculation that currently any attempts to establish common policy on long-term visas do not have chances of success and therefore the Commission does not want to lose political capital. Nevertheless, I think that these absences are very important because they implicitly support the status quo established during the previous years and therefore contribute to the reproduction of the currently existing internal EU borders. This obstructs the achievement of the goals discernable from some Commission articulations (movement of TCNs in the EU for work purposes) as well as the emergence of the genuine border controls-free areas implied by the SEA and Tampere formulations.

This is because such an absence has important consequences on borders in the EU, which are contrary to the de-bordering trend evident in the Commission documents on border controls. The lack of harmonisation efforts in certain types of visas opens the door for references to the “member states”. In turn, such articulations point to the existence of national divisions within the Union, which is a sign of the persistent relevance of internal borders and border controls in the EU despite the efforts towards their abolition. Examples of these are the provisions that national law will guide the issue of long-stay visas and the stipulation that: “Member States shall ... take back any person to whom they have issued a residence permit or provisional residence permit ... and who is illegally resident in the

territory of another Member State.”¹³² These articulations point to the possibility that under certain circumstances different areas in the EU apply different rules with respect to border controls and free movement of TCNs, which is a clear example of the continued relevance of internal borders in the Union.

Importantly, it should also be noted that the absences in the Commission discourse on this issue reconstruct a specific kind of internal physical EU borders in that they are obstacles to the movement of TCNs only and are not applicable to EU citizens. As long as barriers to the movement of EU citizens are concerned, the current provisions in the *acquis* have led to the dismantlement of border controls for this category of people. There are, nevertheless, still specific requirements in terms of EU citizens’ right of residence in other than their member state, which can be interpreted as reconstructing internal EU borders. These, however, recreate functional borders and therefore are more closely related to the right of free movement of people. Thus, I examine them in detail in Chapter Four.

3.4.2. Inconsistencies in the discourse

The second main way in which Commission discourse on border controls can be interpreted as contributing to the reconstruction of internal borders in the EU is through the inconsistencies in the articulations in its documents. There are two main examples of that – the particular provisions of the procedure for applying for Schengen visas and the discourse on the common asylum policy. Again, in both cases the main cause of the Commission articulations is the established pattern of cooperation in JHA, which has left little space for the Commission to advance proposals that envisage greater involvement of the supranational level.

Due to references to “member states”, the latter can be regarded as displaying similar characteristics with the line in the Commission discourse examined in the previous section. Despite that, the articulations on the common asylum policy reconstruct internal borders in a different way – through inconsistency in the discourse, rather than silences in it. There is a clash within this discourse of the Commission between the articulations on the

¹³² European Commission, *Proposal for a Regulation Determining the Third Countries whose Nationals Must be in Possession of a Visa when Crossing the External Borders of the Member States*, COM (93) 684 final, 10.12.1993, p. 25

establishment of the EU as a unified area for asylum seekers and the continued references to “member states”. For example, the Green Paper on the future Common European Asylum System states that its idea is to make: “the European Union a single protection area for refugees ...”¹³³ The achievement of this goal requires diminished salience of borders between the EU members. To that end, as I showed in the previous section, a considerable amount of effort has been put into devising a Union-level system for handling asylum applications and preventing applications in more than one member state, which can have important input into the establishment of a Common Asylum area in the EU.¹³⁴

However, the Commission discourse on this matter has articulated two main areas of concern. Firstly, as the above discussion shows, the setting of minimum standards on procedures has been one of the dominant principles on the issue of asylum. Its goal “is to establish in the short term a minimum level of harmonisation of the rules applicable in the matter in the Community. It does not require the Member States to apply uniform procedures.”¹³⁵ Therefore, “Within the current legal framework, the responsibility for determining asylum claims lies with individual Member States.”¹³⁶ Thus, as Lavenex rightly points out, during the initial years of cooperation on the common asylum policy, the predominant approach has been to leave to national legislation important questions, such as who qualifies as a refugee and what form of protection are different types of refugees entitled to.¹³⁷ This has left scope for considerable divergence on these issues, which in turn, as the Commission Green Paper on asylum acknowledges, has left gaps in the Union acquis

¹³³ European Commission, *Green Paper on the Future Common European Asylum System*, COM (2007) 301 final, 06.06.2007, p. 2

¹³⁴ For studies examining the development of cooperation on Asylum and Refugees at European level, see Sandra Lavenex, ‘The Europeanization of Refugee Policies: Normative Challenges and Institutional Legacies’, *Journal of Common Market Studies*, 39: 5 (2001), pp. 851-874 and Eiko Thielemann, ‘Symbolic Politics or Effective Burden Sharing? Redistribution, Side-payments and the European Refugee Fund’, *Journal of Common Market Studies*, 43: 4 (2005), pp. 807-824

¹³⁵ European Commission, *Towards a Common Asylum Procedure and a Uniform Status, Valid throughout the Union, for Persons Granted Asylum*, COM (2000) 755 final, 22.11.2000, p. 8

¹³⁶ European Commission, *Green Paper on the Future Common European Asylum System*, COM (2007) 301 final, 06.06.2007, p. 4

¹³⁷ Sandra Lavenex, ‘The Europeanization of Refugee Policies: Normative Challenges and Institutional Legacies’, *Journal of Common Market Studies*, 39: 5 (2001), pp. 851-874, p. 861. Footnote 7 gives particular examples of how this plays out in practice. For other examples of how diverging national legislations affect asylum applications see European Commission, *Green Paper on the Future Common European Asylum System*, COM (2007) 301 final, 06.06.2007, p. 5.

on asylum.¹³⁸ From the point of view of border configurations, this contributes to the reconstruction of internal territorial and functional borders inside the EU.

Importantly, many of the articulations in Commission documents show that the Commission is aware of this situation and enunciate measures that potentially can alleviate this shortcoming of the current arrangements. For example, according to the Green Paper on Asylum, national rules need to be “*further approximated*” and it is necessary to “*re-assess the content and added-value of certain procedural devices*”.¹³⁹ So far the Commission has been successful in securing acceptance in principle for further integration on asylum issues. For example, the Parliament adopted the Communication on a Common asylum procedure and a uniform status¹⁴⁰ and the Green Paper on Asylum was discussed in the Council in June 2007 and the Commission was charged with creating a road map of the necessary future work on the basis of the on-going reflection on the functioning of the current asylum system in the EU.¹⁴¹

Secondly, analysis of Commission articulations on the common asylum policy reveals that during the so-called first phase¹⁴² of the policy, there has been one very specific concern, which has guided a lot of the integrative work. This is the issue of the member state responsible for examining an asylum application. One of the first articulations that reveals the specifics for addressing this matter is expressed in a 1988 Communication that reads: “determination of the Member State responsible for examining an asylum requests: responsibility would lie with the Member State which had first shown its consent to the asylum seeker entering its territory (by the issue of a residence permit or visa) or through which he first entered the Community ...”¹⁴³ Therefore, the pattern for dealing with asylum

¹³⁸ European Commission, *Green Paper on the Future Common European Asylum System*, COM (2007) 301 final, 06.06.2007, p. 3

¹³⁹ Both are from *ibid.*, p. 4

¹⁴⁰ This is available in the Bulletin of the EU 10-2001, accessible at <http://europa.eu/bulletin/en/200110/p104010.htm>, accessed on 22.07.2009

¹⁴¹ European Council, 2807th Council Meeting, *Justice and Home Affairs*, C/07/125, 12-13.06.2007, p. 28

¹⁴² The Second phase is envisaged to start in 2010. See for example European Commission, *Green Paper on the Future Common European Asylum System*, COM (2007) 301 final, 06.06.2007, p. 2

¹⁴³ European Commission, *Communication on the Abolition of Controls of Persons at Intra-Community Borders*, COM (88) 640 final, 07.12.1988, p. 23. For another Commission document reiterating this approach see European Commission, *Commission Staff Working Paper: Revisiting the Dublin Convention: Developing Community Legislation for Determining which Member State is Responsible for Considering an Application*

applications has been to establish a EU-level system for determining which member state will deal with which cases. However, an approach that invokes “member states” hampers the establishment of a genuine single area for asylum seekers. This is because these references to “member states” imply that it is still an important question which part of the single area will deal with which application. In turn this reaffirms the importance of the existing territorial borders between the EU members, thus signalling the continued presence of internal Union frontiers and the accompanying them border controls. In distinction to the first problem discussed above, on this matter, there is a lack of articulations in Commission discourse that suggest likelihood for its abandonment or even an attempt to challenge it and change it. This is not surprising, however, given that the Commission is bound to face fierce opposition on any such attempts in the Council. Despite half a century of integration in Europe, this issue cuts deeply into national identity questions, which are still the most powerful way of identification in the EU.

In a similar way the provisions for short-stay visas under Schengen contain some clauses that can be interpreted as reconstructing the internal borders in the EU. These are the stipulations guiding the exact way for issuing short-stay visas.¹⁴⁴ The principles were laid down in the formative years of cooperation under Schengen and proclaim that: “The Member State which is the main destination shall normally be responsible for issuing the visa. If it is not possible to determine that destination, the Member State of first entry shall be responsible.”¹⁴⁵ These principles are adhered to in the 2006 Code on Visas, which adds that: “When a visa with multiple entries is applied for, the Member State of usual

for Asylum Submitted in one of the Member States, SEC (2000) 522, available at <http://www.arena.uio.no/sources/jpa/dublin/com/paper/2000/SEC522.pdf>, accessed on 27.05.2010

¹⁴⁴ It is important to note that these requirements are significant not only in terms of the issuance of the visa, but also when the actual entry into the Schengen territory is taking place. Recently (October 2007) I was told a story about a TCN who was in possession of a Schengen visa issued by the French authorities. The person had a transit flight to France, which stopped in Greece, where he stayed for few days. Upon exiting Greece, the Greek authorities told the TCN that he should never had been allowed to enter Greek territory because his visa is issued by the French officials and therefore France should had been the country through which he should had entered the Schengen area. Under such circumstances, the Greek authorities can expel the TCN from the Schengen area.

¹⁴⁵ European Commission, *Proposal for a Regulation Determining the Third Countries whose Nationals Must be in Possession of a Visa when Crossing the External Borders of the Member States*, COM (93) 684 final, 10.12.1993, p. 35

destination shall be responsible for processing the application”.¹⁴⁶ Also a TCN residing legally in a member state without holding a residence permit from it, who has justified reasons for travelling to another member state: “shall apply for a visa at the diplomatic mission or consular post *of the Member State of destination*.”¹⁴⁷ Thus, as Guild and Bigo argue: “the rules of application are strictly limited on the grounds of nationality – that of the state. The integration of the Union is not apparent here ... The EU visa is a national *de facto* visa which gives facilities to enter the territory of the other States but which does not ensure the entry into a single territory where freedom of movement is guaranteed.”¹⁴⁸

These principles mean that in practice TCNs applying for a Schengen visa still cannot submit their application to any diplomatic or consular mission of a EU member state but have to do so to a specific one. However, this goes against the aim of establishing Schengen as an area in which there are no internal frontiers in terms of border controls. The ideal-typical implementation of such a goal would require reaching a condition where it is not necessary to mention which is the authority that issued the visa. If there is a uniform visa valid for the whole Schengen area, ultimately it should not be important who issues the visa. However, currently this is not the case and the continuing references to “member state responsible for the visa application” presented above have the effect of bringing back national distinctions between EU’s members and hence – reconstruct internal borders in relation to border controls in the Union.¹⁴⁹

Another provision that has such an effect is the stipulation that persons moving within the frontier-free area for a period between three and six months are not entitled to remain in the territory of a single member state for longer than three months.¹⁵⁰ Again,

¹⁴⁶ European Commission, *Proposal for a Regulation of the European Parliament and of the Council Establishing a Community Code on Visas*, COM (2006) 403 final, 19.07.2006, p. 43

¹⁴⁷ *Ibid.* (emphasis added)

¹⁴⁸ Didier Bigo, Elspeth Guild, ‘Policing at a Distance: Schengen Visa Policies’ in Didier Bigo, Elspeth Guild (eds), *Controlling Frontiers: Free Movement into and within Europe* (Aldershot: Ashgate, 2005), pp. 233-263, pp. 247-248 (emphasis in the original)

¹⁴⁹ As I said above, some Commission documents refer to a Common Diplomatic Service for the EU as a future goal. If and when this becomes reality this way of reconstructing internal Union borders will be overcome. What is important in terms of the topic of this study is that such articulations of the Commission indicate a desire to move in this direction.

¹⁵⁰ European Commission, *Proposal for a Council Directive Relating to the Conditions in which Third-Country Nationals Shall Have the Freedom to Travel in the Territory of the Member States for Periods Not*

within a unified territory that allows for free movement of people, such as Schengen, such stipulations recreate the divisions that have existed prior to the launch of integration efforts. As such, these provisions work towards undermining the establishment of a single area and instead through confirming the relevance of the issue of which member state's territory the TCN/s are on, reconstruct internal borders and border controls within the EU.¹⁵¹

Therefore, the main inconsistency in the Commission discourse that contributes to the recreation of internal borders consists of the references to “member States”. These have the effect of confirming the continued relevance of national territories of the Union members and hence, leading to a division (rather than unification) of the Schengen area. However, it is important to note that these internal borders are tangible for a particular category of people – TCNs. EU citizens cannot experience it. This again shows that the undertakings in the area of border controls and more specifically, the discourse of the European Commission have resulted in establishing differently operating frontiers for new types of people for some of which internal borders and border controls in the EU are still relevant. Therefore, it is more accurate to talk about reconstruction rather than decreased salience of internal EU borders in the field of border controls.

3.5. Summary

As the discussion in this chapter has shown, in the field of border controls territorial borders are the main type of border configured through the Commission discourse. It does that in two main ways. Firstly, it has clearly talked about the aim of creating common spaces in the EC/EU, which implies the diminished importance of borders between the member states. Also it has promoted the idea that this new area requires strong controls at its external edges. These border configurations are clearly talked about in the Commission documents and as such constitute their first reading. As I have shown, over the years the

Exceeding Three Months, Introducing a Specific Travel Authorization and Determining the Conditions of Entry and Movement for Periods Not Exceeding Six Months, COM (2001) 388 final, 10.07.2001, p. 5

¹⁵¹ Bigo and Guild make essentially the same argument and provide some other interesting examples of this. See Didier Bigo, Elspeth Guild, ‘Policing at a Distance: Schengen Visa Policies’ in Didier Bigo, Elspeth Guild (eds), *Controlling Frontiers: Free Movement into and within Europe* (Aldershot: Ashgate, 2005), pp. 233-263, pp. 247-248

Commission has articulated positions that contribute to the implementation of these configurations. Firstly, it has consistently argued for greater cooperation at EC/EU level. Secondly, it has advanced some quite radical interpretations of the existing legal documents. One of the outcomes of these articulations has been facilitating the emergence of the so-called “fortress Europe”. This provides one example of how the Commission has contributed to the construction and reconstruction of EU borders. It has done that in two main ways. Firstly, it has accepted and reproduced the assumptions on which the policy on border controls is based and it also has argued in support of the need for greater harmonisation of policies at EU level, thus employing the logic of functional spill-over. Thus, in the case of border controls, the reconfiguration of borders has taken the form of ultimately liberalising the regime for EU nationals at the expense of TCNs who often face modified obstacles to their movement inside the EC/EU. This distinction is also important because as I showed in the last section, when TCNs are concerned, the discourse of the Commission contributes, through its silences and inconsistencies to the reconstruction of the internal borders in the Union. This is significant because it is in direct contradiction to the declared aims in Commission discourse. Thus, it illustrates some of the current limits to the possibility to decrease the importance of borders between EU member states. I argued that the major reason for the occurrence of the silences and inconsistencies in Commission discourse on border controls is the current *acquis communautaire*, which is lacking legal provisions that the Commission can use in order to advance any alternative visions. However, as I will show in the next chapter, even when the policy area in question is from the first pillar, the Commission discourse still configures borders ambiguously.

CHAPTER FOUR

FREE MOVEMENT OF PEOPLE – AMBIGUOUS BORDER CONFIGURATIONS EVEN IN THE FIRST PILLAR

4.1. Introduction

As we have seen in the previous chapter, the Commission has contributed significantly towards abolishing intra-Community border controls. As a result, physical borders have been reduced significantly, which has helped to come closer to achieving the aim of creating an area of free movement. However, I have also shown that Commission articulations construct two different categories of people (EU-nationals and TCNs) who enjoy different rights in respect to crossing EU borders. As the discussion in section 3.4. demonstrated, as far as TCNs are concerned, in certain cases internal borders in the EU are simply reconstructed rather than abolished. This is a trend that persists in the area of free movement of people as well. Here, just as in border controls, TCNs are articulated as the major group of people that experiences continued existence of borders under integration.

Nevertheless, there are some important differences between these two fields in terms of both the types of borders configured and the potential role of the Commission in their configuration. These differences are crucial in light of the goals of this research and thus, I examine Commission discourse in these two policies separately. In distinction to border controls where the measures undertaken overall configure physical (territorial) borders, in the free movement of people, the overwhelming majority of measures concern functional borders because they regulate issues such as access to the labour market or the welfare state. Contrasting with the intergovernmental origins of cooperation on border controls, issues falling within free movement of people have been part of the EC since the Treaty of Rome. Therefore, on free movement of people the Commission is better placed to overcome the limitations it has faced on border controls issue, which puts it in a better position to transcend internal EU borders. In this chapter I interrogate whether this is the case in practice. I argue that the Commission has been successful in setting up trends that

overcome current internal borders but that this still only reconfigured rather than transcended them.

In order to develop this argument, I have divided the chapter into five sections. The first one aims to provide a background for the following discussion. I look into the major developments related to free movement of people. In the second part, I establish the main articulations in Commission discourse that configure borders and present and analyse the articulations in Commission discourse that contribute to decreased salience of internal borders. In the third section, I look into how Commission articulations contribute to the emergence of a new border at the outer edges of the EU. In the fourth section, I focus on the silences and contradictions within Commission discourse on free movement that contribute to the reconstruction of some internal borders between the member states and analyse the reasons for their occurrence.

4.2. Major Developments in the Field of Free Movement of People and Main Themes in Commission Discourse

As I emphasised earlier, the free movement of people has its origins in the Treaty of Rome. It refers to the abolition of any discrimination based on nationality between workers of the member states regarding employment, work conditions, and remuneration. The free movement of people implies the rights to take up employment in other member states; to move freely within the territory of the member states for work purposes; to stay in a member state other than the workers' own for employment purposes.¹ As such, from its inception free movement of people was related to functional borders. Therefore, it is a complex matter and encompasses a variety of policy areas, such as social security, professional qualifications, or immigration. However, while the first two are issues that have been dealt with at the supranational level since the first decade of integration, the third one has gained prominence only in recent years. Furthermore, traditionally immigration has fallen within the remit of JHA. As I explain in greater detail in section 4.4. it was only the

¹ Article 48, Treaty Establishing the European Economic Community, p. 51

last decade that immigration issues started to be linked more consistently with free movement.

The complexity of free movement, where questions often form an interrelated web with problems that nominally fall outside of the scope of the policy on the free movement of people, precipitates a situation where articulations from different discourses (i.e. border controls and free movement of people) configure borders in a similar way. An example of such a situation is the construction of different categories of people under existing EU law (EU nationals and TCNs) that enjoy different rights in relation to their freedom to move in the EU.² Thus, in this chapter, as well as in the previous chapter, the different categories of people constitute a major division line along which the analysis is organised. In other words, I will examine policy proposals of the Commission that relate to both EU citizens and TCNs and scrutinise whether they lead to decreased importance of borders/ construction and reconstruction of borders for Union nationals and/ or TCNs.

As I also pointed out in the previous chapter, in the period after the adoption of the SEA to the present a very important shift has occurred in the understanding of which EU nationals are entitled to free movement in the EU. Before the Treaty of the EU was adopted in 1992, a narrow interpretation to the entitlement to free movement prevailed and it was only conferred upon workers.³ It was only with the new integration impetus in the second half of the 1980s that the conditions were established for expanding the scope of the provisions to cover more groups of people. However, importantly in distinction to the development of border controls this evolution was within the EC.

Both the gradual extension of the groups of people covered and this falling within the remit of the EC can be illustrated with the following Commission articulations. According to its White Paper on *Completing the Internal Market*, the issue of the free movement of people is still explicitly linked to their status as economically active

² A more detailed analysis of how this is achieved is provided in Chapter Three, Border Controls. See section 3.2.2.

³ For studies that make the same point see Gallya Lahav, *Immigration and Politics in the New Europe – Reinventing Borders* (Cambridge: Cambridge University Press, 2004), esp. pp. 38-51; Hans-Werner Sinn, 'EU Enlargement, Migration and New Constitution', *Economic Studies*, 50: 4 (2004), pp. 685-707; Andrew Geddes, *Immigration and European Integration – Towards a Fortress Europe?* (Manchester: Manchester University Press, 2000), p. 44

individuals in the member state to which they have moved: “The Commission considers it crucial that the obstacles which still exist within the Community to free movement for the self-employed and employees be removed by 1992 ... the Commission intends to make the necessary proposals which will eliminate the last obstacles standing in front of the free movement and residence of migrant Community workers.”⁴ The wider interpretation became possible with the TEU, which established EU citizenship to all nationals of the Union’s member states. According to the Maastricht Treaty: “*Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States ...*”⁵ This however, meant that provisions had to be put in place for allowing non-economically active citizens (students, pensioners, etc.) to be able to enjoy the rights conferred upon them in their status as EU citizens. This is clearly evident from the Commission’s position that Community legislation on free movement of people has to be made clearer and restructured around the notion of Union citizenship.⁶ This development considerably enlarged the scope for Commission action in terms of the fields in which it could now make proposals. This can be exemplified with Commission proposals, such as the Green Paper on the obstacles to transnational mobility⁷ in education, training and research⁸ and the Report on the implementation of the Directives on the Right of Residence.⁹

All in all, the main fields that were involved in guaranteeing the free movement of people were provisions for the harmonisation of social protection, recognition of professional qualifications, and the terms regulating the freedom to reside in a member state other than the national’s own. Despite this expansion of the applicability of the right to free

⁴ European Commission, *Completing the Internal Market*, COM (85) 310 final, 14.06.1985, p. 27

⁵ Article 8a, The Maastricht Treaty – Provisions Amending the Treaty Establishing the European Economic Community with a View to Establishing the European Community, p. 5, available at <http://www.eurotreaties.com/maastrichtec.pdf>, accessed on 10.01.2009 (emphasis added)

⁶ European Commission, *Report on the Implementation of Directives 90/364, 90/365 and 93/96 (Right of Residence)*, COM (1999) 127 final, 17.03.1999, pp. 2-3

⁷ It has to be pointed out that Commission documents very often refer to “mobility” for movements within the EU, which as a term is usually employed for movements within a country and not for cross-state migration. For this distinction see for example Franck Düvell, ‘Migration, Minorities and Marginality: New Directions in Europe Migration Research’ in Chris Rumford (ed.), *The Sage Handbook of European Studies* (London: Sage, 2009), pp. 328-346, p. 330

⁸ European Commission, *Green Paper – Education- Training – Research. The Obstacles to Transnational Mobility*, COM (96) 462 final, 2.10.1996

⁹ European Commission, *Report on the Implementation on Directives 90/364, 90/365 and 93/96 (Right of Residence)*, COM (99) 127 final, 17.03.1999

movement of people, some scholars continue to argue that it: “is still economically linked to a great extent.”¹⁰ This suggests that EU nationals that do not meet certain economic criteria are very likely to still have their freedom of movement within the EU curtailed. In the last section of this chapter I will engage in greater depth with this argument in order to show how it is articulated in the Commission discourse and to show that such enunciations have contributed to the reconstruction of the EU’s internal borders.

As far as TCNs are concerned, their rights to free movement within the EU are regulated in two main interrelated contexts. Firstly, as workers and residents in a member state of the Union and secondly, under the emerging regime of the EU common policy on immigration. The foundations of the latter: “have been gradually established under the Tampere and Hague Programme”¹¹ and encompass issues of legal and illegal migration, Schengen, visas and the management of the EU external border and the external dimension of the policy.¹² The main trend in Commission discourse on the rights of TCNs as workers and residents in a EU member state is along the lines that it is necessary to guarantee to the greatest extent possible equal treatment between TCNs and EU citizens. In order to do this, the Commission has had a: “long-standing policy to improve the legal status of third country nationals residing in the Community.”¹³ This is to be achieved through integration policy: “based on non-discrimination, equal treatment, rights and duties [that] allows immigrants to contribute more to society ...”¹⁴ Furthermore, in 2003 the EU Regulation on

¹⁰ Sergio Carrera, ‘What Does Free Movement Mean in Theory and Practice in an Enlarged EU?’, *European Law Journal*, (2005), 11: 6, pp. 699-721, p. 721. Similar claim is made in Hans-Werner Sinn, ‘EU Enlargement, Migration and New Constitution’, *Economic Studies*, 50: 4 (2004), pp. 685-707, p. 700

¹¹ European Commission, *Towards a Common Immigration Policy*, COM (2007) 780 final, 5.12.2007, p. 3

¹² *Ibid.*, pp. 3-7. These are reiterated in a number of speeches of EU officials, such as Antonio Vitorino, *Migratory Flows and the European Labour Market: toward a Community Immigration Policy*, SPEECH/01/334, 9.07.2001; Antonio Vitorino, *Migration as a Resource to be Managed for the Mutual Benefit of Sending and Receiving Countries*, SPEECH/03/417, 18.09.2003; Franco Frattini, *Legal Migration and the Follow-up to the Green Paper and on the Fight against Illegal Immigration*, SPEECH/05/666, 07.11.2005; Benita Ferrero-Waldner, *Migration, External Relations and the European Neighbourhood Policy*, SPEECH/06/30, 24.01.2006; Franco Frattini, *Management of Migration Flows*, SPEECH/06/539, 27.09.2006

¹³ European Commission, *An Action Plan for the Free Movement of Workers*, COM (97) 586 final, 12.11.1997, p. 12. For an overview of the measures undertaken see Antonio Vitorino, *What EU Strategy for Integrating Migrants*, SPEECH/04/340, 30.06.2004

¹⁴ European Commission, *Towards a Common Immigration Policy*, COM (2007) 780 final, 5.12.2007, p. 2

coordination of social security systems between the Union member states was extended to cover the rights acquired by TCNs as well.¹⁵

Thus, the Commission undertakings in the field of free movement of people have undergone significant development in the last two decades. Partly this is a result of the constitutional changes in the EU that have been put into place by successive Treaty amendments (such as those of Maastricht and Amsterdam).¹⁶ As the former European Commissioner for Justice and Home Affairs Antonio Vitorino declares: “Aside from Article 3 (c) of the Treaty of Rome which talks about ‘the abolition ... of obstacles to freedom of movement for persons, services and capital’, there was nothing in the Treaty of Rome as a precursor to EU powers in asylum and immigration.”¹⁷ As I explained in detail in Chapter Two, it was only in the second half of the 1980s that the push towards the establishment of the internal market in the EC laid down the foundations that enabled these particular developments in the following years. As Commissioner Vitorino summarises: “The impetus came from the concept of ‘Europe without frontiers’ so well articulated by Jacques Delors ...” because it required: “creating common rights at European level for bona fide migrants whether for protection or economic purposes.”¹⁸ This opened the avenue for European integration to proceed in a number of new fields as a repercussion of the need to ensure the proper functioning of the internal market. As Commissioner Vitorino summarises: “It made no sense to have an internal market for free movement of goods, services and capital without free movement of persons. And from that sprang the evident need, ... expressed at Maastricht, to legislate for common policies.”¹⁹

Therefore, overall, over the years there has been a clear trend towards widening the scope of the rights of free movement – from free movement of workers to free movement of people in general. This has been accompanied by an increase in the number of

¹⁵ See for example, European Commission, *The Community Provisions on Social Security – Your Rights when Moving within the European Union* (Luxembourg: Office for Official Publications of the European Communities, 2005), p. 40

¹⁶ A significant part of these changes relates to third pillar issues, which are spelled out in greater detail in the section dealing with the evolution of cooperation under Schengen in the Chapter on Border Controls.

¹⁷ Antonio Vitorino, *Migration as a Resource to be Managed for the Mutual Benefit of Sending and Receiving Countries*, SPEECH/03/417, 18.09.2003, p. 2

¹⁸ Both quotations are from *Ibid.*, p. 3

¹⁹ *Ibid.*

fields that are involved in the efforts towards implementing this goal. The European Commission has contributed to these trends through a number of proposals, some of the provisions of which I examine in detail in the following parts of this chapter.

4.3. De-bordering in Commission Discourse on Free Movement of People

There are a number of ways in which Commission discourse contributes towards the decreased salience of previously existing borders between the member states of the EU in the field of free movement of people. These can be classified into several major categories. Firstly, they can be dealing with the free movement of EU citizens or alternatively of TCNs. Secondly, as far as EU citizens are concerned, Commission discourse can be contributing towards the diminished importance of different manifestations of functional borders or establishing a common European identity. Thirdly, some Commission documents contain articulations that promote the idea that the temporary border for free movement of workers for the member states that joined in 2004 should be eliminated. Below I present and analyse all these articulations. What these articulations have in common is that they all relate to several main formulations, which I argue the Commission has used to promote decreased salience of previously existing borders between EU member states.

4.3.1. Main Commission articulations configuring borders

These formulations are related to the major fields concerned with the free movement of people: the existing regime for workers' access to the labour market and the welfare state, education and immigration. In each of these areas, the Commission has articulated formulations implying the existence of a common European space. For example, as I explained in greater detail in Chapter Three, the creation of an "area of freedom, security and justice" is viewed as an important route for addressing some of the challenges raised by immigration. As I explain below, certain immigration issues have been persistently linked to free movement of people since the early 2000s. The Commission discourse also promotes the attainment of the goal of free movement of people through a

number of articulations concerning mainly EU citizens. In the field of education this is exemplified by the support the Commission has given to: “a variety of programmes for transnational mobility of persons who are keen to undergo training ... or contribute to training activities in another Member State of the Community.”²⁰ Mobility is also a key term in Commission discourse on the free movement of workers in general: “Worker mobility is a key instrument for an efficiently functioning single market ...”²¹ Furthermore, as far as the regime for free movement of workers is concerned, there are a number of terms employed by the Commission that contribute to the construction of a common space. The most prominent of them are: “European labour market”, “a single European employment/labour market”, “European-wide labour markets”, “the creation of an employment and work area on a Community-wide scale”.²² These formulations are important in terms of how they configure borders. There are two main reasons why efforts of the Commission towards free movement of people should be interpreted as aimed at de-bordering. Firstly, in its discourse terms such as mobility are linked with phrases such as “united Europe” and “development of solidarity between all Europeans”.²³ Thus, the overall goal is to reduce the existing divisions between the member states. Secondly, the anticipated emergence of a common area in the EU as a result of the increased mobility is regarded as contributing towards the achievement of a single market,²⁴ which as explained in depth in Chapter Two is premised on the idea of creating a frontier free area in the EC/EU. Below I present a

²⁰ European Commission, *Green Paper – Education- Training – Research. The Obstacles to Transnational Mobility*, COM (96) 462 final, 2.10.1996, p. 1. For other references to mobility in relation to learning see for example European Commission, *Recommendation on the Establishment of the European Qualifications Framework for Lifelong Learning*, COM (2006) 479 final, 05.09.2006, p. 14

²¹ European Commission, *Mobility, an Instrument for More and Better Jobs: The European Mobility Action Plan (2007-2010)*, COM (2007) 773 final, 06.12.2007, p. 2

²² The first three formulations can be found in European Commission, *An Action Plan for the Free Movement of Workers*, COM (97) 586 final, 12.11.1997, pp. 8-17. The last formulation is from European Commission, *Green Paper – Education- Training – Research. The Obstacles to Transnational Mobility*, COM (96) 462 final, 2.10.1996, p.1. For other references to “the European Labour Market” see for example European Commission Report, *Towards a Single European Labour Market*, COM (2007) 116 final, 16.03.2007 and Anna Diamantopoulou, *The New Technologies and a Single European Labour Market*, SPEECH/01/75, 20.02.2001

²³ European Commission, *Green Paper – Education- Training – Research. The Obstacles to Transnational Mobility*, COM (96) 462 final, 2.10.1996, summary and p. 1 respectively

²⁴ See for example, European Commission, *Mobility, an Instrument for More and Better Jobs: The European Mobility Action Plan (2007-2010)*, COM (2007) 773 final, 06.12.2007, p. 2

detailed account of how this de-bordering is articulated in this policy area for different categories of people and analyse what types of borders it configures.

4.3.2. Free movement of TCNs

Terms such as “European labour market” or “area of freedom, security and justice” promote the idea of the existence of a common space inside the EU in each particular field and that previously existing borders are less salient. Furthermore, usually when the Commission employs these terms, there are no qualifications added. Thus, they suggest that not only is the area in question de-bordered, but also, importantly, that this is the case for all the people on this area – EU citizens and TCNs alike.²⁵ However, from time to time there are articulations that remind the reader that in fact this is not yet the case. For example, the Commission Action Plan for Free Movement of Workers reads: “Third country nationals do not currently enjoy the right to free movement under Community law, and this proposal does not imply the granting of such a right”²⁶; “The right to free movement of workers ... gives every European citizen the right to enter the territory of any Member State in order to work or to look for work. The purpose is to open European labour markets to all EU workers ...”²⁷

Nevertheless, the Commission discourse shows obvious moves towards overcoming some of the still persisting barriers. A number of proposals contain provisions that aim at facilitating the free movement of some TCNs. This is well illustrated by the following examples. According to a Commission Action Plan, accepted with a resolution of the European Parliament in July 1998²⁸: “It is no longer justifiable that a worker who is covered by national security arrangements should be completely excluded from the protection offered by the Community co-ordination system simply because he or she is not

²⁵ I. e. according to Guild, there has been much academic debate about the possibility of including TCNs into the concept of workers under the Community law. See Elspeth Guild, ‘The Legal Framework: Who is Entitled to Move?’ in Didier Bigo, Elspeth Guild (eds), *Controlling Frontiers: Free Movement into and within Europe* (Aldershot: Ashgate, 2005), pp. 14-48, p. 22

²⁶ European Commission, *An Action Plan for the Free Movement of Workers*, COM (97) 586 final, 12.11.1997, p. 12

²⁷ *Ibid.*, p. 5

²⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1998:292:0102:0201:EN:PDF>, pp. 44-48, accessed on 25.04.2009

an EU national.”²⁹ This principle has been put into practice through signing agreements with third countries that coordinate the social security systems between the EU and the respective third country. This allows nationals of these third countries to aggregate the insurance periods they have acquired by working in different EU member states.³⁰ Thus, these provisions follow the logic applied a few decades earlier when the free movement of Community workers had to be implemented. However, now the aim is to extend the current provisions on coordination of social security benefits to cover not only EU nationals but also TCNs that move between different member states.³¹ This facilitates movement between EU member states for TCNs through removing previously existing legal and administrative barriers that are impeding it. In their place they establish new structures that make it much easier for TCN workers to preserve their social security benefits acquired through work in various EU member states.

Another way in which Commission discourse on free movement of TCNs promotes decreased importance of borders in the EU is via the provisions regulating the access to the member states and their labour markets for certain categories of TCNs. The two most prominent examples to date are the status of long-term TCN residents³² in a EU member state and highly qualified TCN employees.³³ On the issue of the status of long-term residents, the position of the Commission is that: “there should be a common status for long-term residents, so that all third-country nationals residing legally can acquire it and enjoy it on much the same terms in all the Member States ... For the sake of certainty as to

²⁹ European Commission, *An Action Plan for the Free Movement of Workers*, COM (97) 586 final, 12.11.1997, p. 12

³⁰ See for example European Commission, *Proposal for Council Decision on the Position to be Taken by the Community within the Association Council Created by the Euro-Mediterranean Agreement Establishing an Association between the European Communities and their Member States, of One Part, and the Republic of Tunisia, of the Other Part, with Regard to the Adoption of Provisions on the Co-ordination of the Social Security Systems*, COM (2007) 788 final, 11.12.2007

³¹ For a general overview of the current system of social security coordination see <http://ec.europa.eu/social/main.jsp?catId=26&langId=en>, accessed on 28.08.2009

³² Prior to the official Commission proposal on this issue, it commissioned a report on the legal status of TCNs in the EU member states. On the basis of the report its authors published an article. See Kees Groenendijk, Elspeth Guild, ‘Converging Criteria: Creating an Area of Security of Residence for Europe’s Third Country Nationals’, *European Journal of Migration Law*, 3: 1 (2001), pp. 37-59

³³ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, COM (2007) 637 final, 23.10.2007

the law governing third-country nationals, it is essential that acquisition of the status should not be left to Member State's discretion where the conditions are actually met."³⁴ To that end, the Commission has proposed to harmonise the conditions for conferring and withdrawing long-term resident status granted by a member state as well as the rights on which long-term residents enjoy equal treatment with EU nationals. Furthermore, according to this proposal, TCN long-term residents will enjoy the right to reside in a member state different from the one that conferred them the status.³⁵ The Council formally adopted this proposal in November 2003.³⁶

In a similar way, the proposal for the conditions of entry of TCNs for the purposes of highly skilled employment³⁷, which was adopted by the Council in May 2009³⁸, argues that the attractiveness of the EU for this category of people can be enhanced only through Community action and can be implemented only if there is a common system for admitting such workers. The aim is to ensure common rules for admitting this type of workers and that they enjoy the same rights throughout the Union. Furthermore, in drastic distinction to the existing system in other fields of employment, this proposal envisages the possibility of the TCN to move from one member state to another.³⁹ Thus, both these proposals provide for facilitating the free movement of highly-skilled or long-term resident TCNs within the EU through the removal of previously existing legal and administrative barriers. In turn this contributes to the establishing of an area of free movement of people. Furthermore, the tools employed in Commission discourse are the establishment of harmonised rules at EU level for regulating the free movement of the categories of TCNs concerned.

This harmonisation of rules and procedures in EU member states is also expressed in other Commission proposals. One example is the common conditions and common

³⁴ European Commission, *Proposal for a Council Directive Concerning the Status of Third-Country Nationals who are Long-Term Residents*, COM (2001) 127 final, 13.03.2001, p. 7

³⁵ *Ibid.*, p. 29 and p. 34

³⁶ http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=164059, accessed on 25.04.2009

³⁷ For a good legal analysis of the provisions of this Commission proposal see Elspeth Guild, 'EU Policy on Labour Migration – a first Look at the Commission's Blue Card Initiative', *CEPS Policy Brief*, num. 145, November 2007

³⁸ http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=196320, accessed on 04.09.2009

³⁹ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, COM (2007) 637 final, 23.10.2007, p. 7

procedural standards on the entry and residence of TCNs for the purposes of paid employment or self-employed economic activities.⁴⁰ This proposal, however, was officially withdrawn in 2006 because: “Whilst the other European Institutions gave positive opinions, discussion in the Council was limited to a first reading of the text ...”⁴¹ Other examples of efforts to achieve harmonisation of rules and procedures within the EU are the laying down of a uniform format for residence permits for TCNs⁴² (adopted by the Council in April 2008)⁴³ and the application procedure for a single work and residence permit for TCNs in the territory of a member state. It is important to note that the latter proposal, which is still under discussion in the decision-making system of the EU,⁴⁴ allows the holders of the permit if they have valid travel documents to enter and move freely on the territory of Schengen-participating member states for up to three months.⁴⁵ This is in tune with other Commission documents that regulate the short-term movement of TCNs in the EU and again demonstrates the drive towards simplifying and guaranteeing easier movement inside the Union for TCNs. Thus, overall, a tendency towards decreasing the salience of internal borders in the area of free movement of TCNs can be traced in Commission discourse. This trend is even more pronounced in the articulations on free movement of EU citizens.

⁴⁰ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third Country Nationals for the Purpose of Paid Employment and Self-Employed Economic Activities*, COM (2001) 386 final, 11.07.2001

⁴¹ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, COM (2007) 637 final, 23.10.2007, p. 3

⁴² European Commission, *Proposal for a Council Regulation Amending Regulation (EC) 1030/2002 Laying Down a Uniform Format for Residence Permits for Third-Country Nationals*, COM (2003) 558-2 final, 24.09.2003

⁴³ http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=185533, accessed on 25.04.2009

⁴⁴ http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=196321, accessed on 25.04.2009

⁴⁵ European Commission, *Proposal for a Council Directive on a Single Application Procedure for a Single Permit for Third-Country Nationals to Reside and Work in the Territory of a Member State and on a Common Set of Rights for Third Country Nationals Legally Residing in a Member State*, COM (2007) 638 final, 23.10.2007

4.3.3. Free movement of EU citizens

According to the Commission: “many practical, administrative and legal barriers still prevent citizens from exercising their freedom of movement.”⁴⁶ The Commission, however, is committed to make the area of free movement of people a reality. To that end it has promoted measures contributing to the diminished importance of internal borders on all of the major issues related to free movement of people listed above (social security or recognition of diplomas and professional qualifications) in its efforts to tackle the existing obstacles to free movement of people. As explained above, the right to free movement in the Union of EU citizens represents an expansion of the previously existing right to free movement of workers. As such, Commission discourse in the period after the adoption of the SEA builds upon the de-bordering measures adopted in the 1960s and 1970s.⁴⁷

A number of Commission documents are concerned with issues such as pensions, healthcare rights, and social security contributions for EU nationals exercising their right to free movement.⁴⁸ Also, some of the proposals are concerned with further limiting the possibility of member states to employ only its nationals for certain public sector positions

⁴⁶ European Commission, *Free Movement of Workers – Achieving the Full Benefits and Potential*, COM (2002) 694 final, 11.12.2002, p. 3. Some of the persisting obstacles to free movement of people are examined and possible measures for their overcoming are suggested in a number of Commission documents. See for example, European Commission, *An Action Plan for the Free Movement of Workers*, COM (97) 586 final, 12.11.1997; European Commission, *Follow-up to the Recommendations of the High Panel on the Free Movement of Persons*, COM (1998) 403 final, 01.07.1998; European Commission, *Education – Training – Research. The Obstacles to Transnational Mobility*, COM (96) 462 final, 2.10.1996; European Commission, *Supplementary Pensions in the Single Market – a Green Paper*, COM (97) 283 final, 10.06.1997

⁴⁷ Studies that provide detailed examination of earlier periods of integration in relation to free movement of people are Maurizio Ferrera, *The Boundaries of Welfare – European Integration and the New Spatial Politics of Social Protection* (Oxford: Oxford University Press, 2005); Stefano Bartolini, *Restructuring Europe – Centre Formation, System Building and Political Structuring between the nation-state and the European Union* (Oxford: Oxford University Press, 2005). For an overview of the labour migration law see Elspeth Guild, ‘Who is Entitled to Move and who is in Charge? Understanding the Legal Framework of European Labour Migration’ in Didier Bigo, Elspeth Guild (eds), *Controlling Frontiers: Free Movement into and within the Europe* (Aldershot: Ashgate, 2005), pp. 100-139

⁴⁸ See for example, European Commission, *Proposal for a Directive of the European Parliament and of the Council on Improving the Portability of Supplementary Pension Rights*, COM (2005) 507 final, 20.10.2005; European Commission, *The Community Provisions on Social Security – Your Rights when Moving within the European Union* (Luxembourg: Office for Official Publications of the European Communities, 2005); European Commission, *The Elimination of Tax Obstacles to the Cross-border Provision of Occupational Pensions*, COM (2001) 214 final, 19.04.2001; European Commission, *Supplementary Pensions in the Single Market – a Green Paper*, COM (97) 283 final, 10.06.1997; European Commission, *Proposal for a Council Regulation on Coordination of Social Security Systems*, COM (98) 779 final, 21.12.1998

such as the armed forces, the judiciary, the tax authorities and the diplomatic corps.⁴⁹ On this matter, the Commission: “has actively promoted increased access to the public sector, and continues to do so.”⁵⁰ Its position has been that: “ not *all* posts in these fields imply the exercise of public authority and responsibility of the safeguarding the general interest.”⁵¹ Thus, posts concerned with administrative tasks, technical consultation and maintenance cannot be restricted to nationals of the host member state.

Since the transmission of this proposal to the European Parliament in December 2002, however, it has not been processed through the decision-making system of the EU.⁵² This can be read as drawback of this Commission effort to promote its interpretation of what freedom of movement of EU nationals entails. However, the Commission has used other tools at its disposal to that end. In performance of the duties vested in it by the Founding Treaties it has for example undertaken infringement procedures against member states that do not comply with the legal requirements on this issue. In 1988 the Commission launched an action plan aimed at increasing the access to employment in some public sectors, such as teaching and public health care and has undertaken infringement procedures in the ECJ against Luxembourg, Belgium and Greece.⁵³ The ECJ ruled in favour of the Commission in all these cases.⁵⁴

Another way in which the Commission discourse has promoted the decreased salience of internal EU borders from the period prior to the SEA is the constant efforts towards establishing a system in the EU that will facilitate the recognition of professional

⁴⁹ For more details see European Commission, *Free Movement of Workers – Achieving the Full Benefits and Potential*, COM (2002) 694 final, 11.12. 2002, pp. 17-24

⁵⁰ *Ibid.*, p. 18

⁵¹ *Ibid.*, p. 19 (emphasis in the original)

⁵² http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=178951, accessed on 25.04.2009

⁵³ European Commission, *Free Movement of Workers – Achieving the Full Benefits and Potential*, COM (2002) 694 final, 11.12. 2002, pp. 18-19

⁵⁴ See European Court of Justice, Judgment of the Court, Case C-473/93, *Commission v Luxembourg* ECR [1996] I-3207, 02.07.1996; European Court of Justice, Judgment of the Court, Case C-173/94, *Commission v Belgium* ECR [1996] I-3265, 02.07.1996; European Court of Justice, Judgment of the Court, Case C-290/94, *Commission v Greece* ECR [1996] I-3285; 02.07.1996

and vocational qualifications. On this question in the period after 1990s, in tune with the change in the discourse on social policy, one of the accents has been on life-long learning.⁵⁵

All of these measures are predominantly concerned with overcoming existing functional obstacles for free movement between the member states by alleviating legal and administrative barriers. This trend is further reinforced by the expansion of categories of EU nationals that are entitled to move within the Union. The inclusion of students, pensioners, and researchers who are EU citizens into the category of people that can exercise free movement has necessitated the Commission to reduce existing legal and administrative barriers to their movement in the Union as well. For example, the European Parliament and Council adopted a Commission proposal in April 2004.⁵⁶ It promotes the right of EU citizens to reside in another member state by reducing the administrative burden on EU citizens moving within its territory through arguing that the requirement for issuance of residence cards by the host member state should be restricted to cases where this is genuinely justified. Instead, the proposal only requires registration with the competent authorities of the member state for stays over six months.⁵⁷ Furthermore, the Commission has monitored the implementation of the Directives on the right of residence by member states and has undertaken measures to assure their compliance with the Directives' provisions where necessary.⁵⁸ The Green Paper on Education, Training and Research has aimed to launch a debate on the possible measures to overcome the range of legal and administrative obstacles, which still impede the free movement of people undergoing training, those engaged in transnational research and those working in training.⁵⁹

⁵⁵ See for example European Commission, *Proposal for a Recommendation of the European Parliament and of the Council on the Establishment of the European Qualifications Framework for Lifelong Learning*, COM (2006) 479 final, 05.09.2006

⁵⁶ http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=165821, accessed on 10.01.2009

⁵⁷ European Commission, *Proposal for a European Parliament and Council Directive on the Right of Citizens of the Union and their Family Members to Move and Reside Freely within the Territory of the Member States*, COM (2001) 257 final, 29.06.2001, Preamble, points 10 and 11

⁵⁸ See European Commission, *Report on the Implementation of Directives 90/364, 90/365 and 93/96 (Right of Residence)*, COM (99) 127 final, 17.03.1999

⁵⁹ European Commission, *Education – Training – Research. The Obstacles to Transnational Mobility*, COM (96) 462 final, 2.10.1996

However, despite the extensive facilitation these can have for free movement, a number of Commission documents acknowledge that mobility within the Union is still relatively low. According to the 2005 Labour Force Survey, less than 2 per cent of EU citizens live and work in another member state – a proportion that has not changed significantly over the last thirty years.⁶⁰ This low mobility is very likely a sign that as far as movement of people is concerned, abolishing administrative, legal or physical barriers may not be enough for achieving the aims of a frontier-free area.⁶¹ Important dividers, such as identity borders are likely to continue to exist for much longer after the removal of other borders. In that respect a skeptical reading of “mobility” can pose the argument that even if achieved, it can in fact lead to greater appreciation of the existence of differences and therefore, borders. For example, if people regard a movement as crossing a border it can have the effect of solidifying the perception of persisting divisions.⁶²

However, some of the measures articulated by the Commission in the last 10-15 years show that it is aware of this danger. In response, some of its documents have advanced the proposal of complementary measures for promoting the free movement of people. These are aimed at tackling practical obstacles to mobility, such as the lack of information and language and cultural skills for free movement. These efforts have resulted in the establishment of a number of EU-wide programs and the launch of several databases in a variety of fields related to the free movement of people. For example, the European Commission has sought to promote the development of language and cultural skills (such

⁶⁰ Cited in European Commission, *Final Report on the Implementation of the Commission's Action Plan for Skills and Mobility COM (2002) 72 final*, COM (2007) 24 final, 25.01.2007, p. 3. For more data on the mobility within the EU see for example, European Commission, *Mobility, an Instrument for More and Better Jobs: the European Mobility Action Plan (2007-2010)*, COM (2007) 773 final, 06.12.2007, pp. 3-4; European Commission, 2006 – *European Year of Workers' Mobility, the Importance of the Mobility of Workers to the Implementation of the Lisbon Strategy*, MEMO/05/229, 30.06.2005; Vladimír Špidla, *The European Year of Workers' Mobility*, SPEECH/06/248, 24.04.2006; Charlie McCreevy, *Review of the Single Market*, SPEECH/07/532, 14.07.2007

⁶¹ For an overview of the major obstacles to internal migration in the EU see Linda Hantrais, *Social Policy in the European Union* (Basingstoke: Macmillan, 1995), esp. pp. 176-181

⁶² A study that engages with this issue is Paul Kennedy, ‘The Construction of Trans-social European Networks and the Neutralisation of Borders: Skilled EU Migrants in Manchester – Reconstituting Social and National Belonging’, *Space and Polity*, 12: 1 (2008), pp. 119-133. Its main finding, however, is contrary to this skeptical reading and is instead in tune with the de-bordering promoted by Commission documents. It shows that for skilled young professionals mobility within the EU has helped crossing not only territorial but also primordial cultural borders.

as knowledge of other EU member states' societies) by supporting student exchanges between Universities in the EU. The most prominent illustration of these efforts are the ERASMUS, LINGUA and SOCRATES programs, the latter two of which have as one of their activities language teaching.⁶³ Furthermore, the Commission has sought to promote language learning through putting a target of citizens in the EU learning at least two EU languages in order to be able to benefit from the occupational and personal opportunities offered by the single market.⁶⁴

As far as the lack of information is concerned, one of the most important undertakings of the Commission has been the establishment of European Employment Services (EURES). The Commission launched it in September 2003. Its objective is to provide Europe-wide access to available jobs, thus contributing to improving information and transparency of job opportunities throughout the EU. EURES links together Public Employment Services of the member states with partners such as employers and trade unions. It also provides workers and employers with practical information on job mobility. From 2006 it allowed all EU citizens to have direct access to all job vacancies published by the Employment Services of the member states. According to the Commission EURES has become one of the most visited Commission websites.⁶⁵

Another development that facilitates free movement of people inside the Union is the adoption of EU-wide cards on several issues, such as the European Health Insurance Card and European level professional cards that allow for the vocational qualifications recognitions.⁶⁶ The articulations of Commission officials imply that it supports such measures. For example, on the issue of the European Health Insurance Card Commissioner Špidla argued that: "The high acceptance of the European Health Insurance Card clearly shows that this EU-project gives added value to its citizens."⁶⁷ Furthermore, he praised the

⁶³ For brief overview of these programmes see European Commission, *Education – Training – Research. The Obstacles to Transnational Mobility*, COM (96) 462 final, 2.10.1996, p. 34

⁶⁴ *Ibid.*, p. 29

⁶⁵ This brief overview of EURES is from European Commission, *Final Report on the Implementation of the Commission's Action Plan for Skills and Mobility COM (2002) 72 final*, COM (2007) final, 25.01.2007, p. 8

⁶⁶ One of the first professional cards introduced is the European Engineer's Card. For more information about this see Vladimir Špidla, *The European Year of Workers' Mobility*, SPEECH/06/248, 24.04.2006, p. 4

⁶⁷ Vladimir Špidla cited in European Commission, *One Year on: the European Health Insurance Card has Made its Mark across the EU*, IP/05/802, 28.06.2005

idea of the introduction of a European Engineer's Card: "Engineers do not just pave the way for technical progress; they can also be pioneers through good practices for promoting mobility."⁶⁸

All these measures clearly indicate the efforts made by the Commission in overcoming a variety of borders still existing for the free movement of EU citizens, and hence, show a trend towards the construction of a common European space. Time-wise the overwhelming majority of measures striving to overcome practical obstacles to mobility have started to emerge in Commission discourse later than the administrative and legal measures. While the former have been present since the first decades of European integration, the latter became much more pronounced during the period under consideration in this study – after the mid-1980. The advancement of measures that aim at overcoming practical obstacles to mobility are evidence for the comprehensive nature of the Commission understanding of the types of factors that hamper free movement of people. Furthermore, this is an indication of the Commission's desire to achieve genuine freedom of movement, not only one contained in the provisions of legal and administrative requirements. Given the diversity of languages, cultures or practices within the Union, elimination of legal and administrative barriers to free movement is a necessary but not sufficient condition. If mobility is to be achieved, practical measures are unavoidably required once the administrative and legal framework has been transformed. Thus, Commission discourse can be regarded as contributing towards creating this area without internal borders for movement of people.

The focus on these practical obstacles to movement indicates that Commission discourse on this matter is not only concentrated on eliminating functional barriers. It is also becoming more concerned with establishing a common identity in the EU. This is evident from the following Commission articulations: "Transnational mobility ... contributes to the development of 'European citizenship' complementing existing citizenship, of the country of origin."⁶⁹ It is anticipated that with the increased freedom of movement: "should come a growing European consciousness instilled through greater

⁶⁸ Vladimír Špidla, *The European Year of Workers' Mobility*, SPEECH/06/248, 24.04.2006, p. 4

⁶⁹ European Commission, *Education – Training – Research. The Obstacles to Transnational Mobility*, COM (96) 462 final, 2.10.1996, p. 1

awareness of others as a result of exposure to new cultures and societies. Mobility within the Community *ought to contribute to the development of solidarity between all Europeans at all levels ...*⁷⁰ This is considered to be a fundamental condition for the emergence of a true “citizens’ Europe” without which it is impossible to conceive of a European social area.⁷¹ Thus, in the field of free movement, Commission discourse constructs a common area through the elimination of functional borders by the adoption of a number of technical, legal and administrative measures. These, however, in recent years have been more and more accompanied by subtler measures that can eventually contribute substantially to the emergence of a common identity in the EU.

The last important aspect of Commission discourse that contains significant evidence for its contribution towards a de-bordering in the EU for the free movement of people is the Commission’s position on the free movement of workers from the countries that joined the Union in 2004 and 2007. The provisions of the Accession Treaties are that (unless an “old” member state decides to waive it) there will be a seven-year transition period after accession before workers of the “new” member states are allowed to seek employment in countries that have been members of the Union before them. During the 2004 Enlargement three “old” member states (the UK, Ireland and Sweden) did not impose restrictions to free movement of workers from the former Communist acceding countries and in May 2006 several other member states lifted the restrictions.⁷² The Commission has been consistently arguing in favour of free movement within the entire Union and supporting the lifting of the restrictions for East European workers. There are three main ways in which this position is articulated.

⁷⁰ Ibid. (emphasis added)

⁷¹ Ibid, Summary

⁷² For an overview of the regime for free movement of workers from the “new” member states of the EU see European Commission, *The Transitional Arrangements for the Free Movement of Workers from the New Member States Following Enlargement of the European Union on 1 May 2004*, available at http://ec.europa.eu/employment_social/free_movement/docs/transition_en.pdf, accessed on 30.10.2008; European Commission, *Free Movement of Workers to and from the new Member States – How will it Work in Practice?*, available at http://ec.europa.eu/employment_social/free_movement/docs/pr_en.pdf, accessed on 30.10.2008; European Commission, *Free Movement of Workers to and from Bulgaria and Romania – How will it Work in Practice?*, available at http://ec.europa.eu/employment_social/free_movement/docs/accession_2007_en.pdf, accessed on 30.10.2008; European Commission, *High Level Group on Free Movement of Workers*, MEMO/05/2005, 16.09.2005

Firstly, the Commission has reiterated its commitment to free movement of labour throughout the EU. According to the Commissioner responsible for Employment, Social Affairs and Equal Opportunities, Vladimir Špidla: “Free movement of workers is one of the four freedoms of the EU and should be enjoyed by all. I urge all Member States to seriously examine whether transitional periods cannot be dropped.”⁷³ Secondly, the Commission has pointed out on different occasions that the free movement of East European workers has had an overall positive impact on the member states that have lifted the restrictions for the movement of workers from these countries. For example Commission President Barroso maintained that: “A recent analysis from the Commission clearly shows that workers’ mobility from the EU Member States in Central and Eastern Europe to the EU15 has had mostly positive effects.”⁷⁴ More specifically: “Workers from EU10 helped to relieve labour market shortages and contributed to better economic performance in Europe. Countries that have not applied restrictions after May 2004 ... have experienced high economic growth, a drop of unemployment and a rise of employment.” Furthermore: “There was no evidence of a surge in either numbers of workers or welfare expenditure following enlargement in comparison to the previous two years.”⁷⁵ Also there is a line in the discourse that points out that there have not been spectacular flows of migrants to the member states that opened up their labour markets and no serious disturbances to labour markets.⁷⁶ Thirdly, the Commission has expressed its satisfaction that more “old” member states are dropping the restrictions before the end of the seven-year transition period. For example, Commission President Barroso welcomed: “the recent announcement that Finland, Portugal and Spain will join Ireland, United Kingdom and Sweden in lifting ...

⁷³ Vladimir Špidla cited in European Commission, *Commissioner Špidla Kicks off Run-in to Free Labour Movement Decisions for Next Three Years*, IP/05/1153, 16.09.2005. For the articulation of the same argument see also European Commission, *FAQ on the Commission’s Free Movement of Workers Report*, MEMO/06/64, 08.02.2006, p. 2

⁷⁴ Jose Manuel Barroso, *More Europe where it Matters!*, SPEECH/06/168, 15.03.2006, p. 2

⁷⁵ Both quotations are from European Commission, *Free Movement of Workers since the 2004 Enlargement had a Positive Impact – Commission Report Finds*, IP/06/130, 08.02.2006. For similar articulations see also Vladimir Špidla, *The European Year of Workers’ Mobility*, SPEECH/06/248, 24.04.2006, p. 3; Charlie McCreevy, *Review of the Single Market*, SPEECH/07/532, 14.07.2007, p. 3

⁷⁶ Franco Frattini, *The Green Paper on an EU Approach to Managing Economic Migration*, SPEECH/05/364, 20.06.2005, p. 2; European Commission, *2006 – European Year of Workers’ Mobility, the Importance of the Mobility of Workers to the Implementation of the Lisbon Strategy*, MEMO/05/229, 30.06.2005, p. 6

restrictions on the free movement of workers. I look forward to more countries joining the club!”⁷⁷ Commissioner Špidla has also made similar statements.⁷⁸

Thus, overall there is a strong trend in Commission discourse that is promoting decreased significance of internal borders in the EU. This contributes to the establishment of an area where an increasing number of Union nationals and TCNs can enjoy the rights of free movement between the member states of the Union. The analysis of Commission articulations shows that they promote mainly the abolition of functional borders through the implementation of legal and administrative measures relevant for EU citizens and/ or TCNs. Despite its lesser visibility, there is also a trend in Commission discourse towards the abolition of identity divisions through the promotion of a common identity on the territory of the Union. These trends are further reinforced by the support, evident in a number of articulations, for a quicker lifting of the restrictions on free movement of labour from the “new” EU member states. However, a critical examination of Commission documents reveals that there are also configurations of borders, which are less obvious and which lead to the construction and reconstruction of EU borders. I examine them in the next two sections, starting with the construction of the external border of the EU.

4.4. The Trend in Commission Discourse towards the Construction of an External EU Border

As I discussed in Chapter Two, a shortcoming of Neo-functionalism is that it does not provide an in-depth account of the Commission configuration of external EU borders. In order to address this weakness, in this section I analyse how exactly Commission documents articulate them. In distinction to its discourse on border controls, where Commission documents explicitly refer to the external EU border, on the free movement of people there are no such references. Hence, this discourse is more similar to the articulations on social policy and the ENP. The external border in the field of the free movement of people is constructed in Commission discourse both through the erection of

⁷⁷ Jose Manuel Barroso, *More Europe where it Matters!*, SPEECH/06/168, 15.03.2006, p. 2

⁷⁸ European Commission, *Meeting Offers Last Chance to Review Restrictions on Free Movement of Workers in EU*, IP/06/390, 28.03.2006, p. 1

new functional barriers and through the promotion of a new, common European identity. The emerging new functional border is more directly related to the regime for the free movement of TCNs, while the construction of identity borders concerns mainly EU citizens. Before I examine these two types of borders, however, I outline the main themes in Commission discourse on the free movement of people that lead to the emergence of EU's external border.

4.4.1. Main themes of Commission discourse on the Free Movement of People that lead to the construction of the EU's external borders

In the area of the free movement of people, the construction of external EU borders is a result of articulations in one specific field, Immigration. However, as an issue area immigration is also related to border controls. Therefore, for the sake of analytical clarity I specify the immigration issues that are most closely related to free movement of people (and therefore are examined in this chapter rather than the border controls one). I do this by presenting and analysing an important shift in the discourse of the Commission in the last decade.

Since the early 2000s, Commission documents start to increasingly make a distinction between illegal immigration and legal migration. As we saw in the previous chapter, illegal immigration is still articulated as an unwanted phenomenon that needs to be fought against. In distinction to this, legal migration is enunciated as forming the focal point of the “proactive” immigration policy, which the Commission began to advocate during the same period. The aim is to develop the tools that will allow controlling immigration according to the needs of the European labour market.⁷⁹ To that end, a new theme in the Commission documents is that they start to emphasise the increased possibility for legal migration into the EU.⁸⁰ This trend towards articulating a distinction between

⁷⁹ Joanna Apap, ‘Shaping Europe’s Migration Policy – New Regimes for the Employment of Third Country Nationals: A Comparison of Strategies in Germany, Sweden, the Netherlands and the UK’, *European Journal of Migration and Law*, 3: 3 (2002), pp. 309-328, p. 315

⁸⁰ See for example European Commission, *Green Paper on an EU Approach to Managing Economic Migration*, COM (2004) 811 final, 11.01.2005; Franco Frattini, *Legal Migration and the Follow-up to the Green Paper and on the Fight against Illegal Immigration*, SPEECH/05/666, 07.11.2005; Franco Frattini, *The*

illegal and legal immigration is well illustrated by the following assertions by senior Commission officials. According to Commissioner Frattini the EU: “must ... aim at efficient and effective management of legal migration flows and, at the same time, fight illegal immigration in all its dimensions.”⁸¹ In the same vein President Prodi declared: “We must send a clear message to our citizens. We will be tough on illegal immigration and the trafficking of human beings but at the same time we must acknowledge that legal migration is good for Europe. It is a source of vitality and energy which an aging Europe needs”⁸² and Commissioner Ferrero-Waldner argues: “But of course we need legal migration ... Getting the balance right between clamping down on illegal immigration and welcoming those immigrants that we need for our economic and social well-being is essential.”⁸³ Importantly, these articulations also clearly indicate that the Commission is at pains to emphasise that it understands the need to get the balance right and that the necessary measures to secure this are undertaken. This is because as a part of the highly controversial issue of immigration, “The European Commission understands how politically sensitive it is to suggest that immigration is the answer to labour shortages ...”⁸⁴ Nevertheless, this new distinction between illegal and legal migration is important because it constructs legal immigrants as TCNs who will be entitled (under certain conditions) to work on the territory of the EU. Thus, legal migration is inextricably linked to issues of free movement of people, which is why I examine it in this particular chapter.

The reason for this new line in Commission discourse on migration is the argument that it will be indispensable to overcome a threat that has been continuously articulated.⁸⁵ This is the threat of an aging population in the Union and its economic and social consequences. This line comes through in a number of Commission documents. Its starting

Future of EU Migration and Integration Policy, SPEECH/07/98, 23.02.2007; European Commission, *Towards a Common Immigration Policy*, COM (2007) 780 final, 5.12.2007

⁸¹ Franco Frattini, *The Green Paper on an EU Approach to Managing Economic Migration*, SPEECH/05/364, 20.06.2005, p. 3

⁸² Romano Prodi, *Speaking Points Concerning the Seville European Council*, SPEECH/02/290, 18.06.2002, p. 2

⁸³ Benita Ferrero-Waldner, *Migration, External Relations and the European Neighbourhood Policy*, SPEECH/06/30, 24.01.2006, p. 2

⁸⁴ Claude Moraes, ‘The Politics of European Union Migration Policy’, *Political Quarterly*, 74: 1 (2003), pp. 116 – 131, p. 126

⁸⁵ As the analysis in the next chapter that deals with social policy shows, the threat of aging population in the EU is a theme that emerges in other Commission articulations as well.

point is the statistics on demographics in the EU, which the Commission discourse reproduces. Projections indicate that in the period 2010-2030 there will be a decline in employment in the order of 20 million workers in the EU-25.⁸⁶ This enables the Commission to summarise: “Our populations are getting smaller and growing older.”⁸⁷ Already in many European countries the net increase in population is entirely due to immigration. Current projections indicate that by 2050 the population of Austria would shrink by a quarter if there were no immigration.⁸⁸ Furthermore, the age structure of the population will change with the share of people aged 60 and over increasing from 22 percent in 2001 to 27 percent in 2020 on average for the EU.⁸⁹

These demographic trends are expected to have significant repercussions on the economic performance of the Union because they can trigger shortages of manpower, thus impacting on the productivity of the block. At the same time the aging of the population will lead to higher spending for social security, which can have dire consequences. According to one of its Communications on Supplementary Pensions: “Resolving the retirement provision problem related to an aging population is one of the major challenges confronting all Member States of the European Union.”⁹⁰ This is because: “There are today four workers to every pensioner. In 2040 the ratio will be two to one. Without reform, the level of expenditure of state pension schemes could in some Member States reach 15-20% of GDP (1997: approximately 10%). The scale of the possible fiscal implications must be underscored: in some Member States, unfunded pension liabilities could rise to 20% of

⁸⁶ Franco Frattini, *Legal Migration and the Follow-up to the Green Paper and on the Fight against Illegal Immigration*, SPEECH/05/666, 07.11.2005, p. 2. See also Franco Frattini, *The Green Paper on an EU Approach to Managing Economic Migration*, SPEECH/05/364, 20.06.2005, p. 2

⁸⁷ Benita Ferrero-Waldner, *Migration, External Relations and the European Neighbourhood Policy*, SPEECH/06/30, 24.01.2006, p. 2

⁸⁸ Ibid.

⁸⁹ Antonio Vitorino, *Migratory Flows and the European Labour Market: Towards a Community Immigration Policy*, SPEECH/01/334, 09.07.2001, p. 3

⁹⁰ European Commission, *Towards a Single Market for Supplementary Pensions*, COM (1999) 134 final, 11.05.1999, p. 9

GDP.”⁹¹ In these conditions the Commission has on several occasions identified the demographic situation as one of the challenges the EU is currently facing.⁹²

As I pointed out in Chapter Two, the main way through which the external EU border is constructed is through articulating some kind of danger. Hence, in the case of free movement of people, the external border of the Union is created as a result of the need to ensure the persistence of favourable economic and demographic conditions within the EU, which are currently under threat. As the above articulations in the Commission discourse indicate, one of the ways for achieving this is through legal migration. This need contributes to the emergence of the external borders of the EU through providing rationales for action at the level of the Union. In doing this, one of the effects is to encourage a perception of the EU as an entity. It is precisely this understanding that brings the external borders into being.

This perception of the EU as an entity is articulated through putting the emphasis on the commonality of the situation of the member states. Also it downplays any differences that may exist between them. For example, although the demographic data referred to above shows that some member states will be worse affected than others, it nevertheless still makes clear that these statistics will affect the whole of the EU in much the same way. As the former Commission Vice-President and Commissioner responsible for Justice, Freedom and Security Franco Frattini declared the current demographic trends in the EU: “... will undoubtedly affect some Member States more than others. *Nevertheless, it is a common trend.*”⁹³ As the studies of O’Hagan⁹⁴ and Campbell⁹⁵ that I referred to in Chapter

⁹¹ Ibid. For similar account see also European Commission, *Supplementary Pensions in the Single Market – a Green Paper*, COM (97) 283 final, 10.06.1997, p. 1

⁹² For documents referring to aging population as a challenge see Vladimir Špidla, *Opening Address for the Seminar ‘Labour Mobility in the EU and China: Trends and Challenges Ahead’*, SPEECH/06/681, 13.11.2006, p. 3; Franco Frattini, *The Future of EU Migration and Integration Policy*, SPEECH/07/98, 23.02.2007, p. 2; Franco Frattini, *Enhanced Mobility, Vigorous Integration Strategy and Zero Tolerance on Illegal Employment: a Dynamic Approach to European Integration Policies*, SPEECH/07/526, 13.09.2007, p. 2; European Commission, *Towards a Single Market for Supplementary Pensions*, COM (1999) 134 final, 11.05.1999, p. 9

⁹³ Franco Frattini, *The Green Paper on an EU Approach to Managing Economic Migration*, SPEECH/05/364, 20.06.2005, p. 2 (emphasis added). See also Franco Frattini, *Legal Migration and the Follow-up to the Green Paper and on the Fight against Illegal Immigration*, SPEECH/05/666, 07.11.2005, p. 2; Franco Frattini, *Enhanced Mobility, Vigorous Integration Strategy and Zero Tolerance on Illegal Employment: a Dynamic Approach to European Integration Policies*, SPEECH/07/526, 13.09.2007, p. 2

Two explain, such articulations of threat contribute to the internal cohesion of a community, while at the same time they differentiate it from the rest of the world. Hence, this provides a justification for action at the Union level.

After the threat has been articulated in this way, it is much easier to successfully argue for common European action: “Europe is tackling these challenges ... working together to pre-empt the challenges posed by an aging population in Europe ...”⁹⁶ This trend can be illustrated further with a number of other articulations. According to Commission officials: “We need a European approach, which can help the EU address unwanted phenomena ..., while ensuring that Europe can welcome the migrants its economy needs and its society is capable and willing to welcome.”⁹⁷ Or as Commission President Barroso declared: “Immigration is one facet of globalization which demands a European rather than a national response to be effective.”⁹⁸ According to Commission officials, a common approach is necessary because: “Working *together* makes the EU stronger not just when dealing with problems such as illegal migration and border management, but also in seizing the opportunities which migrants embody. *Common action* at EU level also gives Member States a stronger voice on the international stage ...”⁹⁹ This is significant because it is exactly the efforts towards a European approach on the matter that eventually bring the tangible external borders of the EU into existence.

Furthermore, it allows references to “Europe” in Commission discourse. For example, Commissioner Frattini declared: “I am convinced that *Europe* will need more immigration, since labour and skills shortages are already noticeable in a number of sectors

⁹⁴ Jacinta O'Hagan, *Conceptualizing the West in International Relations – from Spengler to Said* (Basingstoke: Palgrave, 2002)

⁹⁵ David Campbell, *Writing Security – United States Foreign Policy and the Politics of Identity* (2nd ed.) (Manchester: Manchester University Press, 1998)

⁹⁶ Jose Manuel Barroso, *Integration through Education in 21st Century Europe*, SPEECH/07/628, 16.10.2007, p. 2.

⁹⁷ Franco Frattini, *Shaping Migration Patterns*, SPEECH/07/556, 20.09.2007, p. 2

⁹⁸ Jose Manuel Barroso, *Opening Remarks of President Barroso – Legal Immigration*, SPEECH/07/650, 23.10.2007, p. 2

⁹⁹ Franco Frattini, *Enhanced Mobility, Vigorous Integration Strategy and Zero Tolerance on Illegal Employment: a Dynamic Approach to European Integration Policies*, SPEECH/07/526, 13.09.2007, p. 3 (emphasis added)

and they will tend to increase”¹⁰⁰ and Commissioner Ferrero-Waldner argued immigration: “will help us make the transition to a new economic situation, and maintain a certain level of growth. To maintain their dynamism countries need human capacity. For Europe, with its falling, aging population that will inevitably mean attracting brains and labour from outside.”¹⁰¹ Such a position is in tune with undertakings in the developed world, where: “immigration has become a structural necessity.”¹⁰² However, it is important because it implies Europe’s existence as something different and identifiable from the rest of the world, thus bringing into existence its external borders.

Thus, analysis of Commission discourse shows that the main ways through which the external border of the EU in the field of free movement of people is constructed are the articulations on the current demographic trends in the Union and the threat of aging of its population. Building on these, Commission discourse has argued in favour of common undertakings at EU level to tackle the current problems. An analysis of Commission discourse shows the following major tools that bring the external borders of the EU into being. Firstly, it has promoted the need for common action at EU level in the field of legal migration. Secondly, and related to that, Commission articulations on legal migration construct a particular vision of the Union and its “Others”. Thirdly, implementing the agreed upon common action at EU level has allowed the Commission to advance concrete measures on issues related to free movement of people in response to the threats posed by current demographic trends in the EU. All of these contribute to the construction of EU’s external borders. However, the first two of these responses are more closely related to the

¹⁰⁰ Franco Frattini, *The Green Paper on an EU Approach to Managing Economic Migration*, SPEECH/05/364, 20.06.2005, p. 2 (emphasis added). The same position is articulated in other Commission documents as well. See for example, Franco Frattini, *Legal Migration and the Follow-up to the Green Paper and on the Fight against Illegal Immigration*, SPEECH/05/666, 07.11.2005, p. 2; Franco Frattini, *The Future of EU Migration and Integration Policy*, SPEECH/07/98, 23.02.2007, p. 2; Franco Frattini, *Shaping Migration Patterns*, SPEECH/07/556, 20.09.2007, p. 2; Benita Ferrero-Waldner, *Migration, External Relations and the European Neighbourhood Policy*, SPEECH/06/30, 24.01.2006, p. 2

¹⁰¹ Benita Ferrero-Waldner, *Migration, External Relations and the European Neighbourhood Policy*, SPEECH/06/30, 24.01.2006, p. 2

¹⁰² Dietrich Thränhardt, Robert Miles, ‘Introduction: European Integration, Migration and Processes of Inclusion and Exclusion’ in Dietrich Thränhardt, Robert Miles (eds), *Migration and European Integration – the Dynamics of Inclusion and Exclusion* (London: Pinter, 1995), pp. 1-12, p. 1. For similar argument see also Stephen Castels, Mark Miller, *The Age of Migration* (3rd ed.) (Basingstoke: Palgrave Macmillan, 2003), p. 178

emergence of a common European identity within the Union. As such, it is associated more with the reconfiguration of identity borders. The common actions at EU level, on the other hand, lead to the creation of new functional borders at the external edges of the Union, which affect mainly the rights of TCNs to move within its territory. I examine both in the following sections.

4.4.2. The construction of the external EU border through the promotion of a common identity

As I argued above, the first main line contributing to the construction of the Union's external border articulated in Commission discourse is the need for common action at EU level on legal migration as a response to the challenge of aging populations in the EU. Its premise is the same as the rationales articulated in a number of other policy areas (such as social policy and border controls) - "Free movement of people ... is meaningless without a unified labour market. A Europe without internal borders is impossible without common action at those borders."¹⁰³ As with the discourse in the fields examined in Chapters Five and Three, such articulations contribute to the emergence of a new border – the external edge of the EU. This is the case because they enunciate a meaning for the entity EU. Generally, as the articulations on the demographic trends presented above demonstrate this is articulated through downplaying any differences that may exist between the member states. Instead, Commission discourse emphasises the commonalities through references to the "European Union" and "Europe", thus encouraging a perception of the EU as a unified whole. As with the ENP and social policy and in distinction to border controls, the above articulation does not refer explicitly to the external border of the EU.¹⁰⁴ Instead, it is

¹⁰³ Antonio Vitorino, *Migration as a Resource to be Managed for the Mutual Benefit of Sending and Receiving Countries*, SPEECH/03/417, 18.09.2003, p. 3

¹⁰⁴ As I pointed out earlier in this chapter, the issues of free movement of people and border controls are closely related. They have been separated in this research for analytical purposes. Nevertheless, in many Commission documents used in my analysis of its discourse of free movement of people, there are explicit references to the "external borders of the EU". These in the overwhelming majority of cases appear in relation to illegal immigration, which as a branch of immigration is related to the issue of free movement of people. However, usually the issue is how to deal with this problem and the measures suggested are more closely related with border controls. This is why in my analysis in this chapter I do not regard any such references to the EU "external border" that may appear as relevant to free movement of people and instead consider them relevant to the analysis for the Chapter on Border Controls.

constructed indirectly, as a by-product of the decreased significance of borders within the Union through the establishment of a regime for free movement of people. It is the internal de-bordering that prompts cooperation at EU-level. Commission officials argue that this is because: "... decisions to admit third country nationals are no longer the exclusive remit of each Member State. Such decisions affect other Member States and the EU labour market as a whole ... This 'political difference' has encouraged Member States to review their national policies and to discuss a common way to proceed."¹⁰⁵ This quotation is also interesting because it shows the Commission employing Neo-functional logic – the previous decisions on integration have “locked up” the member states’ independence, so that now any meaningful action will necessitate joint efforts, which will lead to further integration.

Detailed examination of Commission articulations on the free movement of people will reveal the meaning they ascribe to “Europe”/the “EU”. Furthermore, it will allow analysis of the types of borders that are reconfigured. One of the ways forward in addressing the current economic and demographic threats identified in Commission discourse is to make sure the EU is attractive to highly skilled migrants. As Franco Frattini declared: “We want Europe to become at least as attractive as favourite migration destinations such as Australia, Canada and the USA.”¹⁰⁶ This is because: “To maintain and improve economic growth in the EU, it is essential for Europe to become a magnet for highly skilled immigrants and, at the same time, to attract high caliber students into European Universities ... We must work hard to make the EU an attractive destination for such people.”¹⁰⁷ Furthermore, according to Commissioner Frattini: “Europe’s ability to attract highly skilled migrants is a measure of its international strength.”¹⁰⁸ However, to

¹⁰⁵ Franco Frattini, *The Green Paper on an EU Approach to Managing Economic Migration*, SPEECH/05/364, 20.06.2005, p. 3. See also Franco Frattini, *Legal Migration and the Follow-up to the Green Paper and on the Fight against Illegal Immigration*, SPEECH/05/666, 07.11.2005, p. 2

¹⁰⁶ Franco Frattini cited in European Commission, *Making Europe More Attractive to Highly Skilled Migrants and Increasing the Protection of Lawfully Residing and Working Migrants*, IP/07/1575, 23.10.2007

¹⁰⁷ Franco Frattini, *The Future Development of EU Migration Policy*, SPEECH/07/471, 03.07.2007, p. 4

¹⁰⁸ Franco Frattini cited in European Commission, *Making Europe More Attractive to Highly Skilled Migrants and Increasing the Protection of Lawfully Residing and Working Migrants*, IP/07/1575, 23.10.2007

achieve this: “Europe has to compete against Australia, Canada, the USA and the rising powers in Asia.”¹⁰⁹

All these articulations promote a particular vision of the EU. As such they contribute to the emergence of its external borders through constructing an identity for the Union and its citizens. Therefore, Commission discourse on the free movement of people reconfigures borders through advancement of a common European identity. The above articulations link “the EU” with a number of (economic) powers across the globe as well as “international strength”. Thus, the suggestion they make is that the Union is one of the strong players in the international arena. Furthermore, these comparisons enunciate a number of “Others” for the EU. These are other internationally strong powers – the USA, Canada, Australia, and the “Asian tigers”. In distinction to the discourse on social policy, however, as we will see in the next chapter, the articulations of Others on legal migration fall short of maintaining superiority of the system in the EU in comparison to that of its Others. On the contrary, if anything, the suggestion these articulations make is that the EU has to catch up. Therefore, demographic threats and legal migration contribute to the construction of the EU’s external identity border but do not do so by claiming that the Union is better in attracting outside labour force.

This discourse on the “Others” for the EU is continued in the choice of countries the EU’s statistics on legal migration are compared to: “85% of unskilled labour goes to the EU and only 5% to the USA, whereas 55% of *skilled* labour goes to the USA and only 5% to the EU. We have to reverse these figures ...”¹¹⁰ Also: “*The EU as a whole* ... seems not to be considered attractive by highly qualified professionals ... for example, the EU is the main destination for unskilled to medium-skilled workers from the Maghreb (87% of such immigrants), while 54% of the highly qualified immigrants from these same countries

¹⁰⁹ Franco Frattini, *Enhanced Mobility, Vigorous Integration Strategy and Zero Tolerance on Illegal Employment: a Dynamic Approach to European Integration Policies*, SPEECH/07/526, 13.09.2007, p. 2 (emphasis added)

¹¹⁰ Ibid (emphasis in the original). For similar data see also Jose Manuel Barroso, *Integration through Education in 21st Century Europe*, SPEECH/07/628, 16.10.2007, p. 5

reside in the USA and Canada.”¹¹¹ Importantly, these also articulate another significant “Other” for the EU: “unskilled labour”. This is the case because the above quotations clearly show that the EU’s goal is to attract more skilled migrants, so that it changes in a positive for itself way the statistical data. Therefore, this also indicates a perception of the Self in the EU as an entity that is highly productive, at the forefront of international economic competition and engaged in branches of the economy that require highly qualified labour force. As the analysis in Chapter Five shows, this trend in the perceptions of the “Self” and the “Other” is very evident in the field of social policy as well. In distinction to the articulations there, however, in the area of the free movement of people, the Commission discourse clearly shows that the EU has to improve itself further because at present the data does not indicate the state desired by the EU.

According to Commission President Barroso there are a number of reasons why this is the case. Firstly, it is a result of the existence of twenty-seven different and sometimes conflicting procedures for admitting migrants into the EU. Secondly, there is a lack of cross-border dimension in member states’ policies on legal migration, which makes it difficult for qualified workers to move within the Union. Thirdly, there is a gap in the rights of legal immigrants in comparison to EU citizens.¹¹² In recent years there have been important policy proposals of the Commission that aim at addressing these problems. The implementation of the envisaged measures should help the Union to successfully meet the challenges identified in Commission discourse, thus contributing to the emergence of the European identity promoted in the above articulations. Therefore, they are supporting the construction of EU’s external borders through aiding its successful competition with its rival “Others”. Furthermore, these proposals also contribute to the creation of functional borders at the external edges of the Union because they can lead to the establishment of a novel regime for TCNs to work and reside in the territory of the EU.

¹¹¹ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, COM (2007) 637 final, 23.10.2007, p. 3 (emphasis added)

¹¹² Jose Manuel Barroso, *Opening Remarks of President Barroso – Legal Immigration*, SPEECH/07/650, 23.10.2007, p. 2

4.4.3. *The construction of functional external borders of the EU – the emerging regime for free movement of TCNs*

The functional external borders of the EU are progressively being shaped by the discourse of the European Commission. This is a result of a number of undertakings in which the Commission has been actively involved. Examples of these are the regulation of the rights of long-term residents in the member states or the efforts to allow free movement of highly skilled migrants. Below I examine in detail Commission articulations that contribute to the construction of functional borders at the external edges of the EU.

There are several main tools that lead to that. Some Commission documents offer a good summary of the main ways through which this is achieved. According to former European Commissioner responsible for Justice and Home Affairs Antonio Vitorino the approach endorsed by the Commission: “comprises the establishment, on the one hand, of a *normative framework* laying down the conditions of entry and of stay of immigrants and, on the other hand, of an open *coordination mechanism* to encourage the progressive convergence of the policies of the Member States as regards the management of migratory flows.”¹¹³ As a result of the implementation of such measures, gradually the conditions and procedures for TCNs for entry, stay, family unification, employment and movement between the member states of the EU will be unified. This will mean that increasingly these issues will be regulated at the EU-level, which will decrease to a certain extent the importance and salience of member states’ national borders at the expense of the border of the EU. Therefore, this will lead to the establishment of an ever more visible and important barrier at the external edges of the Union. Furthermore, to the extent that this border will regulate the possibility of actual entry into the labour markets and the welfare states of the members of the EU, this newly-emerging external dividing line constitutes a functional border between the Union and the rest of the world.

The major areas in which these developments have taken place are the regimes for long-term residents in a EU member state and for the employment of migrants, where since the late 1990s there have been a number of important Commission proposals. The measures

¹¹³ Antonio Vitorino, *Migratory Flows and the European Labour Market: towards a Community Immigration Policy*, SPEECH/01/334, 9.07.2001, p. 5 (emphasis in the original). See also Antonio Vitorino, *On the Immigration Policy*, SPEECH/01/463, 16.10.2001, p. 2

envisaged can be divided into three main groups in terms of the tools employed for constructing the external EU border. The first type encompasses unification through common legal action. Examples are the proposal on sanctions against employers of illegally staying TCNs;¹¹⁴ the proposal envisaging common status in the member states for long-term TCNs;¹¹⁵ and the proposals establishing common conditions of entry and residence for employed, self-employed¹¹⁶ and highly skilled immigrants.¹¹⁷ The first of these proposals at the time of writing is still being processed through the decision-making system of the EU.¹¹⁸ The Council, however, adopted the last one in May 2009¹¹⁹ as well as the second one, in November 2003.¹²⁰ The effects of some of the measures provided for in the latter were noticed soon. For example, according to Boswell, the approximation of legislation in the EU has put some member states under pressure to liberalise their national provisions on issues such as naturalisation or the treatment of long-term residents.¹²¹ However, the Commission has not always been able to secure the adoption of its proposals as the withdrawal of the proposal establishing common conditions of entry and residence for employed and self-employed immigrants indicates. The Commission renewed its efforts in this area in 2007 with the proposals on highly skilled migrants,¹²² which was successfully adopted. Thus, Commission activities on these matters can be read as an indication that it is persisting in trying to find issues on which an agreement on common action at the EU level can be secured.

¹¹⁴ European Commission, *Proposal for a Directive Providing for Sanctions against Employers of Illegally Staying Third-Country Nationals*, COM (2007) 249 final, 16.05.2007

¹¹⁵ European Commission, *Proposal for a Council Directive Concerning the Status of Third-Country Nationals who are Long-Term Residents*, COM (2001) 127 final, 13.03.2001

¹¹⁶ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third Country Nationals for the Purpose of Paid Employment and Self-Employed Economic Activities*, COM (2001) 386 final, 11.07.2001

¹¹⁷ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, COM (2007) 637 final, 23.10.2007

¹¹⁸ See http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=195730 for the first proposal and http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=196320 for the third, both accessed on 29.04.2009.

¹¹⁹ See footnote 38 above

¹²⁰ http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=164059, accessed on 29.04.2009

¹²¹ Christina Boswell, *European Migration Policies in Flux – Changing Patterns of Inclusion and Exclusion* (Oxford: Blackwell, 2003), p. 26

¹²² For an academic study that makes the same point see Elspeth Guild, 'EU Policy on Labour Migration – a first Look at the Commission's Blue Card Initiative', *CEPS Policy Brief*, num. 145, November 2007, p. 1

The second tool articulated in the Commission discourse consists of measures that simplify and unify the issuance of documents, such as residence and work permits, by the member states. It is exemplified by amended rules on the uniform format for residence permits of TCNs¹²³ and the proposal for a single application procedure for work and residence permits for TCNs on the territory of a member state.¹²⁴ The Council adopted the former in April 2008¹²⁵ and the latter at the time of writing is still being discussed in the Council of Ministers after the Commission has given its position on the amendments made.¹²⁶ The third tool concerns the convergence of the policies of the member states on legal migration issues. An illustration of this approach is the Communication on the open method of co-ordination in this field¹²⁷ and the common agenda for integration of TCNs in the EU.¹²⁸ The European Parliament passed the first of these proposals with a Resolution in June 2003¹²⁹ and the second one, in July 2006.¹³⁰

The Commission discourse portrays the effect of these measures as helping to facilitate “a gradual and smooth move from national to Community rules ... [by] giving a common legal frame to Member States and ... determin[ing] common definitions, criteria and procedures regarding the conditions of entry and residence of third-country nationals ...”¹³¹ For example, the push towards more equal treatment of TCN and EU employees (an issue core to the better integration of TCNs) started in 1994 with the Commission White

¹²³ European Commission, *Proposal for a Council Regulation Amending Regulation (EC) 1030/2002 Laying Down a Uniform Format for Residence Permits for Third-Country Nationals*, COM (2003) 558 final, 24.09.2003

¹²⁴ European Commission, *Proposal for a Council Directive on a Single Application Procedure for a Single Permit for Third-Country Nationals to Reside and Work in the Territory of a Member State and on a Common Set of Rights for Third-Country Workers Legally Residing in a Member State*, COM (2007) 638 final, 23.10.2007

¹²⁵ http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=185533, accessed on 12.01.2009

¹²⁶ http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=196321, accessed on 12.01.2009

¹²⁷ European Commission, *On an Open Method of Coordination for Community Immigration Policy*, COM (2001) 387 final, 11.07.2001

¹²⁸ European Commission, *A Common Agenda for Integration Framework for the Integration of Third-Country Nationals in the European Union*, COM (2005) 389 final, 01.09.2005

¹²⁹ http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=166319, accessed on 02.05.2009

¹³⁰ http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=193253, accessed on 02.05.2009

¹³¹ Antonio Vitorino, *Asylum is a Right, Economic Migration is an Opportunity*, SPEECH/03/71, 11.02.2003, p. 3

Paper on Social Policy.¹³² This discourse contributes in important ways to the establishment of functional external borders of the Union. The measures it envisages not only (as discussed in the section on de-bordering) lead to increasing unification of the member states' migration regimes but also establish the EU as an entity on this matter, which has its own distinctive system in comparison to the rest of the world.

Importantly, according to the Commission: "This common legal frame is a starting point."¹³³ This is crucial because it points to the possibility that what has happened so far is not the "end of the road", so to speak, at least not from the perspective of the Commission. One of the reasons for this is that in this policy area so far there has been very little transfer of prerogatives to the EU-level in respect to TCNs. This is contrary to developments in other areas such as border controls. The chapter analysing Commission discourse shows that on border controls there have been important developments towards establishing EU-level systems for exchange of information on visa, etc. On free movement of TCNs, the erection of functional external borders has been achieved following a different logic: until now the Commission discourse has very rarely articulated undertakings that will lead to the establishment of EU-wide databases or to the performance of certain tasks at Union level. In that respect, as President Barroso summarises: "the Commission's role is one of facilitator in the service of the Member States of the Union."¹³⁴ This leads to a situation where the conditions and procedures for entry and stay for TCNs are increasingly harmonised as the above discussion of Commission discourse has shown. It is in this respect that one can talk about the construction of functional external borders of the Union. However, this is not accompanied by an increased role of the Commission, provisions for free circulation of TCNs between the member states or establishing databases accessible to the authorities in the member states.

However, some Commission articulations point to its ambitions to amend this situation. Since 2006 some Commission proposals have implied an increase in its role in

¹³² Andrew Geddes, *Immigration and European Integration – Towards a Fortress Europe?* (Manchester: Manchester University Press, 2000), p. 160

¹³³ Antonio Vitorino, *Asylum is a Right, Economic Migration is an Opportunity*, SPEECH/03/71, 11.02.2003, p. 3

¹³⁴ Jose Manuel Barroso, *Integration through Education in 21st Century Europe*, SPEECH/07/628, 16.10.2007, p. 3

the field of economic migration and the possibility for some TCNs to attain the right to move freely within the EU only 2-3 years after their first entry. The former is illustrated by Commissioner Frattini's introduction of the so called "mobility partnerships" made at a conference in Tripoli in November 2006. If accepted, this will become a mechanism that will enable the Commission to directly negotiate with third countries the quotas for accepted TCNs into the EU on the basis of national quotas set by member states in view of their labour market needs.¹³⁵ For its part, the proposal for the admission of highly-qualified TCNs envisages that after two years of residence in a member state the highly qualified worker, as holder of an EU Blue Card, will be allowed to move with his/ her family to another member state for the purpose of highly qualified employment.¹³⁶ Thus, these two proposals show an attempt by the Commission to increase its role on free movement of TCNs. Importantly, if it is successful in promoting its vision, this will put the foundations for transforming the way functional external borders of the EU are constructed. Such articulations can potentially lead to establishment of EU-wide systems for TCN quotas and to promotion of the idea of free movement of TCNs within the EU for economic purposes. Therefore, both of these proposals further reinforce the current trend evident in Commission discourse on free movement of TCNs towards the establishment of an external EU border.

This discussion has highlighted the trend in Commission discourse on free movement of people towards the construction of EU's external borders. It has shown that such a trend is evident in relation to the articulation of a European identity and the regime for free movement of TCNs. This trend is a result of the articulation of a threat in Commission documents posed by aging of EU's population. One of the solutions of this

¹³⁵ Franco Frattini, *The Future Development of EU Migration Policy*, SPEECH/07/471, 03.07.2007, p. 3. For other articulations of this proposal see Franco Frattini, *The Future of EU Migration and Integration Policy*, SPEECH/07/98, 23.02.2007, p. 7 and Franco Frattini, *Enhanced Mobility, Vigorous Integration Strategy and Zero Tolerance on Illegal Employment: a Dynamic Approach to European Integration Policies*, SPEECH/07/526, 13.09.2007, p. 7

¹³⁶ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, COM (2007) 637 final, 23.10.2007, Article 19, point 1. For good analysis of the legal shortcomings of this proposal for establishing this free movement in practice see Elspeth Guild, 'EU Policy on Labour Migration – a first Look at the Commission's Blue Card Initiative', *CEPS Policy Brief*, num. 145, November 2007, pp. 5-7

challenge identified in Commission documents is an increase in the number of migrants admitted to the Union, which in turn implies that there will be greater freedom for movement of people. In relation to European identity, Commission articulations contribute to the construction of the external border of the Union by manifesting specific “Others” thus also enunciating a particular identity for the EU itself. Therefore, this constructs identity borders. As far as TCNs are concerned, the documents examined contribute primarily to the establishment of a new regime for legal entry and movement into the EU for work purposes. As such, they construct functional external barriers. Thus, in the sphere of free movement of people, just as in border controls, the construction of external EU borders comes about as a result of the differentiation of rights of EU citizens and TCNs.

Furthermore, the articulations in the end of the above analysis clearly indicate the ambition of the Commission to increase its role on the matters of free movement of people. However, at present the Commission still faces important constraints in its ability to promote a reading of the undertakings in the field of free movement of people that will bring about a genuine area without internal borders in this area. This means that some internal borders between the member states continue to exist. In turn, this implies that a reconstruction of the internal borders in the Union has taken place. However, in distinction to the reconstruction of internal borders examined in the previous chapter, on some issues in the field of free movement of people the Commission has managed to attain a leading position and to secure acceptance for its vision. In the next section I present how these developments are articulated.

4.5. The Reconstruction of Internal EU Borders through the Commission Discourse on Free Movement of People

In Chapter Three I showed how the Commission has had a significant input in the reconfiguration of EC/EU borders. It employed neo-functionalist logic in linking border control issues with the completion of the internal market. This allowed it to advance a radical reading according to which the goals of the SEA could only be achieved if intra-community borders were abolished altogether. In a similar vein, currently the Commission

has secured the acceptance of a potentially groundbreaking arrangement for free movement for work purposes of some TCNs. This provides evidence for the ability of the Commission to employ its powers in the first pillar, thus giving a different example of how the Commission contributes to the reconfiguration of borders in the EU. Despite that, as I pointed out in Chapter Two, the Commission faces constraints to the proposals for which it can secure acceptance in the Council. In distinction to border controls where the Commission's position contributed to de-bordering, in the case of free movement of people its discourse is conducive to the reconstruction of internal borders in the Union. At the same time, some of the internal borders are reconstructed following a pattern very similar to the one discussed in section 3.4. They are a result of the established way of how the EU functions. Below I examine both of these instances as they are articulated through the silences and contradictions in the Commission discourse.

4.5.1. Contradictions in Commission discourse

The fundamental contradiction in Commission discourse that leads to a reconstruction of internal borders in the EU is between the interpretation that can be given to its stated aims on the free movement of people and some other articulations on the matter. According to the White Paper on *Completing the Internal Market*, one of the main goals is to ensure: “that the market is flexible so that resources, both of people and materials, and of capital and investment, flow into the areas of greatest economic advantage.”¹³⁷ Therefore, as the former Commissioner responsible for social policy Flynn declared: “The challenge for the Union is to break down the remaining barriers to complete free movement and to create *real European* mobility.”¹³⁸ These, as well as the major Commission terms that configure borders, which I discussed earlier (European employment/ labour market or Community-wide labour market) imply that as a result of integration efforts a common employment area will emerge. Importantly, these formulations suggest that the envisaged free movement will encompass all people in the territory of the EC/EU. This means that differentiations, such as nationality or income

¹³⁷ European Commission, *Completing the Internal Market*, COM (85) 310 final, 14.06.1985, p. 7

¹³⁸ Pdraig Flynn, *Free Movement of People in Europe – Equality between Nationals and non-Nationals in Social Security*, SPEECH/94/122, 10.11.1994, p. 3 (emphasis added)

eventually should not matter and everyone should enjoy the right to seek employment or circulate for other reasons anywhere in the Union without facing lengthy and tricky legal and administrative obstacles. As we saw in the previous chapter, the Commission has regarded the creation of such a Community-wide market as one that functions as equivalent to a national market.¹³⁹

However, as I already pointed out in section 4.3., in other instances, Commission documents articulate free movement of people in a different way. For example, a few pages later in the same White Paper is declared that: “The Commission ... considers that *Community citizens* should be free to engage in their professions throughout the Community, if they so wish, without the obligation to adhere to formalities which, in the final analysis, could serve to discourage such movement.”¹⁴⁰ Thus, there is a clear ambiguity in Commission discourse on the issue of who should benefit from the free movement of people. The inclusive articulations in the founding documents and formulations imply that overall the anticipated end result is an EU in which all the different categories of people are allowed to move freely. Such a conclusion is supported by the trend in Commission documents discussed in section on 4.3. to promote expanding and more inclusive interpretations of the beneficiaries of the right to free movement of people.¹⁴¹ However, if that is the case, the above reference to Community citizens contradicts the achievement of free movement of people.

This contradiction has led to a reconstruction of internal identity and functional borders in the EU, which is evident in the discourse of the Commission. The border transformation affects both EU citizens and TCNs but the Commission’s contribution for

¹³⁹ See footnote 41 of Chapter Three on p. 94 in this thesis.

¹⁴⁰ European Commission, *Completing the Internal Market*, COM (85) 310 final, 14.06.1985, p. 27 (emphasis added). For other articulations in Commission documents that make it clear that free movement in the EU refers only to EU nationals see for example European Commission, *Follow-up to the Recommendations of the High Panel on the Free Movement of Persons*, COM (1998) 403 final, 01.07.1998, p. 1a; Padraig Flynn, *Free Movement of People in Europe – Equality between Nationals and non-Nationals in Social Security*, SPEECH/94/122, 10.11.1994, p. 3; European Commission, *An Action Plan for the Free Movement of Workers*, COM (97) 586 final, 12.11.1997, p. 3; European Commission, *Green Paper – Education- Training – Research. The Obstacles to Transnational Mobility*, COM (96) 462 final, 2.10.1996, p. 10

¹⁴¹ Another example of this trend in Commission discourse is its promotion of the idea for ensuring benefit entitlement for unemployed EU nationals undergoing training in another EU member state. For an illustration of this see European Commission, *Green Paper – Education- Training – Research. The Obstacles to Transnational Mobility*, COM (96) 462 final, 2.10.1996, p. 16 and p. 26 in particular

each of the two categories of people has been different. The recreation of internal EU borders for Union nationals is a result of the absence of social welfare provisions at EU level due to the sensitivities of the member states on this matter. Hence, in a similar way to the reconstruction of internal borders on border controls, on the issue of free movement of EU citizens any recreation of internal borders in Commission discourse is a result of established patterns of integration, which the Commission is not in a position to overcome. Therefore, the reconstruction of this particular internal border is reproduced and reemerges through intertextuality in Commission discourse, rather than being actively created by it.

One example of such reproduction that creates a contradiction in the Commission discourse is the possibility to restrict the free movement in the Union for some EU nationals. According to the Commission: “At present, the Community provisions on social security do not yet apply to all persons moving or staying within the European Union or the European Economic Area.”¹⁴² The document specifies that those not covered by Community provisions are persons not covered or no longer covered by a national social security scheme and who are not or are no longer considered members of the family of economically active or non-active persons.¹⁴³ This is an obstacle to the free movement of people because as the next example makes clear, residence in another member state for periods longer than six months depends on sufficient social security provisions. Therefore, people lacking it can potentially be excluded from exercising their right to free movement in the EU. This issue is of great importance given the capacity of welfare states to mediate matters of inclusion and exclusion.¹⁴⁴ As some scholars argue, welfare provisions and social assistance without a doubt are some of the crucial “instruments for controlling improving or limiting the free movement of people.”¹⁴⁵

In this context, the major example of reconstruction of the internal borders in the EU for the free movement of Union nationals is the current requirements for residence in

¹⁴² European Commission, *The Community Provisions on Social Security – Your Rights when Moving within the European Union* (Luxembourg: Office for Official Publications of the European Communities, 2005), p. 9

¹⁴³ Ibid.

¹⁴⁴ See for example Stefano Bartolini, *Restructuring Europe – Centre Formation, System Building and Political Structuring between the Nation-State and the European Union* (Oxford: Oxford University Press, 2005)

¹⁴⁵ Ceyhan, Crowley, King cited in Jef Huysmans, ‘The European Union and the Securitization of Migration’, *Journal of Common Market Studies*, 38: 5 (2000), pp. 751-777, p. 759

another member state. As was shown above, with the adoption of the Treaty of the EU and the introduction of Union citizenship, there has been a significant increase in the categories of EU-nationals that are entitled to free movement, with pensioners or students acquiring this right together with economically active individuals. Furthermore, according to a proposal for a Council Directive, subsequently adopted in March 2003:¹⁴⁶ “The Commission’s intention is that the movement of citizens between Member States should be on much the same basis as when citizens change their residence or job within their own Member State.”¹⁴⁷ Despite that, if the aim is to allow all citizens of the member states to move freely within the Union, there is still a category of people that the documents of the Commission make clear will not be able to benefit from this right. According to a Commission proposal for a Directive from 2001: “Persons exercising the right to free movement should not ... become an unreasonable burden on the public finances of the host Member State during an initial period of residence; it is therefore planned to retain a system whereby the exercise of the right of residence for Union citizens for periods in excess of six months remains subject to the requirement that such citizens be engaged in a gainful activity or, in the case of those not engaged in gainful activity, that they have sufficient resources and comprehensive sickness insurance in the host Member State ...”¹⁴⁸ Furthermore: “Prior to acquisition of the right of permanent residence, it is a matter for the host Member State to decide whether it will extend social assistance provision or sickness insurance coverage to persons not engaged in gainful economic activity, or maintenance grants to Union citizens coming to study on their territory.”¹⁴⁹

¹⁴⁶ See http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=164059, accessed on 23.11.2008

¹⁴⁷ European Commission, *Proposal for a Council Directive Concerning the Status of Third-Country Nationals who are Long-Term Residents*, COM (2001) 127 final, 13.03.2001, p. 3

¹⁴⁸ European Commission, *Proposal for a European Parliament and Council Directive on the Right of Citizens of the Union and Their Family Members to Move and Reside Freely within the Territory of the Member States*, COM (2001) 257 final, 29.06.2001, Preamble, point 9. Similar requirement of having sickness insurance and sufficient resources to avoid becoming a burden on the social assistance systems of the host member state for EU nationals exercising their right to free movement is articulated in European Commission, *Report on the Implementation of Directives 90/364, 90/365 and 93/96 (Right of Residence)*, COM (1999) 127 final, 17.03.1999, p. 5

¹⁴⁹ European Commission, *Proposal for a European Parliament and Council Directive on the Right of Citizens of the Union and Their Family Members to Move and Reside Freely within the Territory of the Member States*, COM (2001) 257 final, 29.06.2001, Preamble, point 19

Thus, these documents articulate people who do not have sufficient resources or comprehensive sickness insurance as a category of EU nationals that can face restrictions on their right of free movement in the Union for periods exceeding six months. Arguably, this is only one issue that remains to be resolved, so that a complete freedom of movement for EU citizens is attained. In that respect, significant progress towards de-bordering has been made in the course of European integration on this matter. Nevertheless, as the above analysis shows, currently there is still an important category of EU nationals that face restrictions on their free movement in the Union. Therefore, I regard the above articulations as a clear contradiction to the overall goal of creating an area of free movement that other Commission documents referred to above promote. This is the first way in which Commission articulations reproduce limitations in current EU legislation that contribute to the reconstruction of internal borders in the Union. Such a reading of the configuration of borders in this discourse is supported by the arguments of other studies that find that: “the poor are indirectly excluded from the privilege of their free movement rights and excluded from the privileges granted by the EU status.”¹⁵⁰ This is because such people will rely on social assistance and currently in the EU there is no system under which they can receive it in another member state different from their own.¹⁵¹

There is another way in which these enunciations recreate internal divisions in the EU. As discussed in detail in Chapter Three, they talk about “host member state”, thus bringing back the issue of the “building blocks” of the Community. This undermines the perception of the existence of a common area and instead underscores the internal divisions that still exist and which are marked by internal, national, borders. In distinction to border controls, where Commission articulations contribute to the reconstruction primarily of territorial borders, in the free movement of people, the enunciations on EU nationals concern mainly functional borders.

¹⁵⁰ Sergio Carrera, ‘What Does Free Movement Mean in Theory and Practice in an Enlarged EU?’, *European Law Journal*, 11: 6 (2005), pp. 699-721, p. 705

¹⁵¹ See Elspeth Guild, ‘The Legal Framework’ in David Cesarani, Mary Fulbrook (eds), *Citizenship, Nationality and Migration in Europe* (London: Routledge, 1996), pp. 30-53, p. 35 and Hans-Werner Sinn, ‘EU Enlargement, Migration and New Constitution’, *Economic Studies*, 50: 4 (2004), pp. 685-707, p. 700

Although there are still some Commission articulations on free movement of EU citizens that contribute to the construction of internal borders, these, as we have seen, apply to decreasing categories of people and situations. On the free movement of TCNs, however, the dominant principle in the EU so far has been the restriction of their freedom of circulation for work purposes. This has led to the establishment of distinctive categories of people in relation to their rights of free movement in the EU, which is in contradiction with the aims of creating a frontier-free area. Again, this is reproduced in Commission discourse.

For example, the Green Paper on Economic Migration talks about “Preference for the domestic market”.¹⁵² Under the goals of the SEA this should imply the inclusion of all TCNs. Nevertheless, in the document the Commission employs the Council’s more restrictive definition, according to which: “*Member States will consider requests for admission to their territories for the purpose of employment only where vacancies in a Member State cannot be filled by national and Community manpower or by non-Community manpower lawfully resident on a permanent basis in that Member State and already forming part of the Member State’s regular labour market.*”¹⁵³ As a result, different categories of people in relation to their ability to move within the EU for employment purposes are constructed. The references to “national” and “Community” manpower establish these as the two categories of people that can benefit of a right of free movement in the EU. These two types are in effect juxtaposed to two other kinds of people: TCNs in general and the long-term resident TCNs. The latter two, apparently do not enjoy a right to move freely in the EU for employment purposes because the Community preference principle only allows them to take up employment in their member state of residence. Such articulations contribute, to the emergence of new identities. Therefore, they lead to the reconstruction of internal identity borders in the EU, through the establishment of different types of people under the EU law. Furthermore, in accordance with the differentiation of internal borders outlined in section 2.2.1. and in distinction to the above national internal borders, this internal border emerges as a result of the promotion of the idea of an integrated Europe and therefore, exists beyond the national borders of the member states.

¹⁵² European Commission, *Green Paper on an EU Approach to Managing Economic Migration*, COM (2004) 811 final, 11.01.2005, p. 6

¹⁵³ Council Resolution of 20 June 1994 cited in *Ibid* (emphasis in the original)

At the same time, the definition of Community preference contributes to the construction of national internal functional borders between the EU member states through its provision that only non-Community long-term resident in the member state in question can attempt to fill a particular position on this member state's labour market. As already discussed, this brings back the importance of the Union's constitutive entities, the member states, through putting the accent on them. Therefore, references to "the member states" and the meaning given to the Community principle in Commission documents on free movement of people are contradicting the goals of the SEA. They are working against the successful achievement of the formulated targets required for the establishment of an area for free movement of people in the EU.

In recent years, however, the Commission has adopted some documents that challenge this principle of restricting the free movement of TCNs. For example, the Green Paper on Economic Migration explores whether the Community Preference principle should be granted to TCNs already present in a member state.¹⁵⁴ This can be interpreted as an attempt of the Commission to overcome Council objections to allowing TCNs to move freely for labour purposes. This attempt of the Commission is further illustrated by the proposals on the rights of long-term residents and on the conditions of entry and residence of TCNs for work purposes. According to the former: "The Commission considers that full integration also entails the right for long-term residents to reside in *other Member States* ..."¹⁵⁵ Therefore, the proposal provides that: "A long-term resident may exercise the right of residence in the territory of *Member States other* than the one which granted him the status, for a period exceeding three months ...".¹⁵⁶ The latter, does not make a distinction between the type of economic activity because it deals with the conditions of entry and

¹⁵⁴ Ibid.

¹⁵⁵ European Commission, *Proposal for a Council Directive Concerning the Status of Third-Country Nationals who are Long-Term Residents*, COM (2001) 127 final, 13.03.2001, p. 8 (emphasis added)

¹⁵⁶ Ibid., p. 36 (emphasis added). As I pointed out earlier in the chapter, this proposal has already been adopted by the Council. See http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=196320, accessed on 23.11.2008. For the opinions of the Council see <http://europa.eu/rapid/pressReleasesAction.do?reference=PRES/07/253&format=HTML&aged=1&language=EN&guiLanguage=en>; <http://europa.eu/rapid/pressReleasesAction.do?reference=PRES/08/205&format=HTML&aged=0&language=EN&guiLanguage=en>; <http://europa.eu/rapid/pressReleasesAction.do?reference=PRES/08/250&format=HTML&aged=0&language=EN&guiLanguage=en>, all accessed on 23.11.2008

residence of (all) TCNs for the purpose of paid employment and self-employed activities.¹⁵⁷ That is why according to Guild, this attempt by the Commission was characterised by a uniform approach that applies to all types of economic activity. However, it did not manage to secure acceptance and had to be withdrawn.¹⁵⁸

Despite this setback in 2007 the Commission adopted another proposal that provides TCNs with the possibility to move within the EU for work purposes after fulfilling certain criteria. According to the proposal on the conditions of entry and residence of TCNs for highly-qualified work: “After two years of legal residence in the *first Member State* as holder of an EU Blue Card, the person concerned ... shall be allowed to move to a *Member State other than the first Member State* for the purpose of highly qualified employment ...”¹⁵⁹ The articulation of highly-skilled TCNs as the category that is envisaged to benefit from freer movement in the EU is in synch with the perception of the Self analysed above. Given the open acknowledgement in Commission discourse that the EU will require increased volumes of legal migration, it is over highly-skilled TCNs that it is most likely for the EU decision-making institutions to be able to reach an agreement. Such interpretation concurs with the argument of Guild who also points out that in this second attempt to promote greater freedom of movement in the EU for TCNs, the Commission has adopted a more piece-meal approach. It has abandoned the earlier more comprehensive method and has divided the issue into sectors.¹⁶⁰

In this respect the Commission Blue Card initiative is a very good example of it successfully¹⁶¹ employing cultivated spillover and acting as a policy entrepreneur by trying to find ways for securing the adoption of its preferred position. This Commission articulation clearly breaks with the principle of restricting the movement of TCNs and

¹⁵⁷ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country nationals for the Purpose of Paid Employment and Self-Employed Economic Activities*, COM (2001) 386 final, 11.07.2001

¹⁵⁸ Elspeth Guild, ‘EU Policy on Labour Migration – a first Look at the Commission’s Blue Card Initiative’, *CEPS Policy Brief*, num. 145, November 2007, p. 1

¹⁵⁹ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, COM (2007) 637 final, 23.10.2007, Article 19, point 1

¹⁶⁰ Elspeth Guild, ‘EU Policy on Labour Migration – a first Look at the Commission’s Blue Card Initiative’, *CEPS Policy Brief*, num. 145, November 2007, p. 1

¹⁶¹ As pointed out above, footnote 38, the proposal was recently adopted by the Council.

instead advances a position that is much closer to the de-bordering aims of the SEA. Nevertheless, all Commission proposals discussed here contribute to the transcendence of the two main types of internal borders only partially. Therefore, they still configure borders ambiguously. On the one hand the references to “member states” in these proposals persist, thus recreating national internal borders. On the other hand, internal borders beyond the national borders of the member states are constructed because this discourse leads to border transcendence only at the expense of creating distinctions between different types of TCNs (long-term vs. not long-term; highly-qualified vs. low skilled). As a consequence, functional and identity internal border in the EU will only be reconstructed again instead of being abolished completely.

Despite that, the challenge that these Commission articulations pose to the established principles shows a different contribution of the Commission in the reconfiguration of internal EU borders in comparison to these examined in section 3.4. While on border controls, as I argued, Commission discourse has by and large followed the established solutions, which through intertextuality are reproduced in its discourse, on the issue of free movement of TCNs for work purposes, the Commission has managed to advance a position that is different from the established pattern. This puts in the position of setting up the trend rather than following it, which are distinctively different roles.

4.5.2. Absences from Commission discourse

As with the previous sections, the absences from Commission discourse on free movement of people can be classified as related to EU citizens and TNCs. These silences lead to the reconstruction of internal borders in the Union due to the Commission inability to overcome objections from the member states. If the aim is to establish a common area of free movement, certain conditions should be put in place. However, currently, not all of them are reflected in Commission discourse on the issue. Therefore, the silence on certain issues means that for the time being at least they will not be enacted in the EU. This makes it impossible to fulfil completely the goal of creating a space within which people can move freely.

The first major silence in Commission discourse on free movement of people is related to the position on the role of member states on migration of TCNs. For example, according to Franco Frattini, Commission proposals on migration: “fully respect the division of power with Member States which will remain solely responsible for the actual numbers of labour migrants admitted onto their territories.”¹⁶² Commissioner Vitorino declares that: “the establishment of common conditions for the majority of Member States, will facilitate the admission and the integration of those migrants who are needed to take up jobs in the *country concerned*.”¹⁶³ These articulations make the acknowledgement that member states will retain their primary position on legal migration, which contributes to the reconstruction of the national internal EU borders. Therefore, if the aim is to establish an area of free movement of people, the Commission should articulate a position that enables the transcendence of any internal dividing lines that may persist. An example of a Commission articulation that clearly does not leave any space for member states reconstructing internal borders is the Commission position on how the area without internal frontiers is to be achieved. As I explained in the previous chapter, on this matter, the Commission has argued that it is necessary to go beyond simply easing border controls and instead abolish internal frontier controls altogether.¹⁶⁴ At present the Commission has not articulated such a radical position on some important aspects of the free movement of people.

For example, the so-called “EU Blue Card” initiative is still based on the condition that the TCN spends a required amount of time in his/ her first member state.¹⁶⁵ Thus, the starting position is still not that highly-qualified TCNs (which as we have already seen the EU is keen to attract) should face no internal obstacles altogether. Such articulation is missing from the Commission discourse. This is an important silence in Commission

¹⁶² Franco Frattini, *Enhanced Mobility, Vigorous Integration Strategy and Zero Tolerance on Illegal Employment: a Dynamic Approach to European Integration Policies*, SPEECH/07/526, 13.09.2007, p. 3

¹⁶³ Antonio Vitorino, *Migratory Flows and the European Labour Market: towards a Community Immigration Policy*, SPEECH/01/334, 9.07.2001, p. 5 (emphasis added)

¹⁶⁴ European Commission, *On the Abolition of Controls of Persons at Intra-Community Borders*, COM (88) 640 final, 07.12.1988, p. 5

¹⁶⁵ European Commission, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, COM (2007) 637 final, 23.10.2007, Article 19, point 1

discourse, which obstructs the creation of a common zone for free movement of people and instead contributes to the reconstruction of internal EU borders. This provision does not completely eliminate one of the reasons identified by Commission discourse as contributing to the lesser attractiveness of the EU for highly qualified workers in comparison to other leading economies. It does not comprehensively transcend the lack of a cross-border dimension of national immigration policies of the member states, which hinders the possibility to move to another member state for work purposes and obstructs the efficient use of the labour force in the EU.¹⁶⁶

It is as a result of Commission reluctance or inability to address this silence in its discourse that some articulations leave TCNs out of the picture. For example, in its Paper on the Internal Market it is made clear that: “the Commission intends to make the necessary proposals which will eliminate the last obstacles standing in the way of the free movement and residence of *migrant Community workers*.”¹⁶⁷ This, however, is a clear silence on the question of the regime of movement of TCNs. As we have seen in the previous section, such silences also lead to contradictions in Commission discourse. As a result, not all internal borders are abolished and in certain cases internal obstacles to freedom of movement of people continue to exist.

A further example of Commission silence on the issue of free movement of people is its articulations on free movement of labour from the member states that joined in 2004 and 2007. Despite all of the rhetoric that encourages and welcomes the opening of the labour markets of the “old” member states to the “new” ones, currently the Commission discourse is silent on actively promoting a more inclusive arrangement for the movement of workers from the new member states. During the Enlargement it was established that: “nationals of the new Member States who are legally working with a contract of 12 months or over in a current Member State at the time of accession of their country to the EU will benefit from the right to free access to the labour market *of that Member State*.”¹⁶⁸ During

¹⁶⁶ Jose Manuel Barroso, *Opening Remarks of President Barroso – Legal Immigration*, SPEECH/07/650, 23.10.2007, p. 2

¹⁶⁷ European Commission, *Completing the Internal Market*, COM (85) 310 final, 14.06.1985, p. 27 (emphasis added)

¹⁶⁸ European Commission, *Free Movement of Workers – Achieving the Full Benefits and Potential*, COM (2002) 694 final, 11.12.2002, p. 5 (emphasis added)

my examination of Commission discourse on free movement of people I did not come across any Commission articulation trying to promote a more inclusive right for at least these nationals of the “new” member states that are already working in an “old” member state. If the Commission is keen on encouraging freer movement for workers from the “new” member states, one could expect articulations promoting the idea of allowing free movement to the whole EU for these workers. In other words, the Commission should have supported the position of giving already existing migrants from acceding states access not only to the labour market of their current member states of residence but also to the entire EU. Such a position is much more in unison with the other Commission articulations on this matter and fits much better the goal of creating a common area for the movement of people. Therefore, I regard this as an important silence in Commission discourse that contributes to prolonging existing obstacles to the movement of some EU citizens within the Union. As such, it leads to the reconstruction of functional internal borders in the EU, rather than to their abolition.

Thus, there are a number of ways in which Commission discourse on the issue of free movement of people contributes to the actual reconstruction of existing internal EU borders. These are a result of two main articulations that contradict the de-bordering trend. Firstly, internal borders are reconstructed by establishing different categories of people that still face obstacles when they want to relocate within the Union. Secondly, the continuing references to “member states” make it impossible to perceive the area as a whole and instead reinforce previously existing divisions. Furthermore, given the assumed efforts to establish a common zone for free movement of people, it is surprising that at times the Commission has been silent on issues that can contribute to internal border transcendence. These are best exemplified by the current provisions for highly qualified TCNs and for already residing workers from the “new” member states to move within the EU for work purposes.

4.6. Summary

All in all, Commission proposals such as the mobility partnerships, the status of long-term TCN residents, the efforts towards overcoming existing practical difficulties for the free movement of people show that the Commission is willing and trying to further the creation of a common space for the movement of people in the EU. Furthermore, this is achieved by utilising the neo-functionalist logic of gradually expanding the fields for common action primarily through cultivated spillover. This Commission discourse has had clear advancements on improving the freedom of movement of people, which implies a decreased significance of internal borders. Nevertheless, it still configures borders ambiguously. As the chapter has shown, there is strong evidence that Commission discourse contributes not only to de-bordering but also to the reconstruction of borders. This is apparent in the trends in Commission articulations towards the construction of the EU's external border and the reconstruction of internal Union borders. The detailed analysis has shown that these result in the construction/ reconstruction of both, identity and functional borders. The external borders are created through the articulation of various legal, administrative, and practical measures in Commission documents as well as through advancing particular understandings of "EU" and "Europe". Internal borders are recreated in two main ways. Firstly, in cases when current proposals cannot go far enough in the provisions for establishing a common European labour market. As the last section has shown, currently Commission articulations show that it is unable or unwilling to overcome the position of member states on a number of issues related to free movement of people. This is very similar to the reconstruction of internal borders in the field of border controls. Secondly, internal borders are also reconstructed when the Commission has been much more pro-active and has advanced more radical provisions for the free movement of TCNs. Nevertheless, as I argued this has been at the expense of establishing new dividing lines between some categories of people. This still makes the Commission discourse ambiguous and indicates the limits to de-bordering for supranational institutions. In the field of the reconstruction of internal EU borders, this is a result primarily of the intricacies of decision-making and the on-going struggles between the various institutions involved in the process of passing the *acquis*, which forces the Commission to act tactically and to consider

carefully how its proposals will be accepted by the other EU bodies. This limits in important ways the ability of the Commission to have its preferred readings accepted as EU law. As far as the external Union border is concerned, Commission discourse points to the need to create a common identity, which invariably depends on the articulation of an “Other”. This, in turn, leads to the establishment of a border. The articulation of identity borders is even more pronounced in Commission discourse on social policy, which I examine in the next chapter.

CHAPTER FIVE

SOCIAL POLICY – CONFIGURATION OF IDENTITY BORDERS

5.1. Introduction

In the previous chapter I examined the configuration of borders in the Commission discourse on free movement of people. I argued that although overall the Commission promotes decreased salience of borders in the EU for both EU citizens and TCNs, its articulations still configure borders ambiguously because at the same time they contribute to the emergence of external boundaries and to the reconstruction of some important divisions in the EU. This trend of ambiguous border configurations in the Commission discourse is even more pronounced in the field of social policy, which I examine in detail in this chapter. In this issue area, in distinction to the previously examined policy areas, Commission articulations configure predominantly identity borders. Furthermore, they are actively engaged in promoting a specific vision of the organisation of social matters in the Union, which is an important contributor to the reconstruction of the internal EU borders in this field.

I consider social policy issues paramount for configuration of borders, which is evident from the role these matters have played during the creation of welfare nation-states in Europe. Despite that, as the Literature Review section in Chapter Two has shown, this is not an area that has been extensively studied in relation to the construction of EU borders.¹ Therefore, one of the contributions of this chapter is to rectify this situation by pointing out the important repercussion that articulations on social policy have on EU borders. Given the topic of this thesis the focus is on the configurations in the discourse of the European Commission. In order to do this, I have divided the chapter into four main parts. The first

¹ An important exception in this trend is Maurizio Ferrera, *The Boundaries of Welfare – European Integration and the New Spatial Politics of Social Protection* (Oxford: Oxford University Press, 2005). This study provides a comprehensive investigation into the problematic relationship between the opening pressures associated with European integration and the closure foundations of the nation-based welfare state.

one provides a brief overview of the development of the Commission discourse on social policy, focusing specifically on how the developments under the social dimension made it feasible to assert the European Model of Society (EMoS) and European Social Model (ESM). These are the two most important bordering articulations in the Commission discourse in the area of social policy. Building on this, in the second part I elaborate on the integrative effects these articulations imply, which contribute to the emergence of a common space in the EU. In the third and the fourth sections, however, I present the critical reading of these border configurations. The former looks into the construction of the EU's external borders, while the latter – at the reconstruction of internal borders in the Union through this Commission discourse.

5.2. Overview of Commission Discourse on Social Policy

The founding Treaties of the EC and the EU unequivocally state that one of the main aims of European integration is to improve the living and working conditions in the member states and to ensure social (as well as economic) progress in these countries.² Therefore, from the outset the integration process has had not only economic but also social aspects.³ This is what enables George to argue that: “There has always been a social dimension to the European Community.”⁴ This dimension received a renewed importance after the signing of the SEA because the achievement of a frontier-free area in the member states would not be complete without measures in the social field.⁵ Such assertions clearly indicate that social policy, as I argued in Chapter Two, displays the characteristics of functional spillover. This has meant that: “the economic objectives of the EC pushed it in

² See the Preambles of the Treaty Establishing the European Economic Community, p. 11 and the Treaty on European Union

³ However, as Scharpf has argued, the design of the European integration process has led to an asymmetrical relationship between economic and social issues, in which the latter have remained primarily a national prerogative that had to increasingly comply with the Europeanised requirements of the former. See Fritz Scharpf, ‘The European Social Model: Coping with the Challenges of Diversity’, *Journal of Common Market Studies*, 40: 4 (2002), pp. 645-670

⁴ Stephen George, *Politics and Policy in the European Community* (2nd ed.) (Oxford: Oxford University Press, 1991), p. 203

⁵ For such a claim see for example European Commission, *Programme of the Commission for 1991*, DOC/91/1, 23.01.1991, p. 3; point 13

the direction of also taking over some of the responsibilities for social policy from the member states.”⁶ This was due to the worry that in the light of increased economic integration there was a need for matching developments in the social area because otherwise, there could be adversary economic and social effects⁷ (such as social dumping⁸ or distorted competition), thus impeding the achievement of the integration objectives stated in the founding Treaty and its amendments. This functional spillover is even more plausible as an explanation of the developments in the field of social policy given the general reluctance of member states to delegate responsibilities in this area to the supranational level. As Cram points out, such delegation has only happened if it was directly related to the functioning of the internal market.⁹ Therefore, it is hardly surprising that at the time of and after the adoption of the SEA, the Commission was very active in promoting its vision of the social dimension.¹⁰ The new Commission President Jacques Delors launched in the second half of the 1980s an ambitious initiative aimed at establishing the political and institutional space for the actions in the social field.¹¹ The achievement of its aims was further facilitated by the increased powers of the Commission in the social policy field under the SEA.¹²

⁶ Stephen George, *Politics and Policy in the European Community* (2nd ed.) (Oxford: Oxford University Press, 1991), p. 216

⁷ For statements to that effect in European Commission documents see for example Padraig Flynn, *The Development of European Level Social Dialogue*, SPEECH/96/200, 23.07.1996, p.3; Padraig Flynn, *The Social Chapter – Cost or Benefit?*, SPEECH/96/223, 26.09.1996, p. 2; Padraig Flynn, *European Social Policy*, SPEECH/98/140, 25.06.1998, p. 3; Padraig Flynn, *Anti-Discrimination – the Way Forward*, SPEECH/98/282, 04.12.1998, p. 4

⁸ The term “social dumping” refers to a situation in which policies or practices in one country are lowered as a result of alterations of social practices or institutions in another country. This definition is from Jens Albert, Guy Standing, ‘Social Dumping, Catch-up, or Convergence? Europe in a Comparative Global Context’, *Journal of European Social Policy*, 10: 2 (2000), pp. 99-119, p. 99

⁹ Laura Cram, ‘Calling the Tune without Paying the Piper? Social Policy Regulation: the Role of the European Commission in the European Community Social Policy’, *Policy and Politics*, 21: 2 (1993), pp. 135-146, p. 136

¹⁰ See for example, Linda Hantrais, *Social Policy in the European Union* (Basingstoke: Macmillan, 1995), esp. pp. 6-15; Laura Cram, ‘Calling the Tune without Paying the Piper? Social Policy Regulation: the Role of the European Commission in the European Community Social Policy’, *Policy and Politics*, 21: 2 (1993), pp. 135-146; Gerda Falkner, ‘The EU’s Social Dimension’ in Michelle Cini (ed.), *European Union Politics* (Oxford: Oxford University Press, 2003), pp. 264-277; the Chapter on Social Policy in Desmond Dinan, *Ever Closer Union – an Introduction to European Integration* (3rd ed.) (Basingstoke: Palgrave Macmillan, 2005)

¹¹ Maurizio Ferrera, *The Boundaries of Welfare – European Integration and the New Spatial Politics of Social Protection* (Oxford: Oxford University Press, 2005), p. 117

¹² For a general outline of the developments in this area see for example Desmond Dinan, *Ever Closer Union – an Introduction to European Integration* (Basingstoke: Palgrave Macmillan, 2005), esp. Ch. 14 and Gerda

Lange defines the “social dimension” as comprising: “all those policies, or proposed policies, for the EC and its member states that provide or would provide rights, opportunities, benefits, or protections to actual, potential, or former participants in the labour market.”¹³ According to him there were two main positions on the appropriate regulatory role of the Community – firstly, the supporters of a minimalist, decentralised, hands-off approach advocated limiting the Community-level legislation and giving more space to member states. Secondly, the social protectionists argued in favour of greater scope of Community responsibilities, which would entail a move towards harmonisation of national standards.¹⁴ As I argued in Chapter Two, the position of the Commission within the institutional structure of the EU binds it to advocate the second of the above positions because it implies greater powers for the supranational level.

In the period after the signing of the SEA, this position seemed to have attained a leading role and had some important successes in the social dimension. However, as Ferrera states: “Delors’ ambitions regarding the social dimension were basically defeated by the 1992 constitutional revision.”¹⁵ This was marked by a shift not only in the actions undertaken in the social policy field but also in the prevailing articulations. This is easily spotted in the discourse of the European Commission on the issue. While before early 1990s the references are to “the social dimension” and “the EMoS”, after 1993 “the ESM” becomes the most commonly used term. Despite the differences in the policies envisaged and advocated by each of them, in respect of the topic of this chapter, these formulations

Falkner, ‘The EU’s Social Dimension’ in Michelle Cini (ed.), *European Union Politics* (Oxford: Oxford University Press, 2003), pp. 264-277. Cram presents a very interesting account of how the Commission has facilitated and utilised the developments in the area of social policy in Laura Cram, ‘Calling the Tune without Paying the Piper? Social Policy Regulation: the Role of the European Commission in the European Community Social Policy’, *Policy and Politics*, 21: 2 (1993), pp. 135-146

¹³ Peter Lange, ‘The Politics of the Social Dimension’ in Alberta Sbragia (ed.), *Euro-Politics – Institutions and Policymaking in the ‘New’ European Community* (Washington: Brookings, 1992), pp. 225-256, pp. 229-230

¹⁴ *Ibid.*, pp. 230-231. Other scholars have made a distinction between a positive integration (up-ward harmonisation) and negative integration (down-ward harmonisation) in Colin Hay, Matthew Watson, Daniel Wincott, ‘Globalization, European Integration and the Persistence of European Social Models’, Working Paper 3/99, POLSIS, University of Birmingham, p. 7 or in Maurizio Ferrera, *The Boundaries of Welfare – European Integration and the New Spatial Politics of Social Protection* (Oxford: Oxford University Press, 2005), p. 116

¹⁵ Maurizio Ferrera, *The Boundaries of Welfare – European Integration and the New Spatial Politics of Social Protection* (Oxford: Oxford University Press, 2005), p. 117

have some crucial underlying similarities. The representations they make directly affect the establishment, abolition and reconstruction of EU borders. Furthermore, as the discussion below shows the relevant articulations configure borders in the same way. Therefore, the analysis of the configuration of borders in the Commission social policy discourse will focus on critically examining the articulations on the “social dimension”, the “EMoS” and the “ESM”, which in the next three sections of the chapter are regarded as variations of the same discourse, rather than as two distinctive discourses.¹⁶ In the following parts of the chapter I have aimed to provide examples of the employment of both, the EMoS and the ESM in the Commission discourse, in order to demonstrate this overlap in the configuration of borders. This part provides a background for the following analysis by outlining the main themes articulated in the documents of the European Commission, highlighting their differences and presenting the way the Commission discourse has evolved.

5.2.1. The European Model of Society

In the years after the SEA the EMoS constituted one of the focal points of the social dimension of the integration project. According to Delors: “... the social dimension is first and foremost the creation of jobs and solidarity.”¹⁷ where the latter is defined as economic and social cohesion founded on the concept of equal opportunities for all parts of the Community.¹⁸ The main aim at the time was: “... to create a core of social rights applicable throughout the Community.”¹⁹ This aim presupposes harmonisation at EU level and is reflected in the content of the major documents in the social area adopted – the Community Charter of Fundamental Social Rights for Workers,²⁰ the Action Plan for the

¹⁶ The main difference between the EMoS and the ESM on one hand and the social dimension on the other hand is their different emphasis. In that respect, the former two refer to “European” and deal with models of society. The ESM, however, leaves more scope for Commission action because this formulation implies that there is greater scope for policy intervention.

¹⁷ Jacques Delors, *Press Conference on the Prospects for the European Council in Madrid*, SPEECH/89/48, 23.06.1989, p. 1

¹⁸ Jacques Delors, *Press Conference before the Maastricht European Council*, SPEECH/91/135, 05.12.1991, p. 1

¹⁹ European Commission Press Release, *Programme of the Commission for 1991*, DOC/91/1, 23.01.1991, p. 3

²⁰ The Commission’s drafts on the Charter are European Commission Communication, *Community Charter of Fundamental Social Rights*, COM (89) 248 final, 30.05.1989 and European Commission, *Community Charter of Fundamental Social Rights*, COM (89) 471 final, 02.10.1989

Implementation of the Charter,²¹ and the Agreement on Social Policy adopted by eleven member states at Maastricht.²²

There are two important themes emerging from these documents, which represent the bulk of the Commission thinking on social policy issues and as such constitute the framework of the social dimension. Firstly, the efforts are predominantly oriented towards the establishment of an agreed upon set of basic social rights (freedom of movement, employment and remuneration, improvement of living and working conditions, social protection, freedom of association and collective bargaining, vocational training, equal treatment of men and women, information, consultation and participation of workers, health protection and safety at the workplace, protection of children, adolescents, the elderly and disabled persons).²³ Secondly, there are two main tools envisaged for the implementation of workers' rights – legislative measures or encouraging the two sides of the industry to conclude collective agreements at national, regional, sectoral or company level.²⁴ These two themes are a result of the general trend established in the social sphere in the Western part of the European continent in the post-World War Two period. Furthermore, they indicate a predisposition towards developing harmonised legislation at the EU level, which shows a stronger manifestation of elements related to positive integration and social protectionism.

However, there is one more recurring theme in the Commission social policy discourse in this period, the idea that the EMOs has to be reexamined, reformulated.²⁵ This

²¹ European Commission, *Action Programme Relating to the Implementation of the Community Charter of Basic Social Rights for Workers*, COM (89) 568 final, 29.11.1989

²² The Social Policy Protocol annexed to the Treaty Establishing the European Union

²³ See for example, the Commission's drafts on the Charter, European Commission, *Community Charter of Fundamental Social Rights*, COM (89) 248 final, 30.05.1989 and European Commission, *Community Charter of Fundamental Social Rights*, COM (89) 471 final, 02.10.1989

²⁴ Ibid.

²⁵ See for example Jacques Delors and Clithene, *Our Europe – the Community and National Development* (London: Verso, 1992), p. 158; Pádraig Flynn, *Speech at the Irish Management Institute Conference*, SPEECH/93/45, 30.04.1993; Pádraig Flynn, *The Challenges Facing the Community on Employment*, SPEECH/93/86, 09.07.1993; Pádraig Flynn, *Green Paper Seminar*, SPEECH/94/59, 28.05.1994, p. 2; Pádraig Flynn, *Social Policy and Employment – Friends or Foes*, SPEECH/95/278, 11.12.1995, p. 2. This theme does not disappear from the later discourses, where it is expressed through the idea of the need for modernising the ESM. For examples of this see Anna Diamantopoulou, *The European Employment Strategy and Social Model*, SPEECH/01/29, 29.01.2001, p. 2; Anna Diamantopoulou, *Employment and Social Policy and Enlargement*, SPEECH/00/176, 11.05.2000, p. 2; Anna Diamantopoulou, *The Modernisation of the European*

was partially due to the fact that in 1993 the EU's social program was coming to an end and it was becoming difficult to agree on its future direction.²⁶ However, this was coupled with the growing perception of a rapidly changing environment, posing new challenges. The changing discourse of the Commission aimed at providing a way for better addressing the challenges of the early 1990s (the structural and technological changes in production, leading to new employment and unemployment patterns, pressure on the welfare state, change in the role of education, workplace relationships, and intergenerational inequalities²⁷). The perception of these challenges triggered thinking about the ways of facing them, which is reflected in shifts of the Commission social policy discourse. This is well summarised by the former Commissioner responsible for Social Affairs Padraig Flynn: "... the debate about the future of European social policy goes much wider than the specific needs of those in work ... the complex and changing relationship between economic and social policy requires us to take a broader view of the challenges we face and the possible solutions to be adopted. It is no longer possible – or productive – to focus too narrowly on specific questions such as labour law."²⁸ The first Commission documents that emerged from this process were the White Paper on Growth, Competitiveness and Employment,²⁹ the Green Paper on Social Policy³⁰ and the White Paper on Social Policy.³¹ To a large extent these Papers were groundbreaking because they initiated the fleshing out of a new emphasis in the social policy field. In distinction to the previous thinking, they put the interrelationship between economic and social policies at the forefront of the discussions

Social Model and the Forthcoming Stockholm Summit, SPEECH/01/113, 09.03.2001; Anna Diamantopoulou, *European Social Policy: Revising the Challenge of Modernisation*, SPEECH/01/170, 10.04.2001

²⁶ Padraig Flynn, *The Development of European Level Social Dialogue*, SPEECH/96/200, 23.07.1996, p. 2; European Commission, *Green Paper – European Social Policy – Options for the Union*, COM (93) 551 final, 17.11.1993, p. 6; Padraig Flynn, *Speech at the Plenary Session of the European Parliament*, SPEECH/95/2, 18.01.1995, p. 1

²⁷ Summarised on the basis of European Commission, *Green Paper – European Social Policy – Options for the Union*, COM (93) 551 final, 17.11.1993, p. 32. For other summaries of the challenges see for example Padraig Flynn, *The Next Phase of European Social Policy – the Implications for Business*, SPEECH/94/101, 20.09.1994, p. 1; Padraig Flynn, *Green Paper Seminar*, SPEECH/94/59, 28.05.1994, p. 2

²⁸ Padraig Flynn, *Green Paper Seminar*, SPEECH/94/59, 28.05.1994, p. 2

²⁹ European Commission, *Growth, Competitiveness, Employment – the Challenges and Ways Forward into the 21st Century – White Paper*, COM (93) 700 final, 5.12.1993

³⁰ European Commission, *Green Paper – European Social Policy – Options for the Union*, COM (93) 551 final, 17.11.1993

³¹ European Commission, *European Social Policy – a Way Forward for the Union. A White Paper*, COM (94) 333 final, 27.07.1994

and as a result, they triggered a move towards looking at the two policy areas as two parts of a whole. A good illustration of the way in which this is done is the definition of the term “social policy” in the Green Paper on Social Policy, where: “... it is taken to mean the full range of policies in the social sphere including labour market policies.”³² Such a perception, especially after the successful adoption of these Papers by the other EU decision-making institutions,³³ provided a link between the three Papers. It also led to the consistent reference to the social and economic policies not as competing with each other but as complementary, as “two sides of the same coin”.³⁴

At the same time another important shift in the Commission social policy discourse occurred – gradually, the references to EMoS are replaced by references to ESM. For example, in his speech to the United Nations (UN) Summit in Copenhagen in March 1995, Commission President Jacques Santer talked about “the European Model of Society”³⁵, while although in a speech a year later he used again the “European Model of Society”, he also referred to the “European Social Model”.³⁶ In a similar vein, the White Paper on Growth, Competitiveness and Employment talks about a “Model of European Society”³⁷, while the Green and White Papers on Social Policy use the term ESM.³⁸ From the late 1990s, the term ESM becomes the one employed overwhelmingly in the Commission discourse. Nevertheless, since the late 1990s in some specific policy areas, such as services

³² European Commission, *Green Paper – European Social Policy – Options for the Union*, COM (93) 551 final, 17.11.1993, p. 6, in footnote 1. For other statements linking these policies see for example Padraig Flynn, *White Paper on Social Policy*, SPEECH/94/118, 26.10.1994, p. 2

³³ The White Paper on Growth, Competitiveness and Employment was passed with Resolutions of the European Parliament and the Council in 1997-1998, see http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=102660, accessed on 07.05.2009; and the White Paper on European Social Policy was passed by a Resolution of the European Parliament in the first half of 1995, see http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=101312, accessed on 07.05.2009

³⁴ See for example Padraig Flynn, *Speech at the Irish Institute of European Affairs*, SPEECH/96/17, 19.01.1996, p. 1; Peter Balazs, *Cohesion Policy: European Solidarity in Practice*, SPEECH/04/290, 08.06.2004, p. 4

³⁵ Jacques Santer, *United Nations Summit for Social Development*, SPEECH/95/30, 12.03.1995, p. 1

³⁶ Jacques Santer, *Speech at the Opening of the European Social Forum*, SPEECH/96/75, 28.03.1996, p. 2

³⁷ European Commission, *Growth, Competitiveness, Employment – the Challenges and Ways Forward into the 21st Century – White Paper*, COM (93) 700 final, 5.12.1993, p. 15

³⁸ See for example European Commission, *Green Paper – European Social Policy – Options for the Union*, COM (93) 551 final, 17.11.1993, p. 33 and p. 70; European Commission, *European Social Policy – a Way Forward for the Union. A White Paper*, COM (94) 333 final, 27.07.1994, p. 2

of general and general economic interest EMoS comes back.³⁹ There it denotes the provision of public services on economic basis. In a way, the different terms encapsulate the shift that occurred during this time in the accents in the social policy discourse – from work and solidarity, which used to be central concepts, to modern views that have to go beyond these issues.⁴⁰ This transformation also signals a change from a more social protectionist approach in the EC's social policy to a more decentralised one. In the next section I present how the Commission discourse articulated these shifts.

5.2.2. *European Social Model*

The trend that started in the early 1990s with the White and Green Papers was confirmed in the following years with the adoption of the Medium Term Social Action Programme for the period 1995-1997;⁴¹ the Title on Employment in the Treaty of Amsterdam; the European Employment Strategy; the Lisbon Council Conclusions on Employment and Social Policy⁴² and the subsequent Social Policy Agenda.⁴³ The line of thinking promoted by these documents is that social policy should be conceived in a broader sense and “not limited only to labour market issues or the defense of the rights of those in employment” (as was the case prior to the early 1990s). Instead: “A real European Social Policy must also look to the problems of the unemployed, the socially excluded, the disabled and other disadvantaged groups in society, and the growing problems faced by our welfare states.”⁴⁴ Thus, the most important shift and difference in the Commission discourse is that although the issues included in the EMoS are still dealt with, new problems and accents are emerging in the ESM. Therefore, it can be concluded that over time, the shifts in the Commission social policy discourse have led to widening the scope of

³⁹ See for example European Commission, *Green Paper on Services of General Interest*, COM (2003) 270 final, 21.05.2003, esp. p. 3.

⁴⁰ Jacques Santer, *Speech at the Opening of the European Social Forum*, SPEECH/96/75, 28.03.1996, p. 2

⁴¹ European Commission, *Medium Term Social Action Programme 1995-1997*, COM (95) 134 final, 12.04.1995. It was passed with a Resolution of the European Parliament in January 1996, see http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=100166, accessed on 07.05.2009

⁴² Available at http://www.europarl.europa.eu/summits/lis1_en.htm, accessed on 22.04.2008

⁴³ European Commission, *Social Policy Agenda*, COM (2000) 379 final, 28.06.2000. It was approved by the Nice European Council Meeting, see for example http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=157362, accessed on 07.05.2009

⁴⁴ Both quotations are from Pdraig Flynn, *Speech at the Plenary Session of the European Parliament*, SPEECH/95/2, 18.01.1995, p. 2

issues dealt with under the social dimension, thus modifying the meaning of the EU social policy.

In the ESM the main approach for addressing the challenges identified is the adoption and promotion of “active labour market and social policies”.⁴⁵ These policies require restructuring of the public spending, so that there are funds available for financing not only the social safety-net (for supporting the unemployed, disabled or elderly) but also a sufficient amount of money for the running of various kinds of programmes (educational, vocational, or re-training). The aim is to enable people out of work to develop their skills and improve their productivity, thus enhancing their competitiveness on the labour market and bettering their chances of finding work. This approach is further reinforced by efforts to restructure the tax systems in the EU, so that it provides increased incentives for various types of people, such as women and the elderly to stay, return or become employed, rather than rely on the social benefits provided. These efforts are complemented by measures aimed at providing good macroeconomic, legal or infrastructural conditions for business. The overarching idea is that a combination of these courses of action will lead to economic growth, which will be translated into higher levels of employment and increased overall standards of living, thus achieving the strategic goal of the EU becoming: “... the most competitive and dynamic knowledge-based economy capable of sustainable economic growth with more and better jobs and greater social cohesion.”⁴⁶ Thus, one of the leading themes of the social policy discourse is that it is a productive factor.⁴⁷

In comparison to the ways envisaged for achieving the EC/EU social policy aims there are some important changes evident in the Commission discourse. Although the main ways for fulfilling them in the period until the early 1990s, such as a legislative approach, financial support through the structural funds and negotiations between employers and unions are still promoted, new instruments are emerging as well. These include the adoption of new programmes, mainstreaming and the so-called Open Method of

⁴⁵ One of the earliest usages of this idea is in the European Commission, *Green Paper – European Social Policy – Options for the Union*, COM (93) 551 final, 17.11.1993, see for example p. 18

⁴⁶ The Lisbon European Council (23 and 24 March 2000) Presidency Conclusions, available at <http://www.ena.lu/>, accessed on 09.05.2009

⁴⁷ European Commission, *Social Policy Agenda*, COM (2000) 379, 28.06.2000, p. 5

Coordination (OMC).⁴⁸ The OMC was first applied under the European Employment Strategy and was later used in the Social Policy Agenda in the area of social inclusion. It involves fixing guidelines on Union level and agreeing upon timetables for achieving short, medium, and long-term goals; establishing qualitative and quantitative indicators and benchmarks; translating the European guidelines into national and regional policies; periodic monitoring, evaluation and peer review organised as a mutual learning process.⁴⁹ Commissioner Diamantopoulou characterises the OMC as: “A clear example of subsidiarity in action.”⁵⁰ However, arguably, it is evidence for the prevailing of intergovernmentalist thinking in the fields of employment and social policies because it does not have any legally binding provisions, and therefore, it does not contribute towards social policy integration in the EU through harmonisation, which would be the aim of the supporters of supranationalism.⁵¹ Therefore, developments in the social field in the period after the early-to-mid 1990s are better characterised as negative integration, closer to the lowest common denominator, which is promoting a more decentralised and hands-off approach.

However, despite these differences in the Commission social policy discourse, there are also continuations in the Commission articulations, which contain very important bordering configurations, such as the articulation of very similar “Others” or the construction of the social space in the EC/EU as a unified one. In that respect, one of the most striking continuities between the articulations of the EMoS and the ESM is their

⁴⁸ Enlisted in Anna Diamantopoulou, *Presentation of the Social Policy Agenda to the European Parliament*, SPEECH/00/324, 21.09.2000, p. 2 and Anna Diamantopoulou, *The Social Policy Agenda: Europe at Work for Trade Unions*, SPEECH/01/114, 09.03.2001, p. 4.

⁴⁹ For some of the existing studies analysing the OMC see James Mosher, David Trubek, ‘Alternative Approaches to Governance in the EU: EU Social Policy and the European Employment Strategy’, *Journal of Common Market Studies*, 41: 1 (2003), pp. 63-88; Mary Daly, ‘EU Social Policy after Lisbon’, *Journal of Common Market Studies*, 44: 3 (2006), pp. 461-481; Nick Adnett, ‘Modernising the European Social Model’, *Journal of Common Market Studies*, 39: 2 (2001), pp. 353-364; Martin Heidenreich, Gabriele Bischoff, ‘The Open Method of Co-ordination: a Way to the Europeanization of Social and Employment Policies?’, *Journal of Common Market Studies*, 46: 3 (2008), pp. 497-532

⁵⁰ Anna Diamantopoulou, *European Social Policy: Rising to the Challenge of Modernisation*, SPEECH/01/170, 10.04.2001, p. 4

⁵¹ As Commissioner Flynn indicates in his speech to the EU Committee of the American Chambers of Commerce, this issue is of importance because there has been quite a disagreement between various fractions on how the EU social dimension should proceed with some seeing legislation as the only active way forward, while others thinking of it as adding to the regulatory burden and diminishing Europe’s capacity to adopt to changing realities. This is from Pdraig Flynn, *The Development of European Level Social Dialogue*, SPEECH/96/200, 23.07.1996, p. 2

insistence that there is a unique way of organising social life in Europe. This idea was initially expressed through the EMoS. According to the then President of the Commission Delors: "... there is a European model of society to which the great majority of Europeans are committed. Everyone agrees that we must adapt it ... Nevertheless, most people want to retain its spirit and its political foundations."⁵² As early as 1986 Delors proclaimed that this model has deep roots in the European civilization, where: "... people feel that a society should not be allowed to crush the individual; but individuality should not be taken so far as to undermine society."⁵³ In a similar way, in 2002, the Deputy Director General of DG for Employment and Social Affairs claimed that the way of life in Europe is: "... different from what you find elsewhere in the world",⁵⁴ which is a result of the fact that in the social field, there are values shared by Europeans (quest for economic prosperity, democracy, participation, search for consensus, solidarity with the weakest members of society, equal opportunities for all and so on). These are the principles that Lönnroth defines as the ESM.⁵⁵ This Model, according to the former Commission President Prodi: "... gives the EU distinctive social features and it sets us *apart* internationally."⁵⁶

So, the underlying theme of both articulations is that European societies are organised in a distinctive way. Furthermore, besides the difference in the terminology used in the two periods to denote this distinctiveness, at the same time it is referred to as a "model" in both of them. This choice of wording is important because it implies that the social systems that belong to this model will display certain characteristics and therefore, it should be relatively easy to differentiate between the societies and countries that have these characteristics and those that do not. This in turn means that there should be a clear border between these two categories. As the analysis below shows the borders configured are

⁵² Jacques Delors and Clisthene, *Our Europe – the Community and National Development* (London: Verso, 1992), pp. 157-158

⁵³ European Commission, *Commission President Calls for Continued Effort to Adjust European Economic Structures without Abandoning the 'European Model'*, IP/86/281, 05.06.1986, p. 2. For another good definition of the main characteristics of the EMoS see Padraig Flynn, *Speech at the Irish Management Institute Conference*, SPEECH/93/45, 30.04.1993, p. 2

⁵⁴ Juhani Lönnroth, *The European Social Model of the Future*, a speech delivered at the EU Conference organised by the Ecumenical EU – Office of Sweden, Brussels, 15.11.2002, p. 3

⁵⁵ Ibid.

⁵⁶ Romano Prodi, *Economic Growth vs Social Policies: a False Dilemma*, SPEECH/02/537, 05.11.2002, p. 2 (emphasis added)

overwhelmingly identity borders. Nevertheless, given the fact that in today's world societies are organised along the clearly demarcated territorial borderlines of a specific state, these identity borders are bound to be manifested on a particular territory. It is therefore this reference to a model in the Commission discourse on social policy that clearly relates the articulations in the social dimension, the EMoS and the ESM, to construction, reconstruction and decreased salience of EU borders. These are the tendencies I aim to uncover through a detailed examination of the Commission discourse, starting with the trend that leads to the construction of a common space, and hence, decreased significance of internal EU borders.

5.3. De-bordering Tendencies in Commission Social Policy Discourse

The references to an EMoS and an ESM in Commission discourse on social policy lead to the construction of a common social space in the EU, which implies the undermining of existing borders between the member states. This is done in two main ways – through promoting mobility and through constructing a common European identity. In comparison to other policy areas (i.e. free movement of people) the promotion of mobility is not as pronounced in the field of social policy. There it is the configuration of identity borders that is predominant and which I therefore examine in greater detail. The Commission discourse constructs common identity in the EU firstly through downplaying the differences between the social orders of the Union's members and secondly through using inclusive words, such as the pronouns "our", "ours", "we". These point to the existence of common historical traditions, civilization, experiences, thinking, perceptions, or current challenges and allow the identification of contemporary undertakings as "common action" or "joint endeavour". All of the above configure borders because they contribute to the undermining of the divisions between the member states of the EU. This part examines these tendencies in the Commission discourse and also looks into how inclusive rhetoric was applied towards the candidate countries from Central and Eastern Europe during the latest Enlargement.

5.3.1. De-bordering through promoting mobility and freedom

The integrative nature of the EU project implies that its ultimate aim is to create a common area between the member states. This necessitates decreasing the significance of the existing borders. As the previous section has shown, in the area of social policy, this is done through the discourses of the social dimension of the European integration. The first important way in which it contributes to the undermining of existing internal borders is through establishing greater mobility and freedom in the EC/EU. This trend can be traced in the Commission social policy discourse, although it is not as pronounced as in other policy areas (i.e. free movement of people).

As I pointed out above, traditionally the social dimension has been justified as trying to: “facilitate the free movement of labour and to support thereby the creation of a single market.”⁵⁷ Therefore, from its inception the rationale for the existence of social policy has been to facilitate the achievement of the EC’s economic aims – the creation of the single market. This tendency is continued in the period after the SEA when the Commission documents assert the necessity to have certain social policy measures in order to have an EC/EU, in which: “decent standards transcend borders alongside capital, goods, services and people.”⁵⁸ For: “The Single Market has changed the conditions which shape economic and social policies. Failure of economic and social performance ... in one Member State or region, affects the growth potential of the whole.”⁵⁹ Thus: “the social dimension ... must move ahead at the same time as the economic dimension.”⁶⁰

These articulations of the European Commission clearly undermine existing borders between the member states. Furthermore, in distinction to the other important de-bordering line in this Commission discourse, this is done through making the case in favour of increased mobility and freedom in the EU, which is a result of the connection made between the social policy issues and the internal market. Therefore, in this case de-

⁵⁷ Juhani Lönnroth, *The European Social Model of the Future*, a speech delivered at the EU Conference organised by the Ecumenical EU – Office of Sweden, Brussels, 15.11.2002, p. 5

⁵⁸ Padraig Flynn, *The Social Chapter – Cost or Benefit*, SPEECH/96/223, 26.09.1996, p. 2

⁵⁹ Padraig Flynn, *Speech at the Social Policy Forum*, SPEECH/98/140, 25.06.1998, p. 3. See also Padraig Flynn, *European Social Policy*, SPEECH/98/140, 25.06.1998, p. 3; Joaquin Almunia, *A European Economic and Social Model for the 21st Century*, SPEECH/07/253, 25.04.2007, p. 4

⁶⁰ European Commission, *Programme of the Commission for 1991*, DOC/91/1, 23.01.1991, p. 1

bordering is articulated through functional spillover. There are two main ways in which this is achieved, by: “a basic set of ‘minimum standards’ for the workplace and beyond ... guaranteed by law (EU and national), for all people living in Europe and a set of principles, institutions, policy guidelines and policy follow-up agreed at EU level, in order to help Member States to reform employment policies, pension policies, anti-poverty policies and healthcare policies.”⁶¹ The envisaged benefits of the increased visibility of the Union in employment and social issues are to: “improve coordination of economic, employment and social policies, ensuring that all EU citizens share in the fruits of growth [;] help to drive better conditions for business and our economies generally and ... change people’s perception of the EU for the better”.⁶² However, in distinction to the Commission discourses in other policy areas (such as free movement of people), there are no direct references to the fact that the measures undertaken will increase mobility and freedom. Instead, the most pronounced way in which this discourse undermines internal borders is its contribution towards the establishment of a common European identity between the member states.

5.3.2. *Downplaying the differences between the social orders in the Member States of the EU*

There is a growing body of academic literature that points to the existence of different social models in contemporary EU. These are a result of the different redistributive and social protection policies in different countries. Scholars have identified several models, which (although variations in the classification and labeling exist) usually are referred to as Anglo-Saxon (neo-liberal), Continental, Scandinavian (Nordic), and Southern.⁶³ Despite this, the EMoS and the ESM refer to a *European* model, which implies

⁶¹ Anna Diamantopoulou, *Future perspectives for the European Social Model*, SPEECH/03/419, 17.09.2003, p. 3

⁶² Ibid.

⁶³ For a good overview of the existing literature on the typology of welfare states and an outline of the main characteristics of the different types of welfare states see Wilhelmus Antonius Arts, John Gelissen, ‘Three Worlds of Welfare capitalism or More? A State-of-the-Art Report’, *Journal of European Social Policy*, 12: 2 (2002), pp. 137-158; Bernhard Ebbinghaus, ‘Does a European Social Model Exist and Can it Survive?’ in Gerhard Huemer, Michael Mesch, Franz Traxler (eds), *The Role of Employer Association and Labour Unions*

that whatever the differences between the existing models, the commonalities between them are more important. I will illustrate this point with several quotations from Commission officials. In 1996 Commissioner Flynn argued: “Yes, there is a tremendous diversity within the spectrum of those systems. In the Scandinavian Countries, social protection is a right enjoyed equally by all citizens. In Germany, Austria, Belgium, Holland and Luxembourg, benefits are mostly earnings-related ... But what I am saying is that one thing stands out: the universal nature and the scope of the social support that European Union governments offer their citizens.”⁶⁴ In the same year the former Commission President Jacques Santer when talking about the Commission’s objectives in the Intergovernmental Conference states that their first objective is the promotion of the ESM and goes on to say that: “... over and above our historical and cultural diversity, we do have – from Portugal in the south to Finland in the north – certain shared ways of organizing our societies.”⁶⁵

Such articulations lead to decreasing the importance of the division between EU member states. The technique employed by the Commission in its discourse is to start by acknowledging the fact that the social systems in the EU have distinctive characteristics. However, the articulations that follow after this concession claim that there is an overriding similarity. This effectively undermines the border between the different EU members because it unequivocally puts the emphasis on what is common. This in turn leads to including all countries in the EU as belonging to, being included in the same category (denoted as either EMoS or ESM). Arguably, there is an important rhetorical move that considerably contributes to this downplaying of the existing differences in the social systems in the member states and the consequent diminishment of the significance of the internal border. As the above two examples indicate, the overwhelming majority of statements making this claim about the underlying similarity between the EU’s members

in the EMU – Institutional Requirements for European Economic Policies (Aldershot: Ashgate, 1999), pp. 12-26

⁶⁴ Pdraig Flynn, *Perspectives on European Employment and Social Policy*, SPEECH/96/110, 06.05.1996, p. 3

⁶⁵ Jacques Santer, *Speech at the Opening of the European Social Forum*, SPEECH/96/75, 28.03.1996, p. 2

firstly talk about the differences but finish with what is shared, thus contributing to the undermining of the borders implied by the existing diversity.⁶⁶

There are two main ways in which the Commission discourse makes the case in favour of the underlying commonality, which leads to undermining the existing borders in the EU. The first one is the reference to shared values, which are the basis on which the Union is founded. It is through these common values, which all member states cherish⁶⁷ that unity in diversity is achieved. As the former Commission President Prodi declares: "... European integration has *always* been about people of diverse cultures and languages coming together on the basis of shared values, and acquiring a shared sense of identity."⁶⁸ In the social field: "... the values of society include the idea of mutual solidarity and responsibility, and the need for a safety-net to catch the less fortunate member of society, be it in terms of income support, or of health care."⁶⁹

The second way is through the claim that in the social field, as well as in the other fields related to the construction of the internal market, the Community/ Union is facing challenges, which "are unlikely to be met by any single European State acting alone."⁷⁰ Therefore, the Commission maintains that there are common objectives, which warrant the efforts to overcome any existing differences and acting together. For example, in 1995 (at the time when the shift between EMoS and ESM was occurring) Commissioner Flynn argued: "Europe has tremendous diversity in its systems of social protection, industrial relations and rights, care, education, and training. But the objectives are essentially common. And *European social policy has tended, rightly, to emphasise the commonality or convergence of those objectives*. That isn't sterile harmonization. It's building on our

⁶⁶ A rare example of reversing this order of representation, where the mutual adaptation between the member states is talked about first and the European diversity – second, is European Commission, *Green Paper – European Social Policy – Options for the Union*, COM (93) 551 final, 17.11.1993, p.33, where it is stated: "... expressed in the notion of a 'European model of society', were governments, organized employers and trade unions acting in concert ... This is an achievement of great importance for the future ... The political construction of Europe will have to be unique because it must build on the diversity of European cultures ..."

⁶⁷ See for example the speech by Lönnroth and the values he refers to, as referenced in footnote 55 above in this chapter.

⁶⁸ Romano Prodi, *Europe in the 21st Century*, SPEECH99/218, 18.12.1999, p. 2 (emphasis in the original)

⁶⁹ Leon Brittan, *Europe: the Next Steps*, SPEECH/93/61, 27.05.1993, pp. 3-4

⁷⁰ European Commission, *Green Paper – European Social Policy – Options for the Union*, COM (93) 551 final, 17.11.1993, p. 33

common interests and strengthening the social dimension of the Union.”⁷¹ Therefore, the Commission discourse continuously points that: “... we need to concentrate on what unites us rather than on what divides us.”⁷²

These two kinds of ways in which the underlying commonality in the EU is argued are contributing to the decreased importance of borders in the EU because they supply both rational and ideational reasons for supporting the efforts for the undermining of borders. The argument that there are common challenges that require common actions provide the logical, reasonable line of the Commission justification, while the references towards the existence of common values work on the ideational front by promoting the emergence of a European mentality in the population of the EU. Furthermore, these two lines are in interrelation with each other, where one of them is reinforcing the other and vice versa. As post-structuralist scholars have argued, the existence of a common threat promotes the establishment of a common identity⁷³ while the stronger the identification with the EU, the more various facts will be looked at from the perspective of the Union, thus requiring responses at the EU-level. In general, the end result of this de-bordering trend is the establishment of a feeling of “we” on the territory in question. Such references will clearly signal a move towards inclusion and therefore, diminishing the visibility of borders. The discourse of the European Commission on the social dimension through its choice of wording obviously contributes to achieving exactly this result.

5.3.3. Usage of inclusive words

This de-bordering trend is further reinforced by the usage of words, which imply inclusion and belonging to the EU and promote identification with it. These are best exemplified by pronouns like “us”, “we”, or “our” and the labeling of some of the envisaged measures, which I present below.

⁷¹ Padraig Flynn, *Social Policy and Employment, Friends or Foes?*, SPEECH/95/278, 11.12.1995, p. 2 (emphasis added)

⁷² Padraig Flynn, *The Issues as the Amsterdam Summit Approaches*, SPEECH/97/88, 18.04.1997, p. 6

⁷³ See for example William E. Connolly, *Identity/ Difference – Democratic Negotiations of Political Paradox* (London: Cornell University Press, 1994)

The Preamble of the White Paper on Growth, Competitiveness and Employment reads: “This major challenge confronts *us all*. That is why we are arguing, first and foremost, the need to press on with building a unified Europe which will increase *our* strength through cooperation and through the benefits of a large area without frontiers of any kind”.⁷⁴ Various Commission officials in their speeches also use these inclusive pronouns. For example, the Commissioner for Economic and Monetary Affairs maintains: “The issue at stake is not which model *we* prefer, but rather how efficient that model might be for delivering growth, jobs and equality of opportunity to citizens, taking into account the new challenges and the rapid changes that *we* are facing”⁷⁵; and a speech by the former Commissioner responsible for Employment and Social Affairs Diamantopoulou on the ESM is full of such references: “*Our* social models have been centre stage in Europe’s continued economic and social progress.”; “... the major contrast remains between Europe and the US ... Which serves to distinguish us as societies. But which hardly puts *us* at an economic disadvantage”; “*Our* first European breakthrough on these issues came back in 1997”.⁷⁶ Although much more rare, this trend was present even at the time of the adoption of the SEA. For example, Delors argued: “... *we* should not let deregulation form a barrier to the necessary dialogue between unions and employers. “*We* must not abandon the European model, which has deep roots. ...”⁷⁷

Besides these most commonly used pronouns that denote the sameness of the EU’s member states, sometimes other pronouns are also used to show the belonging of the population of the Union to its unique way of social organisation. Nevertheless, the meaning constructed by such pronouns is still the same. The suggestion is that there exists a common social space in the EU, which in turn presupposes the decreased salience of internal borders. For example, the Commissioner responsible for Employment, Social

⁷⁴ European Commission, *Growth, Competitiveness, Employment – the Challenges and Ways Forward into the 21st Century – White Paper*, COM (93) 700 final, 5.12.1993, Preamble (emphasis added)

⁷⁵ Joaquin Almunia, *A European Economic and Social Model for the 21st Century*, SPEECH/07/253, 25.04.2007, p. 6 (emphasis added)

⁷⁶ Anna Diamantopoulou, *Europe’s Social Model – Building for the Future*, SPEECH/02/360, 29.08.2002, respectively p. 4; p. 2; p. 3 (emphases added)

⁷⁷ European Commission, *Commission President Calls for Continued Effort to Adjust European Economic Structures without Abandoning the ‘European Model’*, IP/86/281, 05.06.1986, p. 2 (emphasis added)

Affairs and Equal Opportunities Vladimir Špidla declares that: “European citizens remain attached to *their* social model, which is based on inclusion ...”⁷⁸

This emergence of a “we-feeling” is further promoted in the social policy discourse of the European Commission through the way undertakings are called. Although Commission documents usually acknowledge that action at Union level is not always the best way forward, the case is nevertheless made that there are occasions when the current institutional provisions are unsatisfactory⁷⁹ or when measures at the supranational level have added value and thus have to be pursued.⁸⁰ Thus, arguably, in concurrence with the trend uncovered in Chapter Three the Commission still uses any chances it sees feasible to promote further integration at EU level. Many of the names given to the major instruments used in achieving the objectives of the EU social policy imply inclusion. This is done through coordination of undertakings at different cross-border levels; through the development of common strategies, common priorities, and common programmes; through adoption of legislation at the supranational level; through consultation, exchange of information and dialogue between the actors involved.⁸¹ This inclusiveness is further reinforced by the nature of the integration process itself. In distinction to other unification policies in different geographical locations and during different historical periods, the process of European integration is presented as one, in which decisions are negotiated between free and equal partners. The following statement of Commissioner Diamantopoulou exemplifies this: “These common policies, again, are not a matter of one or more countries dictating to others. They are a matter of sovereign states deciding to pursue common objectives for common benefit.”⁸²

⁷⁸ Vladimir Špidla, *Closing Speech on Poverty and Social Exclusion*, SPEECH/06/609, 17.10.2006, p. 3 (emphasis added)

⁷⁹ Jacques Delors, *Address by President Delors Presenting the Commission's Programme for 1991 to the European Parliament*, SPEECH/91/8, 23.01.1991, p. 2; Pdraig Flynn, *The Issues as the Amsterdam Summit Approaches*, SPEECH/97/88, 18.04.1997, p. 2

⁸⁰ See for example Pdraig Flynn, *The Development of European Level Social Dialogue*, SPEECH/96/200, 23.07.1996, p.3; Jacques Santer, *Speech to the European Parliament*, SPEECH/96/260, 22.10.1996, p. 1; Pdraig Flynn, *The Social Chapter – Cost or Benefit?*, SPEECH/96/223, 26.09.1996, p. 5; European Commission, *Facts about the 'Social Chapter'*, MEMO/97/13, 05.02.1997, p. 2

⁸¹ This is based on Anna Diamantopoulou, *European Social Policy: Rising to the Challenge of Modernisation*, SPEECH/01/170, 10.04.2001, pp. 4-5

⁸² Anna Diamantopoulou, *The European Social Model and Enlargement*, SPEECH/00/235, 23.06.2000, p. 3

All in all, these articulations reveal another important way in which through its discourse the Commission undermines the borders between the member states in the social field. The implication of using inclusive words, such as the pronouns “we”, “our”, “us” and the labeling of EU-level actions as “joint” or “common”, is that a feeling of belonging and identification with the Union is promoted. Furthermore, as the last citation shows, this is further reinforced by the argument that the process of European integration is one based on voluntary association. Under it each member state can still exercise free will, and decisions are not based on force, where one, a group of states or the supranational institutions make decisions on behalf of the rest of the members. This is very important because it indicates firstly that whatever decision is taken it is for the good of everyone, and secondly, that in principle the option of not participating is still viable. Therefore, the participation in the policies on the social field signifies a conscious, rational decision that this is the best course of action and identification with all the other participants. As I explained in the previous section, this is what provides the ground on which the claims for the existence of an EMoS and ESM are made. Once their existence is asserted, it becomes possible for participants in the integration process (such as the Commission) to use different types of inclusive words in its discourse, which closes the circle. Therefore, these two main techniques used in the Commission discourse on the social dimension mutually reinforce each other and together lead to constructing a common social space in the EU, which is a border-free area. This is how the Commission social policy discourse undermines internal EU borders. Another field that in its rhetoric displays the same tendencies is the discourse of the Commission on the ESM in relation to Enlargement.

5.3.4. The Commission European Social Model discourse in relation to Enlargement

Before the end of the Cold War, the countries of the Communist block had a distinctive social model, which underwent a thorough change in the 1990s. Given that this was during the same period when the Central and Eastern European Countries (CEECs) were preparing for a full EU membership, it could be expected that they would move

towards greater convergence of their social policies with those of the EU.⁸³ Furthermore, it could be expected that such a development will be strongly supported and promoted by the EU and indeed the rhetoric of the European Commission shows such tendencies.

For example, in various speeches Commissioner Diamantopoulou maintains that the social dimension is an essential part of the Enlargement process. According to her: “The social dimension of the EU and the *acquis* in which it is expressed is an essential component: of building the institutions of democracy and civil society; of making markets work sustainably, and of creating the capacity for engagement in political, economic and monetary union.”⁸⁴ The reason for this is twofold. Firstly, as I said above from the outset the EC/EU has had social as well as economic aims. Secondly, the evolution of the Community social policy (as exemplified by the developments in the Commission discourse on the social dimension shown in the previous section) has led to an alignment between economic, employment and social policies. Commissioner Diamantopoulou refers to these as: “Our famous triangle.”⁸⁵ Therefore: “The social model is central to the Union’s continued economic progress and to enlargement”⁸⁶ and “... social policy and the social *acquis* are not an optional extra – they are a fundamental part of the EU’s legislative base and they are fundamental to building a comprehensive and inclusive knowledge economy.”⁸⁷ Hence: “... the social dimension is a basic element of the process of enlargement, not a casualty of the process.”⁸⁸ According to her: “The challenge for the candidate countries is twofold: they have to adjust to the existing situation in the EU, as

⁸³ For good reviews of the organisation and developments in the field of social policy in the former Communist Countries, see Bob Deacon, ‘East European Welfare States: the Impact of the Policies of Globalization’, *Journal of European Social Policy*, 10: 2 (2000), pp. 146-161; Nick Manning, ‘Diversity and Change in Pre-Accession Central and Eastern Europe since 1989’, *Journal of European Social Policy*, 14: 3 (2004), pp. 211-232

⁸⁴ Anna Diamantopoulou, *The European Employment Strategy and Social Model*, SPEECH/01/29, 29.01.2001, p. 8

⁸⁵ Anna Diamantopoulou, *The European Social Model in an Enlarged Union*, SPEECH/02/262, 7.06.2002, p. 2

⁸⁶ Anna Diamantopoulou, *The European Social Model: Promoting Economic and Social Progress*, SPEECH/01/212, 19.03.2001, p. 3

⁸⁷ Anna Diamantopoulou, *The European Employment Strategy and Social Model*, SPEECH/01/29, 29.01.2001, p.6

⁸⁸ Anna Diamantopoulou, *The European Social Model and Enlargement*, SPEECH/00/235, 23.06.2000, p. 4

well as adapt to a changing landscape ... To secure all this, candidate countries need the European social model.”⁸⁹

There are two very important conclusions that can be drawn from these articulations. Firstly, during the Enlargement process, the social dimension should have been just as important as the other policy areas. In other words, the candidate countries should make the same efforts in this field as in the sphere of economy or democracy before the full EU membership becomes a fact. Secondly, presumably during the time of accession into the Union, the convergence with the old member states on the social issues should be at the same level as that of the other two areas enlisted above. In order to achieve this, during the process of Enlargement, some Commission documents summarise the main focus of the efforts as promoting education and training reform, tax-benefit reform, efforts to strengthen the employment services, social partnerships and social dialogue in the applicant countries.⁹⁰ It is easy to spot the overlap between these priorities and the efforts for reforming the EU’s social dimension itself. Therefore, overall, the rhetoric on the priorities for change in the old and new member states are broadly in line with each other. Hence, the overall result of the Enlargement process in the social sphere is expected to be the gradual inclusion of the applicant countries into the ESM, which should more or less be accomplished before full membership becomes a fact. This means that the new member states will become part of the organisation of social life in the EU, thus the border that used to separate the Western and Eastern European societies will no longer be relevant. In this way the rhetoric of the European Commission on this specific aspect of the social dimension again provides evidence that it promotes the undermining of existing internal borders and leads to de-bordering and the creation of a common space this time encompassing old and new member states.

However, it is highly debatable whether the EU institutions, including the Commission were indeed successful in accomplishing this aim of including the new member states into the ESM. As I will demonstrate in the section on the construction of internal borders by the discourse of the Commission there is another way of interpreting

⁸⁹ Ibid.

⁹⁰ These are based on Anna Diamantopoulou, *The European Employment Strategy and Social Model*, SPEECH/01/29, 29.01.2001, pp. 4-5

how its discourse configures borders in the EU. Before I do this, I will analyse the construction of the external borders of the EU by the social policy discourse of the European Commission.

5.4. The Construction of the EU's External Border through Articulations of the "Self" and the "Other" in Commission Discourse on the Social Dimension

As we have seen in the previous part, the articulations on the EMoS and the ESM promote the emergence of a new identity as a result of the undermining of the borders in the social field between the member states. Nevertheless, a reading of the same documents also displays an opposite trend in the Commission discourse on social policy. As in the previous chapters, internal decrease in the significance of EU borders is inevitably accompanied by the emergence of new dividing lines at the outer edges of the EU. Given that the Commission articulations in the field of social policy configure overwhelmingly identity borders, the construction of the external EU border is a result of the articulation of "Others". So, in order to be able to demarcate the external borders inscribed in the discourse on the EMoS and the ESM, I demonstrate which are the Self and the Others emerging from the documents of the Commission. This will help me to "locate" the border configured through articulating what belongs to the European Models and what does not.

As I explained in Chapter Two, from a discourse theoretical perspective, the construction of the "Other" is crucial because it constitutes the binary opposition on which knowledge is constructed. For the purposes of this research, the "Othering" articulations are indispensable for analysing construction of the EU's external (as well as internal) border because it is through them that it becomes evident what does not belong to the EMoS/ESM. By defining what is outside, the external Union border is drawn and the identity of the 'inside' is further clarified. There are two main types of "Others" emerging from the European Commission social policy discourse. On the one hand these are other (economic) world leaders, countries such as Japan and the United States (US). On the other hand, these are the relatively newly booming economies, such as the Asia-Pacific or China. According to the articulations of the European Commission both types of "Others" are organised on

different social principles than the EC/EU. The analysis of which social principles are emphasised by the Commission articulations will also contribute to further (indirect) definition of the Self, thus showing how the EC/EU's external border is constructed.

The first main "Other"⁹¹ emerging from the Commission discourse on social policy are the relatively newly booming economies of the Asia-Pacific and China. After the signing of the SEA, their articulation as the "Other" is most clearly identified in the beginning of the 1990s. The references to them in the Commission discourse single them out as posing a threat to the economy of the EU. For example, in 1993 Commissioner Flynn refers to low wage economies as one of the main challenges the Union faces: "... there is the huge shift in global comparative advantage away from the high wage producers towards the lower wage economies of the Pacific Rim and elsewhere ..."⁹² More recently, similar concerns are represented through references to globalisation, which is identified as one of the major challenges to EU competitiveness in the 21st century.⁹³ This shift to a reference to globalisation can be partially attributed to the fact that in recent years the lower wages of the new EU member states have been an issue of significant debate. As my analysis of the Commission discourse on free movement of people from the "new" member states in Chapter Four shows, this in itself is also an issue that leads to important configurations of borders in the EU.

The Commission references to globalisation as a challenge can be illustrated with the following statement: "... *competitiveness* must be increased in order to meet the challenge of globalization which ... is ... prompting a massive increase in the supply of labour. We all know that we cannot compete with the emerging economies on labour costs."⁹⁴ The last sentence indicates that the EU acknowledges that it is not in a position to

⁹¹ The numbering of the two main "Others" emerging from the Commission discourse on social policy is not done according to any particular principle, such as their importance, time of articulation, etc. I have used the words "first" and "second" only to enumerate and distinguish between the two.

⁹² Pdraig Flynn, *Speech at the Irish Management Institute Conference*, SPEECH/93/45, 30.04.1993, p. 2. For acknowledgement of the problem of low wage economies see also Sir Leon Brittan, *Improving Social Rights Worldwide – the European Union's Contribution*, SPEECH/94/28, 29.03.1994, p. 3

⁹³ For references to globalisation as one of the major challenges to competitiveness see Vladimir Špidla, *Closing Speech on Poverty and Social Exclusion*, SPEECH/06/609, 17.10.2006, p. 2 and Vladimir Špidla, *A European Economic and Social Model for the 21st Century*, SPEECH/07/253, 25.04.2007, p. 2

⁹⁴ Vladimir Špidla, *Boosting Productivity and Creating Better Jobs*, SPEECH/06/598, 16.10.2006, p. 2 (emphasis in the original)

compete with these countries in terms of labour costs and has identified as a way forward increasing its own productivity instead. For example, in 1993 Padraig Flynn argued: “When examining the reasons for our decline in competitiveness, I think it is important not to fall into the trap of focusing purely on comparative labour costs or issues of social protection ... Let’s be honest about this. There is no way we can compete with the Pacific Rim by lowering wages and reducing levels of social protection to standards reminiscent of the 19th century. This is not only not possible but it is not desirable. The difference in hourly wage levels between Germany and China is 25 to 1. We should not feel threatened by this ... But it does mean that we have to adapt and learn to stay ahead of the competition by other means, especially by focusing on that real test of competitiveness – productivity.”⁹⁵ The ways for achieving this is through Research and Development, improvement of management skills and investment in skills training.⁹⁶

Twelve years later, there are no real changes in the way the appropriate responses are articulated in Commission documents: “... the competitive threat to Europe does not simply stem from bringing into productive use a huge pool of hitherto unskilled, untapped rural labour. That ignores the huge strides forward that the Chinese, Indians and others are making in education and R&D. That makes new competition more broad based with even more implications. Yes, we now face a huge competitive challenge in labour intensive industries ... but in future, in every sector, we will face strong competition unless we manage to keep a lead in research and innovation.”⁹⁷ The important change manifested in this passage is the expectation that in future all sectors of the EU’s economy are likely to face fierce economic competition if the Union does not manage to adequately address the challenge through maintaining high levels of productivity.

Thus, these articulations of low wage economies construct them as the “Other” because they unequivocally convey the message that these countries are posing a threat to the economic performance of the EU. Hence, they are putting at risk the well-being of the Union’s citizens and business. Also, these articulations have important moral connotations. They convey the message that endorsing the social standards of the above countries is

⁹⁵ Padraig Flynn, *The Challenges Facing the Community on Employment*, SPEECH/93/86, 09.07.1993, p. 2

⁹⁶ Identified in *ibid.*

⁹⁷ Peter Mandelson, *A Modern Social Agenda for Europe*, SPEECH/05/381, 23.06.2005, p. 3

totally unacceptable because it represents a backward move that will wipe out significant achievements of the EU societies. These articulations inevitably contribute to the establishment of a perception that these countries are rivals to the EU and have a social organisation inferior to that of the EU, which in turn constructs a border between them and the Union – an external border for the latter. In summary, the main way the discourse of the Commission constructs low wage economies as the “Other” is through explicit references to threat and the suggestion of moral superiority for the EMoS/ ESM. Furthermore, as I explain in greater detail below, these articulations also promote the identity of the EU as a highly productive economy. These are somewhat different from the emphasis in the discourse constructing world economic leaders as the “Other”.

The latter are the second main “Other” emerging from the Commission social policy discourse. The most numerous references in the last 20 years are to the US, followed by Japan. As early as 1986 Commission President Delors argued that the economic difficulties in the Community – slow growth, widespread unemployment, and aging population are: “constantly being compared with the much more successful performance of the United States and Japan over recent years.”⁹⁸ Further evidence for this is the continuous comparison of various macroeconomic performance indicators of the US and Japan with these of the EC/EU.⁹⁹ Thus, there is a clear line of continuation in the discourse of the Commission since the SEA.

However, there is one important “Other” that has disappeared from the discourse. Before 1989 the EMoS was perceived as the third way of societal organisation, opposed simultaneously to both the US’ neo-liberal model and the Soviet’s social-regulated

⁹⁸ European Commission, *Commission President Calls for Continued Effort to Adjust European Economic Structures without Abandoning the ‘European Model’*, IP/86/281, 05.06.1986, p. 1

⁹⁹ See for example, European Commission, *Growth, Competitiveness, Employment – the Challenges and Ways Forward into the 21st Century – White Paper*, COM (93) 700 final, 5.12.1993; European Commission, *Green Paper – European Social Policy – Options for the Union*, COM (93) 551 final, 17.11.1993, pp. 29-30; European Commission, *From the Single European Act to Maastricht and Beyond: the Means to Match Our Ambitions*, DOC/92/2, 11.02.1992, p. 13; Anna Diamantopoulou, *The Modernisation of the European Social Model and the Forthcoming Stockholm Summit*, SPEECH/01/113, 09.03.2001, p. 2; Joaquin Almunia, *A European Economic and Social Model for the 21st Century*, SPEECH/07/253, 25.04.2007, p. 4

markets.¹⁰⁰ This is illustrated by the claim of Commissioner Flynn that the EC/EU has steered unique course between excessive paternalism and excessive liberalism.¹⁰¹ After 1989, however, there is only one opponent left. As Pdraig Flynn declares: “The collapse of Communism has consolidated the world predominance of political democracy and the market economy, but it has also ushered in a new era of socio-economic competition and cooperation in which there will be winners and losers.”¹⁰² In that respect, during the Cold War there were two main “Others” to the EMoS, while after its end, the US’ neo-liberal model remained its sole most important competitor.

Therefore, although as mentioned above, Japan is a country with which the EC/EU is constantly comparing itself, it is hardly surprising that after the collapse of Communism, the US and its neo-liberal model is the most pronounced “Other” emerging from the Commission social policy discourse.¹⁰³ According to Jepsen and Pascual, one of the assumptions of the EMoS discourse is the superiority of the European model over the American one. The US serves as a negative example for European policy-makers, which sets the boundaries within which differences are constructed.¹⁰⁴ The “Other-ing” of the US in this discourse is articulated in an interrelated double move, which shows the negative sides of the socio-economic organisation of the Other and reaffirms the Self’s superiority.

According to Commissioner Flynn: “There is much public discussion about the relative virtues of the North American, Japanese and European socio-economic models. Europe certainly has a lot to learn from the United States and Japan ... but the truth is that

¹⁰⁰ For a claim that this is how the EMoS is perceived see Maria Jepsen, Amparo Serrano Pascual, ‘The European Social Model: an Exercise in Deconstruction’, *Journal of European Social Policy*, 15: 3 (2005), pp. 231-245, p. 232

¹⁰¹ See for example Pdraig Flynn, *Social Policy and Economic Performance*, SPEECH/97/15, 23.01.1997, p. 2; Pdraig Flynn, *Modernizing Europe’s Labour Markets*, SPEECH/98/60, 27.03.1998, p. 1

¹⁰² Pdraig Flynn, *Green Paper Seminar*, SPEECH/ 94/59, 28.05.1994, p. 3

¹⁰³ An evidence for the dominance of the US as the most important Other for the EU is the fact that there are a number of Commission documents, such as speeches of its officials, where the only country the EU is compared to is the US. See for example, Pdraig Flynn, *Society and Jobs in Europe and the US: the Choices we have to Make?*, SPEECH/96/109, 03.05.1996; Pdraig Flynn, *Social Policy and Employment - Friends or Foes?*, SPEECH/ 95/278, 11.12.1995; Anna Diamantopoulou, *The Modernisation of the European Social Model and the Forthcoming Stockholm Summit*, SPEECH/01/113, 09.03.2001; Anna Diamantopoulou, *The Social Policy Agenda: Europe at Work for Trade Unions*, SPEECH/01/114, 09.03.2001; Peter Mandelson, *A Modern Social Agenda for Europe*, SPEECH/05/381, 23.06.2005

¹⁰⁴ Maria Jepsen, Amparo Serrano Pascual, ‘The European Social Model: an Exercise in Deconstruction’, *Journal of European Social Policy*, 15: 3 (2005), pp. 231-245, p. 233

there is no model there to follow.”¹⁰⁵ The overall verdict of the experts is that the socio-economic models in the US and Japan have some important competitive advantages because they allow for lower production costs and social spending as well as greater flexibility for employers. These in turn are contributing to the better macroeconomic performances of the two countries in comparison to the EU. However, as the documents of the European Commission make clear, there are important disadvantages of the American socio-economic system.

Perhaps the most important disadvantage of the neo-liberal model articulated by the Commission documents, is that it has: “... severe social consequences, as demonstrated in the US.”¹⁰⁶ According to a report by the US Council of Competitiveness: “... the real income of the average American family has remained flat for two decades ... the US infant mortality rate is among the highest in the world, and ... America’s schoolchildren rank the last among the big industrial nations in their grasp of science and mathematics. And while America’s postgraduate education remain among the world’s finest, the cost has risen by at least a third in real terms since 1980, far outpacing the average family’s capacity to pay for it.”¹⁰⁷ Furthermore, although living standards in the US are higher than even in the richest EU member states, this is due not to greater American efficiency or productivity but to the longer working hours and most importantly to the higher proportion of working age population being in work in the US.¹⁰⁸ Also, although the US has created more jobs in the 1990s in comparison to the EU, this has not tackled the issue of the so-called “working poor”¹⁰⁹ and the resulting social exclusion.¹¹⁰

Therefore, these articulations point to a situation where although the US does have good macroeconomic indicators for productivity and employment these do not translate into increased living standards for the overwhelming part of the population. On the

¹⁰⁵ Padraig Flynn, *Green Paper Seminar*, SPEECH/ 94/59, 28.05.1994, p. 3 (emphasis added)

¹⁰⁶ Padraig Flynn, *Social Policy and Employment - Friends or Foes?*, SPEECH/ 95/278, 11.12.1995, p. 5

¹⁰⁷ Quoted in *Ibid.*

¹⁰⁸ Anna Diamantopoulou, *The Modernisation of the European Social Model and the Forthcoming Stockholm Summit*, SPEECH/01/113, 09.03.2001, p. 3

¹⁰⁹ Working poor are individuals who are in a regular employment but are still living in relative poverty as a result of low wages and commitments to dependents.

¹¹⁰ Based on Anna Diamantopoulou, *The Social Policy Agenda: Europe at Work for Trade Unions*, SPEECH/01/114, 09.03.2001, p. 3

contrary, there are: “Extremely wide income disparities.”¹¹¹ This is crucial in light of the Commission social policy discourse. As we have seen in the Lisbon Council Conclusions, for the EMoS and the ESM creating a cohesive society, which does not have big income distribution gaps is a major focal point. Commissioner Flynn summarises this stance in the following way: “... if Europe is to become more competitive, European Society as a whole must become more productive. The health of European society and the prosperity of European economy demand the maximum productivity, the optimum contribution from all. But society as a whole cannot achieve maximum productiveness if, in the process, it becomes increasingly divided, between the rich who get richer and the poor who get poorer, between those who forge ahead and those who are left behind. In the mix between economic and social policy, the basic premise of social justice which underpins all our societies must not be abandoned.”¹¹² This clearly juxtaposes the US to the EU.

Since the data on the US shows that big social disparity is exactly what is happening there, it should come as no surprise that various Commission documents warn against an all out emulation of the US neo-liberalism despite its economic successes. For example, Commissioner Flynn urges: “... let’s not go back to the 19th century, or imitate the Americans. It just isn’t desirable either in terms of long run competitiveness or social justice.”¹¹³ And Commissioner Diamantopoulou states that: “Europe should not attempt to ape the US in all things. I too believe that we should hold on to our distinct social beliefs, to ensure that ‘market economy’ does not mean ‘market society’.”¹¹⁴ The reason for these statements is that the Commission discourse on the social models in the EC/EU promotes the idea that they ensure: “... a healthy balance between economic growth and social cohesion. And we have seen all too clearly from other countries, including the United States, the results of *not* having adequate social policies.”¹¹⁵

¹¹¹ Ibid.

¹¹² Padraig Flynn, *Speech at the CBI Conference*, SPEECH/94/120, 07.11.1994, p. 3

¹¹³ Padraig Flynn, *Social Policy and Employment – Friends or Foes?*, SPEECH/95/278, 11.12.1995, p.5

¹¹⁴ Anna Diamantopoulou, *European Social Policy: Revising the Challenge of Modernisation*, SPEECH/01/170, 10.04.2001, p. 4

¹¹⁵ Anna Diamantopoulou, *The European Social Model: Promoting Economic and Social Progress*, SPEECH/01/212, 19.03.2001, p. 2 (emphasis in the original)

These statements clearly indicate that the discourse of the European Commission rebuffs: "... robustly those ..., whose definition of competitiveness, finds it possible to situate economic health in a social wasteland"¹¹⁶ and does not endorse "the narrow, selfish view of social policy"¹¹⁷ What is even more important in terms of the topic of this study, these articulations construct the US as the prime example of an actor that has adopted such socio-economic organisation and in this respect it is the "Other" for the EU. Furthermore, as Jepsen and Pascual, referred to above argue, the discourse of the Commission suggests that the situation in the Union is better than that in the US. In this respect, the Commission discourse on the social models creates a distinct identity of the EU and clearly sets it apart from the main players that are most like the Self, thus, constructing the external border of the Union.

The general way in which this is conveyed is along the lines that: "The European way of life is based on a different social philosophy from that of the USA. A less individualistic and more collectivist model of society."¹¹⁸ And that: "... a weak, de-regulated or low-cost social protection and safeguards system does not bring economic advantage."¹¹⁹ For example, according to the critics of the ESM, EU member states spend too much on social policy in comparison to the US, which affects their competitiveness. However, European Commission documents make clear that overall: "... the US devotes exactly the same proportion of its economic output to health, pensions, social protection, labour market measures, child care, and so ... as does Denmark ... And the other EU countries within 1 or 2 per cent of the US, either way."¹²⁰

The key difference, however, is the way in which this is done – while some countries tax social transfers, other countries, such as the US, impose mandatory private social spending obligations on their workers and employers.¹²¹ Thus, "The difference between the European model and the American model is that, for us in Europe, social

¹¹⁶ Padraig Flynn, *Social Policy and Economic Performance*, SPEECH/97/15, 23.01.1997, p. 3

¹¹⁷ Ibid.

¹¹⁸ Romano Prodi, *Europe in the 21st Century*, SPEECH/99/218, 18.12.1999, p. 3

¹¹⁹ Padraig Flynn, *Social Policy and Employment – Friends or Foes?*, SPEECH/95/278, 11.12.1995, p. 5

¹²⁰ Anna Diamantopoulou, *The Modernisation of the European Social Model and the Forthcoming Stockholm Summit*, SPEECH/01/113, 09.03.2001, pp. 4-5

¹²¹ Ibid., p. 4

policy is a permanent concern of the state.”¹²² The US’ neo-liberal system, on the other hand, has effectively led to a situation, where higher wage employees receive far better social protection than the low-wage employees or the unemployed. It is this low social spending on a large proportion of the American population that has led to increased income disparities and the resulting different life opportunities for the various social groups. Or as Commissioner Flynn argues: “While all income groups in the US saw real incomes rising between 1960 and 1980, it was clear from 1980 onwards that the distribution of income growth was starting to tilt. The top earners began to gain at the expense of the lowest earners. Wages amongst low skilled workers are still dropping, while those of workers with good educational qualifications and relevant skills are going up. And the result is the rise of working poor and the long-term damage caused by undertrained workforce.”¹²³

Thus, from a European perspective there is “another side” to America’s success story and it is: “... that working people in America have not shared equally in the economic boom.”¹²⁴ In the EU, however, according to the Commission discourse: “... we do not want the social exclusion and division we see in the US ... We do not believe that cohesion can only be bought at the expense of economic competitiveness. On the contrary, we believe that cohesion, if achieved by the right means, positively enhances competitiveness. The alternative to cohesion – increasing social exclusion – comes with a heavy economic price tag: higher public spending, not just on welfare bills, but on dealing with the damage. Poverty-related illness, drug addiction and crime push up expenditure on health care, policing, prisons and rehabilitation.”¹²⁵ When this is taken into account, despite differences between the EU Member States’s social systems: “... the major contrast remains between Europe and the US. Not in levels of expenditure, but in terms of who gets what across society as a whole. There is a choice being made in these different approaches. But not a choice between high and low costs. It is a choice between access and equality or ability to pay. A choice between a more, or less, uneven distribution of income, opportunities and life

¹²² Anna Diamantopoulou, *The European Social Model and Enlargement*, SPEECH/00/235, 23.06.2000, p. 5

¹²³ Pdraig Flynn, *Society and Jobs in Europe and the US: the Choices we have to Make?*, SPEECH/96/109, 03.05.1996, p. 3

¹²⁴ Both quotations are from Ibid.

¹²⁵ Anna Diamantopoulou, *New Employment Strategies in the EU and Japan – Adaptability and Entrepreneurship*, SPEECH/00/68, 06.03.2000, pp. 3-4

chances. With Europe's more egalitarian public policies, on the one hand, and the US private regimes – both mandatory and voluntary – on the other. Which serves to distinguish us as societies. *But which hardly puts us at an economic disadvantage. Rather the contrary.*¹²⁶

Thus, the discourse of the Commission articulates the US' neo-liberal model as the "Other" – this model is qualitatively distinct from the European one because it fails to ensure equality in opportunities for success within the society. Therefore, this discourse clearly draws a dividing line between the EU and the US, thus constructing a very important external border for the Union. Furthermore, the documents of the European Commission openly state that the situation in the EU is better, thus articulating the superiority of the ESM over the American one: "So the real policy issue is not the level of spending. But the distribution of the benefits across different groups in society. And the efficiency of the delivery systems. And, on both accounts *we know that the European social model performs much better than the US.* Indeed, all too often, the US demonstrates the real hidden costs of not having effective and equitable social policies."¹²⁷ The EU superiority is a result of: "... a real social advantage, with the benefits of our social systems being more evenly shared across our populations, and with fewer social problems in consequence."¹²⁸ This superiority is further strengthened by claims that in different economic areas or in different periods the EU is performing better than the US. For example, according to Commissioner Flynn: "As a whole we're doing better than the US in terms of global trade. Profit shares are higher in Europe than in the US."¹²⁹ or: "... the US economy is in worse difficulties than the EU at the present time. With a serious loss of jobs, and significant increases in unemployment."¹³⁰

Thus, the examination of the discourse of the European Commission on social policy shows that currently the most significant "Other" articulated, in terms of world

¹²⁶ Anna Diamantopoulou, *Europe's Social Model – Building for the Future*, SPEECH/02/360, 29.08.2002, p. 2 (emphases added)

¹²⁷ Anna Diamantopoulou, *The Modernisation of the European Social Model and the Forthcoming Stockholm Summit*, SPEECH/01/113, 09.03.2001, p. 5 (emphasis added)

¹²⁸ European Commission, *The cost of Non-Social Policies*, MEMO/03/58, 19.03.2003, pp. 2-3

¹²⁹ Padraig Flynn, *Social Policy and Employment – Friends or Foes?*, SPEECH/95/278, 11.12.1995, p. 4

¹³⁰ Anna Diamantopoulou, *Tackling Europe's Unemployment – Strengthening Social Cohesion*, SPEECH/03/62, 08.02.2003, p. 3

economic leaders, is the US. The most important division drawn between the US and the EU lies in the different ways in which their systems of social protection work and the resulting income redistribution within the respective society. In distinction to the low wage “Other”, the difference with world economic leaders is expressed not along the lines of threat but mainly through claims of moral superiority that emphasises the negative characteristics of the opponent’s socio-economic system. Thus, the Commission discourse identifies the system of social protection, which is one of the central features of the EMoS/ESM, in the EU member states as one of the core elements creating the EU identity. Furthermore, the superiority of this system over others is consistently upheld, thus creating a unifying focal point at which the pride of being European can be expressed.¹³¹ This continuous reference to the moral superiority of the system in the EU in this field is in stark contrast with the articulations contributing to the construction of the external EU identity border in the area of free movement of people. As my analysis in the previous chapter has shown, there the articulations lack such connotations and instead convey the message that the EU has to unequivocally catch up.

Furthermore, the “Other-ing” in the Commission discourse also allows summarising the two main features of the EU socio-economic system as its very high productivity and the relatively equal income distribution. It is along these two main lines that the articulations of the “Other” converge with those of the Self, which work towards the construction of a specific European identity, thus further reinforcing the creation of a distinctive external border of the Union.

Given the fact that the European integration process has always been first and foremost concerned with the economic sphere it should come as no surprise that one of the

¹³¹ In this respect it is interesting to note that since the beginning of the 21st century, there is a new line emerging in Commission documents, which more openly claims that the ESM has proved popular outside of the EU and therefore, can be an example for the rest of the world. See for instance, Anna Diamantopoulou, *The European Social Model: a Sound Business Investment*, SPEECH/01/552, 20.11.2001, p. 5; Anna Diamantopoulou, *Managing Change: a New Role for the Social Partners*, SPEECH/01/632, 13.12.2001, p. 1; Anna Diamantopoulou, *The European Social Model in an Enlarged Union*, SPEECH/02/262, 7.06.2002, pp. 3-4; Anna Diamantopoulou, *Policies, Partners, People: an Integrated Approach to Fighting Poverty*, SPEECH/02/367, 05.09.2002, p. 3. An academic study that examines the promotion of the ESM outside the EU is Tonia Novitz, ‘Legal Power and Normative Sources in the Field of Social Policy: Normative Power Europe at Work?’ in Jan Orbie (ed.), *Europe’s Global Role: External Policies of the European Union* (Aldershot: Ashgate, 2008), pp. 139-156.

dominant self-representations that emerge from the discourses of the European Commission is of the EC/EU as an economic world leader and as the world's biggest and most successful economic block. In the words of Commissioner Flynn: "We are the largest, most productive entity in the world ..."¹³² This is further evident from the continuous references of different Commission documents to statistical data that point in this direction. For example, the Green Paper on Social Policy reads: "The Community is one of the most prosperous areas of the world. While it contains only 7% of the world's working age population, it produces some 30% of world's GDP and 45% of world trade in manufactured goods."¹³³ These figures, although slightly adjusted in recent years, as well as other data showing the good economic performance of the EU, are repeated in the speeches of the officials of the Commission.¹³⁴ Overall, these clearly indicate that the EU sees itself as a world leader. Furthermore, although there is a line in the Commission discourse that acknowledges that in the last decades the Union has experienced economic difficulties with social repercussions in terms of tackling unemployment and growth,¹³⁵ its belief in its ability of overcoming the current difficulties is nevertheless still strongly present. The best evidence of this is the new strategic goal set at the Lisbon European Council – in the next decade to make the Union: "... *the most competitive and dynamic knowledge-based*

¹³² Padraig Flynn, *Social Policy and Economic Performance*, SPEECH/97/15, 23.01.1997, p. 1

¹³³ European Commission, *Green Paper – European Social Policy – Options for the Union*, COM (93) 551 final, 17.11.1993, p. 13

¹³⁴ See for example, Padraig Flynn, *Perspectives on European Employment and Social Policy*, SPEECH/96/110, 06.05.1996, p. 4; Padraig Flynn, *European Social Policy - a Help or a Hindrance*, SPEECH/96/127, 20.05.1996, p. 2; Padraig Flynn, *Social Policy and Economic Performance*, SPEECH/97/15, 23.01.1997, p. 1; Anna Diamantopoulou, *The European Social Model: Promoting Economic and Social Progress*, SPEECH/01/212, 19.03.2001, p. 3; Anna Diamantopoulou, *European Social Policy: Rising to the Challenge of Modernisation*, SPEECH/01/170, 10.04.2001, p. 3

¹³⁵ This challenge is best exemplified by the European Commission, *Growth, Competitiveness, Employment – the Challenges and Ways Forward into the 21st Century – White Paper*, COM (93) 700 final, 5.12.1993, particularly Chapter 1, pp. 39-53 but this theme re-emerges in a number of other documents, such as European Commission, *European Social Policy – a Way Forward for the Union – a White Paper*, COM (94) 333 final, 27.07.1994, p. 9 and various officials' speeches, i.e. Anna Diamantopoulou, *The Social Policy Agenda: Europe at Work for Trade Unions*, SPEECH/01/114, 09.03.2001, p. 3; Anna Diamantopoulou, *The Modernisation of the European Social Model and the Forthcoming Stockholm Summit*, SPEECH/01/113, 09.03.2001, p. 2

economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion.”¹³⁶

This reference to greater social cohesion brings back into the focus the ESM. It is in concurrence with the articulations on the US examined above and indicates the commitment to continue to pursue improved economic performance in the EU not despite but through efforts for solving existing social problems. The Green Paper on Social Policy reads that: “... with the disappearance of a two-block world strategic system ... world strategic competition and cooperation will be increasingly based on success in socioeconomic development, involving different and to some extent, competing forms of capitalism”.¹³⁷ Thus, if I want to interpret what is the nature of the EU that is constructed by the Commission discourse, I have to identify the form of capitalism developed in the Union.

According to the discourse of the European Commission, the societies in all member states are built on the belief that there should be a balance between extreme individuality and extreme state involvement. The former will lead to greater gaps in the income distribution thus triggering atomisation, which can eventually cause societal dissolution. At the same time the latter can “suffocate” the individual leading among other things to loss of economic competitiveness. According to Commissioner Flynn: “We have steered a unique course in the world, between excessive liberalism – which risks social fragmentation; and excessive paternalism – which stifles initiative and innovation.”¹³⁸ This has resulted in the establishment of a particular form of capitalism on the territory of the EC/EU, which is exemplified by its specific tax and benefits systems or the involvement of the social partners. This is one of the features that emerge from the Commission discourse as forming the EC/EU’s as a community.

The other most important characteristic that defines the European integration project and helps giving it a meaning is, as we have seen in this part, the economic

¹³⁶ Presidency Conclusions, Lisbon European Council, 23-24.03.2000, available at http://www.europarl.europa.eu/summits/lis1_en.htm, accessed on 22.04.2008, p. 2 (emphasis in the original)

¹³⁷ European Commission, *Green Paper – European Social Policy – Options for the Union*, COM (93) 551 final, 17.11.1993, p. 13

¹³⁸ Padraig Flynn, *Social Policy and Economic Performance*, SPEECH/97/15, 23.01.1997, p. 2. See also Padraig Flynn, *Modernizing Europe’s Labour Markets*, SPEECH/98/60, 27.03.1998, p. 1

performance of the EC/EU. It is on its economic success that the power and influence of the EC/EU are based and it has allowed the Community to become one of the leading actors on the contemporary world stage.

However, as became evident during the overview of the Commission discourse on social policy, there is a strong line that attributes the success in the EC/EU economic performance to the social model that exists there, thus reaffirming its centrality to the identity of the Union. According to Commissioner Flynn: “Social Policy is an integral part of the competitive formula. There will not be a competitive Europe without a vibrant social policy.”¹³⁹ Commissioner Diamantopoulou also argues: “Our social models have been centre stage in our continued economic and social progress.”¹⁴⁰ This is due to the fact that according to the Commission articulations, as the comparisons with the US above have shown, the ESM makes economic sense because a failure of social policies is costly for both governments and societies.¹⁴¹ This provides the rationale for promoting stronger social policies because “A major part of social expenditure – on health and education, for example – is a direct investment in human resources. As important as any investment in machinery or infrastructure”,¹⁴² thus indicating that: “... the capital of workers – human resource capital – [is] increasingly seen to be as important as physical capital.”¹⁴³ Therefore, in a nut-shell, the self-perception of the EU, emerging from the documents of the European Commission is as one of the world leaders, which is based on its strong economic performance, which in its turn is a result of the existence of a specific mode of social organisation in the societies that form the Union. This self-perception, however, constructs the external EU border because it contributes to its constitution as an organisation that has certain specific features that define its community. In turn this creates it as a distinctive and unified entity. However, such unifying perception is not the only way in which issues under

¹³⁹ Padraig Flynn, *White Paper on Social Policy*, SPEECH/94/118, 26.10.1994, p. 2.

¹⁴⁰ Anna Diamantopoulou, *The European Social Model: a Sound Business Investment*, SPEECH/01/552, 20.11.2001, p. 3

¹⁴¹ See for example, Anna Diamantopoulou, *The European Social Model: Promoting Economic and Social Progress*, SPEECH/01/212, 19.03.2001, p. 2

¹⁴² Anna Diamantopoulou, *Presentation of the Social Policy Agenda to the European Parliament*, SPEECH/00/324, 21.09.2000, p. 3

¹⁴³ Anna Diamantopoulou, *The European Union's Employment and Social Priorities: from Lisbon to Stockholm*, SPEECH/01/89, 27.02.2001, p. 3

the social dimension are articulated. As I show in the section below, some Commission articulations contribute to the reconstruction of internal borders inside the EU.

5.5. The Construction of an Internal Border in the EU through Commission Social Policy Discourse

In the context of the social models in the EU, the construction of internal EU borders through the discourse of the European Commission relates to the way social issues were tackled during the Eastern Enlargement process and the references to the UK that can be interpreted as constructing it as an internal “Other”.

5.5.1. Britain as the Internal “Other” in the EU

Generally, the UK represents a special case when it comes to the EMoS/ ESM because, like America, its social model is neo-liberal. As the discussion so far has shown, the Commission articulations indicate that its idea of how social life should be organised strongly opposes the neo-liberal model. Instead, its vision advocates greater involvement in social issues for the state and the supranational level in the EU context. In the past this has led to British opting-out of EU-level legislation on social policy, which represents a tangible manifestation of the existence of an internal border between the UK and the rest of the EU on this particular issue. Although it joined the Social Chapter in the Treaty of Amsterdam in 1997, the trend of Britain disagreeing with the rest of the EU on social policy issues is still present. For example, in the beginning of the new millennium, the Directive on Information and Consultation of workers raised: “considerable concern and worry ... in the UK”¹⁴⁴ and in the summer of 2005, the UK expressed its opposition to the proposed legislation at EU level for the number of hours a week that a worker is allowed to do. This constitutes the discursive background within which the articulations of the Commission operate. My argument is that despite its efforts to the contrary, due to the different visions of the UK and the Commission, Commission social policy discourse

¹⁴⁴ Anna Diamantopoulou, *European Social Policy: Revising the Challenge of Modernisation*, SPEECH/01/170, 10.04.2001, p. 5

constructs the UK as the “Other” thus recreating the existing division between the UK and the rest of the EU. This leads to an inconsistency in the Commission discourse, which is articulated through linking the UK with the “US” and “deregulators”, which both emerge from the Commission social policy discourse as “Others”.

In concurrence with the de-bordering trend under the first reading some articulations of the Commission indicate its desire to overcome the internal border between the UK and the other member states on social policy issues. This is enunciated through a two-step process. Firstly, the Commission has referred to the British position as a serious issue because it obstructs the integration process.¹⁴⁵ This is because “there are two different legal bases for the pursuit of social policy at European level ... one [that] applies across the Union and is based on the social provisions of the Treaty of Rome ... and the other applies to 14 Member States and is based on the Agreement on Social Policy.”¹⁴⁶ Secondly, the Commission has clearly shown that it is in favour of discontinuation of this situation: “My plea – here today – for an end to a separate social chapter simply reflects what has in recent years informed the whole European Social policy”; “I hope the UK will come to recognize that having two legal frameworks for social legislation is what threatens jobs, puts workers’ confidence and security at risk and weakens competitiveness.”¹⁴⁷ This clearly indicates that the Commission supports taking the internal EU borders down, which importantly should be done through accepting the developments at EU level.

The promotion of the establishment of a common social space in the EU and the inclusion of the UK in it are further advanced by some Commission articulations, which emphasise that the UK belongs to the ESM. Most often this is done by acknowledging the diversity of the social systems of the member states, a technique, which I looked at in the section on de-bordering. As I argued there, the inclusiveness is implied by the insistence on the existence of common underlying values and aims, which supersede these differences in the detail. The following statement is a good illustration of this in the case of the UK: “The

¹⁴⁵ Jacques Delors, *Press Conference before the Maastricht European Council*, SPEECH/91/135, 05.12.1991, p. 2

¹⁴⁶ European Commission, *Facts about the ‘Social Chapter’*, MEMO/97/13, 05.02.1997, p. 2

¹⁴⁷ Both quotations are from Pdraig Flynn, *The Social Chapter – Cost or Benefit?*, SPEECH/96/223, 26.09.1996, p. 5

way in which these values are implemented in the Member States of the European Union, with their different traditions, varies ... For example, the United Kingdom has the National Health Service, whereas Germany has a system of insurance funds ...but the basic common direction of all systems is clear.”¹⁴⁸ However, there are other articulations that can be interpreted along the line that the UK represents a special case in the EU, thus contradicting the claim that a common social space exists in the EU.

The first way in which the inconsistency is articulated is through linking the UK and the US. Thus, despite the above claims about Britain’s belonging to the ESM, from the discourse of the Commission it also emerges as a state that has macroeconomic indicators similar to the US: “... when we look at both income inequality and literacy inequality, we find that the Nordics – Denmark, Sweden, Norway – are at one end of the spectrum, in both cases. And that the US, and unfortunately the UK too, are at the other end.”¹⁴⁹; “... US workers work 5 to 10 per cent longer hours per year than European. Even longer than the British!”¹⁵⁰ Thus, these documents link the UK with the US through establishing a clear resemblance between them. As the previous section showed the US is constructed as one of the main “Others” of the EU. Therefore, the link of the UK with it contributes to the exclusion of the UK from the EU, rather than to its inclusion, hence constructing an internal border in the Union.

This perception of ambiguous belonging of the UK to the ESM is further reinforced by the frequent reminder in Commission documents that the UK is a part of the integration project and faces the same challenges as the other member states: “Over the next decade, *Europe, including Britain*, faces a fundamental choice of directions about its response to intensifying global competition.”¹⁵¹; “That is the core of the European employment and social policy, *for the UK and Europe*, in the next decade.”¹⁵² These have: “... been a test of

¹⁴⁸ Vladimír Špidla, *The European Social Model: Wishful Thinking or Reality?*, SPEECH/06/291, 11.05.2006, p. 2

¹⁴⁹ Anna Diamantopoulou, *The Modernisation of the European Social Model and the Forthcoming Stockholm Summit*, SPEECH/01/113, 09.03.2001, p. 4

¹⁵⁰ *Ibid.*, p. 3

¹⁵¹ Peter Mandelson, *A Modern Social Agenda for Europe*, SPEECH/05/381, 23.06.2005, p. 2 (emphasis added)

¹⁵² Pádraig Flynn, *A Personal Perspective on the Development of Social Europe*, SPEECH/99/112, 07.09.1999, p. 4 (emphasis added)

the UK's ability to address both its own identity in Europe, and its own ... performance, in European terms.”¹⁵³ These statements promote a European identity for the UK. However, the fact that these reminders are constantly necessary¹⁵⁴ implies that in Britain, the identification with the EU is not that strong, that the British often feel apart, rather than a part of the EU. Thus, although they are members of the EU, this indicates that there is an important dividing line between them and the rest of the Union on social policy issues, which points towards the existence of an internal EU border. This can be illustrated by the fact, admitted openly by Commissioner Flynn that in the UK there is: “... sometimes bitter, and essentially sham, battle which surrounds any mention of “Europe”, and, especially, the “S” word”¹⁵⁵ and that the British tabloid press (perhaps more than the national press in any other member state) is notorious for its: “... spread of fear and loathing of the Union”.¹⁵⁶

The latter leads to the question what, if anything makes the UK different? As I said earlier, in distinction to the socio-economic models on the continental part of the EU, the British one is neo-liberal. Therefore, it can be expected that in comparison to other European social models, the predisposition on social issues in the UK has been towards less intervention, deregulation, or lower social spending. Currently this predisposition is a result of the policies of the Conservative governments that ruled the country for almost two decades after 1979. This incline has meant that (especially when the Conservative party was in power) the UK was finding it difficult to come to terms with the philosophy underpinning EMoS/ ESM. This distinction is reflected in the Commission discourse, which can be well exemplified by the following quotation of Commissioner Flynn: “Lady Thatcher, the former Prime Minister of the UK, used to say that *she didn't know* what society was. *I know*.”¹⁵⁷ It clearly points to the contradictory positions of the two politicians, thus putting them on the opposing sides of the dividing line. These positions are

¹⁵³ Ibid., p. 2

¹⁵⁴ Although on certain issues, or during particular periods other EU member states can also be regarded as an internal “Other” emerging from European Commission discourse, the UK is the EU member state to which this is most often applicable. Furthermore, as the years of the documents referred to in this section indicate, this tendency has been pronounced virtually throughout the whole period in question. Thus, I regard the UK as a “special case” and one of the most important examples of the construction of internal EU borders.

¹⁵⁵ Padraig Flynn, *Social Policy and the Economy*, SPEECH/97/35, 11.02.1997, p. 2

¹⁵⁶ Ibid., p. 5

¹⁵⁷ Padraig Flynn, *European Social Policy - a Help or a Hindrance*, SPEECH/96/127, 20.05.1996, p. 1 (emphasis added)

informed by the different philosophies they hold. For the EU Commissioner: “People and their skills, enterprise and confidence, as consumers, investors and workers, are both the future of our economies, and of its bedrock, families and society. The economy has to be strong. The values of the market are necessary for enterprise and business. But for citizens, for people, it’s more complex. Human values are more than – and different from – market values.”¹⁵⁸ As we have seen earlier, various Commission documents promote the idea that a very important part of these citizens’ values are the social models in the EU, which stand in favour of solidarity and equality. These, however, require active redistributive policies. It is exactly this kind of policies that Margaret Thatcher was opposing and in turn, this has led her to proclaim that she did not know what society is.

This differentiation between citizens values and market values is again reminiscent to a line in the Commission discourse on US’ “Other”. Taking this into account, however, allows drawing more parallels between the socio-economic systems of the US and the UK. This further contradicts the claim of the UK’s belonging to the ESM and constructs it instead as “Other”, just as the US is, and in this way – establishes an internal border in the EU. Further evidence in support of such argument is that according to the documents of the European Commission, some important positive and negative aspects of British economic performance are closer to these of the US. For example, in terms of its achievements under the European Employment Strategy: “The UK in many ways is a very positive role model, although there is an issue of balance with respect to employment and social policies. In our work on labour markets within the Employment strategy ... we see that the UK performs well in terms of a number of traditional flexibility criteria. And it has shown an impressive capacity to respond to change, especially regarding new technologies. Nevertheless, there remains work to be done ... there is lack of social partnership, at a time when we envisage an enhanced role for the social partners at both European and national level ...”¹⁵⁹

The second main inconsistency in the Commission discourse on social policy that contributes to the emergence of an internal border between the UK and the rest of the member states is the articulation of those in favour of deregulation as “Other”. According

¹⁵⁸ Ibid.

¹⁵⁹ Anna Diamantopoulou, *The European Dimension*, SPEECH/00/298, 12.09.2000, pp. 4-5

to the Commission, there are clear dangers in deregulation: "... we must avoid ... drifting back to the policies and practices that failed to deliver in the past – like wholesale market de-regulation. Not only did they not work, they proved counter-productive. Creating social strife and conflict. Slowing the process of reform and progress. Failing to address the real labour market problems we face."¹⁶⁰; "... deregulators ... offer us the low pay, low productivity route."¹⁶¹ Instead, the Commission promotes the rationale for the existence of social policy at Union level and is at pains to emphasise and reassure that its aim is not to regulate at any price and that it only does so when there is a necessity for that: "Our [EU] economic objectives cannot be achieved without the social dimension." and this is because: "When business goes beyond national borders, I believe there is a need for social rights and principles to go beyond these borders too."¹⁶² This is what makes legislation and regulation at European level important: "The Union has to exist for every situation where the citizen's interest is better served by acting together than by acting separately ... The Commission is convinced that we must act less in order to act better. But on the other hand, ... it will not baulk at taking steps whenever it firmly believes that a contribution from the Union is needed if a question of common interest has to be addressed."¹⁶³

However, according to the discourse of the Commission, this position is not supported by Britain: "We are all familiar with the UK problem which is relatively easy to understand. It combines a general skepticism about the merit of any action at European level with a very specific allergy to regulation in the social field since in the last 15 years the Conservative Government has been pushing policy which goes in the completely opposite direction."¹⁶⁴ More generally, similar concerns are expressed in the following way: "There are those of you who believe that we don't need any legislation in the social field at European level and that the answer lies even in de-regulation. Others, no doubt

¹⁶⁰ Anna Diamantopoulou, *Growth, Employment and Enlargement; the Challenges for Europe*, SPEECH/01/514, 08.11.2001, p. 2

¹⁶¹ Padraig Flynn, *Social Policy and the Economy*, SPEECH/97/35, 11.02.1997, p.4

¹⁶² Both quotations are from Padraig Flynn, *The Development of European Level Social Dialogue*, SPEECH/96/200, 23.07.1996, p.3

¹⁶³ Jacques Santer, *Speech to the European Parliament*, SPEECH/96/260, 22.10.1996, p. 1. For other examples of how the Commission justifies the EU-level legislation see Padraig Flynn, *The Social Chapter – Cost or Benefit?*, SPEECH/96/223, 26.09.1996, p. 5; European Commission, *Facts about the 'Social Chapter'*, MEMO/97/13, p. 2

¹⁶⁴ Padraig Flynn, *Speech at the Irish Institute of European Affairs*, SPEECH/96/17, 19.01.1996, p. 1

elsewhere, believe that the answer lies in more legislation ...”¹⁶⁵ What is interesting about this quotation is the reference to the location of people holding the opposing positions. In the first case – “those of you”, implying the people the Commissioner was delivering the speech to, while in the second case – “no doubt elsewhere” – implies that the people supporting this position are not present at the place of the speech. Given that it was delivered in Dublin, a capital of a country usually classified as belonging, just as the UK, to the neo-liberal social model,¹⁶⁶ it can be extrapolated that the countries with this model are in favour of less EU regulation. Thus, the discourse of the Commission clearly articulates deregulators as “Others” (because they pose a danger) and establishes a link between them and the UK, which results in excluding the latter from the ESM and in constructing an internal border in the EU. I classify this border as existing beyond the national borders of the member states because it is articulated on the assumption of the existence of an EMoS/ESM encompassing a common social space across the EU. It is the failure of only one member to adhere to the principles of these models that brings the internal border into existence.

5.5.2. The construction of an internal EU border through the process of Eastern Enlargement

The second main way in which the discourse of the European Commission on social policy has contributed to the construction of an internal border in the EU is the manner in which the process of Eastern Enlargement of the EU was conducted. As I have shown in the section on de-bordering above, the Commission has articulated a position that the applicant states should become a part of the social dimension and not only of the economic and monetary union and that a belonging to the ESM is not a negotiable issue. This implies an equivocal disappearance of the internal borders on social policy issues between “old” and “new” member states through the inclusion of the latter into the ESM. The extent to which this position was successfully promoted in practice during the accession process, however, is much more problematic, which makes possible the argument

¹⁶⁵ Padraig Flynn, *Social Action Programme 1995-1997*, SPEECH/95/81, 28.04.1995, p. 2

¹⁶⁶ This generalisation is based on Wilhelmus Antonius Arts, John Gelissen, ‘Three Worlds of Welfare capitalism or More? A State-of-the-Art Report’, *Journal of European Social Policy*, 12: 2 (2002), pp. 137-158

that rather than contributing to the abolition of internal borders, the discourse of the Commission on Enlargement has contributed to the establishment of an internal EU border between “old” and “new” member states on social policy issues. This is a result of one major flaw of the Enlargement process – the fact that its design allowed social issues by and large to be attributed secondary importance. The foundations of this situation were laid down in Copenhagen in 1993. According to the Presidency Conclusions of this summit, the former Communist countries that wish to join the EU have to satisfy only economic and political conditions and should adhere to the aims of political, economic and monetary union.¹⁶⁷ This clearly leaves out considerations about the inclusion of the candidate countries into the ESM. Therefore, it should come as no surprise that the discourse of the European Commission, following this general trend, has also been silent on social issues, thus failing “to drive through a European vision of social policy ...”¹⁶⁸. Thus, the design of the Enlargement process left out significant engagement with social policy issues, which meant that the Commission discourse despite the rhetorical claim about its importance did not attach to it significant importance in some of its articulations.

The following examples illustrate these points. According to a memorandum of the European Commission, in the second half of the 1990s, the PHARE program was reoriented to focus only on preparing the participating countries for EU membership. From 1998 around 30 per cent of the assistance was directed towards institution building: “which includes the strengthening of democratic institutions, public administration to ensure public services are ready to apply the *acquis* ... Initially this support will focus on priority areas such as finance, agriculture, environment, justice and home affairs.”¹⁶⁹ Thus, social policy issues are obviously left out of the main focus of the EU’s efforts. Furthermore, even when attempts were made in this direction, the overall result could not be evaluated as satisfactory in the area of social issues. This was a result of the fact that as the assessment of the Interim Report of the Commission on the effects of the program concludes there is:

¹⁶⁷ See the Presidency Conclusions of the Copenhagen European Council, June 1993, available at http://www.europarl.europa.eu/enlargement/ec/pdf/cop_en.pdf, accessed on 29.08.2009

¹⁶⁸ Bob Deacon, ‘East European Welfare States: the Impact of the Policies of Globalization’, *Journal of European Social Policy*, 10: 2 (2000), pp. 146-161, p. 159

¹⁶⁹ European Commission, *EU Enlargement and Accession Partnerships*, MEMO/98/21, 27.03.1998, pp. 2-3

“a tendency for the Commission to contract out expertise in the transition process ... thereby losing grip on the substance and impact of the programmes.”¹⁷⁰ Despite the fact that this clearly signals a danger for the successful inclusion of the “new” member states into the ESM, this is not effectively accounted for and acted upon. This is evident in the fact that according to the former Commissioner responsible for the Enlargement, Günter Verheugen: “The candidate countries have to make really determined efforts to bring in reforms, primarily administrative and judicial reform but also structural reform of their economy. I would also draw particular attention to the importance the Commission attaches to the position of the Roma in a number of candidate countries”,¹⁷¹ thus again sticking to the main areas mapped out by the Copenhagen criteria and not mentioning anything about the social aspects of the process and the challenges it is facing.

Overall, these examples clearly indicate that despite the claim of some Commission documents that social policy is as important as the economic and political aspects of the Enlargement process, within the Commission discourse there is also a significant silence on the matter. This has arguably resulted in attaching less importance to this aspect of the accession, which means that there was less pressure exercised on the candidate countries to comply with the main features of the ESM. Such a position can be further illustrated with the efforts undertaken by the EU in the field of border controls in order to ensure the “new” member states’ inclusion in Schengen. In this policy area, in distinction to the lack of real pressure on social policy issues, there have been a lot of efforts ranging from exchange of know how and actual practices to financial assistance.¹⁷² The culmination of these efforts, in a way, is the SIS II, which is described as: “indispensable so that the new Member States can connect to the system and the Schengen

¹⁷⁰ European Commission, *The Phare Programme: an Interim Evaluation*, 1997, p. 58

¹⁷¹ Günter Verheugen, *The Enlargement Process after Nice*, SPEECH/01/7, 16.01.2001, p. 4

¹⁷² Some of the academic studies that have examined different aspects of the Eastern borders prior to the 2004-2007 Enlargements and the development of border controls cooperation between the EU-15 and the now “new” member states are Eberhard Bort, ‘Illegal Immigration and Cross-Border Crime: Challenges at the Eastern Frontier of the European Union’ in Ian Zielonka (ed.), *Europe Unbound – Enlarging and Reshaping the Boundaries of the European Union* (London: Routledge, 2002), pp. 191-212; Didier Bigo, ‘Border Regimes, Police Cooperation and Security in an Enlarged European Union’ in Ian Zielonka (ed.), *Europe Unbound – Enlarging and Reshaping the Boundaries of the European Union* (London: Routledge, 2002), pp. 213-239; Heather Grabbe, ‘The Sharp Edges of Europe: Extending Schengen Eastwards’, *International Affairs*, 76: 3 (2000), pp. 519-536

area without internal border control can be extended, after a positive Schengen evaluation, to the territory of these Member States.”¹⁷³ Thus, in border controls much more clear criteria and benchmarks were developed and the aim has clearly been a formal inclusion into the EU space.

The lack of such focused efforts and formal ways of inclusion into the ESM, however, has created conditions for excluding the “new” EU members from it altogether, which will unequivocally create an internal border in the EU. Such a tendency has already been clearly manifested – a report on the reform of the European Social Models, commissioned by the European Commission refers to only the social models of the “old” member states.¹⁷⁴ What is remarkable is the fact that it was prepared in 2005, long after the decision to enlarge (and therefore include the “new” member states into the ESM) was taken. This is a clear manifestation of uncertainty on whether the “new” member states are a full-fledged part of the ESM.¹⁷⁵ Therefore, arguably the articulations in the Commission social policy discourse have contributed to a construction of an internal EU border. They have not managed to promote the necessary measures that can ensure the achievement in practice of the goal of including the “new” member states into the ESM. Instead, they have reproduced the silence established with the Copenhagen criteria, which facilitates the creation of an internal division in the EU.

This danger of excluding the former Communist countries from the ESM even after their full membership in the EU as a result of the ineffective arrangement of social policy issues during the Enlargement process becomes even bigger when one considers the fact that as former Communist countries, the majority of the “new” member states have very different experiences in comparison to the rest of the EU. This further increases the necessity of the existence of a minimum degree of unity at least at the level of basic

¹⁷³ European Commission, *Schengen: from SIS to SIS II*, MEMO/05/188, p. 1. See also European Commission, *The Hague Programme: Ten Priorities for the Next Five Years. The Partnership for European Renewal in the Field of Freedom, Security and Justice*, COM (2005) 184 final, 10.05.2005, p. 5

¹⁷⁴ The report was later published as a journal article: Andre Sapir, ‘Globalization and the Reform of European Social Models’, *Journal of Common Market Studies*, 44: 2 (2006), pp. 369-390

¹⁷⁵ A recent study that engages with this issue is Susanne Fuchs, Claus Offe, ‘Welfare State Formation in the Enlarged European Union: Patterns of Reform in Postcommunist States’ in Chris Rumford (ed.), *The Sage Handbook of European Studies* (London: Sage, 2009), pp. 420-441. Although the authors argue that the postcommunist states that joined the EU in 2004 have all “implemented Bismarkian type of social insurance system” (p. 437), they admit that this is a “controversial issue” (p. 421).

principles. The lack of such unity will clearly show inconsistency with the Commission claims that despite the diversity in the social arrangements in the member states, there is overarching commonality of values. As I demonstrated in the section on de-bordering this argument constitutes the bulk of the Commission discourse on the existence of a uniquely European way of social organisation.

Despite this importance of ensuring such unity, the articulations in the Commission documents show an important inconsistency, which can be interpreted as contributing to further exacerbating the already existing tendency towards the construction of an internal border on social issues between “old” and “new” member states. This is the discrepancy between the main trend in developing EU cooperation and integration on social policy issues and the main tools used during the Enlargement process for ensuring the incorporation of the candidate countries into the social models in the EU. While the former indicate a move towards limiting Community-level legislation (as the first section of the Chapter has shown), there is a tendency in the Commission discourse on Enlargement to not pay sufficient attention to this. For example, although as I said above some documents mention that the candidate countries have been actively involved in the Lisbon objective and working methods since 2003 when they were included in the structural indicators,¹⁷⁶ the documents that talk about the progress of the applicant countries towards meeting the Enlargement requirements usually only refer to the achievements towards adopting the existing Community legislation in the social field.¹⁷⁷ The danger is that given the important role that member states play in the social policy field, such emphasis on adopting only the *acquis* will not be sufficient to ensure effective participation of the “new” EU members into the future development of the EU social policy, thus excluding them from it. This will result in establishing an internal border in the EU.

Therefore, the main ways in which the discourse of the European Commission contributes to the construction of internal borders in the EU is through inconsistencies and

¹⁷⁶ Romano Prodi, *Towards Barcelona*, SPEECH/02/85, 27.02.2002, p. 4

¹⁷⁷ See for example Anna Diamantopoulou, *Employment and Social Policy: Achievements and Prospects*, SPEECH/03/550, 15.11.2003, p. 3; Anna Diamantopoulou, *The European Social Model and Enlargement*, SPEECH/00/235, 23.06.2000, p. 3

silences in its articulations. In both cases examined in this section, there is an evident trend to contradict the de-bordering tendencies in the discourse of the Commission on social policy. In the case of the UK this is manifested through articulations that link the country with the US and “deregulators”, both of which emerge from the Commission discourse as “Others”. In the case of Eastern Enlargement, this is a result of the flaws of the process, which has meant that in some important instances the Commission has been silent on social policy issues. Importantly, as the above analysis shows, the Commission is not the EU institution that has taken the lead in establishing the conditions that enable the emergence of the internal dividing lines. Instead, the Commission articulations are bound by the wider discursive contexts established by individual member states’ undertakings and positions (the case of the UK) or the Council (the Copenhagen criteria). However, due to the Commission’s inability to successfully overcome the existing arrangements, in both cases the existing contradictions and silences have obstructed the successful de-bordering of the EU social space and have instead contributed to the construction of an internal border in the Union.

5.6. Summary

This chapter has looked into the main ways in which the Commission social policy discourse configures borders. The detailed analysis has shown that it not only undermines existing borders between the EU member states but also contributes to the construction and reconstruction of the Union’s internal and external borders. Despite the existence of a line in the Commission discourse that contributes to the abolition of internal EU borders through references to increased mobility, the main way in which a common social space in the EU is established is through articulations of common values. These downplay existing differences between the member states’ social arrangements and construct common identity. The last section, however, has shown that there are some important inconsistencies and silences in the discourse of the European Commission. Contrary to its claims in favour of establishment of a common social space in the EU, these in fact construct internal borders in the Union. This ambiguity in the Commission

discourse, however, is different from the one in the previous chapter. There it arose as a result of the efforts of the Commission to secure greater coverage of free movement of people amidst opposition from the member states. This meant that the Commission was driven to articulate specific categories of people (TCNs or EU nationals) who will be covered by the freedom of movement provisions in the *acquis*. In the field of social policy, the ambiguity is a result of different factors. Firstly, in the case of Eastern Enlargement it is due to the Commission being the implementer of the Council decisions. This has meant that its discourse reproduced the mismatch in the statements contained in some documents and a silence on these issues in other. This endangers the successful inclusion of the “new” member states into the ESM. Secondly, in the case of the UK this is done through linking it with “the US” and “de-regulators”, which emerge from the discourse of the Commission as “Others”, thus constructing Britain as an internal “Other”. Thus, in this case it is a result of a particular understanding of the ESM by the Commission and its (sometimes unsuccessful) strive to secure the adherence to it of all member states. The discourse of the Commission also articulates external “Others”, particularly the US and low wage economies, which constructs the external border of the Union through defining the main characteristics of the European model of socio-economic arrangement and identifying the geographical areas that adhere to them. These emerging external borders of the Union in recent years have been put under the limelight due to the increased internal and external demands for it to define its relations with its immediate “outside”. These have given rise to another string of ambiguous border configurations by the Commission, which I examine in the next chapter.

CHAPTER SIX

THE EUROPEAN NEIGHBOURHOOD POLICY – AN AMBIGUOUS CONFIGURATION OF EUROPEAN BORDERS¹

6.1. Introduction

So far I have examined policy areas that focused primarily on issues internal to the EU. In the last empirical chapter of the study, I turn my attention to a policy area that is dealing with the exterior of the Union, the ENP. Given this, it configures slightly different borders. Although the articulations still construct EU borders, because of the external nature of this policy, the bordering configurations are also directly related to the construction and reconstruction of European borders. This renders the distinction between de-bordering, construction and reconstruction of EU's borders irrelevant at times because their focus is on the inside of the Union. Thus, in this chapter the analysis is structured primarily around the configuration of territorial/ identity borders rather than the categories employed in the other chapters. Time-wise, the ENP is the youngest of the policies included in the research and in distinction to the rest of the issues examined in the thesis it was not directly boosted by the SEA. Instead, it is more directly related to the emergence of the third pillar within the Treaty of the EU in 1992. As such, there are a number of reasons that make it an interesting case study for this research. Firstly, as an external policy field, it provides an illustration of the border configurations in Commission discourse on such matters. Secondly, this is an area that similarly to border controls is clearly related to borders. Thirdly, it is of interest due to the wide controversies in recent years surrounding the issue of the EU's external borders, both inside and outside (in the neighbouring countries) the Union. These make it paramount to examine the configuration of borders in this policy area through the Commission discourse in order to provide a comprehensive

¹ A slightly different version of this chapter was published in *Geopolitics*. See Valentina Kostadinova, 'The Commission, ENP and Construction of Borders', *Geopolitics*, 14: 2 (2009), pp. 235-255.

account of the problem. My major argument is that similar to the configurations of borders in the other policy areas examined so far, the Commission discourse on the ENP is ambiguous. Therefore, instead of unequivocally preventing the emergence of new dividing lines between the EU and its neighbours, some of the Commission articulations create the perception that significant differences exist between them, thus recreating divisions in Europe. In order to make this argument, the chapter proceeds as follows. The first section provides an outline of the ENP, explains the powers of the Commission in this policy area and presents the major articulations that configure borders. The second section looks at how the speeches of Commission officials and its ENP-related policy proposals articulate the achievement of the envisaged common area. In the third section I show how this discourse contributes to the emergence of territorial and identity borders of the EU. The fourth section examines how, contrary to the policy's stated aims, the Commission ENP discourse facilitates the emergence of divisions in Europe.

6.2. Development of the ENP and Main Commission Articulations that Configure Borders

From its inception, the ENP was directly related to border configuration.² It was shaped in the early 2000s when the Eastern Enlargement of the EU was looming and there was an on-going debate about the future of the external borders of the Union. In effect, the advance of the ENP was the response to these developments. The policy first started to take shape in early 2002 with efforts towards the “Wider Europe” initiative, which was particularly aimed towards Belarus, Ukraine, Moldova and Russia. The Copenhagen

² Despite that relation between the ENP and borders the vast majority of academic research on this policy is not explicitly employing the concept of borders. See for example Fraser Cameron, Rosa Balfour, ‘The European Neighbourhood Policy as a Conflict Prevention Tool’, *European Policy Centre*, Issue Paper No. 47, June 2006; Michaela Dodini, Marco Fantini, ‘The EU Neighbourhood Policy: Implications for Economic Growth and Stability’, *Journal of Common Market Studies*, 44: 3 (2006), pp. 507-532; Elisabeth Johansson-Nogues, ‘A Ring of Friends? The Implications of the European Neighbourhood Policy for the Mediterranean’, *Mediterranean Politics*, 9: 2 (2004), pp. 240-247; Ivailo Gatev, *The EU's Neighbourhood Policy towards Ukraine*, paper presented at the European Foreign Policy Conference, held at London School of Economics, 2-3 July 2004; Heather Grabbe, ‘How the EU should help its Neighbours?’, *Centre for European Reform*, June 2004. For a more thorough review of the relevant research on this issue see Valentina Kostadinova, ‘The Commission, ENP and Construction of Borders’, *Geopolitics*, 14: 2 (2009), pp. 235-255, pp. 237-238

European Council formally adopted the initiative in December 2002 but on the insistence of the Southern EU members also included the non-member states on the shores of the Mediterranean Sea. The number of ENP countries rose further in June 2004 when the Caucasian republics of Armenia, Azerbaijan, and Georgia also became official European Union partners in this policy. In the meantime, Russia and Algeria had declined participation and instead insisted on developing its relations with the EU on a separate track.³ The European Commission formally initiated the ENP in March 2003 with its Communication on the “Wider Europe Neighbourhood”.⁴

The main aim of this policy, as summarised by the Commissioner responsible for External Relations and the ENP Benita Ferrero-Waldner is “... to expand the zone of prosperity, stability and security ...” beyond the borders of the EU.⁵ The roots of this aim go back to the European Security Strategy, which outlines as major security threats to the EU in the post-Cold War era terrorism, proliferation of weapons of mass destruction, regional conflicts, state failure, and organised crime.⁶ Thus, one of the conclusions of the Security Strategy is that the “... internal threat to our security has an important external dimension: cross-border trafficking in drugs, women, illegal immigrants and weapons ... Such criminal activities are often associated with weak or failing states.”⁷ As a result, a key strategic objective for addressing these threats is for the countries on the borders of the EU to be well-governed, because: “Neighbours who are engaged in violent conflict, weak states where organized crime flourishes, dysfunctional societies or exploding population growth on its borders all pose problems for Europe.”⁸

Immediately after the end of the Cold War the tool for achieving stability in the EU’s neighbourhood was the accession of some of the former Communist countries into the

³ This summary is based on Karen Smith, ‘The Outsiders: the European Neighbourhood Policy’, *International Affairs*, 81: 4 (2005), pp. 757-773, p. 759. Another source that provides an overview of the evolution of the ENP is Elizabeth Johansson-Nogues, ‘The EU and its Neighbourhood: an Overview’ in Katja Weber, Michael Smith, Michael Baun (eds), *Governing Europe’s Neighbourhood: Partners or Periphery?* (Manchester: Manchester University Press, 2007), pp. 21-35

⁴ European Commission, *Wider Europe - Neighbourhood: a New Framework for Relations with our Eastern and Southern Neighbours*, COM (2003) 104 final, 11.03.2003

⁵ Benita Ferrero-Waldner, *European Neighbourhood Policy*, SPEECH/06/149, 07.03.2006, p. 2

⁶ In ‘A Secure Europe in a Better World – European Security Strategy’, available at <http://consilium.europa.eu/uedocs/cmsUpload/78367.pdf>, accessed on 21.08.2006, pp. 3-4

⁷ *Ibid.*, p. 4

⁸ *Ibid.*, p. 7

EU, which was done through the Enlargement policy. As a result, borders have been transformed and as the Literature Review in Chapter Two showed, it prompted a debate about how the Union's relations with its neighbours are best conceived of. However, more recent speeches of high-ranking EU officials and EU documents show that gradually a position that the Union cannot enlarge "ad finitum" is becoming ever more pronounced. This has also prompted the above-mentioned on-going debate about the limits of the EU.⁹ Thus, since the early 2000s the ENP became the new tool for dealing with these issues. Despite the fact that this policy does not envisage full EU membership for the partner countries, and therefore, is in some respects a departure from the logic of Enlargement, in other ways it is a continuation of it. Paramount in that respect is that the ENP just as the Enlargement envisages addressing the security threats for the EU by engaging with its neighbours. The overall aims of the Action Plans are concurring with the Copenhagen criteria and their implementation is reminiscent of the accession negotiations of the 1990s. Therefore, the ENP, just as the Enlargement, can achieve its aims by transforming the borders between the EU and its neighbours through diminishing the visibility of the dividing line.¹⁰

However, the European Security Strategy demonstrates that the overriding logic of the ENP is that the world outside the borders of the EU is disordered. Furthermore, because the disorder of this world is threatening to destroy the ordered world inside the EU, it must undertake due action so that it can protect itself from the outside dangers. The envisaged way of doing this is to neutralise the risks arising from the disorder through the spread of the EU's order. This line of thinking, as I demonstrate below has crucial implications that

⁹ See for example European Commission, *Wider Europe - Neighbourhood: a New Framework for Relations with our Eastern and Southern Neighbours*, COM (2003) 104 final, 11.03.2003, p. 5; Romano Prodi, *A Wider Europe – a Proximity Policy as the Key to Stability*, SPEECH/02/619, 05.12.2002; Eneko Landaburu, *From Neighbourhood to Integration Policy: are There any Alternatives to Enlargement?* held at CEPS Conference "Revitalizing Europe", available at http://ec.europa.eu/world/enp/pdf/060223_el_ceps_en.pdf, accessed on 21.08.2006; Benita Ferrero-Waldner, *European Neighbourhood Policy*, SPEECH/06/149, 07.03.2006

¹⁰ Nevertheless, the inclusion that will be achieved if the aims of the ENP are met will be of different nature since the partner countries are not envisaged to become full EU members. This prompts a peculiar tension between inclusion and exclusion in the ENP. Examples of studies that have pointed out the inclusion-exclusion tension are Stephan Stetter, 'Theorizing the European Neighbourhood Policy: Debordering and Rebordering in the Mediterranean', *EUI Robert Schuman Centre for Advanced Studies*, Working Paper RSCAS No. 34, 2005 and James Wesley Scott, 'The EU and 'Wider Europe': Towards an Alternative Geopolitics of Regional Cooperation?', *Geopolitics*, 10: 3 (2005), pp. 429- 454

lead to an ambiguous configuration of EU and European borders because it obstructs the successful diminishment of the visibility of the border between the EU and its neighbourhood.¹¹

This reasoning has also inspired the particular way in which the ENP functions. In order to achieve the goal of establishing an ever-closer relationship with the Neighbourhood countries, the EU and each partner country reach agreement on reform objectives across a wide range of fields within certain “common” areas such as cooperation on political and security issues, economic and trade matters, mobility, and so on. Crucially, in support of the partner’s own efforts towards the fulfillment of these goals, the EU provides financial and technical assistance. This arrangement advances a perception of the relationship that although at pains to emphasise the equality between the parties, still retains the dynamic of a senior (EU) – junior (partner-country) hierarchy. From the EU side the actual establishment of the relationship with the partner-country (or Territory in the case of Palestine) proceeds in two stages. Firstly, the Commission prepares a Report that assesses the political and economic situation and the institutional aspects of the possibility to have a relationship with this entity. Once the Council adopts it, an individually negotiated Action Plan is agreed with the partner. The Action Plans define the agenda of political and economic reforms by means of short and medium-term (3-5 years) priorities. A sub-committee formed by the EU and the specific country monitor the implementation of the mutual commitments and objectives of the Action Plan. Starting from 2006, the Commission regularly publishes its reports on the progress achieved.¹²

Thus, in this policy area the Commission is mainly the implementer of decisions taken by the Council. This is an important difference to the major role the Commission has in the other policy areas included in this study, where its primary function, as we saw, is to initiate legislation. Thus, in the ENP, the Commission is the channel through which the negotiating, signing and monitoring of the implementation of the Action Plans are

¹¹ A study that engages in-depth with this ambiguity and its causes is Ruben Zaiotti, ‘Of Friends and Fences: Europe’s Neighbourhood Policy and the Gated Community Syndrome’, *Journal of European Integration*, 29: 2 (2007), pp. 143-162

¹² This summary of the way the ENP functions is based on http://ec.europa.eu/world/enp/howitworks_en.htm, accessed 11.05.2009

conducted. However, this leaves open the question of what the role of the Commission is and how as an institution it configures borders in the ENP. This question is crucial, given that, as I argued in Chapter Two, when the external borders of the Union are concerned, the Commission can be expected to promote the construction of borders. The discussion in Chapter Three provided one example of how the Commission has contributed to the construction and reconstruction of EU's external borders, thus offering valuable empirical material in support of Neo-functionalists' anticipation of Commission promotion of the emergence of EU's external borders.

However, in the field of border controls one can argue that the Commission has had a very limited ability to advance successfully a position promoting lesser visibility of borders, given the decision-making structure and the preferences of the member states. Arguably this is not the case with the ENP. Although the preferences of the member states and the decision-making process are still unfavourable for the Commission, the successful achievement of the main aims of the ENP presupposes altering borders. This should be a fertile ground on which the Commission could (if that was its goal) advance a stance that blurs the distinction between the EU and its neighbourhood by utilising the prerogatives it is charged with in the third pillar. Despite that, as the analysis below shows, the Commission discourse on the ENP does not contain an indication that it has tried to do this. Instead, as far as the configuration of EU borders is concerned, just as in the case of border controls, the Commission discourse endorses and reproduces the assumptions on which articulations are based. In doing this, contrary to the aims of the ENP, the Commission configures borders ambiguously, thus contributing to border construction and reconstruction instead of preventing their emergence.

The Commission can base a more radical stance building on the two core articulations of what the aim of the ENP is. Its "Wider Europe" Communication, on which the policy is founded, maintains that in order to successfully respond to the challenges the EU currently faces, it has to: "*avoid drawing new dividing lines in Europe and to promote stability and prosperity within and beyond the new borders of the Union*"¹³ and to: "*aim to*

¹³ European Commission, *Wider Europe - Neighbourhood: a New Framework for Relations with our Eastern and Southern Neighbours*, COM (2003) 104 final, 11.03.2003, p. 4 (emphasis in the original)

*develop a zone of prosperity and a friendly neighbourhood – a ‘ring of friends’ – with whom the EU enjoys close, peaceful and co-operative relations.”*¹⁴ These aims require that the visibility of current borders that mark the divisions between the EU and its neighbours be altered through *enhanced relations* with the neighbourhood countries.¹⁵ Thus, although these two formulations acknowledge that borders will not disappear, they envisage much closer cooperation, which in turn should blur the distinction between the EU and its neighbours, thus significantly reducing the visibility of the dividing line. Hence, these are the main articulations that configure borders. In turn, the Commission can utilise these clear policy aims in an effort to advance a more radical position that promotes increased and eased interaction between the EU and its neighbourhood. As I show in the next section, on the surface Commission articulations show a trend that contributes to the establishment of this common zone, thus implying an alteration in the current visibility of borders.

6.3. The Trend towards De-bordering in the Commission ENP Discourse

The trend in Commission ENP discourse towards decreasing the salience of the external EU borders is evident in articulations that configure identity, functional and territorial borders. These express the current thinking on how the aims of the ENP can be achieved in practice. The key formulations that enunciate it are well summarised in the Commission ENP Strategy Paper. Therefore, in the table below, I display these formulations as well as the incentives and the policy tools through which the EU envisages the implementation of the ENP’s Action Plans.¹⁶

Table 6.1: Wording of the Commission Incentives and Policy Tools for the Implementation of the ENP:

AREA	WORDING OF THE POLICY ACTIONS
Political dialogue	Further development of a shared responsibility between the two parties for security and stability in the region

¹⁴ Ibid. (emphasis in the original)

¹⁵ Ibid. (emphasis in the original)

¹⁶ A good summary of the areas covered in the Action Plans is also available in European Commission, *Beyond Enlargement: Commission Shifts European Neighbourhood Policy into Higher Gear*, IP/04/632, 12.05.2004.

Economic and Social Development Policy	<ul style="list-style-type: none"> ➤ prospect of a stake in the EU internal market based on legislative approximation; ➤ participation in a number of EU programmes; improved interconnection and physical links with the EU; ➤ reduction of tariff and non-tariff barriers to trade; ➤ increased market integration ➤ increased economic integration with the EU
Trade and Internal Market	<ul style="list-style-type: none"> ➤ legislative and regulatory approximation for stimulation of trade and economic integration; ➤ greater market opening according to the WTO principles; ➤ administrative co-operation; ➤ gradual elimination of non-tariff barriers to trade; ➤ convergence with the Union's law and regulatory structures; ➤ free trade in services as a goal;
Justice and Home Affairs	The parties working together for border control management and facilitation of the legitimate movements
Connecting the Neighbourhood	
Energy	<ul style="list-style-type: none"> ➤ Improved access to the EU energy market; ➤ Improved energy network connections between the two parties; ➤ Legal and regulatory convergence; ➤ Gradual convergence of energy policies and the legal and regulatory environment; ➤ Gradual involvement of the EU's neighbours into the EU's regulatory practices and bodies
Transport	<ul style="list-style-type: none"> ➤ Step up aviation relations with neighbouring countries with the goal to open up markets and to co-operate on safety and security issues; ➤ Improving the physical transport network; ➤ Close coordination in drawing up investment plans for transport networks
Environment	Promoting regional cooperation between various neighbourhood countries
Information Society	Support of the EU's neighbours to take advantage of the Information society
Research and Innovation	Opening of the European Research Area to partner countries
People-to-people, programmes and agencies	<ul style="list-style-type: none"> ➤ ENP will promote cultural, educational and general societal links between the EU and its neighbours; ➤ Gradual opening of certain Community programmes in education, training and youth, research, environment, audio-visual, culture. (Tempus Plus is a proposal in that direction)

Source: Author's compilation based on European Commission, *European Neighbourhood Policy - Strategy Paper*, COM (2004) 373 final, 12.05. 2004, pp. 13-20

The measures envisaged in the Strategy Paper include a broad variety of undertakings that promote the inclusion of the EU's neighbours into different aspects of the policy areas in question. The idea is that over time, if successful, this will have very similar effects to those of European integration and the relationship between the two parties will resemble the relations the EU currently has with the countries of the EEA.¹⁷ Although the latter officially are not members of the EU, they participate in most of its policies. Thus, it is anticipated that the measures undertaken within the ENP will result in decreasing the salience of borders between the EU and its neighbouring states. This will be achieved through privileging inclusion at the expense of exclusion, which will lead to blurring the dividing line between the Union and its neighbourhood, thus leading to achieving the policy's aims and to unification of the continent.

Furthermore, as I said above, these articulations configure identity, functional and territorial borders. From the above formulations and policy aims, the goal of promoting cultural, educational and general societal links between the EU and its neighbours has the greatest potential to contribute to the emergence of a feeling of common identity in the area. This is the case because the possibility of knowing each other will allow (in a positive scenario) people to discover that they are not all that different after all. Furthermore, forging links between institutions (cultural, educational and so on) will enable the transfer of practices, which in the medium to long-term in theory can also contribute to the perception of shared identity, which, in turn, will diminish the importance of current borders. Also, the approximation of legislation and the gradual convergence of practices and policies over time can have similar effects.¹⁸ As far as territorial and functional borders are concerned, the envisaged improved access to each other's markets in a number of areas (economic, research and education, movement of people) is a way of removing current

¹⁷ EEA comprises the members of the EU and the European Free Trade Area (EFTA) (Norway, Switzerland, Lichtenstein, and Iceland) and was created in order to allow the EFTA countries to participate in the EU's single market.

¹⁸ A contribution that explores the development of this side of the EU – Neighbourhood relations is Michelle Pace, 'People-to-People: Education and Culture' in Katja Weber, Michael Smith, Michael Baun (eds), *Governing Europe's Neighbourhood: Partners or Periphery?* (Manchester: Manchester University Press, 2007), pp. 156-175

physical, legal and administrative obstacles to mobility. If achieved in practice, the aim of establishing a common area between the EU and its neighbouring countries will start taking shape.

These policy aims and the ways for achieving them are further reiterated in the articulations of Commission officials. For example, the Commissioner responsible for Fisheries and Maritime Affairs Joe Borg argues that: "... the ultimate goal for all partner countries ... should be integration to the fullest possible degree. This includes participation in the Single Market ...",¹⁹ which the then Commissioner responsible for Enlargement Günter Verheugen defined as an extension of the "four freedoms" of movement – of goods, services, capital and labour as a long-term perspective of the ENP.²⁰ The envisaged end result from the successful implementation of the ENP will be a "... move from 'shallow' integration to deeper economic and regulatory integration", which means approximating legislation, building regulatory frameworks, and strengthening administrative capacities.²¹ This will come as a result of overcoming the predominance of trade and cross border exchanges in the relationship and including in it tools for overcoming non-tariff barriers through the establishment of common technical norms and standards, intellectual property rights, competition rules and consumer protection.²² The stake in the internal market, as well as the involvement in the EU programmes and the cooperation in transport and energy networks, according to Commissioner Ferrero-Waldner, will offer EU's Eastern and Southern neighbours "... many of the benefits previously associated only with membership ..."²³ This prospect allows the ENP to be described as: "... a relationship that goes beyond cooperation to include closer political links and an element of economic integration."²⁴

Such a depiction of the EU-Neighbourhood relationship bypasses the currently existing clear division between members and non-members. Instead, as the former

¹⁹ European Commission, *Enlargement and the European Neighbourhood Policy*, SPEECH/04/247, 13.05.2004, p. 3

²⁰ European Commission, *The Neighbourhood Policy of the European Union: an Opportunity for Tunisia*, SPEECH/ 04/33, 22.01.2004, p. 5

²¹ The quotation and the non-tariff barriers are in Benita Ferrero-Waldner, *The European Neighbourhood Policy: Bringing our Neighbours Closer*, SPEECH/06/346, 06.06.2006, p. 3

²² Ibid.

²³ Benita Ferrero-Waldner, *European Neighbourhood Policy*, SPEECH/06/149, 07.03.2006, p. 3

²⁴ European Commission, *European Neighbourhood Policy: a Year of Progress*, IP/05/1467, 24.11.2005, p. 1

Commission President Romano Prodi presents it, the ENP offers a chance for the neighbourhood countries to: "... share everything with the Union but institutions".²⁵ This suggests that instead of being left outside, the EU's neighbours still have a tangible perspective of being substantially included into the policies of the Union, although not having the membership prospect in the short and medium-term for the Eastern neighbours and even in the long-term for the Southern partners.²⁶ The expectation is that the successful implementation of the policies envisaged in the Strategy Paper and outlined in the Action Plans will eventually result in the extension of an area of peace and stability to the neighbours of the EU. This will result in creating a zone that shares the EU's fundamental values and objectives²⁷ (what the Wider Europe Communication terms "a ring of friends"). All of these will mean that the threats outlined in the European Security Strategy have been successfully overcome.

In line with these aims, steps towards the achievement of greater integration between EU members and non-members at the external borders of the Union have already been undertaken. An example of this approach, according to the Commission, is the adoption of the New Neighbourhood Instrument for cross-border cooperation. It offers an opportunity to develop a single approach for cooperation across the external EU border. Therefore, the Instrument overcomes²⁸ the separation between internal and external funding sources for regions and allows running single operations on both sides of the external EU borders.²⁹ Such an approach had been impossible until recently due to the fact that EU

²⁵ Romano Prodi, *A Wider Europe – a Proximity Policy as the Key to Stability*, SPEECH/02/619, 06.12.2002, p. 6

²⁶ For the membership prospects of the neighbouring countries of the EU for example Ferrero-Waldner says that the ENP offers a privileged form of partnership now irrespective of the future nature of the two parties' relationship. See Benita Ferrero-Waldner, *European Neighbourhood Policy*, SPEECH/06/149, 07.03.2006, p. 3

²⁷ European Commission, *European Neighbourhood Policy - Strategy Paper*, COM (2004) 373 final, 12.05.2004, p. 5. Pace examines the normative dimension of the ENP in the Mediterranean in Michelle Pace, 'Norm Shifting from EMP to ENP: the EU as a Norm Entrepreneur in the South?', *Cambridge Review of International Affairs*, 20: 4 (2007), pp. 659-675.

²⁸ The Proposal was adopted by the Council and passed by a Resolution of the European Parliament in the end of 2003. See http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=183992#356314, accessed on 12.05.2009

²⁹ European Commission, *Paving the Way for a New Neighbourhood Instrument*, COM (2003) 393 final, 1.07.2003. This Proposal is further developed in Commission's Proposal for *Regulation Laying Down the General Provisions Establishing the European Neighbourhood and Partnership Instrument*, COM (2004) 628

regions had different funding sources from non-EU regions. This hampered the development of coordinated projects between regions from both sides of the external Union border, as a result of the divergent requirements for accepting a border project and the financial resources available.

Another Commission document aimed at addressing some of the grievances of the Neighbourhood countries is the “Proposal laying down the rules for the local border traffic at the external borders of the Union”.³⁰ It was adopted in tune with the understanding, evident in Commission documents establishing the ENP, that the borders of the enlarged Union will cut across areas that traditionally have had very close relations. Hence, in order to not cause such disruption and therefore to help achieve the goals of the ENP this proposal aims to facilitate the crossing of the external EU borders by locals of the bordering area of the neighbouring country. The proposal requires that local non-EU residents, defined as people inhabiting for at least the last six months an area that does not extend more than 30 kilometers, can cross multiple times the external borders of the EU and stay in the border area in the neighbouring member state up to seven consecutive days. The European Parliament and the Council have also adopted this proposal.³¹ Given the delays that some other proposals face, this indicates a convergence of the positions of the main decision-making bodies of the EU on the course of action in the ENP.

Thus, it can be concluded that overall, the Commission discourse on the ENP presents the policy as an endeavour that will contribute to the deeper inclusion of the Neighbourhood countries into the EU policies. The measures envisaged in the ENP, as well as Commission documents already adopted reiterate this image of the policy. As a result, it is anticipated that the ENP will contribute towards reducing the difference between the EU (inside) and its neighbourhood (outside) in territorial, functional and identity terms. The neighbouring countries are going to be an integral part of the internal market (one day) and

final, 29.09.2004. This second Proposal was also adopted with a Regulation by the Council and the European Parliament in October 2006. See Regulation of the European Parliament and of the Council, *Laying down General Provisions Establishing a European Neighbourhood and Partnership Instrument*, (EC) No 1638/2006, 24.10.2006, available at the *Official Journal of the European Union*, L 310/ 1 of 09.11.2006.

³⁰ European Commission, *Proposal Laying Down Rules on Local Traffic at the External Land Borders of the Member States and Amending the Schengen Convention and the Common Consular Instructions*, COM (2005) 56 final, 23.02.2005

³¹ http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=192571, accessed on 12.05.2009

hence, enjoy some (if not all) of the four freedoms of movement. Furthermore, the area covered by the ENP is referred to as a “common”, joint space in which all the inhabitants share the positives and the negatives. Therefore, the EU is expecting its neighbours to undertake fundamental and often painful reforms in the name of eradicating the existing dangers in this common space. This will decisively contribute to the enhancement of the well being of the whole region, thus creating a zone of mutual stability and prosperity. Furthermore, this common area can only be created if all its inhabitants share a common set of values, which are guiding the conduct of their internal and external affairs. All in all, even if it is a long-term aim, the representation of the policy that this discourse makes is that the ENP will eventually contribute substantially towards the decreased salience of the dividing lines in Europe by creating an area of inclusion. Commissioner Ferrero-Waldner offers a good summary of how this presentation of the Commission discourse on the ENP configures borders: “Borders ... must work flexibly, as a facilitator of economic, social and cultural exchanges. They should ... promote a network of interconnected interests, allowing exchanges and contacts to flourish. Borders are ... about breaking down barriers between peoples and cultures.”³²

Despite this trend towards the construction of a common space at the outer Eastern and Southern edges of the EU through the Commission discourse, the same documents can be read in another way as well. This second reading will reveal a rather different configuration of the EU borders because it shows that beneath the inclusionary rhetoric there is an exclusionary dynamic going on. This contributes to the construction and reconstruction of borders between the EU and its neighbourhood. I demonstrate this argument in the next sections of the chapter.

³² Benita Ferrero-Waldner, *The European Neighbourhood Policy: Helping Ourselves through Helping our Neighbours*, in a speech by Ferrero-Waldner held at the Conference of Foreign Affairs Committee Chairmen of EU member and candidate states available at http://ec.europa.eu/comm/external_relations/news/ferrero/2005/sp05_31-10-05.htm, accessed on 21.08.2006

6.4. The Construction of Identity and Territorial EU Borders through the Commission ENP Discourse

The articulations in the Commission ENP discourse construct both identity and territorial borders of the EU. The construction of the territorial borders is established through the current decisions of which countries in the EU neighbourhood have EU-candidate status. The identity border is constructed as a result of articulations that indirectly create an understanding of the neighbouring countries as “the Other”.³³ I elaborate on each of these points in this section.

6.4.1. Commission ENP discourse as constructing the “Neighbourhood” as the “Other”

The articulations in the Commission ENP discourse, contrary to the image presented above, can also be read as contributing to the establishment of a mindset in which there is a rigid distinction between the EU and the Neighbourhood. From this perspective, therefore, rather than leading to the establishment of a common space, the Commission ENP discourse configures new borders. This border configuration is a result of the logic of the founding documents of the policy. As I explained above, the premise of the actions undertaken under the ENP is that enhanced insecurity for the EU emanates from its Neighbourhood.³⁴ However, this very thinking facilitates the emergence of a significant dividing line, which in the context of this study is classified as an identity border of the EU.

As I argued in the previous chapters, the articulation of danger leads to the construction of visible external borders because danger enforces closure – both spatial and on the community that is threatened.³⁵ As I pointed out above, as a policy the ENP originated in the European Security Strategy and its ultimate aim is to help the EU address the threats it currently faces. Therefore, Commission discourse on the ENP can be read as

³³ An article that explores the same problem, with a focus particularly on the Mediterranean, from a different angle is Michelle Pace, ‘Norm Shifting from EMP to ENP: the EU as a Norm Entrepreneur in the South?’, *Cambridge Review of International Affairs*, 20: 4 (2007), pp. 659-675

³⁴ For the same statement see also Roberto Aliboni, ‘The Geopolitical Implications of the European Neighbourhood Policy’, *European Foreign Affairs Review*, 10: 1 (2005) pp. 1-16, p. 1

³⁵ David Campbell, *Writing Security – United States Foreign Policy and the Politics of Identity* (2 ed.) (Manchester: Manchester University Press 1998), p. 73

contributing to the emergence of identity borders by advancing particular perceptions of who is “us” and who is “them”, or “the Other”. For example, when discussing European borders, Commissioner Rehn has maintained that: “The map of Europe is defined in the first place in the minds of Europeans. Geography sets the frame, but fundamentally it is values that make the borders.”³⁶ Thus, in order to have a complete analysis of how Commission ENP discourse configures borders, it is necessary to interpret who is articulated as “us” and who emerges as “the Other” from this discourse and if it constructs a distinction between the EU and its neighbourhood countries.

In order to assess this, I use Diez’s summary of the different strategies for constructing us/ them distinction in various articulations: representation of the other as an existential threat (occurs when various types of issues are represented as a security threat); representation of the other as inferior; representation of the other as violating universal principles (occurs when the standards of the self are perceived to have universal validity and therefore, the other should be convinced to accept them); representation of the other as different.³⁷ The first three contribute to the construction of salient borders because they sharpen the perception of the parties as distinct from each other.

It is claimed that the cornerstone of the ENP is to enable the Union to maximise the opportunities offered by the 2004 Enlargement by enhancing the relations with the EU’s new neighbours on the basis of shared values.³⁸ According to the ENP Strategy Paper: “The privileged relationship with neighbours will build upon mutual commitment to common values principally within the fields of the rule of law, good governance, the respect for human rights, including minority rights, the promotion of good neighbourly relations, and the principle of market economy and sustainable development.”³⁹ The officials of the

³⁶ Olli Rehn, *EU Enlargement and the Western Balkans*, SPEECH/ 06/85, 15.02.2006, p. 5

³⁷ Thomas Diez, ‘Constructing the Self and Changing Others: Reconsidering ‘Normative Power Europe’’, *Millennium: Journal of International Studies*, 33: 3 (2005), pp. 613-636, p. 628

³⁸ European Commission, *Wider Europe - Neighbourhood: a New Framework for Relations with our Eastern and Southern Neighbours*, COM (2003) 104 final, 11.03.2003, p. 4. The challenges and contradictions this has created for the EU foreign policy in the Mediterranean are explored in Michelle Pace, ‘Norm Shifting from EMP to ENP: the EU as a Norm Entrepreneur in the South?’, *Cambridge Review of International Affairs*, 20: 4 (2007), pp. 659-675

³⁹ European Commission, *European Neighbourhood Policy - Strategy Paper*, COM (2004) 373 final, 12.05.2004, p. 3

Commission in their public appearances repeat this basic principle.⁴⁰ The Commission Communication “Wider Europe – Neighbourhood: a New Framework for Relations with our Eastern and Southern Neighbours”, refers to the EU’s Charter of Fundamental Rights when setting out the following values: respect for human rights and the rule of law; democracy.⁴¹ According to Commissioner Ferrero-Waldner, the values that shape today’s EU are good governance, the rule of law, respect for human rights and democracy. So, what is evident from all this, is that the “common values” that the ENP promotes are in fact the basic values on which the European Union is founded. However, as the measures envisaged to be undertaken in the Action Plans⁴² indicate, it is an exaggeration to say that at present the partner countries in the ENP are perceived as having successfully implemented these values in their social, economic, or legal systems. In fact, Commission documents on the ENP envisage several main directions in which the spread of the “common values” is promoted. These will be outlined here on the basis of the EU/ Ukraine and the EU/ Tunisia Action Plans.

Both Action Plans present the following main areas as priorities for reform actions in Tunisia and Ukraine: democracy, rule of law, human rights and fundamental freedoms; economic and social reform and development; trade, market and regulatory reform; cooperation in justice and home affairs; transport, energy, information society and environment; people-to-people contacts.⁴³ There is a difference in the way the specific actions that need to be undertaken are worded between the two Action Plans. The Ukrainian one uses more extensively the aim of implementing reforms in political dialogue (democracy, rule of law, human rights and fundamental freedoms) in accordance with the “European standards”.⁴⁴ The Tunisian Plan refers to the international and the UN legal

⁴⁰ See for example the speech by Commissioner Ferrero-Waldner, *Europe’s Neighbours – Towards Closer Integration*, SPEECH/05/253, 22.04.2005; Günter Verheugen, *The Neighbourhood Policy of the European Union: an Opportunity for Tunisia*, SPEECH/04/33, 22.01.2004

⁴¹ European Commission, *Wider Europe - Neighbourhood: a New Framework for Relations with Our Eastern and Southern Neighbours*, COM (2003) 104 final, 11.03.2003, p. 4, in footnote 2

⁴² For a sample of the provisions of the ENP Action Plans see EU/ Ukraine and EU/ Tunisia Action Plans available respectively at http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf and http://ec.europa.eu/world/enp/pdf/action_plans/tunisia_enp_ap_final_en.pdf, both accessed on 28.08.2006

⁴³ Ibid.

⁴⁴ http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf, accessed on 28.08.2006

framework on these issues.⁴⁵ However, even in the Tunisian Action Plan there is reference to the need to bring the national standards in line with the EU and international ones, although this is usually concerning more technical issues, such as industrial products or reform in the tax system.⁴⁶ Furthermore, the introduction of the Tunisia/ EU Action Plan reads: "... with a view to bringing Tunisian economic, social, and science structures more into line with those of the Union. The process also advances and supports the approximation of Tunisian legislation, norms and standards with those of the Union in the areas covered by the plan."⁴⁷ Therefore, arguably EU officials (including the members of the Commission who develop the policy proposals and implement them once they are adopted) see the ENP above all as a good instrument for spreading throughout the EU's neighbouring countries these particular values.

However, if the ENP partner countries do not share these values, they emerge from Commission discourse as the "Other" who should be taught the superior EU values and practices. Hence, the ENP in fact serves as a very good example for the latter three strategies for articulating the "Other". The Action Plans of the Commission outline quite detailed measures necessary for each partner-country to undertake in order to bring its political or economic systems more in tune with those of the EU's. In turn, this will eventually enable the partners to enjoy the envisaged participation in the internal market of the EU. However, this clearly marks a border between us and them. This is the case because these actions imply that EU standards are in fact universal and the partner-countries have to undertake certain actions in order to ensure their adherence to these values and norms. Even if the suggestion is not that these are universal, there is clearly the feeling that the EU's way for doing things is better and therefore it is necessary to ensure that the neighbouring countries will take it on board. In sum, a very likely effect of these articulations is that it will feed a mindset for both – EU citizens and citizens of the neighbouring countries that contributes to the emergence of an identity border between them. This will be a result of enunciations according to which from an EU citizen's point of

⁴⁵ http://ec.europa.eu/world/enp/pdf/action_plans/tunisia_enp_ap_final_en.pdf, accessed on 28.08.2006

⁴⁶ Ibid., particularly the sections on Taxation and the medium term objectives on the technical rules, conformity evaluation standards and procedures in the EU harmonised sectors.

⁴⁷ Ibid.

view, the “Other” is the person outside the current external border of the Union either because this is the person who is very likely to pose some sort of (usually soft) security threat to the EU’s way of life or because he/ she still needs to be included in the better system of the EU’s values and norms. In this light the widely spread negative attitude of the EU population towards any possible inclusion of the Eastern neighbourhood countries as full members of the Union is hardly surprising since they are the “Other” who is posing a threat to us, who we should protect ourselves from.

This construction of the Neighbourhood as the “Other” is of paramount importance. Although at some level all policies inevitably create “Others”, as the first reading of the Commission discourse on the ENP showed, the over-arching aim of this policy is exactly to prevent the emergence of divisions between the EU and its neighbourhood. Therefore, the fact that Commission documents construct the neighbours as the “Other” constitutes them as different, which results in continuous distancing of the EU from its partner-countries. This in turn subverts the policy altogether because it creates a paradoxical situation in which there is a contradiction between the asserted aims and the actions undertaken, which makes the former unachievable.⁴⁸ As the articulations of the European Commission on the ENP discussed in the second reading show, they do not do anything to effectively alleviate this situation. On the contrary, these are good empirical examples of this paradoxical situation. Arguably, they are contributing to further deepening the already existing predispositions, which contributes to the establishment of a sharply defined identity border between the EU and its neighbourhood. This is effectively precluding the achievement of the policy’s insisted on aims because it constitutes the construction of borders.

6.4.2. The Commission ENP discourse as constructing the territorial border of the EU

This tendency towards the construction of borders is further confirmed with other articulations of the Commission that can be read as contributing towards the emergence of important new territorial borders at the external EU edges. Again, this is despite the claim

⁴⁸ Another study that engages with these issues in the Mediterranean is Michelle Pace, ‘Norm Shifting from EMP to ENP: the EU as a Norm Entrepreneur in the South?’, *Cambridge Review of International Affairs*, 20: 4 (2007), pp. 659-675

that the ENP is launched in order to avoid the creation of new dividing lines. Instead, the policy itself is an important dividing line, and hence, a border. The reason for this is simple. The mere decision over which countries participate in the ENP creates an important territorially fixed differentiation. This inevitably works towards creating different types of countries/ entities in respect of their relationship with the EU, and more their prospects for membership in the Union. This is a result of the fact emphasised by Prodi that the EU cannot go on enlarging forever, since this will bring the danger of watering down the European political project. Hence, he maintains that: “We need a debate in *Europe* to decide where the limits of Europe lie.”⁴⁹

Article 49 of the Treaty of the EU stipulates that any European country may apply for membership and on this basis some Eastern European states have expressed a clear desire to join the Union. However, the Wider Europe Communication claims that in reality: “... any decision on further EU expansion awaits a debate on the ultimate geographic limits of the Union.”⁵⁰ In fact, membership of the ENP can be read as an indication of where these ultimate geographical limits will lie. These articulations acquire even greater importance when another fact is taken into account - that the countries of the Western Balkans (or South Eastern Europe): Croatia, Serbia, Montenegro, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia (FYROM) and Albania⁵¹ are dealt with in a separate framework. The really significant distinction between these two groups of states is their prospect for full EU membership.⁵² In this respect, while the Eastern European neighbours of the EU are offered a “privileged partnership” (which falls short of EU membership), the countries in the Western Balkans officially have an opportunity for EU membership. As Prodi asserts: “The integration of the Balkans into the European Union will *complete the unification of the continent*, and we have held out this prospect to them. Although there is

⁴⁹ Romano Prodi, *A Wider Europe – a Proximity Policy as the Key to Stability*, SPEECH/02/619, 05.12.2002, p. 3 (emphasis in the original)

⁵⁰ European Commission, *Wider Europe - Neighbourhood: a New Framework for Relations with Our Eastern and Southern Neighbours*, COM (2003) 104 final, 11.03.2003, p. 5

⁵¹ The list is taken from <http://www.euractiv.com/en/enlargement/eu-western-balkans-relations/article-129607>, accessed on 05.09.2006

⁵² See for example ‘Wider Europe’ a document prepared jointly by Chris Patten and Javier Solana, available at http://ec.europa.eu/world/enp/pdf/0130163334_001_en.pdf, accessed on 18.08.2006, point 2

still a long way to go, the Balkans belong to Europe. The process of integrating them will create a sort of bridge between enlargement and neighbourhood policy.”⁵³

Furthermore, the clear commitment of the EU to the accession into the Union of the countries of the Western Balkans is indicated by the organisation’s documents and the speeches of its officials. For example, the current President of the European Commission Jose Manuel Barroso has declared: “... there can be no doubt about our joint objective: full EU membership for Croatia.”⁵⁴; on the day of the official opening of their Stabilisation and Accession Agreement negotiations the Commissioner for Enlargement Olli Rehn has maintained, in relation to Bosnia and Herzegovina that: “Your country has a clear European perspective, which today becomes even more concrete and tangible.”⁵⁵ The European perspective for the Western Balkans is also confirmed in a number of EU documents.⁵⁶ The Commission was not the sole actor deciding over the issue of the integration of the Western Balkans. However, the instrument for implementing the EU’s policy for its relations with this region is the Stabilisation and Association Process (SAP). The prerogatives of the Commission of proposing and implementing policies within SAP make it an actor that has a significant contribution to the over-all decision-making process. Furthermore, as the above articulations indicate, in the Commission discourse there is no attempt of advancing an alternative vision (for example arguing for the necessity to accept the East European Neighbourhood countries) or of at least disagreeing with the current thinking on the issue of future Enlargement. Due to this silence in the Commission discourse on this issue it can be argued that it endorses these articulations and as a result contributes to the establishment of this particular territorial border at the external edges of the Union.

⁵³ Romano Prodi, *A Wider Europe – a Proximity Policy as the Key to Stability*, SPEECH/02/619, 05.12.2002, p. 3 (emphasis added)

⁵⁴ Jose Manuel Barroso, *Leading by Example: Croatia’s Road to EU Membership*, SPEECH/06/96, 16.02.2006, p. 2

⁵⁵ Olli Rehn, *Bosnia and Herzegovina: Moving Closer to Europe*, SPEECH/05/732, 25.11.2005, p. 2

⁵⁶ See for example the Presidency Conclusions of the Thessaloniki European Council, June 2003, chapter V, available at http://europa.eu.int/constitution/futurum/documents/other/oth200603_en.pdf, accessed on 21.09.2006, the Presidency conclusions of the European Councils in June and December 2004, available respectively at <http://www.consilium.europa.eu/uedocs/cmsUpload/81742.pdf> and http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/83201.pdf, both accessed on 02.10.2006, the Thessaloniki Agenda for the Western Balkans: Moving towards European Integration, available at <http://www.stabilitypact.org/reg-conf/030621-thessaloniki/agenda.doc>, accessed 02.10.2006

The different statuses indicate that at present, in distinction to the candidate states on the Balkans, the countries encompassed in the ENP are not thought of as possible full members of the EU. Hence, the Neighbourhood policy at present marks the border between the countries that have membership prospects and those that do not, thus constructing a new territorial border at the edges of the EU. This border, however, does not have only symbolical meaning. In fact belonging to the ENP or the Enlargement policy framework bears significant practical consequences not only in terms of the final objectives of the EU-partner country relationship, but also in terms of what kinds of funds are available, specific conditions for participation (or access altogether) in certain policies and programmes of the EU, the prospective regime for the freedoms of movement at the moment or in short-term perspective. All of these issues are related to the question of the construction of borders through the Commission discourse because at present some of the measures envisaged for the candidate countries are not open to the Neighbourhood ones. The lack of articulations that envisage the establishment of a regime that allows for easy access of the Neighbourhood countries into the EU can be read as a silence of the Commission ENP discourse that hampers the establishment of a common space between the partners. Therefore, instead it constructs territorial borders.

Thus, contrary to the policy's stated aims, the Commission articulations on the ENP contribute to the construction of new dividing lines through establishing both territorial and identity divisions at the outer edges of the EU. However, these have a bearing on European borders as well. This is an issue that is paramount in an external policy area for the EU and therefore, below I examine how the Commission ENP discourse configures European borders.

6.5. The Construction of European Borders through the Commission ENP Discourse

As I pointed out in previous sections of the chapter, one of the major reasons why the Commission discourse on the ENP on the surface appears to be contributing to the decreased significance of borders is because its stated aim is *“to avoid drawing new*

dividing lines in Europe".⁵⁷ Yet, as I argued above, many of the articulations of this Commission discourse contribute to the erection of important borders at the edges of the EU, both in terms of identity and territory. However, to the extent that at least some of these articulations relate to the issue of regulating divisions in Eastern Europe, they are directly involved in configuring borders on the continent. Furthermore, as a result of the erection of a visible external EU border, the constructed European border, contrary to the officially stated aims, is also salient and important. Hence, what is happening is a reconstruction of European borders, which is taking place for both territorial and identity boundaries.

6.5.1. Commission ENP discourse as reconstructing European identity borders

The first way in which the Commission ENP discourse can be regarded as contributing to the reconstruction of European borders is through a contradiction in its articulations. The aim of the ENP is to avoid drawing new dividing lines on the continent. However, as we saw in the previous section, some of the articulations do not effectively contribute to achieving it. Instead, they single out the Neighbourhood as a place that poses danger, thus creating juxtaposition between the EU and its outside. It results in establishing a mindset in which there is a rigid distinction between the inside and the outside and hence constructs salient borders. This contributes to the reconstruction of European borders because there already is a strong trend of equating the EU and Europe. Hence, there is a danger that even if something is geographically positioned in Europe, this may be lost due to the growing perception that since it is not in the EU, it also is not European.

In that respect some Commission articulations not only are not inclusive but on the contrary, further this trend. Although under Article 49 of the Treaty of the EU Eastern European Neighbours satisfy the geographical criteria for membership in the Union, they are still included in the same policy framework as the Southern Mediterranean states. This may indicate that the former, just as the latter should not be considered "European". For example, according to the "Wider Europe" document prepared jointly by Christopher

⁵⁷ European Commission, *Wider Europe - Neighbourhood: a New Framework for Relations with Our Eastern and Southern Neighbours*, COM (2003) 104 final, 11.03.2003, p. 4 (emphasis in the original)

Patten and Javier Solana, geographically the EU's neighbours include: "... three main regional groupings: the Mediterranean ...; the Western Balkans ...; and Russia and the other eastern neighbours ..."⁵⁸ As was already shown, the countries from the other two groups, besides the Western Balkans, do not have any clear prospects for future membership. What is more, the countries from the Southern Mediterranean do not qualify for EU membership according to Article 49 of the Treaty of the EU.⁵⁹ Hence, the inclusion of the "eastern neighbours" in the same policy framework as the Southern Mediterranean states may indicate that the former, just as the latter should not be considered "European". In this context the absence of the word "European" from "Russia and the other eastern neighbours" acquires new meaning. It implies that the Eastern neighbours do not have the prospect for EU membership, because they, just as the Southern Mediterranean states are not European.

The advancement of such understandings contributes to the reconstruction of European identity borders by establishing a particular meaning of what it is to be European. You have to comply with the various criteria and practices articulated by the Commission and other EU institutions, such as the Copenhagen criteria or the satisfaction of the Action Plans under the ENP. Also, and related to this, such understandings suggest particular readings of where Europe is. As I said above, increasingly Europe is perceived as being equivalent to the EU. Hence, anything that is not in the EU geographically is not in Europe as well. This last point is also related to the reconstruction of European territorial borders.

6.5.2. Reconstruction of European territorial borders

In practice the reconstruction of European territorial borders can be traced in the concrete policies undertaken under the ENP. These undertakings are the second way in

⁵⁸ Document prepared jointly by Chris Patten and Javier Solana, *Wider Europe*, available at http://ec.europa.eu/world/enp/pdf/0130163334_001_en.pdf, accessed on 18.08.2006

⁵⁹ For example a Communication from the Commission stipulates: "In some cases the issue of prospective membership has already been resolved. Accession has been ruled out, for example, for the non-European Mediterranean partners." See European Commission, *Wider Europe - Neighbourhood: a New Framework for Relations with Our Eastern and Southern Neighbours*, COM (2003) 104 final, 11.03.2003, p. 5. An in-depth study of how the Mediterranean as a "region" is integrated in EU policy discourses and practices is provided in Michelle Pace, *The Politics of Regional Identity – Meddling with the Mediterranean* (London: Routledge, 2006).

which contradictions within the Commission stated aims on the ENP are articulated. This is the case because measures under the ENP are simultaneously inextricably related to recent developments in the common EU immigration policy. As I showed in Chapter Three, in this field the Commission has failed to advance a position on the external EU borders, which is radically different from that of the Council and which in turn has facilitated the emergence of the so-called “fortress Europe”. This, however, clashes with the need to have a more inclusive regime for the neighbouring countries under the ENP. This creates a tension with regards to the movement of people at the common EU-partner country borders.⁶⁰

For example, the Hague Programme in the section on the Partnership for European Renewal in the Field of Freedom, Security and Justice reads: “A common immigration policy cannot confine itself to admission and return policies: successful management of migration flows must become an integral element and comprise a serious investment in relations with third countries”.⁶¹ The Communication also envisages specific recommendations for negotiating directives on visa facilitation with third countries in the context of the EC readmission policy.⁶² These articulations depict the Union’s relations with third countries (especially the countries of origin and transition of migrant flows) as guided primarily from the aim of preventing migration flows from entering the EU. Importantly, in continuation of a trend we saw earlier on in the chapter, the Council quickly adopted this proposal in April 2006,⁶³ which again, can be read as an indication of concurrence of the thinking in these institutions.

Cooperation by the partner countries with EU policy will be rewarded with easing of the visa-application process for the country’s own nationals. In tune with this is the position that: “... cooperation on the management of migration flows would need to be intensified ... For most of these countries, the Commission has already programmed

⁶⁰ JHA in the ENP is analysed in John Occipinti, ‘Justice and Home Affairs: Immigration and Policing’ in Katja Weber, Michael Smith, Michael Baun (eds), *Governing Europe’s Neighbourhood: Partners or Periphery?* (Manchester: Manchester University Press, 2007), pp. 114-133

⁶¹ European Commission, *The Hague Programme: Ten Priorities for Next Five Years The Partnership for European Renewal in the Field of Freedom, Security and Justice*, COM (2005) 184 final, 10.05.2005

⁶² Ibid.

⁶³ http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=192847#377933, accessed on 13.05.2009

assistance for establishing an adequate legislative framework, reinforcing their external borders and promoting institutional and administrative capacity for managing migration.”⁶⁴ This proposal was again swiftly adopted by the Council and the European Parliament⁶⁵ and in relation to the ENP these policy priorities are evident in the Action Plans the EU has concluded with Tunisia and Ukraine.⁶⁶ The latter explicitly requires the signing of a readmission agreement as a precondition for signing a visa facilitation agreement. From this it is evident that the majority of the JHA policy measures are in fact pushing towards the establishment of a visible border as a way for guaranteeing better security within the EU. This sharply contrasts with encouraging greater exchanges and flows between the EU and its Neighbourhood, which is one of the signs for achieving closer integration.

In a similar vein, the specific conditions of the Communication for facilitating the local border traffic (discussed in section 6.3. above) stipulate that the total duration of the successive visits to a member state will not exceed three months for each six-month period. Local residents are entitled to the “L” visa for the purposes of local traffic, valid from one to five years. To obtain this visa the person needs a valid travel document; documents proving his/ her status of border resident and the existence of legitimate reasons for frequent border crossing, such as family links, social, cultural or economic motives. Evidence for sufficient funding in relation to the stay may also be required. These visas are not issued at the border. The cost for the visa is the same (unless the member state waves the fees) as the fee charged for issuing a short-term multiple-entry one. There may be specific facilitations at the border crossing points for the border residents in possession of the “L” visa.⁶⁷

⁶⁴ European Commission, *On the Development of a Common Policy on Illegal Immigration, Smuggling and Trafficking of Human Beings, External Borders and the Return of Illegal Residents*, COM (2003) 323 final, 3.06.2003

⁶⁵ http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=183230#367217, accessed on 13.05.2009

⁶⁶ See respectively EU/ Tunisia Action Plan http://ec.europa.eu/world/enp/pdf/action_plans/tunisia_enp_ap_final_en.pdf, p. 4; EU/ Ukraine Action Plan http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf, p. 4, both accessed on 28.08.2006

⁶⁷ All these provisions are from European Commission, *Proposal Laying Down Rules on Local Traffic at the External Land Borders of the Member States and Amending the Schengen Convention and the Common Consular Instructions*, COM (2005) 56 final, 23.02.2005

Overall, this proposal should manage to facilitate the contacts between the border areas. Furthermore, introducing this policy is a novel move by the EU, which can potentially problematise the traditional border practices at the limits of state territory. It does create a precedent in which specific categories of people from the EU's neighbourhood can travel to the Union under conditions different from those that have previously been applied. However, despite its novelty this undertaking is limited in its ability to solve the problem all together. There are several major reasons for that. Firstly, the zone defined as "border area" under this proposal encompasses a relatively narrow territory of 30 kilometers. It is quite likely that people with links with the new EU member states covered by the provisions of the proposal will live beyond this zone. Furthermore, although the visa can be issued for up to five years, the procedure for obtaining it (the required documents), as well as the necessary actions (in the majority of the cases it is most likely the local residents will need to undertake a fairly long journey to the closest consular or diplomatic mission of the EU member state, since no visas are issued at the border) are not doing enough to facilitate the process for the local residents. All of these problems stem from the fact that we live in a world of territorial states, a condition that even the EU cannot escape. Therefore, although the "local border traffic" proposal can be taken to serve as an example of the EU's policies, which abide by the obligations the Union has undertaken in its relations with third countries this is done with the view primarily of protecting its own interests. This means that the proposal does not provide for very generous concessions from the EU. The result of this, however, with the ENP aims in mind, is most likely to be a perception of the border as one not allowing for easy crossing by people or other kinds of flows, such as trade for example. In turn, this will make the exchanges harder and hence, will harden the achievement of the Neighbourhood policy's objectives.

Hence, as we have seen, instead of working towards preventing the emergence of new dividing lines on the continent, as is the declared aim in the official documents of the European Neighbourhood Policy, aspects of the Commission discourse in fact effectively contribute to the construction and reconstruction of European and EU borders. Decisions over which countries will be included in each of the existing frameworks for the conduct of the EU's relations with third countries and the rhetoric of Commission officials regarding

each of these different frameworks, are actively establishing a particular mindset or thinking of these areas. This however, constructs new borders. I also showed that the discourse of Commission officials and the content of the documents the Commission signs with its ENP partners are related and influence the perception of what and where Europe is. Last, but not least, all of these articulations indirectly suggest that the “Other” for the EU is exactly the countries encompassed under the ENP. All of these points clearly demonstrate that the Commission discourse on the Neighbourhood policy relies on, utilises and further reinforces assumptions and practices that contribute to the emergence of salient borders. As a result of all this, there is a full set of both material and mental tools working towards the establishment of European and EU territorial and identity borders. These are further reinforced by the concrete policies undertaken as the examples on movement of people have shown.

6.6. Summary

Thus, the analysis of the Commission discourse on the ENP shows that despite the inclusionary aims and rhetoric on this issue, there is an underlying dynamic that precludes the achievement of the goal of greater integration between the EU and its Neighbourhood. Therefore, the Commission ENP discourse contributes to the construction of highly visible EU external borders and to the reconstruction of divisions in Europe. These are due to the advancement of a perception that because the Neighbourhood poses dangers to the EU it is in fact the “Other”, which in turn contributes to the establishment of identity borders. This trend is further reinforced by articulations, some of which have led to the undertaking of specific policy steps that establish visible obstacles to the free flow of goods or people, thus erecting a territorial border at the edges of the EU.

The finding that the Commission ENP discourse, contrary to the declared aims, contributes to the construction of borders is further suggested by the lack of articulations that can be interpreted as contributing towards elevating these underlying trends that construct and reconstruct borders. Instead, as the analysis in the chapter shows, overall, there seems to be a general concurrence in the thinking of the Commission and other major

EU institutions, such as the Council. Such a situation, however, clearly illustrates the claim in Chapter Two that as far as external EU borders are concerned, supranational institutions, such as the Commission, are predisposed to construct and reconstruct external borders. This is also in tune with the findings in the Chapter on Border Controls, which also indicated that the Commission was not advancing radically different positions on the issue of the EU's external borders in comparison to the Council or the member states. However, if in Chapter Three this could be explained with a disadvantage in the position of the Commission within the decision-making process of the EU, the ENP, given its declared goals, presents a much more promising case for promoting lesser visibility of borders. Therefore, the ENP is a crucial case when it comes to demonstrating the simultaneity of the processes of de-bordering, rebordering and border construction under integration. Furthermore, the analysis of this chapter showed a different set of empirical examples of the Commission contribution to the emergence of EU's external borders, such as the articulation of particular "Other" or the implementation of policies that lead to the construction of salient borders.

CHAPTER SEVEN

CONCLUSION

In this study, I set out to critically examine the integration-borders nexus by analysing the way borders are configured in the discourse of the European Commission. The main thrust of this project has been to demonstrate that although on the surface it is transcendence of borders that Commission documents emphasise, this is not the only configuration implied by these documents. Parallel with the trend to de-bordering, new borders are constructed and old ones reconstructed by the Commission articulations. In doing this, I have contributed to the academic debates examining the ambiguous results on borders by the process of European integration by providing a detailed empirical examination of the simultaneous processes of border reconfigurations. Such a formulation indicates an understanding of borders as social constructs that emerge out of the numerous interactions that are taking place between different agents in a variety of locales. As a consequence, I have studied borders by examining discourses on borders. As I explained in Chapter Two, the term discourse has a wide meaning and refers to structured systems of signs that create knowledge about the world. I regard language as having a primary position because ultimately it is by communicating through language that the meaning of other signs becomes intelligible. Therefore, in order to examine how the European Commission discourses configure borders, I focused on interrogating the ways in which inclusion/exclusion issues are settled. Building on that, I analysed whether these configurations lead only to border transcendence or have more ambiguous consequences.

Given the wide variety of actors that contribute to the transformation of borders in the EU, I had to delimit the focus of the research. I concentrated on examining the ways in which the discourse of the European Commission configures borders. The main reason for choosing the Commission is its position within the institutional structure of the EU. As a supranational institution, it has a vested interest to aim to promote more integration, thus

ensuring the perseverance of the conditions that lead to border transformations. This also has the important advantage of allowing examination of the contribution to the configuration of borders of a unique type of international organisation, one that can under certain conditions and in particular circumstances impose legally binding decisions to the EU member states. Thus, the present study was able to provide rich empirical data on the specific ways in which the Commission has contributed to the construction and reconstruction of EU borders. However, a focus on the Commission is worthwhile only if it is able to exercise independent influence over the process of integration. I have argued, in tune with the positions of Neo-functionalists that integration is best conceived of as a process. Therefore, it is a continuous, every day occurrence, in which the Commission is ideally placed to steer the developments. It can do this in policy areas in all the three pillars of the EU, although its effectiveness and the means it can use vary from issue area to issue area. In the policies under the first pillar, the major leverage of the Commission comes from it being the sole legislation initiator. This allows it to exercise considerable control not only over the exact wording of the policy proposals but also over issues such as the timing of a proposal or the choice of legal basis. For second and third pillar policies, the Commission is the main implementer, which means that it can significantly influence the way EU legislation is interpreted, thus impacting on its day-to-day implementation.

Although the above clearly shows that I share some of the core assumptions and arguments of Neo-functionalism, my understanding of borders as social constructions has meant that I do not conceive of Commission discourse as having a single author. Instead, due to the complex interactions that occur between the various actors involved in the process of renegotiating inclusion/ exclusion issues in the EU, the Commission documents also reflect and reproduce the preferences and positions of other actors and institutions. This process of mutual influence between the parties involved means that in practice there are multiple authors behind the Commission discourse. Therefore, in the Commission documents, other influences besides the position of the Commission itself are present. Thus, the understanding of the Commission as an actor means that its officials, given their own interests can be expected to follow a particular line, which regarding the renegotiation of inclusion/ exclusion issues can be expected to be relatively cohesive. However, this does

not mean that the results of Commission undertakings expressed in its discourse will always be the ones its officials have articulated, which is a result of the Commission interactions with other parties involved in the renegotiations.

In the empirical part of the study I examined how the discourse of the Commission configures European and EU borders in a number of policy areas (ENP, social policy, free movement of people and border controls) in the period from the adoption of the SEA to the time of writing. I chose the second half of the 1980s as the starting point of the investigation because it was a time when the integration project in the EU received a major boost with the decision to work towards the creation of the internal market, defined as “an area without internal frontiers”. Again, as in the case of the decision to focus the study on the Commission, such an undertaking provides very favourable conditions for examining the integration-borders nexus because it provides a fertile ground for border transformations. This ensures that there is rich empirical material on which to base the investigation. My major finding is that in each of the policy areas under investigation, the discourse of the Commission simultaneously with the process of border transcendence, contributes to the construction and reconstruction of borders. Thus, the ambiguous border constructions can be regarded as an underlying common trend in the configuration of borders by Commission discourse. In each of the policy areas I studied, Commission discourse at first glance leads to the establishment of a common space in the EU. In turn, this implies a decreased importance of internal borders. However, a critical examination of Commission discourse reveals ambiguous dynamics of which the present study provides rich empirical details.

In the first three case studies, social policy, border controls and free movement of people, border transcendence builds upon the aims of developing a functioning internal market. As I pointed out, there is a continuous trend in Commission discourse to link the achievement of the single market with the necessity of undertaking various actions in the fields of social policy, border controls or free movement of people. This is evidence of the Commission employing functional spillover in its efforts towards promoting further integration. The concrete articulation that prompted a move towards the decreased significance of internal borders is the goal of “creating an area without internal frontiers”.

In the field of border controls after the 1999 Tampere Council was added another articulation that presupposes diminished importance of internal borders, the formulation of the aim of creating in the EU “an area of freedom, security and justice”. In social policy, the construction of a common area is conveyed through references to “a European Model of Society/ European Social Model”, which imply that despite any differences that may exist between the member states, there is nevertheless a stronger underlying commonality between them. As far as the ENP is concerned, one of the core ideas of the policy is to “avoid the emergence of new dividing lines” after the latest enlargement of the EU through “enhancing the relations” with the partner countries. Again, this creates the perception that this policy will diminish the salience of borders and contribute to the construction of a common space between the EU and its neighbouring countries.

In the empirical chapters of the research, using the strategy of double reading, I interrogated these bordering articulations and showed that the ways in which they configure borders are not as straightforward as it seems initially. A critical engagement shows that in each and every case the efforts towards establishing common areas still lead to the emergence of borders both at the outer edges of the EU and within it.¹ With the notable exception of the external borders of the Union in the field of border controls, this construction and reconstruction of borders is not openly acknowledged in the discourse of the Commission. This emergence of new borders is a result of articulations that construct new regimes for entering, moving and residing within the territory of the EU; new categories of people that have different rights under these regimes; that refer to particular groups of people/ social arrangements as being different, inferior, threatening to the Union, thus enunciating them as the “Other”.

For example, a construction and reconstruction of borders recurring in Commission discourse throughout the Chapters on Border Controls and Free movement of People, is the emergence of the category “EU citizens” who have the right to move and reside freely within the territory of the Union. These people are in effect juxtaposed in the Commission

¹ In that respect the ENP is a special case. Due to it being directed towards the external relations of the EU, it does not reconstruct internal borders in the Union. Nevertheless, as the analysis in Chapter Six has shown, it is implicated in the reconfiguration of European borders parallel with the reconstruction of the EU’s external borders.

documents to non-EU citizens (TCNs), who are still very likely to face restrictions when entering the Union or trying to relocate within it. Nevertheless, as the analysis in these chapters shows, the Commission has consistently been promoting the rights for TCNs. It has advanced a position in favour of establishing a regime for the movement of people (irrespective of whether they are EU citizens or TCNs) within the EU along the lines of a movement within a national territory. As my analysis in Chapters Three and Four shows these attempts have been at best partially successful and have resulted in the reconstruction of the internal borders in the Union. This is the case because often the Commission has faced strong opposition by the Council and the member states to its positions, which led to the ambiguous border configurations of the Commission discourse in these fields.

Despite this common cause for the construction and reconstruction of borders through the Commission discourse, there are some important differences in the particular contribution of the Commission across the policy areas. As Chapters Three and Four illustrate, when internal EU borders are concerned, the Commission has been more successful in overcoming opposition towards greater inclusiveness to TCNs in the first pillar. As I showed in Chapter Four, the Commission has persistently tried to find a way to transform the *acquis* so that TCNs, just as EU citizens, face fewer obstacles when moving within the EU for work purposes. Therefore, in this policy area, as exemplified by the Blue Card initiative, the Commission has employed cultivated spillover and has acted as a policy entrepreneur by being pro-active and trying to set the trend. In distinction to this, the reconstruction of internal borders in the Commission discourse in the field of border controls (which prior to 2001 was in the third pillar) is a result of the inability of the Commission to overcome the limitations set to it by other EU actors. Thus, in this field, the Commission is playing by the rules established by other actors in the integration process. In a similar way the construction of internal borders in the social policy area is a result mainly of the limitations for the Commission to secure adherence of all the member states to its interpretation of the European Model of Society/ European Social Model.

In distinction to the Commission efforts to further decrease the internal borders in the EU, when its external borders are concerned, it has contributed to their emergence. As directly related to the issues of the Union's external borders, the ENP and border controls

are the primary examples of this. As I argued in Chapters Three and Six, in these policy areas the Commission has overall accepted the assumptions on which each of the policies are based instead of adopting a more critical stance, which could have allowed it to articulate policies that decrease the salience of the EU's external borders. As I argued in Chapter Six, the ENP is especially well placed in this regard because the whole idea of the policy is to prevent the emergence of new dividing lines. This provides the Commission with a good starting position for advancing an alternative reading of various beliefs and practices, which if altered, can contribute substantially to decreasing the perception of a rigid distinction between the Enlarged EU and its neighbours.

Thus, the case of free movement of people is a good illustration of the limits to border transcendence in the discourse of the Commission as a result of the interactions taking place during the process of renegotiating the bordering practices in the EU. The cases of border controls and the ENP, on the other hand, are examples of the inherent inability to transcend borders without the simultaneous necessity to construct borders elsewhere. Taken together, these two provide empirical examples of how in practise the Commission discourse constructs and reconstructs the internal and external EU borders.

Another finding of the study is that in different areas, varying types of borders are configured and reconfigured. The analysis of the case studies of this research shows that often the articulations configure predominantly one particular type of border. For example, the discourse on border controls is concerned predominantly with territorial borders, that on social policy deals primarily with identity borders, while the free movement of people one puts the accent on functional borders. In the ENP, the analysis shows that it is mainly territorial and identity borders that are being configured in the discourse of the European Commission.

These findings contribute to the current academic debates both theoretically and empirically. Empirically, firstly I have demonstrated in detail how the processes of border transcendence and border construction/reconstruction appear simultaneously. Therefore, contrary to the approach taken by the overwhelming majority of current studies on EU borders that focus on only one aspect of border transformations (transcendence/construction), I argue that these should always be approached as the two sides of the same

coin. Such an understanding provides a much more comprehensive picture of the on-going developments on the ground.

Therefore, secondly, my study highlights the major factors and the current limitations leading to border construction/ re-construction through Commission discourses. These were demonstrated in the empirical chapters for all the main types of borders that I have focused on. In tune with the arguments of discourse theorists and post-structuralists, it is not possible to articulate a perception of the “Self” without juxtaposing it to a particular “Other/s”. This was well illustrated especially in the Chapters on the ENP and Social Policy, where the analysis of the Commission documents revealed a number of “Others” against which the identity of the EU is articulated. As the discussion in Chapter Five showed, the major “Other” articulated in the Commission discourse is the US. In the ENP the main “Other” articulated are the partner countries because they emerge from Commission articulations as inferior, peoples that need to be taught the EU way of doing things. Related to this articulation of the “Other” is also the perception of the “Self”. As the analysis in the case studies has shown, the Commission documents articulate the EU as a world leader, especially in the economy, as an ordered place or as a society based on the values of social justice. These articulations contribute to the construction/ reconstruction of identity borders. For their part territorial and functional borders are configured mainly as a result of the construction of two categories of people, EU citizens and TCNs that are covered by different regimes for entering, moving and residing within the territory of the Union. The Chapters on Border Controls and Free Movement of People provide good illustration of these kinds of border configurations. As I discussed at length in Chapters Three and Four, EU citizens are entitled to move freely on the territory of the Union, while the regimes for entering into the EU and residing there legally severely restrict this possibility for TCNs.

These examples ultimately show that in the territorial world we inhabit today, the Commission discourse does not advance an understanding that can overcome the prevailing territorial logic of organising different kinds of interactions. As a result of the two limitations in abolishing borders, Commission discourse contributes to the configuration of territorial, functional and identity borders. As the analysis in Chapters Three to Six shows,

this is demonstrated by the emergence of new divisions at the external edges of the Union and by the reconstruction of internal borders within it. Importantly, as far as the reconstruction of internal borders is concerned, as Chapters Four and Five show, the Commission in fact supports their transcendence, which is evident primarily from the Blue Card initiative and the efforts towards including the UK in the Agreement on Social Policy in the first half of the 1990s. Therefore, in these cases it is the constraints the Commission faces within the EU decision-making system that limit the actual achievement of the decreased significance of borders. This is not the case, however, with external EU borders, where Chapters Three and Six show the concurrence of Commission articulations with the prevailing logic in these policy areas. This is evidence that unless it is placed on a global scale any integration efforts are likely to lead to the emergence of some borders at some level.

Thirdly, the project through its detailed examination of a wide range of Commission documents provides new angle of analysis under which particular details become more obvious. For example, the origins of the ENP in the European Security Strategy give an insight into why the policy is inherently contradictory in regards to its articulations about the partner countries and the detailed examination of the social policy discourse shows the underlying similarities between the two Models in regards to their configuration of borders.

Thus, these realities at the borders of/ in the EU point to two important practical conclusions. Firstly, there is a necessity to examine critically the formulations and policy goals of EU institutions. As the example of the ENP demonstrates especially well, sometimes there is a discrepancy between the stated objectives in the official documents and the assumptions guiding the measures undertaken. Sometimes such a mismatch can have negative results on the achievement of these same aims. Therefore, what is required is evaluating critically whether despite the language and the overall presumed direction of a policy the underlying assumptions that inform decision-making and actions allow the effective attainment of the stated goals. Because if they do not until action is undertaken to address this issue, the declared policy aims will not be achieved, thus, prolonging the negative effects that prompted the development of the policy in the first place. Secondly, it is necessary to be more sensitive to the fact that very often decreasing the significance of

borders is a process that can take a lot of time and resources. Therefore, very often the legal inclusion or entry into the EU in a way may represent only the first step towards border transcendence. Such an argument is highlighted by the findings of the Chapter on Social Policy that there is a danger that despite the stated support and necessity to ensure the inclusion of the “new” EU member states into the European Social Model, in practice this is still highly problematic. However, the successful achievement of this goal is paramount because otherwise the perception that the “new” member states are not properly European will strive, thus pointing to the continuing existence of dividing lines.

These empirical contributions relate back to some core theoretical debates in Political Science and Integration Studies. I have engaged with questions such as what are borders, how should they be studied, what is integration, or what is the Commission role in it, in order to develop my analytical framework. In that respect, the present study makes several contributions on a theoretical level.

Firstly, I have argued that Neo-functionalism as it currently stands provides only a detailed account of Commission contribution towards the configuration of the internal EU borders. This is an argument that is supported by the examples in the empirical chapters. As far as the external EU borders are concerned, Neo-functionalism anticipates that the Commission will favour the emergence of EU’s external borders. Nevertheless, this theory does not explicitly engage with an in-depth analysis of how the Commission will express its preferences in practice. The present study allows addressing this shortcoming. As the analysis in the empirical chapters shows, there are several main ways in which the Commission has endorsed and facilitated the emergence of salient EU external borders. Firstly, this comes about due to the Commission accepting the underlying assumptions on which EU policies are based. I demonstrated this trend in Chapters Three and Six. Secondly, the external EU borders emerge as a result of the utilisation of spillover in the Commission discourse. Chapters Three and Four of this study provided illustration of this. Thirdly, EU’s external identity borders are articulated in the Commission discourse by enunciating particular understandings of the “Self” and the “Other”. Chapters Four, Five and Six illustrate this.

Furthermore, importantly, these different patterns of the construction of the EU's external border by the Commission discourse provide examples of different contribution of the Commission to the process. The acceptance of the underlying policy assumptions can be attributed to the inability of the Commission to overcome the preferences of other powerful institutions, such as the Council of Ministers, on how the process of integration should be conducted. As such, it is plausible that the Commission was not the driving factor behind the establishment of the EU external borders. However, the last two examples are more clearly related to the Commission performing some of its core functions. Therefore, arguably the external borders these articulations configure come about as a direct consequence of the actions of the Commission. In these cases, the Commission support is most likely due to the possibilities of increasing its own powers and prerogatives.

Secondly, I have provided a conceptualisation of the ways in which various types of borders in the EU are created. In Chapter Two I developed a general matrix of the main ways in which different types of borders can be configured and I demonstrated how it applies to the various policy areas interrogated in this study. Furthermore, building on the differentiation between two main types of internal EU borders, I have classified the internal borders reconstructed through the discourses of the European Commission in the fields of border controls, free movement of people and social policy. This contributes to pinpointing the on-going struggle between intergovernmental and supranational solutions in the process of redrawing EU's borders. When the former is paramount, national borders between the member states persist, thus prolonging the reign of Westphalian thinking. When the latter is dominant, important borders beyond the national ones of the member states emerge, which creates a new spatial organisation of various relations.

Thirdly, I have addressed the role of the Commission in the transcendence, construction and reconstruction of EU borders, thus relating to the debates about its contribution to the process of integration. I argued that the Commission occupies a strategic position within the institutional structure of the EU, which is crucial because this allows it to be able to sway the decision-making process in its preferred direction. At the same time, I looked into the limitations it faces in promoting its preferred outcomes.

A major consequence of the findings of this thesis is that academic studies need to be much more attentive and critical to the ways in which borders are actually configured in policy documents. As the strategy of double reading, which I employed in this research has revealed, actors involved in decision-making may tend to articulate things in a specific way and to advance particular representations. These in turn encourage particular perceptions. When scholars, as well as other people, do not engage critically with thus constructed perceptions, there is a real danger of accepting them at face value. I refer to this process as a danger because it is through unquestioned acceptance of the messages conveyed that important dynamics that are taking place are not interrogated. In turn, this implicitly supports the assumptions the documents in question make, which contributes to the “normalisation” of the practices involved. When that happens, processes that are in fact constructed by people through their social interactions start to be taken as a given, creating the impression that there is nothing that can be done about it.

For example, in the case of current inclusion/ exclusion dynamics in the EU that inform the particular ways in which borders are constructed, a central assumption, supported by the discourse of the Commission has been that the abolition of border controls between the member states necessitates stronger borders at the outer edges of the Union. As the Chapter on Border Controls has demonstrated, this assumption has been widely utilised (including by the Commission) in various discourses related to Shengen to create the current system that regulates the flow of people at the external borders of the EU. However, some scholars have argued that borders between the current Union member states have always been permeable and therefore, the abolition of internal border controls in the EU makes less difference than it is widely held to.² Such a claim puts back in the limelight the issues of why, then, current policies on border controls in the EU take the shape they do, allowing to interrogate who they benefit, who loses from them, what alternative arrangements can be made. Therefore, critical engagements with the ways in which borders are currently configured are indispensable because they allow developing more

² Jef Huysmans, ‘The European Union and Securitization of Migration’, *Journal of Common Market Studies*, 38: 6 (2000), pp. 751-777

sophisticated grounds for policy-making and implementation and making it more difficult for policy-makers to ignore some important outcomes of their undertakings.

In a similar vein, the critical engagement with the ways in which Commission documents configure borders, has allowed me to successfully address the issue that is of central concern here, namely to examine the configuration of EU and European borders by Commission discourse. As this study shows, contrary to the perception suggested by the Commission documents, the Commission has much more ambiguous ways of configuring borders, which lead to border constructions and reconstructions parallel with the above process of border transcendence. Despite successfully addressing this central question, the research has come across issues that it has not been able to tackle in detail but which are in one way or another related to the question of configuring borders under the process of integration. Namely, future studies can engage in pursuing the question of when certain bordering articulations were advanced, where they were advanced, which were the actors behind them, and how these bordering articulations developed time-wise. Another direction in which the interrogation of this study can be continued is to investigate how the Commission's preferred positions on an issue are negotiated and supported in the wider decision-making machine of the EU and how they eventually develop into concrete policies. Also, a more empirically rich account can be provided to the claim that the Commission tends to promote the construction of the EU's external borders because this leads to an increase in its powers and prerogatives. In terms of policy-specific future research, it is of paramount importance to follow up on the ways in which the "new" member states of the EU are included into the ESM. This is the case because if the Commission assertion that there is a unique European way for organising societal relations is to hold true, becoming part of this European identity may prove to be a focal point for establishing a genuine enlarged common European area. From the field of social policy this common space may expand to other fields, thus having a significant impact on the transcendence of current internal borders in the EU.

However, in tune with the central argument of this study even such a development will result in configuring borders at the external edges of the Union, which is an inevitability that even supranational institutions cannot escape. Therefore, especially in the

light of the findings of the Chapter on the ENP, it is going to be beneficial to start talking more openly of the emerging external borders of the Union. This will at least have the advantage of allowing addressing some of the serious issues that come with it in terms of the final borders of the Union or the regimes for TCNs and maybe as a result creating a more transparent playing-field.

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