Tanel Kerikmäe · Archil Chochia *Editors*

Political and Legal Perspectives of the EU Eastern Partnership Policy

Springer

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archil.chochia@ttu.ee

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Editors
Tanel Kerikmäe
Tallinn Law School
Tallinn University of Technology
Tallinn, Estonia

Archil Chochia
Tallinn Law School
Tallinn University of Technology
Tallinn, Estonia

ISBN 978-3-319-27381-5 ISBN 978-3-319-27383-9 (eBook)
DOI 10.1007/978-3-319-27383-9

Library of Congress Control Number: 2016930826

Springer Cham Heidelberg New York Dordrecht London

Printed on acid-free paper

Springer International Publishing AG Switzerland is part of Springer Science+Business Media (www.springer.com)

Preface

Year 2015, six years after launching the EU's Eastern Partnership (EaP) policy in 2009, can be characterised as yet another crucial year in the implementation of that policy.

In May 2015, the Riga Eastern Partnership Summit—EaP Survival Summit, as it was also sometimes called—took place, which was to take stock of the EaP initiative in the context of tremendously changed post-2013 security political environment. Also, a broader European Neighbourhood Policy (ENP) review was launched in March 2015. As the High Representative of the European Union for the Foreign Affairs and Security Policy Federica Mogherini underlined while introducing the ENP review: *The EU has a vital interest in building strong partnerships with its neighbours. Recent developments in the region have increased the challenges we all face: from economic pressures to irregular migration and security threats. We need a strong policy to be able to tackle these issues. We also need to understand better the different aspirations, values and interests of our partners. This is what the review is about if we are to have a robust political relationship between our neighbours and us.*

Reaching these objectives is without any doubt a very difficult task. And there are many reasons to believe that the outcome of the review will be, to a large extent, influenced by the crisis in Ukraine and deteriorating situation in the South. Before 2013, the entire ENP policy was very much based on the philosophy of enlargement, which used the assumption of EU's irresistibility and attractiveness. Along with changed environment, the latter has been pushed back by the new concerns for security and stability in the neighbourhood. Based on those considerations, fundamental questions have been asked in the ENP review document about the further level and instruments of cooperation.

The main question deriving for the EaP within the context of ENP review is how to make the policy truly efficient in the context of increasing differentiation between the Eastern Partners. Here also the questions about keeping the balance between values and interests become relevant: how to avoid the lowering of the level of ambitions of the policy, how to live up to the principle of conditionality

(so called *more-for-more* principle) under the circumstances where the 28 Member States are unlikely to find compromise on the membership perspective and how, without giving up on EU interests, to develop meaningful relationships with those that do not want to have a closer integration with the EU. After all, EaP is first and foremost a framework for developing bilateral relations with six respective countries—Ukraine, Georgia, Moldova, Armenia, Azerbaijan and Belarus. And accordingly, the EU's EaP initiative should also be looked at rather as a tool, not as an ultimate goal. The main aim is the well-being, stability and democratisation of EaP countries and thereby making the neighbouring region more prosperous and stable.

There is a growing differentiation between EaP countries regarding their ambitions for their relations with the EU. There are the three countries that have stated their wish to become members of the EU and the other three, which for many reasons have chosen very different paths. The litmus test in the foreseeable future for those countries that have concluded the association agreements will be the actual and efficient implementation of those agreements, i.e. the actual achievements by the EaP countries themselves in reforming their societies and economies. Even though the main burden here lies with the partner countries themselves, this will also be the yardstick by which the EaP policy and EU's commitment will be measured.

Let us hope that the ENP review will provide us with some additional, more flexible tools that would help reach those aims. The ongoing review process and different discussion platforms tackling the challenges related to the reshaping of the policy are of utmost importance. The current publication, launched by Estonian scholars, which is a compilation of articles by well-known international authors who examine the political and legal perspectives of the EU EaP policy, is a valuable contribution to this end.

Tallinn, Estonia Marge Mardisalu-Kahar

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Dimensions and Implications of Eastern Partnership Policy: Introduction

Tanel Kerikmäe

An official definition for the core theme of the given book has been given by the European Union External Action:

> The Eastern Partnership (EaP) is a joint initiative of the EU and its Eastern European partners: Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine. Launched in 2009 at the EU Prague Summit, it brings our Eastern European partners closer to the EU. The Eastern Partnership supports and encourages reforms in the EaP countries for the benefit of their citizens.[1]

We have to admit that the posed objectives and aims of the EaP are not in compliance with the actuality. The success stories are clouded by frustration, mismanagement, failures, unexpected obstacles, blame put on each other. Although the whole European Neighbourhood Policy (ENP) is currently in repairs, the achievement of intentions requires lots of resources and political will from both sides. This volume is based on current lessons learned and, therefore not dedicated to country-specific studies of Belarus, Azerbaijan or Armenia, as, in the context of the EaP, there is not much to celebrate. This fact is presented by several scholars, e.g. by Pawel Dariusz Wiśnewski from Carnegie Centre.[2] Critical view is also presented by Adam Hug from the UK-based Foreign Policy Centre, who claims that "the EaP was transformed by events from a broadly technocratic exercise into a geopolitical fault line between Europe (and the wider West) and Russia".[3] Surely, the "Russian factor" cannot be ignored when delving into the analysis of EaP strategies. Fierce critical comments by Moscow are further supported by international independent and "independent" experts. For example, Dr Heinrich

[1] http://eeas.europa.eu/eastern/index_en.htm.

[2] Wiśnewski (2013).

[3] Hug (2015).

T. Kerikmäe (✉)
Tallinn University of Technology, Tallinn Law School, Tallinn, Estonia
e-mail: tanel.kerikmae@ttu.ee

T. Kerikmäe, A. Chochia (eds.), *Political and Legal Perspectives of the EU Eastern Partnership Policy*, DOI 10.1007/978-3-319-27383-9_1

Bonnenberg from think-tank Atlantic Community states loudly that "the effort has been a Western European attempt to strip these countries of their historical ties with Russia".[4] In spite of different approaches, the fact is that the Vilnius summit (2013) was not a heyday for the EaP. Despite the fact that the tools constructed by the EU for the EaP civil society and business circles to communicate with European ones, the overall effectiveness of the EaP can be questioned.

The current book is a cooperation project of several outstanding professionals from various nationalities. Besides all of them being academic researchers, many have obtained empirical experience while representing some of the EaP countries or being involved in the topical EU-funded projects. The set of articles is diverse—the book discusses the Eastern Partnership from the perspectives of several subject areas, i.e. political, economic, social, and also refers to techniques of e-technology and digital communication as innovative tools to achieve the objectives of EaP. In our first chapter, Ukrainian, Spanish and Estonian authors (the lead author, Dr. Vlad Vernygora) open the discussion on substantive political dilemma of the EaP. The discussion helps to apprehend the positioning of the EaP in the context of the EU wider ambition and contributes to understanding its essence behind the EaP's formal and visible concepts. Today, the horrors of war in Ukraine with tens of thousands of killed soldiers and civilians, with more than million displaced, are impairing the credibility of the EaP and intensifying instability in other partner countries. Frequent accusations towards the EU being irresolute have led to the core of the issue—what is the EU's responsibility as an international actor, e.g., in terms of EaP? The authors of the aforementioned chapter claim that the EaP *per se* is built on "systemic conflict" that is revealed by increasingly apparent collision between "imperial paradigm" and "pragmatic functionalism".

Another chapter, written together by a Latvian academic fellow, Prof. Muravska, and Dr Berlin, the honorary director of the European Commission, is seeking for an answer to the effectiveness of EaP from an economic point of view, relying on facts and figures that illustrate the microeconomic and fiscal indicators of the six EaP countries. The advantages of the EaP policies for partner states are being analysed in comparison to possible alternatives, such as the EAEU, where Russia has a leading role. The authors indicate that the EU is seen as a "soft power". As the EU market is related to certain social values, the EaP economic dimension should not only be dependent on what has been agreed upon at inter-governmental conferences. On the contrary, the reluctance of the EaP countries' governments towards the reforms cannot justify "closing the door" by the EU as a standard setter. Instead, the dialogues with civil society and all the stakeholders in EaP countries (business and academic circles) should be further encouraged—in the longer perspective, these debates are relevant for determining and ensuring the Europe-minded perspective of a particular state.

As digital language is becoming *lingua franca*, at least for the new generation of EaP citizenry, colleagues from Bremen/Lüneburg/Tallinn unpack the EaP from the

[4] Bonnenberg (2014).

perspective of Information Society and ICT, which, according to the researchers, has become more concrete and defined over time. Association agreements are analysed from the digital communication dimension, and the EU is encouraged to "preserve its first position as an exporter of digital services in the future". The author from Belarus continues the discussion, explaining convincingly that a democratisation could be more efficient by practicing e-democracy as "a new opportunity for participatory democracy" in general. The contextual appearance of ICT in the EaP dimension is developed by Prof. Katrin Nyman-Metcalf and a Slovakian researcher. Both authors have empirical experience through their activities in the e-Governance Academy based in Tallinn. E-governance issues are debated beyond the technical aspects, rather focusing on European values behind the digital communication. Estonia, often called the EU flagship country in the field of e-technology, has clear advantages in "selling" the concept of electronic government to EaP countries. The authors have selected Moldova and Ukraine to serve as sample countries where relative success is more apparent than elsewhere.

Three next chapters by colleagues from Tallinn Law School are moving the discussion to the social arena. Dr Joamets talks on harmonisation of family law and its impact on the EaP. Again, the primal question is based on values, although the author indicates that some of the EU Member States can act as conservatively as EaP countries and the struggle between emerging human rights and old traditions may have similarities. At the same time, aspirations of the EU can be followed by the EaP societies that would make the finding of common future easier. Dr Lehte Roots is focusing on migration topic and provides an overview of international agreements in the field of EaP. She introduces the framework of Mobility Partnerships and Common European Asylum System through relevant EU legal instruments. A doctoral student Hamed Alavi from Iran screens the EaP through protection of environment (greener decisions) with emphasis to DCFTA's, mobility of citizens, sectoral cooperation (energy, transport), institutional reforms, etc. Dr Hoffman from Germany is persuasive when critically screening Ukrainian private law through its ambitions to become European like. He presents the factors that are still slowing down Ukrainian Europeanisation, e.g., business transactions, effectiveness of anti-corruption measures and digitalisation of legal space.

Further chapters are related to concrete EaP countries and reveal criticism, hopes and suggestions. Professor Roman Petrov from Ukraine is concerned with constitutional challenges of Georgia, Moldova and Ukraine, and screens intricately achieved Association Agreements through the standpoint of Prof. Van Elsuwege. The chapter, written by two Ukrainians—colleague Dr. Evhen Tsybulenko and his co-author from Mariupol—are dissecting the hybrid war in Ukraine, pointing out the expectations of Kyiv and encouraging EU to reform the ENP as taking account the tragic events during the last years.

The Europeanisation process in Georgia is argued by a colleague, Dr. Chochia, and researcher Johanna Popjanevski from Sweden-based Institute for Security and Development Policy.

A former student of Tallinn Law School, Dali Gabelaia, is critically challenging the perspectives of Georgian "European Dream". The paper gives a detailed overview

of Tbilisi's relations with the EU and pulls out certain problematic areas as seen by Georgian side such as the EU-modelled equality/non-discrimination and personal data protection. At the same time, the author is straightforward with reflecting the main reasons for Euroscepticism (such as occupied territories in Abkhazia and South Ossetia). Another case study on Georgia is presented by Dr Andguladze, discussing Europe-like-modelled schemes of legally non-binding rules on Georgian media landscape (self-regulation, ethics charters, etc.) with the examples deriving from Sweden, the UK, Germany and Estonia, as well as the jurisprudence of the European Court of Human Rights. Similar topic concerning Moldovan Europeanisation of television and media is discussed by a Romanian scholar, Onoriu Colácel.

The book concludes with the paper of researchers from my university's business faculty (TSEBA), presenting the perception of Baltic-Russian innovation in the context of the EaP with emphasis on cross-border political-economic cooperation. As discussed before, the success of the EaP depends, or at least it is highly influenced, on "Russian factor" and unpredictability of further political climate may well be reduced with pragmatic cooperation that cannot, of course, threaten the rule of law and the agreements within the framework of the Eastern Partnership.

Has the EU so far failed to provide alternative political-economic route of being clung to Russia (to at least half of the six EaP countries)? Rethinking the past EaP strategies is unavoidable, but positive effects of EaP cannot be underestimated. New initiatives must become more pragmatic and goal oriented from both sides. The key for EaP's success is to respect each other and not to get entangled in ambiguous promises. As Elena Korosteleva alleges, the partnership elements were mostly prioritising EU-laden agenda.[5] Hopefully, the Eastern Partnership Parliamentary Assembly will accelerate the constructive dialogue between the EU and its Eastern partners in order to create the atmosphere of parity and respect for each other.

The editor wishes to thank European Commission Education, Audiovisual and Culture Executive Agency (EACEA) for funding a project, "Legal assessment of the Methods of Eastern Partnership Countries in Raising the Competitiveness and Institutional Capacity Based on EU Policies and Legal Framework", and Estonian Ministry of Foreign Affairs Cooperation and Development Fund for financing several Eastern Partnership-related projects.

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The Eastern Partnership Programme: Is Pragmatic Regional Functionalism Working for a Contemporary Political Empire?

Vlad Vernygora, David Ramiro Troitiño, and Sigrid Västra

Abstract Focusing on the Eastern Partnership Programme (EPP), this paper ponders on discerning a principal reason because of which the European Neighbourhood Policy (ENP) was not able to help the EU in establishing and running a proper strategic framework where the entity could feel confident and secure, comfortably 'communicating' with its immediate neighbourhood in the European East. The article represents an interpretational type of theoretical analysis and argues that pure political driving forces of desirable cooperational or confrontational activities dramatically affect the outcome. This paper claims that the EPP's 'innate' functional nature has been clashing with the EU's status of a *de facto* contemporary political empire, and the situation has eventually resulted in the self-admitted necessity for the EU to comprehensively revise the ENP/EPP. The argument here is as follows: being a function-driven entity presumes relative freedom in making choices; being an empire leaves an entity with no other choice but to 'behave' like an empire in terms of expanding further into its periphery.

1 Introduction

[. . .] whether I am a trembling creature or whether I have the right.—Fyodor Dostoyevsky[1]

At some point in history, the European Union (EU) had to realise that, as a large geo-political entity with borders, it was destined to have neighbours. This statement could have been considered exaggeratingly sarcastic, if it had not been a reflection

[1] Dostoevsky (1917), Part 5, Chapter 4.

V. Vernygora (✉) • D.R. Troitiño
Department of International Relations, Tallinn School of Economics and Business Administration, Tallinn University of Technology, Tallinn, Estonia
e-mail: vlad.vernygora@ttu.ee; perdices57@yahoo.es

S. Västra
Tallinn University of Technology, Tallinn, Estonia
e-mail: sigrid.vastra@gmail.com

T. Kerikmäe, A. Chochia (eds.), *Political and Legal Perspectives of the EU Eastern Partnership Policy*, DOI 10.1007/978-3-319-27383-9_2

of reality. The European Neighbourhood Policy (ENP), established only in 2004, was the EU's late but, nevertheless, direct functionalistic response to an obvious need. The official Brussels was aiming at creating a **framework** that would be successfully containing the complicated set of **relationships**, which the entity had been trying to enjoy with its immediate and not-so-immediate neighbourhood. In any case, it is impossible to wave aside a fact that the EU has been investing "considerable political capital and financial and bureaucratic resources in the development of relations with neighbouring states and regions".[2] The highly integrated part of the European continent through its declared objective—to avoid "the emergence of new dividing lines" between the EU and its neighbourhood and strengthen "the prosperity, stability and security of all"[3]—saw the relatively seamless development of the ENP in years to come. At least, the idea was then characterised by academia as a "model of 'deep integration' through an ambitious network of free trade agreements"[4] and, perhaps, a debate-provoking mechanism regarding a decision to be made on the limits of Europe.

With the time, having being solidified by elements of *ad hoc* crisis management, some of the examples of the ENP-originated activities have been generally positive and mutually beneficial (the EU's interactions with Georgia and Moldova). There are also few cases where the EU has not been taking any delight out of its involvement in the process—Syria, Belarus and Libya have been staying outside most of the ENP-framed interconnections. By 2007–2008, the EU started receiving plenty of critical feedback on the ENP from academic circles. For example, Haukkala suggested that, while the EU made many efforts to exercise its skill as the continent's hegemonic "normative entrepreneur", its neighbourhood policy should be based "more on tangible cooperation with more modest rhetoric and clearer material incentives" and "less on heavy normative convergence and harmonisation".[5] In his turn, Edwards talked about the ENP's ambiguous and uncertain results; the scholar also made a comment on the "lack of clarity, inconsistency and incoherence" between the EU bureaucracy and Member States, with messages coming from the EU being described as "mixed and confusing".[6]

Having spent the initial five laborious years on relationship building with the neighbours as different as Tunisia and Ukraine, the EU made a logical decision to start visualising its vicinity through the prism of splitting the neighbourhood into different groups. This is how the ENP's very own Eastern Partnership Programme (EPP) was 'born' in May 2009, all in order to draw a well-marked line between the post-Soviet Six (Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine) and other neighbours. Arguably, this exercise of distinguishing the European lot of designated neighbours from non-European ones was clearly of geo-political nature,

[2] Cottey (2012), p. 375.

[3] European Neighbourhood Policy (2015).

[4] Gould (2004), p. 195.

[5] Haukkala (2008), pp. 1604–1605, 1618.

[6] Edwards (2008), p. 46.

sending around a hint about the EU's intentions concerning the complicated but undoubtedly 'European' East. The Romano Prodi's desire to prevent "the others"[7]—in the post-Russo–Georgian War period, 'the others' fell to mean 'Russia'—from determining the limits of the EU-bound European continent received a distinctly practical dimension. After all, in accordance with the Treaty on European Union, the normative side of the process has always been commencing with a geography lesson—the EU is open to all European countries.[8]

The dramatic failure of the EPP's Vilnius Summit in November 2013 was a 'wake-up' call for the EU's External Action Service. Not only did Ukraine's corrupt political regime (being 'helped' by no less corrupt Russia) drive the country away from signing the much anticipated Association Agreement with the EU and cobble the way for another *Maidan*, but the EU had to realise the fact of its **tactical** unpreparedness for playing a full-scale geo-political game with Russia on a big Ukraine, not to mention smaller states like Armenia. The existence of 'pro-Ukraine' and 'contra-Ukraine' groups of countries within the EU[9] has perennially been a secret of *Polichinelle*, but both High Representative for Foreign Affairs and Security Policy/Vice-President of the European Commission Catherine Ashton and Commissioner Štefan Füle (frequent visitors to Kyiv in 2012–2013) were very determined to preserve the "unbearable lightness of permanent integration".[10] Their *fiasco* in Vilnius was of an extraordinary kind, and, in March 2014, 10 turbulent years later after ENP was announced, while proudly reminding the outer world that the EU's financial framework for 2014–2020 has provided for "the level of funding secured for the neighbourhood" to be accounted for an astonishing EUR 15.4 billion, the European Commission nonetheless had to declare that the process "in implementing reform commitments [in the designated neighbourhood] has been uneven".[11] The 2015 public consultation process, initiated by the EU's External Action Service and the European Commission, on "the future direction of the ENP" will be eventuating with "concrete proposals"[12] regarding the difficult matter. What it has already signified is that the results of the ENP's decade-long implementation are far from what the EU ever expected.

With a focus on the EPP, this paper ponders on discerning a principal reason because of which the ENP was not able to help the EU in establishing and running a proper strategic framework where the entity could feel confident and secure, comfortably 'communicating' with its immediate neighbourhood in the European East. It is also a try to contribute to an international scholarly debate on the ENP/EPP, which, in point of fact, has brought up two 'heavyweight' enquiries—"what kind of political community the EU is becoming and what are the limits of its

[7] Prodi (2002b), as cited in Wilson (2013), p. 77.

[8] See Consolidated version of the Treaty on European Union (2012), p. 43, Article 49.

[9] See Kuzio (2003, 2012).

[10] Vernygora (2013).

[11] Neighbourhood at the crossroads—taking stock of a year of challenges (2014).

[12] Towards a new European Neighbourhood Policy (2015).

power projections in the EU's neighbourhood".[13] The article represents an **interpretational type** of theoretical analysis that admits that cooperative vectors in Europe are still linked to the issues of political economy. At the same time, it argues that pure political driving forces of desirable cooperation or confrontation are dramatically affecting the outcome whereas immensely assisting those who are trying to identify relationships in a given region. After all, "the economy is political"[14] and has always been. In our specific case, this paper claims that the EPP's 'inbred' functional character has been constantly clashing with the EU's status of a *de facto* contemporary political empire, and the situation has eventually resulted in the self-admitted necessity for the EU to comprehensively revise the ENP/EPP. The argument here is as follows: being a function-driven entity presumes having relative freedom in making choices; being an empire leaves an entity with no other choice but to 'behave' like an empire in terms of expanding further into its periphery. Depending on what the EU really would like to become in the context of strategising its long-term interactions with the designated Eastern neighbourhood, the entity could **either** continue applying pragmatic functionalism when implementing the EPP but then be not so upset at a time of its next geo-political failure **or** show less hesitation in recognising its status as a modern political empire, apply its 'weight' on the EPP's initiatives, leaving functional schemes for cooperation with other regions (for example, for solving Europe's migration crisis that really threatens the EU's existence).

This paper's objectives are, **firstly**, to outline the dualistic operational nature of the EU's activities in the EPP-connected framework and, **secondly**, to prove that the EU's complex application of pragmatic functional approach in the framework of EPP is in systemic conflict with the unstoppable inertial empire-forming process within the EU. Few lines will be written on the Ukrainian case to illustrate the point. This work offers nothing more than an interpretation—one of many—of the EPP-bound framework; it also accentuates the fact that both imperial and functionalistic paradigms have great 'value added' components to academic debates on the EU's interactions with its designated Eastern European neighbours.

2 The EU's Imperial Paradigm and Pragmatic Functionalism

From one side, the ENP appeared to be a general multidimensional policy that would be highlighting the privilege and, to some ironic extent, luck of an EU's neighbour to be designated by the entity as an EU's neighbour.[15] Normatively, as noted by Dimitrovova, the 2004 European Neighbourhood Strategy Paper declared

[13] Dimitrovova (2012), p. 249.
[14] Keohane (1984), p. 21.
[15] Vernygora (2013), p. 94.

the EU's wish "to establish a ring of friends that will be gradually connected and integrated into the EU space of governance".[16] From the other angle, the ENP/EPP's distinct bilateral nature framed conditional relationships with the neighbours on a case-by-case basis via Action Plans. Intriguingly, as suggested in a critical manner, the EU "was reaching the limits of its [...] ability and willingness to resolve Europe's strategic dilemmas through the process of enlargement";[17] therefore, it was in search of a working framework "to halt further enlargement for those potentially eligible".[18] As a result, the EU, while arguably being in the list of those who "'look, talk and walk' like empires",[19] switched all its persuasive power on to divert the talk with the Eastern neighbours into a strictly functional debate.

Indeed, since the beginning of 1990s, the EU has been arguably trying to respond to the challenges of multidimensional interdependence, the process that, in many cases, the EU's predecessors had initiated. This activity has literally adduced a huge part of academia, mostly European scholars, to paint a 'picture' of the EU "as an open, borderless, placeless and centreless empire", almost neglecting issues linked to "geopolitics, unequal exchanges and domination".[20] The heavily symbolised nature of the EU story—the EU flag, the parts of the Beethoven's Ninth Symphony, the concept of the European Capital of Culture and many other similar associative symbols that could be mentioned to prove this fact—has gradually brought up a range of academically *nouvelle* topics related, for example, to a hybrid system of self-identification within the EU,[21] local versus pan-European national identity,[22] advantages and disadvantages of common approach in foreign policymaking[23] and even EU perceptions elsewhere.[24] Consequently, it has become a globally confirmed undisputed fact that, according to Cottey, the EU "constitutes a new model of international relations based on institutionalised multilateral, multifunctional cooperation"[25] between its Member States. However, this is where an **imperial paradigm** justifiably pops up to enrich academic discourse in terms of our in-depth understanding of the EU, even though, as it was picked up by Parker, "[a]n irony of arguing for the prominence of empire in geopolitics is that it is so often a form of geopolitics which dares not to speak its name".[26] An enquiring mind could hardly find a large group of the EU officials who would be ready to confirm that the entity

[16] Dimitrovova (2012), p. 253.
[17] Gould (2004), pp. 172–173.
[18] Edwards (2008), p. 46.
[19] Zielonka (2012), p. 502.
[20] Dimitrovova (2012), p. 251.
[21] See Troitiño (2013).
[22] See McCormick (2010).
[23] See Holland (2004).
[24] See Chaban and Holland (2008).
[25] Cottey (2012), p. 376.
[26] Parker (2010), p. 127.

they work for is a contemporary empire on a presumably unstoppable mission to grow.

While searching for a right line of words in order to define what 'empire' means, one could observe myriads of approaches proposed by international scholarship. Dimitrovova acknowledges that "the notion of empire is mixed up with various theoretical positions"[27] and then tries offering a certain system to it, crediting Zielonka, Beck and Grande, and Hardt and Negri[28] for their big studies on correspondingly neo-medievalism, cosmopolitanism and post-imperialism. Howe's definitions of empire and imperialism go hand in hand, with the former being presented as a form of a political unit ("a large, composite, multi-ethnic or multinational political unit, usually created by conquest, and divided between a dominant centre and subordinate, sometimes far distant, peripheries") and the latter as an action ("the actions and attitudes which create or uphold such big political units—but also less obvious and indirect kinds of control or domination by one people or country over others").[29] Zielonka sees that "the notion of empire is hazy"[30] and then descries the phenomenon as "a vast territorial unit with global military, economic and diplomatic influence".[31]

Keeping in mind the groundbreaking general theoretical works of Wolfgang Mommsen[32] and Michael W. Doyle,[33] even a small review of the major examples of the more recent, thus EU-relevant, academic research on modern empires—Motyl,[34] Zielonka,[35] Gravier,[36] Parker,[37] Dimitrovova[38] and, to some extent, Nexon and Wright[39]—confirms that the existence of 'centre/core and periphery' relations is considered one of the most important distinguishing features of a contemporary empire. Zielonka[40] specifies that

> an empire must have a record of acting in a way that imposes significant domestic constraints on a [...] periphery to be governed by the imperial centre. The rule over peripheries is justified by the empire's civilising mission or vocation. In other words, empires must have an imperial vision of themselves or a *mission civilisatrise* of some sort towards their external environment.

[27] Dimitrovova (2012), p. 251.
[28] See Zielonka (2006), Beck and Grande (2007), and Hardt and Negri (2000).
[29] Howe (2002), p. 30.
[30] Zielonka (2011), p. 337.
[31] Zielonka (2012), p. 509.
[32] See Mommsen (1981).
[33] See Doyle (1986).
[34] See Motyl (1997, 1999, 2001).
[35] See Zielonka (2006, 2011, 2012, 2013).
[36] See Gravier (2009).
[37] See Parker (2008, 2010).
[38] See Dimitrovova (2012).
[39] See Nexon and Wright (2007).
[40] Zielonka (2012, p. 509).

In our particular case, Parker detects the likelihood for "the geopolitics of empires"[41] to be exemplified by the EU and the USA. Interestingly enough, while arguing about the US's treatment of Europe as "one of its peripheries" and that it "clashes with the EU's own imperial ambitions",[42] Zielonka also adds Russia and China to the list of contemporary empires.[43] From that point of view, while leaving the example of the USA aside for now, it is not difficult to infer that Russia and China as well as Russia and the EU can, theoretically and practically, **compete externally** against each other for dominance over their respective peripheries. The logic of Russia's actions before and after the EPP Vilnius Summit tells a 'story' that this planet's largest country treats the EPP not merely as a programme on 'humanitarian assistance'; instead, Russia understands it as the EU's intention to oust "the bear" out of "the taiga".[44] The Realists, like Mearsheimer, give much more on the topic,[45] but this paper will not be converting its narrative to use a 'great power vs. small power' type of discourse.

When speaking of the EU's characteristics of empire, there are precisely no such things as 'centre/core' and 'periphery' in their classical terms. According to Gravier, "there cannot be a geographical localisation, since the core cannot be reduced to one state [...] all member states are part of both the core and of the periphery of the EU [...] the EU's core is not a place but a statum"[46]—even if Brussels is sometimes called the capital of the EU, nobody ever claimed Belgium to be a core of the EU. At the same time, Zielonka insists, the biggest EU enlargement in 2004 could be seen as "a prototype of imperial politics" because the EU took political and economic control over the then "unstable and impoverished" Eastern European countries.[47] Parker echoes it from a different perspective—"[w]here a lack of 'order' is experienced, [...] the imperial extension of power acquires a logic and an appeal".[48]

However, the imagery imperial 'suit' of the EU covers a 'body' that quite often acts in a non-imperial way. Indeed, the EU has evolved to become what it is by going through the 'hurdles' of **internal competition**. Haas[49] picked it up and offered a highly reflective theoretical approach that turned to be known as neo-functionalism. Europe's mechanisms of **neo-functional spillover**, with their historic emphasis on economics,[50] swiftly gushed out with a high number of new as well as sophisticated features like crisis prevention, human rights promotion or help

[41] Parker (2010), p. 128.
[42] Zielonka (2011), p. 338.
[43] Zielonka (2012), p. 502.
[44] Putin (2014).
[45] See Mearsheimer (2014).
[46] Gravier (2009), p. 632.
[47] Zielonka (2006), p. 11.
[48] Parker (2010), p. 124.
[49] See Haas (1958).
[50] Smith (2004), p. 28.

in civil society building. From what it was back in 1950s, the situation was getting rapidly changed, making the EU's predecessors and eventually the EU in itself becoming more unified, more interconnected and more *intra*-orientated. The spill-over effect turned to be almost completely de-touched from its puzzling fathering theory, when the EU evidently made few attempts of "distilling"[51] neo-functionalism. Arguably, it was the time when the massively enlarged EU 'tried' the spillover effect on its new neighbourhood in 2004. Literally speaking, a key element of an intra-orientated theory started being bravely used in a non-compatible external environment that the EU had no operational possibility to effectively manage.

By the end of the new millennium's first decade, a complicated geo-political 'ornament' directly edged the EPP's establishment, and the 'ornament's' distinguishing features were as follows: indicators of neo-regionalism in Central-Eastern Europe;[52] the EU's enlargements (May 2004 and January 2007); the particular outcome of the 2008 NATO Summit in Bucharest and the 2008 Russo–Georgian War that followed afterwards; the establishment of the Common Security and Defence Policy (CSDP) under the Lisbon Treaty (2009); the factor of Russian direct and indirect 'presence' in the post-Soviet territories, including the Crimea, the Ukrainian East and 'breakaway' areas of Georgia, Moldova and Azerbaijan (from 1991 onwards); the 'coloured' revolutions in Georgia (2003) and Ukraine (2004); the EU's involvement into the so-called gas wars between Russia and Ukraine (2005–2009); the growing role of Turkey in international affairs; the dramatically falling-towards-autocracy-Ukraine's declared aspirations to become an Associate Member of the EU; the Moldova-Romania socio-historical linkage that became an important element in Moldova's pro-EU political stance. All of the above-mentioned factors, together and separately, had been conductive for the EU to recognise the imminence of engagement into **pragmatic** function-driven interactions on the wider European continent. The spillover did not perform well in the EPP framework. Additionally, on the ground, one country's problem would overnight become an issue for a humongous community, which its neighbour had just joined. On the same day, when Romania entered into the EU, the Transnistrian question ceased to be an issue of special significance for Moldova, Ukraine and Russia only—suddenly, it became a notably problematic matter for the EU as a whole.

In a sense of understanding that the contemporary model of the EU's stance regarding its designated neighbourhood was far from being finalised, the entity had evidently decided to get back to basics and enrich its externally 'stumbling' neo-functional strategy by embracing **pragmatic regional functionalism**, of which EPP became an example. For students of international relations, it would mean no less than an exciting academic rebirth (or even 'rehabilitation') of David Mitrany's enquiry on the "essential functions"[53] of an international society. At the

[51] McGowan (2007).

[52] See Vernygora and Chaban (2008).

[53] Mitrany (1975a), p. 99.

extreme end of critical academic discussions, it would be even possible to see the EPP just as a means to frame "conditions of peace"[54] with the designated neighbours or, possibly, with Russia. Alternatively, it could be argued that, for the EU that was experiencing its enlargement and other *fatigues*, the EPP was no more than a wistful move to test its operational effectiveness and, if lucky enough, forecast its prospects to somehow benefit from cooperation with diverse European East. Therewith, as it was evinced by Edwards, the EU's neighbourhood-related initiatives could be treated as "a response to competing demands that inevitably resulted in compromise and ambiguity".[55]

Giving its own interpretation, this paper argues that the enthralling side of the EPP-framed initiatives was, perhaps, attributed to the EU's innate desire to have more freedom in dealing with the intricate neighbourhood. The good old spillover strategy has/had been 'dwelling' in the intra-EU world where its unstoppable effect is/was always promoted by Brussels. On the contrary, the EU's interactions with the immediate outer world started requiring more simplicity and, figuratively speaking, ability to 'use a reverse gear' whenever necessary. Being introduced after the ENP/EPP's reshuffling in 2010–2011, the 'more for more' principle was the best example of the growing tendency within the EU's policymaking process to include an easily accessible 'reverse gear' into the entity's 'transmission' mechanisms. Those were initially designed to help the EU in moving forward, up or aside, but never backward. Mitrany's classic argument on "common material needs",[56] which the EU and the EPP nations could theoretically and practically have, goes very well with cooperation-related frameworks, which "can be narrow or comprehensive in scope".[57] The distinctly pragmatic 'more for more' ('less for less' or 'nothing for nothing') schemes can be of good assistance in 'regulating' the format of interactions. It has not been often pronounced by international scholarship in a legible way, but an action to stop the process or to go backwards is a function-performing exercise, too. Our question is, of course, knotted to whether or not the EU can ever (got for itself a geo-political right to) perform such an action in its periphery.

3 Clashes Between Functional Approach and Imperial Aspiration

Back in 1980s, Keohane expressed certain scepticism that "the Europeans" would have the capacity to become a hegemonic power "in the foreseeable future".[58] The current situation is significantly different from what it was then, and it lets students

[54] Groom (1999), p. 221.
[55] Edwards (2008), p. 45.
[56] Mitrany (1975b), p. 145.
[57] Smith (2004), p. 22.
[58] Keohane (1984), p. 49.

of international relations notify the 'audience' that the EU clearly has capacity to fulfil its hegemonic role in Europe. The seriousness, with which many scholars include 'the EU's case' into discussion on modern political empires, does not leave a decent chance for anyone to be too sceptical about the EU's real, prospective or perceived might. Within the EU, on the political side of the talk, top European politicians (for example, Angela Merkel)[59] do not hide prospects for the European Commission to become a proper government and the Council of the EU to become a second chamber of the European Parliament. The creation of a super-state called 'Europe' is a matter of time and, perhaps, a matter of the EU's survival. This factor brings more light onto debates regarding the EU's external activities that assuredly include the entity's interactions with its designated neighbours in the European East or periphery. It also makes it clear that the EU's direct competition with Russia is of unavoidable and, until one of the two collapses, permanent nature. The Russian Federation has access to the same periphery, not to mention that the Kremlin does not even bother formally designating its post-Soviet neighbourhood, counting on the geo-political legacy of the wrecked Russia-bound communist empire.

Interestingly enough, as noted by Emerson, the EU's idea on designating its neighbouring area was based on a genuine wish "to avoid neglecting 'the new neighbours'"[60] in the aftermath of the 2004 Enlargement. What is even more intriguing is that the thought was on targeting Belarus, Moldova and Ukraine **only**. It was undoubtedly related to the then EU Commission President's position on further enlargement and the declared necessity for the EU to actually have borders. When a reporter asked Prodi about 'European' political perspectives for Armenia, Azerbaijan and Georgia, the President's reply was heard even in South Pacific:[61]

> People in New Zealand also feel that they are European. That is the problem. We cannot limit ourselves to considering the historical roots. We also have to give a natural size to the EU.

Indeed, the above statement carried plenty of pragmatism and allows us to talk about the EU's neighbourhood-connected initiatives as of been functionally orientated from their inception. Were it a strict policy to implement, it would be the policy to do so. Nevertheless, the EU's 'neighbourhood debate' resulted in the acceptance of the most accommodating and super-holistic framework—the ENP. Not only did the Caucasus trio become parts of the deal, but also the EU's Mediterranean neighbours were included in the list. In itself, the fact that the ENP's bilateral Action Plans, designed by the Commission for the designated neighbours, were "bearing a strong resemblance to most of the 35 chapters of the accession process"[62] had underlined the obvious—the EU was counting on the

[59] Merkel (2012) and The Merkel plan (2013).

[60] Emerson (2011), p. 50.

[61] Prodi (2002a) as cited in Hemmer Pihl (2002).

[62] Emerson (2011), p. 50.

spillover effect to do its magic once again, but this time it had to be done in the outer world. In this paper's interpretation, it would mean that the **first serious clash** between the EU's exigent functional approach and the imperial aspiration was detected. Without even admitting it for itself, the EU **wanted** to do a few imperial 'exercises', even though those actions were clearly of 'gentle' political character.

However, the supersonic speed of twenty-first century did not leave much time for the EU to do 'good-for-health-hula-hooping' in the neighbourhood. Instead, the remarkably integrated part of the European continent suddenly got on the 'swing' that was in constant motion without any possibility to halt the dangerous exercise. A new imperial Russia without Boris Yeltsin in charge was something that the EU was not prepared to deal with. The time when President Prodi would dare talking to President Putin in a noticeably haughty way—"Well, yes, you are European, even if you are looking Eastwards, but you are too big for the EU"[63]—had gone. The Barroso Commission started its cadence almost in the same time with the beginning of Ukrainian 'Orange Revolution' in November 2004, and the EU with its neighbourhood-related ideas about Action Plans in mind simply had no strategy on how to counter a strong Russia. Andrew Wilson told a compelling story on the Russian state's direct involvement into anti-'Orange Revolution' activities;[64] thus, there is no need to reiterate it. However, the example of the EU–Ukraine neighbourhood-building interactions can show the EU's geo-political disarray explicitly.

Ukraine, by far the largest country among the EU's Eastern Partners, had to experience the flash and the dramatic setback of the 2004–2005 popular protest. The political West, including the EU, did not want an open confrontation with Russia over Ukraine; it was also true that the then President Yushchenko had glaringly "failed to take full advantage of his Orange Revolution triumph".[65] Then the clear-cut Russia's victory at the 2008 NATO Bucharest Summit, followed by the 2008 Russo–Georgian War, made it very confusing for Ukraine to establish an order of priorities in foreign policymaking. In addition, the country's weak attempt to distinguish itself "from its own image of a totally corrupt quasi-state"[66] was not a success either. Including Ukraine in an informal list of "Nations in Transit", Silander and Nilsson specified the country's "negative democratic development over the last decade"[67] that would cover the entire period after the 'Orange Revolution'. In short, the EU–Ukraine Action Plan adopted on 21 February 2005 became **the** document for the two parties to live with.

The 2005–2009 'gas wars' between Russia and Ukraine demonstrated the latter's absolute and the EU's significant dependency on Russian gas and oil, delivered through the Ukrainian territory. For the EU, it was the time to reflect on its latent

[63] Prodi (2002a).

[64] See Wilson (2005).

[65] Wagstyl and Olearchyk (2007).

[66] Vernygora and Chaban (2008), p. 140.

[67] Silander and Nilsson (2013), p. 455.

imperial ambitions, as the ruthless competitor was showing who was the dominating actor in the area that he considered his own 'taiga'. Most probably, it was a surprising response for the Russian side, but the EU decided to go on and establish the EPP, placing its relationships with the Eastern European periphery within a specially customised framework. Arguably, Russia construed it the way that the EU had not given up on the European East.

From this paper's perspective, the EPP's appearance was not a big change, but the introduction of 'more for more' approach was. As it was noted before, it represented a crucial policy adjustment, taking the EPP away from continuing the usage of spillover-orientated applications. In the Ukrainian case, the EU had all the reasons for a geo-political 'retreat'—an autocratic Russia, supported by high oil prices, felt extra-comfortable in its periphery; from 2010, the then Ukrainian President Yanukovych started implementing the process of total incorporation of Ukraine for himself and members of his family; the Ukrainian Armed Forces and the Security Service of Ukraine were literally becoming 'servants' of their Russian equivalents.[68] However, in contempt of those negative issues, including even the fact of Yulia Tymoshenko's arrest and imprisonment, the EU was heading to its November 2013 in Vilnius, thinking of signing an Association Agreement with one of the most corrupt political regimes existing on the planet. Certainly, there were many concerns expressed by the EU's top officials on the Tymoshenko and other cases where Ukraine was urged "to uphold the principles and common values that form the core of the Eastern Partnership".[69] A 2013 study[70] on how the EU was perceived by the Ukrainian general public underscored that the EU–Ukraine official interactions were "mired in contradictions and empty rhetoric". Nevertheless, it looked obvious; there was nothing that would be changing the EU's imperial course of actions in terms of its Eastern periphery in general and the designated periphery's largest country in particular. It meant that the described sub-period was featured by **another clash** between inertial activities of the modern empire and its own external policy that was not compatible with imperial aspirations.

In 2014, the Quiet Crimean War and the Russo–Ukrainian War in Donbass made tectonic changes to the post-World War II international system, bringing it on the verge of collapse. The very new reality literally pushed the EU to carry out a public consultation on the review of the ENP/EPP—the process of advice gathering ended on 30 June 2015, and the Commission is to analyse the received contribution to work our proposals on the ENP's future by the end of 2015.[71]

During the 2013 Vilnius Summit, the EU had a hope "to see the signature of the Association Agreement with Ukraine [... and] finalisation of negotiations on Association Agreements, including Deep and Comprehensive Free Trade Areas

[68] Vernygora (2014).

[69] Ashton and Füle (2011).

[70] Chaban and Vernygora (2013), p. 90.

[71] The EU carried out a consultation on the review of the European Neighbourhood Policy (2015).

(DCFTA), with Moldova, Georgia and Armenia".[72] According to the Eastern Partnership Implementation Report for 2014,[73] the EU informed on "intensive high-level dialogue" that took part between the parties involved, the Association Agreements were signed with Ukraine[74] (the political chapters—on 21 March 2014, the balance—on 27 June 2014), Georgia and Moldova (on 27 June 2014), with all these Agreements provisionally taking effect. In a significant addition, the document confirmed that the *status quo* on EU–Armenia, EU–Azerbaijan and EU–Belarus differentiates greatly from the first trio. With Armenia going under the Russia-controlled Eurasian Economic Union and Azerbaijan postponing meetings under the Partnership and Cooperation Agreement with the EU, the situation looks uncertain for the EPP's initiatives with these nations. Belarus is a special case and deserves a separate study—the report noted that the EU "continued its policy of critical engagement towards Belarus" (meaning that almost nothing happens), but the country's engagement into the peace negotiations on Russo–Ukrainian War in Donbass might be assisting it in the nearest future in regard to revitalising its relationships with the EU.

In any case, the result of the ENP/EPP's latest revision could hardly be underestimated. In the light of current confrontation between the EU and Russia, the EPP-related interconnections will be influencing the process of the international system's redesign. With necessity, the EU will be playing a key role in that process.

4 Conclusion

This paper's discussion was built up to show the dualistic nature of the EU's operational capacity regarding the EPP framework. It argues that one of the principal reasons for the EPP to experience frequent revisions and receive permanent critique is directly linked to the EU's status of a modern political empire that clashed with the EPP's functional nature. The claim is that if the EU is positioning itself as a function-driven entity in dealing with its designated neighbourhood, it could certainly enjoy relative freedom in making choices. However, if the EU eventually recognises its imperial stance, then it needs to be less hesitant when planning to expand into periphery. Offering few examples on EU–Ukraine interactions, the paper identified that the EPP is in systemic conflictual situation with the EU's empire-building process, which has inertial as well as unstoppable character. The article should be treated as an interpretational type of theoretical work that recognises the importance of purely political actions focused on achieving cooperation or confrontation—those actions dramatically affect interrelations within a given framework.

[72] The EU meets Eastern Partnership foreign ministers ahead of November summit (2013).

[73] Implementation of the European Neighbourhood Policy. Eastern Partnership Implementation Report Eastern Partnership Implementation Report (2015).

[74] The country was already at war with Russia.

Arguably, the EPP's ultimate success or failure will lead towards determination and further formalisation of the other EU-originated frameworks and procedures. Therefore, the ENP/EPP requires to be clearly outlined and conceptually understood by the parties involved in order to significantly increase its degree of sustainability and widen the EU's confines of operational capacity.

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Towards a New European Neighbourhood Policy (ENP): What Benefits of the Deep and Comprehensive Free Trade Agreements (DCFTAs) for Shared Prosperity and Security?

Tatjana Muravska and Alexandre Berlin

Abstract This article examines the problem of the ENP countries' integration with the EU market from two perspectives: the macroeconomic situation as an integral component of the overall transformation process and the integration with the EU markets, and the political economy of the regional integration perspectives of these countries. This methodological approach serves as a tool for integrating a number of main goals related to the EU's soft power that require the development and support of civil society in the neighbouring states. This contribution aims to offer insight in the implementation of the regional arrangements, taking into consideration new political and economic realities in the Eurasian Single Economic Space; it examines these implications in relation to the need to expand and adapt the content and approach of the AAs/DCFTAs agreements. The further economic development in the regions of Eastern Europe and Caucasus as a precondition for the prosperity and security of countries and of the region is discussed. The article concludes that the ENP has inevitably become more important due to the new borders of the EU to the East and the emergence of the Eurasian Economic Union.

1 Introduction

In the last decade, there has been a major eastward shift in global economic power of unprecedented nature. The exact composition of the newly emerging global economic powers is not yet clear, but it is now fully acknowledged that the political and economic relevance of the West is being rescaled (O'Neill and Terzi 2014) and even downscaled.

T. Muravska (✉)
University of Latvia, Raina 19, Riga LV 1585, Latvia
e-mail: tatjana.muravska@lu.lv

A. Berlin
European Commission, 121 d'Italie, Paris 75013, France
e-mail: berlinalexandre@gmail.com

T. Kerikmäe, A. Chochia (eds.), *Political and Legal Perspectives of the EU Eastern Partnership Policy*, DOI 10.1007/978-3-319-27383-9_3

The European Union, as a trading bloc, since its inception in 1952 (Coal and Steel Treaty), has expanded regularly both in scope and membership from its initial 6 Member States to now 28, and with a number still in the antechamber. This increase in membership has also been accompanied by a major expansion of the scope and functions of the European Union, with each successive revision of the Treaty, into a very broad mandate and complex role, which matches, with a few exceptions, those of its Member States, the notable one being defence. The former Commission's President Barroso declared in 2007 on the occasion of the 50th anniversary of the EU that its "new raison d'etre" is to help Europeans prosper in a globalised world (Barroso 2007). Less than 20 years earlier, the EU was primarily seen as a regional integrational entity among a relatively small number of participating countries tearing down the wall that separated them and prevented their economic and political integration, the EU's external policy being essentially a sub-product of this internal consolidation (Sapir 2011:vii). With globalisation, this internal integrating approach to the Single Market was losing its relevance and consequently the EU's external policy acquired a new importance and dimensions, which needs to be taken into account in consolidating the fragmented character of the governance of the EU's external policy, including its economic aspects.

In the twenty-first century, societies with different and complex cultural identities and beliefs are forced to closely interact. In the EU Member States just as in any ENP country, discussion is taking place on what will be the political as well as methodological response to the challenges in the EU external relations and changing EU Neighbourhood Policy. The ENP is an important EU policy representing soft power instrument striving to bring democracy, stability and prosperity to the partner countries. In the last several years, the ENP has produced somewhat mixed results and has been a disappointment in some cases. Structural policy weaknesses and different socio-economic realities in the ENP countries notwithstanding, the major challenge to the successful implementation of the ENP comes from the Russian external policy as related to its geopolitical role in its shared neighbourhood with the European Union.

2 The EU'S Soft Power and Conditionality Towards Eastern Partners

The EU's relationship with its neighbourhood is based on soft power principles, which cover the overall sphere of EU's and partner countries' interests. Closer cooperation between the EU and its Eastern European partners—Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine—is a key component for the EU's external relations; as the EU has expanded, these countries have become closer neighbours, and their economic and social development influence the economies in the EU.

The EU aims to promote democratic values and support its Eastern neighbours in implementing, for example, the rule of law and adapting European high-quality standards for trade. The implementation of far-reaching reforms in the partner countries is undoubtedly a positive development. In addition, greater freedom of movement (visa-free travel) would go a long way towards empowering young people in the Eastern neighbourhood and Caucasus countries as well as encouraging exchange with their peers in the EU.

The EU has signed Association Agreements (AAs) on 27 June 2014 with Georgia, the Republic of Moldova and Ukraine (European Commission 2014). The AAs are aiming at political association and economic integration of ENP countries with the EU. The AAs could have strong impact on the ENP countries' economies and societies to bring these countries closer to EU standards and norms. The AAs comprise three general chapters: Common Foreign and Security Policy, Justice and Home Affairs, the Deep and Comprehensive Free Trade Area (DCFTA). The chapter Deep and Comprehensive Free Trade Agreements (DCFTAs) covers environment, transportation, science and education; it is more than a classical free trade agreement. It concerns the liberalisation of trade and harmonisation of trade-related legislation of a country with EU standards and the *acquis communautaire*. In addition, before an AA is signed, a country has to gain a membership in the World Trade Organization (WTO) and to become a part of the multilateral trade agreement, which is a precondition for entering and completing negotiations on the DCFTAs. Consequently, Azerbaijan and Belarus, which are not members of the WTO, cannot negotiate the DCFTA with the EU.

The AAs and DCFTAs are aiming at political association and economic integration of ENP countries with the EU. These countries have to adopt 350 EU laws, EU standards and norms—within a 10-year time frame.

Opening the markets through the progressive removal of customs tariffs and quotas, harmonising laws, norms and regulations in various trade-related sectors will make this possible. Signatories of DCFTAs have access to the EU's 500 million consumers and a market with a combined economy of 12.9 trillion euros (European Commission 2014).

Structural and economic reforms in the region are a prerequisite for meeting the conditionality posed on the ENP countries by the EU. However, a challenge in this process is that the requirements demanded of neighbouring states are often similar to those placed on prospective Member States, but without the incentive of eventual EU membership.

3 Structural Reforms or Uncertain Prospects of Economic Convergence

As result of a structural crisis in the socialist system, and following the disintegration of the Soviet Union in 1991, the countries of ENP became independent states: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.

Following the regaining of independence, a nation-rebuilding process has started; institutions for the functioning of a nation had to be established. This involved new major political and economic transformation that had to ensure transition to democracy, the rule of law, functioning market economy and integration of these countries in international political and economic environment.

Institutional changes in transition from a central-planned to a market economy were based on introduction of a liberal economic policy, followed by the recommendations of the international financial institutions. Institutional reforms, privatisation and restructuring of large enterprises in all branches of national economy, radical fiscal reform, supported by the reform of tax policy and tax administration, as well as the reform of the budgetary process, have been carried out according to a "policy package" suggested by the "Washington institutions" policy (Blejer and Skreb 2002). The key fundamental recommendations of the International Monetary Fund (IMF), related to the establishment of a rigorous macroeconomic framework, have been implemented by the mid of 1990s and thus completed the first-generation reforms.

The assessment by the IMF shows that despite the diversity of the conditions of the countries in Eastern Europe (Belarus, Moldova and Ukraine), complexity and complementarity of reforms as well as their low speed in Armenia, Azerbaijan (a resource-rich country) and Georgia (which are considered in the groups of Caucasus and Central Asia (CCA) Region countries by IMF and the World Bank (WB) have made significant achievements in transitioning to market economies and laying the foundation for sustained growth since their independence in 1991. Almost all Eastern European countries (EEC) and CCA countries now have functioning key macroeconomic institutions (central banks and ministries of finance) and have completed many reforms—such as the privatisation of small and medium firms, price liberalisation and exchange rate unification—to enable the establishment of market economies. Countries, with the exception of Ukraine, show positive GDP growth in 2014, confirming confidence in completing first generation market reforms. The exception of Ukraine could be explained by the external and internal conflicting environment; however, according to the forecast of the WB growth is expected in 2015. Success in rising income per capita has varied across countries and seems tied to natural resource endowment (see Table 1).

The countries of the Regions have benefited from improvements in the total factor productivity (TFP); the World Bank surveys show that since 1990, TFP growth has surged in the CIS region, including countries of DCFTAs with the EU.

This is mainly a reflection of the growth rebound in these countries from the deep economic dysfunction of the 1990s. The sources of growth have varied

Table 1 Macroeconomic indicators in the ENP countries, 2014

	GDP growth (%)	GDP per capita $	GDP per capita PPP	Inflation	Public debt (% of GDP)	Unempl.	GDP Bn $	Current account balance
Georgia	4.8	3918	8223	3.1	33.6	12.4	16.5	−7.8
Moldova	4.6	2280	5091	5.1	28.0	5.8.	7.9	−4.8
Ukraine	−6.5	2979	8240	12.2	67.6	10.0 (2014)	131.8	−2.7
Belarus	1.5	8712	18,184	18.1	31.5	0,5	76.1	−6.3
Azerbaijan	2.0	9033	17,515	1.4			75.2	9.8
Armenia	3.4	3475	8137	3.0	42.5 %	17.9	10.8	−7.2
Russia	0,6	14,113	25,635	7.8; June 2015-15.3	17.92	5.6	1800	3.2

Source: World Bank (2014)

substantially between the countries; the economic growth has been driven mostly by commodities and labour exports, reflecting the highly undiversified economies of most EEC and CCA countries.

In the future, the countries should make substantial efforts to achieve stable and sustained growth through the pursuit of reforms that would allow many of these countries to join the world's dynamic emerging markets.

A comparative situation in the EEC countries and Caucasus related to the business climate reforms is shown in Fig. 1, representing the world ranking of EEC and CCA countries out of 189 economies (World Bank, Doing Business 2014). Advanced developments in the business environment have been essential in Georgia and Armenia. Much less progress has taken place in Ukraine, Moldova and Belarus.

According to the International Institutions, reforms remain limited in all EEC and CCE, with the exception of Georgia (IMF; EBRD 2014), in the financial sector and banking, insurance and capital markets, which are critical areas for investments inflows. Reforms are still needed to improve infrastructure of roads, railways and urban transport. In order to enhance long-term competitiveness, the countries need to accelerate reforms of the juridical systems and of the civil service. Other areas of reforms are eradication of corruption; support for SMEs; increased spending on health care, research and education; and improvements in labour skills. Also, jobs in these countries are mainly in low-productivity occupations. These constraints are compounded by deficiencies in the higher education system, which worsen skill mismatches. Furthermore, lack of flexibility in labour market regulations makes it difficult for firms to hire workers and slow the pace of the relocation of workers.

Countries of DCFTAs are mainly labour-intensive agricultural countries. In labour-intensive countries such as Georgia, Moldova and Ukraine, a shift from

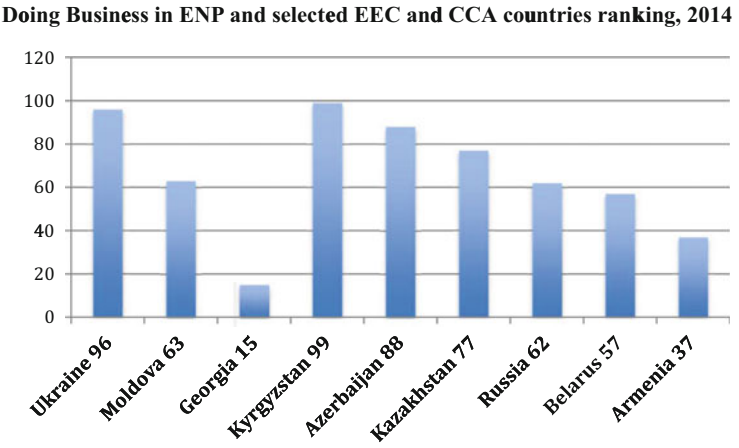

Fig. 1 Doing business in ENP and selected EEC and CCA countries ranking, 2014. *Source*: World Bank, Doing Business (2014)

large-scale collective farming to small-scale individual farming caused dramatic gains in technical efficiency but relatively small losses in scale efficiency.

The increase in labour productivity in the agricultural field would release labour force for industries and services in the Region (World Bank 2014) (Table 2).

Reducing constraints and improvements of governance and institutional framework would be helpful for these countries to become dynamic emerging economies (Table 3).

Role of Remittances in the Region Remittances are an important source of income for the countries of ENP and in particular for Moldova and Armenia.

Russia is the primary destination for labour migration in the Region, an important source of growth and of external financing. Remittances' role is important in their impact on the country's current account balance, household consumption and poverty dynamics. In Georgia and Moldova, as well as Armenia, about 2/3 of remittances come from Russia. Thus, these counties are vulnerable to dislocations in the Russian labour market and are a subject to economic situation in Russia.

ENP countries have to facilitate openness of trade relationship between ENP countries and with EU, which would serve to develop and diversify their economies.

The EU should emphasise implementing the DCFTAs with Ukraine, Moldova and Georgia, and the case for benefits for the EU should be made as well. Fight against corruption, international and transnational crime, as well as promotion of tourism can lead to gains in short- and medium-term perspectives.

Table 2 GDP composition by sector in ENP countries and Russia, 2014

Country	Agriculture	Industry	Services	Labour force in agriculture (%)
Georgia	8.5	21.6	69.9 (2013)	52
Moldova	13.8	19.9	66.2	26
Ukraine	9.9	29.6	60.5	17
Armenia	20.6	37.3	42.1 (2013)	39
Belarus	9.2	46.4	44.7	9.4
Azerbaijan	6.2	63.0	30.8 (2013)	38
Russia	4.2	37.5	58.3	9.7

Source: World Bank (2014)

Table 3 Remittances in GDP in ENP countries, 2014

Country	Personal remittances, received (% of GDP)
Georgia	12.0
Moldova	26.1
Ukraine	5.6
Armenia	19.0
Azerbaijan	2.5

Source: World Bank Indicators (2014)

4 Benefits for Cooperation

Intra-Regional Cooperation Between ENP Countries Regional cooperation is considered as an important instrument for promoting economic growth. Furthermore, an increased specialisation in EEC and CCA countries could generate more trade, which can provide opportunities for small, poor and especially inland economies—some of them are DCFTAs countries. However, as discussed above, most EEC and CCA countries do not have the required number of skilled workers, local financial capacity or ability to sustain clusters of suppliers and complementary services. In addition, economic cooperation among countries with shared borders facilitates the creation of larger markets to increase efficiencies and economies of scale by reducing barriers to trade, capital and labour mobility. Lack of regional cooperation is a constraint for the development of growth-facilitating infrastructures.

Cross-border cooperation facilitates the development of regional infrastructure networks supporting trade and permitting the efficient management of cross-border spillovers. This is particularly important for inland and transit countries such as Armenia and Georgia to have access to the other countries of the Region and integration within the global markets. The geography of the ENP countries presents some interesting challenges more specifically in relation to Georgia (see Box 1).

Box 1: Location of Georgia
Its location is the best asset of Georgia, and this is what Georgia can offer to Europe. Today, the strategic location of Georgia is very important in many aspects; if one thinks about Azerbaijan, which is an oil-and-gas-rich country, there is no way they can sell their products to Europe without the help of Georgia. The big value of Georgia to Azerbaijan is that Azerbaijan needs Georgia to export commodities without being dependent on Russia. To a certain extent, the stability and the future of Georgia depend very much on the strength of Azerbaijan. Georgia is also the route to arrive to Central Asia, Kazakhstan and even China, coming back to the years of the Silk Road.

Increased regional economic cooperation should also allow, for example, CCA countries to support growth through enhanced energy and water security and possibly to enable progress on long-standing conflicts and tensions; however, while the countries of these EEC and CCA Regions have made progress in integrating with the rest of the world, intra-regional trade has yet to expand. Despite rapid economic growth, the share of intra-regional trade relative to the Regions' overall global trade dropped significantly over the past two decades (Seok Hyun Yoon in *Regional Economic Outlook: Middle East and Central Asia IMF*, 2014, p. 92). This lower and decreasing intra-regional trade in the CCA contrasts with that of the gradually rising figure among the Association of Southeast Asian Nations (ASEAN) countries.

It is also important to have an institutional partnership between countries to speak with one voice with much strong political powers outside the Regions. In this context, the Baltic States can serve as an example as they have some similarities with countries of the Caucuses—geographically diametrically opposed borders with Russia. However, the Baltic States in dealing with Russia have the advantage of being Members States of the EU. The Caucuses countries in the other end of Russia do not have strong institutional partnership among themselves to speak on behalf of them in discussions with Russia.

Legacy of Cooperation Between of EEC and CCA Countries with Other Regional Partners Several institutions have been put in place to promote regional cooperation between EEC and CCA countries. Initially, the Commonwealth of Independent States (CIS) was established in 1991 to maintain open borders, trade, transport and capital mobility between the republics of the former Soviet Union. The Eurasian Economic Community was established in 2000 and has started developing regional cooperation. Notwithstanding the above-mentioned institutional efforts, progress on regional cooperation has been slow. The process of a customs union creation was started in 2010 with an Agreement on the Customs Union between the Heads of the governments of Russia, Belarus and Kazakhstan (later renamed the Eurasian Customs Union). The Eurasian Customs Union came into force on 1 January 2010 and led to the formation of the Common Economic

Space on 1 January 2012, with the aim of implementing four freedoms (goods, capital, services and people). Further steps were taken on May 29, 2014, when leaders of Russia, Belarus and Kazakhstan signed an Agreement to create an alliance for free trade and coordinating important economic policies.

The Eurasian Economic Community was renamed on 1 January 2015 with the launch of the Eurasian Economic Union (EAEU). Armenia and Kyrgyzstan joined the EEU in 2015. Currently, the Eurasian Economic Union (EAEU) focuses mainly on the Eurasian Customs Union (ECU). The creation of the EAEU formally closes the process of forming the institutional bases for the integration process.

Since 2012, the Eurasian Economic Union (EAEU), as well as a Customs Union, has been run by the *Eurasian Economic Commission*, which represents a permanent regulatory body.

The main institutions that constitute the EAEU are the following:

1. *The Supreme Eurasian Economic Council*—it is the EAEU's highest body (at the presidential level) and unanimously defines the directions of co-operation. Its Decisions prevail over the Decisions of the Eurasian Intergovernmental Council, and the Decisions of both these institutions prevail over the decisions of the Commission.
2. *Eurasian Economic Commission*—it consists of a Council (a political organ made up of the five deputy prime ministers, which acts in a supervisory role) and the College (an executive body). The Commission's Council adopts its Decisions by consensus, while the College does so by a qualified majority of two-thirds of the votes, with the exception of so-called sensitive subjects, for which unanimity is required (the Supreme Eurasian Economic Council defines the list of sensitive subjects). Each Decision of the Commission is taken by a qualified majority of votes (Article 18 Treaty on the Eurasian Economic Union).
3. *Eurasian Intergovernmental Council* at the prime ministerial level—it is to supervise the implementation of the Treaty's provisions and of the Decisions taken by the Presidents.
4. *The Court of the Eurasian Economic Union*—it is in charge of resolving disputes and guaranteeing the parties' compliance with the agreements signed.

The EAEU institutions continue to privilege national over supranational decision-making. For example, the Eurasian Commission enjoys limited supranational powers because the Commission decisions can be vetoed by one country at the level of ministers/heads of states (Sean et al. 2014).

Currently, the decision-making practice of the Eurasian Economic Union cannot be seen as similar to that of the European Union as the decision-making processes are different; for the Eurasian Economic Union, it is based on the principle of unanimity. In addition, the history of European integration is a testament to the importance of convergence of Member States' interests at different stages of integration. This convergence will be even more salient for the Eurasian integration process, because so far it has been more reliant on initiatives and agreements between heads of state. The convergence of preferences in key policy areas (such

Table 4 Comparison of population and GDP of Eurasian Economic Block in 2014

Countries	Population	Share of population in %	GDP per country bn	Share of GDP in %
ECU	179.3	100	2106.5	100
Armenia	2.9	1.6	10.8	0.5
Belarus	9.6	5.4	76.1	3.6
Kazakhstan	17.2	9.6	212.2	10.0
Kyrgyzstan	5.8	3.2	7.4	0.4
Russia	143.8	80.2	1800	85.5

Source: Authors' calculation, World Bank data, 2014

as trade regulation) will therefore be a crucial factor in the progress of Eurasian economic integration (Blockmans et al. 2012).

The economic benefits of the Eurasian Economic Union (EAEU), as well as a Customs Union ECU, are not fully evident. The main reasons were and still are the unbalanced composition of this Union; disparity in the economic size of the largest state, Russia, and that of the other members of the ECU being greater than in any other regional economic grouping; and asymmetry of economic size (population and GDP) of the Member States (see Table 4).

Russia is the most important partner, accounting for 85.5 % of the bloc's GDP and 80.2 % of its population. The figures for Kazakhstan and Belarus are 10 % and 9.6 % and 3.6 % and 5.4 %, respectively. Armenia is accounting for 0.5 % of GDP and 1.6 % of population, while Kyrgyzstan is 0.4 % of GDP and 3.2 % of population.

Decisions of the Commission are binding on the territory of the EAEU Member States; the Commission sets key rules for the Customs Union and is tasked with handling Russia's trade relations with third countries and relations with the WTO on behalf of all partners. The far-reaching adoption of Russian custom tariffs in 2010 resulted in an increase of tariffs in external economic relations for Belarus and Kazakhstan in the first instance. With Russia's accession to the WTO in 2012, the tariffs of the Union have been reduced, as Russia's arrangements with the WTO are applied for the Union as a whole (Eurasian Commission 2014).

Within the Customs Union, most internal trades have been liberalised (barred certain sectors like sugar, tobacco, alcohol or rice), and since July 2011, border controls between its members have largely disappeared. Conversely, controls were stepped up on the borders with its direct neighbours in the CIS, which opted to stay out of the EAEU. The immediate impact of the Customs Union on members was an increase in the external tariff in many sectors in Kazakhstan and relatively few other sectors for Belarus and Russia (Mkrtchyan and Gnutzmann 2013; Dreyer and Popescu 2014).

Kazakhstan, which had the most liberal trade before the ECU, faced an increase in import tariffs, which on average increased from 6.5 % to 12.1 % (Dreyer and Popescu 2014).

Although countries succeeded to eliminate all trade tariffs between them, non-tariff barriers hampering the trade still exist in the EAEU sanitary and phyto-sanitary measures and other technical regulations are considered to be essential cost-increasing barriers for the exporters. The Commission is in charge of harmonising the block's technical and sanitary standards, as the absence of shared and mutually recognised standards has proven to be a major obstacle to furthering economic integration (Eurasian Commission 2014).

In relation to the non-tariff barriers, the position of the World Bank is the following: sanitary and photo-sanitary measures and other technical regulations are essential; however, they represent cost-increasing barriers for the exporters.

However, internal trade grew in the following years after the establishment of the ECU. By 2011, intra-ECU trade share among member countries rose by 17 % compared with that in 2009. In the years before the establishment of the ECU, the amount of the internal trade between the establishing countries was about US$44bn, which grew and reached to US$62bn. by 2011 (Mkrtchyan and Gnutzmann 2013).

Under this customs union, the governments of the member countries are to implement programs aimed at harmonising technical regulations and introducing agreements of mutual recognition, although there is no significant progress in this sector (The World Bank Report 2012).

Designed with the hope of eventually guaranteeing the free movement of capital and labour, the Eurasian Union is expected to have a say in the macroeconomic, financial, competition and energy policies of its members.

The above considerations show that the EAEU is economically unbalanced, politically it has one-country dominance and decision-making process is not very efficient. The short-term economic benefits and welfare gains are assured; however, the log-term benefits are not obvious. All steps taken by governments towards further integration of countries into the Single Economic Space has not been perceived as absolute value by the general population in the CIS countries. There is a mitigated view in the public opinion about the freedom of movement of goods, capital and labour, which justifies that specific human dimension about integration is not taken in consideration as part of advocacy for integration (Zadorin et al. 2015).

Potential for Increased Prosperity The EU is mostly a union of middle-size and small countries, so it demonstrates more homogeneity in terms of size of populations, territories and economies than the members of the EAEU. The immediate benefits for the former CIS countries that are signatures of the DCFTAs will be economic and social as the three countries Georgia, Moldova and Ukraine gain access to the EU's market. This agreement gives to the partner countries an opportunity of economic integration and benefits, which contributed to the rapid development of western economies. The countries gain an access to modern and sophisticated technology, which is necessary for modernisation and development.

DCFTAs also bring benefits from the EU's investments to these economies (European Commission 2014). Other benefits relate in particular to trade effects; they concern essentially welfare benefits. Trade effects (trade creation or trade diversion) are based on the structure of economies and countries' competitiveness versus complementarity.

Challenges in trade benefits are closely linked to regulatory matters and regulatory competition: internal versus external. The EU cuts import tariffs for all three countries as part of a phased-in opening of markets on both sides. The removal of the EU import tariffs will occur in the first few years following the Agreement. In addition to lowering tariffs, the European Commission will assist these countries in bringing their products up to EU quality standards, which will speed their access to the European market. However, Georgia, Moldova and Ukraine will go more slowly in cutting their tariffs on imports from the EU in order to protect some fragile sectors from competition. The AAs/DCFTAs aim at boosting bilateral trade in goods and services between the EU and Ukraine by progressively cutting tariffs and by aligning Ukraine's rules with the EU's in selected industrial sectors and for agricultural products. The EU will open its markets to Ukrainian goods within 7 years, while Ukraine will have up to 10 years to open its market to EU goods—and up to 15 years for Ukraine's vulnerable auto sector. In the DCFTA, Ukraine has committed itself to harmonising a large number of rules, norms and standards in a number of trade-related areas with those of the EU. These areas are competition, public procurement, trade facilitation, protection of intellectual property rights and trade-related energy aspects.

When the reforms following from the AAs/DCFTAs are completed, it is expected that Georgia will have a 4.3 % growth per year (€292 million in national income). Independent economic research suggests that Moldova's participation in the DCFTA will boost its GDP by 5.4 % annually, exports to the EU by 16 % and imports from the EU by 8 %. For Ukraine, the DCFTA as a whole is expected to boost Ukraine's national income by €1.2 billion per year, and Ukrainian exports to the EU are expected to increase by €1 billion per year. Sectors that would benefit the most are wearing apparel and textiles, food products, vegetable oil and non-ferrous metals. New market opportunities in the EU and higher production standards will spur investment, stimulate the modernisation of agriculture and improve labour conditions (European Commission 2014; Vinhas de Souza 2011, pp. 1–5).

Core reforms resulted from the AAs/DCFTAs are foreseen in a number of key areas besides the trade-related ones. They focus on economic recovery and growth issues, consumer protection and vital sectors of national economies such as energy, transport, environmental protection and industrial development. The reforms are aimed at improving public governance, justice, law enforcement, social development and protection. The AAs of the EU with Georgia, Moldova and Ukraine are the prelude for the development of a deeper dimension in international relations, both for the EU and the countries concerned, with significant human implications. The need to increase the knowledge and understanding of the EU among the

population and in particular the youth not only is essential in the EU Member States, but also it should be a high priority for the European Institutions and those interested in the European Union in the ENP countries. Compliance with the WTO rules due to the low tariff barriers will have limited effect in the countries.

ENP Cooperation with EU Versus EAEU Both the EU and Russia are offering the ENP countries to join their respective (and mutually incompatible) trading blocs with different conditionalities.

Russia is currently imposing trade restrictions on Moldova, Georgia and Ukraine, as well as cancellation of the agreement on a Free Trade Area within the CIS and raising customs tariffs for these three countries from zero level to the level of "most favored nations" agreed with WTO. Furthermore, Russia has threatened to take a series of retaliatory steps that include stricter veterinary and phytosanitary controls that could lead to serious limitations in the movement of foodstuffs; cancellation of the simplified procedure for citizens of Ukraine, Moldova and Georgia entering Russia; restrictions on employment in Russia for citizens of Moldova, Ukraine and Georgia; political guidance to Russian business to reduce or stop investing in Ukraine, Moldova and Georgia.

The EU has to seek ways to better engage with Russia and avoid the scenario whereby ENP countries are being split and forced to choose between East and West. According to the EU, both the DCFTAs and ECU are free trade zone agreements, and they should not create any tension in trade relations. The EU currently does not seem to be ready to start negotiations with the entire ECU and EAEU.

5 Conclusion

EU relations with ENP countries offer many substantial benefits to both sides. In order for these to become reality, the EU should improve and reconsider the way it approaches its ENP partners. In the relations of the EU with the ENP countries, the following pillars should be considered: political, economic as well as civil society. The economic pillar will be effective if there is a support of the civil society and therefore there is a need to understand what the EU is and what is entailed by the integration with the EU. The content of studies of the EU must be regularly adapted to these constantly changing realities.

The EU benefits from the cooperation with the region of ENP as this region has inevitably become more important due to the new borders of the EU to the East and the emergence of the Eurasian Economic Union as an ambitious regional grouping. The political elite of ENP countries see the AAs/DCFTAs from political and security perspectives as the DCFTAs' material occupies the largest part of the AAs, since indeed it is deep and comprehensive in content.

The EU support requires some conditionality and the need for an increase of economic efficiency and productivity in the regions of Eastern Europe and Caucasus as a precondition for the prosperity and security of countries and of the regions.

ENP countries' integration with the EU market requires continued implementation of the second-generation reforms that assure macroeconomic stability and support countries of the region to become strong emerging economies. These reforms should be supported by the civil society. The task of bringing the economies of the ENP up to par with the economies of the EU Member States is a major task. The experience of previous accessions has demonstrated that EU standards are more readily adopted by candidate states to the EU when there is a clear benchmarking process in place and there is regular reporting on the progress of aspirant countries by the European Commission.

The EU's soft power also requires the development and support of civil society in the neighbouring states; the role of civil society is essential.

If political elites in the Eastern neighbourhood show reluctance to political and economic reforms, the door and the dialogue with civil society, students, academics, businesses must be kept open and enhanced.

The EU must engage its Eastern neighbours as equal partners to affect positive change in its own neighbourhood. If the EU cannot demonstrate this commitment, it cannot ever be viewed as a world power demonstrating the limitations of the EU's soft power in the East, important for the future of EU foreign policy.

The experts in political economy of regional integration already involved in European Union research should be encouraged to become interested in the ENP aspects of their subjects. Such an approach should be progressively extended to other countries with which the EU will conclude similar agreements in the future.

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Information Society Goes East: ICT Policy in the EU's Eastern Partnership Cooperation Framework

Olga Batura and Tatjana Evas

Abstract This chapter analyses how ICT policy is reflected in the Eastern Partnership (EaP) framework and what governance instruments it employs. The analysis is based on the review of relevant policy and legal documents. The contribution traces stages of the development of the ICT policy in the EaP framework from 2009 to early 2015. The analysis indicates that the ICT policy develops in stages. Each subsequent policy programming cycle extends and expands the ICT issues across various spheres of the EaP. Thus, the ICT policy is becoming increasingly important and a mainstream policy area in the overall EaP. The chapter argues that the enhanced ICT cooperation within the EaP is linked to the growing significance of ICT in the EU internal policies promoting the Information Society and Digital Single Market. The main argument of this chapter is that to further strengthen cooperation in ICT matters within the EaP, the EU should focus on the greater involvement of stakeholders of different levels, the dissemination of information and best practices, the promotion of cooperation between the EaP partners and more flexibility through the use of various policy and governance instruments in the EaP toolbox.

O. Batura (✉)
Leuphana University of Lüneburg, Lüneburg, Germany

European Humanities University, Vilnius, Lithuania
e-mail: batura@leuphana.de

T. Evas
University of Bremen, Bremen, Germany

Tallinn Law School, Tallinn University of Technology, Tallinn, Estonia
e-mail: tatjana.evas@ttu.ee

T. Kerikmäe, A. Chochia (eds.), *Political and Legal Perspectives of the EU Eastern Partnership Policy*, DOI 10.1007/978-3-319-27383-9_4

1 Introduction

The Eastern Partnership (EaP) was launched in 2009 with the main aim[1] to create necessary conditions to accelerate "political association and economic integration" with the EU's neighbours to the East: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. A regional enhancement to the European Neighbourhood Policy (ENP), the EaP is conceptualised as a proactive policy on the EU's part addressing and supporting the efforts of the partner countries to come closer to the Union.[2] With the accession of the partner countries explicitly off the table, the main "carrot" of the ENP and EaP for the participating countries is a full access to the EU single market.

Contemporary notion of the EU single market necessarily covers a dimension of information and communications technologies (ICT). Their significance for the global competitiveness of the EU's economy has been underscored numerous times and found its expression in the Digital Agenda for Europe (DAE)[3]—an extensive strategy aimed at maximising the social and economic potential of ICT for smart, sustainable and inclusive growth. The DAE encompasses seven ICT-driven or ICT-related initiatives that shall make EU's economy fit, innovative and productive for the twenty-first century: (1) creation of a Digital Single Market; (2) interoperability and standards for ICT products; (3) enhancing trust in and security of ICT; (4) provision of fast and reliable infrastructure; (5) enhancing research and innovation; (6) spreading digital literacy, skills and inclusion; and (7) use of ICT for broader societal issues (environment, culture, transport, etc.).

In order for the EaP partner countries to benefit fully from the eventual stake in the EU internal market, the EaP framework should incorporate actions and initiatives in all these areas. In this context, the aim of this chapter is to analyse how and what ICT policies are reflected in the EaP framework and its individual instruments. To this end, the chapter examines relevant policy and legal documents, as well as their implementation in a historical perspective and, on their basis, in Sects. 2–4 maps out several stages of the policy development that indicate the growing importance and mainstreaming of the ICT issues in various spheres of the EaP. Section 5 discusses the latest policy developments launched by the new Commission that set ICT matters, in particular the completion of the Digital Single Market, high on its agenda. The chapter concludes with Sect. 6 summarising main findings of the research and making policy recommendations.

[1] Council of the European Union. Joint Declaration of the Prague Eastern Partnership Summit, 7 May 2009.

[2] Communication from the Commission to the European Parliament and the Council. Eastern Partnership. COM(2008) 823 final of 03.12.2008, Brussels, p. 1.

[3] Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, A Digital Agenda for Europe, COM (2010) 245 of 19.05.2010.

2 First Steps: 2009–2011

Initially, cooperation in ICT matters within the EaP was intended in the economic context. The multilateral cooperation framework suggested by the Commission in its proposal on the EaP[4] was to provide a setting for a structured approximation process to allow for legislative and regulatory convergence of the partner countries with the EU. A thematic platform on economic integration and convergence with EU policies was to support the achievement of a long-term objective of a Neighbourhood Economic Community, modelled after the European Economic Area, and a full access to the EU's single market.[5] The existence of a reliable and modern infrastructure is a necessity for such projects; therefore, interconnection of partners' telecommunication networks—both among themselves and with the EU—as well as deployment of advanced communication networks, was to be facilitated and promoted.[6]

The implementation of the EaP with regard to ICT took, however, a different turn. In 2009, the multilateral thematic Platform 2 "Economic integration and convergence with EU policies" focused on trade and trade-related regulatory cooperation and on environmental issues but not on services, e-commerce or infrastructure.[7] Cooperation in ICT-related matters was moved to the thematic Platform 4 "Contacts between people"—a choice that is difficult to explain.

Platform 4 has dealt with mobility of students, teachers and researchers; cultural policies; mobility and vocational training of youth; cooperation and capacity building in research and has had as its main objective the integration of the partner countries into the relevant EU programmes and initiatives. Cooperation in ICT matters fitted only partially into this framework. In particular, the work programme for 2009–2011[8] envisaged activities reminiscent of cooperation for regulatory approximation. It was proposed to set up a dialogue on the development of the Information Society within all Eastern partners, which would include the promotion of the EU regulatory approach, international cooperative research in ICT, bridging the digital divide and managing global information and ICT issues (for instance, Internet governance). As an initial step, an event for the regulators of electronic communications in the EaP countries was suggested in order to inform them about the review of the EU framework and to explore the benefits of regional regulatory

[4] Communication from the Commission to the European Parliament and the Council. Eastern Partnership, COM(2008) 823 final of 3.12.2008, esp. at pp. 8–9.

[5] Communication from the Commission to the European Parliament and the Council. Eastern Partnership, COM(2008) 823 final of 3.12.2008, p. 10.

[6] Communication from the Commission to the European Parliament and the Council. Eastern Partnership, COM(2008) 823 final of 3.12.2008, pp. 10–11.

[7] Commission Report to the meeting of Foreign Ministers. Implementation of the Eastern Partnership in 2009. Meeting doc. 319/09 of 1.12.2009, pp. 6–7.

[8] Eastern Partnership. Platform 4 "Contacts between people". Core objectives and proposed Work Programme 2009–2011. Available at http://eeas.europa.eu/eastern/platforms/docs/platform4_261109_en.pdf.

cooperation. Moreover, several EaP regulators requested EU support for regulatory cooperation in the region.[9]

Therefore, from the inception on, cooperation between national regulatory authorities (NRAs) of the EaP countries and the EU has become one of the central topics under Platform 4. In 2010–2011, three workshops[10] were held bringing together NRAs and the EU-level agency called Body of European Regulators for Electronic Communications (BEREC). At the last meeting in Barcelona, REGULATEL (Latin American Forum of Telecommunications Regulatory Authorities) was present to share its experiences in broadband promotion, spectrum management, roaming, the future of universal service and the role of NRAs in liberalised market. These events, as well as continuing work on mapping of ICT stakeholders and actors and enhancing the ICT policy dialogue, indicated the necessity of a deeper, more regular and formalised cooperation between the regulators.

Under Platform 4, cooperation in ICT matters in relation to education and research was started, which corresponded better to the theme "Contacts between people". Besides mobility, the main activities of Platform 4 focused on the mapping of ICT actors, identification of research potential and priorities in the EaP region, relevant training and assistance to the research actors and enhancement of the ICT research policy dialogue.[11] Platform 4 was also aimed at modernisation and reforms in the relevant fields in EaP countries and should support activities that introduce an electronic (or digital) dimension in the field of research and education and promote the development and usage of ICT infrastructure and services.[12]

In 2009–2011, the EaP did not offer its own initiatives in this regard. Rather, it built on, enhanced and played a role of an umbrella for the already existing regional cooperation and collaboration programmes. It encompassed the Black Sea Interconnection Initiative (BSI), its follow-up High-Performance Computing Infrastructure for South East Europe's Research Communities (HP-SEE) and the SEE-GRID eInfrastructure for regional eScience.[13] The BSI[14] aimed to introduce new technologies, networks and services for research and education in the countries of the South Caucasus and to connect them to the European Research Area and, in

[9] Eastern Partnership. Platform 4 "Contacts between people". Core objectives and proposed Work Programme 2009–2011, p. 11.

[10] See information at the website of the EU and EaP electronic communication regulatory platform: http://www.eapereg.eu/index.php/network/eapereg.

[11] Commission Report to the meeting of Foreign Ministers. Implementation of the Eastern Partnership in 2010. Meeting doc. 335/10 of 3.12.2010, p. 13; Joint Staff Working Document. Implementation of the European Neighbourhood Policy in 2011. Regional Report: Eastern Partnership, SWD(2012) 112 final of 15.5.2012, pp. 10–11.

[12] Eastern Partnership. Platform 4 "Contacts between people". Core objectives and proposed Work Programme 2009–2011.

[13] Commission Report to the meeting of Foreign Ministers. Implementation of the Eastern Partnership in 2010. Meeting doc. 335/10 of 3.12.2010, p. 13.

[14] For more information on the BSI, see http://www.increast.eu/en/441.php.

practical terms, to the backbone academic network GÉANT2.[15] The HP-SEE[16] was to develop and operate an infrastructure connecting high-performance computing facilities in the South East Europe, as well as to establish and maintain a link to GÉANT for the South Caucasus. The programme intended to foster regional and Europe-wide collaboration and develop advanced capacities for research in natural sciences. The SEE-GRID eInfrastructure for regional eScience[17] was to improve equal participation of the countries of South Eastern Europe and EaP in the European Research Area. Additionally to the development of regional academic networks and linking them to GÉANT, the programme supported access to the GRID—a distributed computing infrastructure providing processing and storage services for research.

In the first stage of the EaP implementation, two distinct directions of cooperation in ICT matters developed. On the one hand, the EaP was used to involve the partner countries in the EU programmes for research and education and to facilitate academic collaboration, exchange and mobility. This cooperation was partially in the sense of the initial EaP proposal as it aimed at the improvement and development of ICT infrastructure and interconnection of networks. However, in this respect the EaP did not offer a significant added value as it utilised the existing EU programmes.

On the other hand, cooperation between regulatory bodies was launched for the purposes of exchange of experience and best practices, which might ultimately aim at regulatory approximation and convergence. This cooperation answered to the needs of the EaP partners and seemed to be—at least to some extent—initiated and encouraged by them. The spontaneous, possibly even unexpected, interest of the partner countries in this topic could provide an explanation why this cooperation was pursued under Platform 4: in 2009, it was the only platform that dealt with the Information Society and ICT. This was a new aspect of cooperation that was not envisaged in this form at the inception of the EaP framework—even though the objective of regulatory approximation was set prominently in the context of the possible Deep and Comprehensive Free Trade Agreement. The ability of the EaP to accommodate such cooperation effectively proves its flexibility.

3 Expansion of Cooperation in ICT: 2012–2013

The growing importance of ICT and the necessity of an enhanced cooperation in the field were strongly emphasised at the end of 2011. Para. 17 of the Joint Declaration of the Eastern Partnership Summit in Warsaw in September 2011 states that "in the light of the increasing role of information and communication technologies in the

[15] For more information on the GÉANT2, see http://geant2.archive.geant.net/.

[16] For more information, see https://www.hp-see.eu/.

[17] For more information, see http://www.see-grid-sci.eu/.

democratization of societies the participants of the Warsaw Summit agree to enhance the liberalisation of electronic communications and welcome the work toward a network of Eastern Partnership electronic regulators".[18]

Following this announcement, two meetings of Platform 2 held in 2012 addressed cooperation in the field of ICT as one of the economic and trade issues,[19] and the EaP Regulators Network for electronic communication (EaPeReg)[20] was officially launched in September 2012.

The EaPeReg has developed into a main instrument of technical assistance in the field of ICT, and it lays foundations for a long-term cooperation between the EU and EaP countries and for regional cooperation between the partner countries.[21] It is a regulatory platform for technical and regulatory capacity building organised collaboratively by the EU (through BEREC) and EaP NRAs. The intermediary objective is to convey a better understanding of various complex regulatory issues in the area of electronic communications and Information Society in order to contribute to ICT development through making better regulatory decisions. To these ends, the EaPeReg acts in five activity fields:

1. exchange of experience and expertise;
2. promotion of best practices and, where appropriate, approximation of legislation;
3. monitoring of ICT market development and accompanying them regulatory framework in partner countries;
4. facilitation of information exchange with international organisations; and
5. contributing to the preparation of documents, reports, benchmarks, presentations, analyses and common positions at international meetings and workshops.

The EaPeReg's programme has a limited time horizon (2013–2014)[22] and consists of 10 thematic workshops on main regulatory issues under the EU regulatory framework: methodology of market analysis, costing methodologies, mobile and fixed termination rates, universal service obligation, quality of service and customer protection, roaming, broadband and new generation networks, accounting separation and regulatory audit, frequency assignment and digital dividend, and digital switchover. Additionally, national regulatory authorities of partner countries can request individual support on specific regulatory issues that were not addressed or could not be solved during the meetings and workshops.

[18] Council of the European Union, Warsaw, 29–30 September 2011.

[19] Joint Staff Working Document. Implementation of the European Neighbourhood Policy in 2012. Regional Report: Eastern Partnership, SWD(2013) 85 final of 20.3.2013, p. 14.

[20] See http://www.eapereg.eu/index.php/84-side-left/113-policy.

[21] See the Memorandum of understanding of the Eastern Partnership regulators network. Available at http://www.eapereg.eu/attachments/article/198/FINAL%20MoU%20on%20EaP%20Regulators%20Network_English.pdf.

[22] See the information on the project at http://www.enpi-info.eu/maineast.php?id=464&id_type=10 and http://www.eapereg.eu/index.php/project/about.

An additional momentum to the cooperation within the EaPeReg was given by the Joint Declaration of the Eastern Partnership Summit in Vilnius in 2013.[23] The Commission and the High Representative of the Union for Foreign Affairs and Security Policy identified five priority areas for the EaP following the summit.[24] Three of them—"Political association and economic integration", "Interconnections and networks" and "Connecting with people"—were directly relevant for cooperation in ICT. They further emphasised the necessity of close regulatory cooperation and promotion of related policies with a view to creating interoperable cross-border services.[25]

The cooperation under Platform 4 directed at development and use of ICT infrastructure and services in education and research and at involvement of the EaP partners in the EU's programmes continued very much along the same lines as during the initial phase.[26] Two developments, however, shall be pointed out. First, innovation was introduced as a new dimension of the modernisation and reform, and also of cooperation in research and education. A Common Knowledge and Innovation Space (CKIS) linked to the Europe 2020 Smart Growth initiatives and in particular the Innovation Union flagship initiative shall be further developed in order to facilitate integration of the EaP countries into the European Research Area.[27] Efforts of the EaP countries to improve regulatory aspects and the development of ICT infrastructures for education and research shall be supported in so far as they advance their implementation of CKIS and enhance their participation in the Horizon 2020 programme on research and innovation.

Second, the issue of the development of e-Infrastructure for research and education within the region and its connection to the GÉANT backbone gained in prominence. In 2013, the EaP research and education community consisting of members of EaP Governments, university professors and practitioners of research and education issued a joint declaration for strengthening ICT e-Infrastructure for the region.[28] Subsequently, a working group was established to elaborate an Eastern

[23] Council of the European Union, Vilnius, 29 November 2013.

[24] Joint Staff Working Document. Implementation of the European Neighbourhood Policy in 2013. Regional Report: Eastern Partnership, SWD(2014) 99 final of 27.3.2014, p. 3.

[25] Council of the European Union. Joint Declaration of the Eastern Partnership Summit, Vilnius, 29 November 2013, para. 18; Joint Staff Working Document. Implementation of the European Neighbourhood Policy in 2013. Regional Report: Eastern Partnership, SWD(2014) 99 final of 27.3.2014, p. 4.

[26] Joint Staff Working Document. Implementation of the European Neighbourhood Policy in 2012. Regional Report: Eastern Partnership, SWD(2013) 85 final of 20.3.2013, p. 18; Joint Staff Working Document. Implementation of the European Neighbourhood Policy in 2013. Regional Report: Eastern Partnership, SWD(2014) 99 final of 27.3.2014, p. 22.

[27] Joint Staff Working Document. Implementation of the European Neighbourhood Policy in 2013. Regional Report: Eastern Partnership, SWD(2014) 99 final of 27.3.2014, p. 4.

[28] The text of the Joint Declaration can be found at http://www.asm.md/galerie/Joint%20Declaration-final%20v2(1).pdf.

Partnership Interconnect (EPIC) proposal for connecting the region together and to the GÉANT network.[29]

At the end of 2011, one more dimension of cooperation in ICT matters was added to the EaP. Under Platform 1 "Democracy, good governance and stability", the panel on public administration reform opened the topic of e-government[30]—the usage of ICT for interaction within the governmental structure, between the government and citizens and between the government and businesses. The panel also adopted a Work Programme for 2011–2014[31] consisting of six thematic areas, one of which was e-government, which also includes data protection and information security policy and other.[32]

Cooperation in the ICT matters clearly intensified and expanded thematically but, at the same time, became more concrete and often precisely defined. The two directions of cooperation—regulatory and policy approximation, on the one hand, and greater involvement of EaP partners in EU programmes, on the other—became more evident. Arguably, the distinction corresponds thematically to the competences of the EU in the respective fields.

The interest and initiative of the EaP partners played a central role in these developments. In this context, the accent on targeting of ICT stakeholders—regulators, practitioners in the field of research and education—proved to be the right strategy of the EaP. They seem to fully accept the originally intended "joint ownership"[33] of the EaP and to have learnt the ways to efficiently use the EU's funding, training and assistance offers.

4 2014: Association Agreements as a Major Legal Tool of Cooperation

The year 2014 was arguably the turning point in the development of the EaP: in this year, Association Agreements (AAs) were added to the toolbox of the ENP/EaP as the most advanced form of cooperation aimed, disregarding the title, at the establishment of a Deep and Comprehensive Free Trade Area (DCFTA) between the EU

[29] Joint Staff Working Document. Implementation of the European Neighbourhood Policy in 2013. Regional Report: Eastern Partnership, SWD(2014) 99 final of 27.3.2014, p. 22.

[30] Joint Staff Working Document. Implementation of the European Neighbourhood Policy in 2011. Regional Report: Eastern Partnership, SWD(2012) 112 final of 15.5.2012, p. 12.

[31] The Work Programme of the Panel on public administration reform can be found under http://www.cscouncil.am/Draft%20PAR%20Panel%20Work%20Programme%20adopted%20061011.pdf.

[32] Joint Staff Working Document. Implementation of the European Neighbourhood Policy in 2013. Regional Report: Eastern Partnership, SWD(2014) 99 final of 27.3.2014, p. 20.

[33] Communication from the Commission to the European Parliament and the Council. Eastern Partnership, COM(2008) 823 final of 3.12.2008, p. 3.

and partner countries as a ultimate integration goal. Up to date, AAs were signed but not yet ratified with Georgia,[34] Moldova[35] and Ukraine.[36] Negotiations with Armenia were finalised in 2013, but the agreement was not signed due to the wish of the country to join the Customs Union with Belarus, Kazakhstan and Russia,[37] which is incompatible with the AA. Negotiations are ongoing with Azerbaijan,[38] while no agreement exists or is currently intended with Belarus.[39]

The AAs are the legal embodiment of the political declarations made by the EaP participants in Warsaw and Vilnius. Under the AAs, the EaP countries are to progressively liberalise both the establishment and trade in electronic communication services and to cooperate on electronic commerce. Progressive liberalisation shall be ensured by the inbuilt review mechanism: the Parties undertake a commitment to review the established legal framework regularly and to further address remaining obstacles through negotiations.

However, the real value added of the AAs lies in the detailed provisions on domestic regulation for several individual sectors, including electronic communications and e-commerce. Under the AAs, the EU and partner countries undertake to promote cooperation on the development of the Information Society for the benefit of citizens and businesses, in particular by aiming at facilitating access to electronic communication markets, encouraging competition and investment in the ICT sector.[40] Every AA foresees principles for the design of the domestic regulatory framework, at times quite extensive and detailed (see, for instance, the title of Sub-Section 5 EU–Ukraine AA). These sector-specific commitments, individual for each partner country, are contained in Annexes to AAs.

All requirements of the sector-specific commitments originate from the EU's legal and regulatory framework for electronic communications, and even their wording often remains the same as in the EU Directives. In this context, even though every single article starts with the words "the Parties shall ensure", it means that the partner country shall bring its legislation in compliance because EU Member States implemented the EU regulatory package of 2002 in their national

[34] Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, OJ L 261/4 of 30.8.2014.

[35] Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, OJ L 260/4 of 30.8.2014.

[36] Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, OJ L 161/3 of 29.5.2014.

[37] See country information under http://eeas.europa.eu/armenia/index_en.htm.

[38] See country information under http://eeas.europa.eu/azerbaijan/index_en.htm.

[39] Belarus participates only in the multilateral mode in the EaP. See country information under http://eeas.europa.eu/belarus/index_en.htm.

[40] See Arts. 324–325 EU-Georgia AA, Arts. 98–99 EU-Moldova AA and Arts. 389–392 EU-Ukraine AA.

law. This turns AAs into so-called asymmetric agreements with the EU exporting its regulatory model and partner countries adjusting to it.[41]

For example, similarly to Art. 3 Framework Directive on electronic communication services,[42] AAs[43] require the creation of an independent regulator for electronic communications that is legally distinct and functionally independent from any service provider. They further require an effective structural separation of the regulatory function from activities associated with ownership or control, if state ownership of or control over a supplier of public communication networks or services is retained. The AAs describe in great detail the powers NRAs shall be endowed with. For instance, according to AAs—and in line with the requirements of the EU Access Directive[44]—NRAs shall be able to curb market power of the incumbent in order to create a level-playing field for competitors, especially for new entrants, by imposing, for instance, the following obligations:[45]

- obligation of non-discrimination (compare Art. 10 Access Directive),
- for a vertically integrated undertaking—obligation to make transparent its wholesale prices and its internal transfer prices (compare to Art. 11 (1) Access Directive),
- obligation to meet reasonable requests for access to, and use of, specific network elements and associated facilities, including unbundled access to the local loop (compare Art. 12 (1) (a) Access Directive), and so on.

Just like all EU Member States, partner countries have to reform their competition law[46] and render it applicable to their electronic communication markets. Competition law shall become the primary instrument of market regulation in a broader sense with sector-specific regulatory intervention applicable to individual markets where effective competition cannot yet be developed due to historical market conditions. To this end, NRAs will identify relevant product and service markets that lack effective competition with the help of indicative lists contained in AAs. For the EU, the indicative lists naturally correspond to the Commission Recommendation on relevant product and service markets within the electronic

[41] The following overview of Association Agreements is largely based on Batura and Kretova (2015).

[42] Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, OJ L 108 of 24.4.2002.

[43] For provisions on regulatory authorities, see Art. 105 EU-Georgia AA, Art. 232 EU-Moldova AA and Art. 116 EU-Ukraine AA.

[44] Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities, OJ L 108 of 24.4.2002.

[45] Compare to the following provisions in Association Agreements under the EaP: Art. 107 - EU-Georgia AA, Art. 234 EU-Moldova AA and Art. 118 EU-Ukraine AA.

[46] See Arts. 203–209 EU-Georgia AA, Arts. 333–344 EU-Moldova AA and Arts. 253–267 EU-Ukraine AA.

communication sector susceptible to ex ante regulation in accordance with the Framework Directive.[47] Indicative lists for partner countries are different, however. For example, in the case of Ukraine the list is 17 markets long and is a copy of the previous version of the Commission Recommendation on relevant markets subject to ex ante regulation, which was in force immediately after the liberalisation of the market for electronic communications in the EU. Both indicative lists are subject to "regular revision" by each Party individually, although in the case of Ukraine such revision is linked to the approximation of its laws to the EU *acquis* (Fn 1 to Art. 116 (4) EU–Ukraine AA).

All AAs contain provisions on cooperation in the field of electronic commerce with the aim of its enhancement between the EaP countries and the EU. Even though the main body of AAs rather generally speaks of "maintaining a dialogue" and "exchange of information" on relevant legislation and its implementation,[48] Annexes list specific EU legal acts subject to approximation:[49] for instance, Directive 2002/58/EC on privacy and electronic communications, Directive 2000/31/EC on electronic commerce, Directive 1999/93/EC on a Community framework for electronic signatures. Moreover, all AAs ensure that service providers and operators of facilities of the transport layer of electronic communications do not bear responsibility for the content of the transmitted, hosted or cached communications and do not have an obligation to monitor the transmitted packages.[50]

Differently from association agreements leading to accession, the AAs under the EaP do not foresee complete alignment of laws and regulations of partner countries with all the *acquis communautaire*. Instead, AAs focus on the core issues of specific service sectors that are important for trade and economic relations between the Parties, in the first line. This is a reasonable approach—due to the differences in the level of economic development and considering the fact that partner countries are going to be eventually integrated into a much bigger and advanced European internal market. It is, therefore, to partners' benefit to adopt EU's standards; to modernise their legal system and economy, focusing on their strengths; to modernise the necessary infrastructure; and to support most progressive service sectors.

According to this approach, AAs name the exact provisions and/or specifies the exact issues to be borrowed from particular EU legal acts to be transposed into national legislation by the partner countries. It can be argued that provisions selected by AAs constitute the core of the EU legal and regulatory framework as they contain main notions and principles for the regulation of a specific sector. They

[47] Commission Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, OJ L 344/65 of 28.12.2007.

[48] See Art. 128 EU-Georgia AA, Art. 255 EU-Moldova AA and Art. 140 EU-Ukraine AA.

[49] See Annex XV-B EU-Georgia AA, Annex XXVIII-B EU-Moldova AA and Appendix XVII-3 EU-Ukraine AA.

[50] See Arts. 129–133 EU-Georgia AA, Arts. 256–260 EU-Moldova AA and Arts. 244–248 EU-Ukraine AA.

effectuate the adoption of the EU's system and logic in the regulation of electronic communication markets: leading role of strong competition law with corrective targeted intervention of a (strong) regulator to support or restore effective competition. Additionally, regulation and law should assume an enabling role and create conditions and incentives for competition by, for instance, strengthening users' rights, security of communications and data protection; introducing number portability; and ensuring efficient use of radio spectrum.

AAs foresee separate procedures to control approximation and implementation of laws.[51] In the first step, the appropriateness of implementation is evaluated (approximation) with the help of special cross-comparison tables (transposition tables). In the second step, national laws that have been classified as properly implemented by a competent European Commission service are assessed with regard to continuity of their application and adequacy of their enforcement. This is done on the basis of "adequate evidence" that includes sufficient administrative capacity, satisfactory track record of sector-specific surveillance and investigation, prosecutions and administrative and judicial treatment of violations. The described control procedure is triggered by partner countries: when a partner country considers that regulatory approximation in a particular sector (for example, ICT) has been achieved, it informs the EU, and the EU in cooperation with the country undertakes a comprehensive assessment of the approximation and enforcement of sectoral rules. The EU then reports to the Trade Committee, which is an executive body for the respective AA, whether all conditions are indeed satisfactorily fulfilled. If the report is positive, the Trade Committee may decide that the Parties shall grant each other internal market treatment with respect to the sector at issue.

In the context of the AAs, the existence of the partner's network of regulators for electronic communications, EaPeReg, gains a new significance and the continuation of its work is of utmost importance.[52] As a capacity-building facility and a place for exchange of experience and best practices, it becomes the key actor of regulatory approximation in the field of electronic communications. Lessons learned and knowledge and skills acquired via the EaPeReg might be decisive for the future granting of the full internal market treatment to the electronic communication sector. Therefore, a memorandum of understanding signed by the EaPeReg group with BEREC[53] in 2014 can provide a foundation for the necessary future technical support and cooperation. The above-indicated cooperation on issues of electronic commerce represents an important development in the cooperation on ICT matters within the EaP. It signifies a move from ICT infrastructure and carrier services up the stream to digital markets—markets that are based and dependent on

[51] See Arts. 450–453 EU-Moldova AA and Annex XVII EU-Ukraine AA.

[52] Association Agreements also promote cooperation of NRAs. See Art. 326 EU-Georgia AA, Art. 100 EU-Moldova AA and Art. 393 EU-Ukraine AA.

[53] Memorandum of Understanding between the Body of European Regulators for Electronic Communications (BEREC) and the Group of Eastern Partnership Regulators for Electronic Communications Networks and Services (EaPeReg Network), BoR (14) 125 of 26.09.2014.

the underlying electronic communications. In 2014, this has become a topic of interest within the EaP, and a new panel under Platform 2 was proposed by the EaP partners (or, rather, pitched to them by private actors[54]) to deal exclusively with harmonisation of digital markets (HDM).[55] The proposal of the HDM initiative draws heavily on the EU's Digital Agenda for Europe and argues strongly that cooperation in this area could boost economic modernisation in the EaP partners, increase their compatibility with the EU internal market and facilitate economic integration.[56] The HDM initiative stands for approximation and convergence of rules, standards and policies in electronic commerce, digital skills and adjacent areas (eCustoms, eIdentification, security and trust, eProcurement, etc.).[57]

The HDM proposal is in accord with the political guidelines set with regard to the EU Digital Single Market by the new Commission,[58] and it found strong support both from the EaP partners and from the EU Member States and the European Commission. Two workshops on HDM were already held on the topics of eCommerce, eCustoms and Digital Skills. Subsequently, in December 2014, an HDM study was launched to assess the harmonisation readiness in the EaP countries.[59]

Cooperation in ICT matters under Platform 4 still focuses on the provision and maintenance of high-bandwidth infrastructure for research and education and connectivity to the European Research Area. Yet in this field a qualitatively new engagement has been started as well. On the basis of the EPIC proposal mentioned above, the first proprietary EaP project was prepared by the EU and partner countries. The project called E@P.Connect[60] shall provide high-capacity connectivity between the partner countries' research and education networks and with

[54] For more information about the industry's role, see http://infopark-association.org/harmonizing-digital-markets-hdm-initiative.

[55] Joint Staff Working Document. Implementation of the European Neighbourhood Policy in 2014. Eastern Partnership Implementation Report, SWD(2015) 76 final of 25.3.2015, p. 13.

[56] Ministry of Foreign Affairs of the Republic of Belarus. Non-paper "Proposal for an Eastern Partnership Flagship Initiative 'Harmonising the EU's and Eastern Partners' digital markets". Available at http://infopark-association.org/sites/default/files/file_attach/Belarus%20MFA%20-%20HDM%20non-paper-official%20version.pdf.

[57] See presentations by the representatives of the industry association Infopark: http://eeca-ict.eu/images/uploads/Cluster_events/Networking_12Nov14_Baku/HDM_Initiative_Anishchanka_BY.pdf and http://infopark-association.org/sites/default/files/file_attach/Infopark%20HDM%20Initiative%20presentation%20-%20Brussels-2014%2005%2013.pdf.

[58] Juncker, Jean-Claude. A new start for Europe: My agenda for jobs, growth, fairness and democratic change. Opening statement in the European Parliament Plenary Session of 15.7.2014. Available at http://ec.europa.eu/priorities/docs/pg_en.pdf. See also the Mission Letters to the Vice-President Andrus Ansip and Commissioner Günther Oettinger, available at http://ec.europa.eu/archives/juncker-commission/mission/index_en.htm.

[59] Joint Staff Working Document. Implementation of the European Neighbourhood Policy in 2014. Eastern Partnership Implementation Report, SWD(2015) 76 final of 25.3.2015, p. 14.

[60] For more details, see http://www.ceenet.org/news/ceenet-geant-security-training-starts-in-serbia/.

GEANT. It is intended that E@P.Connect enables "the entire research and education community in the partner countries (2 million people) to participate in collaborative research activities on an equal footing with their European and global peers".[61]

5 2015: A Boost to the Cooperation in ICT Matters

While 2014 was described as a major turning point for the EaP in general due to the addition of a strong legal instrument—Association Agreements—to the toolbox of the policy, 2015 is likely to become a major booster to the ICT dimension of the EaP. As mentioned in the previous section, interest and initiatives of the EaP partners, especially the Harmonising Digital Markets initiative, were a timely fit for the political priorities of the Juncker's Commission. The Digital Single Market (DSM) is not just one of the 10 priorities on the agenda of the Commission. Now it has a very tight time schedule and is to be delivered by the end of 2016.[62] Cooperation with third countries is considered a necessary dimension of the DSM strategy if the EU wishes to preserve its first position as an exporter of digital services in the future.

In this spirit, at the beginning of 2015 several important events and activities took place that, arguably, laid foundations for future development within the EaP framework but beyond Association Agreements that will require an innovative use of the existing EaP instruments and the creation of new ones.

Following the Eastern Partnership Summit in Riga in May 2015 that underscored the significance of the ongoing projects (GEANT, E@P.Connect) and announced an establishment of a special Panel on Harmonising Digital Markets,[63] a special Eastern Partnership Ministerial Meeting on Digital Economy was held on 11 June 2015. The result of this meeting is, on the one hand, a serious enhancement of the existing programmes and projects. For instance, the Commission reports to have signed "a €13 million contract to expand connectivity in the Eastern Partnership countries" for research and development under the E@P.Connect project.[64] Furthermore, cooperation on electronic commerce will become more focused and precise and will cover a greater number of topics, such as digital contracting,

[61] Joint Staff Working Document. Implementation of the European Neighbourhood Policy in 2014. Eastern Partnership Implementation Report, SWD(2015) 76 final of 25.3.2015, p. 16.

[62] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A Digital Single Market Strategy for Europe, COM(2015) 192 final of 06.05.2015.

[63] Council of the European Union. Joint Declaration of the Riga Eastern Partnership Summit, 21–22 May 2015, para. 27.

[64] See website of the European Commission on the First Eastern Partnership Ministerial Meeting on the Digital Economy: http://ec.europa.eu/digital-agenda/en/news/first-eastern-partnership-ministerial-meeting-digital-economy.

ePayments and eLogistics. Trust in digital environment and possibilities of electronic identification shall be increased by improving legislative measures, sharing of best practices and know-how. Approximation of legislation on electronic communications is identified as necessary to guarantee competition, investment and growth in the EaP countries.

On the other hand, the Joint Declaration of the First Eastern Partnership Ministerial Meeting on Digital Economy[65] renders precise some of the more political statements of Association Agreements, foresees concrete actions for their realisation (for example, eGovernment, digital skills) and adds a digital dimension to traditional areas of cooperation (for example, customs and transport). It also supplements Association Agreements, the ongoing programmes and initiatives and even, partially, the work programme of the EaP for 2014–2017[66] and introduces new spheres of cooperation. For example, one of the cooperation areas is open data: the partners agree to consider principles of the G8 Charter on open data[67] as a guidance for access and reuse of public sector information.[68] Another novelty is an agreement to make protection of critical information infrastructure a part of national policies and to exchange experiences and best practices within the EU's Computer Emergency Response Teams (CERT) and European Network and Information Security Agency (ENISA). Cooperation for the promotion and implementation of an open multi-stakeholder governance model for the Internet is yet another novel area of the EaP.

6 Concluding Remarks

Even though it is tempting to compare the new broad framework of cooperation in ICT matters under the EaP to the EU's DSM strategy that has given an impetus to this cooperation with EaP countries, such comparison would not be plausible. The ICT dimension of the EaP lacks the scope, depth and intensity of the DSM strategy for the obvious reason that the latter is aimed at the creation of an internal market

[65] The full text can be found at https://eu2015.lv/images/news/2015_06_11_EaP_Digital_Economy.pdf.

[66] Eastern Partnership Work Programme for 2014–2017. Platform 2 "Economic Integration and Convergence with EU Policies": http://eeas.europa.eu/eastern/platforms/docs/work_programme_2014_2017_platform2_en.pdf, and Platform 4 "Contacts between People": http://ec.europa.eu/education/international-cooperation/documents/eastern-partnership/work-programme-p4-2014-2017.pdf.

[67] The full text can be found at https://www.gov.uk/government/publications/open-data-charter/g8-open-data-charter-and-technical-annex.

[68] Until the First Eastern Partnership Ministerial Meeting on the Digital Economy, the relevant EU Directive 2003/98/EC on the reuse of public sector information was only mentioned in Annex XXVIII-B EU-Moldova AA—without any plausible relation to the text and the commitments under this Agreement.

between 28 highly integrated Member States. Instead, the Digital Agenda for Europe that builds the foundation for the development of a Digital Single Market is a better reference point.

The overview of the relevant EaP developments in the historical perspective demonstrates that ICT issues were largely neglected during the development and the first years of the EaP, even though both Europe 2020 strategy[69] and the Digital Agenda for Europe were in discussion and then adopted around the same time as the EaP. At the beginning, cooperation on ICT issues was limited to the research and education field, while all trade- and economy-related aspects were ignored. This can be explained by the fact that initially the EaP continued in line with the predominantly political cooperation within the ENP. However, with the progress of the negotiations on Association Agreements and with the growing understanding of what the "stake in the internal market" can mean, the focus of cooperation in ICT matters moved to the economy and trade. At the same time, perception of the significance of ICT has grown very fast, and the relevant cooperation has intensified in various policies.

After the latest Eastern Partnership Ministerial Meeting on Digital Economy, one can argue that future cooperation in ICT will cover all areas indicated in the Digital Agenda for Europe: from improvement of infrastructure, interoperability and digital skills to creating a secure, efficient and inclusive environment for any electronic activity (eCommerce, eTrade, eGovernment, etc.). These fields of action correspond to the challenges in the context of digital age as identified in the DAE. The sole difference is the lack of the internal market objective: the EaP, by contrast to the DAE, focuses on liberalisation of trade and approximation of laws necessary for that. This is the first step on the road to the Deep and Comprehensive Free Trade Area and integration in the EU market promised by the Association Agreements.

Realisation of such a large-scale undertaking under the EaP will arguably require more and diverse instruments than currently in use. For the success of cooperation, the EU should not rely on multilateral and bilateral agreements in the first place: not all EaP countries are able or interested in concluding them. International agreements should remain just one of different instruments of the EaP toolbox. Furthermore, sensitive matters of open data, data protection and privacy or cybersecurity cannot be adequately served by the means of the all-embracing Association Agreement. Dedicated agreements and cooperation within specialised organisations will be necessary, as well as special projects (for example, twinning). For the purposes of Internet governance and interoperability, specific arrangements for cooperation between the EU and EaP countries within the relevant international forums would be of use. The experience of the implementation of the EaP in the discussed field has demonstrated the effectiveness of the involvement of stakeholders who actively

[69] The DAE is one of the flagship initiative of the Europe 2020 strategy due to the recognition of the key role that ICT will play in the future of the European economy and society. See Communication from the Commission. Europe 2020—a strategy for smart, sustainable and inclusive growth, COM(2010) 2020 final of 03.03.2010.

participate in the development of EaP initiatives and make use of funding opportunities. This needs to be further encouraged by spreading information about the EaP, ensuring sufficient financing and creating platforms where stakeholders from different EaP countries can interact among themselves and with the various level of stakeholders from the EU and Member States.

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Democratisating the Eastern Partnership in the Digital Age: Challenges and Opportunities of Political Association Beyond the Language of Official Texts

Yuri Misnikov

Abstract The Eastern Partnership is based on such core democratic values as the rule of law, respect for human rights, good governance, sound civil society and free media. One of the Partnership's key objectives is to increase the level of association with EU policies based on common values - such as the rule of law and respect for human rights - and eventually make the entire region more democratic and stable. The Association Agreement is seen as a special democratisation instrument for deeper association, however, without promising the EU membership. The question is whether or not the Partnership's democratisation agenda has any impact on the actual state of democracy in this region. To answer this and other questions, the paper examines the language of the Partnership's key official documents, along with the EU's relevant development cooperation programmes. The goal is to find out (a) how friendly they are in terms of democratic rhetoric, (b) whether the democratisation potential of digital ICTs is taken into account and (c) whether there is a correlation between being a partner country and being democratic. The paper concludes that, overall, being merely a partner country is not sufficient for making democratic progress. It is the Association Agreement that prompts deeper democratisation. The current scope of the ongoing democratisation programmes is rather traditional and does not include the benefits of digital democracy to engage with ordinary citizens as key beneficiaries of democracy promotion initiatives. The field of democratic citizenship and political participation, where such benefits can be most strongly felt, is recommended for inclusion into such initiatives.

Y. Misnikov (✉)
New Media Scholar, Minsk, Belarus
e-mail: yuri.misnikov@gmail.com

T. Kerikmäe, A. Chochia (eds.), *Political and Legal Perspectives of the EU Eastern Partnership Policy*, DOI 10.1007/978-3-319-27383-9_5

1 Introduction: Importance of Democratic Rhetoric

Democratic transformation of the EU's immediate neighbourhood in the Southern Mediterranean[1] (Euro-Mediterranean Partnership—EUROMED) and Eastern Europe[2] (Eastern Partnership—EaP) is the major objective the European Neighbourhood Policy (ENP). It aims at achieving '. . . the closest possible political association and the greatest possible degree of economic integration' building on common interests and such democratic values as the rule of law, respect for human rights, social cohesion, good governance, sound civil society, market economy, sustainable development'.[3] In official practice, it means that the text of the ENP country-specific action plans must contain provisions committing to such values. This also means that democratic rhetoric is important in its own right for both the EU leadership and partner governments to declare publicly and officially their commitment to democracy as a common value. Those countries that cannot—for a variety of internal and external reasons—announce about democratic commitments may not have the ENP full-fledged action plans.[4] Responding to the Arab Spring events in 2011, the EU has further strengthened its democratisation rhetoric in the EUROMED region by offering its Mediterranean partners a 'partnership for democracy and shared prosperity' founded on an incentive-based "more-for-more" principle to support those countries that are ready for deeper reforms.

However, the Eastern Partnership is 'a specific dimension'[5] within the ENP. While the latter aims at maximising political association and economic integration with the partner countries, only the EaP includes a deep association agenda in the form of the Association Agreement (AA).[6] Georgia, Moldova and Ukraine signed such agreements in 2014 after several years of negotiations.[7] The meaning of "deep association" is effectively tantamount to deeper democratisation. It is assumed that agreeing to sign the AA, the EaP partners make a deliberate choice to step up their internal agenda of democratic transformation, be ready to absorb technical assistance from the EU to this end and then report about the implementation progress. The level of detail of democratisation rhetoric that can be found in the language of

[1] Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Syria, Tunisia, plus Palestine.

[2] Armenia, Azerbaijan, Belarus, Georgia, Moldova, Ukraine.

[3] See more at http://eeas.europa.eu/enp/about-us/index_en.htm; the ENP projects' budgets reached some 12 billion euros in 2007–2013 against the background of over 200 billion euros of trade with ENP partners.

[4] Belarus, Libya and Syria have not formalised their full participation in the ENP, while Algeria is currently negotiating its ENP action plan.

[5] As worded, for example, in the Joint Declaration of the Eastern Partnership Summit held in Riga, Latvia during 21–22 May 2015; see more at http://eeas.europa.eu/enp/documents/progress-reports/index_en.htm, as well as in other EU official documents.

[6] That replaced Partnership and Cooperation Agreements (PCAs).

[7] Council decisions of 2014 (for Moldova, see eeas.europa.eu/moldova/pdf/eu-md_aa-dcfta_en.pdf; for Georgia—eeas.europa.eu/georgia/pdf/eu-ge_aa-dcfta_en.pdf; for Ukraine—eeas.europa.eu/ukraine/docs/association_agreement_ukraine_2014_en.pdf).

the AA is more substantial than the language of the ENP action plan, for it carries a formalised obligation to improve internal policies and stop undemocratic practices in public and political spheres, in line with the EU standards of democracy.

The challenge of living up to the language of democratisation as described in the AA gains additional complexity—and significance—since having the AA does not carry a promise of the EU membership. While democratic values are declared as common, the membership of the EU presumes meeting many other obligations under the candidacy status.[8] But how successful and effective is the EaP in facilitating democratic change without promising the EU membership?[9]

A number of other related questions arise in this respect. Is it that the participation in the ENP and EaP prompts "real" democratisation or should it first be internally imbedded in domestic policies driven by the explicit national agenda to advance democracy? Which particular aspects of democratisation are highlighted by the ENP and—for that matter—by the EaP? Does the official language of the Association Agreement aimed at deepening political association with the EU also help deepen the actual state of democracy? What new democratisation opportunities can be attributed to digital technologies that have emerged over the past two decades, for example, under the guise of e-Democracy and e-Participation? And can these make democratic progress stronger in the otherwise not-so-democratic region of the EaP?

To answer these and other questions to some extent, the paper attempts painting a "big picture" of the EU's international development cooperation by examining the democratisation language used in the main EaP documents and then comparing the official rhetoric[10] with the actual state of play. Specifically, the intent is to

- assess democratic performance of the EaP as a region (rather than individual countries) in general and in comparison with the EUROMED region;
- review the design, scope and content of the democratisation objectives contained in the EaP underlying official documents, along with their implementation strategies; and
- provide recommendations to strengthen the democratisation aspect of the EaP, with a special emphasis placed on the use of e-Governance technologies.

To achieve these goals, it is essential, firstly, to clarify how democracy is understood both in theory and nowadays increasingly in the Internet-influenced practice.

[8] The status can vary from "official candidate" to "potential candidate" and "negotiating candidate"; the eventual membership requires that the candidate country has stable governing institutions guaranteeing functioning democracy (e.g., the rule of law and respect for human rights) and market economy (e.g., being able to compete economically within the EU).

[9] To a large degree, the EU membership was the main driving force, alongside the importance of international security issues, behind the successful democratisation of the Baltic States within a relatively short span of time.

[10] The term "rhetoric" does not have in this context any negative connotation; it is simply applied here to mean the language of official documents.

2 What Is Democracy?[11]

2.1 The Duality of Democracy

Democracy is a complex—and often disputable—social, political and cultural phenomenon that is difficult to measure. The results of democracy assessment depend on how the democratic theory is defined and understood. Democratically advanced countries can be described, for example, as 'polyarchies', meaning a network of multiple centres of political power that include elected officials, the equality to elect and be elected and free media.[12] Other theorists advance the term 'complex democracy' to underscore its dual nature.[13] The objective of these and other definitions is to reflect more pragmatically upon modern realities by drawing on elements of both liberal pluralist and republican democracy. Such approach highlights those participatory activities that negotiate individual and group values for the benefit of the broader common public good. From this perspective, the duality of democracy is seen as a desired participatory ideal against the realities of the actually existing governance regimes that may not necessarily match the ideal. The duality of democracy as an idea and as a political reality could be reconciled by making political participation a criterion for judging how close the reality is to a desired ideal.[14] For that, democracy should include 'the most compelling principle of legitimacy—"the consent of the people"—as the basis of political order'.[15]

Eight institutional requirements can be discerned from a vast list of conditional factors and criteria for a society to qualify for the actually functioning (liberal) democracy, namely (1) elected officials; (2) free, fair and frequent elections in which coercion is relatively rare or non-existent; (3) freedom of expression; (4) access to alternative, independent sources of information; (5) autonomous associations; (6) democratic and inclusive citizenship; (7) independent judiciary; and (8) impartial and reasonably neutral civil service.[16]

By and large, there is certain—although academically not conclusive—consensus that the core meaning of democracy is based on the centrality of citizens within the political system. If political culture fails to provide realistic opportunities and incentives for citizens to directly or indirectly influence government policies, then the levels of civic activism will consequently drop, as evidenced in many modern liberal democracies. If civic duty lacks its key motivational and moral factors, the very legitimacy of democracy and its political efficacy suffer in the eyes of citizens

[11] This section draws on the author's (unpublished) doctoral dissertation submitted in accordance with the requirements for the degree of Doctor of Philosophy at the University of Leeds, Institute of Communications Studies, UK (admitted to the degree on 12 September 2011).

[12] Dahl (1989).

[13] Baker (2002), p. 143.

[14] Held (2006).

[15] Held (2006), pp. ix–x.

[16] Dahl (1989), pp. 108–129; Crick (2002), pp. 106–109.

reproducing thereby a 'vicious circle' of democracy's discontents.[17] Marginalised and poorly represented people are unlikely to believe that their opinion can be taken seriously[18] and would rather stage protests that in the democratically less mature and politically polarised society may turn into violence. For example, the inability of the Ukrainian former government to discuss with its people the goals of the Association Agreement with the EU in a democratically participatory and equal manner well before the Euromaidan is a vivid demonstration of how quickly the lack of opportunities for political participation and public dialogue can delegitimise the ruling authority. This is also an indication of the overall political vulnerability of the entire EaP region.

2.2 *e-Democracy: A New Opportunity for Participatory Democracy?*

The arrival and subsequent global spread of new, digital information and communication technologies (ICTs) has given a renewed hope to revive the ideals of democratic participation in the form of electronic democracy (e-Democracy) and participation (e-Participation). To reflect upon the new ways of information processing and communication management, first the notion 'teledemocracy' was conceptualised as a radical tool of public empowerment that can encourage greater participation.[19] It was believed that democracy could be 'possible in places where it was not possible before' by using new means of aggregating individual preferences and group decisions based on the social choice theory and thus improving representative democracy.[20] It was how the first wave of e-Democracy evolution started.

The idea of the 'virtual community' as explained by Howard Rheingold[21] in the early 1990s and further expanded by other commentators introduced such novel notions as the virtual public sphere, online communities, online identities and representations, online citizen participation and Internet debates.[22] These heralded the next wave of e-Democracy evolution that led to the formulation of grand theories of information and network society 'built around macro-electronics-based information technologies'.[23] In the late 1990s and early 2000s, it was widely accepted that new digital technologies are not only changing many traditional

[17] Pateman (1970), pp. 46, 103–104.

[18] Held (1987), p. 259.

[19] See, for example, Arterton (1987) and McLean (1989); on e-Democracy see a useful overview in OECD (2003).

[20] McLean (1989), p. 2.

[21] Rheingold (1993).

[22] See, for example, Baym (1996, 1998); Malina (1999).

[23] Castells (2000), Castells (2004), p. 7.

perceptions about social and economic conditions but are also transforming the very nature of these conditions.

In this light, the Internet became increasingly viewed not just as a new technology but also as a radical virtual, moral and ethical public space.[24] The interactive Web 2.0 technologies that helped emerge the social media have substantially expanded the peer-to-peer networking at personal, micro-level and thus reinvigorated public discourses in which the ordinary, lay people play the main role.[25] The online and offline activism of non-organised citizens has driven the development of many e-Participation tools.[26] That profound change prompts to rethink the role of the ordinary and highly connected citizen in modern democracy and to reconsider the ways of political participation so that 'the consent of the people' becomes the core of democratic legitimacy.

It's just recently that some credible empirical evidence has emerged about e-Democracy practices.[27] It comes largely from e-Participation domain (particularly from the e-Consultation field) aimed at better policymaking, which has become one of the most popular ways of putting e-Democracy into practice with the help of new media.[28] Stephen Coleman and Jay Blumler[29] propose a two-layer e-Democracy model dependent on the roles citizens perform in participation initiatives—as active or passive participants. They distinguish two types of e-Democracy: (a) from above and (b) from below.

'e-Democracy from above' means that one of the government agencies is simultaneously the owner, host and operator (and also a participant) of an Internet-enabled participatory activity that seeks citizens' engagement to share their opinions, views and expertise on certain issues. It is a top-down process, typically organised in the form of online consultations. Whereas this raises the level of transparency in public affairs and increases the extent and intensity of the participation base among citizens, this version of e-Democracy depends on the authenticity and sincerity of all participants, including governing bodies and politicians.[30] The importance of authenticity becomes a 'litmus test' of the trust between political elites and citizens, which measures the success or failure of e-Democracy outcomes.

'e-Democracy from below' is organisationally a bottom-up process, with citizens acting as the driving force of an e-Democracy practice. Contrary to top-down

[24] Benkler (2006), Orgad (2007).

[25] In addition to traditional print and broadcast media that before the Internet were the sole players in defining the tone and content of public discourses (television was harshly criticised, for example, by Neil Postman in his *Amusing Ourselves to Death: Public Discourse in the Age of Show Business*).

[26] See, for example, Macintosh et al. (2002) and Macintosh (2006).

[27] Johnson and Bimber (2004).

[28] See, for example, Coleman (2003).

[29] Coleman and Blumler (2009).

[30] Coleman and Blumler (2009), pp. 111–116.

e-Consultations that may enjoy a certain degree of legitimacy, e-Democracy from below usually takes shape as an informal, publicly transparent, fluid and institutionally 'autonomous interaction' outside the domain of official politics.[31] Such informally self-organised online interactions among citizens can be task-oriented, purposefully designed initiatives to challenge authorities, for example, by staging politically motivated discourses and offline actions (such as social protests and campaign movements). Citizens' political online activism can also be realised in the form of political talks or open-ended public dialogues, with the purpose of discussing politics intellectually and collectively, sharing information and exchanging views as opposed to action-oriented events. Citizens' bottom-up e-Democracy is far more flexible than the government-based model and can have a local (grassroots), national or global character.

Both types of e-Democracy rely on active participation of the ordinary, non-organised citizens whose role is often overlooked in favour of the traditionally convenient engagement with organised civil society and non-governmental organisations. The same can be said about the design of the EU technical cooperation assistance in the EaP region when it comes to choosing beneficiaries for democracy-related activities.

3 Democratisation Agenda of the EU Official Development Assistance

3.1 Difficulty of Assessing Democratisation Effects of EU's International Cooperation

As argued above, demonstration of the commitment to common democratic values is vital for the EU in its relations with neighbours. The ENP and EaP are effectively the EU's large-scale international development cooperation projects consisting of other smaller thematic projects and programmes designed to address particular political, security, economic, cultural and other matters. As any development cooperation, there are structure, objectives, activities, budgets, time frames and beneficiaries described in relevant documentation. While there is a vast collection of guidelines on how to evaluate development assistance (prepared by different countries and put together in one place by the OECD), there are no dedicated recommendations for evaluating democratisation effects of international cooperation programmes.[32]

[31] Coleman and Blumler (2009), p. 117.

[32] See more at the web page of the OECD's DAC Evaluation Resource Centre www.oecd.org/derec/guidelines.htm and www.oecd.org/development/evaluation/dcdndep/38686953.pdf.

The European Commissions' guides for the evaluation of the EU's External Assistance do not shed a light on how democratic impacts could be assessed and measured.[33] For example, the European Commission's International Cooperation and Development (EuropeAid)[34] includes a component on Democracy and Human Rights to deal with a range of locally driven democratisation processes and initiatives. The European Commission specifically

> . . .backs national reform processes and democratic institution-building through its geographical programmes. It supports local actions aimed at empowering disenfranchised groups, promoting dialogue and mediation between diverse interests within societies and encouraging political pluralism, transparency, accountability and consultation through the European Instrument for Democracy and Human Rights (EIDHR). Where the political environment is particularly restrictive towards civil society, the EU aims to promote human rights and protect democracy activists, particularly by supporting the freedom of opinion and expression, the freedom of association and peaceful assembly, the freedom of thought, conscience, religion or belief and the freedom of movement. To support home-grown/local democracy efforts, it works with a wide range of partners, including grass-roots organisations, international parliamentary associations, advocacy and watch-dog organisations, political foundations, trade unions and the media.[35]

The EU's new programming framework for the community's bilateral development cooperation for 2014–2020 defines the programming process and explains the guiding principles it is based upon. The Programming Instructions[36] issued in May 2012 contain the detailed guidance for the programming of the EU's bilateral development cooperation with partner countries and regions in Africa, the Caribbean and the Pacific (ACP) under the 11th European Development Fund (EDF) and in Asia, the Middle East and Latin America under the Development Cooperation Instrument (DCI), as well as in the context of the EU's Multiannual Financial Framework (MFF) for 2014–2020.[37] As in the case of many other international development cooperation instruments, the Instructions include the theme of democracy, human rights and the rule of law as main priorities. Yet the guiding principles for programming and designing democratisation initiatives do not contain the evaluation guidelines for measuring the impacts of such initiatives. The lack of such guidance on the OECD's Development Assistance Committee's (DAC)

[33] Guidelines for Geographic and Thematic Evaluations (Volume 2) and Guidelines for Project and Programme Evaluations (Volume 3). European Commission, 2006; accessed 2 August 2015 at www.oecd.org/development/evaluation/dcdndep/47469176.pdf and www.oecd.org/development/evaluation/dcdndep/47469201.pdf.

[34] DG DEVCO; see more at http://ec.europa.eu/europeaid/general_en.

[35] See at http://ec.europa.eu/europeaid/sectors/human-rights-and-governance/democracy-and-human-rights_en.

[36] Instructions for the Programming of the 11th European Development Fund (EDF) and the Development Cooperation Instrument (DCI)—2014–2020 European Commission, Brussels, May 2012; accessed on 2 August 2015 at http://ec.europa.eu/europeaid/sites/devco/files/14_05_11_progr_instructions_cover_page_clean.pdf.

[37] The EaP region is not mentioned in the document.

website is a telling fact highlighting the problem of studying and interpreting the effects of democratisation.[38]

The EU Neighbourhood's Eastern Partnership region is among the EuropeAid's key recipients of bilateral and multilateral dimensions.[39] The umbrella programme of the bilateral dimension includes a possibility of additional assistance as a reward for the progress made in building deep and sustainable democracy ("more-for-more" principle). While it is important to have such a dedication to democracy cooperation facility, its optional character may not be enough to produce desired democratisation effects. Also, there is no visible mention of the use of ICT for democratisation. The EuropeAid's democracy building agenda can be substantially expanded to offer a better focused assistance for strengthening the sense of democratic citizenship among ordinary people. It could be done by making public (and political) participation a conditional criterion for any type of development assistance—be it an AA or a non-AA partner, especially at the regional (inter-country) level for stronger experience sharing and wider cross-border impacts.

3.2 Eastern Partnership's Platform 1: A Dedicated Democratisation Plan

Democratisation goals are well and explicitly built into the political association agenda handled within the work of Platform 1 on Democracy, Good Governance and Stability.[40] Its core objectives and activities are aligned with bilateral Action Plans or Association Agreements under three common areas: (1) Democratic Governance, (2) Justice and Home Affairs, (3) Security and Stability. The Democratic Governance area includes the following activities (it is worthwhile to cite the full texts to better appreciate the strong democratic language used here):[41]

[38] The author is also aware that the scholarship on the topic of democratic impacts is vast and its comprehensive review has not been among this paper's goals. In the context of the paper, the prime intention has been to study the European Union's official documents relevant to the Eastern Partnership region and find out to which extent they are democracy friendly in general terms and whether they take account of the democratisation potential of digital ICTs.

[39] See more at http://ec.europa.eu/europeaid/regions/eu-neighbourhood-region-and-russia/introduction-0_en.

[40] Platform 2 is about Economic Integration and Convergence with EU Policies (includes transport, SMEs, environment and climate change, taxation, trade, labour and social policies, professional skills, macroeconomic and financial stability, Information Society, including electronic communications and related regulatory activities aligned with the Digital Agenda for Europe 2020—DAE; it is remarkable that Moldova's National Strategy for Information Society Development "Digital Moldova 2020" is modelled on the DAE—see more at http://www.mtic.gov.md/en/transparency/hotarire-nr-857-din-31102013-cu-privire-la-strategia-nationala-de-dezvoltare-societatii.

[41] Quoted from the Work Programme for 2014–2017, see more at http://eeas.europa.eu/eastern/platforms/docs/work_programme_2014_2017_platform1_en.pdf (accessed on 15 July 2015).

Activity 1: Democracy and Human Rights – strengthening the respect and implementation of European human rights standards (children's rights, gender equality), electoral standards, freedom of expression, Ombudsmen/National Human Rights Institutions, children's rights, prevention and fight against corruption, transparent management of public goods, public administration reform. The objective is to contribute to the HR objectives of the bilateral Action Plans or Association Agendas by strengthening ombudsman institutions in EaP countries in order to improve their ability to contribute to the establishment of deep and sustainable democracy; promote best European standards and exchange of views on best practices regarding children's rights and gender equality.

Activity 2: Public Administration Reform. The objective is to provide general support to implementation of reforms agreed in bilateral Action Plans or Association Agendas through contributing to establishment of a professional, accountable and value based apolitical civil service; f foster approximation to best standards practised in the EU and contributing to increased efficiency of the public administration and policy making process by promoting European standards and exchanging best practices; boosting the capacity of civil servants by organising specific training courses; boosting the administrative capacity of regional and local authorities; promoting local government reform; promoting e-Governance.

Activity 3: Fight against corruption (via cooperation with the Council of Europe). The objective is to support the implementation of bilateral objectives from the Action Plans or Association Agendas, including the relevant recommendations of the Council of Europe Group of States against Corruption (GRECO), the European Commission recommendations in the context of the visa dialogue (where applicable), the recommendations of the review mechanism of the UN Convention against Corruption (where applicable), as well as other relevant anti-corruption monitoring mechanisms; promote good governance including open government and boost the capacity of public administration and the criminal justice sector to prevent and fight corruption and economic crime; review existing systems to fight corruption in EaP countries (legislative, policy and institutional framework, including enforcement structures) and share good practice with a view to increasing overall efficiency in reducing corruption; improve the skills of civil servants, civil society organisations and businesses dealing with anti-corruption issues; strengthen the cooperation between public authorities (at both central and local level), civil society organisations and the private sector in relation to the development, implementation and monitoring of effective anti-corruption policies.

Activity 4: Electoral standards (via cooperation with the Council of Europe). The objective is to strengthen the objectives under the bilateral Action Plans or Association Agendas, notably regarding the respect for the democratic electoral standards based on recommendations of CoE's Venice Commission and OSCE/ODHIR.

Justice and Home Affairs area covers such essential for democracy issues as the improved functioning of the judiciary (Activity 6), including the use of ICT applications in court system, the protection of personal data in line with European standards and fight against cybercrime (Activity 8) through cooperation with the Council of Europe. Other activities (under Asylum and Migration, Cooperation among Law Enforcement Agencies, Integrated Border Management) are more important for public administration modernisation rather than for the democratisation agenda per se (although there is a link, of course).

Training and networking of local authorities, with a view of strengthening their administrative capacities and promoting local government reform and decentralisation, are carried out in cooperation with the Committee of the Regions under the Conference for Regional and Local Authorities of the Eastern Partnership (CORLEAP). Other relevant democratisation areas under Justice and Home Affairs

include cooperation in the field of police reform and specific fields of law enforcement; combating organised crime, including drug crime; coordinating strategies against cybercrime and human trafficking; strengthening customs administrations. Multilateral cooperation in the justice sector focuses on judiciary reform (towards an independent and efficient judiciary) and data protection.

3.3 Democratisation via the Association Agreement

The AA is an action-based instrument meant to specify how close and deep the political and economic relations with the EU can potentially be by spelling out the content of such (political) association and (economic) integration across several hundreds of articles. The AAs do not promise the EU membership. The term "association" here is defined as 'a close and lasting relationship' based on the 'commitment to building a deep and sustainable democracy and a market economy' which presumes 'participation... in European policies'.[42] However, it is the economic integration that comes to the forefront in the form of a Deep and Comprehensive Free Trade Area (DCFTA). This is a central component of the AA with the intention to integrate the associated country into the EU Internal Market.

The 'common values' are rather briefly outlined in the AA's Preamble by asserting 'that the common values on which the European Union is built—namely democracy, respect for human rights and fundamental freedoms, and the rule of law—are also essential elements of this Agreement'. First articles define objectives and general principles to reiterate the importance of strengthening democracy by respecting the rule of law, good governance, human rights and fundamental freedoms. Two additional sections, under Freedom, Security and Justice, deal with the rule of law (independence of the judiciary, access to justice and the right to a fair trial) and the protection of personal data. It is specifically mentioned, for example, that the parties 'agree to cooperate in order to ensure a high level of protection of personal data in accordance with EU, Council of Europe and international legal instruments and standards' (in the case of Georgia and Moldova, there is Annex I entitled Freedom, Security and Justice attached to AAs, which contains legal provisions to govern personal data processing and protection; the AA for Ukraine does address the issue of privacy and personal data protection in other appendices). Here are the examples of the language used in the AA for Georgia:[43]

> Article 13. Rule of law and respect for human rights and fundamental freedoms 1. In their cooperation in the area of freedom, security and justice the Parties shall attach particular importance to further promoting the rule of law, including the independence of the

[42] See, for example, Preamble of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (page 4, published in the Official Journal of the European Union on 29.5.2014).

[43] See at http://eeas.europa.eu/georgia/docs/index_en.htm.

judiciary, access to justice, and the right to a fair trial. 2. The Parties will cooperate fully on the effective functioning of institutions in the areas of law enforcement and the administration of justice. 3. Respect for human rights and fundamental freedoms will guide all cooperation on freedom, security and justice.

Article 14. Protection of personal data The Parties agree to cooperate in order to ensure a high level of protection of personal data in accordance with the EU, Council of Europe and international legal instruments and standards referred to in Annex I to this Agreement.

The protection of individual privacy in relation to the processing and dissemination of personal data in electronic form[44] and the protection of confidentiality of individual records and accounts gains central position among other ICT-related democratic instruments. The issue of privacy and personal data protection is mainstreamed into other activities, such as customs services, information exchange and data processing and featured in the AA's respective sections. This is the only aspect of democracy that is explicitly linked to ICTs. A special chapter on cooperation in the field of information society is viewed from the services perspective, with a primary focus on electronic communication networks and electronic service providers. Only in the case of Moldova, there is a rather loose reference in Article 99 to good governance listed among other e-Government priorities—'encouraging and promoting the implementation of ICT tools for a better governance, e-learning and research, public healthcare, digitisation of cultural heritage, development of e-content and electronic commerce'.

Despite the declared focus on the societal effects of ICTs, the business aspect is articulated much better, as evidenced by the language of the dedicated articles (for example, the one quoted below is taken from the AA for Ukraine;[45] it is typical for other AA partners as well):

Article 389. The Parties shall step up cooperation on the development of the Information Society to benefit citizens and businesses through the widespread availability of Information and Communication Technology (ICT) and through better quality of services at affordable prices. This cooperation will also facilitate the access to the markets for electronic communication services, encouraging competition and investment in the sector.

This and other AA provisions clearly aim to facilitate economic integration into the European internal Single Market by approximating legislation and improving practices. As far as the use of ICT is concerned, it is Digital Single Market that has been recently prioritised by the European Commission in recognition of the growing impact of ICTs on business models and practices.[46]

[44] That is in the electronic communication sector.

[45] See at http://eeas.europa.eu/ukraine/docs/index_en.htm.

[46] A Digital Single Market Strategy for Europe was announced on 6 May 2015 by the European Commission; see the Strategy here: http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf.

3.4 Other Democratisation Instruments

In addition to the cooperation activities linked to the Association Agreement, there are many ongoing and planned activities between the EU and partner countries (not necessarily the AA signatories) at bilateral and multilateral levels that address democracy directly or indirectly. One could mention, for example, political and human rights dialogues, as well as numerous tailor-made projects aimed at building capacities for more democratic institutions in the field of public administration and local governance. Such projects also include those funded by the European Endowment for Democracy (EED).[47] Set up under the Polish Presidency in 2012, the EED draws on the experience of democratic transition in the Member States of the EU 'to foster and encourage democratization and deep and sustainable democracy in countries in political transition and in societies struggling for democratisation'; it also targets the European Neighbourhood partner countries, including those in the EaP region.

The EED's main beneficiaries include 'pro-democratic movements and other pro-democratic actors in favour of a pluralistic multiparty system on democratic ground; social movements and actors; civil society organisations; young leaders (including through a European invitation programme for young people who have shown interest in democratisation), independent media and journalists (including bloggers, social media activists, etc.)... provided that all the beneficiaries adhere to core democratic values, and human rights as well as subscribe to principles of non-violence'. Political foundations and the European Network of Political Foundations (ENoP) are also the Endowment's direct beneficiaries.

The focus on human rights underpins the operations of the European Instrument for Democracy and Human Rights.[48] In a similar vein, its projects, programmes and grants support civil society in general and human rights defenders in particular, although without a special focus on the post-communist transition societies.

4 Assessment of the Democratisation Scope and Content of the EaP Official Documents

4.1 What's Included?

Figure 1 takes stock of the democratisation scope and content as manifested in the EaP key official documents. These are

[47] See more: https://www.democracyendowment.eu/about-eed/.

[48] See more at http://www.eidhr.eu.

Democracy factors, criteria, conditions	Joint Declarations of the Eastern Partnership Summits				Work Programmes		Summarised assessment
	Prague, 7 May 2009	Warsaw, 29-30 September 2011	Vilnius, Summit 28-29 November 2013	Riga, 21-22 May 2015	Platform 1 "Democracy, Good governance and Stability", WPs for 2012-2013 and 2014-2017	Platform 2 "Economic Integration and Convergence with EU Policies", WPs for 2012-2013 and 2014 – 2017	
Elected officials via free, fair, and frequent elections without coercion					Yes (2014-17); Yes (2012-13)		**Strong**
Fundamental freedoms, incl.:	Yes	Yes	Yes	Yes	Yes (2014-17)		**Strong**
freedom of expression					Yes (2014-17)		Moderate
Access to information, incl.:							**Absent**
access to Public Sector Information (PSI)							Absent
access to alternative, independent sources of information							Absent
Civil society/autonomous associations	Yes	Yes	Yes	Yes	Yes (2014-17)		**Strong**
Democratic, inclusive citizenship, incl.:							Absent
political participation							Absent
conflict resolution, trust building	Yes	Yes	Yes	Yes	Yes (2014-17); Yes (2012-13)		Strong
Independent, transparent judiciary, rule of law, incl.:		Yes	Yes	Yes	Yes (2012-13)		**Strong**
crime, law enforcement, anti-corruption		Yes	Yes	Yes	Yes (2014-17); Yes (2012-13)		Strong
cyber security			Yes	Yes	Yes (2014-17); Yes (2012-13)		Strong
Human rights/Ombudsman, incl.:	Yes		Yes	Yes	Yes (2014-17); Yes (2012-13)		**Strong**
gender equality				Yes	Yes (2014-17)		Moderate

Democracy factors, criteria, conditions	Joint Declarations of the Eastern Partnership Summits				Work Programmes		Summarised assessment
	Prague, 7 May 2009	Warsaw, 29-30 September 2011	Vilnius, Summit 28-29 November 2013	Riga, 21-22 May 2015	Platform 1 "Democracy, Good governance and Stability", WPs for 2012-2013 and 2014-2017	Platform 2 "Economic Integration and Convergence with EU Policies", WPs for 2012-2013 and 2014 – 2017	
privacy/personal data protection					Yes (2014-17); Yes (2012-13)		Strong
Good/democratic governance, incl.:	Yes	Yes	Yes	Yes	Yes (2014-17)		**Strong**
impartial civil service/ public administration reform[61]			Yes	Yes	Yes (2014-17); Yes (2012-13)		Moderate
local (self)governance/ democracy/decentralization			Yes		Yes (2014-17); Yes (2012-13)		Strong
citizen participation			Yes				Weak
Open Government					Yes (2014-17); Yes (2012-13)		Moderate
Information Society, incl.:			Yes			Yes (2012-13); Yes (2014-17)	**Moderate**
electronic communications/ regulation			Yes	Yes		Yes (2012-13); Yes (2014-17)	Strong
e-Governance/e-Government			Yes		Yes (2012-13); Yes (2014-17)	Yes (2012-13); Yes (2014-17)	Strong
media			Yes		Yes (2012-13)		Weak
e-Democracy/ e-Participation (e-Information, e-Consultation, e-Decision-making)							Absent
Open Data							Absent

Fig. 1 Presence and assessment of key democratisation requirements as expressed in EaP documents (Not in the order of priority). *Source*: Compiled by the author based on the works of Robert Dahl (1989), Bernard Crick (2002), UNDESA, EU official documents

- four Joint Declarations of the Eastern Partnership Summits held in Prague (2009), Warsaw (2011), Vilnius (2013) and Riga (2015); and
- two EaP Work Programmes, as the Partnership's main implementation and reporting instruments.

The EaP's democratisation language is assessed with the help of 27 democratic requirements grouped around nine broader categories (see chapter "The Eastern Partnership Programme: Is Pragmatic Regional Functionalism Working for a Contemporary Political Empire?" above). The data demonstrate that the overall

democratic rhetoric—and hence the demonstrated commitment to democracy—is high in each document ("Yes" in grey marked cells). With the exception of Access to Information, all main democratisation factors are explicitly expressed and assessed as Strong (highlighted in green). It is also clear that the democratic rhetoric was increasing with each EaP Summit reaching its peak in the Riga Joint Declaration and then dropping somewhat 2 years later at the Vilnius Summit in May 2015. Another conclusion is that the democracy-related language (and respective content) of the Work Programme for Platform 1 "Democracy, Good governance and Stability" for 2014–2017 is stronger and more expansive than in the Programme for 2012–2013.

Over a relatively short period of 6 years, the EaP has become significantly more mature in demonstrating its commitment to the traditional values of democracy in the same way as these are enshrined in the EU's own official documents. However, there is certain confusion with regard to the issues of Information Society and e-Governance. While during 2012–2013 e-Governance was part of Platform 2 "Economic Integration and Convergence with EU Policies", for the period of 2014–2017 it was moved to (a more relevant in the author's opinion) Platform 1 "Democracy, Good governance and Stability". In general, the topic of the Information Society is handled under the economic integration umbrella instead of the political association rubric.

Electronic (tele)communications infrastructure and regulation dominate the language of the Information Society section. It explains why the Information Society theme is viewed through the lens of economy and business rather than democracy and good governance. Such confusion is indicative of the lack of a clear strategy on how to handle the topic of ICTs in relation to governance in general and democracy especially. The domain of information society would suit better to host societal effects of ICT, including e-Democracy, since whereas the national information and communication infrastructure can be considered the backbone of the Information Society, it is unlikely its essence. That leaves the societal aspects of ICTs virtually unaddressed; for example, the media issue is not mentioned at all in the Work Programme for 2014–2017.

4.2 What's Missed?

It was argued in chapter "The Eastern Partnership Programme: Is Pragmatic Regional Functionalism Working for a Contemporary Political Empire?" that, firstly, democracy cannot be healthy without civic activism and political participation. Secondly, the issue of democratic, inclusive citizenship is paramount for engaging with ordinary people. Non-organised citizens are equally key actors for democracy, alongside the organised forms of civil society (e.g. non-governmental organisations and other pro-democracy movements). And, thirdly, e-Democracy tools, especially e-Participation via ICT-enabled information provision and public

consultation instruments, provide new opportunities to reach out to many of those ordinary citizens who are digitally active (but do not necessarily participate in democratic politics beyond periodic voting). Doing so could advance democratic citizenship for a more participatory democracy and thus avoid the "vicious circle" of democracy discontents due to the lack of legitimacy of governing authorities in people's eyes.

However, these issues, and especially the topic of democratic citizenship, including political participation, are not part of democratic rhetoric and are missing from the language of the EaP official documents.[49] There may be a special need for a more focused assistance in nurturing a diverse civic culture beyond non-governmental organisations that may not represent the entire range of diverse opinions and interests of ordinary citizens who rarely associate themselves with the organised civil society groups. The communist legacy that for many decades excluded any alternative civic cultures not tied to the ruling socialist norms and values is still negatively felt in all EaP countries. Also, there is a strong proven relationship between civic and political cultures.[50] Another problem is that the term "citizenship" is often interpreted either too broadly to underline people's civic rights and duties' irrespective of how democratic the political system is or too narrowly to mean the right to vote.[51] Making democratic citizenship an integral part of the EaP democratisation programmes would make the latter stronger.

5 Assessment of the Actual State of Play in Democratising the Eastern Partnership

Measuring and assessing democracy has become a popular topic of both academic research and practitioners' work. The scope and findings of such research and work vary greatly. It is done typically through the aggregated composite indicators designed by international institutions and advocacy groups to assess countries' particular sides of democracy. For example, to review the implementation of the European Neighbourhood Policy in 2014, the European Commission has collected statistics in the field of Democracy, Good Governance and Human Rights[52] by

[49] The author is well aware that some of the citizenship-related issues that are discussed below may be part of particular initiatives, programmes and projects implemented in the EaP region with the EU's support; however, the point being made here is to argue that democratic citizenship is too important for a viable democracy and needs to be included into the democratisation agenda in the EaP region more explicitly so that the attention of the EaP partners is brought to it as well.

[50] See, for example, in Almond and Verba (1989).

[51] Bellamy (2008), p. 2.

[52] Implementation of the European Neighbourhood Policy in 2014. Joint Staff Working Document. Implementation of the European Neighbourhood Policy Statistics. European Commission, Brussels, 2015; accessed on 15 July 2015 at http://eeas.europa.eu/enp/pdf/2015/enp-statistics-report-2014_en.pdf.

using a range of indices produced by Transparency International (Corruption Perception Index), Freedom House (Freedoms in the World and on the Net), the Economist Intelligence Unit (Democracy Index), Reporters Without Borders (World Press Freedom Index), ILGA (LGBTI rights), UNDP (Gender Inequality Index), ILO (labour rights and standards), among other indicators. Freedom House, for instance, addresses primarily the state of political liberties, whereas Reporters without Borders specialise in measuring the freedom of the press and the Internet; in turn, the Polity IV Project assesses the overall level of democracy in a historical perspective. A common feature of many assessment techniques is the ranking of countries (and regions) against the established benchmarks of democratic performance. Such rankings paint a 'big picture' of the state of democracy—achievements or failures—and help reveal global, regional and inter-country trends in democratic progress.

However, there are disadvantages of highly aggregated macro measurements. These tend to overlook other qualitative sides of democracy, such as democratic manifestations from below at the micro level of communities, groups and, especially, private individuals. As a result, even democratically relevant indices become analytically weaker. It is argued in this respect that many statistically aggregated and inferred indices view democracy in minimalist terms as 'a procedural definition of democracy and thus avoid the problem of maximalist definitions'.[53] Despite such disadvantages, it is still useful to use them to compare the EaP and EUROMED regions and look for correlations between the degree of political association and democratic performance.

Table 1 presents a series of the democracy and e-Governance indicators averaged for two ENP regions. The assessment analysis allows making four main conclusions. One, the EaP region seems to be more democratic that EUROMED, although not substantially. Two, EaP partners that have signed the Association Agreement are visibly more democratic in terms of fundamental freedoms, including the Internet freedom, and e-Participation activities. Three, the Association Agreement (more democratic) partners do not fare better on a corruption scale; overall, the EaP region does not seem to be less corrupt than the EUROMED. Four, while the level of e-Governance development (including the provision of e-Services) is better developed than in the less democratic Mediterranean region, there is no similar positive correlation among the EaP partners, that is to say, the more democratic AA partners do not have an advantage over the non-AA countries in the use of ICTs in and for public administration.

[53] Munck and Verkuilen (2002), p. 9.

Table 1 Democracy and e-governance indicators for ENP regions

	Eastern partnership (group average)				Southern Mediterranean partners (group average)	
	All partners		**AA partners**			
Corruption perception (on a scale of 0–100)	35	Corrupt	37	Corrupt	33	Corrupt
Human rights/fundamental freedoms (the lower number – the better)	4.4	Partly free	*3.2*	Partly free	5.1	Not free
Democracy index (among 165 countries, the lower number – the better)	105	Hybrid	*77*	Hybrid	117	Hybrid/ Authoritarian
Press/media freedom (among 179 countries, the lower number – the better)	110		*89*		139	
Internet freedom (on a scale of 0–100, the lower number – the better)	41	Partly free	*30*	Free	53	Partly free
E-Governance development index (Online service + Telecomm. Infrastructure + Human capital; the higher number – the better)	0.5679		0.5550		0.4465	
Online service index (the higher number – the better)	0.4605		0.4642		0.3809	
Online service (advanced stages 3 + 4, the higher number – the better)	26		27		28	
e-Participation Index (the higher number – the better)	0.4935		*0.5490*		0.3762	
e-Participation (stages 2 + 3, the higher number – the better)	12.71		*20.87*		17.39	

Stage 1: Emerging one-way information services; Stage 2: Enhanced one-way or simple two-way way information services; Stage 3: Transactional two-way services; Stage 4: Connected services using Web 2.0 and other interactive tools; for more information, see United Nations E-Government Survey 2014. E-Government for the future we want. UNDESA, United Nations, 2014

Use of online services to facilitate provision of information by governments to citizens ("e-information sharing"), interaction with stakeholders ("e-consultation") and engagement in decision-making processes ("e-decision making"); for more information, see United Nations E-Government Survey 2014. E-Government for the future we want. UNDESA, United Nations, 2014

Source: Compiled by the author using the data from: Implementation of the European Neighbourhood Policy in 2014 Statistics. Joint Staff Working Document. European Commission, Brussels, 2015 (Accessed on 15 July 2015 at http://eeas.europa.eu/enp/pdf/2015/enp-statistics-report-2014_en.pdf); United Nations E-Government Survey 2014. E-Government for the future we want. UNDESA, United Nations, 2014 (Accessed on 15 July 2015 at http://unpan3.un.org/egovkb/Portals/egovkb/Documents/un/2014-Survey/E-Gov_Complete_Survey-2014.pdf)

6 Conclusion: Findings and Recommendations

Although the democracy-related language present in the EU cooperation programmes and EaP documents is generally adequate and strong, its scope and contents are traditional, focusing on such issues as human rights, the rule of law, civil society. Their value for democracy is undeniable, which is evidenced by a strong positive correlation between signing the EaP Association Agreement and better democratic standing. Yet more research is needed to detail the sources of stronger democratisation effects on the part of the AA countries; too little time has passed since signing the Agreements in 2014 to improve democracy in the signatory countries. It should have been probably years of preparations and negotiations prior to signing the agreement that important decisions were made and implemented. Nonetheless, the democratisation impacts are evident even in the absence of a perspective to join the EU (at least in the foreseeable future). This is even more remarkable keeping in mind that the issues of economy and trade integration—not democracy—dominate the language and contents of AAs. However, such a positive impact of the Association Agreement raises the question of democracy prospects in other three EaP partners that may have no plans to sign one.

Another interesting observation is that e-Democracy tools are better exploited in a more democratic setting of the Association Agreement partners. In this context, making a distinction between e-Democracy and broader e-Government might be useful analytically and practically, as no visible relationship has been found between the levels of democratisation and ICT-enabled modernisation of government administrations. A need for such a distinction could be explained by the existence of a more profound difference between the political (democratic) and public administration spheres than it is usually thought.

The role and possibilities of digital communication among citizens and between them and authorities is constantly growing in importance. Stephen Coleman and Jay Blumler stress that from a democratic practice perspective, debates and deliberations among equal citizens can be considered as both the manifestation and the embodiment of democratic citizenship;[54] that citizens may already be prepared to participate in democratic discourses on political issues; and that political and state institutions would need substantial reconfiguration to be able to accommodate input from citizens. Richard Bellamy further points out that 'Rules and regulations cannot cover everything, and their being followed cannot depend on coercion alone.[55] Whether citizens participate or not, the fact that they can do so, colours how they regard their other responsibilities, such as abiding by those democratically passed laws they disagree with, paying taxes, doing military service...It also provides the most effective mechanism for them to promote their collective interests and encourage their political rulers to pursue the public's good rather than their own.'[56]

[54] Coleman and Blumler (2009).

[55] Bellamy (2008), p. 6.

[56] Bellamy (2008), p. 3.

The EU can share a lot of good practices that might be useful for the EaP region,[57] for example, its vast experience[58] in developing and applying various e-Democracy tools that help provide the right type of information, organise public consultations, learn how to deliberate and discuss issues in a rational way and how to respect and accept the minority opinions when it comes to decision-making. The work of the Estonian organisations in the EaP region[59] is a case in point to prove that there are innovative ways to improve awareness about digital technology in general and e-Democracy in particular. But as yet, the democratisation potential of democratic citizenship, political participation and e-Democracy is not adequately exploited.

There might be a need to review the current democratisation agenda for the EaP countries and strengthen it by shifting the focus of EU's development assistance in favour of the ordinary and non-organised citizens, in addition to the traditional non-government organisations and other organised civil society organisations. Due to the communist heritage, the EaP region still lacks the tradition of democratic socialisation. Locally viable political and civil cultures are yet to emerge. At the moment, the overwhelming majority are not members of the organised civil society groups and entities. Making democratic citizenship, access to information and e-Democracy (especially e-Participation) a democratisation priority would strengthen the EaP's overall viability. As a result, that would help avoid political instability and social disorder in Eastern Europe in favour of public debate, trust and dialogue among equal citizens, on the one hand, and with authorities, on the other, making the latter more legitimate and thus democratic in people's eyes.

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[57] See, for example, Compendium. Participatory Democracy: a retrospective overview of the story written by the EESC. European Economic and Social Committee. Brussels, 2011 www.eesc.europa.eu/resources/docs/compendium-web.pdf; the Roadmap for Participatory Democracy and. Results of Extraordinary Group III Meeting on 22 March 2011; for checking out the importance of democratic discourses and dialogues, see, for example, Mouffe (2000), Habermas (1996), Pichler and Balthasar (2013).

[58] Including within the projects funded by the ICT S&T/R&D component of the 6th and 7th Framework Programmes and now a successor Horizon2020 programme.

[59] For example, the Centre of Eastern Partnership, the ICT Demonstration Centre, e-Governance Academy (the latter participated in organising in 2014 an e-Democracy and e-Participation course for Master students of the Tallinn University of Technology).

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Exporting Good Governance Via e-Governance: Estonian e-Governance Support to Eastern Partnership Countries

Katrin Nyman-Metcalf and Taras Repytskyi

Abstract Estonia is a globally recognised leader in e-governance, having bypassed many countries when it comes to development of public e-services as well as e-democracy. From having been at the receiving end of international assistance and advice only a couple of decades ago, Estonia is now sharing its expertise—not least with Eastern Partnership countries for which it is especially well placed, sharing common history. The introduction of e-governance presents questions on what legal reforms or new laws that are necessary to support the technological process and also fundamental and principled questions related to values and attitudes to governance. Is it possible with the help of e-governance to export principles of good governance? In this chapter, the question is seen from the side of the exporter as well as from the side of the recipients, primarily Moldova and Ukraine. Details of e-governance transition in these countries is described, and it is discussed what it is that makes countries receptive to assistance to further good governance and democracy.

1 Introduction

Estonia is a globally recognised leader in e-governance. Having realised the importance of information and communication services (ICT) for the development of the country early on after independence, Estonia has managed to bypass many larger and richer countries when it comes to development of public e-services as well as e-democracy. Delegations from all over the world come to study the

K. Nyman-Metcalf (✉)
Tallinn Law School, Tallinn University of Technology, Akadeemia tee 3, 12618 Tallinn, Estonia

Estonian e-Governance Academy, Tallinn, Estonia
e-mail: katrin.nyman-metcalf@ttu.ee

T. Repytskyi
Estonian e-Governance Academy, Tallinn, Estonia

Matel Bel University, Banska Bystrica, Slovakia
e-mail: repytskyi@gmail.com

T. Kerikmäe, A. Chochia (eds.), *Political and Legal Perspectives of the EU Eastern Partnership Policy*, DOI 10.1007/978-3-319-27383-9_6

Estonian example. From having been at the receiving end of international assistance and advice only a couple of decades ago, Estonia is now sharing its expertise—not least with Eastern Partnership countries.

Many states in transition realise the importance of modern technologies for development and put emphasis on their ICT capacity in development work, including the introduction of e-governance. However, the technical aspect is just one side of the issue. Electronic governance can and should be a tool for *good* governance—not just governance. Transitioning to e-services, public or private, should not be an end in itself but a way to make a needed and desired service more accessible, efficient and attractive. It is much easier to set up technical criteria for what a successful ICT service is than to define what good governance is. We all want our Internet to be as fast and interruption free as possible, but is it equally sure that the understanding of what good governance looks like is the same across countries and cultures? And if it is not, is assistance like that provided through the Eastern Partnership still relevant?

There is no generally accepted definition of e-governance, but it is broadly understood to mean selection, design and implementation of ICT to provide services, improve effectiveness or promote democratic values and participation—thus a functional process where technology is not an end in itself. The success should be related to achieving the goals and objectives for which the electronic governance should be a tool and not just by evaluating the ICT involved.[1]

For lawyers, e-governance presents practical questions on what legal reforms or new laws are necessary in order to incorporate new ways of doing any transactions that have legal implications.[2] In addition to this, lawyers as well as other social scientists are beginning to realise more and more that fundamental and principled questions are also affected by introduction of e-governance. Philosophers have discussed for centuries what it is that makes people obey rules, what it is that assigns authority and how ethics can be internalised. There has never been—and no one expects there to ever be—one single answer to this, but a web of factors contribute to the picture at any one time, in any one place. With e-society having made time and place something very different than what it was only 50 years ago, a number of new issues have been thrown into the equation. This is challenging enough for a stable country with a functioning administrative and governance system, which is reformed gradually, but for a country in transition where good governance is not yet internalised, the challenges are even greater.

This chapter looks at the potential for Estonia to support Eastern Partnership states through assistance to e-governance, focusing on non-technical aspects and especially on questions related to values and attitudes to governance. The chapter discusses if and how it can be ensured that e-governance support goes beyond the technical and practical and incorporates also values. The question is seen from the side of the exporter: Is Estonia able to transfer principles of good governance, and

[1] Gil-Garcia (2012), p. 17.

[2] Tallo et al. (2013), p. 10.

should it attempt to do so? The matter is also addressed from the side of the recipients, the Eastern Partnership countries: can principles be imported, or does that mean a risk that they will lack national ownership and lead to superficial and ineffective structures that are seen as alien and in need of constant outside support? To understand this, it is important to see what the recipient states are doing to introduce or increase the use of e-governance.

We analyse the state of affairs in primarily two Eastern Partnership states, Moldova and Ukraine, although the general discussion is of interest also for other countries. The selection of Moldova and Ukraine is based on the fact that the e-Governance Academy (eGA) has recent and ongoing projects in these countries. Consequently, it is possible to provide concrete examples and there have been studies made that provide us with relevant empirical data. In the scope of this chapter, it has not been possible to conduct surveys or create statistically verified numerical data. The analysis of attitudes and the implementation of good governance is based on literature studies and data collected in other contexts, as well as on personal reflections and experiences of the authors.

2 Estonia as the Role Model

With Estonia's own post-Soviet legacy, the country is well placed to advice other former Communist bloc states, as there is both understanding and practice in Estonia on what such a legacy means. The common history can encourage other states—like the Eastern Partnership states—as they can see what is possible to achieve in a short time and with limited resources. This means that Estonia has achieved an important role as model and as a practical giver of support and advice to Eastern Partnership states specifically on e-governance—and with that also on general principles of good governance.[3]

Quoting the title of a recent chapter in another volume on the Eastern Partnership,[4] what several of the Eastern Partnership states wish for is to be less "post-Soviet"—less "post" and less "Soviet" meaning being forward looking rather than shaped by the (Soviet) past and to develop in a manner that is not mainly coloured by the Soviet legacy. The example of the Baltic States and most of all of Estonia is especially valid, as it represents a large measure of success in these endeavours. At the same time, Estonia understands and sympathises with the situation of the Eastern Partnership states, having to assert their statehood in the face of an often hostile attitude from Russia.[5]

[3] It is no coincidence that when Sweden is the main sponsor of e-governance projects in Ukraine, Estonia has been invited to be the main partner for the actual implementation of the projects. http://www.ega.ee/node/976.

[4] Kerikmäe et al. (2014), pp. 144–159.

[5] Nodia (2006), pp. 133–145 at p. 144.

The Estonian e-governance experience offers many elements of interest for countries around the world. The integrated databases with one single point of entry is one such interesting issue.[6] This article does not aim to explain in detail how the various aspects of Estonian e-governance function, but in order to understand the exportability of different ideas it suffices to have a basic understanding of the solutions. For the integrated databases, it is necessary that there is a good system on how to link the different databases of different authorities, without centralisation but with an interface that permits integration.[7] It is also essential that the integration is used for a purpose—to facilitate cooperation and interaction between authorities, with the aim of being able to provide better services to citizens and businesses. For this to work, it must be easy to enter the system and access the services.

The integration of databases is something that is handled by authorities. The regular user should not need to know anything about this, as the services should function as seamlessly as possible. If a person wants to use e-governance services, he or she should be able to easily log in and find what they are looking for. What goes on in the "back room" is of no concern for the regular user, although it is in the interest of transparency that it is possible to see how the system is construed and functions, including security aspects of it. As higher demands of competence and readiness to embrace new things can be put on authorities than ordinary people, the Estonian model of integration of databases can be used in different countries and adapted to the particular situation of that country. The end result will look different in countries of a different size and structure, with more or less available e-services, but the basis can be the same—including the flexibility to keep building the system.

As concerns the access of people to the services, we face more differences between states. To some extent, this is due to the different traditions on how to identify oneself: is there an ID card, a personal identification number? Such systems in the offline world can be adapted to the online world, but if there is no such system and perhaps there is even an ideological resistance to ID cards, the challenge to find an effective entry point to the e-governance system is greater. Added to this is the very important question of attitude and knowledge of the population, which determines how ready they will be to embrace the new governance system. Such attitudes cannot be exported, but methods to affect attitudes and means to raise competence can be suggested.

A challenge for public policy and legislative development is over-institutionalisation—excessive reliance on regulations for altering human development and social behaviour.[8] With such a way of thinking, it is tempting to presume that if a successful regulatory system is exported from one country to another, it will be an effective and useful tool there as well for the desired shaping of behaviour. The Estonian e-governance developed in a rather unique situation, when a recently independent transition state with a weak economy decided to make use of the fact

[6] https://www.eesti.ee.

[7] https://www.ria.ee/x-tee/.

[8] Solarte (2014), pp. 251–283.

that it started with a clean slate to embrace more modern technologies than richer and more developed states. Political will and an openness to risks were decisive factors. The time and setting in which Estonia started its e-governance development cannot be replicated, but the attitude to innovation can perhaps be learnt.

MacCormick writes how modern government is a highly complex endeavour with many different considerations. The tasks are not easily quantifiable, but it may be possible to make lists of a number of the most important ones to see that there is a satisfactory balance between various goals (that may also be contradictory). In this task, it is important according to MacCormick to produce some summary statement of the values that guide one's actions. It is not possible to make the exercise of good governance only a quantifiable process—it is qualitative, but it is possible to make it clearer by presenting values.[9] Estonia has since independence not deviated from the track of returning to the (Western) European family of nations. At the same time, there are few expressions of values in the presentations of e-governance of different institutions. The focus tends to be on the technical solutions and on what services can be delivered by innovative means. The underlying values of democracy, respect for the individual, transparency and fairness can be assumed more than found explicitly. Even if e-governance helps to overcome different problems such as lack of efficiency, corruption (especially the low-level, everyday kind of corruption), challenges of poor transport infrastructure or security issues with people attending to different public transactions, it is clear that e-governance will not by itself solve fundamental problems of governance. It can be a facilitator in a framework of reforms.

For the legal system, e-governance presents benefits as well as challenges. In general, there should not be too much special legislation on e-governance in any country that wishes to build an effective system of e-governance. Such special legislation risks to create a parallel system of governance, which may mean that the desired efficiency gains are not fulfilled and there are threats to legal certainty. Instead, there is a need for a comprehensive overview of existing legislation, with amendments to a number of laws and some additions. In some areas, the legislation is special or different for e-governance—in other situations, it is just a case of improving existing general legislation or introducing such general legislation if it is missing. Foreign observers are often surprised that Estonia does not have a large body of e-governance related legislation. Even the law on databases that was adopted in 1997 was abrogated in 2006 as the content is now found in the Public Information Act.[10] There is a special Digital Signatures Act,[11] but other provisions are found in addition to the Public Information Act also in the Penal Code (for cybercrimes),[12] in data protection law[13] and for ICT issues in the Electronic

[9] MacCormick (2008), pp. 45–46.

[10] Public Information Act RT I 2000, 92, 597.

[11] Digital Signatures Act RT I 2000, 26, 150.

[12] Penal Code RT I 2001, 61, 364.

[13] Personal Data Protection Act RT 2007, 24, 127.

Communications Act.[14] Laws relating to government structures as well as many secondary legal acts complete the picture, but many aspects of day-to-day e-governance are based on the administrative code or on various legislation relating to specific issues of governance rather than e-governance.

One side of e-governance is the handling of different administrative issues—another side is the application of ICTs in the democratic process. One aspect of the Estonian e-governance that attracts a lot of attention abroad because of its (near) uniqueness is the Internet voting. Such e-elections—remote Internet voting with binding results to parliamentary, local and European elections[15]—have been held in Estonia since 2005.[16] So far, no other country has followed the Estonian lead in this respect for national elections, although some local elections[17] as well as special elections for different organs use similar methods. Although this is a very far-reaching and exciting application of e-democracy,[18] this concept includes much more.[19] The term "democratic deficit" was first launched for the European Union (EU) (then the European Economic Community) by the Young European Federalists in 1977 and has since been used concerning both the EU and in other contexts. Such a deficit can be combated by active citizen participation, transparency of decision-making, publicity of decisions, involving citizens in the debate as well as in the actual decision-making.[20] Modern technologies give a possibility to reach many more people in a more efficient manner, and especially to permit them to actively take part in the democratic process. This can provide wonderful tools for countries in transition, but as with e-services, there are also pitfalls if people do not embrace the new technologies.

French and Rios Insua explain issues that need to be considered in the context of e-participation because of differences as compared with the traditional democratic process. There is a lack of physical contact; much larger numbers of people can interact. Quite rightly they then ask the very important question, if all such issues are successfully addressed, would the public trust the e-participation process? Various levels of trust need to be considered, from trust in the website as such and the interactions that take place on it to trust in how the views (expressed in comments and interactions) of the participants will be understood and interpreted. There is a need for trust in the basic systems, a trust that technology does not fail

[14] Electronic Communications Act RT I 2004, 87, 593.

[15] http://www.vvk.ee/voting-methods-in-estonia/engindex/.

[16] An evaluation of the early attempts is found in the conference report "E-voting. Lessons learnt and Future Challenges" (rapporteur F. Breuer), 26–28 October 2006. Available at http://www.ega.ee/files/27.10.06_Report_evoting_Conference.pdf.

[17] http://www.bk.admin.ch/themen/pore/evoting/index.html?lang=fr; www.geneve.ch/evoting/english.

[18] *Handbook on e-Democracy* (Epace Theme Publication, 2010), http://www.ega.ee/files/edemo_0.pdf.

[19] See for a discussion on the online campaigns in Estonia for the 2011 parliamentary elections http://www.ega.ee/node/855.

[20] Lavin and Insua (2010), pp. 31–45 at pp. 32–33.

and trust in that technology will not be used to mask abuse of the democratic process. The legitimacy of the system, especially if it is not used by many (and perhaps not understood by many), is another issue.[21]

Clearly e-participation can be important to help achieve participation in democratic processes, but it will not by itself lead to increased participation. Participatory democracy has been something that specialists, pressure groups and politicians have been looking for during at least the past 40 years, as Lavin and Rios Insua point out. The aims have altered a bit with time, from legitimising public decisions to involving stakeholders in the process. Decentralisation, ways to involve citizens with special knowledge, increasing diversity—many factors contributed to a push for public decision-making that was not just made by decision-making organs. Even if such organs were democratically elected, something additional has been requested, a greater public participation.[22]

Thus, Estonia as a role model can be useful for the practical applications of different public services and also to inspire the greater use of tools of e-democracy.

3 Moldova

The Republic of Moldova similarly to the other states of the former Soviet Union is struggling with corruption and bureaucracy. But unlike many such states, it has managed to progress and provide a good example of the successful implementation of technologies into the state system. This was achieved due to effective and efficient use of money allocated to the reforms, as well as with the assistance of experts and professionals from the e-governance sphere.[23]

There is a popular thesis, stating that Moldova managed to advance and build e-governance in just 4 years. Indeed, if we analyse the development of this institute in the country, we see huge efforts, resources used and results being accomplished in the period of 2010–2014. However, it is important to mention that Moldovan e-governance implementation has been on the agenda already since 2003. A bit later, in 2005, UNDP and the Ministry of Information Development launched the Project "Implementation of E-Governance Component of a National Strategy on Information Society Technologies for Development – Building eGovernance in Moldova".[24] The main beneficiaries were the Ministry of Information Development, Academy of Public Administration and National Tax Authority of the Ministry of Finance. This was the logical continuation of the project of the Government of Moldova that started in 2003 and assisted national authorities in formulating a National Strategy on Information Society Technologies for

[21] French and Insua (2010), pp. 345–358 at pp. 355–356.

[22] Lavin and Insua (2010), pp. 32–33.

[23] The portal to Moldovan e-governance is available on http://www.egov.md/index.php/en/.

[24] http://www.itu.int/net4/wsis/stocktaking/projects/Project/Details?projectId=1175231547.

Development "e-Moldova". The main objective pursued was development of a framework for building e-governance in Moldova.

Activities were focused on three main directions: (a) assessment/policy support, (b) training of civil servants and (c) promotion of electronic public services, aiming to achieve the following results:

- establish a legal framework for building e-governance, including development of an e-governance concept;
- develop methodological frameworks on training and certification of public servants in ICT, pilot training of 150 public servants;
- design technical specifications for e-services and mechanisms for providing e-services, including online tax declarations.[25]

Back in 2007, in one of the concept papers of the project "Building eGovernance in Moldova-2", three main problematic issues were mentioned:

(a) delayed mass-scale implementation of the Electronic Document and Digital Signature Law,
(b) weak IT departments of government agencies and ministries,
(c) lack of leadership and political will on the part of some agencies to pursue the use of ICT in their work.

As correctly stated, it represented the overall weakness of the government in general, with strategic planning being the weakest point while 'crisis management' and 'problem fixing' prevailed. Since then these issues have been tackled to some extent, which has also influenced the development of e-governance in Moldova positively.

According to the Action Plan 2012–2013, in 2010, the Government of the Republic of Moldova launched the Governance e-Transformation process to increase transparency, improve government efficiency and public service delivery and fight corruption by harnessing the power of information technologies. In September 2011, the Government approved the first Strategic Program for Governance Technological Modernization, which provides a unified vision to modernise and improve public services and increase government efficiency.[26]

Through the Open Government Partnership, the Government of Moldova committed to build the foundation of a transparent, reliable, efficient government that will communicate and collaborate closely with its citizens and provide high-quality public services. In this context, Moldova will address three of the five grand challenges: increasing public integrity, more effectively managing public resources and improving public services.[27]

[25] Government of the Republic of Moldova United Nations Development Programme.

[26] Open Government Action Plan 2012–2013 for the Republic of Moldova, Approved by Government Decision Nr. 195 on 04.04.2012.

[27] *Ibid*.

The Government of Moldova joined the open data initiative in April 2011 with the launch of the open government data portal www.date.gov.md in order to promote transparency, administrative efficiency, public accountability and the economic benefits of data reuse. This initiative is part of promoting the principles of open government—one of the pillars of the Strategic Program for Governance Technological Modernization (e-Transformation) approved through the Government Decision no. 710 of September 20, 2011.[28]

According to the recently adopted Policy concept on the principles of the open government data, the opening up and publishing of government data according to the principles defined will have a significant impact on transparency and the country's social and economic development. High expectations are held for what this can achieve. Citizens will have increased and facilitated access to information about the performance of public authorities and institutions, and transparency will increase the latter's efficiency and accountability in the decision-making process. The cooperation of the public authorities and institutions with the civil society will scale up after the government data are opened up and will facilitate a constructive dialogue between them. Entrepreneurs will have the opportunity to develop their businesses or start new ones by using sector open data with high economic value. The cooperation between the public authorities and institutions and the private sector, civil society and experts from various sectors will gradually improve the quality of the government data. The opening up of data will help develop research and innovations in various sectors; the Government will improve the quality of its policies that will draw on the findings of surveys and data generated by surveys and develop the research- and innovation-based economy.

An important recent document, which shapes and supports the development of e-governance, is the 2014 Action Plan, where actions, deadlines and procedure are prescribed in order to reach proclaimed goals. Also, the actions laid down in the approved Plan have been funded from the budget allocated for the Governance e-Transformation Project.[29]

In our opinion, it is worth pointing out that the e-governance policy of Moldova was developed gradually and constantly, which in the end is giving good results. Most recently, the Prime Minister of Moldova, Y. Linke, stated: "We look forward to the openness of the business environment in the implementation of Government e-transformation Agenda, the use of electronic services, which have recently been launched with the intention to simplify the interaction between citizens and representatives of the business environment with the authorities, as well as to eliminate the risk of corruption."[30] Executive Director of the Center for e-Governance

[28] GOVERNMENT RESOLUTION No. 700 from 25.08.2014 Policy concept on the principles of the open government data.

[29] GOVERNMENT DECISION No. 1096 of 31.12.2013 on the approval of the 2014 Action Plan for the implementation of the Strategic Program for Technological Modernization of Governance (e-Transformation).

[30] http://pan.md/paper/Vlasti/EupravlenievMoldoveobsudilisbiznesmenami/47692.

S. Mocan also said that, "the government intends to make the fullest possible use of advantages provided by digital technologies to improve the comfort and efficiency of the reaction of the business environment with state institutions. Quality public servants, available all the time, regardless of geographic location and used devices (computer, laptop, mobile phone, interactive panels or tablets), at minimal cost—this is the main objective of the Agenda, implemented by the government. In this regard, we look forward to the openness of the business environment in communication and digital communication with the authorities, as well as to support and direct participation of the business community in the implementation of Agenda."[31] These recent efforts and plans were made in order to secure the government to business element of the e-governance in Moldova.

The most recent UN e-government survey (where the country was ranked 66th) pointed out that Moldova is facing a problem with the launching of open government data initiatives because of low public interest. Its citizens are not demanding disclosure of government data, in contrast with most other countries where government data was released under strong public pressure. Officials in Moldova supporting an open data initiative have held events to generate interest and awareness around the issue, in addition to training sessions on data journalism and app development using open data. According to these officials, a Moldova-based NGO is working on a project called Budget Stories that would essentially release budgetary information in the form of infographics, creating visual stories behind the facts. In a separate initiative, a group of students in Moldova is combining different cartographic and geographic data to produce maps that will assist the government in visualising certain domestic challenges.[32]

Moldova has reached quite far on the road to a usable e-governance. The situation in the country shows how e-governance is never an issue that can be seen in isolation—not least as far as making it attractive and properly used by citizens is concerned. The Estonian assistance through the e-Governance Academy, for example, includes a project aimed at, based on the analysis of existing local practice and Estonian experience, delivering a practical guidebook on open government and citizen engagement. The guidebook, mainly directed at Central Public Authorities, should give a step-by-step methodological guidance on how to implement the principles of open government.[33]

[31] *Ibid.*

[32] UN e-Government Survey 2014 "E-Government for the Future We Want" http://unpan3.un.org/egovkb/en-us/Reports/UN-E-Government-Survey-2014.

[33] http://www.ega.ee/node/1220.

4 Ukraine

Benefits of e-governance are proved by sustainable progress. Above all the features, we can point out a significant reduction in procedure time of communication and decision-making, transparency of public services to citizens, ability to influence the policy of a state and so on. Ukraine, the biggest country of the Eastern Partnership programme and a state of big possibilities, due to various factors of subjective and objective nature found itself placed under the label of a developing state. Countries within this group are more likely to take the followers' and observers' path when it comes to being in line with the recent world developments and initiatives.

So it has been with the case of e-governance. When answering a question "in what year did Ukraine start the development in e-governance sphere?" we can presume that it happened in 1998, when the Ukrainian parliament (Verkhovna Rada) adopted the law "On National Program of Informatization".[34] This document consisted of some important theoretical concepts and definitions, as well as obliged Parliament to report on the state of implementation of the programme with the adaptation of the annual budget. Among other things, it also contained procedural norms about the programme of informatisation of local authorities, some functions of public bodies and the financial side of implementation of the law. Until now, this law was amended four times (most recently in 2012).

Two years later, the President's decree "On measures developing the national component of global information of the Internet and providing wide access to this network in Ukraine"[35] was released to encapsulate the efforts and policy of those days, which shaped the idea of e-governance more precisely. This decree was backed by the concept of "Electronic Ukraine", which was officially mentioned for the first time in the Regulation of the Government. It was developed under the widely discussed and spread idea of "eEurope".[36] Besides that, in 2003 the State Committee for Informatization and Communications of Ukraine approved the Order of Procedure providing information and other services using the electronic information system "Electronic Government". Although this regulation does not define the concept in question, it clearly defined the main function of e-government—providing administrative services.

It is also important to mention that during 2000–2001, more than 30 information-analytical systems of different levels were redesigned or created in order to keep up with the legislation and technological progress. Among them there were systems of information-analytical support of state statistics authorities, tax administration, customs, ministries of transport, labour and social policy and many others. However, their analysis proved that the level of their correspondence and aims were different and not unified, nor based on similar principles. These initial mistakes caused a lot of misunderstandings and influenced the development of e-governance

[34] http://zakon4.rada.gov.ua/laws/show/74/98-%D0%B2%D1%80/ed19980204.

[35] http://zakon4.rada.gov.ua/laws/show/928/2000.

[36] http://zakon4.rada.gov.ua/laws/show/1302-2002-%D0%BF/ed20020829.

in Ukraine. Moreover, such an important factor as the lack of proper and cost-efficient financing kept playing a big role for some time to come. In the framework of legal policy and framework development, Ukraine kept on a track with adopting and passing different laws and regulations. However, these were often not efficient as the mechanism of their implementation was not concrete, effective and well handled.

The existing mechanism of the National Program of Informatization[37] did not fully meet the needs of information society in Ukraine and implementation of e-governance. It was usually limited to the informatisation of public authorities, especially executive bodies at central and regional levels, and focused on the use of ICT in traditional governance without prioritising provision of quality public services or means of allowing businesses and individuals to participate in policymaking and the electoral process or exercise control of authorities. Electronic governance was primarily seen as a technical matter rather than as a tool for good governance. Until now, there have not been any significant initiatives to use ICT to increase democratic participation.

Furthermore, the Law of Ukraine "On the Fundamentals of information society in Ukraine in 2007–2015" and the concept of e-governance in Ukraine do not define the process of building an information society. It does not include any means for the establishment of a special entity for this and its status, power or ways to achieve goals, defined by law and the concept. Thus, some fundamental aspects of creating a strong framework from the structural side are lacking.

An important factor that significantly affects the situation in the information sphere in Ukraine in general, and particularly in e-governance, is that the organisational and regulatory support in this area is far from perfect. First of all, some key issues for e-governance are not prescribed in the legislation. Second is poor law enforcement: there are many cases where laws or regulations are ignored or interpreted arbitrarily. And last but not least, as the national legal system is still in a state of development, laws and regulations sometimes contradict with each other. In such a situation, e-governance has not been able to play any important role for strengthening good governance in general, as it is struggling with its own governance.

Despite the active use of the modern experience of other countries and not least Estonia to ensure effective use of ICT in Ukraine, there are still remaining problems of their applications to improve the political and legal system and modernise public administration. Among them are

- structural fragmentation of functions in the state apparatus in addressing information management and e-government;
- fragmented legal framework for e-government structures and complexities of advanced legislation;

[37] http://zakon4.rada.gov.ua/laws/show/74/98-%D0%B2%D1%80/ed19980204.

- weak link among specially authorised bodies in the field of organisational support to various important projects of modernisation, for example, a gap of interaction between structures involved in e-governance with those in charge of administrative reform;
- lack of a common conceptual platform for e-governance central authorities and local authorities, as each agency has its own approach towards solving these problems, as well as absence of general rules of information interaction, insufficient institutional and legal framework for the process of selection and dissemination of best practices of e-governance established through the budget.[38]

In our opinion, the problem with the implementation started at the level of the theoretical base not being neither legislatively developed nor evolved into a unified and precise concept or agenda. The process in Ukraine lacked step-by-step guidelines. Scholars in Ukraine have argued on the way e-governance policy should be directed, adopted and developed further on. In our opinion, the five-stage doctrine of policy, developed in 2011 in Ukraine, might be used in the case of seeking solutions. These stages are as follows:

the first stage (initiation policy)—identification and analysis of social problems, the formation of goals and policy priorities, recognising two types of social problems: those that are controlled by the government and solved by it and those that occur in society but so far are beyond the political attention;
the second stage (policymaking)—development of public policy that provides the coordination of interests, goals and means of achieving them;
the third stage (policy adopting)—legitimisation of public policy and funding, providing consolidation policy developed in a number of decisions and programmes;
fourth stage (policy implementation)—implementation and monitoring of public policy that includes a set of measures to implement the decisions and programmes;
fifth stage (evaluation policy)—evaluation of public policies aimed at verifying its efficiency and quality of public policy and regulation; the result of this phase can be either adjustment or waiver of inculcated policy.[39]

When analysing the recent developments of the e-governance in Ukraine, we must take into account the events which occurred in the period of 2013–2014, during the revolution in Ukraine, as they heavily influenced the development of e-governance as well. Not only a change of the political regime but also a change of

[38] Бабаєв В. М. Текст лекцій з дисципліни «Електронне урядування» / В. М. Бабаєв, М. М. Новікова, С. О. Гайдученко; Харк. нац. ун-т міськ. госп-ва ім. О. М. Бекетова. – Х.: ХНУМГ, 2014. – 74 с.

[39] Петренко І. Сутність державної політики та державних цільових програм / Ігор Петренко //$ 6#Журнал «Віче», №10. – 2011. [Електронний ресурс]. – Режим доступу: $ 6#http://www.viche.info/journal/2566/.

the policy approach is clearly visible. The newly elected President and appointed government in Ukraine declared readiness and willingness to further develop e-governance in the country. For the first time in history, a special authority—State Agency for e-governance—has been created. Alexander Ryzhenko, who is the head of the Agency, has established priorities for 2015, and among them is the creation of e-services standards for the development of electronic interaction and openness of government data.[40]

The key performance indicators for 2015 are as follows:

- initialise the implementation of a pilot operation system of electronic interaction between government electronic information resources and connect to it the 10 priority government information resources;
- provide 10 priority services in electronic form (from a list of 20 basic services of the European Union);
- implement a web portal open data and information from the 5 priority information resources authorities represented as structured data sets for automated processing;
- implement a pilot operation of the web portal of e-democracy and create an innovative centre of e-governance in Ukraine;
- develop and implement the Concept of State Program of e-governance "Electronic Ukraine 2020" and adopt programmes of informatisation in all regions of Ukraine.[41]

According to the UN E-Government Survey 2014, Ukraine took 87th place in the rating next to Albania, Fiji and El Salvador. In order to prevent delays in the country's e-government development, the State Agency will provide primarily operational feedback and continual dialogue between citizens and authorities. With the introduction of online mechanisms, the provision of service will be transparent and open, and citizens will have the opportunity to apply for services online without having to visit the administrative premises, which will eventually reduce the level of corruption in the country.[42]

Estonia through the e-Governance Academy is currently carrying out a number of projects in the e-governance sphere in Ukraine, supported by the Swedish government, focusing on local government. Since September 2012, there has been a project covering the Ivano-Frankivsk oblast. The city of Lviv joined the project in July 2013. The objective of the project—which has recently been expanded—is to enhance capacity of a selected oblast to implement ICTs for better and transparent governance and local democracy and to create an example for the central level authorities for further multiplication of the process in other oblasts.[43]

[40] http://www.kmu.gov.ua/control/uk/publish/article?art_id=247662359&cat_id=244277212.

[41] *Ibid*.

[42] http://dhrp.org.ua/en/news/533-20141008-en.

[43] http://www.ega.ee/node/976.

Even though the e-governance in Ukraine seems to be on a right track again, the current government must secure the stability of the implementation of all the proclaimed ideas and goals. However, some aspects also need to be taken into serious consideration. For example, all the legislative and policy regulations need to be reformatted and cancelled if their existence does not make sense or they have lost their actuality. The state must improve its electronic presence by means of cutting unnecessary spending on paper bureaucracy, as well as allow citizens to avoid drawn-out processes of services. We believe that the provision of services in the online mode is one of the priorities of development of e-government as one of the basic principles of administrative services is efficiency, which is best provided through the network. Serious marketing campaigns are needed in order to secure that the gap in terms of awareness and activities between the state authorities, academic scholars and citizens can be narrowed.

5 e-Governance as the Way Forward

There are many different views on the introduction of more technology into our daily lives and not least into governance. Gil-Garcia summarises attitudes listed by different authors as the pessimistic and the optimistic ones. Computers can lead to a dehumanised and technocratic world, or instead they can help make goods and services more efficient and of higher quality.[44] This very simple distinction nevertheless may define how governments and other actors approach policies to e-governance. It may not be a bad thing to keep both views in mind: the dehumanising aspect should not be forgotten in the quest for efficiency. Not least in a situation of profound reforms and changes in society is there a risk that people feel more and more alienated from the state and society. For some people, and perhaps especially for the younger generation, modern technologies bring people and authorities closer. Others, however, will see the use of technology as yet another factor to make them feel alienated and isolated. Such issues are relevant in both Moldova and Ukraine as shown by attitudes to e-governance.

For a governance system to function, rules must be intelligible and possible for most people to obey.[45] No system can function only based on direct enforcement by authorities. Various factors need to be measured to determine the success of e-governance and establish the steps that need to be taken to implement it, suitable for each specific society. Internet access is a basic and crucial indicator, and it is important that this is seen as *real* access, not just theoretical. People have to be able to actually use Internet-based services and not be deterred by high costs, problems to get subscriptions, low speed and poor quality, etc. In this respect, studies have shown great differences between countries in the Eastern Partnership region as well

[44] Gil-Garcia (2012), p. 21.

[45] Blichner (2011), pp. 27–53 at pp. 40–41.

as within countries. It is still not possible in any of the countries concerned to rely on only Internet-based services.[46]

Gil-Garcia lists different approaches to understand and evaluate e-governance. This can be done in an evolutionary manner, estimating different stages of development from initial attempts (web pages and other reflective tools) to total integration (with all government services provided through a single portal like in Estonia). The progress can be estimated by looking at where on a scale a certain society is. Another perspective is to make a precise definition of e-governance, like how specifically ICTs should be used for specific purposes and to see how close to the definition reality is. A third conceptual approach is to determine who the stakeholders are and see for each one how much they have progressed.[47]

Successful e-governance needs to figure in complex organisational and social issues. The social relationships around the technological solutions and the interaction between different social actors must be figured in if it is to be possible to understand why something is successful and how.[48] Few scholars would argue that technologies are to be held directly (and only) responsible for social change. The holistic approach has been called the ensemble view of technology, with technology a piece of a complex system. Laws are part of this system as are budgets, training, social relations, and much else with institutional conditions of interaction with technology having an important role. By being aware of these connections and what they mean, technologies can be properly applied to achieve change.[49]

Moldova and Ukraine both show examples of policies to encourage the use of Internet like adequate pricing policies to promote Internet use, projects in schools, public access in libraries and other measures.[50] What experience in Estonia and elsewhere has shown is that not only technical and practical measures are needed in order to increase the use of Internet services, but it is also essential to focus on attitudes and awareness among the population of the new possibilities available.[51]

In Ukraine, the political will to implement e-governance has been rather strong at the local level. The Estonian e-Governance Academy has ongoing projects in, e.g., the Ivano-Frankivsk oblast, where top leaders in oblast, regional and city levels have expressed their will and support to the integration of ICT in governance. Even the recent unrest in the country has not led to a lessening of support for e-governance reforms. This region can also serve as an example of issues that need to be dealt with, in addition to the technical ICT matters. If ICTs are to be implemented for better and more transparent governance and to support local democracy, there is a need for reforms that allow such effects to be felt—this is not an IT issue. At the same time, the development of e-governance in Ukraine has

[46] Tallo et al. (2013), p. 10.

[47] Gil-Garcia (2012), p. 5 and pp. 5–14, for details on the approaches.

[48] *Ibid.* p. 31.

[49] *Ibid.* pp. 34 and 37.

[50] Tallo et al. (2013), p. 10.

[51] *Ibid.* p. 11.

suffered from a lack of a coherent development programme and unclear objectives. Recent decisions have a potential to rectify this, with special structures created to support e-governance.

In Moldova, open policymaking, participation and leveraging new technologies in this process have been supported. The policymaking process as well as participation practices were analysed to see what recommendations for enabling frameworks of regulative, organisational and procedural nature could be made, including an online participation tool. It must, however, be asked if awareness of open governance and of the benefits of open policymaking and participation increase or results remains focused on the technical side of e-participation.

6 Concluding Remarks

Estonia has managed to put itself firmly on the world map as far as e-governance is concerned.[52] This is despite the fact that Estonia has only been independent for a bit more than 20 years, had to start out its re-independence period with an almost non-existent infrastructure and a ruined economy and even now is not among the richest European states. Such negative factors have, however, conversely also been shown to be strengths: they allowed Estonian politicians and other opinion leaders to take bold decisions as there was nothing to lose. Now when Estonia plays an important role as a global role model, it means that its experience is valuable anywhere in the world, exactly because it is not a privileged and wealthy country that in any event could only with difficulty be emulated by anyone else.

For the Eastern Partnership states like Moldova and Ukraine, it is of special interest to study the example of Estonia as the states' share to the Soviet background. As shown, both these countries do develop e-governance and have adopted various policies and laws to support e-governance as well as greater use of ICTs for governance and, to some extent, for supporting the political process. Estonia has assisted through various projects, in addition to numerous personal contacts and official visits. There are some positive signs with the countries taking a more structured approach to e-governance lately, with the creation of institutional structures to support it. Nevertheless, the development has been somewhat patchy and inconsistent. There has been more of a focus on technical matters than the possibilities to support better governance and increased democratic participation. The political crises and, in the case of Ukraine, the ongoing war have meant that the development is going on in a very complex situation.

[52] http://e-estonia.com/e-residents/e-residency/; http://online.wsj.com/articles/estonia-to-offer-e-residency-to-foreigners-1413897698; http://www.ibtimes.co.uk/estonia-first-country-offer-e-residency-digital-citizenship-1468766—these are just some sources on the most recent e-initiative of Estonia.

Estonian support to e-governance in Eastern Partnership states can be seen in two different ways: either looking at specific projects with concrete aims and performance indicators or looking at Estonia being a model that countries generally want to follow. The first aspect can be evaluated by measurable indicators as project results, reported under the terms of various support projects. The second aspect is much harder not just to measure but even to identify in the first place. This is something expressed in political statements or even just during visits and conferences. Here we must thus just presume that Estonia plays an important role—by showing what is possible and what the level to which countries should strive is.

We cannot point to universal success of e-governance in our selected states, Moldova and Ukraine. There are positive developments, but the progress is patchy and the popularity of the concept not ensured. It would, however, be wrong to draw the conclusion that the assistance and knowledge transfer has been a failure. What can be concluded is that it is a long and complicated procedure, where it is not possible to point to quick and clear gains for good governance via e-governance. This is, however, not a reason for questioning the long-term usefulness and viability of such assistance.

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Eastern Partnership and Family Law

Kristi Joamets

Abstract Family law has in the EU a special status. EU secondary law does not regulate it directly, but principles of EU primary law are applicable as much as they do not harm the culture and traditions of member states. When EaP states want to approach the EU principles, then they have to consider the position and development of EU family law as well. The article compares the EU concept of family life and marriage to the following EaP states. Based on the analyses of the constitutions and family law acts of EaP states, author discusses if EaP states are progressive or conservative states in EU context in this respect. These analyses will support the development of family law policies in EaP states as they give a current legal description of the general principles of family life in EU law and the direction the EaP states should choose when working out the new policy of family relations.

1 Introduction

Family law has in the European Union (EU) a special status. EU secondary law does not regulate it directly: principles of EU primary law are applicable as much as they do not harm the culture and traditions of member states. This principle has left family laws of member states in a certain isolated development causing the differences in legal regulations. Free movement of persons has caused to emerge a large number of disputes and problems related to diversity of family laws of member states. In recent years, the question of harmonising the family laws of EU member states has gathered again more attention; a trend is to support more liberal views of family matters instead of traditionalism. However, it has not been easy for the conservative member states; on the other hand, it is understandable that family relations have been changed and new values must be accepted.

K. Joamets (✉)
Tallinn Law School, Tallinn University of Technology, Akadeemia tee 3, 12618 Tallinn, Estonia
e-mail: kristi.joamets@ttu.ee

T. Kerikmäe, A. Chochia (eds.), *Political and Legal Perspectives of the EU Eastern Partnership Policy*, DOI 10.1007/978-3-319-27383-9_7

When the EU promotes the relations between the neighbouring countries, including Eastern Partnership (EaP) states,[1] then the new values related to family matters will reach to those countries as well and can cause the conflicts or disputes common to the EU today. Anyway, when EaP states want to accept the general principles of the EU, they have to consider the EU primary law, including human rights. In this respect, it would be essential that these states notice and analyse the developments of EU family law and make a self-examination to ascertain what will be the difficulties in accepting the progressive view[2] of family law in their countries.

The article characterises the current development of EU family law, more specifically a concept of family life and marriage, and compares this development to the following EaP states: Ukraine, Georgia, Moldova, Armenia, Belarus and Azerbaijan. Based on the superficial analyses of the family laws of these countries,[3] author discusses if they are progressive or conservative states in EU context in this respect.[4] Besides, author analyses the documents regulating the EaP related to family law to find out the role of family law in this policy and discusses how the family law will develop when certain policy is applied and which legal problems would emerge in this process when analysing it in the context of EU family law. These analyses will support the development of family law policies in EaP states as they give a current legal description of the general principles of family life in EU law and the direction the EaP states should choose when working out the new policy of family relations.

2 European Family Law and the Concept of Culture

Family law has a special character in the EU. From the Treaty on European Union (TEU) and Treaty of the Functioning of the EU (TFEU), there cannot be found any direct rule for this branch of law. Also, clear reference to the widespread understanding that family law is the "inner question" of member states does not exist. Or when such understanding was essential in the times when "nation-state" was described as traditionalism, then in today's society, which is characterised by pluralism and multiculturalism, family law does not fit into the framework of such traditionalism any more. Even more, when in 1960–80s one could see family law only as a branch of private law, today it has moved towards public law and its public nature is more visible as earlier.[5] Looking at Chapter 3 of the TFEU, one can

[1] The article shows that the neighbouring states are conserved to family law as conservative or regressive states by the definition of Antokolskaia. See footnote 2.

[2] See Antokolskaia about the regressive and progressive member states (Antokolskaia 2010).

[3] Basically the legal norms providing the concept of family, family life and marriage.

[4] Antokolskaia (2010).

[5] See Garrido Gómez (2014), p. 4; Needham (2014), p. 42.

realise the "open doors" for the intervention of family law regulations by the EU legal instruments: article 81 (TFEU) provides that (subparagraph 1) "The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States". Though the specific measures provided in subparagraph 2 seem to regulate only the procedure, subparagraph 3 provides clearly that "Notwithstanding paragraph 2, measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure", by giving the authority to the EU institutions to regulate family law matters. Anyway, the authority to regulate is restricted by the consent of member states, but member states must justify its denial in this procedure. Besides, such justification must consist of profound reasoning based on a principle of proportionality, which often makes a denial complicated. In this respect, family law has a special role in EU law. On the one hand, it is commonly accepted that it is deeply related to the traditions and culture of a member state demanding careful treatment by not harming those traditions and culture(s), and the only possible "common" regulation can be done through private international law. On the other hand, as the nature of family relations have been changed considerably in recent decades and converged, it is not correct to refer to the deep differences of family laws any more. The spread and importance of human rights have impacted the society as well, which in turn has converged the family laws of member states that want to follow the human rights. Still, the protection of culture[6] of member states is a main reason for justification of non-harmonisation of family laws of member states.

Danesi and Perron explain that Kroeber and Kluckholm (1963) have offered more than 150 qualitatively differing definitions for culture, but they have agreed in two principles: first, "the culture is a style of living, which is based on certain common system of understanding, and second, there is a continuous transferring of such system to the following generation".[7] This definition describes culture as well today, and with no doubt culture has a changing nature.

Culture is related to the identity of person, but this does not exclude the integration. Culture itself has vague borders, and different cultures can create culture groups by certain common values, e.g. the values of democratic states or values of Western states or values of human rights or common EU values, etc. We can talk about the paradox of open culture, erosion of culture or cultural assimilation, etc. This all explains the dynamic nature of culture and the importance to be

[6] Analysing the role of culture as a main tool in such justification process, author supports the view that in the context of family law in Europe it is not correct to refer to the different traditions of member states' family relations as hindering harmonisation or agreements on how to solve those differences. Author states that in general those differences are not based on deep social traditional values that a state needs to protect but are more "haphazard" in nature or, even more, outdated. About the culture and family law in Europe, see also Alpa (2010), p. 3.

[7] Danesi and Perron (2005), p. 31.

careful in referring to it in justifying certain legal solution. From the historical perspective, we have seen the hierarchy of cultures—stronger cultures have destroyed weaker ones, and industrialisation has justified the domination of other cultures too. Yet it is understandable that every critic evaluates culture and its content from the view of his/her culture; even trying to be neutral is difficult and could be influenced by his/her own background and values. Historical development of culture[8] in Europe, but why not even wider, can be described through the conflict of traditionalism and modernism. Even more, since 1970s, post-modernism has presented new and controversial values to modernism as well.

In this framework, it is complicated to define legally the concepts of family life, family and marriage. It is difficult because in today's family laws, all the stages of development can be found—in some relation we are in traditionalism, in the other in modernism and in some in post-modernism. This describes today's society as a pluralistic society, but regulating the social relations in such conditions by profound grounds is complicated.[9]

However, in EU context it seems that it is time to start talking about the European culture more strongly. In a legal context, it would mean respecting and following the general principles and values of the EU, as provided by the Treaty of EU: "/. . ./ DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law,/. . ./; /. . ./ CONFIRMING their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law,/. . ./. Adding in a list the right to free movement, fundamental social rights and integration etc, it gives the frames to European values – culture. / . . ./." The general principle "DESIRING to deepen the solidarity between their peoples while respecting their history, their culture and their traditions" does not mean that referring to history, culture of some smaller group and traditions allows to make exceptions from the aforementioned general principles; exceptions are accepted when justified, but in this justification process the other principles should be considered as well.

As cross-border family relations are mixing the cultures, then it is difficult to point to one separate tradition any more. Even more, as mentioned above, in Europe the traditions of family relations do not differ so much. Actually, the evolution[10] of family law has shown a move into the same direction[11] instead, only in different speed.[12] Nevertheless, in practice there is as if a "big game" related to family law in

[8] Author uses the word "culture" in singular form on purpose. She states that in most family law relations in Europe we should speak about one single European culture. Differences in general are so unimportant that it is unreasonable to refer to them at all.

[9] See also Gephart (2014).

[10] See also Garrison and Scott (2012), p. 315.

[11] Antokolskaia's description of the historical development of family law in Europe shows also a change in the same direction but in different timing (Antokolskaia 2003, pp. 53, 65).

[12] Örücü (2003, 2010).

the EU. In this respect, it would not be a surprise when the EU one day decides that there is no time to wait for the "laggers" and will impact them by the harmonised rules.[13]

Summarised, EU family law is in a stage of development where common values based on human rights are prevailing over the protection of the values of member states, or in other words, these values of member states have become similar to the values of other member states. The main principles providing a framework for national family laws come from the TEU, the EU Charter of Fundamental Rights (Charter) and the European Convention on Human Rights (ECHR) supporting the rights and interests of an individual.

3 The Role of Family Law in Eastern Partnership Policy

EaP[14] is a bilateral policy from 2009 between the EU and its eastern neighbouring states covering Armenia, Azerbaijan, Georgia, Moldova, Ukraine and Belarus.[15] EaP is one part of the European Neighbourhood Policy (ENP)[16] developed in 2004 with the objective of avoiding the emergence of new dividing lines between the enlarged EU and its neighbours[17] and offering to the neighbours a privileged relationship, building upon a mutual commitment to common values (democracy and human rights, rule of law, good governance, market economy principles and sustainable development). EaP includes political association and deeper economic integration, increased mobility and more people-to-people contacts. Besides the increase of political and economic links, cultural links are emphasised to be related to this policy too.[18]

The EU has adopted Action Plans[19] with each EaP country (except Belarus) within the framework of the ENP. These Action Plans, which set out an agenda of political and economic reforms with short- and medium-term priorities of 3–5

[13] This would influence the family law developments in EaP countries as the current "tolerance" will be changed to certain obligatory rules.

[14] See http://eeas.europa.eu/eastern/index_en.htm (25.10.2014).

[15] Croatia joined the Eastern Partnership on 1 July 2013.

[16] See http://eeas.europa.eu/enp/index_en.htm (25.10.2014).

[17] ENP framework is proposed to 16 of EU's closest neighbours—Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Palestine, Syria, Tunisia and Ukraine. EaP covers only Armenia, Aserbaijan, Georgia, Moldova, Ukraine and Belarus.

[18] See Multilateral Platforms 2014–2017. Available at: www.eeas.europa.eu/eastern/index_en.htm and EaP Culture Programme (the programme's overall objective is to support the role of culture in the region's sustainable development and promote regional cooperation among public institutions, civil society, cultural and academic organisations in the Eastern Partnership region and with the European Union). Available at: www.euroeastculture.ee (15.01.2015).

[19] See http://eeas.europa.eu/enp/documents/action-plans/index_en.htm (25.10.2014).

years, include home affair's elements, i.e. document security, border management, migration, police reform, law enforcement cooperation, and effective prevention and fight against organised crime and corruption.[20]

EaP does not have a separate policy related to family matters. However, the connections to family law from the objectives provided by some platforms of ENP can be noticed. Similarly to EU practice, economic integration and convergence with EU policies[21] will lead to cross-border family relations and hence to the need for the integration and convergence of family laws. Labour market and social policies as a part of economic development raises a question about the recognition of family relations and equal treatment of all family members. It is clear that after the EU has expanded, these countries have become closer neighbours, and their security, stability and prosperity will be affected mutually by each other increasingly. This will impact their family laws as well.

In this respect, the closer cooperation between the EU and its eastern European partners—Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine—is very important for the EU's external relations. Work Programme 2014–2017[22] provides an objective to "promote best European standards and exchange of views on best practices regarding children's rights and gender equality". The ENP on Migration and Asylum supports cooperation by providing a forum where all migration- and asylum-related aspects can be openly discussed among the Eastern partners and between them and the EU. But until now the scope has been on trafficking on human beings, on irregular migration, on integration of migrants, on internally displaced persons and on statelessness.[23] But again, all of these are the questions related more or less to family relations.[24]

This shows that though family law has not been the topic of ENP and EaP, it is directly related to the objectives of its policies, meaning that EU family law principles should be considered additionally in these policies;[25] otherwise, this can lead to misunderstandings and conflict of laws once the principles of EU family law meets the cultures of EaP states.

[20] See http://eeas.europa.eu/enp/documents/action-plans/index_en.htm (25.10.2014).

[21] See Platform 2 Economic integration and convergence with EU policies. http://eeas.europa.eu/eastern/platforms/index_en.htm (25.10.2014).

[22] See http://ec.europa.eu/geninfo/query/resultaction.jsp?QueryText=Work+Programme+2014-2017&query_source=ENTERPRISE&swlang=en (25.10.2014).

[23] See Stancová (2010).

[24] See Implementation of the ENP in 2013 Regional Report: Eastern Partnership. Joint Staff Working Document. Brussels, 27.03.2014. SWC(2014) 99 final.

[25] E.g., the promotion of democracy and rule of law, improvement training of judges, prosecutors and officials with regard to human right issues (see the ENP Action Plans www.eeas.europa.eu).

4 Concepts of "Family Life" and "Marriage" in EaP States' Family Laws

Two basic and topical concepts in family law today are "family life" and "marriage". These concepts are related to each other, and marriage has often been considered as the only possible model of family life. Yet the European Court of Human Rights (ECtHR) has formed an understanding that marriage is only one of the possible models of family life and cannot be considered as the most important one—all the models must be protected equally.[26] However, as there are plenty of models,[27] it should be asked if really all the models must be protected and in which amount. In the Western world, these models must be in conformity with human rights. But considering an accepted model for marriage, there can be the types of marriages[28] in which the human rights are disputable. Certainly, Western-style marriages are recognised more, but this does not exclude other forms from the protection when appropriate. In this respect, in addition, the spouses of cohabitation and also the relatives can be granted some protection but not always—often the denial is based on the fact that this form of family is not protected by the laws of member states, e.g. Roma's marriages, transgender marriages, polygamy, etc.

Currently, the two topical questions related to marriage and family life are still cohabitation and gender-neutral marriage. Still, polygamy seems to be the following topical question in a wider scope. Debates over polygamy follow the same patterns as it has been with gender-neutral marriage. However, there are already some member states which recognise polygamy directly.[29]

The ECHR and the Charter have separate provisions for marriage.[30] EU member states regulating cohabitation have recognised cohabitation as one type of family life next to marriage. Even though the regulations on cohabitation are different in their content, it can be generalised that a new type of family life exists and is recognised by most member states.[31]

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[26] E.g., see Rees v UK 1986, Cossey v UK 1990, X, Y and Z v UK 2006, Vallianatos and others v Greece 2013.

[27] E.g., matrimony, with or without children; common law couples; single-parent families; reconstituted families; etc. (Garrido Gómez 2014, pp. 1–2); see for a definition of family Needham (2014). Willekens states that "the concept of the *family* is just as riddled with ambiguities as the concept of law. The notion of the "*family*" may alternatively or cumulatively refer to (1) kin relations; (2) the relations between cohabiting sexual partners; (3) the relations between spouses, whether cohabiting or not; or (4) the relations between the members of a household that includes children." Willekens (2003), p. 73.

[28] Wardle (2013) points out the numerous types of marriages: e.g., wife loaning, mistress keeping, marriage for political or economic purposes, child marriages, sibling marriage, uncle marriage, endogamy, polygamy, co-marriage, forced marriage, bride selling, etc. (Coontz 2005, pp. 15–23 in Wardle 2013, p. 1395).

[29] E.g., UK. See Crawford and Carrtuhers (2011), p. 41.

[30] See Charter art 9 and ECHR arts 8 and 12.

[31] About cohabitation in Europe, see, e.g., Sverdrup (2014); Barlow (2014). Walleng (2014).

Regulation of cohabitation leads to the question of same-sex marriages. Many EU member states have regulated same-sex cohabitation, more or less differing from the regulation of marriage. Some member states have repealed the cohabitation law regulating same-sex cohabitation and legitimated gender-neutral marriage.[32] They have explained this change in attitude of society by the statement that there cannot exist two legal relations regulated similarly, only having a different name: states should support only one relation, and this must be marriage. Based on practice, author presumes that other member states are in their way to reaching the same conclusion.[33]

Actually, the same development can be predicted from the EaP states; they are just in the beginning of this road. Based on the practice of EU member states, one can predict that it will not be an easy task. Yet EaP states have an opportunity to learn from the EU practice in this question and maybe "jump over" the stages EU member states had to come through because of the novelty of the question: for example, EaP states could legalise the gender-neutral marriage instead of suffering from the "unpolite" and time-consuming political debates over the regulation. EaP states should learn from EU practice that this process should be started with profound explanations, both in legal as well as in social meaning. In "cultural justification",[34] the rational and proportional decisions must be used instead of political gain.

Another question is, how exactly and in which amount EaP countries should follow the rules provided by EU law? As EaP and ENP policies do not regulate or refer to family law matters and in the EU this branch of law has certain privacy, the frames of obligations are vague, especially when in the EU this privacy does not mean isolation and member states have to follow the general principles of EU primary law anyway.

[32] Eleven European countries legally recognise same-sex marriage; additional 13 countries have a form of civil union or unregistered cohabitation. Several countries are currently considering same-sex union recognition. Estonia adopted Cohabitation Law Act, which allows registered partnership also to same-sex partners, in October 2014.

[33] The nearest developments are that family life gets similar legal protection as marriage, and member states are moving towards cohabitation regulations, including same-sex cohabitation; usually after that, cohabitation will be replaced by gender-neutral marriage.

[34] See p. 3; for example, Biryokov states that "Ukraine's history reflects the encounters between the rich and varied civilizations that developed in Europe, the Middle East and Asia (Biryokov 2002, p. 54). Similar description covers also other EaP states. This means that different cultures meet and collide. Family law is related to the culture. However, bringing the prominence to one culture causes disputes. For example, the Soviet regime tried to fight against bride kidnapping and forced child marriages, including polygamy, but in practice these forms of marriages exist in some EaP states until today. Abdullahi A An-Na'im wrote that scholars generally agree that in theory and tradition the regions of Central Asia and Caucasus are patriarchal; many Central Asian families still expect to arrange their daughter's marriages (Abdullahi 2002, p. 31). Author states that maybe these societies which have not yet accepted the equality of men and women (see Enachi 2014) are not ready to understand the gender-neutral family relations. However, this raises a question, how can EaP states promote the common values of the EU then?

Before the Soviet occupation, the family laws of EaP states were closely related to religion. Antokolskaia describes the period of Stalin's regime as the desire of the totalitarian regime to bring all corners of society under its control, including family matters.[35] After the death of Stalin, the terror was over, but none of the Soviet Republics still knew either democracy or religious freedom.[36] In 1969, with the adoption of the Code on Marriage and Family by the Soviet Union, the family law was made more liberal again. Political transformation after the collapse of the Soviet Union in EaP countries consisted, additionally, the need for constitutional changes to comprise the constitution of the Western world, including human rights.[37] This impacts the development of family law as well. The right to family life and the right to marriage are general rights provided usually in the constitution but often in different wording. This offers different interpretations in practice, and author states those speculations on the concept of marriage too. For example, a common discussion is that when the constitution provides clearly that marriage can be contracted between a man and a woman, then as a constitutional principle this does not allow to regulate same-sex marriages in a state. Based on this interpretation, some states have even considered changing their constitutions to grant the justification tool for non-recognition of gender-neutral marriages.[38]

Still, it would be interesting to see what those states would do when ECtHR decides that providing only non-gender-neutral marriage is against human rights.[39] Or what if the EU adopts a legal act legalising gender-neutral marriages? In those cases, a question arises if the constitutions of those states are in conformity with the human rights and/or EU law.

Referring to the provisions of constitutions which provide "a man and a woman" to the related to marriage is speculative, additionally, because one cannot assume that at those times the different genders were mentioned because of the protection of heterosexual marriages. For example, Elizondo Urrestarazu and Petrescu have pointed out that in Spanish Constitution the reference to a man and a woman was made to prevent the discrimination of women, that is to "highlight the equality between a man and a woman once more in the constitutional text".[40] One can presume that in other states the reason has been the same.

Khazova (2010) describes the development of post-Soviet family law with H. Willekens' words, "when change occurs the direction is always the same".[41] In this respect, the development of family law in Eastern countries and Western

[35] Antokolskaia (2011), p. 112.

[36] Ibid, p. 112.

[37] See Schweisfurth and Alleweldt (1998).

[38] See Elisondo Urrestarazu and Petrescu (2013), p. 24.

[39] ECtHR has emphasised in many decisions that ECHR is a "living instrument", which means that the provisions of this legal act must be interpreted correspondingly to the certain moment of development of the society when the decision is made.

[40] Elisondo Urrestarazu and Petrescu (2013), p. 20.

[41] Willekens (1998), p. 48. See also footnote 11.

countries is the same. She states that "despite the variety of family regulations and the distinctly conservative tone of some of the laws, movement towards Western models is evident, or at least its main direction is predictable".[42] It is moreover assumed that the same changes which take place in the EU will soon be visible in EaP countries too. However, how easily this reflection by the laws in Eastern regions takes place is a more complicated question.

EaP states have enacted new family laws after the Soviet occupation—Georgia in 1997, Belarus in 1999, Azerbaijan in 2000, Moldova in 2001, Ukraine in 2002 and Armenia in 2004.[43]

The Armenian Constitution (art 35) provides that "men and women of marriageable age have the right to marry and found a family according to their free will. The family is the natural and fundamental cell of the society." Article 1(4) of the Family Code of Armenia[44] provides that the only family union is a marriage between a man and a woman. Family relations are considered limited, characterised as follows: "Legal regulation of family relations is realized in accordance with the principles of free will of a man's and woman's marital union, the equality of spouses' rights in family, solution of family issues by mutual consent, taking care about mutual well-being, primary provision of the rights and best interests of minor and incapable family members." (art 1 (4))

Article 17 of the Azerbaijan Constitution provides family as a basic element of society; article 32 provides that family and marriage are protected by the state. The Constitution does not refer to a man and a woman; not marriage but family is a basic element of society. Moreover, the Constitution does not define the concept of family but only uses the concept. Still, according to article 2 (2.3) of the Family Code of Azerbaijan,[45] also the only family relations is marriage between a man and a woman. Marriage is a "free-will alliance of a man and woman with the purpose of establishing a family".

The Georgian Constitution does not have specific provisions for marriage or family relations. According to the Georgian Civil Code, "Marriage is the voluntary union of a woman and a man for the purpose of creating a family" (art 1106). The part on family matters in the Civil Code does not have general provisions about family life. The Code uses the word "family", but there is no explanation on how family could be understood.

Article 48 of Moldova's Constitution provides that the family shall represent the natural and fundamental factor of society and shall enjoy the state's and society's protection; the family shall be founded on a freely consented marriage between a

[42] Khazova (2010). Available at: http://ejcl.org, p. 17.

[43] Khazova, pp. 1–2.

[44] Family Code of Armenia 2004 (non-official translation). Available at: http://www.parliament.am/legislation.php?sel=show&ID=2124&lang=eng (27.10.2014).

[45] Family Code of Azerbaijan 1999. Available at: http://gender-az.org/index_en.shtml?id_doc=93 (27.10.2014).

husband and wife, on their full equality[46] in rights and the parents' right and obligation to ensure their children's upbringing, education and training. Moldova's Family Code[47] provides that the adjustment of the family relations is performed according to the principles of monogamy and voluntariness of the marriage union of the man and the woman (art 2 (3)). Article 3 legitimates cohabitation too with a limitation that "other social relations similar to the family" are also regulated by the Code.

Article 5.1 of the Constitution of Ukraine provides that marriage is based on the free consent of a woman and a man. Each of the spouses has equal rights and duties in the marriage and family. The Ukrainian Family Code[48] seems at first glance to have a wider understanding of family, providing that "the family is a primary and basic unit of the society" and that "a family is composed of persons that live together, have joint household, mutual rights and responsibilities" (art 3(2)). Article 3(4) of the Code still specifies that "a family is founded based on marriage". The provision that "a person that has given birth to a child may found a family notwithstanding his/her age" (art 4(2)) refers to the possibility that there can be a family also without marriage, but this provision seems to protect single mothers and not legitimating cohabitation as a model of family life. However, article 9 legitimates cohabitation under certain conditions, providing cohabitants with the right to regulate relations between them upon a written agreement in so far as this is not inconsistent with the provisions of the Family Code, other laws and morals of society. This regulation allows cohabitation,[49] but not between same-sex persons.

The Belarus Constitution (art 32)[50] provides that on reaching the age of consent, women and men shall have the right to enter into marriage on a voluntary basis and start a family. Belarus Code of Marriage and Family[51] provides that family as a natural and basic unit of society is created by the moral principles which do not allow the weakening or breaking of the family relations (par 1). Marriage is a voluntary relationship between a man and a woman (par 12).

[46] But according to the Joint Staff Working Document. Implementation of the ENP in the Republic of Moldova Progress in 2013 and recommendations for action. Brussels. 27.03.2014. SWD(2014) 93 final, a new action plan implements the 2013–2015 national gender equality programme, which for the first time provides for gender equality measures in the fields of security, law and the national army, p. 8; equality council was established in Moldova in 2013, p. 9.

[47] Family Code of the Republic of Moldova 2000. Available at: http://cis-legislation.com/document.fwx?rgn=3480 (27.10.2014).

[48] Family Code of Ukraine 2002. Available at: www.familylaw.com.ua/. . ./FAMILY_CODE_OF_UKRAINE. . . (27.10.2014).

[49] Art 21 provides that a marriage is a family union between a woman and a man; woman and man's living as a family without being married does not constitute a ground for them to have the rights and responsibilities of a married couple.

[50] Constitution of the Republic of Belarus. Ministry of International Affairs. Belarus net. Retrieved 12 July 2014.

[51] Кодекс Республики Беларусь о браке и семье 9 июля 1999 г. № 278-З. Available at: http://pravo.levonevsky.org/bazaby11/republic48/text194.htm (10.01.2015).

In general, all EaP states provide directly in their laws that marriage is the only model of family life.[52] They all have references to different sexes in relation to marriage. It is complicated to state that the reason for such regulation is a clear reflection that in those societies it is impossible to accept gender-neutral marriages. Instead, it may be the protection of women's rights in family relations providing by law that marriage can be contracted only by the voluntary consent of a woman. The provision has got a new interpretation and by this a measure in fighting against same-sex marriages. Actually, the general provisions about family life and marriage are similar to the wordings of the constitutions of EU member states which can be characterised as conservative states. However, practice has shown that new values have come in these states not always by the changed legislation but by the new interpretations. In this respect, also, the provisions of EaP state's constitutions and family laws providing marriage only between a man and a woman can just get a new liberal interpretation one day.

As the general principles of the EU cover, additionally, human rights, then this is one of the common values in the EU influencing closely also the development of family law, especially marriage. Conventions and international treaties on human rights usually refer to the family as a basic unit of society, but they do not define the term "family", including who should be considered a member of the family.[53] When on the one hand EaP states are influenced more or less by the family relations not accepted by the Western tradition,[54] then on the other hand the individuality as a value has taught women to have more rights and independence, which has raised divorces, cohabitational relations and single-parent families. This in turn shows the development of society and family life and allows to state that some of the EU trends have been accepted by the EaP states and the assumptions that the others can be accepted in principle as well.

The ECHR and the Charter give a wider protection as they protect family life,[55] including cohabitation. As mentioned above, many EU member states have regulated cohabitation by a separate legal act and most of the member states protect cohabitation as a legal relation through different legal acts. When the EaP states' constitutions provide marriage as the only possible model of family life, it can be presumed that cohabitation is not accepted in these jurisdictions. This is contrary to the EU principles of family law and fundamental rights.[56] Similarly to EU member

[52] Moldova and Ukraine accept cohabitation too, but as seen Moldova calls this legal relation as "a similar relation to family"; see also art 21 of Ukrainian Family Code.

[53] See Carcimartin (2012), p. 85.

[54] E.g., child marriages, forced marriages, etc.

[55] See ECHR art 8 and Charter Art 7.

[56] Moorhead states: "The role of the ECJ as the supreme legal authority within the Union institutional framework is central to understanding these possible conceptual developments. We may distinguish two senses in which the foundational values of the Union legal order govern the operation of Union laws within the Court's judgments. The first concerns the Court's recognition that the Treaty objectives possess a constitutional status within a hierarchical system of Union and domestic laws. The second concerns the effects of all Union laws (primary and secondary) as a

states, when following those principles an EaP state wants to explain that in their culture the only possible model of family life is marriage, then that state has to justify this argument based on the proportionality principle[57]—in short, the state has to prove that "cohabitation harms marriage". This must be done through the analysis of the rights and obligations of the individuals who are parties in marriage or in cohabitation. The result of this analysis must show that the rights and obligations of the spouses in marriage are considerably violated or harmed by the fact that there is a regulation on cohabitation in a state.

The same pattern should be applied in relation to gender-neutral marriages: how gender-neutral marriage will harm traditional marriage. In EU practice, a mere reference to the "protection of traditional marriage" has not worked because traditional marriage with elements of different sexes and having mutual biological children of the spouses is outdated. Current family relations differ from this "single and the only one" a lot. In this respect, the protection of values of traditional marriage has not passed the proportionality test in the justification process.

Justification obligation makes drafting, interpreting and applying the family law complicated as this promotes more flexibility in family matters. It is true that flexibility in one case can provide a legal basis to demand the same flexibility in another legal relation or case. But this is the cornerstone of democracy—states can restrict the rights of an individual only as much as needed, and the evaluation mechanism here is proportionality test of competing values.

5 Conclusion

The article is not a deep analysis of the family laws of EaP states but includes suggestions, based on EU family law principles and practice, on what should be considered by the lawyers of those states when analysing or providing the policy of their family law. Unfortunately, it is common in many EU policies that family law as "a matter of member state to decide" has been left aside, and it can be noticed

'directly applicable *body* of legal norms within member states' legal orders that, according to the supremacy doctrine, possess constitutional status' (Moorhead 2014, p. 9). General principles of EU primary law should be applied by EaP states too.

[57] Davis states that in the EU, a member state can sometimes hide behind the private international law rules when non-recognising the same-sex marriages contracted abroad as marriage capacity is governed by each individual's "personal law"—law of his or her nationality or domicile. See Davis (2014), p. 264. Author of the article does not agree with Davis in this respect as also the norms of private international law must be in conformity with EU primary law, which means that all the substantive laws of a member state, including the one(s) regulating private international law, must be in accordance with the ECHR and the Charter. That is, the justification principle covers additionally private international law rules. Even more, private international law refers in most cases to the family law acts of this certain member state, which are substantive law. This is something EaP states should consider as well—private international law must be in accordance with the principles of ECHR.

what influences the policy can bring along to the legal family relations. This article is an attempt to show the interaction between the EaP policy and family laws of the Eastern region as well.

Based on the provisions of constitutions and family law acts of EaP countries, it can be concluded that most of the states are regressive when using the classification of Antokolskaia. This means that the development of family law is slow with respect to accepting legally gender-based and gender-neutral cohabitation and marriage. Ukrainian and Moldova's family laws provide some rules for cohabitation, showing by this the acceptance of cohabitation as a model of family life and converging it to marriage. However, based on legal literature, one can assume that in some EaP states there are still problems related to equality of men and women. As long as the equality question is not solved, the progressive views of EU member states and the interpretation of family life in the Charter or the ECHR will not take place. In this respect, the concepts of family and marriage in the laws of EaP states are outdated, similarly to the family laws of conservative EU member states. Old traditions being contrary to the principles of human rights will complicate the convergence of family laws of EaP countries to EU family law.

EU fundamental principles provide protection to family life, widening the scope from marriage to other models of family as well. Family relations which seem impossible to accept and regulate today need a profound analysis based on the proportionality principle. This will probably lead to the understanding that giving certain rights to individuals in these unacceptable family relations will not harm the values of other individuals.

Providing cohabitation, including cohabitation between same-sex persons, as a model of family life and regulating it by legal norms is one of the tasks EaP countries must consider. Another question is gender-neutral marriage, which in the context of fundamental rights of the EU collects more attention and support from EU member states. EaP states can learn a lot from the mistakes of EU member states related to the development of family law and can reach to the legal regulation suitable for today's society more quickly than some EU member states have reached or will reach. Many researches have proved that family law is specific in this respect that despite its vulnerability to the traditions of society, it moves the same direction, only in different speed, and despite a state we consider. In this concept, EaP countries cannot state that they will never accept gender-neutral marriages. They will, one day. How complicated this road will be for them depends only on their capability to learn from the practice of EU member states.

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Mapping the Migration Issues: EaP Policy as a Tool for Regulation

Lehte Roots

Abstract Ukraine, Belarus and Moldova turn into the eastern neighbours of the European Union after the 2004 EU enlargement. They have become frontline countries of migration control of the EU. All these countries are considered to be countries of origin, destination and transit of migrants. EU Eastern Partnership policy is also dedicated to increasing the capacity of these countries to control migration flows. The membership of EU for these countries also depends on the capacity to control the borders.

This chapter highlights the migration control issues in Ukraine, Moldova and Belorussia in connection with Eastern Partnership, the European Neighbourhood Policy and the Copenhagen criteria; highlights the importance of the external dimension of the Area of Freedom, Security and Justice; and explains the EU neighbourhood policy and management of migration. Additionally to the effective border control, new members must fulfil the Copenhagen criteria, and it applies also to the migration management principles and values.

1 Introduction

The enlargement of the European Union (EU) in 2004 changed the geopolitical map of Eastern and Central Europe. After that, Ukraine, Belarus and Moldova turn into the eastern neighbours of the European Union.

All these three countries have borders with other states of the Commonwealth of Independent States—Ukraine and Belarus with Russian Federation and Moldova with Ukraine. Therefore, the capacity of these countries to control and manage migration retains as a relevant interest to the European Union and impacts its own migration control. Ukraine, Belarus and Moldova are viewed as countries of origin, destination and transit of migratory flows.

L. Roots (✉)
Tallinn Law School, Tallinn University of Technology, Akadeemia tee 3, 12618 Tallinn, Estonia
e-mail: lehte.roots@ttu.ee

T. Kerikmäe, A. Chochia (eds.), *Political and Legal Perspectives of the EU Eastern Partnership Policy*, DOI 10.1007/978-3-319-27383-9_8

These countries are also part of the European Union Eastern Partnership policy and therefore have access to different funding opportunities also to increase the capacity in the field of migration control and management.

Migration control is in high political agenda and Eastern partners are expected to collaborate and raise their standards. Possible EU membership can be used as a "carrot" to increase the willingness for improvements and close cooperation. The Union has basically two strategies with regard to its neighbours: (i) offer of a future membership, i.e., a dynamic association process with candidate status, or (ii) attempts to stabilise the country (or its wider region) by offering cooperation but without closer integration into the EU and without the membership prospect.

The European Neighbourhood Policy (ENP) essentially reflects the second approach, which, however, does not mean that some of the countries involved would not be interested in full membership. The very opposite is true. And by way of illustration, one might recall the statement of Ukraine's leaders on the country's future membership in the EU, made in 2004, which took the Union's representatives slightly by surprise and was met with moderate reactions.[1] Ten years later in 2014, Ukraine is in crisis and has become a refugee-producing state. It shows clearly the need for stable partners with clear political direction.

Association Agendas and ENP Action Plans have a list of objectives to be achieved, and it requires significant financial resources. The financial resources are provided within the framework of the European Neighbourhood and Partnership Instrument (ENPI)[2] and the EU financial instruments supporting the implementation of the Neighbourhood Policy. The additional Eastern Partnership resources aim to support two particular initiatives in the bilateral track: the Comprehensive Institution Building (CIB) programme and the Pilot Regional Development Programmes (PRDPs). In order to implement these programmes, specific Memoranda of Understandings are signed with individual partner countries.

On the multilateral level, there are five regional Flagship Initiatives financed from ENPI, namely (i) the Integrated Border Management Flagship Initiative; (ii) the Support to Small and Medium Enterprises (SMEs) Flagship Initiative; (iii) the Regional Electricity Markets, Energy Efficiency and Renewable Energy Sources Flagship Initiative; (iv) the Prevention, Preparedness and Response to Natural and Man-Made Disasters Flagship Initiative (PPRD-East); and (v) the Environmental Governance Flagship Initiative.

This chapter of the book is focusing on the Integrated Border Management Flagship, European Neighbourhood and Eastern Partnership initiatives and looking

[1] Koopmann and Lequesne (2006), p. 12.

[2] Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laid down general provisions establishing a European Neighbourhood and Partnership Instrument (OJ L 310, 9.11.2006, p. 1). As of 1 January 2014, the ENPI Regulation was replaced by a new Regulation of the European Parliament and of the Council establishing a European Neighbourhood Instrument (proposal COM [2011] 839 final of 7 December 2011), with an increased budget of EUR 18.2 billion for the period 2014–2020, which is 40 % up on the amount available under the ENPI from 2007–2013.

at the developments in the field of migration. How can migration regulations be improved in the enlargement process, and how is EU Eastern Partnership influencing the migration developments in the EU neighbouring countries?

The European Union is developing a broad range of policies and instruments to manage the increasing challenge of migration, security of external borders and asylum. It does so in full respect with human rights and fundamental values that should be respected and followed also by the EU eastern partners. The EU action is complementing the competencies and action of Member States that in many cases (like in the area of residence permits, asylum decisions, reception of refugees, external border management, etc.) retain exclusive competences.[3]

Migration is a topic that does not cover full EU competence but has shared competence with the EU Member States. Therefore, it is extremely important that accession states are ready to implement the EU directives and regulations to manage and control migration and asylum. Many of the countries that are currently EU strategic eastern partners, after the accession, will expand the EU border to the East, and their border becomes EU eastern border.

2 Procedures for Accession to the EU and Copenhagen Criteria

According to Article 49 Treaty on European Union (TEU), every European state has a possibility to become a member of the European Union. Nevertheless, it is open to interpretations. As the term European is not defined, it contained geographical, historical and cultural elements which all contribute to the European identity.[4] It is not possible to have a simple formula for shared proximity, ideas, values and other elements that contribute to the European identity. In fact, every state that joins the European Union is bringing new aspects of identity and culture to the European level.

In 1993, the Copenhagen European Council stated requirements for the candidate countries that are known as Copenhagen criteria.[5] First criteria—political conditionality and stability of institutions are needed for guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. This type of political stability in the field of immigration is also important to be ready to join the EU and its immigration acquis as it is under the EU competence.

Article 49 TEU refers to the need for applicant countries to respect and show the commitment to the values listed in Article 2 TEU. These include human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including rights of persons belonging to minorities.[6]

[3] European Commission, MEMO/13/862, Brussels, 9 October 2013.

[4] Emmert and Petrovi (2014), Article 2.

[5] Hill and Smith (2011), p. 313.

[6] Peers et al. (2014).

The second criteria for the accession is the functioning and competitive market economy. This is important to maintaining the internal market balance as protective measures, and national reflex would undermine the single market.

Third criterion is taking on the obligations of membership, and it implies the acceptance of the EU aquis—e.g., the rights and obligations, actual and potential, of the Union legal and political system and its institutional framework. The EU aquis is a broad notion which includes the contents principles and political objective of the Treaties, the secondary legislation adopted to implement the Treaties, as well as the jurisprudence of EU courts, soft legal document such as declaration and resolutions adopted in the Union framework, as well as international agreements concluded by the Union and its Member States in relation to Union policies. The applicant must accept the entire aquis, and in case of difficulties on the side of the applicant, it should be resolved through transitional measures in the third country, rather than by adapting EU rules.

The membership also means that the applicant state needs to apply and implement the acquis effectively. In this sense, it means that the applicant state should have the legal and administrative framework and capacity in the public and private sectors to implement and enforce all aspects of the acquis. This is also an important principle.

Fourth criterion: absorption capacity applies to the European Union itself. It is important to take into account the Union absorption capacity so as to ensure the momentum of European integration. In the case of the EU neighbours, this seems as a secondary problem as the EU very much promotes the accession, and it means that its capacity to absorb new members are assessed before the proposal to join the EU is made.

3 EU Actions in the Field of Migration Control and in the Context of Eastern Partnership

In order to strengthen its external migration policy, the EU sets up partnerships with non-EU countries that cooperate on migration via the so-called Dialogues for Migration, Mobility and Security.

This approach was reinforced by the adoption of the EU's renewed Global Approach to Migration and Mobility (GAMM) in November 2011, which provides the overarching framework of EU's renewed external migration policy.[7]

The emphasis is on promoting well-managed mobility, enhancing the development benefits of migration, strengthening international protection and promoting the human rights of migrants. The GAMM is implemented through regional and bilateral dialogues, with policy tools known as Mobility Partnerships foreseen as the principal instruments for bilateral cooperation.

[7] House of Lords (2012–2013).

The GAMM has to be "complementary to other, broader objectives that are served by EU foreign policy and development cooperation" and to "address migration and mobility, foreign policy and development objectives in a coherent and integrated way".[8]

In the field of migration and EU external relations, there are many issues covered: surveillance and external border controls, EU cooperation with countries of origin and transit of migrants, Global Approach to Migration, the EU as an area of protection of refugees and persons in need of other types of protection and solidarity and burden sharing among EU Member States and with third countries. These are the topics that are relevant in the EU Eastern Partnership policy too.

4 External Dimension of Area of Freedom Security and Justice

Migration and asylum control has been the internal issue of a country, and the competence of the EU was almost non-relevant in this field for decades. In the current situation, the EU has its own competence in the field of migration and asylum, and it affects the accession countries and also the neighbourhood. The EU is deriving its competence from Article 3(2) of the Treaty on European Union, which says that "The Union shall offer its citizens area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime".

The main focus is to offer the citizens freedom and security and justice by having control on external border and have measures to deal with asylum and migration and also measures to prevent and combat crime. It is the matter not only of the EU Member State but also of the EU. The external border control, common asylum and immigration policy should be based on solidarity between the Member States.[9] This can be achieved in the situation when there is common interest and capacity to do so. Therefore, potential accession countries in the Eastern border of the EU should be prepared, helped and trained in order to confront these challenges after the accession. Therefore, the focus on good cooperation with EU border countries might lead to a significant efficiency.

The external dimension of the Area of Freedom, Security and Justice (AFSJ) is not an external policy in its own right but rather a product of its internal development, existing purely for the function of internal needs.[10]

[8] European Commission, MEMO/13/862, Brussels, 9 October 2013.

[9] Art 67 §2 TFEU.

[10] Peers (2011), p. 11.

The latest 2010–2014 EU 5-year Stockholm programme dedicated a section to the "external dimension" of AFSJ on top of a whole range of external measures provided for in the individual policy fields.[11]

The objective of the EU to offer to its citizen by AFSJ is challenged with illegal immigration, international terrorism and organised crime phenomena.[12] Also, the emergence of external security threats has played a major role in the development of the EU in relation to the AFSJ. As a parallel example from the past on political agreement, adopting the European Arrest Warrant was reached only after the events of 9/11. External pressure and security concerns, the promise given under the AFSJ policy, have led the EU to enhance its competence and have given the EU a position of a global actor, that is, able to respond to immigration flow from third countries and to threats posed by terrorism and crime, which immigration is very often linked to. As a consequence, the EU has engaged in a concluding agreement with the AFSJ clause falling within the framework of development policy or neighbourhood policy.

In terms of thematic priorities, two main issues are relevant: (1) controlling migration flows, strengthening cooperation with countries of origin and transit and working on some convergence in asylum policy across Member States and (2) improving security in Europe by controlling the serious criminal phenomena threatening it, both inside and outside.[13]

Often the external dimension of the AFSJ is linked to the Union's Common Foreign and Security Policy (CFSP), as is the case with the fight against international terrorism. Immigration control is not just about keeping immigrants out or adjusting the legal immigration paths to the EU. It is often seen as part of controlling international crimes and terrorism. So the EU agencies that are not specifically established for the immigration control or management are nevertheless dealing with some issues related to immigration. The agencies of the EU in the domains of the AFSJ—such as EUROPOL, Eurojust and FRONTEX—also conclude agreements with third countries, including Ukraine, Belarus and Moldova.

In Article 4(2) of the Treaty on the Functioning of the European Union (TFEU), the AFSJ is listed as a shared competence between the Union and its Member States. The competences conferred upon the EU in the field of AFSJ are almost all internal competences, and only in the relation to immigration policy there is an express external competence.

Parallel to agreements directly pertaining to the management and surveillance of external borders, the EU has made use of its powers to conclude visa-related agreements and readmission agreement. This competence of the EU is related to the Schengen arrangements, which have made short-term visa policy (visas valid

[11] Monar (2012).

[12] Eckes and Theodore Konstadinides (2011).

[13] Communication from the Commission to the European Parliament and the Council: An area of Freedom, Security and Justice Serving the Citizen. Document COM(2009) 262 Final, 10 June 2009.

for 3 months within the Schengen area) as exclusive competence of EU. According to Article 79(3), the Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.[14]

Readmission agreement is also linked to the border management and is related to the border management concept. The EU has concluded a number of readmission agreements with counties in—and beyond—the neighbourhood. Thus, while agreements falling under the ENP and other Partnership and Cooperation Agreements (PCA) will always contain clauses on readmission, these clauses are never self-executing and require the conclusion of a separate ad hoc agreement. The EU has concluded a number of readmission agreements with eastern ENP countries such as Ukraine and Moldova.

The European Union has concluded readmission agreements with Ukraine[15] and Moldova.[16] There is still no readmission agreement with Belarus. The aim of those agreements is to return third country nationals, irregular migrants and failed asylum seekers. At the request of a Member State, partner countries must readmit on their territory all nationals who do not, or who no longer, fulfil the conditions for entry into or residence on the territory of the EU.[17] This also applies if the person has been deprived of his/her nationality after entry into the EU, without acquiring that of a Member State. According to the rules of these agreements, also third country nationals who are not nationals of Ukraine or Moldova can be returned to these countries if it is clear that they have entered the EU from these countries. This puts a big burden to the neighbouring countries as the returned migrant becomes their burden for settlement or subject for the further return to the country of origin procedure.

Furthermore, Moldova shall readmit, under certain conditions, the children of their nationals and their spouses of another nationality. Each partner country also commits to readmit any third country nationals or stateless person residing illegally in the EU if the person concerned:

- holds a valid visa or residence permit issued by Georgia, Moldova or Ukraine;
- has illegally and directly entered the territory of the Member State from Georgia, Moldova or Ukraine.[18]

[14] Art 79(3) TFEU.

[15] Council Decision 2007/839/EC of 29 November 2007 concerning the conclusion of the Agreement between the European Community and Ukraine on readmission of persons. OJ L 332 of 18.12.2007.

[16] Council Decision 2007/826/EC of 22 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorisation. OJ L 334 of 19.12.2007.

[17] Coleman (2009).

[18] http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l14163_en.htm, Accessed 20.11.2014.

In relation to other AFSJ policies, the EU can only act externally through the application of the implied powers doctrine. The possibility for the EU to conclude international agreement in the domain of AFSJ is confirmed in a declaration on Article 218 TFEU, the procedure pertaining to the conclusion of international agreements by the EU.[19]

The Global Approach to Migration is to be defined in the widest possible context as the overarching framework of EU external migration policy, complementary to other, broader, objectives that are served by EU foreign policy and development cooperation.

The Migration and Mobility Dialogues are the drivers of the GAMM and should be standardised as much as possible.[20] They will be carried out as part of the broader frameworks for bilateral relations and dialogue in the form of Strategic Partnerships, Association Agreements or Partnership and Cooperation Agreements, Joint Cooperation Councils or JLS Subcommittees. Dialogues are to be pursued both by regional processes and at bilateral/national level with key partner countries. Where relevant, they should be undertaken according to the Common Foreign and Security Policy. Dialogues will build on regular political steering, through high-level and senior official meetings, action plans, cooperation instruments and monitoring mechanisms, where relevant. In addition, they should also be pursued at local level, notably in the framework of policy/political dialogue, through the EU Delegations.[21]

There is an approach that the Global Approach to Migration and Mobility should be considered and promoted as the overarching framework of the EU External Migration Policy, based on genuine partnership with non-EU countries and addressing migration and mobility issues in a comprehensive and balanced manner. The GAMM should respond to the opportunities and challenges that the EU migration policy faces while at the same time supporting partners to address their own migration and mobility priorities, within their appropriate regional context and framework. The GAMM should establish a comprehensive framework to manage migration and mobility with partner countries in a coherent and mutually beneficial way through policy dialogue and close practical cooperation. It should be firmly embedded in the EU's overall foreign policy framework, including development cooperation, and well aligned with the EU's internal policy priorities. The GAMM should be driven by Migration and Mobility Dialogues. They constitute the fundamental process by which the EU migration policy is transposed into the EU's external relations. They aim to exchange information, identify shared interests and build trust and commitment as a basis for operational cooperation for the mutual benefit of the EU and its partner(s). The GAMM should be jointly implemented by the European Commission; the European External Action Service

[19] Van Vooren and Wessel (2014), p. 481.

[20] Fassmann et al. (2009).

[21] GAMM p. 4.

(EEAS), including the EU Delegations; and the EU Member States, in accordance with the respective institutional competences.[22]

Good governance of migration and mobility of third country nationals can create value on a daily basis. The clear, harmonised legal immigration rules with more open access to Europe can resolve many issues of irregularity, respect of human rights and conditions for living of immigrants in Europe. It can also increase the EU's competitiveness and enrich European societies. With an increasingly global labour market for the highly skilled, there is already strong competition for talent.

Dialogue and cooperation with non-EU countries can increase the burden sharing while assessing the need to maintain orderly movements. Without well-functioning border controls, lower levels of irregular migration and an effective return policy, it will not be possible for the EU to offer more opportunities for legal migration and mobility, and this increases the need for good cooperation and mutual understanding, the same objectives of the EU and its neighbouring countries. The legitimacy of any policy framework relies on this. The well-being of migrants and successful integration largely depend on it.

According to the GAMM, "The EU will step up its efforts to prevent and reduce trafficking in human beings. It will continue to improve the efficiency of its external borders on the basis of common responsibility, solidarity and greater practical cooperation. It will also reinforce its operational cooperation geared towards capacity-building with its partner countries."[23]

EU has set up four themes: (1) legal migration and mobility, (2) irregular migration and trafficking in human beings, (3) international protection and asylum policy and (4) maximising the development impact of migration and mobility that should be covered under the GAMM. Addressing trafficking in human beings is of key importance and should be a visible dimension of the pillar on irregular migration. As the aim is launching a comprehensive approach under the GAMM, it justifies raising the profile of international protection and asylum as one of its pillars.[24]

Global approach to migration management sets that the first priority should be the EU Neighbourhood, notably the Southern Mediterranean and the Eastern Partnership, where the migration and mobility dimensions are closely interrelated with the broader political, economic, social and security cooperation, with dialogues taking place both in the regional context and at bilateral level. The aim should be systematically to move towards strong, close partnerships that build on mutual trust and shared interests, paving the way for further regional integration.[25]

[22] GAMM p. 5.
[23] GAMM p. 5.
[24] GAMM p. 6.
[25] GAMM p. 7–8.

5 International Agreements in the Field of Immigration and Asylum as Part of Eastern Partnership

EU has signed agreements on border control, short-stay visas and readmission.[26] Frontex, an EU agency, is concluding agreements with neighbouring countries and candidate countries to increase communication and the establishment of contact points and cooperate on the surveillance of borders. This type of external action has been developed principally with third countries that physically share a frontier with the EU like Ukraine, Belarus and Moldova, but not exclusively by Georgia. These agreements also contain clauses on training, exchange of best practices and information. This is a clear proof that Eastern Partnership and prospective membership of the EU is used to set up EU standards in the neighbourhood. The EU has also concluded "short stay visa waiver treaties" whereby the EU and the third country in question decide reciprocally to stop requiring short-term visas from Brazil, Seychelles and the Bahamas. Should the waiver of visa requirement appear too risky in relation to potential migratory pressure of a certain country, the EU has developed the practice of concluding visa facilitation agreements whereby the two parties agree on easing the procedural and administrative steps for short-term visas, such as decreasing the price of an EU or third country visa like it is done with Russia and Georgia.

6 Role of the EU Agencies in the Development of Eastern Partnership Cooperation in the Field of AFSJ

EU agencies in the Area of Freedom, Security and Justice can conclude two categories of agreements: cooperation agreements and operational agreements. Under the first type of agreement, AFSJ agencies are given a power to establish stable mechanisms in order to work together with external partners. In order to give effect to the agreement, cooperation agreement usually identifies contact points for each party so as to facilitate direct contact, cooperation and coordination.

Operational agreements are distinguished from cooperation agreements because of two reasons.

Operational agreements are agreements concluded by one of the AFSJ agencies, which include mechanisms to share personal data between the parties and/or which foresee concrete operational mechanisms such as joint patrolling of borders or coordination of investigations.

The EU agency has to pass a number of authorisations in order to conclude these types of agreements that normally envisage the exchange of personal data.

[26] Regulation 562/2006/EC, External border management and enforcement and application of Schengen Border Code. OJ 2006 no. L105/1. This regulation contains the rules on patrolling the external borders of the MS and the EU.

Article 23 of the Europol Decision[27] affirms that the agency can conclude an agreement containing provisions on the exchange of personal data "after approval by the Council, which shall previous have consulted the Management Board and as far as it concern the exchange of personal data, obtain the opinion of Joint Supervisory Board" for the purpose of assessing the existence of an adequate level of data protection by that entity.[28]

Because of their material scope, operational agreements require a thorough scrutiny of the envisaged agreements and an assessment of the international partner with which the agency wants to conclude it so as to make sure that EU standards on rights protection and rule of law are respected.[29] Thus, depending on the agency's mandate, an operational agreement concluded by an AFSJ agency is an agreement that goes beyond the establishment of cooperative tools and that establishes means of cooperation at the enforcement moment.

The founding instruments of the agencies do not fix the names of countries with which agencies have to conclude agreements. As we have seen, only the Europol Regulation regulates the procedure that leads to the identification of targeted countries at the political level. The choice of international partners will depend on a set of considerations that can be summarised as follows: (1) geostrategic importance, (2) policy context, (3) existence of special relation or specific importance of a third country in relation to a specific policy. The ENP countries constitute the most important group of states falling within this category; while the importance of the ENP has been reinforced by the introduction of Article 8 TEU, the security dimensions of this policy has played a central role since its inception in 2004.

These types of cooperation at the operational and cooperation level are a good tool for improving the capacity of the organisations from the Eastern Partnership countries, as some additional rules or procedures can be introduced in order to follow the European principles, values, rights and procedures. Also, relevant Instruments of administrative accountability and democratic checks and balances can be introduced.

[27] Council Decision of 6 April 2009 establishing the European Police Office (Europol), OJ L 121, 15.5.2009, p. 37.

[28] Council Decision 2009/935/JHA of 30 November 2009 determining the list of third States and organisations with which Europol shall conclude agreements.

[29] Mitsilegas (2009).

7 EU Neighbourhood Policy and Management of Migration

The European Neighbourhood Policy originates from the fifth enlargement in 2004 and aims to create a special relationship with those third countries to the south and east that were not included in the enlargement process. The European Neighbourhood Policy illustrates how the EU has drawn objectives and processes from the EU enlargement policy and applied them in a non-accession context. These countries which are not eligible for accession to the EU, or which are currently not viewed as potential candidates by the Union, may develop their cooperation with the EU through the so-called ENP.

With the Treaty of Lisbon, the ENP received an explicit legal competence in EU primary law. The reason for the existence of Article 8 of TEU is that the European Convention found it important to legislate the special relations of the EU with its neighbourhood. In this way, the Treaty would constitutionalise the special relationship with the neighbourhood that was considered politically expedient so as to not create new dividing lines between those nations that were part of the fifth enlargement in 2004 and those that were not.[30]

Article 8 of TEU should be associated with Article 21 of TEU in that it sets out an objective for the Union, specific to its neighbourhood. Importantly, however, the provision is worded strongly. The Union shall develop special relations with the neighbours, meaning that the EU cannot choose to have a neighbourhood policy but it is its obligation. Further, the relationship must be based on the values of the Union, thereby referring back to Article 3(5) TEU. Nevertheless, Article 8 should be viewed as setting objectives but not legal basis to conclude agreements. It does not confer new or distinct powers upon the Union.

8 Implementation of Mobility Partnerships in Eastern Europe as Part of Eastern Partnership Policy

Mobility Partnership (MP) is beyond its pilot phase and should be upgraded and promoted as the principal framework for cooperation in the area of migration and mobility between the EU and its partners, with a primary focus on the countries in the EU Neighbourhood. The proposal to negotiate an MP should be presented once a certain level of progress has been achieved in the migration and mobility dialogues, also taking into consideration the broader economic, political and security context.

[30] European Convention, Title IX: The union and its immediate environment, Brussels, 2 April 2003, CONV 649/03.

The MP provides the comprehensive framework to ensure that movements of persons between the EU and a partner country are well governed. The MP brings together all the measures to ensure that migration and mobility are mutually beneficial for the EU and its partners, including opportunities for greater labour mobility.

The MP is tailor-made to the shared interests and concerns of the partner country and EU participants. The MP offers visa facilitation based on a simultaneously negotiated readmission agreement. A 'more for more' approach, implying an element of conditionality, should continue to be applied as a way to increase transparency and speed up progress towards concluding these agreements. An appropriately sized package should support capacity building; exchanges of information and cooperation on all areas of shared interest should be offered by the EU and by Member States on a voluntary basis to Eastern partners.

The MP can help to ensure that the conditions necessary for well-managed migration and mobility in a secure environment are in place. Provided legal instruments (visa facilitation and readmission agreements) and political instruments (policy dialogue and action plans) are implemented effectively, the EU would be able to consider taking gradual and conditional steps towards visa liberalisation for individual partner countries on a case-by-case basis, taking into account the overall relationship with the partner country concerned.[31]

The Mobility Partnership is to be built in a balanced way around all four pillars of the GAMM, notably with commitments on mobility, visa facilitation and readmission agreements. It may, where appropriate, also include linkages to broader security concerns. Cooperation will be backed up by a support package geared to capacity building and cooperation in all areas of shared interest.[32]

The following tools can be applied within the various stages of dialogue and operational cooperation with EU partners and will find their place in the MP/CAMM frameworks:

- knowledge tools, including migration profiles; mapping instruments, studies, statistical reports, impact assessments and fact-finding missions;
- dialogue tools, including migration missions, seminars and conferences;
- cooperation tools, including capacity building, cooperation platforms, exchanges of experts, twinning, operational cooperation and targeted projects and programmes.

[31] GAMM p. 11.

[32] GAMM p. 11.

9 The Common European Asylum System and Eastern Partners

The European Union has established the Common European Asylum System (CEAS), and its relevance to the Eastern Partnership countries is obvious. As previously mentioned, Ukraine, Belarus and Moldova are also sending countries, which means that there are still people fleeing from those countries to the European Union where they apply for asylum. At the same time, Eastern Partnership countries are expected to have well-functioning reception conditions and procedures to receive refugees from other countries.

Asylum is granted to people who are fleeing from persecution or serious harm, experienced in their own country, and therefore they are in need of international protection. Asylum is a fundamental right, and it is an international obligation to grant asylum to refugees. At the international level, this right and obligation is recognised in the 1951 Geneva Convention on the protection of refugees. In the EU, it belongs to the area of open borders and freedom of movement, countries share the same fundamental values and Member States need to have a joint approach to guarantee high standards of protection for refugees. Therefore, before accession to the EU, the candidate countries have to fulfil these criteria in order to be able to respect the EU rules and regulations.

Asylum procedures must at the same time be fair and effective throughout the EU and impervious to abuse. Since 1999, the EU has been working to create a Common European Asylum System and improve the current legislative framework. The EU rules how asylum seekers should be treated, and what the procedures are to identify the refugees have now been agreed, setting out common high standards and stronger cooperation to ensure that asylum seekers are treated equally in an open and fair system—wherever they apply. The EU asylum system is in constant development, and many directives that have been adopted before the previous 2004 big enlargement are under revision. According to the EU Commission:

- The revised Asylum Procedures Directive aims at fairer, quicker and better quality asylum decisions. Asylum seekers with special needs will receive the necessary support to explain their claim and in particular there will be greater protection of unaccompanied minors and victims of torture.
- The revised Reception Conditions Directive ensures that there are humane material reception conditions (such as housing) for asylum seekers across the EU and that the fundamental rights of the concerned persons are fully respected. It also ensures that detention is only applied as a measure of last resort.
- The revised Qualification Directive clarifies the grounds for granting international protection and therefore will make asylum decisions more robust. It will also improve the access to rights and integration measures for beneficiaries of international protection.
- The revised Dublin Regulation enhances the protection of asylum seekers during the process of establishing the State responsible for examining the application,

and clarifies the rules governing the relations between states. It creates a system to detect early problems in national asylum or reception systems, and address their root causes before they develop into fully fledged crises.

- The revised EURODAC Regulation will allow law enforcement access to the EU database of the fingerprints of asylum seekers under strictly limited circumstances in order to prevent, detect or investigate the most serious crimes, such as murder, and terrorism.[33]

Eastern partners are those that should be able to adopt these rules and implement them before they can join the EU.

10 Conclusion

Migration control and the capacity of the EU neighbours are developing under the Eastern Partnership policy, and it can be used as a tool for improvement. But it is not the only European Union measure that is dedicated to development. Building on the comprehensive political and legal framework for migration and mobility presented by the Commission in its Communications of 4 and 24 May 2011, and on 6 years of experience of implementation of the previous approach, the Commission is convinced that it is now time for the EU to consider how to consolidate this as the overarching framework of the EU's external migration policy.

The promise of future participation in the European Union system, the Copenhagen criteria, must be fulfilled by new members. It applies also closely to the migration principles, values and management.

European Union eastern partners are also subject to the EU's external policy. To achieve the objective, the Global Approach should be firmly embedded in the EU's overall foreign policy, including development cooperation and Eastern Partnership, and better aligned with the EU's internal policy priorities. In line with the Treaty of Lisbon, the EU will need to speak with one voice, also when it comes to its external migration policy and part of Eastern Partnership. It was clearly stated that the GAMM is implemented through regional and also bilateral dialogues, and Mobility Partnerships are an important part of it.

[33] European Commission, MEMO/13/862, Brussels, 9 October 2013.

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The European Union and Protection of Environment in Eastern Partnership Countries

Hamed Alavi

Abstract According to the European Union's primary law, the Union has been mandated with the promotion and protection of environment inside and outside of her territory. In the absence of effective international environmental conventions, the EU has been left with few options in fulfilling her environmental protection mandate. First, it can take the initiator and become a global leader in the elaboration of international environmental agreements. Second, the EU has the option of establishing export standards which subjects all exports of the Union to third countries to internal market's environmental standards. Third, the EU can set the same standards for imported products from third countries. The final option is to form regional agreements between the EU and third countries and follow the goal of environmental protection at regional level. The current chapter will focus on the last option and efforts of the EU to promote environmental protection standards outside her territories in the framework of the Eastern Partnership Program. This paper studies the environmental status quo and challenges which EaP partner countries are facing, as well as the effects of EU approximation on the environment and climate change of the above-mentioned countries. The paper also describes the tools that are used by the EU in order to implement her environmental initiatives in EaP countries and that are necessary for achieving the most from the application of such tools in each country and at regional level.

1 Introduction

The primary law of the European Union has mandated European institutions to preserve, protect, and improve the quality of environment inside and outside the Union's territory at global level.[1] While Article 3(3) of TEU does not address the

[1] Kramer (2013).

H. Alavi (✉)
Tallinn University of Technology, Tallinn, Estonia
e-mail: hamed.alavi@ttu.ee

T. Kerikmäe, A. Chochia (eds.), *Political and Legal Perspectives of the EU Eastern Partnership Policy*, DOI 10.1007/978-3-319-27383-9_9

mandate of the EU to protect the environment elsewhere in the world, Article 3 (5) TEU clearly mentions the Union, and its global relations should contribute to "sustainable development of the Earth". Additionally, Article 21(2) (e) TEU on external actions of the Union emphasizes on the EU's mandate to "foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty", and Article 21(2) (f) TEU clarifies that "help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development". Besides, articles on EU environmental policy of TFEU have no reference to limitation of environmental protection by the Union to its geographical territory. Article 191(1) TFEU clearly determines the objectives of the EU environmental policy as "promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change". Failure of international environmental agreements leaves the EU with few options for the fulfillments of its mandate towards international environmental protection. First, it can take the initiator and become a global leader in the elaboration of international environmental agreements. Second, the EU has the option of establishing export standards which subjects all exports of the Union to third countries to internal market's environmental standards. Third, the EU can set the same standards for imported products from third countries. The final option is to form regional agreements between the EU and third countries and follow the goal of environmental[2] protection at regional level in the framework of similar initiatives to the Eastern Partnership Program. As result, the current chapter will try to focus on the last option and review challenges which the EU is facing in relation to protection of environment outside its boundaries, environmental aspects of relations between the European Union and its Eastern neighbors, major environmental priorities of EaP countries and necessities which can be addressed by EaP in order to improve environmental management in EaP countries.

2 Challenges for EU in Fulfilling Its Global Environment Protection Mandate

Protection of environment at global level is in need of making a meaningful international environmental agreement which becomes a more and more difficult goal to achieve. Such difficulty is clearly visible in limited achievements of the Kyoto Protocol on Climate Change, provisions on the protection of whales, global standards of cars, chemicals, marine pollution and the protection of the Arctic territory; and international agreements on forests. Researchers consider two main reasons for failure of international environmental agreements in achieving their

[2] Ibid.

objectives and difficulty in elaborating new global environmental agreements (see footnote 2). Kramer considers the main reason for failure of international environmental agreements to achieve their objective as increasing reluctance of the United States of America to be a part of international agreements. For example, the United Sates has not ratified the Basel Convention on the shipment of waste (1989), the Convention on Biological Diversity (1992), the Kyoto Protocol (1997), the UNECE Aarhus Convention, the Cartagena Protocol on trade in genetically modified organisms, and the Stockholm Convention on Persistent Organic Pollutants (POPs). There is no doubt that due to the high influence of the US in international society, their attitude towards not being bound by international environmental agreement will create lots of obstacles on the way of such initiatives to achieve their goals.

The second main reason for failure of international environmental agreements should be searched in attitude of many countries to prioritize economic developments to environmental protection.

As a result, the EU has few options towards the fulfillment of her environmental protection mandate outside at international level. First, it can take the initiative and become a global leader in the elaboration of international environmental agreements. Second, the EU has the option of establishing export standards which subjects all exports of the Union to third countries to internal market's environmental standards. Third, the EU can set the same standards for imported products from third countries. The final option is to form regional agreements between the EU and third countries and follow the goal of environmental protection at regional level in the framework of similar initiatives to the Eastern Partnership Program.

3 Environmental Condition and Priorities in Eastern Neighbors of the European Union

It is still possible to consider the environmental situation of former soviet republics in Eastern Europe in accordance with centrally planned economy and heavy industrialization.[3] The collapse of the Soviet Union resulted in dramatic economic transformation of countries in the Caucasus Region, Eastern Europe, and Central Asia, which resulted in institutional and control vacuum and environmental deterioration. Naturally, during the transition period, all involved states were more concerned with managing their financial problems, social inequalities, and high level of poverty rather than focusing on their environmental problems. According to OECD report,[4] Georgia, Moldova, Ukraine, and Belarus suffer serious environmental problems, including air pollution, bad quality of water, deterioration of land and human health, and loss of ecosystem, which is a regional and cross-boundary problem. However, situation is getting better in Moldova, Ukraine, Georgia, and

[3] Ölund Wingqvist and Wolf (2013).

[4] OECD (2012a).

Belarus, which can be attributed to development of environmental policies, joining international environmental agreements, and establishing environmental authorities.[5] Meanwhile, OECD comments on different environmental challenges and priorities among eastern neighboring states of the EU.

3.1 Georgia

UNECE environmental performance review in 2010[6] provides that Georgia is mainly suffering from air pollution, water quality, waste management, land use nature conversion, and chemical, marine and coastal pollution. Air pollution is a growing concern, and water supply is underdeveloped. Waste water management is also a huge problem. Georgia also faces with severe forest loss, soil contamination, and uncontrolled use of fertilizers[7].

The need for sustainable plans to balance environmental protection, economic growth, and social development has been addressed as priority in Georgia's National Action Plan 2012–2016. Additionally, need for improvement of national environmental legislation, increasing national awareness among stockholders, improvement of monitoring and enforcement systems are considered as priorities to achieve long-term objectives in 11 areas, including air protection, water resources, the Black Sea, waste and chemicals, biodiversity, groundwater and mineral resources, land resources, disasters, climate change, and nuclear radiation safety.[8]

3.2 Moldova

In similar way to Georgia, the main environmental challenges of Moldova can be summarized as air quality, water pollution, low protection form nature, waste management problems, and climate change. Other environmental problems in Moldova are land sliding, soil erosion, and loss of biodiversity.[9] Waste water management facilities are outdated and are in need of upgrading; extreme use of pesticides has resulted in soil and underground water contamination.

The government of the Republic of Moldova has set its medium- and long-term development plans in accordance with European standards and towards the achievement of balance between environmental protection and economic

[5] Ölund Wingqvist and Wolf (2013).
[6] UNECE (2012).
[7] Government of Georgia (2012).
[8] Ibid.
[9] Ölund Wingqvist (2009).

development.[10] Providing support for energy efficiency and use of renewable energy is another environmental priority for the government of Moldova, which can be the result of its 97 % dependency on foreign sources of energy (mainly imported from Russia).[11]

3.3 Belarus

Quality of water, protection from nature, industrial pollution, waste management, soil degradation, and residuals of radioactive contamination from Chernobyl blast are the main environmental problems facing the government and the people of Belarus. Extreme dependency of the national economy on industrial activities has resulted in environmental pollution. Management of waste is another problem.[12] Climate change is also another issue which urges the government of Belarus to adopt preventive measures.[13]

The government of Belarus has defined its national environmental priorities as follows: main priority is prevention of danger in the health of its citizens due to environmental pollution. Second priority is prevention of harm to natural resources, besides destruction of natural and cultural monuments. Third and fourth priorities are reduction of risk due to accident and minimizing socioeconomic outcomes of emergency situations.[14] WHO comments on the respective legislation of the government of Belarus on Health and Environmental Risks and the comprehensive but vague and lacking action orientation. Based on the recommendation of WHO officials, it should have clearer targets and precise indicators.[15]

3.4 Ukraine

In similar manner to other countries in the region, the main environmental concerns of Ukraine can be listed as water pollution, air pollution, protection from nature, waste management, and radioactive contaminations, which mostly affect northeast of the country.[16] We should add to the abovementioned list unsustainable usage of energy and climate change, besides other existing environmental challenges.[17]

[10] Government of Moldova (2012).
[11] Ibid.
[12] EU (2007).
[13] Drakenberg (2010).
[14] Government of Belarus (2004).
[15] UNECE (2012).
[16] EPI Ukraine (2011).
[17] http://unfccc.int/resource/docs/dpr/ukr1.pdf (visited 15 July 2015).

According to OECD, environmental priorities for Ukraine are as follows: implementation of quality standards for the environment, with consideration of those of the EU as reference; expansion of the environmental network of parks and reserves; and, finally, development of regulatory framework for proper implementation of the Kyoto Protocol.[18]

3.5 Azerbaijan

Azerbaijan is facing environmental challenges regarding climate change, degradation of natural resources, extinction of biospecies, expansion of desert, extreme grazing and destruction of pastures, and efficiency of regulatory and enforcement procedure.[19]

Based on the abovementioned challenges, OECD report has defined priorities of Azerbaijan as follows: First and foremost priority is preservation of biodiversity and restoration of natural resources. Second priority is limiting desertification by restoration of pastures. Final priority is ratification and harmonization of environmental regularity and enforcement framework with the EU legislation.[20]

3.6 Armenia

Environmental priorities of Armenia include preservation of Lake Sevan in the framework of the comprehensive program on Lake Sevan; safeguarding and preservation of protected areas, including national parks and reserves; as well as implementing any other nature preservation measure in time of necessity.[21]

4 Environmental Aspects of European Neighborhood Policy

The European Union has two main strategies in its relations with her neighboring states.[22] First is offering a membership, and the second strategy is proposal of stabilization for the country through cooperation without membership prospect. The essence of the European Neighborhood Policy is the implementation of the

[18] OECD (2012a).
[19] Ölund Wingqvist and Wolf (2013).
[20] OECD (2012a).
[21] Ibid.
[22] Lustigova (2014).

second strategy.[23] By developing the European Neighborhood Policy (ENP) in 2004, the EU tried to share her tangible and intangible benefits with neighboring states. Later, in 2011, ENP went under review in order to evaluate its overall effectiveness. General reasons behind reviewing ENP can be mentioned as taking into force the Lisbon Treaty, political changes in North Africa and the Middle East under the umbrella of Arab Spring, and military actions in Libya and Syria. Results of review showed limited outcome of support to political reforms in neighboring countries despite providing economic and trade support.[24] Therefore, a new flexible approach of "More for More" was taken, which is in accordance with the demands, capacities and reform needs in each neighboring state.[25] However, the main objectives of the new approach are forming "deep democracy", inclusive economic development, effective regional partnerships (for example, Eastern Partnership Program), and the development of necessary instruments.[26] Article 8 TEU, which came into force by ratification of the Treaty of Lisbon, emphasizes on the importance of the Neighborhood Policy for the European Union and provides legal framework for ENP, as well as Eastern Partnership. Additionally, Article 217 of TFEU provides a legal basis for Association Agreements with partner countries of EaP. Association Agreements should be considered as main legal tools which are in use for the purpose of enhancing and securing the deeper formal relations between the European Union and partner countries. AA includes Deep and Comprehensive Free Trade Areas (DCFTAs) in order to utilize regulatory approximation for the purpose of increasing trade, investment liberalization, and converging towards European standards and regulations.[27]

In addition, political instruments like action plans, flagship initiatives, and programs are used to complement the legal framework. The EU signed Association Agreements with Ukraine, Georgia, and Moldova on 27 June 2014.

The environmental aspect of association is important as it can be recognized both as an individual principle and under inclusive economic development, alongside energy transport, migration, and trade. Action plans which are tailored to the specific needs and strong points of each neighboring country are in the heart of ENP and reflect the commitments of each neighboring state.[28] "More for More" strategy promotes mutual accountability with interactive and frank policy dialogue.[29] The Country Progress Reports, which are published annually, will provide an assessment on the progress towards mutual goals.

[23] Ibid.

[24] EU (2011).

[25] Ibid.

[26] Ibid.

[27] Joint Communication to the European Parliament et al. (2013), p. 3.

[28] EU (2004b).

[29] Ölund Wingqvist and Wolf (2013).

5 Eastern Partnership

Eastern Partnership was the joint proposal of Sweden and Poland in 2008 following the objective of intensifying relations between the EU and countries in Eastern Europe and South Caucasus. Eastern Partnership officially came into existence on 7 May 2009 during the Heads of States or Governments Summit in Prague as joint effort of the EU and its Eastern European Neighbors to raise the importance of economic and political reforms, as well as provide assistance for regional states to get closer to the EU.[30] EaP follows the same principles of ENP; however, it has more regional focus and covers Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine.

The joint declaration of Prague Summit comments on EaP "will be based on the commitments of the principles of the international law and to fundamental values, including democracy, rule of law and the respect for human rights and fundamental freedoms as well as to market economy, sustainable developments and good governance".[31] The main goal of Eastern Partnership was defined as follows: "To create necessary conditions to accelerate political association and further economic integration between the European Union and interested partner countries".[32] EaP takes the multilevel governance approach towards collaboration of the EU with her Eastern European Partners. Bilateral level covers formation of Association Agreement (including Deep and Comprehensive Free Trade Areas) with each partner country "where the positive effects of trade and investment liberalization will be strengthened by regulatory approximation leading to convergence with EU laws and standards".[33] In addition, need for administrative capacity building, energy security in a long-term perspective, developing sectorial cooperation, and visa liberalization in order to support the mobility of citizens were among the issues of concern by all partner countries at individual level.

In order to complement the bilateral initiatives, multilateral framework consisted of five main areas originally proposed by the European Commission:[34] democracy, stability and good governance, economic integration, energy security, and finally contacts between people. Work in progress will be overseen by the respective senior officials in the relevant field during semiannual meetings. Multilateral platforms are to be reviewed in annual meetings of Ministers of Foreign Affairs, while meetings of the heads of states of European Partnership countries will take place once every 2 years.[35] In the framework of EaP, important aspects of the environment and climate change are relevant to all bilateral agreements between partner states and the EU, as discussed below.

[30] Chochia and Hamulak (2014).

[31] Council Document 8435/09 of 7 May 2009, p. 5, Paragraph 1.

[32] Ibid, p. 6, Paragraph 2.

[33] Ibid., P. 7, Para 5.

[34] Lustigova (2014).

[35] Council Document 8435/09 of 7 May 2009, pp. 8–9. Paras 10–12.

5.1 DCFTA, Political Association, and the Environment

Association Agreements have very broad range and comprehensive content in order to touch upon all aspects of mutual interest, as well as to be able to create a very specific type of institutional structure.[36] The main principles which are generally applied to AAs with Eastern Partnership countries can be mentioned as shared values and principles, including rule of law, democracy's fundamental freedom and respect for human rights, sustainable development, market economy, and good governance.[37] AAs also cover Freedom, Security, and Justice; data protection; migration; movement of persons; fight against financing terrorism and money laundering, drugs, and organized crime. Therefore, Deep and Comprehensive Free Trade Areas (DCFTAs) signed with Eastern Partnership countries are much more comprehensive than classic DCFTAs as result of not only focusing on opening markets for goods and services but also working on gradual approximation of signatory countries to trade and trade-related areas of the EU. Energy policy is one focus area of DCFTAs by looking at problems related to supply of energy, efficiency of energy consumption in signatory EaP countries, integration of energy markets, as well as renewable energy. Other areas of AAs include macroeconomic stability, banking and insurance, transport, company law, information society, environment, telecommunication and information technology, maritime governance and fisheries, science and technology, tourism, agriculture, rural development, consumer protection, education, social cooperation, youth training, space cooperation, civil society cooperation, cultural cooperation, and regional and cross-border cooperation.

Despite the fact that environment does not have a direct link with political and economic association, they can be linked together through impacts of governance. Good governance is the way to set proper regulations and implement environmental-friendly policies, inform individuals about the importance of the environment, and lead society to a sustainable use of environmental resources. On the opposite side is improper, bad, or weak governance, which will lead to negative effects on the environment. Association Agreements and DCFTAs can be used as a way for regulatory and institutional approximation with focus on alignment with EU law and standards. Trade can be linked to environment in two main manners: first of all, sources of income from EaP partner countries are mostly non-renewable natural resources, fishery, forestry, and agricultural products which are with poor national management system. As it is already mentioned, water problems are prevalent in Eastern Europe, Caucasus, and Central Asia; pollution and overfishing are a serious concern for marine resources in the region; and overlogging has resulted in heavy deforestation at regional level. At the same time, global demand for natural resources is increasing constantly, which can have serious effects on countries with imperfect environmental regulatory and enforcement systems.

[36] Lustigova (2014).
[37] Ibid.

Second is the nature of trade, which can be environmental friendly or not, depending on the conduct of trade used. In case of increasing energy efficiency and constant innovation via investment in research and development, trade will be friendly to the environment. However, unsustainable consumption of resources, shifting polluting industries to countries with weak environmental regulations, and increasing transport can lead to non-environmental- friendly style of trade. DCFTA has emphasis on regulatory approximation of EaP countries to the EU. Therefore, integration of trade will affect evaluation, monitoring, and enforcement in different regulatory areas, including environment. As a result, trade integration will be a significant factor for EaP countries towards approximation with EU environmental regulations.[38]

5.2 *Increasing Contacts Among People and Mobility of Citizens*

Association Agreements include different issues relevant to free movement and mobility like visa facilitation, improving law enforcement, and actions against corruption, organized crime, and trafficking. In terms of environmental protection, law enforcement and actions against corruption show direct effect. Examples can be sensitivity of natural resources like forest, minerals, and marine resources to corruption and weak observation in the field of licensing.

Evidentially, environmental regulations and authorities are not strong enough to perform their monitoring, licensing, and penalty imposing duties in an acceptable manner. Therefore, regulatory approximation to the EU through Association Agreements can play a significant role in the improvement of environmental regulation and enforcement frameworks in EaP countries.

5.3 *Sectorial Cooperation*

Sectorial cooperation is very vast, and in the framework of Association Agreement it can include different areas of transport, energy, regional development, climate change, and agriculture, which all have environmental effects. Energy production and transport have clear environmental effects in areas of air pollution, consumption of energy resources, and disposal of waste. EaP countries, except Georgia, which has access to renewable sources of energy, are depending on non-renewable sources of energy while energy efficiency is low and, relatively, pollution resulting from energy consumption is high. Therefore, there is potential for improvement of energy efficiency.[39] At the same time, the agriculture sector is the main employer in

[38] OECD (2012a).

[39] Ölund Wingqvist et al. (2012).

EaP partner countries. The main environmental problems of the agriculture sector among EaP countries are overconsumption of water, soil erosion and contamination (due to high consumption of chemical fertilizers), and water pollution.

6 Prerequisites for Improving the Environment in EaP Countries

Good governance has been considered as the most important prerequisite for improvement of the environment in EaP partner countries.[40] Improving regulatory frameworks, besides effective monitoring and implementation law enforcement procedure, can be mentioned as elements of good governance relevant to management of the environment. However, it is not easy for EaP countries to overcome difficulties and existing obstacles on the way to implementation of good governance at national and regional levels. A common obstacle for all EaP partner countries can be considered as being entrapped in the Soviet legacy, which in terms of environmental management can be translated as silo thinking, government and regularity inefficiency, low accountably, and low level of the rule of law.

Additionally, in the presence of environmental policy and regulation, enforcement bodies are absent, and as a result, implementation is lacking element. Weak governance, institutional incapacity, and low importance to the environment in government policies can be listed as absence of effective implementation of environmental policies, even in the presence of such policies among EaP countries.

We should add to the abovementioned list ineffectiveness of market-based instruments like negligence of EaP countries towards cost of damages to the environment and deterioration of the ecosystem and loss of biospecies. Barriers to development of low-emission infrastructure should also be considered as another obstacle for the betterment of environmental activities in EaP partner countries. Except for Georgia, which has access to renewable energy due to its abundant water resources, EaP partners still use fossil fuels as their main source of energy, while lack of interest among their authorities in low emission sources of energy can be related to high costs of initial investments, low return on investment, difficulties in the allocation of budget, and absence of policy to fine pollution.[41]

[40] Ibis.

[41] OECD (2012b).

7 Institutional Reforms in EaP Countries

Implementation of necessary reforms will help EaP countries to move towards good governance in the field of environment, and EU approximation can be a good motivation for them. For this purpose, environmental enhancement should be among the development priorities of all Eastern Partnership states. Developing tools to estimate short-, mid-, and long-term benefits of environmental management can be one of such priorities. Other priorities can be the inclusion of environmental and climate change strategies in national development plans with the direct involvement of ministers of finance, economy, and environment. Forming such committee will help in the allocation of enough budgets to the environmental aspect of development plans while giving sufficient voice to ministers of environment. EaP countries should also improve government performance via reducing inconsistency between environmental policies and other development, trade, and transport policies. It is also necessary to address existing organizational, regulatory, and financial constraints on the way towards implementation of sound environment policies. OECD directly advises EaP states not to produce more strategic papers but to focus on policy implementation.[42] Proper policy implementation is another aspect of statewide reform which is in need of a right policy instrument. While the right policy instrument can be the same for the region as a whole, the right mix of policy instruments differs according to the needs and status of each partner country.

Another aspect of reform which should be taken into account is use of administrative instruments in combination with policy instrument in order to increase monitoring and compliance at national level. Information dissemination is also one aspect of reform which will be helpful in increasing the accountability of the government and trust building between the state, citizens, and environmental activists, as well as between partner countries and the EU. Partner states can use environmental civil society organizations and non-governmental organizations to enhance the implementation of environmental policies and their respective monitoring processes. Environmental activists as a well-informed stockholder can also provide governments with useful policy consultations. Another aspect of reform which can positively affect environmental issues in EaP countries is increasing transparency. Providing transparent data about consumption and licensing of natural resources can contribute to long-term sustainable development.

8 Opportunities for Easter Partnership States

Potential opportunities for the improvement of the environment in EaP countries are numerous, and EU approximation can be a great driving force for this purpose. Long-term environmental opportunities in EaP states can be divided into three main

[42] OECD (2012a), p. 148.

groups:[43] energy efficiency, renewable energy, and sustainable agriculture. Energy efficiency has lots of opportunities to be improved. For example, sustainable energy consumption (mainly heating systems) is followed by more than 40 municipalities in the region via membership in the European Covenant of Mayors.[44] Energy pricing is another important aspect of energy efficiency which is considered by EaP member countries. Currently, energy tariffs in all EaP countries are below cost recovery, while highest tariffs can be noticed in Moldova and Georgia. Policy experts strongly recommend tariff reform while considering the affordability for consumers and cost recovery at the same time. Implementation of penalties, taxes and fines are among the tools which can be used in tariff reform process. However, experience in Georgia proves that rate of payment evasion can be high.[45]

Renewable energy is another opportunity for EaP countries to improve their environment. Apart from Georgia, which has access to sustainable sources of renewable energy via using wind and water resources, other regional countries still have a long path ahead towards commercial use of renewable energy. Revision of tariff and pricing policies can be helpful for reduction of consumption in already limited water resources of countries in the region. Finally, sustainable agriculture is final leg of opportunity tripod for getting environmental protection and getting close to EU environmental norms for EaP countries. Since most economies in EaP countries are based on agricultural products and commodity trade, economic development in these countries will result in overconsumption of nonrenewable natural resources, soil and land erosion, destruction of forests, and reduction of water resources. EaP countries can benefit from AAs with the EU by moving towards green job creation, promotion of organic agriculture, forestry, afforestation, and carbon sequestration. Additionally, economic instruments for improving water management are considered by some regional governments. Ukraine and Moldova are already working on the promotion of organic agriculture which will contribute to national income in the field of agriculture.

EaP countries should implement substantial institutional reforms in order to seize abovementioned opportunism, protect the environment, and mange further approximation to the EU and its norms. Such institutional reform will have some common aspects among all partner countries, while some other aspects will be substantially different from one country to another as a result of representing country-specific needs. The first step which all EaP countries need to take is linking the environment and climate change to top priority development objectives. Such objectives can be listed as improving export potentials, increasing growth, changing the national economic structure, reducing unemployment rate, and energy policy. Establishing a link between environment and high-priority national objectives should be evident in short- and long-term national development plans, and for this purpose, OECD recommends the formulation of Strategic Environmental

[43] Ölund Wingqvist and Wolf (2013).
[44] Ibid.
[45] Ibid.

Action Plan at government level and extending it to the national budget.[46] In addition, supportive role of ministers of finance and economy to environment ministers should be emphasized due to the importance of environment and climate change in development and investment plans, while environment ministers should be given a more important role in national budget negotiation process. Policy coherence and avoiding policy inconsistencies is another recommended element of institutional reform to EaP countries. Policy implementation is another aspect of reform which needs to be addressed in all EaP countries via proper mix of policy instruments. For example, there is a need to have a right mix of economic instruments (e.g., tariff reforms) and administration (e.g., regulatory and compliance monitoring mechanism) and information-based instruments (e.g., publishing environment rating of businesses at national level). In order to improve implementation of reforms, participation of stakeholders is highly recommended. Civil Society Organizations and other non-governmental organizations can help in the promotion of environmental standards as well as in playing the roles of watchdog and change agent in regions. Transparency is another element of good governance which should be considered by EaP countries.

9 Conclusion

With reference to primary law of the European Union, the EU follows an objective of protecting the environment outside of its geographic territories on the basis of agreement with third countries on its vicinity. The current chapter discussed environmental challenges for eastern neighboring countries of the Union and the existing opportunities for them to protect the environment and climate change at national and regional levels in the framework of the Eastern Partnership Program. The roadmap of Eastern Partnership explicitly explains support on regulatory approximation, improving administrative and implementation capacities, as well as realization of multilateral environmental agreements as the overarching environmental objectives which are relevant to environmental protection and climate change performance of partner countries in direct and indirect manner. While the EU integration should be considered as a significant driving force for EaP partner countries, they all need to show higher level of environmental protection, improve environmental governance, and support necessary investments for infrastructural development. Good governance is the key element in the regulation and implementation of effective environmental policies; therefore, improving institutional capacities and governance can result in the proper implementation of environmental policies, making greener decisions, and moving ahead in the EU approximation process.

[46] OECD (2012a), p. 148.

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Implementation of Association Agreements Between the EU and Ukraine, Moldova and Georgia: Legal and Constitutional Challenges

Roman Petrov

Abstract This contribution analyses the constitutional challenges which are likely to arise before Ukraine, Moldova and Georgia in the course of implementation of the Association Agreements (AAs) with the European Union (EU) into their legal systems. The contribution focuses on two major challenges to this intricate process. The first challenge is how to ensure effective implementation and application of the AAs within the Ukrainian, Moldovan and Georgian legal orders. The second challenge is how to solve potential conflicts between the AAs and the Constitutions of Ukraine, Moldova and Georgia. It is concluded that the AAs will serve as a template for further political and economic reforms in Ukraine, Moldova and Georgia and will contribute to the integration of these countries into the European legal space.

1 Introduction

The solemn signature of the AAs between the EU and Ukraine, Moldova and Georgia took place at the EU Summit in Brussels on 27 June 2014, which was followed by ratifications by national parliaments in Moldova, Georgia and Ukraine.[1] This long-awaited event culminated the end of very long negotiation

[1] Moldovan Parliament expediently ratified the Association Agreement on 2 July 2014. It was shortly followed by the ratification by the Georgian Parliament on 18 July 2014. The final accord was played during the simultaneous ratification of the Association Agreement by Ukrainian Parliament and the European Parliament (ratified all three agreements) on 16 September 2014. Meanwhile, all three association agreements are under a lengthy process of ratification by parliaments of the EU Member States. Therefore, the interim application of the association agreements is taking place in accordance with the EU Council decisions (Council Decision

R. Petrov (✉)
Jean Monnet Centre of Excellence at the National University of Kyiv-Mohyla Academy, Kiev, Ukraine
e-mail: petroveulaw@gmail.com

T. Kerikmäe, A. Chochia (eds.), *Political and Legal Perspectives of the EU Eastern Partnership Policy*, DOI 10.1007/978-3-319-27383-9_10

and signature process that has been lasting since 2008. Ukraine's road towards the signature of the AA was the most dramatic. Due to mounting economic and political pressure from Russia, the Government of Ukraine decided to suspend the process of preparation for signature of the EU–Ukraine AA on 21 November 2013.[2] Following this news, hundreds of thousands of Ukrainians went to the streets. The "Maidan" revolution, which claimed more than 100 victims, resulted in the dismissal of President Victor Yanukovich on 22 February 2014 and the election of pro-European new president Petro Poroshenko on 25 May 2014. As a consequence, the "most ambitious agreement the EU has ever offered to a partner country"[3] is back on the agenda and was signed along with the Moldovan and Georgian AAs on 27 June 2014.[4]

Entering into force of the AAs will inevitably lead to the consideration of the legal and constitutional challenges of these agreements on the legal systems of Ukraine, Moldova and Georgia. Yet there is no straightforward clarification of these issues because the AAs are the very first framework international agreements in the modern history of Ukraine, Moldova and Georgia, which imply their deep and far-reaching integration into the legal order of supranational international organisation.

Taking the above as a starting point, the aim of this paper is to analyse what constitutional challenges will arise before Ukraine, Moldova and Georgia in the course of implementation of the AAs into their legal systems. The paper focuses on two major challenges to this intricate process. The first challenge is how to ensure effective implementation and application of the AAs within the Ukrainian, Moldovan and Georgian legal orders. The second challenge is how to solve potential conflicts between the AAs and the Constitutions of Ukraine, Moldova and Georgia.

2014/295/EU of 17 March 2014 and COM(2014)609). Application of Title IV (deep and comprehensive free trade area) of the EU-Ukraine Association Agreement has been postponed till 1 January 2016 due to political and security pressure of the Russian Federation.

[2] The Ukrainian government's decision cannot be disconnected from the Russian proposal to establish a Eurasian Union building upon the already existing customs union between Russia, Belarus and Kazakhstan. On the background of this initiative and its implications for EU-Ukraine relations, see: Van der Loo and Van Elsuwege (2012).

[3] Van Rompuy (2013).

[4] European Council, 'Statement at the signing ceremony of the Association Agreements with Georgia, Republic of Moldova and Ukraine', Brussels, 27 June 2014, EUCO 137/14. Available at: <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/143415.pdf>, accessed 10 December 2014.

2 Objectives and Specific Features of the Association Agreements with Ukraine, Moldova and Georgia

The AAs between the EU and Ukraine, Moldova and Georgia are the most voluminous and ambitious among all EU association agreements with third countries.[5] These are comprehensive mixed agreements based on Article 217 TFEU (association agreements) and Articles 31(1) and 37 TEU (EU action in the area of Common Foreign and Security Policy).[6] There are many novelties introduced to these agreements. Most prominent of them are strong emphasis on comprehensive regulatory convergence between the parties and possibility for the application of the vast scope of the EU acquis within the Ukrainian, Moldovan and Georgian legal orders. Of particular significance of the AAs is the ambition to set up a Deep and Comprehensive Free Trade Area (DCFTA), leading to gradual and partial integration of Ukraine, Moldova and Georgia into the EU Internal Market. Accordingly, the AAs belong to the selected group of 'integration-oriented agreements', i.e. agreements including principles, concepts and provisions which are to be interpreted and applied as if the third country is part of the EU. It is argued that the AAs are unique in many respects and, therefore, provide a new model of integration without membership.

2.1 Comprehensiveness as Specific Feature of the AAs with Ukraine, Moldova and Georgia

The AAs with Ukraine, Moldova and Georgia are innovative legal instruments which in the opinion of Prof. Peter Van Elsuwege are characterised by three specific features: *comprehensiveness*, *complexity* and *conditionality*.[7] The AAs are *comprehensive framework agreements* which embrace the whole spectrum of EU activities from setting up deep and comprehensive free trade areas (DCFTAs) to cooperation and convergence in the field of foreign and security policy, as well as cooperation in the area of freedom, security and justice (AFSJ).[8]

[5] For example, the EU-Ukraine AA comprises 7 titles, 28 chapters, 486 articles, 43 annexes on about 1000 pages.

[6] EU-Ukraine Association Agreement (OJ 2014 L161/1). EU-Moldova Association Agreement (OJ 2014 L57/1). EU-Georgia Association Agreement (OJ 2014 L261/4).

[7] These features of the AAs were described by Peter Van Elsuwege in Guillaume Van der Loo, Peter Van Elsuwege, Roman Petrov 'The EU-Ukraine Association Agreement: Assessment of an Innovative Legal Instrument' EUI Working Papers (Law) 2014/09.

[8] See Title II and III of the AAs.

2.2 Complexity as Specific Feature of the AAs with Ukraine, Moldova and Georgia

The *complexity* of the AAs reflects a high level of ambition of Ukraine, Moldova and Georgia to achieve economic integration in the EU Internal Market through the establishment of DCFTAs and to share the principles of the EU's common policies. This objective requires comprehensive legislative and regulatory approximation, including advanced mechanisms to secure the uniform interpretation and effective implementation of relevant EU legislation into national legal orders of Ukraine, Moldova and Georgia. In order to achieve this objective, the AAs are equipped with multiple specific provisions on legislative and regulatory approximation, including detailed annexes specifying the procedure and pace of the approximation process for different policy areas in more than 40 annexes and based on specific commitments and mechanisms identified in both the annexes and specific titles to the agreement.

2.3 Conditionality as Specific Feature of the AAs with Ukraine, Moldova and Georgia

Furthermore the AAs are founded on a strict *conditionality* approach which links the third country's performance and the deepening of its integration with the EU.[9] In addition to the standard reference to democratic principles, human rights and fundamental freedoms as defined by international legal instruments (Helsinki Final Act, the Charter of Paris for a New Europe, the UN Universal Declaration on Human Rights and the European Convention on Human Rights and Fundamental Freedoms),[10] the AAs contain common values that go beyond classical human rights and also include very strong security elements such as the "promotion of respect for the principles of sovereignty and territorial integrity, inviolability of borders and independence, as well as countering the proliferation of weapons of mass destruction, related materials and their means of delivery".[11]

Apart from the more general 'common values' conditionality, the AAs contain a specific form of 'market access' conditionality, which is explicitly linked to the process of legislative approximation. Hence, it is one of the specific mechanisms introduced to tackle the challenges of integration without membership. Of

[9] For example, the preamble to the EU-Ukraine AA explicitly states that "political association and economic integration of Ukraine within the European Union will depend on progress in the implementation of the current agreement as well as *Ukraine's track record in ensuring respect for common values, and progress in achieving convergence with the EU in political, economic and legal areas* [emphasis added]".

[10] Arts. 2 EU-Ukraine, EU-Moldova and EU-Georgia AAs.

[11] Art. 2 EU-Ukraine AA and Arts. 3 EU-Moldova and EU-Georgia AAs.

particular significance is a far-reaching monitoring of Ukraine's, Moldova's and Georgia's efforts to approximate national legislation to EU law, including aspects of implementation and enforcement.[12] To facilitate the assessment process, the governments of Ukraine, Moldova and Georgia are obliged to provide reports to the EU in line with approximation deadlines specified in the Agreements. In addition to the drafting of progress reports, which is a common practice within the EU's pre-accession strategy and the ENP, the monitoring procedure may include "on-the-spot missions, with the participation of EU institutions, bodies and agencies, non-governmental bodies, supervisory authorities, independent experts and others as needed".[13]

3 Effective Implementation and Application of the AAs Within the Ukrainian, Moldovan and Georgian Legal Orders

Implementation and application of the AAs within the legal systems of Ukraine, Georgia and Moldova will be governed by their national constitutional laws. Provisions of the Constitutions of Ukraine, Georgia and Moldova on application of international agreements follow the same approach and provide that in case of conflict of the AA provisions with their national legislation (excluding national constitutions), the former prevails. Once duly ratified by the Parliaments of Ukraine, Georgia and Moldova, the AAs will become an inherent part of their national legal systems as any other duly ratified international agreement.[14]

[12] Art. 475 (2) EU-Ukraine AA, Arts. 448–449 EU-Moldova AA, Arts. 414–415 EU Georgia AA.

[13] Art. 475 (3) EU-Ukraine AA, Art. 450 EU-Moldova AA, Art. 416 EU Georgia AA.

[14] Article 9 of the Ukrainian Constitution of 1996 provides that 'International treaties in force, consented by the Verkhovna Rada of Ukraine [Ukrainian Parliament] as binding, shall be an integral part of the national legislation of Ukraine. Conclusion of international treaties, contravening the Constitution of Ukraine, shall be possible only after introducing relevant amendments to the Constitution of Ukraine.' Full text in English is available at <http://www.president.gov.ua/en/content/constitution.html>, last assessed 10 July 2014. Article 8 of the Moldovan Constitution of 1994 provides that "The Republic of Moldova pledges to respect the Charter of the United Nations and the treaties to which she is a party, to observe in her relations with other states the unanimously recognized principles and norms of international law. The coming into force of an international treaty containing provisions contrary to the Constitution shall be preceded by a revision of the latter." Full text in English is available at <http://ijc.md/Publicatii/mlu/legislatie/Constitution_of_RM.pdf>, assessed 10 December 2014. According to Article 6(2) of the Constitution of Georgia, an international treaty or agreement of Georgia unless it contradicts the Constitution of Georgia, the Constitutional Agreement, shall take precedence over domestic normative acts. Full text in English is available at <http://www.parliament.ge/files/68_1944_951190_CONSTIT_27_12.06.pdf>, assessed 10 December 2014.

3.1 Legal Challenges for Effective Implementation and Application of the AAs with Ukraine, Moldova and Georgia

Relevant provisions of the Constitutions of Ukraine, Georgia and Moldova imply that, on the one hand, properly ratified AAs will not only be equated to the same status as national laws but will also enjoy a priority over conflicting national legislation.[15] On the other hand, the AAs cannot overrule conflicting provisions of the national constitutions, and the legal systems of Ukraine, Georgia and Moldova do not envisage direct enforceability of international agreements in the national legal order.

The AAs are not just ordinary international agreements but complex framework legal structures that not only contain specific norms that govern the functioning of the association relations and DCFTA between the EU and Ukraine, Moldova and Georgia but also envisage a possibility of application of the vast scope of the "pre-signature" and "post-signature" EU acquis[16] within the legal system of the eastern neighbouring countries. The scope of the EU acquis to be applied by Ukraine, Moldova and Georgia covers not only EU primary and secondary laws but also EU legal principles, common values and even case law of the ECJ, as well as specific methods of interpretation of the relevant EU acquis within their legal systems. Hitherto, the Ukrainian, Moldovan and Georgian legal systems have not faced the necessity to implement and to effectively apply a dynamic legal heritage of an international supranational organisation.[17] Subsequently, adherence of Ukraine, Moldova and Georgia to the dynamic EU acquis via the AAs will encapsulate a plethora of challenges to their national legal orders.

One of the serious challenges to be faced by the eastern neighbouring countries is reluctance of the judiciary in the eastern neighbouring countries to apply and effectively implement international law sources in their own judgments.[18] In

[15] Article 19(2) of Law of Ukraine "On International Treaties of Ukraine" provides that "If duly ratified international treaty of Ukraine contains other rules then relevant national legal act of Ukraine rules of the respective international treaty should be applied". Article 19 of the Moldovan Law No. 595-XIV 'On International Treaties' of 24 September 1999 states: 'international treaties shall be complied with in good faith, following the principle of *pacta sunt servanda*. The Republic of Moldova shall not refer to provisions of its domestic legislation to justify its failure to comply with a treaty it is a party to' (*Monitorul Oficial*, 2 March 2000, No. 24). Article 6 (1) of the Law of Georgia 'On International Treaties' states that an international treaty of Georgia is an inseparable part of the Georgian legislation. 'Parlamentis Utskebani', 44, 11/11/1997.

[16] For more on application of "pre-signature" and "post-signature" EU acquis in the EU external agreements, see Petrov (2011).

[17] May be with exemption of application of the EU sectoral "energy" acquis under the framework of the Energy Community, which Ukraine joined in 2010. See Petrov (2012).

[18] Petrov and Kalinichenko (2011). This happens mainly due to (1) the belief that international case law is not relevant to civil law systems, (2) the translation of case law and jurisprudence, (3) lack of translation of case law into Ukrainian to help judges adapt their decisions to best

practice, the Ukrainian, Moldovan and Georgian courts refer mainly to international agreements which are duly signed and ratified by their national parliaments and which are self-executing within the Ukrainian legal system. Even in these cases, the correct application of international agreements is not guaranteed. It happens because one of the most important impediments for the application of international law by the Ukrainian, Moldovan and Georgian judiciaries is the correct understanding of these international conventions by national judges. Application of the AAs by the eastern neighbouring countries' judiciaries will increase through increasing familiarity with the AAs and the EU legal order as well due to claims on behalf of Ukrainian, Moldovan and Georgian nationals based on provisions of the AAs and the EU "acquis".[19]

3.2 Possible Solutions for Effective Implementation and Application of the AAs with Ukraine, Moldova and Georgia

In the writer's opinion, the objective of effective implementation and application of the AAs may be achieved by issuing a special implementation law that will clarify all potential conflicts of provisions of this agreement with Ukrainian, Moldovan and Georgian legislative acts. For example, Ukraine has already gained some experience in ensuring the implementation and application of the European Convention of Human Rights (ECHR), which Ukraine ratified in 1997. The ratification of the ECHR by Ukraine took place by means of two laws. The first law was law on ratification of the ECHR wherein Ukraine recognised the jurisdiction of the European Court on Human Rights (ECtHR).[20] The second law was a special law on application of case law of the ECtHR in Ukraine. It imposed on Ukraine a duty of mandatory and timely execution of all judgments of the ECtHR related to this country.[21] In accordance with these laws, judgments of the ECtHR are being formally accepted by the national judiciary as sources of law and Ukrainian judges frequently refer to the ECtHR judgments in their decisions. However, the rate of

European standards. Furthermore, the Verkhovna Rada of Ukraine is not always expedient in solving conflicts between ratified international agreements and national legislation.

[19] More on judicial activism and voluntary application of the EU acquis in the eastern neighbouring countries, see Van Elsuwege and Petrov (2014).

[20] Law of Ukraine "On Ratification of the European Convention on Human Rights 1950, First Protocol and protocols № 2, 4, 7 and 11" of 17 July 1997, № 475/97-BP.

[21] Law of Ukraine "On Execution of Judgments and Application of Case Law of the European Court of Human Rights" of 23 February 2006, № 3477-IV.

effective application of ECtHR case law in Ukraine is considered as unsatisfactory and lags far behind other European countries.[22]

The special law on implementation of the AAs may solve much more complicated issues than the Ukrainian law on ratification of the ECHR in 1997. For instance, this law will face the necessity of clarifying how binding decisions of the Association Councils should be applied in Ukraine, Moldova and Georgia. Direct applicability of the Association Councils' decisions will depend on their undisputed acceptance by national judiciaries. The special law on implementation of the AAs must clarify whether the ECJ case law constitutes a part of the EU sectoral acquis contained in the AAs' annexes. This issue is of prime importance for the Ukrainian, Moldovan and Georgian governmental agencies and the judiciaries which will deal with interpretation of various elements of the EU sectoral acquis within their national legal orders. Another challenge is clarification of how the EU directives listed in the annexes to the AAs should be implemented into the legal system of Ukraine, Moldova and Georgia. In other words, may this process take into account choice of form and method of implementation of the EU directives listed in the annexes to the AAs? Last but not least, what are the legal means of transposing the EU dynamic acquis into the Ukrainian, Moldovan and Georgian legal systems? All these issues will be novel for the relatively immature legal system of Ukraine, Moldova and Georgia and, therefore, have to be answered in the special law on implementation of the AAs.

3.3 Experience of Third Countries of Effective Implementation and Application of the AAs with the EU

Ukraine, Moldova and Georgia may study and apply experience of other third countries which signed association agreements with the EU and issued national laws on implementation of these agreements. For instance, in 2001 the Croatian Parliament ratified the Stabilization and Association Agreement (SAA) and at the same time enacted the Act on Implementation of the SAA, which required implementation of all secondary association acquis but did not envisage its direct effect within the Croatian legal order.[23] The Norwegian Parliament adopted a statutory law on implementation of the EEA Agreement in 1992. This law granted the provisions of the EEA Agreement and its secondary law supremacy over conflicting national legislation. The Norwegian law on implementation of the EEA Agreement clarified that relevant EU regulations are to be implemented without change but the

[22] See the 7th Annual Report of the Committee of Ministers 'Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights' in 2013. Available at <http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2013_en.pdf>, last visited 10 December 2014.

[23] Rodin (2001).

implementation of EU directives must take into account choice of form and method of implementation.[24] In order to ensure effective application of the relevant EU acquis within a myriad of sectoral agreements with the EU, Switzerland adopted several implementation laws too. For example, Federal Law on Swiss Internal Market in 1996 mirrors most of the relevant EU acquis and Swiss Law on Federal Parliament ensures "euro compatibility" of Swiss law drafts with the EU acquis.[25]

4 Potential Conflicts Between the AAs and the Constitutions of Ukraine, Moldova and Georgia

The process of implementation of the AAs may release a plethora of constitutional conflicts in the legal systems of Ukraine, Moldova and Georgia. One of the major problems to be solved in the course of implementation and application of the AAs is lack of direct enforceability of international agreements in the eastern neighbouring countries' legal orders. This challenge had been faced by other associate countries too before their accession to the EU.

4.1 Constitutional Challenges in the Course of Implementation of the AAs in Third Countries

Most of the countries of Central and Eastern Europe and the Western Balkan region promoted Euro-friendly interpretation of their national legislation. For instance, in 1997 the Polish Constitutional Tribunal rejected the binding force of EU law provisions in the EU–Poland AA within the Polish legal order but acknowledged the obligation on the Polish government and judiciary to interpret "the existing legislation in such a way as to ensure the greatest possible degree of such compatibility".[26] In 1998, in the landmark *Europe Agreement* judgment, the Hungarian Constitutional Court did not recognise direct applicability of provisions of EU law referred to in the EU–Hungary AA without their 'express constitutional authorisation' in the dualist Hungarian legal order.[27] However, the Hungarian Constitutional Court considered that references to the EU acquis in the EC–Hungary AA should be 'taken into consideration' in the course of the implementation by national authorities.[28]

[24] Statute of 27 November 1992, nr. 109. For more detail see Bruzelius (2009/10).

[25] Maiani (2009/10).

[26] Decision of the Polish Constitutional Tribunal K. 15/97, OTK [Orzecznictwo Trybunalu Konstytucyjnego, the collection of decisions of the Constitutional Tribunal], nr. 19/1997, at 380.

[27] Hungarian Constitutional Court, *Decision 30/1998, (VI 25) AB*. Also see Piquani (2007). Volkai (1999).

[28] Hungarian Constitutional Court, *Decision 30/1998, (VI 25) AB* at V. 5.

The Czech Constitutional Court emphasised the special importance of EU law for the Czech legal system and frequently cited the EU acquis, including the ECJ case law, in its judgments.[29] One solution of this problem is when the Constitutional Courts in Ukraine, Moldova and Georgia rule on the Euro-friendly interpretation of the AAs within their national legal orders and refer to experiences of other associate countries which either already joined the EU or are on the pre-accession track. Another solution could be an amendment of the Ukrainian, Moldovan and Georgian Constitutions in order to ensure direct enforceability of the AAs. In 2001, both the Czech and Slovak republics made international law directly enforceable in their domestic legal systems by amending their respective constitutions.[30] However, it is unlikely that the eastern neighbouring countries may introduce new amendments that may imply at least a minimal limitation of the national sovereignty. For example, Ukraine formally rejected accepting full membership in the Eurasian Customs Union for constitutional reasons (because of the threat to national sovereignty). Some of the AA provisions impose commitments on Ukraine, Moldova and Georgia that directly contradict their national constitutions. For instance, the EU–Ukraine AA binds Ukraine to ratify and to implement the Rome Statute on the International Criminal Court and its related instruments. However, the Constitutional Court of Ukraine has ruled out the constitutionality of some provisions of this document for Ukraine.[31] Consequently, the ratification of the Rome Statute on the International Criminal Court by the Verkhovna Rada of Ukraine (parliament) is possible only after positive ruling of the Constitutional Court of Ukraine. Furthermore, the issue of approximation of dynamic EU acquis by Ukraine in adoption of which Ukraine does not take part may be challenged before the Constitutional Court of Ukraine as contrary to fundamental constitutional principles of Ukraine on legality and sovereignty.[32]

[29] *Skoda Auto* case, Collection of decisions of the Constitutional Court, vol. 8, p. 149. Therein, the Czech Constitution Court stated that the EU founding treaties result from the same values and principles as that in the Czech constitutional law; therefore, the interpretation of EU competition law by the EU institutions should be taken into account in the course of interpretation of the corresponding Czech rules.

[30] Kühn (2003).

[31] Ruling of the Constitutional Court of Ukraine on compatibility of the Constitution of Ukraine to the Rome Statue of the International Criminal Court of 11 July 2001, Nr. 1-35/2001.

[32] Article 5 of the Constitution of Ukraine provides that "The right to determine and change the constitutional order in Ukraine shall belong exclusively to the people and shall not be usurped by the State, its bodies, or officials".

4.2 Constitutional Challenges for Effective Implementation and Application of the AAs with Ukraine, Moldova and Georgia

The AAs will certainly produce a profound effect on the legal systems of Ukraine, Moldova and Georgia which will significantly contribute to further Europeanisation of these countries' judiciaries.[33] It will face a necessity of application and interpretation of the relevant EU acquis contained in the main body of the AAs and in annexes. Furthermore, the Ukrainian, Moldovan and Georgian judiciaries will encounter a challenge of referring to EU legal principles and common values, especially in the domain of non-discrimination and equal treatment. One of the necessary first priority measures to answer this challenge will be in-depth training of the Ukrainian, Moldovan and Georgian judges and civil servants in fundamentals of EU law. The implementation of the AAs will trigger a reform of the national institutional framework responsible for the approximation of national legislation in line with the EU acquis. Ukraine, Moldova and Georgia will have to upgrade the competence of governmental bodies and to set up a specialised ministry or horizontal governmental agency responsible for coordination of legal approximation in order to keep up with strict deadlines of adoption of the EU sectoral acquis as provided in the annexes to the AAs. Another challenge could be the need to ensure the timely transposition of the EU dynamic sectoral acquis into the legal systems of Ukraine, Moldova and Georgia.[34] The eastern neighbouring countries have never faced the need to adopt and implement dynamic legislation of other international organisation while not taking part in the law-making process. Legal justification for this action could be clarified by the Constitutional Courts of Ukraine, Moldova and Georgia. The most likely solution is to equip the Association Councils with the right to define and propose the scope of the EU dynamic sectoral acquis to be adopted by Ukraine, Moldova and Georgia after signature of the agreements.

[33] Petrov and Kalinichenko (2011).

[34] For example, Articles 114(1), 124(1), 133(1) of the EU-Ukraine AA state that "Ukraine shall ensure that its existing laws and future legislation will be gradually made compatible with the EU *acquis*". Article 153(1-2) of the EU-Ukraine AA reads: "Ukraine shall ensure that its existing and future legislation on public procurement will be gradually made compatible with the EU public procurement *acquis*. In this process, due account shall be taken of the corresponding case law of the European Court of Justice and the implementing measures adopted by the European Commission as well as, if this should become necessary, of any modifications of the EU *acquis* occurring in the meantime."

5 Concluding Remarks

To conclude, we have set out a number of considerations which lead us to believe that the signature of the AAs with the EU will trigger significant internal reforms in the eastern neighbouring countries. First of all, the future AAs will serve as a template for further political and economic reforms in these countries. The obligation to share the EU's common democratic values will imply regular monitoring by the EU institutions. Thereby, this should prevent the eastern neighbouring countries from undemocratic practices. The new joint institutions set up under the framework of the AAs will help to pursue the programme of approximating the laws with the help of its binding decisions. The process of effective implementation of the AAs will constitute the greatest challenge for Ukraine, Moldova and Georgia. These countries have to prove their adherence to the EU's common democratic and economic values and ensure the proper functioning of their deep and comprehensive free trade areas. The latter objective may be achieved only under the condition of establishing truly competitive market economies and the adoption of international and EU legal standards. Ukraine, Moldova and Georgia will be bound by the decisions of the dispute settlement body established by the AAs. Following the widely used practice in the EU's external agreements, the AAs contain so-called evolutionary and conditionality clauses. These are provisions in the EU's external agreements with specific objectives (for instance, granting a visa-free regime, access to all freedoms of the EU Internal Market), the attainment of which is conditional either on certain actions on behalf of a party to an agreement (such as the elimination of trade barriers and uncompetitive practices) or on the effective functioning of democratic and market-economy standards (such as free and fair elections and fighting corruption).

Effective implementation and application of the AAs require Ukraine, Moldova and Georgia to solve several important constitutional and legal challenges. The very first step on this road would be an adoption of comprehensive implementation laws by national legislatures of these countries. These laws can be modelled on already existing national laws on implementation of the ECHR and must take into account good practices of other European countries which faced similar challenges before joining the EU. The second step would be a constitutional review of the provisions of the AAs by the Constitutional Courts of Ukraine, Moldova and Georgia on matter of compatibility of the AAs with fundamental principles in national constitutions (principle of sovereignty, constitutionality of the Rome Statute and other issues). Furthermore, Constitutional Courts of Ukraine, Moldova and Georgia will be expected to rule on place of binding decisions of the Association Councils and relevant EU "acquis" in the legal systems of these countries.

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The Ukrainian Crisis as a Challenge for the Eastern Partnership

Evhen Tsybulenko and Sergey Pakhomenko

Abstract The chapter is devoted to the study of the Ukrainian crisis as a challenge for the EU Eastern Partnership. The hybrid war waged by Russia against Ukraine in Donbass, as well as the occupation and illegal annexation of Crimean peninsula by the Russian Federation, has led to a situation in which the traditional EU intentions toward the EaP came into dissonance with the new realities. These new challenges for the EaP require a proper response from the EU. Actually, this response could have been gleaned on the eve of the Riga Summit. Significant attention is paid to Ukraine's expectations, the Russian factor, and the prospects of reforming the Eastern Partnership. The necessity of further differentiation of groups of countries according to the goals of their cooperation with the EU and for a clearer definition of their membership prospects that within such a differentiation becomes more appropriate is put forward in the chapter.

1 Introduction

"The Ukrainian Crisis" has become an established term for the events and processes that have been happening in Ukraine since the winter of 2013/14 till present. It encompasses three separate components that differ chronologically and qualitatively:

E. Tsybulenko (✉)
Kyiv International University, Kyiv, Ukraine

Tallinn Law School, TUT, Ehitajate tee 5, Tallinn 19086, Estonia
e-mail: evhen.tsybulenko@ttu.ee

S. Pakhomenko
Mariupol State University of Humanities, Mariupol, Ukraine
e-mail: spplus@ukr.net

T. Kerikmäe, A. Chochia (eds.), *Political and Legal Perspectives of the EU Eastern Partnership Policy*, DOI 10.1007/978-3-319-27383-9_11

(1) civil protests against President Yanukovich's regime that resulted in its demise and the change of government;[1]
(2) the occupation and illegal annexation of Crimean peninsula by the Russian Federation;[2]
(3) the hybrid war waged by Russia against Ukraine in Donbass.

The Russian aggression in Ukraine directly threatens European security as it violates the existing principles of international law, destabilizes the system of international relations, sets a precedent for the use of force in the realization of geopolitical interests, opens the possibility of not complying with "the rules of the game" for individual subjects of international relations.[3] Thus, the possible destructive effects of the Ukrainian crisis are clearly superior to the past conflicts in Europe of the second half of the twentieth century, including the conflicts in the former Yugoslavia. According to the experts at the Information Analysis Center of the Faculty of International Relations of the Ivan Franko National University of Lviv, the Ukrainian crisis has become and continues to be an important factor in the transformation of the international order (which is in a constant flux of destructurization and transformation) in the sense that it played the role of a "catalyst" in the international confrontation of the global players (US, EU, Russia, China) and regions (Middle East, Latin America, East Asia) on the design and interpretation of the new international order (Rogovik and Nabi 2015).

In addressing the conflict, Ukraine hopes for the support and help of the West, especially the EU, and in order to facilitate that it intends to utilize all the instruments and mechanisms upon which their relationship is based. A prominent place among these mechanisms is taken by the "Eastern Partnership" initiative as a part of the European Neighbourhood Policy. But is it capable of providing the partnering countries with the tools necessary to ensure their security? Is it capable of offering real prospects for the implementation of Europeanization as a process of formation, distribution, and institutionalization of formal and informal EU rules, procedures, policy paradigms, styles, and modes of action? And ultimately, is the Eastern Partnership able to answer the main question: what are the European perspectives for the states that have signed the Association Agreement and announced their European aspirations?

[1] See, e.g., PACE, 30.01.2014: Resolution 1974 The functioning of democratic institutions in Ukraine (2014).

[2] See, e.g., United Nations, 27.03.14: General Assembly Resolution A/RES/68/262 *Territorial integrity of Ukraine* (2014) and PACE, 10.04.2014: Resolution 1990 *Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation* (2014).

[3] See, e.g., OSCE Parliamentary Assembly, 08.07.15: *Resolution on The Continuation of Clear, Gross and Uncorrected Violations of OSCE Commitments and International Norms by the Russian Federation* (Helsinki, 5–9 July 2015), and PACE, 24.06.2015: Resolution 2063 *Consideration of the annulment of the previously ratified credentials of the delegation of the Russian Federation (follow-up to paragraph 16 of Resolution 2034 (2015))* (2015).

2 The EU's Motivations in the Creation and Development of the Eastern Partnership

Among the factors for initiating the EaP, usually the following are encountered:

(1) The reaction to the EU enlargement (2004 and 2007) when not only the number of EU members increased significantly but also the number of the countries with which the Union now had a common border – the EU needed to establish a system of neighborly and mutually beneficial relations with a number of very different states. It was the awareness of this need that was embodied in the establishment of the European Neighbourhood Policy of which the EaP was a part (Lustigova 2014).
(2) An important role in defining the eastern vector of the Neighbourhood Policy was the development of its southern direction initiated by France, which launched the Barcelona Process, which covered the countries of the Mediterranean. In this situation, the diversification of the ENP and the clear definition of its eastern direction seemed logical. It also provided additional opportunities for a regional impact for those EU states that are situated on the eastern border or have their own interests in that direction. Not coincidentally, the EaP was initiated by Poland and Sweden (Svoboda 2014).
(3) The Russian–Georgian war of August 2008, which revealed the inability of European institutions to deal effectively with a real aggression and the final stages of secession of an individual territory of a sovereign country – in these circumstances, the EU had to offer its Eastern neighbors a program that had to somehow compensate for the absence of other more effective actions in support of their security (Sherr 2015).

The multilateral component of cooperation within the EaP included four thematic platforms. These platforms were the democracy of appropriate governance and stability, economic integration and convergence with the EU, energy security, and interpersonal contacts. These were the flagship initiatives where the resources were actually focused. Particular attention was given to preparing association agreements and creation of deep and comprehensive free trade areas (FTA).

At the official level, the EaP was positioned as a technological toolbox to provide the technical assistance and to deepen the economic integration with the EU's Eastern neighbors without promising a prospect of the European Union membership for them (see also Kerikmäe and Roots 2013). The main incentives for the partner states were the access to the European markets as a result of signing of the Association Agreements, as well as the prospect of a visa-free travel regime. At the same time, it was emphasized that the participation in the Eastern Partnership does not entail membership and that initiative is not directed against Russia. Thus, the EU has chosen a collective, multilateral, and to some extent unified format of cooperation, considering it more appropriate and perhaps more convenient. It was supposed to realize its goals by developing a common approach for the whole region and not addressing each country separately (Samadashvili 2014).

Despite the official rhetoric, from the very beginning some experts have recognized a certain geopolitical content to the EaP. Thus, G. Perepelitsa, the Director of the Foreign Policy Research Institute of the Diplomatic Academy of Ukraine at the Ministry of Foreign Affairs of Ukraine, believed that by establishing the "Eastern Partnership" the EU wanted to create a kind of safety belt for itself on its eastern borders and to foster a democratic and pro-European trend in the development of these neighboring countries (Perepelitsa 2015). The talks about the geopolitical meaning of the "Eastern Partnership" became especially active and open before the Vilnius Summit. In particular, the representatives from the initiators of the "Eastern Partnership", the heads of the Foreign Ministries of Poland and Sweden Radoslaw Sikorski and Carl Bildt expressed the hope that the Vilnius Summit of the Partnership should "become the summit of achievements" while symbolically naming their article "Uniting Europe" (Sikorski and Bildt 2013), (Gasparyan 2014). According to A. Umland, "a Europeanized Ukraine would give an impetus to the gradual implementation of European values in other post-Soviet countries, including the Asian part of the former USSR" (Umland 2013). Obviously, such rhetoric invariantly affected the expectations of the European-oriented part of Ukrainian political spectrum and society.

The Ukrainian crisis has led to a situation in which the traditional EU intentions toward the EaP came into dissonance with the new realities. Firstly, the possibility of the signing of the Association Agreement with the EU has been perceived by the Ukrainian society not just as a technological instrument for intensification of trade relations but also as the acceptance of European civilization values, as the final choice of the foreign policy orientation, and as a step in the immediate run-up to the EU accession. Not least, the aforementioned rhetoric of the European partners has also contributed to this understanding. An important role was played by propaganda by the supporters as well as the opponents of the European Association whose efforts made the agreement the paramount current dilemma in the minds of the public, a historical and vital choice of the Ukrainian people. As a result, there was an absolutization of acceptance or rejection of the Association Agreement, the sharp polarization of positions which can be described metaphorically as a confrontation between "Euro-Romanticism" and "Euro-Demonism". That is why the turmoil with the Agreement the peak of which coincided with the Eastern Partnership Summit in Vilnius became the starting point for the revitalization of public activity in Ukraine in the form of "Euromaidan", which later developed into a large-scale uprising against the ruling regime. Russian aggression against Ukraine only encouraged the three partner countries—Ukraine, Moldova, and Georgia—to restore their rhetoric about the prospect of membership apparently against the wishes and aspirations of the EU.

Secondly, the Eastern Partnership which previously did not look very expensive financially gradually turned into a costly project for the EU. Thus, the total aid for the six neighboring countries covered by this program gradually grew from €450 million in 2008 to €785 million in 2013. In 2013, the implementation of the Eastern Partnership programs has attracted €250 million, which were previously planned for the other programs under the European Neighbourhood Policy (Ukrstat 2014).

But since the Riga Summit, Ukraine alone has received €1.8 billion, and the country continues to need constant financial injections.

The Ukrainian crisis has clearly identified two groups of partner countries, and the EU can no longer ignore the differences between them. The first group of countries is Ukraine, Georgia, Moldova. They have signed the Association Agreement, and Moldova has received a visa-free regime with the EU. Another trend is demonstrated by Belarus, Armenia, and Azerbaijan with their colder view of the EU and their foreign policy oriented toward Russia. Azerbaijan is more interested in contacts with Brussels in the economic sphere and in the transportation of its energy resources to Europe. Armenia, given the difficult geopolitical situation, was forced to abandon economic integration with the EU in favor of joining the Russia-initiated Customs Union. The authoritarian style of government of the perennial leader of Belarus, Alexander Lukashenko, and his recent attempts to balance between Brussels and Moscow rather suggest that the European Commission needs to develop an individual approach regarding Minsk (Madoyan 2015). These three countries, despite the individual characteristics of their political regimes, are clearly unenthusiastic about the democratic initiatives offered by the Eastern Partnership.

Finally, contrary to the repeated claims that the EaP is not aimed against Russia, Russia has painfully and aggressively seen the initiative primarily as a threat to its interests in the post-Soviet space. And it was precisely Russia's intervention that has deepened, sharpened, and stretched in time the so-called Ukrainian crisis.

These new challenges for the EaP require a proper response from the EU. Actually, this response could have been gleaned on the eve of the Riga Summit. Once again, it was stated that the Eastern Partnership should not be seen as a stage for the full membership in the Union. The meeting in Riga was dubbed the "Survival Summit", and its results were diplomatically summarized by the Foreign Minister of Lithuania Linas Linkevičius: "The summit in Riga is not the last one, let us leave something for another time." (Taradai 2015). However, the fact that the three states have clearly outlined their European aspirations confirms that they still consider EaP as a springboard on the difficult path of European integration. As the columnist for "ZN" Alyona Getmanchuk notes: "the prospect of membership theme may be muffled in the official rhetoric, but it becomes an integral part of the academic and public discourse not only in the Eastern Partnership countries but also in the EU. The initiative of Ukrainian civil activists to submit a symbolic bid for the EU membership at the forum in Riga was welcomed very warmly. In particular, so did the European Commissioner Hahn who has asked permission to take with him the posters with signatures for this initiative to decorate the bare walls in his office. He also noted how important it is not to lose naivete because it allows one to believe in change. This was said in the context of the EU membership prospects for Ukraine." (Getmanchuk 2015).

Despite the continuation of the traditional rhetoric about the compatibility of the Eastern Partnership and the close cooperation of partners with Russia, the EU could not ignore the Russian aggression in Ukraine. The final declaration of the summit in Riga condemns the annexation of Crimea. But the refusal of Belarus and Armenia

to sign this version of the text again demonstrated the difference between the partners. We now witness not only the difference in the desired level of closeness and in the ultimate objective of cooperation with the EU exhibited by the two groups of countries. What surfaced now is the sharp difference of positions on the territorial integrity of a partner, and in fact on the questions of European security. The reluctance of Azerbaijan, Armenia, and Belarus to include the words recognizing the illegality of the annexation of Crimea by the Russian Federation and later to sign the declaration is another sign of a lack of solidarity within the Partnership and of the difference of approaches to the interpretation of the international law and European values. So far, diplomatically, neither Ukraine nor the European partners accentuate attention on this, but apparently the unified policy for the Eastern Partnership toward countries neighboring the EU comes to an end. In its place, the EU officials plan to create two different forms of cooperation: one for Ukraine, Georgia, and Moldova, which signed the association with the EU, and another for the rest—Belarus, Armenia, and Azerbaijan oriented in their policy on Russia. According to Diana Potemkina of the Latvian Institute of International Affairs, right now the EU is trying to reform the Eastern Partnership according to the differentiation that was just reflected in the final declaration of the Riga Summit. "As for the countries that do not want to join the European Union with them we can still maintain relationships based on a somewhat different model, with somewhat different issues." (Taradai 2015).

Obviously, it is why for the first time the EU recognized that each partner country should have an individual plan of the integration process. Their desire to build relations with the European Union without the agreement is embodied in part by the members of the Riga Summit's reaffirmation of "the sovereign right of each partner freely to choose the level of ambition and the goals to which it aspires in its relations with the European Union".[4]

3 Ukraine's Expectations

In large parts of the Ukrainian political spectrum, the Eastern Partnership initially caused moderate skepsis. First of all, the criticism was directed at the lack of a clearly fixed goal—the EU membership or at least a hint at the prospect of the membership. The Association Agreement and visa liberalization, which were seen by Ukraine as primary objectives and the necessary steps toward EU membership, seemed more suitably solved bilaterally and not in the format of the Eastern Partnership. Not the least reason for a rather cool attitude toward the initiative was the difference among the partner states, and in 2009 under President Yushchenko, it seemed that by unifying the Ukrainian integration efforts with not

[4] European Council, 22.05.15: *Joint Declaration of the Eastern Partnership Summit* (Riga, 21–22 May 2015).

pro-Western Belarus, Armenia, and Azerbaijan, the EU lowered the "status" of Ukraine not noticing or, possibly, ignoring its Europe-oriented foreign policy. Thus, the EaP project seemed if not futile, to have no breakthrough. It only meant to complement the range of existing EU instruments in relation to third countries: Agreement on Partnership and Cooperation, action plans under the European Neighbourhood Policy and the various sectoral agreements on visa facilitation.

On the other hand, there were those who saw the EaP as an opportunity for the regional leadership for Ukraine, a chance to become a "locomotive" in the development of the "pro-European space" given its greater advancement in the desire to integrate. Paweł Wołowski, an expert at the Center for Eastern Studies in Warsaw, believed that "this initiative is considered regional and it will allow Ukraine to become the leader of the six countries that are the recipients of the Eastern Partnership" (Perepelitsa 2015).

While these expectations proved to be in vain, still in the days of Viktor Yanukovych the EaP allowed to preserve contacts and to continue the promotion of specific issues—visa liberalization and preparation of the Association Agreement. It seems unlikely that under the pro-Russian President Viktor Yanukovych a proper level of bilateral relations could have been maintained without the EaP initiative. And who knows how the situation would have developed if Viktor Yanukovych had signed the Association Agreement at the Vilnius Summit?

The events of 2014–2015 in Ukraine affected the Ukrainian position on the EaP. The Association Agreement (including the FTA provisions), which has become almost a national idea, was nevertheless signed. Ukraine declared aloud that not only its intention remains to become a full member of the EU but also that it is with this perspective in mind that it considers its participation in the Eastern Partnership. At the political and expert level, the idea that the membership prospect should be an incentive to reform the country becomes increasingly common and the lack of clarity on the EU long-term expansion plans only increases instability in the region, undermining the proreform efforts in the states that have chosen a course of rapprochement with the EU (Gaidai 2015).

But now, under the ongoing Russian aggression, the question of security comes to the forefront. According to the survey of the estimates and expectations of Ukrainian opinion leaders on the Eastern Partnership which was conducted under the project with the eloquent title "Important, forgotten or unnecessary?", almost half of respondents (47.7 %) mentioned "strengthening security" as one of the main areas that should be the focus of the Eastern Partnership in the next 5 years. For Ukrainian respondents, the dramatic events of 2014 revealed an unacceptable weakness of a security component of the Eastern Partnership manifested in a complete failure by the EU to counter threats in the region. Respondents were asked to rate the progress on the nine objectives set out in the Joint Declaration of the Prague Eastern Partnership Summit of May 7, 2009. The goal of "maintaining security and extending stability between the EU and the Eastern Partnership" received the lowest rating. Sixty percent of respondents said that the situation in this regard not only has not improved but even worsened; 43.5 % of them identified it as being much worse. Indicative in this context were also the answers to the

question, "Integration with which structure will be most beneficial to your country?" Half of the respondents (51 %) chose NATO, while 45.5 % chose the EU (Gaidai 2015).

There is another even more clearly pronounced priority of Ukraine's participation in the initiative—mobility and freedom of movement within the EU. Increasing the mobility of citizens of the Eastern Partnership countries through the implementation of various exchange programs and the elimination of visa barriers is a powerful tool in the hands of the EU to spread European values and practices, to enhance the attractiveness of the European integration for Ukraine. In some ways, this can be called an instrument of "soft power" by which the EU can clearly demonstrate to ordinary citizens the benefits of the European lifestyle. But despite government promises to implement the Visa Liberalisation Action Plan in 2015, Ukraine has not fulfilled the vast majority of the EU requirements. So far, the only ones accepted by the European Commission as completely implemented are the items on judicial cooperation in criminal matters and the production of biometric passports. The almost implemented items include the document security, counternarcotics, and human rights. The items of border management and migration are only partially implemented, obviously, because even by the official figures Ukraine does not control more than 400 km of the eastern border in the Donetsk and Lugansk regions. However, Oleksandr Sushko, Scientific Director at the Institute for Euro-Atlantic Cooperation, believes that "the EU's attitude toward visa prospects has changed radically. Now the EU understands the inevitability of granting a visa-free regime simultaneously to both Ukraine and Georgia. But the EU does not give any guarantee for it is being cautious and not only about the failure of the Visa Liberalisation Action Plan but also about escalation in the east. Although no one will mention the second factor out loud." (Sidorenko 2015). Therefore, the current military threat remains the main danger for the abolition of visas.

4 The Russian Factor

From the very beginning, Russia has been perceiving the Eastern Partnership as an initiative that impedes the economic and geopolitical interests of Russia in the post-Soviet space. The following explanation of Russia's attitude toward the Eastern Partnership is dominant in the EU and among pro-European political forces and experts of the EaP partner countries. Moscow seeks to include its neighbors in its sphere of influence and to restore the Soviet-style domination over them through the integration within the Eurasian Economic Union. Actions of Kremlin in Ukraine speak strongly in favor of the fidelity of this assessment. But, in fairness, we have to recognize that Moscow's motivation in countering the EaP has a more comprehensive and diversified nature than just implementation of imperial ambitions. Pointing to the economic component of the initiative, Russian expert Mikhail Troitsky and Senior Fellow for Russia and Eurasia at the International Institute for Strategic Studies (IISS) S. Charap observe that the model of the free trade zones goes beyond

conventional free trade agreements; it requires from the participating countries the adoption of a substantial part of acquis communautaires (laws, rules, and regulations of the EU). Thus, there is an integration in the economic and legal space of united Europe which results in weakening of trade links with other partners, including Russia. The agreements on free trade areas make the markets of the countries-participants significantly more open to EU goods and services than that of Russia. Given that four EaP countries are already members of the Commonwealth of Independent States free trade agreement, which includes Russia, Moscow has cited the potential for domestic production to flow into the Russian market and for the illegal reexport of EU goods to Russia (Troitsky and Charap 2013). From the above, the authors conclude that Moscow is justified when it considers its neighbors' agreements on free trade as a threat to its own economic security.

Explaining Russia's position on the EaP (although writing at the time of the Vilnius Summit in November 2013, i.e., before the annexation of Crimea and the Donbass war), M. Troitsky and S. Charap try to relate it to the theoretical considerations of the American political scientist Robert Jervis, namely that a security threat occurs because "one state's gain in security often inadvertently threatens others". Jervis explains, "many of the steps pursued by states to bolster their security have the effect—often unintended and unforeseen—of making other states less secure". When the motives and plans of a state are unclear, increasing its capabilities can be viewed as a threat. And therefore, economic associations and military political alliances are bound to deal with one of the manifestations of the dilemma of security—integration security. It arises before a state that perceives the integration of its neighbors into economic organizations or military blocs inaccessible to that state itself as a threat to its safety or well-being. The integration dilemma occurs primarily due to limited membership of these associations. For states that are excluded from the integration initiatives open to their neighbors the integration is not a mutually beneficial process but a zero-sum game. As with the general security dilemma, the intentions of the neighbors or the supporters of their inclusion in a union do not necessarily have to be hostile to the state to cause the integration dilemma. To use moderation when choosing a response to the actions of other international actors is difficult because states usually assume the worst about the motives and goals of others. Such assumptions are often the cause of escalation of conflicts, especially when communications between the states are limited. Faced with the integration dilemma, the leaders of competing unions constantly raise the stakes to lure or force some country to join "their" association while sharply criticizing each other, thus undermining mutual trust. The negative consequences for everyone involved are increased at every step of growing competition (Troitsky and Charap 2013).

Thus, M. Troitsky and S. Charap support a rather widespread belief that it is the exclusion of Russia from the Eastern Partnership that led to its negative reaction to the initiative and the measures it requires. At the same time, we believe that in this case we are dealing with an excessively free interpretation of Jervis' thesis. Indeed, the EaP does not provide for any military or defense cooperation that could cause an appropriate response from Russia. The only appropriate response to possible threats

to its economic interests in the form of free trade zones has to be the relevant economic decisions, not a military aggression. All the more so since the EU understands Russia's economic concerns as evidenced by the final declaration of the Riga Summit, which stressed the importance of tripartite consultations on the implementation of the free trade area agreements. And in any case, no "safety" measures intended to ensure one's own security justify a military aggression violating the principles of international law and the territorial integrity of a sovereign state. In fairness, we repeat that as noted above the article of Messrs M. Troitsky and S. Charap was written at the time of the Vilnius Summit in November 2013, i.e., before the annexation of Crimea and the war in Donbass. And these authors warned about the inadmissibility of rigid and "abusive" rhetoric against Ukraine, as well as the inadmissibility of new trade wars. The possibility of a real war these experts (and not only them) just could not predict.

5 Ukraine and the Prospects of Reforming the Eastern Partnership

Despite the considerable number of pessimistic forecasts about the future of the Eastern Partnership, obviously, the initiative is already an established and active component of the Neighbourhood Policy and Brussels is unlikely to abandon it or to try to replace it with some other way of cooperation in the East. On the contrary, the Ukrainian crisis has increased the relevancy of this component of European policy as evidenced by the attention paid by the top officials of the leading EU countries to the EaP summits, while previously these summits were primarily subject to the care of European officials of second rank.

But the Ukrainian crisis has put reforming of the initiative on the agenda. Almost undoubtedly the future holds the differentiation of approaches for the countries that have signed and complied with the Association Agreements (Ukraine, Moldova, Georgia) and the ones that have not (Armenia, Azerbaijan, Belarus). As noted in the working proposals of the Government Office for European Integration of the Cabinet of Ministers of Ukraine, the logic of the implementation of the new phase of the Eastern Partnership will, on one hand, not only intensify and deepen integration with the EU for Ukraine, Moldova, and Georgia but will also keep the relations with the other group within the EaP, on the other, both in bilateral and multilateral dimensions. It acquires a particular importance in the light of the need to maintain close links with the civil societies of the second group (Sushko et al. 2015).

According to the Co-Chairman of the EU–Ukraine Civil Society Platform and research director at the Institute for Euro-Atlantic Cooperation Oleksandr Sushko, "the increased distance between partner countries creates a space for possibilities and even simplifies the task for a country that is willing and able to move from words to deeds, and to prove with its own results the possibility of European

modernization in adverse and dangerous but also motivating political conditions. Ukraine by its own example may prove the viability of the model of 'political association and economic integration' that is at the root of the Eastern Partnership, and thus save faces both its own and of the European Union, and show an effective alternative way for nations that are still living in the post-Soviet authoritarian kleptocracies. Also, the successful Europeanization of Ukraine achieved through the implementation of the Association Agreement may fill the shortage of practical leadership that causes the scepticism about the Eastern Partnership." (CPSA experts 2015).

Thus, we see that as they did in the beginning of the Eastern Partnership initiative, optimistic Ukrainian experts continue to think of the prospect of Ukraine's regional leadership. But for these forecasts once again have not gone in vain, Ukraine must make considerable efforts in the process of reform and Europeanization. First, we must focus primarily on small steps the successful implementation of which will provide the evidence for the real progress of the Eastern Partnership for Ukraine. The priority should be given to the implementation of the Visa Liberalisation Action Plan. It is important that the once again voiced date—the beginning in 2016—is postponed again, although the military conflict in Donbass complicates the task significantly and the transition to internal (not external as the work in that direction is already underway) biometric passports is extremely costly in financial and organizational terms.

Along with multilateral cooperation, the priority areas of bilateral cooperation should be emphasized and the continuing EU support in the constitutional reform, decentralization, fight against corruption, judicial reform, energy security, and business climate improvement should be maintained.

Ukrainian politicians must abandon loud promises of "breakthroughs" and tone down the political PR campaign for the Eastern Partnership so as to avoid giving rise to false expectations among the European-leaning part of Ukrainian society. When these expectations are not realized, the result is frustration and scepticism about the European prospects of the country.

Obviously, the time has come for the EU to put forth a clearer definition of prospects of membership for the group of countries that have expressed such a desire. This perspective should become a significant incentive for reform processes. In addition, some EU member states, especially the countries of Central and Eastern Europe and the Baltic states, should increase their interest and their systemic participation in the EaP. These countries have the experience in a regulatory and economic convergence with the European Union that is also most suitable for Ukraine. Within the framework of the Eastern Partnership, there should be developed mechanisms for the systemic transfer of this experience and relevant management models.

6 Conclusions

(1) The Ukrainian crisis has become the most significant challenge to the EaP, and it demonstrated that in Ukraine and Russia the initiative is evaluated primarily in geopolitical terms.
(2) The Ukrainian crisis has revealed the inefficiency of the Eastern Partnership in terms of security and has illuminated the contradiction between the European bureaucracy's perception of the EaP as purely technological instrument of economic and trade cooperation and the global civilizational and geopolitical expectations of a number of partner countries.
(3) In these circumstances, there arises an urgent need for a reform of the initiative in the direction of further differentiation of groups of countries according to the goals of their cooperation with the EU and for a clearer definition of their membership prospects that within such a differentiation becomes more appropriate.
(4) Ukraine should abandon its unjustified expectations from the Eastern Partnership and start viewing the latter as an additional opportunity to enhance the process of internal reforms in line with Europeanization.

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Europeanisation of Private Law in Ukraine: Comparisons in the Field of Law of Obligations

Thomas Hoffmann

Abstract The fate of the EU–Ukraine Association Agreement—although finally signed between March and June 2014—shows in a nutshell the nature of the more than 20 years of approximation between the European Union and Ukraine: a series of ambitious leaps towards the west but few of them strong enough to not to be pulled back by the lack of respective legal implementation, legal reforms and—last but not least—the lack of will. Much has been written about the weal and woe of Ukraine's Europeanisation, and literature will even increase after the ongoing escalations of this year will hopefully have ended soon. Still, less has been written about what has been achieved already in terms of legal harmonisation, especially in a field much less touched by politics, as it is the law of obligations—in spite of an obvious need for both academics and practitioners. This article therefore provides a comparison of the Ukrainian law of obligations with European harmonisation initiatives—here represented by the Draft Common Frame of Reference (DCFR)—and aims at pointing out these fields of law, where further approximation could be obtained.

1 Introduction

Ukraine's 1996 Constitution declared the State to be "democratic, social, and law-based", shaping a framework which since then has been implemented into practice only to certain degrees, as far as the strict enforcement of the rule of law is concerned.[1] Still, approximation with the European Union also in the field of law has since then been an explicit goal of various Ukrainian governments. The envisaged "Europeanisation" in terms of human rights protection, anti-corruption

[1] Hennadiy Moskal, former deputy interior minister, described on March 26, 2010, to the daily newspaper Kyiv Post the Ukrainian system of justice as "rotten to the core"; see http://www.kyivpost.com/content/business/moskal-rotten-to-the-core-62565.html.

T. Hoffmann (✉)
Faculty of Law, Institute of Private Law, University of Tartu, Näituse 13a, 50409 Tartu, Estonia
e-mail: Thomas.hoffmann@ut.ee

T. Kerikmäe, A. Chochia (eds.), *Political and Legal Perspectives of the EU Eastern Partnership Policy*, DOI 10.1007/978-3-319-27383-9_12

measures or the establishment of a comprehensive welfare system experienced a considerable drawback in November 2013, when the partnership and trade agreement[2] with the EU was repelled at the Eastern Partnership Summit in Vilnius, setting the approximation procedure into a state of "hibernation" even before the annexation of Crimea by the Russian Federation and subsequent military operations in Eastern Ukraine.

Against this background, the goal of this paper is less to analyse the different steps and procedures of approximation taken within the last decade—as already provided in detail, e.g., by *Petrov*[3] last year—nor is it to speculate about the future development of these once successfully initiated measures. This paper simply aims at analysing and comparing what the contents of substantial Ukrainian private law—especially its law of obligations—is actually about. The paper focusses here less on dogmatic reflections—see, e.g., recently *Luts* on Law of Contracts[4]—but rather on the text of the positive law itself, in this case the Ukrainian Civil Code and, partly, the Ukrainian Commercial Code. Following a general systematisation of Ukrainian private law within the framework of other continental European *civil law* systems, this task will be performed by the comparative analysis of ten standard situations between private law and Western European systems. These are here—since the proposal of the Common European Sales Law has unfortunately been withdrawn earlier this year[5]—represented by the Draft Common Frame of Reference (DCFR),[6] which successfully serves as common denominator for various private law unification proposals not only after it was finally fully published in six volumes (containing comments and comparative notes) in October 2009.[7] The DCFR was very positively acclaimed not only in Europe[8] and has—after some years of somewhat vague perspectives—now apparently reached a status of general recognition.[9]

[2] See the resumé "A look at the EU-Ukraine Association Agreement", published on 27 April 2015 on the European Union External Action homepage.

[3] Petrov (2014), pp. 173–185.

[4] Luts (2012), pp. 97–113.

[5] For background information, see Clive, Eric, on "European Private Law News", posted on January 7, 2015.

[6] The text of the DCFR is online accessible at http://ec.europa.eu/justice/policies/civil/docs/dcfr_outline_edition_en.pdf.

[7] For a detailed overview on the background and genesis of the DCFR, see Antoniolli and Fiorentini (2011), pp. 1–27.

[8] For a non-European evaluation, see Emmert, Frank, The Draft Common Frame of Reference (DCFR)—The Most Interesting Development in Contract Law Since the Code Civil and the BGB (2012).

[9] Even in the common law world, see, e.g., the recent article by Richardson (2014), The DCFR, Anyone?, in the "Journal of the Law society of Scotland".

2 The System of Ukrainian Private Law

2.1 Special Features

Although Ukraine is a civil law culture, three aspects of the Ukrainian private law system challenge the average Western European law practitioner in a special way.

First of all, the Ukrainian law of obligations is marked by a dual structure.[10] Both the Civil Code of Ukraine (CCU, Цивільний кодекс України) as well as the Economic Code of Ukraine (ECU, Господарський кодекс України) regulate private law matters. Differentiation would be simple if application of the respective code followed clear conditions. However, as the ECU does not only refer to business entities, but to every kind of legal action in the "field of production (...) and sale of products" (art. 3 Nr. 1 ECU), principally almost all major everyday legal transactions can be subject to ECU application. This essential discrepancy does not only provide Ukrainian legal secondary literature a boasting field of exertion, but also causes serious difficulties in everyday legal practice, as both codes are not fully compatible with each other,[11] and as especially the ECU is marked by a somewhat backward spirit. In fact, one of the most essential findings within an OECD assessment undertaken on the Ukrainian legal system in 2004 was that the ECU has a "decided tendency towards re-establishing a command economy", for instance by "its empowerment of the government to dictate the actions of companies and to deprive companies of various benefits and privileges when they do not comply with government demands".[12] The report's central advice was thus to abolish the ECU altogether, as its regulations rather disturb the functioning of the Ukrainian private law system than supplement it effectively.[13]

Another characteristic element of both the CCU and the ECU is their additive structure. Although there is formally a "general part", the majority of legal consequences—as payment of losses, return of money, duty to perform in kind—is situated in the respective separate provision. Due to this fragmentary specialisation, a considerable number of cases cannot be solved completely in accord with the respective *stattja*.

Finally, the comparably short life expectancy of both CCU and ECU provisions (more than a dozen amendments in both codifications only within the last 12 months) provides a lasting challenge to both legal and business practitioners.

[10] Biryukov (2010), pp. 53–78.

[11] OECD-report "Legal issues with regard to business operations and investment in Ukraine" (2004), pp. 18–25.

[12] OECD-report (2004), p. 8.

[13] OECD-report (2004), p. 9.

2.2 Structure

The Ukrainian private law does not contain an abundance of laws. Of genuine civil law nature are only the following laws:[14] the *Civil Code of Ukraine*[15] in six books, containing *General Provisions* (parties and objects to legal relations, legal transactions, limitation of action), *Personal non-property rights of a natural person*, *Ownership and other property rights*, *Intellectual property rights*, *Obligations*, and *Law of succession*, a *Family Code*, an *Economical Code*[16] and a *Law on securities and stock exchange*.

However, these laws are supported by a vast number of by-laws and supplementary provisions. As far as public matters are concerned, the density of regulations by law rises.

2.3 Methodology

This paper provides a mere general outset on Ukrainian law of obligations and therefore cannot give detailed advice on the crucial question whether generally the CCU or the ECU will be applied. As the formal subsidiarity of the CCU in practice is impeded in many cases, the question of application will have to be answered for each case basing on the specific circumstances. Anyway, the CCU will remain the main code used for the comparative solutions.

In general, this approach should be also followed in legal practice. However, if there is any element pointing towards the application of the ECU, the following procedure should be applied:

1. *Step:*
   Section on ***separate types*** *of contract in the* ***ECU***→
2. *Step:*
   General provisions on obligation *within the* ***ECU***→
3. *Step:*
   General provisions *of the* ***ECU***→
4. *Step:*
   Section on ***separate types*** *of contract in the* ***CCU***→
5. *Step:*
   General provisions on obligation *within the* ***CCU***→

[14] Laws partly accessible (in Ukrainian language) in the Ukrainian State Gazette's website at http://ovu.com.ua/.

[15] Online accessible (in Ukrainian language) at http://zakon1.rada.gov.ua/laws/show/435-15

[16] Online accessible (in Ukrainian language) at http://zakon2.rada.gov.ua/laws/show/436-15. English translation available at http://www.wipo.int/wipolex/en/text.jsp?file_id=182251.

6. *Step:*
   General provisions** of the **CCU

The fact that finally approximately 60 % of all cases are solved under the rule of the CCU is due to the fragmentary character of the ECU, whose regulation density is considerably disproportionate (and in its contents often conflicting with the CCU). In this analysis, all articles without mentioned provenience are those of the CCU.

3 The Law of Obligations

3.1 Basic Characteristics

The law of obligations regulates debtor–creditor relationships. The term "obligation" is defined in Art. 509, being a legal relation where one party (the debtor) is obliged to perform an action to the benefit of the other party or to abstain from a certain action, while the creditor has the right to claim the performance of this obligation from the debtor—a definition thus quite similar to that in DCFR III 1:102.

The content of an obligation can, to a large extent, be determined by contract. However, Art. 526 states that the obligation shall be properly performed not only according to the conditions of the contract but also following the requirements of the Civil Code and other acts of civil law. Obligations may arise by a legal transaction, e.g. by contract, but may also have the law as their immediate source. They must be based on the principles of good faith, sense and justice, Art. 509.

Ukrainian law distinguishes between *General provisions* (section I, chapter 47, Arts. 508–654), *separate types of obligations* (section II, chapter 54, Arts. 655–1143) and *non-contractual obligations*, chapter 78, Arts. 1144–1157. Quasi-contractual relationships as *negotiorum gestio* are not or hardly regulated in Ukrainian law; Ukrainian private law even lacks a general regulation for unjustified enrichment.

Case 1 A intends to buy a wardrobe. While inspecting several items exhibited in B's furniture shop, he is hit by a falling chandelier negligently fixed by B. Subsequent medical treatment requires ca. 1.000 UAH. On which basis can A claim damages?

Solution The institute *of culpa in contrahendo* is not known in Ukraine. C will only be liable to A on the grounds of tort. Tort is regulated in chapter 82, "indemnification". Ukrainian law provides general provisions in § 1 (Arts. 1166–1194) and distinguishes between *damages inflicted by mutilation and other health injuries including death* (§ 2, Arts. 1195–1208) and *damages due to defects of commodities* (§ 3, Arts. 1209–1211).

According to Art. 1166, a person inflicting property damage is liable for all damages resulting from the violating action. As C cannot prove that the damage was inflicted without negligence or intent, Art. 1166 Nr. 2, he will be fully liable for damages. Article 1196 states, by the way, that damages for health injuries will be treated equal to damages for property violation if the violating person inflicted the damage under performance of his or her contractual obligations. Liability will—in other words—be restricted if the tortfeasor has contractual relations with the aggrieved party.

Conclusion According to Ukrainian law, C will have to pay damages only on the basis of tort law, i.e. Art. 1166.

Pre-contractual liability belongs to the "common core" of most continental European legal systems[17] and has thus been implemented in the DCFR as well in Art. II 3:301 par. 3. Such general duties of good faith at the negotiating state are unknown to Ukrainian law. This lack is, however, not due to dogmatic reasons as it is in the Anglo-American common law[18] but rather a shortcoming resulting from the grinding impact of the Soviet past on hitherto existing private law instruments in Ukrainian law.

3.2 Agreements

According to Art. 626 I, an agreement is defined as an "arrangement between two or more parties targeting at the establishment, change, or termination of civil rights and responsibilities". An agreement can be unilateral, i.e. without counter-obligation, or bilateral, Art. 626 II, III. The ECU provides respective provisions in Art. 179. An agreement is concluded as soon as one party's proposal to conclude an agreement is accepted by the other party to the extent that the parties reached a consensus on all essential provisions, Arts. 638 II, 640 I (exceptions concerning the moment of conclusion in Art. 640 II, III).

The provisions on transactions are based in many cases, literally, on the respective provisions on *Rechtsgeschäfte* of the German BGB. However, as the CCU regulates cancellation and amendment more precisely in the chapter on agreements, the practical importance of chapter 16 is not comparable to BGB book I, Title 2.

The offer as well as the acceptance must be received by the other person in order to have legal effect. Once the offer has been received, it is binding on the offeror. The offer only ceases to be valid if the other party does not accept within an eventually specified term of response, Arts. 631 I, 643 ff.

[17] See for details Hesselink and Cartwright (2008), pp. 1–17.

[18] See for details Banakas (2009), pp. 1–21.

Case 2 A offers to B a car at a price of 12.000 UAH for sale via mail on Monday. On Tuesday, A changes his mind and writes another letter to B stating that he would not be ready to sell the car any more. On Wednesday, B receives A's first mail, agrees in writing and posts his letter at the post office. On Thursday, he receives A's second letter; A receives B's accepting letter on Friday. Is there any binding contract between A and B/C?

Solution No. According to Art. 642 par. 3, no binding contract is formed before the acceptance actually reaches the offeror. It is generally revocable before that time.

Ukrainian law follows here the path of continental European legal systems. Parallel to the DCFR, which states in Art. II 2:402 par 1 that "an offer may be revoked if the revocation reaches the offeree before the offeree has dispatched an acceptance (...)", Ukrainian law regulates the issue distinctively against the Anglo-American *Postal rule*.[19]

3.3 Dissent

Dissent as such is not regulated by a separate provision. However, its legal consequence, the lack of a binding contract, can be depicted from Art. 638, which states that there will be no agreement unless both parties agreed about all the essential terms of a contract.

Case 3 A offers B 100 kg of "Varenyky" for sale. B, a foreigner, ignores the actual meaning of Varenyky (being a kind of dumplings) and thinks it to be jam (ukr. Варення = jam). He orders 100 kg. After depicting his error, he claims being mistaken. Is A bound by a contract?

Solution Article 638 states that there will be no binding contract before all essential terms are regulated: object, price and term (duration of contract). Under this definition, no agreement has been concluded yet upon the object to be transferred. Therefore, there are no contractual obligations.

The DCFR defines an agreement in II 4:103 par 1 as follows: (1) Agreement is sufficient if: (a) the terms of the contract have been sufficiently defined by the parties for the contract to be given effect; or (b) the terms of the contract, or the rights and obligations of the parties under it, can be otherwise sufficiently determined for the contract to be given effect. The situation presented above would be—just as in, e.g., German law—rather seen as a classical avoidance constellation.

In Ukrainian law, these approaches are not congruent. Article 638 has a much broader scope of application than dissent regulations in other continental European systems, and is therefore of upmost importance in Ukrainian civil law practice:

[19] For a comparison of the rule with the DCFR, see Macdonald (2013), at "3. The Revocation Issue".

whenever one of these essential elements is not specified in the contract, any of the parties may claim its invalidity, however detailed the remaining part of the contract may be designed. The reason for this action would not be the mistake of one party but an—obviously—deficient determination of the *essentialia negotii*. In consequence, dissent as regulated in Art. 638—in Western law a rather theoretical institute—is partly replacing classical continental European avoidance institutes and thus a commonly used legal tool in Ukraine.

3.4 Form

The agreement is generally formless, Arts. 205, 639 I. However, in some special cases certain forms must be complied with; see Arts. 206–213.

Non-compliance with these and other requirements may lead to legal consequences provided in § 2, Arts. 215–235. If the non-compliance results in invalidity, the transaction will be considered as invalid from the moment of conclusion (*ex tunc*), Art. 236.

Case 4 A signs a business lease contract with B. They agree about a leasing term of five years, but B ignores contract notarisation. Nevertheless, A moves in and duly pays the lease agreed upon. After 2 years, B intends to lease the premises to another person. He summons A to leave the premise, as the contract was void due to the lack of notarisation/registration. Is A obliged to leave?

Solution According to Art. 793 II, a lease contract for a term more than three years has to be notarised. If this form is not met, the contract generally will be void, Art. 219 I.

However, according to Art. 219 II, the court may declare a generally invalid transaction valid if the notarisation was hindered by a circumstance which was beyond the control of the person claiming validity. In the present case, there are good chances for A, as the duty to notarise was carried out by B.

While II 2 1:106 DCFR states plainly in its first par. that "a contract or other juridical act need not be concluded, made or evidenced in writing nor is it subject to any other requirement as to form", Ukrainian law assigns major importance to form. Quite often, invalidity will not be an automatic legal consequence if certain conditions are not met, but the party may claim the contract's invalidity in order to let it be declared void by the court. The same applies *vice versa*, if a void contract is claimed to be valid on the basis of *bona fide*. Provisions such as sec. 518 par 2, 311b BGB, which may lead to irrelevance of the defective form by execution, are not explicitly provided by Ukrainian law or used in an equivalent function by courts applying the Ukrainian Civil Code.

3.5 Special Types of Agreements

3.5.1 Adhesion Contracts

The regulation concerning "adhesion contracts", Art. 634, refers to standard form contracts (see respective definition in par. 1).

Case 5 A concludes a purchase contract between him and buyer B in the form of an adhesion contract (i.e. standard business terms). One of the adhesion contract's provisions states that A will not be liable even for intentional contract violation. After conclusion, B changes his mind and refuses to be bound by the contract. Is B bound nevertheless?

Solution A standard form contract may be substituted or terminated upon the demand of the joining party if the agreement excludes or restricts the responsibility of the offeror for violating his or her obligation or contains other provisions obviously burdensome for the joining party. However, the joining party has to prove that the respective provisions deprive his or her usual rights "clearly", Art. 634 II. Such a proof will presently easily be obtained, since Art. 614 states that a transaction terminating the responsibility for deliberate violation will be void. A can successfully demand the adhesion agreement to be terminated, as far as the restriction of liability is concerned. The remaining parts of the adhesion agreements are not affected and remain binding, Art. 217.

In spite of being a mere "common frame", the DCFR regulates in detail business terms, providing not only general definition for the term "not individually negotiated" (see II 1:109) but catalogues for "significantly disadvantaging terms" (II 9:403) as well; see II 9:410. In spite of its purpose as a comprehensive codification, the Ukrainian code is here much shorter; it simply states that all terms "явно обтяжливі для сторони" (clearly disadvantaging the other party) provide a claim to terminate the contract to the aggrieved party.

3.6 Representation

Representation can be based on contract, the written law, the act of a body of a legal entity or on other grounds established by acts of civil legislation, Art. 237 III.

Case 6 A, living in Kyiv, intends to purchase a car from B in Odessa. He asks his companion C to act on behalf of himself, as C lives in Bessarabia himself. For this purpose, C is supplied with a power of attorney, duly signed by A and restricted to the current month. According to the power of attorney, C is authorised to transfer authorisation to third persons. On his way to B, C gets hurt in a car accident. C calls his friend D and tells him to conclude the purchase contract, but he does not (nor does D) inform A about it. Hereafter, D signs the contract in the name of A with B.

Two days later, A regrets his decision and decides to purchase another car. He states that he was not bound by any contract, as he did not authorise D to represent him.

Can B demand payment of the purchase price? If so, who has to pay?

Solution Generally—according to Art. 240—the transfer of authorisation is possible, as far as it is provided by the contract or the law.

In the present case, such a provision is envisaged by the power of attorney. The power of attorney is valid, as it complies with the terms of expiration (if he failed to do so, the power of attorney were void, Art. 247 III). However, Art. 240 II states that the representative is obliged to inform the represented party about the transfer and about the person to whom the power of attorney/authorisation was transferred. If he fails to do so, the representative will be bound by the obligation himself.

Therefore, C became party to a binding contract and has to pay the purchase price himself.

Modification I C purchases two cars for A. A refuses to pay for both cars, as he did not order C to buy a second car. Does A have to pay both cars?

Solution No. C has to pay for both cars. Article 241 states that the agreement creates rights and obligations only upon approval of the represented person. If a contract concluded by the representative beyond authority is not approved, the representative will be bound by himself.

Modification II When C left the hospital after a few days (but still in the current month), he forgot to conclude the envisaged contract with B. In consequence, B sold the car to another person. A had to purchase an equivalent car for a higher price from E. Can A demand payment of the losses from C?

Solution Generally, the representative can refuse to perform actions assigned by a power of attorney, Art. 250. However, he has to inform immediately the represented person, Art. 250 II. If he fails to do so, he will be liable for the losses, Art. 250 IV.

Ukrainian law regulates representation in the first book (general provisions) of the Civil Code, chapter 17, Arts. 237–250. There are no prevailing provisions in the section about separate types of obligations either in the economic code (for example, the economic code does not mention commercial forms of representation; Art. 243 is exhaustive for commercial representation as well). Nevertheless, these "commercial representatives" do not equal the "procurator" of German/Austrian law; they can be stockbrokers or securities traders, i.e. exclusively fulfil functions in financial matters.

The representative may conclude any transaction the represented person can conclude himself/herself, as long as the represented person has not to conclude personally. As far as a representative exceeds his authority, the transaction will only bind the represented person after his or her approval, Art. 241.

While in Western European civil law systems generally the "principal's authorisation may be granted express or impliedly" (DCFR II 6:103 par 2), it is of major importance in Ukrainian law that powers of attorney (in Ukrainian Довіреність)

are not only issued in written form but in general even notarised (Art. 245 pars. 1 and 2) and regulated respectively broadly; see Arts. 244–250, leading in practice to difficulties of the same kind as referred to in case 4.

3.7 Violations of Obligations

According to Art. 610, violation of the obligation can be its non-performance or any form of performance violating the provisions determined by the content of the obligation (undue execution).

Ukrainian law does not provide any regulations directly referring to secondary duty violation. The agreement has to be interpreted in order to use the contract itself as a legal basis for damage claims. Courts may also be flexible concerning the recognition of the respective contract passages, as the violation of secondary duties is a major issue in legal practice and tort law does not provide sufficient grounds for compensation in all cases.

Case 7 Carrier C transports furniture into the apartment of client A. As C passes the apartment's doorway, he negligently demolishes the wallpaper at a length of 0.5 m. The existing hauling contract between C and A does not provide any provisions about this kind of damage.

On which legal basis can A claim damages?

Solution Possibly C violated the contract with A. According to the contract, C had to transport furniture from another place to A's apartment. However, the contract does not explicitly refer to damages that occurred during the work. Nevertheless, there could be legal grounds for damages on contractual basis.

Ukrainian law does not provide positive regulations about the consequences of secondary duties' violation. But as mentioned above, C could be liable to A on the ground of tort. According to Art. 1166, a person inflicting property damage is liable for all damages resulting from the violating action. As C cannot prove that the damage was inflicted without negligence or intent, Art. 1166 Nr. 2, he will be fully liable for damages.

Conclusion According to Ukrainian law, C will have to pay damages only on the basis of tort law, i.e. Art. 1166.

Ukrainian law did not implement liability for the violation of secondary duties (as known in German law in sec. 241 II BGB) and is in this point similar to the approach of the DCFR, which also does not provide any claims for the violation of *Nebenpflichten*, as far as they were not explicitly determined in the contract.[20] Just as in the DCFR, claims are restricted to tort, which in Ukrainian law is regulated in chapter 82, "indemnification". Ukrainian law provides general provisions in §

[20] Kieninger (2012), pp. 218.

1 (Art. 1166–1194) and distinguishes between *damages inflicted by mutilation and other health injuries including death* (§ 2, Arts. 1195–1208) and *damages due to defects of commodities* (§ 3, Arts. 1209–1211).

Losses are determined by taking into account the market prices existing on the day of voluntary satisfaction of the creditor's claim by the debtor at the place of performance, respectively, if the claim was not voluntarily performed, on the day of bringing up the claim, Art. 623 par. 3.

3.8 Responsibility

According to Art. 614 ff. responsibility is generally fault based (intent, gross negligence or simple negligence).

Case 8 A lets his hair be dressed by B. During performance, B cuts off the major part of A's hairstyle due to a sudden and intense earthquake. Will B be liable for damages, as A calls for a toupee?

Solution According to Art. 614 I, a violator will only be liable as far his or her guilt (intent or negligence) is obvious. If he or she proves that he or she made use of every possible means to perform properly, he or she will not be deemed responsible. A violator shall also be released from responsibility if he or she proves that the violation was due to a contingency or to force majeure, Art. 617 I. Still, responsibility for negligent (i.e. non-deliberate) violation can be restricted or terminated by legal agreement.

Anyhow, the creditor carries the burden of proof for the existence and extent of the losses, Art. 623. A has to prove that his present haircut is a damage eligible for compensation.

Ukrainian law follows here the doctrine of fault-based liability, providing exculpation mechanisms quite similar to those of German law. In consequence, it partly contradicts the general rule of strict liability as implemented in DCFR III 3:104, providing "force majeure" and—concerning the amount of damages—foreseeability (DCFR III 3:703) as sole elements restricting the debtor's liability.[21]

3.9 Termination of Obligations

Chapter 50 provides eight ways which lead to termination of an obligation: Performance, Art. 599; transfer of indemnity, Art. 600; offset, Art. 601; parties' consent, Art. 604; remission of debt, Art. 605; union of debtor and creditor in one person,

[21] See also Kieninger (2012), p. 209.

Art. 606; impossibility, Art. 607; respectively, death of the debtor, Art. 608/liquidation of legal entity, Art. 609.

Together with rescission, Art. 615, in practice performance, offset and impossibility are the most important ways of termination.

3.9.1 Termination by Performance: Place of Performance

The proper performance in terms of Art. 526 leads to termination of obligation, Art. 599.

As far as the contract does not specify a place of performance, it will be determined from the circumstances of the legal relationship, Art. 532 Nrs. 1–5; otherwise, the place for performance will be the debtor's residence, Art. 532 Nr. 5. However, special conditions can be provided by separate types of obligations and by the ECU.

Case 9 A orders a wardrobe from B and pays in advance. B produces the wardrobe and—as A and B agreed—delivers it to A. During transport, the wardrobe gets damaged.

Is A entitled to the delivery of a defect-free wardrobe?

Solution According to Art 526, B had to perform properly according to the contract. B had to produce a wardrobe within time and free of any defects. Before delivery, such a wardrobe existed. However, performance has to take place on the right place as well.

The general provisions (here Art. 532 par. 3) state for obligations on transfer of commodities (property) the place of production to be the right place. A would have properly performed.

However, purchase law provides a different regulation in Art. 664 I Nr. 1: if the goods are to be delivered to the buyer, the seller will not have performed before complete delivery. At that point of time, the wardrobe was already defective. B did not perform.

Modification B produces the wardrobe but does not perform. On which legal basis can A claim performance?

Solution Generally, the contract itself provides a sufficient legal basis for claiming transfer of property. However, Art. 620 states that the creditor shall have the right to claim this object from the debtor and its transfer if the debtor does not perform his obligation to transfer an object specified by individual characteristics to the creditor's possession. As the wardrobe has not already been assigned into a third person's possession, Art. 620, A can base his claim against B on Art. 620 as well.

Art. 197 ECU provides further amendments of these principles of place of performance (e.g. for land plots, constructions, monetary obligations).

If for performance no time period (term) is established in the agreement, the creditor has the right to claim performance at any time, Art. 530 II. The debtor has

in that case to perform this obligation within a period of 7 days since the day of bringing up the claim.

The term time period can refer to the point of time when the debtor may perform (if performance is not accepted by the creditor, he may be liable according to Art. 612) or when the debtor has to perform (violation of this obligation may lead to consequences according to Art. 613).

The place of performance—especially of subsequent performance—has been in the focus of various practical and academic discussions in the European legal space lately.[22] In Ukrainian law, the respective regulations is, anyway, rather short, basically running parallel to DCFR III 2:101, where the place of performance is—in case of doubt—the seller's residence. If the goods were sent to the buyer—as in our case—the risk passes in the DCFR, anyway, already when the goods are passed to the delivery person, IV A: 202. Ukrainian law differs in this point considerably not only to the DCFR but also to the German law (447 BGB), stating that risk does also in this case not pass before the buyer in fact receives the good (вручення товару покупцеві).

3.9.2 Termination by Performance: Performance by Cheque

Payment via cheque is one of the less often used performance types in Ukraine. The legal structure of cheque payment does not differ from Western European procedures.

Case 10 A opens a new branch of a café chain in Kyiv. He decides to use cheques as general payment practice. How should he legally be advised in order to avoid difficulties?

Solution The CCU does not provide a clear legal structure which can be laid down as a basis for cheque payment. Neither Art. 528 (performance by third parties) nor the provisions about representations cover the character of cheque payment sufficiently. However, cheques are generally acknowledged as means of payment in practice, and several by-laws regulate cheque payment.

In the DCFR, III 2:108 mentions the "cheque" in par. 2 as a method of payment as well, but its significance in the European legal system the DCFR derives from is by far less than in the Ukraine; see the 74th chapter of the CCU, where § 5 regulates settlements by clearing house cheques, Arts. 1102–1106. Although details are regulated quite extensively, the question against whom the cheque holder may sue in case of non-payment remains unclear, Art. 1106. Further details are regulated by the National Bank's by-law on cheque payment.

Legally, there is no special obstacle to be evaded or avoided. Difficulties are rather caused by administrational efforts; e.g., each cheque payment has to be listed

[22] On the *place for subsequent performance*, see, e.g., recently Hoffmann (2014), pp. 383–394.

in the accounting department. Besides, the majority of business partners prefer cash payment.

3.10 Amendment of Agreements

Grounds to amend or cancel agreements vaguely differ from many central European legal systems. However, due to the multilayer structure of the CCU, agreements can be cancelled according to the general provisions (Art. 229–235), the provisions about obligations (Art. 611 Nr. 2), the provisions on agreements (651) and—if applicable—the respective provisions of the ECU (Art. 188).

Besides an amendment or cancellation by the parties' consent, the agreement can be amended or cancelled by court decision on request of one of the parties, Art. 651 II, if the agreement has been significantly violated, i.e. when the inflicted losses of the other party exceed the bargain expected by agreement conclusion. The agreement can as well be terminated if one party unilaterally refuses to perform, Art. 651 III.

4 Conclusion

The large-scale reforms of Ukrainian private law of 2004 raised hope that legal security and efficiency of the Ukrainian system of private law would be enhanced. The analysis of ten "standard" private law situations under Ukrainian law shows, against the background of European private law systems as here represented by the DCFR, that there is on first sight a quite close similarity in the general dogmatic approach, structure and dimensions of the Ukrainian Civil Code. This does not surprise, as even the Soviet civil code was structurally derived from continental European law principles, of which—based on nineteenth-century Russian law—the main model was German law, as seen, e.g., in the case of fault-based liability for non-performance. Still, many main characteristic elements of German law (as the liability for the violation of secondary contractual duties) have not been implemented into Ukrainian law, while most "classical" civil law principles as defying the Anglo-American postal rule can be found in Ukrainian private law till this day.

A second sight, nevertheless, reveals that numerous elements of the "common core" of European private law are not fully or not implemented at all—what, by the way, does not automatically justify a verdict in terms of quality; transferring, e.g., the classical avoidance constellation to the "realm of dissent" may not lead to less fair judgements as such. But many of these differences still can only be evaluated as shortcomings. These can be found in general consumer law (e.g. in the lacking catalogue for void standard business terms) and also on simple dogmatic misconceptions as the lacking differentiation for carriage contracts concerning the

passing of risk. The practically probably most essential specialty of Ukrainian private law is its abundance of form requirements, many of them amounting to the notarial level. These requirements—just as the vast amount of regulations on cheque transactions—do not only slow down business transactions and open the doors to corruption but seriously also impede Ukraine's quest for digitising its legal communication.

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Change of Power and Its Influence on Country's Europeanization Process. Case Study: Georgia

Archil Chochia and Johanna Popjanevski

Abstract Georgia is an interesting example to analyze among Eastern Partnership countries due to the variety of complex political processes taking place in the country. Georgia has been one of the most successful partners within EaP initiative, achieving considerable success in implementing policies and following the European Union integration path. However, a set of obstacles has remained for Georgia on its Western route. Continuous reluctance in European capitals toward further enlargement of the EU, especially with regard to countries belonging to Russia's immediate neighborhood, has delayed the integration process. Security threats throughout the Eastern partnership region, coupled with fears of clashing with Moscow, have seemingly caused certain unease among certain member states to invest fully in the enlargement process vis-à-vis the region. Furthermore, shift of power in Georgia has raised a few questions in European circles regarding the country's future commitment to the European goals, and therefore understanding these developments correctly is vital for EU–Georgia relations and Georgia as a country. This chapter therefore aims to analyze recent political developments in Georgia and their influence on the country's relations with the EU.

1 Introduction

The European Union's (EU's) enlargement process is an important global political development that influences economic and political systems not only inside the EU but beyond its borders as well. European building process has had a long history with diverse phases of development since the establishment of the European Coal

A. Chochia (✉)
Tallinn Law School of Tallinn University of Technology, Tallinn, Estonia
e-mail: archil.chochia@ttu.ee

J. Popjanevski
Institute for Security and Development Policy – Silk Road Studies Program, Stockholm, Sweden

Ilia State University, Tbilisi, Georgia
e-mail: jpopjanevski@isdp.eu

T. Kerikmäe, A. Chochia (eds.), *Political and Legal Perspectives of the EU Eastern Partnership Policy*, DOI 10.1007/978-3-319-27383-9_13

and Steel Community (ECSC) by the six founding members in 1951. The community that started as a trading bloc regularly grew in size, and since then the EU has been joined further by 22 states. Such process broadened the EU's responsibilities, role, and functions and therefore brought new challenges for the Union's foreign policy in order to guarantee security in the long term. Major role was played by a historic and so far the biggest enlargement of the EU in 2004, reuniting Europe after a long period of division while expanding the borders of the Union even further and "discovering" new neighbors.[1] The period marks the launching of the European Neighbourhood Policy (ENP) as a foreign policy tool to govern EU's relations with its closest neighbors and strengthen security and stability on the Union's borders.

The Eastern Partnership (EaP) was launched in 2009 as a joint policy initiative and represents the eastern dimension of the ENP, aiming to speed up economic and political integration of Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova, and Ukraine, bringing them closer to the EU and its political and economic standards.[2] Enlargement process brought these countries closer to the EU and therefore their influence on the Union. As the culmination of the long process of negotiations, in June 2014 three countries from the EaP list, namely Georgia, the Republic of Moldova, and Ukraine, marked their success by signing the Association Agreements (AA) with the EU.[3] AAs focus on supporting core reforms in the countries, their economic recovery, governance, sectoral cooperation, and the far-reaching liberalization of their trade with the EU. AAs included Deep and Comprehensive Free Trade Area (DCFTA) agreements.

Georgia is an interesting example to analyze among EaP countries due to the variety of complex political processes that has been taking place since its independence from the Soviet Union in 1991. While perhaps being the most pro-Western among the EaP countries, since its independence the country has suffered from civil wars, heavy corruption, ongoing regional conflicts, and war with Russia in 2008. Georgia was the first postcommunist country undergoing so-called colorful revolution in 2003, and finally, the first time since its independence it experienced democratic and peaceful transfer of power as a result of parliamentary elections in October 2012. Even though in every recent ruling political power in Georgia has declared European integration as a priority goal and public opinion in Georgia towards the EU is one of the highest among EaP countries,[4] recent political developments have raised a few questions in European circles regarding the country's future commitment to the European goals, and therefore understanding these developments correctly is vital for EU–Georgia relations and Georgia as a country.[5]

[1] Prodi (2002).

[2] Council of the European Union. Joint Declaration of the Prague Eastern Partnership Summit, 7 May Council of the European Union 2009 http://europa.eu/rapid/press-release_PRES-09-78_en.htm.

[3] European Commission (2014).

[4] Müller (2011), pp. 64–92.

[5] Cornell (2013).

The EU is and should be interested in Georgia, and South Caucasus as whole, not only for bringing peace and stability on its borders and therefore preventing direct problems to the Union but also due to its geographical and political position. The Black Sea area and the South Caucasus region are of different international players' interests, also due to the region's huge transit capacities, including the sea routes, as well as the pipelines, being an East–West corridor. Profitable partnership with the countries in the area could be a big step for the EU in order to achieve energy security, therefore diversifying routes and sources by having alternative ones.[6] For such diversification, the following characteristics could be identified: the EU could access energy resources of Central Asia and bypass the pipeline system of Russia; process should lead to decreasing of the prices and in general should increase influence of the EU on the countries in the region.[7] Oil resources from Azerbaijan have been reaching European markets already since 2005 via Baku-Tbilisi-Ceyhan, while Caspian natural gas will also have access to the West via the Trans-Anatolian pipeline, which is scheduled to be completed by 2018. The region is also a military corridor for NATO towards the East and finally is a trade corridor with its full potential yet to be explored.[89] 'Politically, Georgia is an important example for other countries of EaP, depending on these countries' willingness to reform, and therefore, taking into account the pressure from Russia, it serves as an example to others on how much EU would engage and how successful the EU–Georgia cooperation is.[10]

This chapter therefore aims to analyze recent political developments in Georgia and their influence on the country's relations with the EU, dividing them into two periods: prior to the transfer of power as a result of the 2012 parliamentary elections and after.

2 History of Georgia's European Aspirations and the Effect of the Rose Revolution

Georgia's pro-European ambitions were proclaimed even during its first independence period, when in 1918 the head of country's government Noe Zhordania used political unrest caused by the Bolshevik revolution in Russia to declare the country independent. The priority for the Georgian government was integration to the European political world in a way to reassure the country's recent independence, and therefore the new leader started actively establishing closer cooperation with European states. Later on, Zhordania explained: "Soviet Russia offered us

[6] Kottari and Wisniewski (2011).
[7] Wisniewski (2011), pp. 58–79.
[8] Cornell et al. (2005).
[9] Cornell (2013).
[10] Ibid.

[a] military alliance, which we rejected. We have taken different paths, they are heading for the East and we, for the West."[11] Georgia's independence lasted for 3 years, and the country regained its independence only after the collapse of the Soviet Union in 1991; thus, Tbilisi's European plans had to be postponed until then.

Georgia proclaimed independence by adopting the Independence Restoration Act on the 9th of April 1991;[12] however, it was not until December of 1991 that Georgia was recognized as an independent country. The country had to deal with a number of political, social, and economic problems after the dissolution of the Soviet Union. Difficult political situation and incompetence of the ruling elite of the time resulted in a false start of democracy and state building in Georgia.[13] Instead of uniting around the liberalization idea, the national movement was split; ethnic conflict in South Ossetia, civil war and overthrowing of the government, devastating war in Abkhazia, and losing control over approximately one fifth of the country's territory made Georgia almost a failed state. Georgia's resources were spent on establishing the most basic order, and democratic reforms, so necessary for the country, were forgotten for more than a decade.[14] With the new government, from 1994 the country slowly started to implement needed reforms and managed to achieve some results worth mentioning; however, it heavily suffered from corruption and slowly "the state had virtually abandoned its public functions and stopped delivering basic services as the entire machinery of government had turned into a private market for corrupt informal transactions."[15] According to the World Bank:

> By 2003, reform momentum sputtered to a halt, and Georgia was a near failed state. Political power was increasingly fragmented, corruption and crime were rampant, there were massive arrears in pension payments and teachers' salaries, and infrastructure was in a state of near collapse.[16]

During this period, Georgia actively engaged in the bilateral and multilateral programs of the EU, including the national programs supporting institutional reforms, the Comprehensive Institutional Building (CIB) program, the INOGATE program supporting energy policy cooperation between the EU and partner countries, the TRACECA program promoting the development of regional transport dialogue, and Euro-Asian transport connections, macro-micro financial support, Partnership and Cooperation Agreement (PCA) starting from 1999. In 1995, the EU also established a regional representation in Tbilisi, Georgia, dealing with the

[11] Kirchik (2010). Affairs, 1 July 2010. https://www.foreignaffairs.com/articles/russia-fsu/2010-07-01/letter-tbilisi-georgia-between-two-powers.

[12] On 31 March of 1991, a referendum was held in Georgia: the question to answer was whether people wanted to restore Georgia's independence on the basis of the Independence Act issued on 26 May of 1918. 90.3 % of population took part in the referendum, and 98.9 % of participants answered positively to the question.

[13] Nodia (2007).

[14] Nodia (2006).

[15] Engvall (2012).

[16] World Bank (2009).

regional issues.[17] However, President Eduard Shevardnadze's government failed to bring any major positive development for the country.[18] As a result, massive corruption and the state's being unable to function led the country to the Rose Revolution in 2003, when young Mikheil Saakashvili and his political partners overthrew President Shevardnadze.

On his inaugural ceremony in 2004, as a new Georgian president, Saakashvili proclaimed the EU as a main goal for the country and suggested that the EU took further steps in cooperation.[19] During the same year, Georgia established the Office of State Minister on European and Euro-Atlantic Integration, which is responsible for coordinating the EU and NATO assistance programs, coordinating information centers, and reporting on the country's progress. At the same time, Georgia's European Union Integration Commission was created, chaired by the Prime Minister of Georgia and composed by all ministers of the country. The Commission facilitated the process of the EU and Euro-Atlantic integration and prepared the recommendations and proposals for the government. Since the first day, Saakashvili and his government have been pointing out that the main goal of the country is to join the European community and developing towards the West.[20] As a symbolic fact, European Union flags were introduced, and still are raised, on every government building and main state institutions. The new government also started to work on the new Georgian identity by changing the understanding of the Soviet past of the country and underlining its disastrous effect on the Georgian nation. Soon after Saakashvili came to power, the Soviet occupation museum was opened in the capital Tbilisi, and many similarities could be drawn from other former Soviet states that went through similar process of defining the past. Saakashvili went as far as declaring that any political party opposing country's European goals should be made illegal.[21]

Revolution meant a great deal for Georgia; it brought to the country a young and pro-Western government, which, with a new style of politics, managed to pass very painful but long-needed reforms, significantly reduce corruption, and establish a very business-friendly environment. The trust and support of Western partners returned, investments started to flow in, and the country's economic situation started to improve tremendously.[22]

When it comes to fighting corruption, the new government engaged in "large-scale reform, resulting in an almost complete eradication of petty bribery," and even though "its actions at times have been drastic—take, for example, the decision

[17] European Union External Action. European Neighborhood Policy–Overview. http://eeas.europa.eu/enp/index_en.htm.

[18] Beacháin and Coene (2014), pp. 923–941.

[19] Saakashvili, M. Inaugural Address. Tbilisi, January 25, 2004.

[20] Georgiev (2008).

[21] President Saakashvili during his 10 February 2005 annual address to the national parliament, as reported by Rustavi-2 TV station.

[22] Coppieters and Legvold (2005), pp. 274–290.

to disband the entire traffic police force—but the results are impressive."[23] In Transparency International's Corruption Perceptions Index, Georgia ranked 124th back in 2003, scoring 1.8 on a scale of 10, while in the following years the country's results have been improving, and in 2011 Georgia ranked 64th, scoring 4.1.[24] Remarkable results were achieved in improving the business environment, by abolishing 90 % of permits and country moving from 112th place in 2005 to 11th in 2007 in the World Bank's Doing Business rankings.[25] Furthermore, thanks to successful tax reform, by decreasing tax burden, Georgia managed to quadruple its tax revenues between 2004 and 2010.[26] One of the new government's trademark reforms was that of the police, one of the most corrupt institutions in the country, where overnight 16,000 policemen were fired and American-style patrol police was established, becoming one of the most trusted institutions in the country.[27]

However, such rapid and dramatic reforms were not always accomplished democratically. In order to build the state, the government had to centralize the power and have stronger control on state institutions.[28] This in return created problems within Georgian society and grew the protests against the government, which often responded by cracking down the opposition, like in 2007, when TV channel Imed covering the protest was raided by heavily armed police forces, journalists were beaten up, and equipment destroyed. The same time, the government managed to have a strong control over the judicial system, and as Council of Europe's Commissioner for Human Rights reported in 2011, the acquittal rate of the first-instance Tbilisi city court, for example, was 0.04 %.[29] Such confidence in courts meant that the government often used this against businessmen who usually preferred to choose plea bargaining instead of going to court while knowing the conditions in prisons where prisoners were often abused and tortured.[30, 31] Furthermore, Georgia heavily suffered from the war with Russian in 2008. Understanding how Georgian success could influence other post-Soviet countries and what this could mean for Russian interests, Russia has always tried to keep its strong influence on Georgia and undermine political processes in the country.[32] With all problems and difficulties the government faced, gap and lack of communication

[23] Transparency International (2011).

[24] Transparency International, CPI (n.d.).

[25] World Bank. Ease of Doing Business in Georgia. Doing Business: Measuring Business Regulations http://www.doingbusiness.org/rankings.

[26] Cornell (2013).

[27] Ibid.

[28] Ibid.

[29] See report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Georgia from 18 to 20 April 2011. https://wcd.coe.int/ViewDoc.jsp?id=1809789.

[30] Cornell (2013).

[31] Human Rights Watch (2006).

[32] Cornell (2013).

between Saakashvili's team and the society grew. Additional role in the process was played by that fact that the economic model adopted by the government never generated enough jobs and poverty, especially in the regions, remained a main problem.[33]

3 The 2012 Parliamentary Elections Period

By 2011, an opposition had emerged comprising six parties and headed by business tycoon and multibillionaire Bidzina Ivanishvili. The new movement, the Georgian Dream (GD), entered the election campaign on an agenda predominantly centered on the mutual goal of ousting Saakashvili and his team from power. It promised, moreover, to correct mistakes of the past through bringing justice to wrongdoings of the former administration and to achieve improvements to the business investment climate.

The parties were ideologically very different, ranging from Ultranationalists to Western-orientated liberalists. As such, their victory over Saakashvili's United National Movement (UNM) party was maybe surprising to many foreign observers but may be explained by a set of domestic circumstances that directly or indirectly contributed to their success. As previously noted, disappointment with Saakashvili and his UNM team had been growing for a number of years, fuelled by a certain stagnation in reforms during its last years in power. Severe discontent surfaced already in 2007, when ten opposition parties' large-scale demonstrations were held in Tbilisi, followed by a crackdown on protestors that resulted in a state of emergency and the resignation of President Saakashvili and a call for snap elections. The demonstrations, gathering up to 50,000 protestors on the streets of Tbilisi, were largely a result of the government's failure to communicate its liberalization reforms and to communicate the benefits of its Euro-Atlantic agenda.[34] It was clear that while the Saakashvili-led government had succeeded in proving itself as a reformist in the view of its international audience, it had failed to make the same case to the Georgian public. Moreover, the outbreak of the 2008 Georgia–Russia war led many to question the rationality of the leadership in its Russian policies. While evidence that Russia had planned the war became increasingly glaring in the years following the 2008 events, misinterpretation of the roots and causes of the war resulted in both international and domestic criticisms of the government for its reckless behavior in South Ossetia.[35]

Moreover, a mere month before the 2012 elections, videos were released showing the use of severe torture and abuse in Tbilisi's Gldani prison. The public's

[33] Ibid.

[34] See, e.g., Cornell et al. (2007).

[35] See, e.g., Asmus, R "A little War that Shook the World", *Palgrave McMillan*, 2010 and Starr, F and Cornell, S (eds) "The Guns of August 2008: Russia's War in Georgia" *M.E. Sharpe*, 2009.

outrage that coupled the scandal suggested that a tipping point was reached which would significantly affect the election outcome. As such, an environment had emerged in which the first power shift through election in Georgia since independence could take place. Also, Ivanishvili, whose personal wealth amounted to approximately half of Georgia's GDP, raised significant domestic expectations of improved socioeconomic conditions for the Georgian public, infrastructural developments, and increased investments in the halting sectors of society. Many Georgians believed, rightly or wrongly, that the billionaire's fortune could guarantee the Georgian economy and that votes for his party coalition could entail personal financial rewards.

The GD leadership also understood that it needed to display its commitment to pursue the country's Western agenda to maintain international credibility. Thus, Ivanishvili gathered around him individuals who had previous experience in Euro-Atlantic work and ties to the West, including pro-Western leader of the Free Democrats Party Irakli Alasania, Republican Party leader Davit Usupashvili, and former Georgian Ambassador to Turkmenistan and Afghanistan Alexi Petriashvili. As such, Ivanishvili secured that the new government enjoyed trust among both the Georgian population and Georgia's Western partners.

However, the inexperience of the incoming government soon became apparent. Faced with the difficult task of living up to the significant expectations of the Georgian public, efforts were initially largely directed towards bringing justice to past deeds rather than engaging in much-needed reform work. Seemingly fuelled by the discontent of the public against Saakashvili's team, the new leadership pursued its battle against UNM beyond the election, arresting and prosecuting high-level party profiles, including former Interior and Defense Minister Bacho Akhalaia, former Prime Minister Vano Merabishvili, former Mayor of Tbilisi Gigi Ugulava, and former President Mikheil Saakashvili (in absentia).[36] Thousands of opposition activists were also subjected to questioning or investigation by the prosecution. The selective targeting of political opponents led international observers to react with concern, warning the government of politically motivated acts of retribution.[37]

The government's overwhelming focus on political retribution, while neglecting urgently needed reform efforts in other spheres, did little to foster the economic growth that the new leadership had promised. Albeit a common occurrence in the

[36] For further analysis, see Popjanevski, J, "Retribution and the Rule of Law: The Politics of Justice in Georgia", *Silk Road Paper*, June 2015.

[37] See, e.g., EU Foreign Policy Chief Catherine Ashton's statement in November 2012 that "there should be no selective justice; no retribution against political rivals. Investigations into past wrongdoings must be, and must be seen to be, impartial, transparent and in compliance with due process", at http://georgiaonline.ge/articles/1359316127.php, and the Council of Europe Parliamentary Assembly (PACE) October 2, 2014 resolution on "the Functioning of Democratic Institutions in Georgia.", which expressed concern over "allegations that the arrests and prosecution of a number of former government-officials are politically motivated and amount to selective and revanchist justice", at http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21275&lang=en.

wake of a power shift, the GDP growth plunged from an average of 6.1 % to 1.7 % in the months following the election.[38] The unemployment rate remained high, and foreign investors seemingly took a step back awaiting developments in the political sphere.

Soon, moreover, personal differences between the personalities within the GD leadership surfaced. In particular, Alasania's independent standing within the government, and simultaneous aspirations to run as GD's presidential candidate in the 2013 election, did not rhyme well with Ivanishvili's continuous interests in controlling the decision making of the new leadership. Following a set of controversies surrounding the signing of an air defense agreement,[39] Alasania, together with his team of deputies, was dismissed from his post as Defense Minister. This led then Euro-Atlantic Minister Petriashvili and Foreign Minister Panjikidze to resign from the government, meaning that the most pro-Western team within the GD was no longer in place.

3.1 Toward EU Integration

In spite of noted setbacks in the political sphere, Georgia's quest toward EU integration continued. Already in 2010, negotiations began regarding the conclusion of an Association Agreement (AA) with the EU, involving getting Georgian legislation compatible with EU acts and reforms in the spheres of political cooperation, justice, freedom and security, and the economy. In 2012, Georgia also entered into negotiations with the EU regarding visa liberalization for Georgian citizens to EU countries. As part of the process, the EU launched a project on 'border management and migration regulations' aimed at strengthening the capacity of the Georgian government in relation to border management.[40]

Building on to the strong Western ambitions of the Saakashvili-led government, the GD government ambitiously pledged to pursue efforts to integrate with the EU with the ultimate goal of attaining full membership. At the EaP Vilnius Summit in November 2013, the Association Agreement was initialized and, subsequently, signed by Tbilisi in June 2014. Following the approval by the European Parliament of the ratification of the AA, the parties agreed on an Association Agenda to facilitate its implementation, defining priorities for 2014–2016.[41] Following the

[38] "Georgia Overview", *The World Bank*, February 2014, at http://www.worldbank.org/en/country/georgia/overview.

[39] For more information, see Cornell, S, "Is Georgia Slipping Away?", in *American Interest*, November 13, 2014, at http://www.the-american-interest.com/2014/11/13/is-georgia-slipping-away/.

[40] See http://en.trend.az/scaucasus/georgia/2233677.html.

[41] See http://www.eeas.europa.eu/statements/docs/2014/140626_05_en.pdf and http://eeas.europa.eu/georgia/pdf/eu-georgia_association_agenda.pdf.

Vilnius Summit, Georgia also acceded to the EU Common Security and Defense Policy (CSDP), entailing the provision of support to EU security missions.[42]

However, the European Parliament coupled the process of concluding the Association Agreement with concerns. In a nonlegislative resolution in December 2014, the Parliament took note of the tense political climate in Georgia and expressed particular concern about the potential use of the judiciary to fight political opponents, calling for enhanced efforts to reform the judiciary and for increased cross-party dialogue.[43]

Through the AA, Georgia also acceded to the Deep and Comprehensive Trade Agreement (DCFTA), providing Georgian businesses access to the EU's single market, a long-standing ambition of the Georgian leaderships. It equally, however, brought with it challenges to the Georgian economy, especially in the short term. Lacking mechanisms for fulfilling DCFTA quality requirements, especially in the small business sector, has been a long-standing challenge for Georgia. However, in the longer perspective, the agreement is expected to bring significant benefits to the Georgian economy, with a GDP growth of 4.3 % and an increase in export and import by 12.4 % and 7.5 %, respectively.[44] Wages are expected to increase by 3.6 %, leading to improved socioeconomic conditions.[45] The EU also continues to provide substantial aid money to Georgia, amounting in 2013–2017 to €335–410 million.[46]

3.2 Georgia's NATO Path

Along with EU integration, membership of NATO remained an unmistakable ambition of the government after the 2012 power shift. The appointment of Alasania as Minister of Defense was an important signal to the alliance of Georgia's continuous quest for closer NATO integration. Recovering from the setback Georgia suffered in 2008, when denied of NATO Membership Action Plan (MAP) at the spring Bucharest Summit, Alasania ambitiously pursued his and the government's NATO agenda ahead of the Wales Summit in September 2014. Given the continuously fragile security situation in the region, exaggerated by Russia's aggressiveness in Ukraine, the Summit was viewed as decisive for Georgia's stability.[47] However, at the Wales Summit, Georgia again failed to receive MAP but was promised a number of alternative cooperative arrangements from the alliance. This

[42] http://eeas.europa.eu/statements/docs/2013/131129_02_en.pdf.

[43] See http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2014-0042+0+DOC+XML+V0//EN.

[44] See http://trade.ec.europa.eu/doclib/docs/2012/november/tradoc_150105.pdf.

[45] Ibid.

[46] See http://eeas.europa.eu/georgia/index_en.htm.

[47] Author's interviews with senior Georgian officials, 2014.

involved a package to increase Georgia's defense capacity through, for instance, the establishment of NATO training centers and stronger liaison mechanisms. However, while having provided large-scale support to NATO operations in Iraq and Afghanistan, Georgia's pleas for membership of the alliance have remained unanswered.

4 Conclusions

Indeed, ever since the Rose Revolution in 2003, integration with the EU has been a pronounced ambition of the Georgian leaderships. As noted previously in this chapter, the launch of the EaP initiative by Poland and Sweden in 2009 constituted an important step in this process, offering Georgia important opportunities to advance towards eventual membership with the Union. However, a set of obstacles has remained for Georgia on its Western path. Continuous reluctance in European capitals toward further enlargement of the EU, especially with regard to countries belonging to Russia's immediate neighborhood, has delayed the integration process. Security threats throughout the Eastern partnership region, coupled with fears of clashing with Moscow, have seemingly caused certain unease among certain member states to invest fully in the enlargement process vis-à-vis the region.

The power shift in 2012 introduced additional challenges to Georgia's Europeanization process, especially after the departure of the most pro-Western forces within the GD coalition from office. While remaining committed to its European aspirations, the post-2012 government has yet to live up to standards set by the EU with regard to the rule of law, political cooperation, and the economy. The postelection period has seemingly also brought with it a shift in public sentiments with regard to Euro-Atlantic integration. As became visible already in 2007, Tbilisi preoccupation with its foreign policy agenda fuelled a certain level of discontent among the Georgian public; indeed, many viewed these processes as advancing at the cost of more pressing domestic issues. While public support for Georgia's Euro–Atlantic processes proved high in national opinion polls, at between 60 % and 70 %, a survey conducted by the National Democratic Institute in August 2014[48] suggested that domestic issues were of significantly higher relevance for the public than NATO and EU ones, which were ranked top among the issues that the government spent too much time discussing. Moreover, the survey suggested that a growing number of people than before were favoring Georgian membership of the Russian-led Eurasian Union, an increase by 9 percentages from late 2013. Analysts will argue that these shifts in sentiments were partly linked to a rapid influx in pro-Russian groups within the nongovernmental sector in

[48] https://www.ndi.org/files/NDI_Georgia_August-2014-survey_Public-Issues_ENG_vf.pdf.

the period following the 2012 election,[49] as well as the failure by the Interior Ministry to tackle Russian infiltration into the civil society sector and other spheres of society in the postelection period.

The post-2012 era has also seen a troublesome increase in radicalisms and intolerance. In May 2013, a gay rights parade was disrupted by a forceful antidemonstration by thousands of conservative protesters, including orthodox priests, many of whom pointed at the rally as a result of immoral Western influences.[50] The May 2013 events were followed by heated debates surrounding the adoption of an antidiscrimination bill in early 2014—a requirement in Georgia's visa liberalization process with the EU—further testifying to the increasing polarization of Georgian society with regard to Europeanization and the growing influence of anti-Western forces on the political scene.

In sum, a number of challenges, as well as opportunities, remain for Georgia in its Europeanizing process. Decisive will be Tbilisi's commitment to its Western ambitions and to its required reform agenda. Equally essential is the West's recognition of the importance of the region, not least as a trade and energy corridor to the East.

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[49] See e.g. Ciceri, M, "The Kremlin Pulls on Georgia", in *Foreign Policy – Democracy Lab,* March 9, 2015, at http://foreignpolicy.com/2015/03/09/the-kremlin-pulls-on-georgia/, and author's interviews in Tbilisi, 2015.

[50] See Radio Free Europe/Radio Liberty, "Antigay Protestors Disrupt Georgian Rights Rally", May 17, 2013 at http://www.rferl.org/content/georgia-gay-rights-protests/24988972.html. http://www.rferl.org/content/georgia-gay-rights-protests/24988972.html.

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Georgia's Right to 'European Dream'

Dali Gabelaia

Abstract At a time when Georgia's aspiration to become an insider of the EU is not achievable in the nearest future, probably one of the most teasing proposals made by the EU was promising visa-free travel by first delivering the Visa Facilitation and Readmission Agreements and starting a dialogue on this subject, which later was followed by VLAP. Clinging to the idea, authorities as well as the media gave it a huge resonance, causing society to think that the EU is nearer than ever. However, fulfilling certain requirements under VLAP showed that neither authorities nor the public is quite ready to endorse and fully accept some paramount values. Georgia's struggle on its way to Europe will be discussed on the examples of adoption and implementation of anti-discrimination and personal data protection laws as part of VLAP.

1 EU–Georgia Relations at a Glance

Georgia's relations with the EU has a long story, which as in the case with a majority of other post-Soviet countries started just after Georgia regained its sovereignty after the breakup of the Soviet Union. The EU was one of the first to assist Georgia in the difficult early years of transformation to a democratic country. The European Commission opened its Delegation in Georgia in Tbilisi in 1995,[1] and the first main document on which Georgia and EU relationships are based on—the Partnership and Cooperation Agreement—came into force in 1999.

Relations with the EU became more intense after 2003. Political priorities of cooperation with Georgia were defined by the European Neighbourhood Policy (ENP) Action Plan adopted by the EU in November 2006. In 2009, the EU stressed the importance of this region to which Georgia is a part and the privileged

[1] Delegation of the European Union to Georgia (2015).

D. Gabelaia (✉)
Ministry of Energy of Georgia, LEPL State Agency of Oil and Gas, Tbilisi, Georgia
e-mail: daligabelaia@yahoo.com

T. Kerikmäe, A. Chochia (eds.), *Political and Legal Perspectives of the EU Eastern Partnership Policy*, DOI 10.1007/978-3-319-27383-9_14

relationship it was offering to it by launching the Eastern Partnership (EaP),[2] which aims to promote the partner countries' political association, their gradual economic integration, legal mobility, and visa liberalization with the EU.[3]

The Visa Facilitation[4] and Readmission Agreements between Georgia and the EU came into force on 1 March 2011, while in June 2012 the EU began a visa dialogue with Georgia. On February 25, 2013, Georgia received the Visa Liberalisation Action Plan (VLAP),[5] which constitutes the main instrument of the visa dialogue between Georgia and the EU. This was the first step in a long journey of achieving a distant goal of establishing a visa-free regime.

The majority of reforms that are supposed to be carried out during visa liberalization process involve implementation of international norms mainly from the United Nations and the Council of Europe.[6]

It should be mentioned that unlike in the case of the Western Balkans, Georgia, as well as Moldova and Ukraine, was granted an "action plan" and not a "roadmap"; the reason for this was EU's desire to avoid setting the Western Balkans' experience as a precedent for the Eastern Partnership.[7] However, a precedent was still set. Being the frontrunner in the visa liberalization process (visa-free travel was allowed in December 2013), Moldova showed that the fulfillment of benchmarks is credible. Moldova's case raised expectations that Ukraine and Georgia can be next to be granted free travel.

In this article, we are going to assess the processes that took part in Georgia regarding the implementation of certain benchmarks under VLAP in the perspective of leading the process in a timely manner, gaining public support, ensuring transparency of the process, and conducting active dialogue around the most problematic issues within the society and the nongovernment sector. According to the "Third progress report on Georgia's implementation of the action plan on visa liberalisation", Georgia's progress under the four blocks of the VLAP has been significant;[8] however, it still needs to make further efforts.

[2] Ibid.

[3] Samvelidze (2014).

[4] The visa facilitation regime has been often mistaken for visa liberalization, when it actually constitutes a first step towards the long-term goal of establishing a visa-free regime. In the visa facilitation agreements, visa obligations still prevail but with simplified procedures such as the exemption of visa fees for certain categories of visa applicants, a reduced fixed visa fee for the rest of the applicants, and a shorter period for issuance, along with the possibility to lodge applications for multiple-entry visas. Hernández i Sagrera, R. (2014). The Impact of Visa Liberalisation in Eastern Partnership Countries, Russia and Turkey on Trans-Border Mobility. http://aei.pitt.edu/50257/1/No_63_EU_Visa_Liberalisation.pdf. Accessed 10 June 2015.

[5] Samvelidze (2014), p. 5.

[6] Hernández i Sagrera (2014), p. 8.

[7] Ibid.

[8] European Commission–Report from the commission to the European Parliament and the Council (2015), p. 10.

VLAP consists of four key blocks of benchmarks in the spheres of document security, border and migration management, public order and security, and external relations and fundamental rights. Each block consists of two tiers: the first one envisages the introduction of the corresponding legislative changes and the elaboration of a policy framework, while the second tier involves the process of implementation and carrying out the respective measures.[9] Introducing implementation tier is aimed at minimizing the risk of temptation to comply with the requirements only on paper; however, the danger that governments will try to achieve minimum required standards without being interested in processing initiated reforms shall always remain.

While overall Georgia managed to make significant progress, achievement of the results we have now required overcoming of serious challenges, and a lot is still to be done. We are not going to discuss all problematic issues, but rather we will focus on the adoption and implementation of anti-discrimination and personal data protection laws, which shows that neither authorities nor society is completely ready for the introduction and promotion of certain values.

2 Discrimination Issues in Georgia: Are Some More Equal Than Others?

2.1 Drafting and Adopting the Law

Discrimination is regulated by various Georgian legal acts. All norms are originating from the Constitution of Georgia, which states that "everyone is born free and is equal before the law regardless of race, color of skin, language, sex, religion, political or other opinions, national, ethnic and social affiliation, origin, property or social status, place of residence".[10] Although some other laws reiterated the same provision, it was not until the adoption of the Law of Georgia on the Elimination of All Forms of Discrimination that the issue got a more detailed regulation.

Adoption of the law was one of the toughest requirements. The main problem was wrongful understanding of the essence of the law due to the low levels of awareness and deliberate misinformation spread by conservative and anti-Western groups. As a result, public opinion was formed that the law concerned solely the discrimination of sexual minorities and not discrimination defined as different treatment of persons with certain characteristics.

In general, the issue of the protection of minority rights is quite problematic for Georgian society. Events that unfolded on May 17, 2013, demonstrated that public opinion and attitudes directly contradicted the principles promoted by the EU. On the mentioned day, several nongovernmental organizations tried to organize a

[9] Samvelidze (2014), p. 6.

[10] *See* Article 14 of Constitution of Georgia.

demonstration in Tbilisi in order to mark the international day against homophobia and transphobia. A counterdemonstration with several thousands of participants was held at the same time. The letter violently dispersed the LGBT activists and their supporters. Even the police was unable to stop the violence.[11]

Bearing all this in mind, it is not difficult to imagine what difficulties were overcome to adopt the antidiscrimination law. At the very beginning, the whole process of drafting was split in two phases. The Ministry of Justice was determined as the responsible body on the first stage. It managed to ensure involvement of society by consulting nongovernmental organizations as well as the entire community, including members of LGTB organizations, Roma communities, and other ethnic minorities.[12] Organization of several public consultations during the development of the proposed legislation that served to ensure an open and transparent law-making process was very welcomed by international organizations.[13] Not only the law-making process but also the draft law proposed by the Ministry can be praised for conformity with EU requirements. The draft law envisaged creating a new independent body—the institution of Equality Inspector, which would have the mandate to impose financial sanctions in cases of discrimination. Such approach was assessed as an effective mechanism.

To initiate the draft law before the Parliament, the draft was passed to the Government according to Georgian legislation. That is when the second phase of drafting was set in place. However, after the Georgian Government received the draft law, it had undergone several amendments without any inclusiveness or transparency. Only the public defender's office was involved in this second stage, while nongovernmental organizations and other communities were excluded.[14] Changes to the draft became known to the society only after it was submitted to the Parliament.[15] As a result, the vast majority of society was not aware what issues were exactly regulated by the draft law and what its main aim was. As mentioned before, an opinion was formed that the law would serve as promotion for sexual minorities. Such situation was used by those who are trying to generate negative attitude towards EU by stressing that it encourages the promotion of wrongful values.

Since the draft law submitted to the Parliament differed from the original one, it was criticized by both nongovernmental and religious organizations. The main reason of disagreement between the Orthodox Church and authorities was Article 1 of the draft law, which provided for prohibited grounds of discrimination. "Sexual

[11] Public Defender of Georgia (2013), p. 190.

[12] Romanian Center for European Policies (2015), p. 4.

[13] ODIHR (2013).

[14] Romanian Center for European Policies (2015), p. 4.

[15] Transparency International Georgia (2014). New anti-discrimination law: Challenges and achievements. http://transparency.ge/blog/antidiskriminatsiuli-kanoni-mightsevebi-da-gamotsvevebi?page=2. Accessed 12 June 2015.

orientation"[16] and "gender identity" were particularly problematic issues; the clergymen believed such wording was absolutely inadmissible and considered it as accepting "homosexuality as a norm of behavior."[17] In addition to such statements, rallies were held outside the Parliament with demands to reject the draft law.

While nongovernmental organizations, critisized the draft law for removal of the effective mechanism of enforcement introduced by the initial draft. Despite serious turmoil, on May 2, 2014, the Georgian Parliament adopted the law at its third reading.

2.2 *Mechanism of Protection Under the Law/Main Concerns Regarding the Law*

The initial draft was set to create a new independent body—the institution of Equality Inspector. The later draft, however, granted the function of supervision on elimination of discrimination to the Public Defender of Georgia (Ombudsman), an institution that was designated as a monitoring body for the protection of human rights and freedoms in the territory of Georgia and under its jurisdiction.[18] To fulfill the imposed functions, the Ombudsman collects and analyzes statistical data, prepares opinions to be submitted to the Parliament regarding respective legislation amendments, and carries out other activities to raise awareness of the public regarding discrimination issues. This means that the Ombudsman can also carry proactive measures by reflecting on the essence of the problem. According to the law, the Ombudsman examines facts of the discrimination not only when addressed by a victim of discrimination but also on its own initiative. Discrimination cases are solved by the Equality Department of the Ombudsman, which has five employees according to the information published on the official website.[19]

Clearly, such activities can be fulfilled only if adequately financed from state budget. It should be mentioned that when submitted to the Parliament, the financial side was not determined and remained a problem. This was criticized by some nongovernmental organizations, as lack of adequate sources could seriously jeopardize the effective fulfillment of the Ombudsman's obligations prescribed by the law: "Such an attitude towards the functioning of the institution will only prove that the adoption of the law is a formality and that very little attention was given to its

[16] Interestingly, almost identical problems occurred in Moldova during adoption on antidiscrimination. Although Moldova managed to adopt such law, it came into force under the title of the "Law on the Provision of Equal Opportunities", and sexual orientation was removed from Article 1 as one of the reasons for protection against discrimination.

[17] See article of Avaliani G. Davit Isakadze threatened deputies that they will be Anathematized (2016). http://www.netgazeti.ge/GE/105/News/30447/. Accessed 15 June 2015.

[18] Article 2 of The Organic Law of Georgia on the Public Defender of Georgia.

[19] See webpage of Public Defender of Georgia. http://www.ombudsman.ge/ge/diskriminaciis-prevenciis-meqanizmi/tanamshromlebi. Accessed 10 June 2015.

execution phase."[20] Luckily, the Office of the Ombudsman received the financial resources necessary for implementing its functions.

Another reason for concern was depriving the Ombudsman of the effective mechanism of imposing financial sanctions; in the absence of such mandate, the Ombudsman has to focus on mediation and restoration of the violated rights. If the Ombudsman fails to reach consensus between the parties in some particular cases, the victim of discrimination is always entitled to go to court. Moreover, the victim of discrimination is entitled to apply to the court at any stage of the process and demand moral or material damage from the offender.[21]

Unfortunately, most of the times the victims of discrimination are reluctant to deal with courts regardless of their financial situation or of their level of education. The court system is perceived as distant from the citizens, and especially in a society where the gravity of the act of discrimination is not yet fully assimilated by the population, it is unlikely that antidiscrimination can be effectively done in courts.[22]

The efficiency of the mechanism itself is questionable. Since the problem of discrimination arises from public consciousness, a risk always exists that fighting discrimination by penalizing violators cannot be effective and even cause a counterreaction expressed in hatred towards individuals with different characteristics and strengthening of radical forces.[23]

Legal argument against repressive powers lies within the Constitution, as it authorizes the Ombudsman to identify acts of violation of human rights and freedoms but not to punish violators, so granting such powers to the Ombudsman will go beyond authority granted to him/her by the Constitution. It is also said that the ability of punishing offenders contradicts the essence of mediator function given to the Ombudsman. It is believed that in this case, the Ombudsman will not be able to mediate effectively, as the prospective offender will not trust the mediator.

Besides, while caring out mediation authority, the Ombudsman may turn into a violator of human rights himself. Imposing sanctions on individuals presupposes

[20] Transparency International Georgia (2014). New anti-discrimination law: Challenges and achievements. http://transparency.ge/blog/antidiskriminatsiuli-kanoni-mightsevebi-da-gamotsvevebi?page=2. Accessed 12 June 2015.

[21] According to the Annual Report of the Public Defender of 2014 year, the Ombudsman was addressed by 38 persons in order to determine discrimination. Pending cases can be found on the webpage. Interestingly, according to the report of the Public Defender on protection of rights and freedoms in Georgia, majority of discrimination cases refer to discrimination at work, different political opinions, belonging to trade/professional unions, nationality; applications also refer to refusal to provide services because of sexual orientation, harassment due to skin color, etc. For detailed information, see Report of Public Defender on The Situation in Human Rights and Freedoms in Georgia for 2014. http://www.ombudsman.ge/uploads/other/2/2439.pdf.

[22] Romanian Center for European Policies (2015), p. 13.

[23] Transparency International Georgia (2014). New anti-discrimination law: Challenges and achievements. http://transparency.ge/blog/antidiskriminatsiuli-kanoni-mightsevebi-da-gamotsvevebi?page=2. Accessed 12 June 2015.

entering into the sphere protected by human rights.[24] This always includes the probability that the Ombudsman's actions will be recognized as illegal by the court and as a result will adversely affect the Ombudsman's image.

We have already mentioned earlier that "sexual orientation" and "gender identity" were unacceptable to the Orthodox Church; to somehow secure its position, the definition of discrimination was restricted by reference to public morals.

The initial definition of discrimination read as follows: "kind of treatment or creating the conditions when one person is treated less favorably than another person in a comparable situation on any grounds specified in Article 1 of this Law or when persons in inherently unequal conditions are treated equally in the enjoyment of the rights provided for by the legislation of Georgia."

Due to the severe protests of certain religious groups mentioned above, the following exception was added to this article: "maintaining public morals, when this has an objective and reasonable justification." However, not to be given a very broad interpretation, as a compromise the following formulation was agreed: ". . .unless such treatment or crating such conditions serves the statutory purpose of maintaining public order and morals, has an objective and reasonable justification, and is necessary in a democratic society, and the means of achieving that purpose are appropriate."[25]

Despite different approaches regarding certain mechanisms and norms, adoption of the mentioned law is a huge step forward in terms of protection of human rights and, especially, in fighting discrimination. To fulfill the goals of the law, it is essential to provide adequate resources and to have a strong will not only on the part of the Ombudsman but also on the part of other state institutions. It is also important to raise awareness of the public in regard to discrimination issues. In this case, the government has a very important role.

3 Balancing Between Personal Data Protection and the State's Interests

3.1 Background for Personal Data Protection

The Constitution of Georgia provides a basis for personal data protection by insuring protection of private life (Art. 20) and information existing on official papers pertaining to individuals' private matters (Art. 41 para. 2). The Constitution obliges the state to ensure the realization of these rights and, as such rights are not absolute, prevents it from restricting them without relevant grounds. Interference in the rights is allowed only to reach a legitimate aim and to do this by using only such means, which will be less harmful to the right.[26]

[24] Ibid.

[25] See Article 2 paragraph 2 of Law of Georgia On All Forms of Discrimination.

[26] Georgian Democracy Initiative (2015). p. 42.

In order to ensure proper guarantees for the protection of personal data, especially in the age of technology when life is a continuous process of information exchange and flow and the requirement of personal data processing is justified by the needs of different fields of everyday life, general provisions of the Constitution are not enough. European integration makes it especially important to work towards improvements in this sphere. Adoption of personal data protection regulation was one of the benchmarks set under VLAP. Apart from the reason stated above, adoption of respective regulations became of great importance to Georgia also due to a number of scandals in 2013 over secret eavesdropping and surveillance, after information on thousands of secret audio and video recordings created in 2005–2012 was publicized.

Although the law of Georgia on "Personal Data Protection" entered into force in May 2012, before VLAP was introduced to Georgian authorities,[27] serious steps regarding data protection were taken later when the competition committee[28] for the selection of the Personal Data Protection Inspector (Inspector) was created in 2013, and the Inspector was appointed to the position on July 1, 2013.[29] Furthermore, the application of the law to the private sector has entered into force only in November 2014, following several new changes to the law that were adopted in August 2014.[30]

Introduction of such monitoring body is a novelty for Georgia. There has been no prior experience of supervising in this field, which makes it especially important to examine all of the preconditions for effective operation of the supervising body.[31]

Although the law was adopted in 2011 its effective implementation and data protection became possible after the Inspector was appointed in 2013.[32] That is why evaluating faults of the law or its implementation in such a short time cannot be very deep; however, several questions, especially regarding the latest changes, have been raised, not to mention implementation phase, which might have a few shortcomings even if the law was less contradicting. Several issues were addressed by

[27] VLAP was presented to the Georgian authorities on 25 February 2013; for more information, see http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/eastern-partnership/visa-liberalisation-moldova-ukraine-and-georgia/index_en.htm.

[28] The committee consists of the representatives of the Executive Branch, the Parliament, the Judiciary Branch, the Public Defender of Georgia, and the nongovernmental sector of Georgia. The competition committee nominates the candidates for Inspector with a simple majority of votes and proposes the candidates to the Prime Minister, who shall, within 10 days, introduce to the Parliament of Georgia two candidates to be elected to the position of Inspector. The Parliament of Georgia, under the procedures determined by the Rules of the Parliament of Georgia, shall elect the Inspector not later than 14 days after nomination of the candidates. For detailed procedure, see Law of Georgia on Personal Data Protection, Article 28.

[29] Georgian Young Lawyers' Association (2014), p. 7.

[30] Romanian Center for European Policies (2015), p. 9.

[31] Georgian Young Lawyers' Association (2014), p. 5.

[32] Similar situation occurred in Romania, where the data protection law was adopted in 2001, but until 2006 when the new authority was created, nothing important happened in terms of implementation.

the Inspector in its first annual report. Some recommendations were given by the Council of Europe, but Georgian authorities do not seem to have real political will to follow recommendations. This became obvious when in the end of November 2014 amendments regarding new wiretapping were introduced to the Parliament.

3.2 Faults in Personal Data Protection

Proposed amendments allowed the Interior Ministry to own and operate so called black box spying devices in telecom operators' networks. These amendments were vetoed by the President; however, his version of amendments that offered the Parliament an alternative version which excluded unlawful interception of communications by the law enforcement agencies was also widely criticized. As a result, the President's veto on the initial version of the amendments was overridden.[33]

Moreover, the Georgian Parliament also suggested an expansion of surveillance activities through mandatory data retention provisions for all electronic communication providers. In a case when the EU directive on data retention was considered invalid by the European Court of Justice and the Constitutional Courts of some member states declared the laws that implemented the directive as breaching the right to privacy,[34] discussing such possibility by the members of the Parliament cannot be assessed positively.

According to the law on data protection, the Inspector is fully independent; however, the fact that "powers of the inspector shall be prematurely terminated if he/she fails to perform his/her duties for four consecutive months"[35] can be a source of potential restriction of authority of the Inspector. Rules of procedure of the Inspector and the procedure for his/her exercise of powers[36] may serve as another tool that significantly endangers the independence of the authority or minimize its role.

Financial and human resources also require attention. The Inspector's office is financed from the State Budget.[37] Although there seems to be no problems regarding financing at present, it has to be mentioned that the law on data protection only names the source of funding,[38] but to ensure complete independence it is necessary

[33] Civil Georgia (2014).

[34] Georgian Young Lawyers' Association (2014), p. 7.

[35] See Article 30 paragraph 3 sub-paragraph 'b' of Law of Georgia on Personal Data Protection.

[36] See Article 27 paragraph 2 of Law of Georgia on Personal Data Protection: "Rules of procedure of the Personal Data Protection Inspector and the procedure for his/her exercise of powers shall be defined under the appropriate Regulations approved by the Government of Georgia."

[37] According to the official webpage of Personal Data Protection Inspector, in 2014 600 000 GEL were allocated for the operation of the personal data protection inspecting authority, while in the current year the approved budget of the Personal Data Protection Inspector's Office equals to 1,450,000 GEL. http://personaldata.ge/en/about-us/budget Accessed 10 June 2015.

[38] See Article 32 paragraph 4 Law of Georgia on Personal Data Protection.

to regulate funding issues in more details. An example can be taken from a similar institution—the Public Defender of Georgia; the regulating legislation stipulates that decreasing the amount of the salaries indicated in the state budget in relation to the previous year may only take place after the prior consent of the Public Defender.[39]

Number of Inspector's office workers was also questioned. Taking into account that Georgia has quite a number of IT and e-government systems that most likely are implemented without proper consideration of data protection principles and thus will raise some data protection issues in the nearest future, this concern is not lacking grounds.

The Inspector is granted with authority on his/her own initiative and upon application of an interested person to conduct an inspection of any data controller and data processor.[40] The Inspector can decide to opt for one of the measures provided by Art. 39 of the law. It was noted that the law only enumerates such measures and does not specifically state whether they can be used accumulatively.[41] Apart from these measures, the same article of the law grants the Inspector with authority to draw up an administrative offense report and impose administrative liability upon a data controller or data processor, respectively, under statutory procedures.[42]

As for participation of the Inspector in the law-making process, the Inspector is authorized to submit proposals to the Parliament and other public institutions intended to improve the legislation and to prepare reports on laws and other normative acts that refer to data processing. It will be better to turn such power to the Inspector's obligation. As the best practices from EU member states show, better results are achieved when Inspector's consultations are mandatory and results are made publicly available; otherwise, it would be impossible to assess the role of the Inspector in the legislative process and how the government follows them.[43]

The biggest concern and debates are raised by the last amendments of the law made to it in November of 2014. These amendments are believed to "drastically worsen the legislation on human rights protection, and create risks of unjustified government interference in citizens' private lives."[44] In the essence of the legislative package[45] lies the opportunity for the Ministry of Internal Affairs to retain the

[39] See Article 25 paragraph 3 of The Organic Law of Georgia on the Public Defender of Georgia.

[40] Article 35 paragraph 1 of Law of Georgia on Personal Data Protection.

[41] Georgian Young Lawyers' Association (2014), p. 12.

[42] The only fine issued by the Inspector in 2014 that was contested in court was upheld by the Tbilisi Court. See Personal Data Protection Inspector (2014). Report on the State of Personal Data Protection in Georgia-2014. http://personaldata.ge/res/docs/Angarishi_2014/Annual%20Report_2014_English.pdf.

[43] Romanian Center for European Policies (2015), pp. 14–15.

[44] Transparency International Georgia (2014). Nine threats to your personal life stemming from the new legislation on secret wiretapping. http://transparency.ge/en/blog/nine-threats-your-personal-life-stemming-new-legislation-ons-secret-wiretapping. Accessed 12 June 2015.

[45] Package introduced amendments to the following acts: Law on Electronic Communications, Law on Personal Data Protection and Code of Criminal Procedure.

so-called black boxes (the lawful interception management system), which ensure the direct access to telephone conversations and the content of communications transmitted over the Internet. This allows the Ministry to intercept and store telecommunications data in real time, without any oversight as no permission is required.

As a restriction for actions of the Ministry a two-stage electronic system which requires consent from the Inspector[46] was introduced. However, by involving the only data protection institution into the technical and legal implementation of interception and tapping, the essence of data protection will be ruined as practically no independent oversight mechanism remains. What makes things worse is that the two-stage electronic consent system does not apply to cases referred to by Articles 136–137 of the Criminal Code of Georgia when data are transmitted via the Internet.[47]

Such amendments raised just criticism and even served as a basis for initiating the civil campaign "This affects you too—we are still wiretapped." The fact is that from a country where privacy was breached daily, Georgia has turned into one where protection of personal data and privacy is a subject for public debates. Some of them are resulting in real benefits in terms of protection of personal data, while others were left without response and will probably be solved only through the intervention of the Constitutional Court.[48]

4 Unfulfilled Aspirations

The recent summit held in Riga made it obvious that anticipated results of VLAP implementation are not even close and all expectation shall be postponed at least until the next summit. Georgia's hopes that rose in the beginning of the year after Moldova was made visa free gradually declined. This outcome should not be a complete surprise when considering processes evolving in the country.

On Georgian level, a strong political will is required to fulfill all the reforms; however, despite numerous claims made by the current administration that they have a firm position to fulfill undertaken commitments with regard to the principles envisaged by VLAP,[49] it seems to be lacking political willpower;[50] as a result,

[46] Article 3 Paragraph 31 of Code of Criminal Procedure of Georgia.

[47] See Article 35^1 Paragraphs 1 and 2 of Law on the Protection of Personal Data and Article 143^4 Paragraph 1 of Code of Criminal Procedure.

[48] Romanian Center for European Policies (2015), p. 24.

[49] See article of Qoqoshvili (2015). Garibashvili, Margvelashvii, and Usufashvili jointly address Leaders in Europe. http://www.netgazeti.ge/GE/105/opinion/44668/ . Accessed 12 June 2015.

[50] Shelia R., "The Authorities Should Tread Very Carefully"–What is the Reason for Rising Euroscepticism in Georgia? (2015). Georgian Journal. http://www.georgianjournal.ge/politics/30607-the-authorities-should-tread-very-carefully-what-is-the-reason-for-rising-euroscepticism-in-georgia.html. Accessed 12 June 2015.

certain decisions are difficult to make. The reason for this is that the ruling team presents a coalition, and this evokes certain challenges in terms of maintaining unified support for European integration.[51] All this is making the prospect of EU membership a distinct one.

Another serious problem was and still remains transparency of the process and involvement of society. In regard to visa liberalization, the process was not transparent from the very beginning. The Action Plan received by Georgia was not translated and made public for 3 months.[52] As a rule, the lack of transparency during the process significantly influences its dynamics, and vice versa the more open the cooperation is between the government and the nongovernmental sector, the more dynamic the process will be. This is because challenges can be identified in a timely manner and the relevant measures can be developed to quickly overcome them.[53] On the other hand, low awareness about the EU in general and the specific agreements signed between the EU and Georgia only hinders the whole process of integration. Authorities do not provide sufficient information to the society regarding meaning and requirements, as well as how specific agreements Georgia has entered into affect everyday life. Even though some issues regarding relations between Georgia and the EU become subject to political debates and are covered by media, awareness of society remains low, and despite highlighting some benefits, no one refers to obligations undertaken by the state. Visa-free travel, for instance, is quite a popular issue among the Georgian public; however, society is hardly familiar with the conditions and commitments of the state under the respective agreement. As a result, benefits expected can be significantly exaggerated. To avoid such outcome, transparency shall be ensured and detailed information shall be provided to society.

5 Reasons for EU Skepticism

It needs to be taken into consideration that each country's relations with the EU are individual. Some experts in Georgia often refer to the experience of Balkans, which passed the liberalization process in 3 years and got visa-free travel in 2010 and 2011.[54] However, creating expectations in this regard is wrong and can be followed

[51] The draft law presented by the government was amended by the Parliament, and later while discussing the draft on antidiscrimination law in the Parliament, some deputies were against certain provisions of the law and were supporting the position of the church representatives. For details, see transparency international Georgia (2014). New anti-discrimination law: Challenges and achievements. http://transparency.ge/blog/antidiskriminatsiuli-kanoni-mightsevebi-da-gamotsvevebi?page=2 Accessed 12 June 2015.

[52] Samvelidze (2014), p. 13.

[53] Ibid p. 13.

[54] See article of Qoqoshvili (2015). Is it possible to achieve visa-free travel in 2015 on Riga summit - an interview with Vano Chkhikvadze. http://www.netgazeti.ge/GE/105/opinion/37763/ Accessed 12 June 2015.

by disappointment. The broad and general character of the Visa Liberalisation Action Plan gives skeptical countries an opportunity to easily find some reason to hinder the process.

Apart from problems within Georgia, international political conditions have to be considered. We have already mentioned above that Moldova's case was believed to be a precedent which will lead Georgia closer to the EU. However, there are no identical cases; besides, a combination of insufficient progress from Georgia's side and lack of desire from the EU creates a very good opportunity for refusal of a visa-free regime at this stage. Bearing in mind that fulfilment of the action plan is not limited in time, such refusals and postponements can serve for the EU for a while.

Meanwhile from the EU's perspective, there are serious reasons to worry about further relationship with Georgia. Some name lack of proactive diplomatic approach from Georgian side as one of them. According to Teona Lavrelashvili, former president of the European Youth Parliament and a legal advisor in Brussels, this can be visible on all levels.[55] Deepening relations with the EU cannot be taken for granted. Georgia needs more communication to keep its interests on the EU's agenda. Recent events, especially Russia's aggression towards EaP countries, are certainly affecting EU's enlargement policy.[56]

Occupied territories of Georgia—Abkhazia and South Ossetia—remain another huge problem for decision making. Although the EU remains firmly committed to its policy of supporting Georgia's territorial integrity within its internationally recognized borders, their existence may be used by Russia for creating unstable situation in the country. On the other hand, getting closer to the EU may be an important factor contributing to the potential of Georgia to become more attractive to the occupied regions. Visa-free travel serves as an instrument to start peace process among the population of Georgia in occupied territories. The first step in this direction is obtaining biometric passports issued by Georgian authorities that are required for visa-free travel. Currently, residents of Abkhazia and South Ossetia are given identity cards and travel documents with a neutral status. The population cannot travel anywhere with these documents as they are not recognized by EU member states and only carry symbolic significance.[57]

However, Russia's influence is so strong that it is hard to achieve any progress in establishing real cooperation and open relations with the governing bodies of occupied territories. Considering this, it would be extremely difficult to involve people residing in Abkhazia and South Ossetia in processes.

Similar problem occurred with regard to Transnistria in Moldova's case, but at the time the country was granted visa-free regime, political conditions were more favorable for the EU to take respective decision. Besides, Moldova had a very strong support from the Romanian government in the EU, while Georgia does not.[58]

[55] Shelia (2015).

[56] Romanian Center for European Policies (2015), p. 38.

[57] Chkhikvadze and Mrozek (2014), p. 9.

[58] Tavberidze (2015).

Reaching unanimity in a union of 28 members is a difficult issue, especially on such sensitive matters as visa liberalization. Political conditions have to change or at least become less tense; otherwise, the EU will be too reluctant to aggravate relations with Russia. Granting visa-free regime to Georgia may become a step to provoke Russia into making even more aggressive moves. [59]

6 Lessons To Be Learned

Becoming closer to the EU is a long process. Even though some mistakes have been made, the reformatting process which is evolved in Georgia so far helped the country to change into a better and more developed one. The EC's report dated May 8, 2015, categorized Georgia's progress on VLAP criteria as "almost," "partially," or "completely" achieved. However, a lot still has to be done, and this shall be understood by the authorities and the society. What the Riga Summit had shown is that Georgian politicians tend to give exaggerated assessment to events that take place in connection with the EU. The outcome was far from the one expected, and it resulted in people having inflated expectations. Such outcome serves well those forces that are antagonistic to the EU and can be used as proof that Europe is very reluctant to move towards closer relations. With proper work within society, Euroskepticism is a few steps away.[60]

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[59] Ibid.

[60] According to the last poll results provided by the U.S. National Democratic Institute (NDI), a majority of the respondents approve entering into association agreement with the EU (68 % believe it is acceptable). At the same time, the number of supporters joining the Russia-led Eurasian Union has steadily increased in recent years: from 11 % in 2013, it soared to 20 % in 2014 and to 31 % in 2015. For details, see NDI (2015). Public Attitudes in Georgia Results of April 2015 survey carried out for NDI by CRRC Georgia. https://www.ndi.org/files/NDI%20Georgia_April%202015%20Poll_Public%20Issues_ENG_VF_0.pdf Accessed 12 June 2015.

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European Self-Regulations Mechanism: The Case Study for Georgia

Mamuka Andguladze

Abstract Self-regulation as a voluntary mechanism is the key instrument in any democratic state to keep the media accountable to the public and to increase the quality of media products, credibility, and the trust. The core of the professional journalists includes the commitment to truth, loyalty to the audience, the permanent verification of information, and the maintenance of independence during performance of the job. Given the importance of self-regulation, the article aims at analyzing the Georgian self-regulatory mechanisms and decision-making process and comparing them with European standards. The analyses show that the self-regulatory mechanisms in Georgia are characterized by several deficiencies, and there is still a long way for establishing effective, professional and sustainable self-regulatory bodies, which will guarantee the professionalism and independence of the Georgian media. Therefore, the article includes recommendations deriving from the best European practices. (Cp. Unesco, professionalism, journalism and self-regulation, 2011)

1 Introduction

The main aim of this paper is under the perspective of the growing importance of the nonbinding ethical principles to find out whether the existing mechanism of co- or self-regulation in Georgia provides the proper platform and whether the practical application corresponds to the best European standards.

The Georgian media landscape, especially the television sector, has been seen as polarized and plagued by the affiliation with the political parties. The main TV channels are either owned or managed by the persons associated to both the ruling coalition and the opposition party.[1] Despite the significant improvements following

[1] Media Law Institute, "Two major challenges facing Georgian media after elections" http://medialawinstitute.ge/73-two-major-challenges-facing-georgian-media-after-elections.html; Blogs on

M. Andguladze (✉)
Council of Europe, Tbilisi Office, Tbilisi, Georgia
e-mail: andguladze@gmail.com

T. Kerikmäe, A. Chochia (eds.), *Political and Legal Perspectives of the EU Eastern Partnership Policy*, DOI 10.1007/978-3-319-27383-9_15

the latest parliamentary election, the preelection period was characterized as a "merciless" fight between the two rival political groups and the associated media outlets. In addition, the Georgian media suffers from the lack of professional specialists, and thus people are deprived of the objective media products.[2] There is a risk that the power of media could be misuesd in a way that the democracy can be subject to the threat and the media could be used as the mouthpiece of propaganda for persons who are in power.[3]

The main idea for establishing the self- or coregulatory organs in the media sector aims at promoting the journalistic standards and respect for professional ethics among the media representatives. The self-regulatory systems facilitate the relation between the journalists and media consumers. Moreover, self-regulation has been regarded as a mechanism for direct conflict resolution, protecting the media from unnecessary legal claims, and reducing governmental interference.[4]

Observing the ethical standards are vital for all media organizations as the "fourth estate" having the great impact on shaping the public opinion, therefore, the moral obligations to protect the public values.[5]

The analysis of the legal practices of the European Court of Human Rights (ECtHR) has shown that the European Court, however controversial the practice is,[6] regularly refers to the necessity to observe journalistic ethics while considering or weighing the necessity of state interference in the fundamental rights of media.[7]

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the polarized Georgian media sector posted on the homepage of Transparency International Georgia: "After elections, TV stations reposition themselves and change ownership" http://transparency.ge/en/blog/after-elections-tv-stations-reposition-themselves, "Entities Associated with Government and Opposition Taking Over TV stations" http://transparency.ge/en/blog/entities-associated-government-and-opposition-taking-over-tv-stations; Freedom of the Press 2013, Georgia.

[2] http://www.freedomhouse.org/sites/default/files/inline_images/NIT-2011-Georgia.pdf).

[3] Cp. Aidan White: Ethical journalism and human rights, 2011. Commissioner for Human Rights, Ethical journalism and human rights, 2011.

[4] Cp. *OSCE*: The Media Self-Regulation Guidebook, p. 10, 2008; UNESCO: Professional Journalism and Self-regulation, 2011. Freedom and accountability: safeguarding free expression through media self-regulation, article 19, 2005.

[5] Cp. UNESCO: Professional Journalism and Self-regulation. 2011;

[6] There is some critical voices in the literature against the practice of the ECtHR claiming that the European Court should apply self-restraint in its practice and avoid interfering into areas of journalistic technique, which is beyond the Court's competence; see Dirk Voorhoof, "Freedom of expression, journalists' rights and duties and the impact of ethics and self-regulation in the light of Article 10 ECHR", 2008.

[7] See Dirk Voorhoof, "Freedom of expression, journalists' rights and duties and the impact of ethics and self-regulation in the light of Article 10 ECHR"; ECtHR, *Prager and Oberschlick v. Austria*.

2 New Challenges Facing the Media

Freedom of the media, including both traditional and new media, is protected and guaranteed by a number of international agreements to which Georgia is a party.[8] As a "public watchdog," the media should provide the citizens with objective information about the domestic or international events of public interests; control the government; inform, educate, and entertain the citizens; and contribute to public discussion by taking into account the diversity of the society.[9] According to the ECtHR, the journalists have not only the right but also a "duty" to criticize those who are in power.[10]

Journalists or other professionals working in the media sector should realize and understand their role as a medium providing the general public with the objective information and impartial analyses on current affairs. Therefore, they should be primarily interested in maintaining their independence and taking responsibility for that.[11]

The European media sector faces new challenges such as the growing concentration of the European media market, the domination of entertainment programs, and global economic crises. All these factors may lead to an environment of self-censorship when the journalists deliberately avoid to cover newsworthy topics as they anticipate negative reactions from the media owners, main advertisers, etc.[12]

The rapid technological developments in the communication sector significantly increased the possibilities to disseminate information to the public, especially via the Internet. However, the developments provide new challenges for the media environment; as the traditional media remains in a weak position, the news field has been overloaded by the large number of information provided by various sources. Therefore, the credibility of the information provided by the media outlets has been critically perceived. In order to ensure the existence of the professional media which is able to provide objective information without unnecessary legal regulation, an effective self-regulation mechanism should be seen as the only effective tool for achieving the mentioned goals.[13]

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[8] *Cf*. Universal Human Rights Declaration, International Covenant on Civil and Political Rights, European Convention for the Protection of Human Rights and Fundamental Freedom.

[9] *See, Unesco,* "Public Broadcasting: Why? How? 2001"; *World Bank*: "Broadcasting, Voice and Accountability"; Cf. Cases fo the European Court of Human Rights: *The Sunday Times v. The United Kingdom, Handyside v. the United Kingdom, Informationsverein Lentia and Others v. Austria* etc.

[10] See the case law Lingens vs. Austria and the article of Thorgeirsdottir: Self-Censorship among Journalists: A (Moral) Wrong or a Violation of ECHR Law? p. 386.

[11] Cp. *Thorgeirsdottir*: Self-Censorship among Journalists: A (Moral) Wrong or a Violation of ECHR Law? p. 386.

[12] See the article of *Thorgeirsdottir*: Self-Censorship among Journalists: A (Moral) Wrong or a Violation of ECHR Law? p. 384.

[13] CommDH (2011) 40, *Ethical journalism and human rights*; Puddephatt: The Importance of Self-Regulation, p. 12; *UNESCO*: Professional journalism and self-regulation, p. 18;

There are two types of content regulation: prior regulation (as in the case of movies, video games, internal control of programs and article at the media outlets, etc.) and post regulation (through the complaints at self-regulation institutes, press councils, media ombudsman, etc.). Depending on the nature of the content, not all information are regulated equally as commercial information is the most strictly regulated content, even by statutory regulations, compared to political one, which is less regulated, while artistic expression is somewhere in the middle.[14] However, content regulations through binding legal norms have been seen as harsh and inappropriate, disproportionate, and unnecessary type of sanction in any democratic country. The content regulation has to be carried out through self-regulatory mechanisms aiming at the protection of the rights of other persons, as well as to keep up with high journalistic standards.[15]

3 Journalistic Ethics

Self-regulation as a voluntary mechanism is the key instrument in any democratic state to keep the media accountable to the public and to increase the quality of media products, media credibility and the trust.[16] In addition, self-regulation encourages and promotes communication between the media and its consumer, while the citizens are allowed to express their opinion, criticism or suggestion regarding the media programs or their services. In cases of professional mistakes committed by the media professionals, they will be judged not by the politicians but by their colleagues. The self-regulation mechanism reduces the possibilities of government interference or legal suits brought by citizens.[17]

Observing the principles of the self-regulation mechanism could ensure a further enhancing of the professionalism of the media workers. The core of the professional journalists includes the commitment to truth, loyalty to the audience, the permanent verification of information, the maintenance of independence during the performance of the job, and the creation of a discussion platform for the general public.[18]

Thorgeirsdottir: Self-Censorship among Journalists: A (Moral) Wrong or a Violation of ECHR Law? p. 383.

[14] Tambini et al.: *The privatisation of censorship: self regulation and freedom of expression*, pp. 401, 404.

[15] Cp. Tambini et al.: *The privatisation of censorship: self regulation and freedom of expression*, pp. 401, 402.

[16] *OSCE*: The Media Self-Regulation Guidebook, p. 10, 15; *Puddephatt*: The Importance of Self-Regulation, p. 12.

[17] ARTICLE 19: Freedom and Accountability, p. 16, 17; *OSCE*: The Media Self-Regulation Guidebook, p. 11; *UNESCO* Professional journalism and self-regulation, p. 11, 17, 18, 70.

[18] *Bill Kovach* and *Tom Rosenstiel* (April 24, 2007). "The Elements of Journalism; What News people Should Know and the Public Should Expect, Completely Updated and Revised" in *Puddephatt*: The Importance of Self-Regulation, p. 13.

The commitment of an individual journalist to the ethical standards is a first step towards media self-regulation. However, the journalist alone cannot influence the whole media landscape; therefore, collegial support is crucial on the way to establishing a professional self-regulation mechanism and traditions in the country. Furthermore, the owners of the media organizations should recognize the importance of the self-regulation as the best way to gain the trust and the credibility of the audience and to defend their freedom from government interference.[19]

4 Diverse Mechanisms of the Self-Regulation

The effective media self-regulatory institutes have been seen as important mechanisms for both new and established democratic countries as the achievement and maintenance of the media's freedom and professionalism are the task of every state. The forms or organizational structures of the self-regulation bodies differ based on the political, cultural, or social environment in any particular country.[20]

4.1 Ethics Charter

The ethics charters specify the individual rights and duties of the journalists, as well as the guidelines and working principles on how to carry out a responsible work. The titles of the ethics charter are different in several countries; however, all of them have a common goal, namely to insure the high quality of professionalism of media workers and to keep the journalists accountable to the public. The ethics charters include the basic working principles such as accuracy, fairness, independence, balance, and accountability, which should be observed by the journalists.[21]

The practices of the different countries have shown that in one state may coexist several ethical charters or the media owners of editors can produce their own ethics charter as in-house rules.[22] What matters is that respect to the principles is set by the ethics codes.[23] Furthermore, as the society changes permanently, the principles and

[19] *ARTICLE 19*: Freedom and Accountability, p. 23.

[20] *UNESCO*: Professional journalism and self-regulation, p. 11-12, 17.

[21] *OSCE*: The Media Self-Regulation Guidebook, p. 21 et seqq.

[22] The guidelines, of BBC along with the Editorial Code of the Guardian, are regarded as the best examples of internal code of conducts; see more *Puddephatt*: The Importance of Self-Regulation, p. 14.

[23] *Puddephatt*: The Importance of Self-Regulation, p. 12, 13; *OSCE*: The Media Self-Regulation Guidebook, p. 24.

guidelines of the ethics charter should also be supervised and changed accordingly.[24]

Any type of the ethical charters or codes should include adherence to the following principles such as the respect for the publics right to receive the objective information as well as accuracy, fairness, non-discrimination, respect for the principle of presumption of innocens etc.[25]

The ethics charter can apply to all kinds of media outlets, including traditional and new media. However, the self-regulation mechanisms of the broadcasters can be different from the professional guides of the journalists working in other outlets.[26] In addition, the ethics charters provide the basic principles and guidelines upon which the self-regulatory bodies like the press councils or the media ombudsman can consider the complaints and take their decisions.[27]

4.2 Press Councils

Press council as a part of the media self-regulation mechanisms is seen as one of the best known instruments for the execution of the journalistic professional standards. The effectiveness of the press council depends on the cooperation among the journalists, media stations, and the public. The first institute of the press council was established in Sweden, known as "Court of Honor," in response to the increased concern regarding inaccuracy in the media work.[28]

Press councils have several functions such as review the complaints lodged by the interested parties, mediate between the media outlets and the plaintiffs, consider the complaints and deliver the decisions. The council can provide relevant recommendations as well as guidelines to the journalists etc. review te complaints lodged by the intereseted parties, mediate between the media outlets and the plaintiffs, consider the complaints and deliver the decisions. accept complaints; the council can provide relevants recommendations as well as guidelines to the journalists etc.[29]

As the press councils do not have the legal powers to implement their authority, establishing the public trust is a key element for ensuring an effective self-regulation body. The press councils should include as members the various media outlets which share their values and represent the large number of the society,

[24] *OSCE*: The Media Self-Regulation Guidebook, p. 31, 32, 43.

[25] *ARTICLE 19*: Freedom and Accountability, p. 8.

[26] *Puddephatt*: The Importance of Self-Regulation, p. 12; *OSCE*: The Media Self-Regulation Guidebook, p. 41.

[27] *OSCE*: The Media Self-Regulation Guidebook, p. 34.

[28] *UNESCO*: Professional journalism and self-regulation, p. 20, 69.

[29] *UNESCO*: Professional journalism and self-regulation, p. 20; See also *OSCE*: The Media Self-Regulation Guidebook, p. 46.

including the so-called Yellow Press. The representatives of civil society as well play an important role in enhancing the self-regulation mechanism and carrying out the monitoring of its work. The existence of proper functioning press councils are also largely dependent on the financial sustainability of these bodies. In a good case, the press councils can be funded by the journalists and media owners, 50/50 %, respectively.[30] In Bulgaria, the outlets fund the council according to the agreed percentage allocated from their income.[31] There are also cases when the press council is partially funded by the government as well.[32] Like in Georgia or Montenegro, in a transit period the press council may also be financially supported by international donor organizations.[33]

The framework basis of the press council, including the organizational structure, functions, and the decision-making process, may be elaborated and adopted by the members of the council with the support of the international organizations. However, there are cases when the government is also involved in the establishing process. The press councils are run as a rule by the director, who can be elected by the governing body or members directly. The members of the governing body, including the director of the press council, should be persons with experience working in the media sector and who enjoy high respect among their colleagues. Despite the original title of the press councils, the broadcaster media outlets can also join the self-regulatory bodies.[34]

Besides the financial sustainability the proper functioning of the press council may be undermined by the political situation when the democratic institutions and traditions are still fragile and where there are cases of the government interference in the activity of the media outlets including the press council. The controversial relations among the government, business groups, and the media may create an environment of mutual dependence, which can result in devaluating the concept of self-regulation. The lack of public awareness, traditions, and experience related to journalistic self-regulation should not be underestimated as it can lead to preventing the cooperation of the different media stations.[35]

The press councils may consider the complaints filed by any person claiming that a particular media organization has violated the norms of the code of conduct. After studying the case, the governing body of the press council publishes its decision and sometimes even asks the members to publish its order. There are few cases when the council is authorized to fine the media organization that was found liable for infringing the ethical codes. However, the main effect of the

[30] *OSCE*: The Media Self-Regulation Guidebook, p. 61, 62 Norway.

[31] *OSCE*: The Media Self-Regulation Guidebook, p. 61, 62.

[32] *OSCE*: The Media Self-Regulation Guidebook, p. 61, 62 - Cyprus, Luxemburg.

[33] *OSCE*: The Media Self-Regulation Guidebook, p. 47, 57, 61; *UNESCO*: Professional journalism and self-regulation, p. 20-22.

[34] *OSCE*: The Media Self-Regulation Guidebook, p. 54, 55, 60.

[35] *UNESCO*: Professional journalism and self-regulation, p. 22; *OSCE*: The Media Self-Regulation Guidebook, p. 64, 66.

sanction of the press council is a public discussion of the journalistic failure after establishing that there is a violation of the commonly regarded professional standards.[36]

The successful work of the press council or generally any mechanisms of self-regulation can be measured by the level of credibility of the media organizations. In a polarized media environment, however, it would be difficult to gain the trust of the diverse groups of society, while in an established democratic country the press councils manage to protect the media from state interference and harsh-binding regulations.[37]

4.3 Media Ombudsman

The media ombudsman institute,[38] a relatively new form of self-regulation, has been regarded as one of the effective instruments for different reasons. The idea is based on the "in-house" concept, and the role is assigned to an individual rather than to an institution. One of the first institutes of the press ombudsman was also established in Sweden, like the first press council (1969).[39]

The institute of the ombudsman can be called the "Conscience" of the media, building a direct connection between the public and the media. The instrument of self-regulation enhances the accountability, transparency, and ethical standards of the news institutions.[40]

The media ombudsman ensures the improvement of the media reporting by monitorting the quality of the media products as well as the increase the public awareness of the journalists about the ethical standards and the public feedback. The ombudsman might consider the suits filled by the plaintiffs against the media outlets over reporting.[41]

The media ombudsman should have the role of a neutral judge who monitors the work of the media and considers the complaints of the consumers referring the quality of the media products. The ombudsman encourages the feeling of the audience that they are also part of the media, which cares about their opinion.[42] The duties of the media ombudsman include "reader complaints and comments,

[36] *ARTICLE 19*: Freedom and Accountability, p. 24.

[37] *ARTICLE 19*: Freedom and Accountability, p. 25.

[38] The word "Ombudsman" originally comes from the Swedish language meaning a "representative"; see more *OSCE*: The Media Self-Regulation Guidebook, p. 68.

[39] *UNESCO*: Professional journalism and self-regulation, p. 69; *OSCE*: The Media Self-Regulation Guidebook, p. 68; See also *ARTICLE 19*: Freedom and Accountability, p. 22.

[40] Cf. *OSCE*: The Media Self-Regulation Guidebook, p. 11; *UNESCO*: Professional journalism and self-regulation, p. 75; J.L. González-Esteban et al., p. 11.

[41] http://newsombudsmen.org/about-ono.

[42] J.L. González-Esteban et al., p. 12; *UNESCO*: Professional journalism and self-regulation, p. 76; *OSCE*: The Media Self-Regulation Guidebook, p. 71.

communications with staff, reader communications, columns, corrections, reader outreach."[43]

The number of the received complaints depends on many factors such as the size and circulation of the media, including the content of the information in question. The workers of the newsroom should be permanently informed about the nature of the complaints in order to avoid any wrongdoing in the future. The ombudsman can receive various feedback for the work from both the citizens and the media workers. For communication purpose, the contact details of the ombudsman, including the mail address or the phone number, should be publicly available. Besides, the ombudsman regularly follows the work of the media outlet and checks whether the published information corresponds to ethical standards even though there are no particular complaints filed.[44]

The media ombudsman may run his own columns where he can regularly inform the public about the latest developments. In small communities, the ombudsman can even meet with the consumers and discuss several topics, including the professional standards of a particular media outlet.[45]

As a rule, the ombudsman does not deal with the personal columns or editorial opinions which are generally regarded as subjective and biased viewpoint.[46] The ombudsman may ask the media outlet to publish a correction mail, or in case of severe violation of the ethical standards it may demand publishing the extracts from the critical correspondence or discuss the contested media product on his column.[47]

The media ombudsman should be a person who has worked for many years in the media sector as a journalist, has a good understanding of how the journalists work, and has a good knowledge of the target community. The media ombudsmen should have concluded a contract with the appropriate media and should enjoy full independence during his work. He must be free from any interference from the media outlet or any other party.[48]

Broadcasters generally have their own media ombudsman, who deals with the viewers' complaints and checks independently the information broadcasted by the television network. There are cases when a broadcaster considers the complaints in their own media programs, giving the citizens the chance to engage in the quality of the content.[49]

[43] *UNESCO*: Professional journalism and self-regulation, p. 77.

[44] *UNESCO*: Professional journalism and self-regulation, p. 78, 80, 85; *OSCE*: The Media Self-Regulation Guidebook, p. 72.

[45] *ARTICLE 19*: Freedom and Accountability, p. 24; *OSCE*: The Media Self-Regulation Guidebook, p. 72; *UNESCO*: Professional journalism and self-regulation, p. 79.

[46] *UNESCO*: Professional journalism and self-regulation, p. 83.

[47] *OSCE*: The Media Self-Regulation Guidebook, p. 74.

[48] *UNESCO*: Professional journalism and self-regulation, p. 80, 81, 89; *OSCE*: The Media Self-Regulation Guidebook, p. 78.

[49] *UNESCO*: Professional journalism and self-regulation, p.99 etseqq; *OSCE*: The Media Self-Regulation Guidebook, p. 79.

5 Self-Regulation Mechanisms in Europe

In the most established democratic countries, the mechanism of journalistic self-regulation has been developed and established for several years. The European experience has shown that the common reason behind establishing the self-regulatory institutes were laid by the desire to overcome the media crises caused by the loss of credibility and to avoid state control by increasing media accountability towards the public; for example, in Germany, the first press council was established as a reaction to the initiative of the federal government to introduce the self-monitoring body under public law; the same happened in the UK following the increase of press intrusion into private life, etc.[50]

The common trend across the different countries can be described as follows:[51]

- Press councils were established as independent bodies.
- As mentioned above, the self-regulatory institutes were established as a result of struggle between the press industry and the government.
- Press councils are dominated under influence of media industry.
- Similarities have been traced in the structure, membership, selection procedure of members of the council, decision-making proceedings of the self-regulatory institutions.
- Most press councils are funded by the industry itself.
- Councils have gradually extended their competences from traditional to the new media industry.
- There is lack of representation of the interest of consumers.[52]

5.1 Sweden

The first press council in Sweden (*Presses Opinionsnaemnd*) was established in 1916 as a response to the growing public critiques for the poor quality of work provided by the local press outlets, which during the First World War manipulated the coverage, and as a result this undermined their own credibility. The council was composed of three well-known members selected by the journalists' union, who were dealing with complaints against press organizations. The council was also in charge of considering the industrial disputes between press organizations and employees, press entities and other companies, etc. Due to the growing number of cases, the work of the press council became less sufficient. In the framework of the further big reform, the institute of the media ombudsman was introduced in

[50] *ARTICLE 19*: Freedom and Accountability, p. 26; PCMLP- IAPCODE Self-regulation and codes of conduct p. 23.

[51] See more PCMLP- IAPCODE Self-regulation and codes of conduct p. 24-25.

[52] Cp. Tambini et al.: *The privatisation of censorship: self regulation and freedom of expression*, P. 428.

1969 as an attempt to help the press council to deal with its overloaded work. The media outlets do not participate in the selection of the media ombudsman, who will be appointed for 3 years by the heads of the parliamentary ombudsman, the Swedish Bar Association, and the Swedish Press Cooperation Council. There is no fee for filing the complaint, but if the media organization would be found guilty for violation of the ethical standards, then they would be charged with administrative fees.[53]

The Swedish self-regulation model has been regarded as one of the successful mechanisms around the world. The fact that the number of sold newspapers in Sweden is the highest in Europe shows that the media organizations enjoy the highest level of public trust from the audience and self-regulatory institutes positively contribute to the media environment.[54]

5.2 UK

The UK has a long tradition in terms of self-regulatory institutions. However, after the "phone hacking" scandal, the reputation of the Press Complaints Commission (PCC), which was in charge of dealing with complaints, had been severely damaged. As a result, the PCC was replaced by the Independent Press Standards Organisation (IPSO),[55] which is authorized to consider complaints related to ethical violations in the press and magazine industry. The IPSO was established based on the recommendation of the well-known Leveson Inquiry,[56] which among others concluded that the independence of the existing press self-regulatory institute from the industry was not ensured and therefore suggested the creation of a new institute.[57] The IPSO is a relatively new organization; however, the goal of the institute remains the same, namely ensuring the maintenance of high standards for journalist work and independence from the industry in order to avoid past fatal mistakes.

The IPSO has its own ruling, based on which complaints are considered and decisions are ruled. The board is composed of members who are totally independent, meaning they are not associated with the current media industry, and the rest represents the press sector.[58] Some of the leading outlets such as The Guardian or the Financial Times refused to join the IPSO, preferring their own self-regulatory body.[59]

[53] *ARTICLE 19*: Freedom and Accountability, p. 30, 31.

[54] *ARTICLE 19*: Freedom and Accountability, p. 32, 33.

[55] http://www.pcc.org.uk/AboutthePCC/WhatisthePCC.html.

[56] https://www.gov.uk/government/publications/leveson-inquiry-report-into-the-culture-practices-and-ethics-of-the-press.

[57] http://www.pcc.org.uk/AboutthePCC/WhatisthePCC.html, https://www.ipso.co.uk/IPSO/.

[58] https://www.ipso.co.uk/IPSO/index.html.

[59] http://www.theguardian.com/media/greenslade/2014/sep/04/press-regulation-ipso.

Besides the self-regulatory institutes for the press industry, the Office of Communications (Ofcom), the country's media regulatory authority, is entitled to deal with violations of ethical standards committed by radio and television stations, including public and private ones. Based on the broadcasting code, which is binding on the outlets, the Ofcom considers the complaints and rules on the ethical violation. In cases of severe violations of the broadcasting code, the Ofcom is authorized to impose binding sanctions on the broadcasters such as fine and even revocation of the licenses issued by it.[60]

5.3 Germany

Germany does not have a long tradition in terms of ethical charters, although some private media outlets adopted their own codes. Moreover, the institute of the media ombudsman had disappeared from the landscape, although there were several attempts from private stations to reestablish the ombudsman position. However, Germany has several ethical councils, including the press council founded in 1956 by the leading journalistic unions, together with the leading media organizations and publishers. There are also two press councils to monitor the ethical standards of the two national public broadcasters. In addition, at state/regional level, the local media regulatory bodies are authorized to consider the compliments of the audience regarding the violation of ethical standards brought against the media organizations. Since 2009, the German press council has started to regulate the work of the online media as well.[61]

The German Press Council (*DeutscherPresserat*), one of the distinguished self-regulatory bodies in Europe run by journalists, not only deals with complaints but also advocates high professional standards and freedom of the media. More than 90 % of the national press entities have accepted the ruling of the German self-regulatory institute. The basic document, the Press Code, has been modernized and changed several times in response to the developments occurring in the country. The large part of the budget of the council is financed by publishers. The association of journalists also donates to the German Press Council, along with the federal grant allocated from the government based on an agreement dating back to 1976. The government is now allowed to interfere with the work of the press council.[62]

[60] http://stakeholders.ofcom.org.uk/enforcement/content-sanctions-adjudications/.

[61] J.L. González-Esteban et al., p. 7, 13, 5.

[62] *ARTICLE 19*: Freedom and Accountability, p. 33, 34.

5.4 Estonia

A former post-Soviet country underwent significant changes after the collapse of the Soviet Union. Estonia has been regarded as one of the freest countries in the world in terms of media freedom where the freedom and pluralism of media is guaranteed by law and in practice. The code of conduct for journalists has been elaborated and adopted in the framework of the press council in 1997. The council is authorized to deal with complaints referring to professional standards. The media outlets delegate their representatives to the Press Council, whose members include active journalists, teachers/professors, representatives of the journalistic unions, and lawyers. The number of complaints resolved by the Press Council is not very high, but the council still remains an important partner for the audience.[63] In 2006, the Estonian audio video sector established the ombudsman to oversee complaints coming from the audience. The duty of the ombudsman includes ensuring the transparency of the media outlets as well. In 2002, on the initiative of publishers, a new press council was created as well, which is under the full control of the Estonian Newspaper Association.[64]

6 European Court of Human Rights and Journalistic Ethics

The European Convention on Human Rights and Fundamental Freedoms protects the freedom of expression, including media freedom.[65] Over the years, the ECtHR promoted and developed the broad area of the journalistic freedom, media freedom, and public debate.[66] The Court has reiterated on many occasions that the freedom of expression protects not only such information which are favorable to the majority of society but also those that can "offend, shock or disturb" the people.[67] Besides the "negative obligations" of the national authorities not to violate the fundamental right defined by article 10 ECHR, in the sense of "positive obligation" the states should also ensure the protection of freedom of expression against interference from private persons.[68] The case law of the European court protects not only the right of journalists to disseminate information but also the freedom to gather,

[63] The detailed statistic, see http://www.asn.org.ee/english/statistics.html.

[64] To read more González-Esteban, García-Avilés, Karmasin, Kaltenbrunner: *Self-regulation and the new challenges in journalism: Comparative study across European countries*, 2011.

[65] Article 10 (1) ECHR.

[66] See ECtHR, *Sunday Times v. UK*; Dirk Voorhoof, "Freedom of Expression under the European Human Rights System".

[67] See ECtHR, *Handyside v. UK*; ECtHR *Oberschlick v. Austria*; ECtHR, *Barthold v. Germany;* Dirk Voorhoof, "Freedom of Expression under the European Human Rights System".

[68] See ECtHR, ÖzgürGündem v. Turkey; Dirk Voorhoof, "Freedom of Expression under the European Human Rights System".

elaborate and publish the information.[69] Compared to private persons, politicians and other public persons should tolerate a higher level of criticism.[70]

As the right to free expression should be exercised with "duties and responsibilities,"[71] media freedom can be subject to restrictions. However, the restriction should undergo the so-called triple test in order to reduce the possibility of governmental interference in the fundamental right. Restrictions are allowed if they are "prescribed by the law," have "the legitimate aim," and are "necessary in a democratic society."[72]

Besides the standard test, the ECtHR refers to the journalistic ethics while considering the cases related to media freedom—whether the journalists observed the ethical standards when they were reporting on issues of public interest. In several cases, the ECtHR declared the government's activity inconsistent with European standards when the journalists performed their duties in accordance with professional ethics.[73] But when the journalist cannot invoke "his good faith or compliance with the ethics of journalism," it could be a decisive argument for the ECtHR to justify the restriction.[74]

Two major principles are emphasized following the case law of the European court: the way in which the journalists collect the information and the form of the published media products.[75] The level of public interest and the legitimate aim play an important role when the media obtains a secret or confidential information. While considering the form of the published information, the European court pays attention to the standards of ethical norms.[76] The court even refers to the assessment provided by the self-regulatory bodies over the media conduct.[77]

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[69] See, ECtHR, *Ukrainian Media Group v. Ukraine;* Dirk Voorhoof, "Freedom of Expression under the European Human Rights System".

[70] See, ECtHR, *Princess Caroline v. Germany*; Dirk Voorhoof, "Freedom of Expression under the European Human Rights System".

[71] Article 10 (2) ECHR.

[72] See ECtHR, *Sunday Times v. UK*; Dirk Voorhoof, "Freedom of Expression under the European Human Rights System".

[73] See Dirk Voorhoof, "*Freedom of expression, journalists' rights and duties and the impact of ethics and self-regulation in the light of Article 10 ECHR*"; ECtHR*De Haes and Gijsels v. Belgium*; ECtHR*Fressoz and Roire v. France*; ECtHR*BladetTromso and Stensaas v. Norway ect.*

[74] See Dirk Voorhoof, "Freedom of expression, journalists' rights and duties and the impact of ethics and self-regulation in the light of Article 10 ECHR"; ECtHR, *Prager and Oberschlick v. Austria*.

[75] ECtHR, *Stoll v. Switzerland;* Dirk Voorhoof, "Freedom of expression, journalists' rights and duties and the impact of ethics and self-regulation in the light of Article 10 ECHR".

[76] Such as relying on a trustworthy source, not undermining the rights of other persons, relying on sufficiently accurate and factual basis, the intention to inform the public on issues of public interest, etc. See also ECtHR, *Stoll v. Switzerland;* Dirk Voorhoof, "Freedom of expression, journalists' rights and duties and the impact of ethics and self-regulation in the light of Article 10 ECHR".

[77] ECtHR, *Stoll v. Switzerland;* Dirk Voorhoof, "Freedom of expression, journalists' rights and duties and the impact of ethics and self-regulation in the light of Article 10 ECHR".

7 Framework of Journalistic Ethics in Georgia

7.1 Legal Basis

The Georgian constitution provides for a broad protection of the freedom of expression, including the freedom of the media. The constitution prohibits the censorship and monopolization of the mass media by the official authorities and private persons as well.[78] The constitutional guaranty includes the protection of the media while journalists are carrying out their duties such as collection, checking, and dissemination of information, etc.

The freedom of the media is not an absolute fundamental right as it can be restricted in cases defined by the constitution,[79] which are similar to the provisions specified in article 10 (2) of the European Convention on Human Rights and Fundamental Freedoms.

The right of the media outlets is guaranteed by the Georgian Law on Freedom of Speech and Expression, the law on broadcasting, the criminal code of Georgia, which declares as punishable the prevention of journalists from engaging in professional activities, forcing them to either disseminate information or refrain from its dissemination.[80] Moreover, in 2004, the parliament of Georgia passed a bill and abolished criminal responsibility for defamation.

7.2 Code of Conduct for Broadcasters

In 2009, the Georgian National Communications Commission[81] adopted the Code of Conduct for Broadcasters, which specifies the guidelines, principles, rules, and recommendations for the production and broadcast of programs.[82] The aim of the Code of Conduct is that all Georgian broadcasters, including public ones, should ensure the observation of professional ethical standards and be accountable to the public.[83] The document specifies the main principles for broadcasters such as ensuring impartiality and accuracy of information, accommodating interests of different social groups, respecting the right to privacy of individual persons, and balancing the public interest with respect to privacy.[84] The broadcasters should take into account the size and composition of audience, including the expectation of the

[78] Article 24 (2, 3), Georgian Constitution.

[79] Article 24 (4).

[80] Article 154 (1), Criminal Code of Georgia.

[81] Georgian media regulatory agency.

[82] Article 1 (1), Code of Conduct for Broadcasters.

[83] Article 4, Code of Conduct for Broadcasters.

[84] Article 3 (1), Code of Conduct for Broadcasters.

audience and the degree of possible harm and offence which can be caused by the disseminated information.[85]

The Code of Conduct obliges broadcasters to create an effective mechanism to examine complaints through the system of self-regulation.[86] Any concerned person has a right to file a complaint[87] against a particular media outlet in the self-regulation body and request for the correction or retraction of any inaccurate information through the same means and in the same form.[88] The complaints should be considered through an impartial, transparent, and fair procedure, and the right to an appeal of the decision should also be guaranteed.[89]

7.3 Charter of Journalistic Ethics

Besides the Code of Conduct for Broadcasters, there is also a Georgian Charter of Journalistic Ethics defining the professional principles for all journalists regardless of the type of media outlets they represent.[90] According to the charter, the journalists should respect the truth and the people's right to have accurate information. Based on true facts, the journalists should report and impart information; only fair methods should be used by the representatives of media outlets to obtain news, documents, or other kinds of information.[91] The journalists should do their utmost to avoid any kind of discrimination based on sex, origin, religion, political opinions, etc.[92]

In case of a violation of the principles and rules defined by the journalistic charter, any concerned party may apply to the media council, which oversees the execution of the charter's principles by the journalists who are the members of the journalistic charter. Following the latest amendment into the charter of the journalistic ethics, the council is authorized to rule over the complaints against nonmembers as well, a decision seen by many as progressive, which contributes to the promotion of the ethical values among the journalists.

[85] Article 3 (2), Code of Conduct for Broadcasters.

[86] Article 14, Law on Broadcasting.

[87] Article 6 (1), Code of Conduct.

[88] Cases of continuing severe violation of the provisions of the Code of Conduct for Broadcasters may cause the suspension of the license of the broadcasters.

[89] Article 9, 10, Code of Conduct.

[90] According to the latest information, the total number of the journalists who signed the charter is 154; http://alturl.com/h5vo5. However, there are a number of active journalists who didn't join in the call of the charter.

[91] Article 1, 3, 4, Charter of Journalistic Ethics.

[92] Article 7, Charter of Journalistic Ethics.

8 Challenges of the Georgian Self-Regulation Mechanisms

Generally, the Georgian media legislation provides for a good platform for the professional journalistic standards, but even with the sound codes there will be no consistent self-regulatory body or quality journalism unless the standards are not upheld in practice.[93]

The current self-regulatory mechanisms in Georgia are characterized by several deficiencies.[94] The institutional capacities of the media organizations are weak; the meaning and the importance of the self-regulation are underestimated among the outlets, including the publishers, as a necessary instrument to ensure media professionalism. Therefore, it has a weak impact on the media. The public awareness about the role and function of the self-regulation is relatively low.[95] Polarized media environment as well as the controversial and unhealthy ties among the politicians, business groups, and media outlets additionally impede any significant developments of the self-regulation institutions and traditions in the country.[96]

Decision makers at the media outlets failed to ensure that all journalists are aware of the ethical principles and issues related to professional journalism. Ethical standards have not been systematically revised and promoted as a reaction to the changes in society. Contracts concluded between journalists and media organizations do not include the guaranties of editorial independence of journalists.[97]

9 Perspectives of the Georgian Self-Regulation Mechanism Conclusion

In spite of the latest positive changes and the steps taken by the Georgian Journalistic Ethics Charter to promote the ethical standards among journalists and to increase awareness of the public on self-regulatory institutes, self-regulation still remains fragile in Georgia. Based on the analyses on the European experience, we can conclude that there is still a long way for establishing effective, professional, and sustainable self-regulatory bodies which will guarantee the professionalism and independence of the Georgian media.

The Charter of Journalistic Ethics, along with the media outlets, should increase public awareness regarding the existence of self-regulation mechanisms and rules that include their rights and duties. The decision makers should adopt relevant

[93] See also Aidan White: Ethical journalism and human rights, 2011.

[94] Problems identified during the research look similar to the situations in some East European Countries. For more information, see also *UNESCO*: Professional journalism and self-regulation, p. 23; *ARTICLE 19*: Freedom and Accountability, p. 9.

[95] *Cp*. *UNESCO*: Professional journalism and self-regulation, p. 23.

[96] *Cp*. *UNESCO*: Professional journalism and self-regulation, p. 23.

[97] *Cp*. *UNESCO*: Professional journalism and self-regulation, p. 23.

changes to introduce the right to reply, as neither the Code of Conduct for Broadcasters[98] nor the Charter of Journalistic Ethics envisage equivalent remedies that ensure a possibility for consumers to react to any information in the media which presents inaccurate facts about the concerned party.

The Georgian National Communications Commission should change the Code of Conduct for Broadcasters allowing third parties such as the representatives of nongovernmental organizations working in the media area to file a complaint in the self-regulation bodies in cases of high public interest.

The institution of a press ombudsman, meaning the appointment of impartial media professionals from outside the media outlet to oversee the observation of ethical standards, should be introduced. The duties and obligations of the ombudsman should ensure the complete independence of the ombudsman and provide the proper functioning mechanisms.

Diverse, robust, and sustainable financing systems are needed to be created in order to fund the media council existing under the Charter of Journalistic Ethics as a sound funding system ensures the independence and well functioning of the media council. The dependence only on the international donor's financial sources cannot be seen as a long-term resolution.

In order to avoid the dominance of any journalistic groups or even individuals, the members of the governing body of ethical charter should be elected in a transparent and democratic process.

For increasing the public trust, creditability, and legitimacy of the self-regulatory mechanisms, the appropriate bodies should ensure the transparency of their work, regular publications of the activities, including the decisions and the details related to the funding.

The officials of the self-regulatory bodies are not properly aware of the latest developments in European countries and especially of the principles defined by the ECtHR. The self-regulatory institutes should anticipate that there is a possibility that their decision could be taken into account by the national courts and especially by the ECtHR. Therefore, the self-regulatory bodies should be familiar with the ethical principles defined by the European court.

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[98] There is only one exception according to the Code of Conduct for Broadcasters in cases concerning the Guidelines for reporting politics and elections; article 24 (6): *If a qualified election subject or political party representative makes an allegation against another qualified election subject or political party representative, broadcaster should be given a right of reply.*

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Europe on Romanian-Speaking TV in the Republic of Moldova

Onoriu Colăcel

Abstract Romanian-speaking TV in the former Soviet Republic of Moldova is currently developing an infotainment genre that is politically charged and rooted in the history of modern Romanian literary culture. Choosing the EU over the Eurasian Customs Union comes across as a matter of ethnic and cultural background. The republic's ethno-national traditions and the political loyalties of Moldovan citizens overlap to the extent to which TV entertainment, whether in Russian or in Romania, is bound to touch on contentious issues. The first privately owned TV station of Moldova, **JurnalTV**, and its Sunday evening show, *Ora de Ras* (The Hour of Reckoning, my translation) make a strong case for Europe. Making the country modern and European has everything to do with its past as recorded in the language of history. The ancient roots of Moldovans, their continuous settlement of the area and struggle for freedom are preached by the hero of all Moldovans, Stephen the Great, not to mention present-day media heroes (Constantin Cheianu and Anatol Durbala) who blow the whistle on corruption in local and national government.

1 Introduction

The issue of Moldovan alignment to Western values is topical for the present of the former Soviet Republic. The association agreement with the EU, signed on June 27 and ratified on the 2nd of July 2014, is the cornerstone of the country's foreign policy for pro-European Moldovan citizens. Making the country modern and European, this is to say Westernising Moldova, is the main concern of **JurnalTV**, the first ever privately owned station of the republic. The greater good of the indigenous society is at the heart of the media war between Romanian- and Russian-speaking media outlets. Conservative and Russian-speaking communities indict the Romanian-speaking broadcaster for being the mouthpiece of the

O. Colăcel (✉)
Faculty of Letters and Communication Sciences, University Ştefan cel Mare of Suceava, Suceava, Romania
e-mail: onoriucolacel@litere.usv.ro

T. Kerikmäe, A. Chochia (eds.), *Political and Legal Perspectives of the EU Eastern Partnership Policy*, DOI 10.1007/978-3-319-27383-9_16

EU. Suspicion regarding Brussels is the Russian way to phrase the values of the partnership between the EU and Eastern countries. Equally so, Europe and Europeanisation are the means to prosecute the former Soviet regime, current corruption and Russian imperialism. Particularly, themes that spring from the prospect of EU accession and Russian retaliatory measures underpin the professed mission of Romanian-speaking media: remittances from Moldovans working in the EU and Russia, the Russian ban on Moldovan exports, etc. Much like the country itself, media industry is a battleground for conflicting narratives.

1.1 The Moldovan Media Landscape

Media industry in the Republic of Moldova follows the trend in other Western European countries, where, more than a decade ago, 'eyewitnesses' concluded that there "has been an increase in programmes of the infotainment genre" (Brants and Van Kempen 2002, p. 176). One of the most influential Moldovan examples, the TV show *Ora de Ras*,[1] aired by **JurnalTV**, although at the forefront of local infotainment, is obviously indebted to the tradition of socially engaged performance arts rather than to the so-called political cheerleading, commonly thought to define the genre. Irrespective of its video aesthetics, the broadcast takes sides in the grand battle between "capitalist Atlanticism" and "socialist Eurasianism" (Dungaciu 2015, p. 44), which makes "this tiny ex-Soviet state [. . .] crucial battleground in the tug of war between Europe and Moscow" (Parkinson 2014).

The Hour of Reckoning claims to inform the public while showing that the country's establishment rarely tells the 'whole truth' about the workings of the government. The main side effect of the TV programme is to showcase the well-known Moldovan "inherent social divisiveness, especially that resulting from divisions over whether its identity lies more with the West (including Romania) or the East (including Russia)" (Hale 2015, p. 419). All the same, **JurnalTV** and *The Hour of Reckoning* are conspicuous in the indigenous media landscape that underwent dramatic changes "resulting from Romanian private investments" (Milevschi 2012, p. 178). The first ever private station of the republic fulfils "two basic functions for society: creating a national public sphere and supporting social integration" (Albrecht 2014, p. 122). In other words, the media landscape of the country mostly circulates Russian and Romanian instances of popular culture. These identity narratives centre on characters that self-identify with the above-mentioned "ethnotypes" (Leerssen 2006, p. 11) and, most of the times, entirely disregard the identity narrative steeped in the ethno-national tradition Romanian-speaking Moldovans share with 'Moldovans' living in neighbouring Romania. *The*

[1] Hereafter, *The Hour of Reckoning* (my translation) is aired on **JurnalTV**, retrieved from http://oraderas.jurnaltv.md [accessed 29.03.2015].

Hour of Reckoning addresses the need for local perspectives on indigenous patterns of self-identification.

Unquestionably, a Moldovan public sphere is in the making. Anatol Durbala together with Constantin Cheianu—the two performers in front of the camera—have plenty to say about it, if one is to consider their popularity ratings among Romanian-speaking Moldovans. For example, the infotainment theme of the show is staged in hugely successful live anniversary performance every year, set to celebrate the David versus Goliath artwork of the programme, i.e., a boy's catapult that aims to shoot down the foes of 'Atlanticism' in Moldova.

The extent to which Moldovan self-identification overlaps with the Romanian one is thoroughly debated on each episode of the show. Anatol Durbala performs a number that puts in the spotlight the "Moldovan language" for the use of Romanians. The routine is straightforward: a recognizably Moldovan character has a word with a speaker of literary Romanian on the topics of the day. Their exchange emphasises the West-East fault line at the heart of Moldovan society, importantly, from the perspective of the average citizen of the country. Consequently, the Romanian identity contributes in a subordinate degree to the general effect and Anatol Durbala's impersonation of the native Moldovan sets the agenda while driving forward the argument.

It follows that infotainment is inherently politicised as a means to safeguard the ethnic tradition of the historical principality of Moldova as well as the current state-building enterprise undertaken by the Moldovan establishment. *The Hour of Reckoning* itself turns out to be a site for both building Moldovan identity and resisting to the appeal of other (more) prestigious ethnic and national designations. *The Hour of Reckoning* helps place in Eastern European context the Romanian/Russian self-identification most Moldovans have to take in while watching TV stations that rebroadcast foreign media content.

However, the way the show covers particular events is nothing short of malicious misrepresentation. One cannot disregard its controversial choice for "modes of conversation that privilege an informal communicative style, with [. . .] emphasis on personalities, style, storytelling skills and spectacles" (Thussu 2007, p. 3) at the expense of traditional investigation, focus on hard facts and, generally, notions of news credibility. For example, the TV show vilifies the revamped minority coalition 'Alliance for a European Moldova' that, with the help of the Communists, appointed the new government of the country early 2015. As a matter of principle, the reasons have to do with the (in)formal leaders of the government parties, Vlad Plahotniuc (PDM) and Vlad Filat (PLDM). First of all, Vlad "Plahotniuc's media holding re-broadcasts Russian TV Channel One in Moldova" (Socor 2015), and both the politician and his media empire are in a war of words with **JurnalTV** and *The Hour of Reckoning*. Together with Vlad Filat, a former prime minister of Moldova, Plahotniuc and his 'henchmen' (family connections raised to the highest offices in the state) are the archenemies of Europe, which stands for progress and democracy. They are indicted for corruption and 'economic crimes' against all the people of Moldova, regardless of native tongue and national identification. Both Anatol Durbala and Constantin Cheianu suggest that their rhetoric of character

assassination is a response to the present state of affairs in Moldovan media. What used to be the monopoly of Russian-speaking media is now plain to see in the fact that the republic "remains closely connected with Russia's mass media environment" (*Ibidem*). Even today, quite a number of Russian stations are free to air on Moldovan cable networks: "rebroadcasts from Russian TV channels account for about half of the programming on Moldovan cable networks [. . .] Access to Russia's Perviy Kanal does not require cable" (Puiu 2015). Russian propaganda in the former Soviet Republic is unrelenting and vicious enough to require the strong language of name calling and recrimination in Romanian, a language everybody seems to fully understand in Moldova.

Against all odds, **JurnalTV** and *The Hour of Reckoning* advocate European values and, fundamentally, are committed supporters of their country's accession to the EU. The editorial policy of the station and, particularly, its flagship Sunday evening show portray Moldovan reality in a manner that may be construed as biased. Responsible reporting is blended with commercial practices that promote a Eurocentric discourse. Commercial TV comes to oppose the Communist legacy and, as of late, Russian expansionism in Crimea and the East of the republic. Anatol Durbala and Constantin Cheianu are committed proponents of Europe and, much like in the history of modern Romanian culture, use interchangeably notions of Europeanisation and modernisation. However, most of the time, their "willingness to uncritically apply largely unexamined metaphoric frames" (Steuter and Wills 2008, p. 155) to the week's events (the show is broadcast on Sunday evenings) comes across as sheer propaganda. Repeatedly, Anatol Durbala and Constantin Cheianu call for the public to recognise and support their plea for clamping down on corruption. The issue of Moldovan alignment to Western values is topical for the present of the 21st-century Moldova.

The association agreement with the EU, signed on June 27 and ratified on the 2nd of July 2014, is the cornerstone of the country's foreign policy for pro-European Moldovan citizens. Mostly, the TV show answers to conservative and Russian-speaking communities, to "the Moldovan Eurasians" (Milewski 2013) who obviously indict the broadcast for being a mouthpiece of Europe. Suspicions regarding Brussels and anxieties about "pro-Romanian unionism" (Hale 2015, p. 419) set apart Russian-speaking Moldovans from the Europhile statement made by Anatol Durbala and Constantin Cheianu. Moldova strives to act its part among the "Eastern partnership countries" (Muravska 2014, p. 3). However, "the so-called homo moldovanus, i.e. those Moldovans who [. . .] have come to internalise the social construct of the Soviet of Moldovan origin" (Milewski 2013) and "Romanian speakers who consider themselves Moldovans (which means that they aspire to a political and civic Moldovan identity)" (*Ibidem*) are openly acknowledged by *The Hour of Reckoning* too. Essentially, the two hosts of the show impersonate the public prosecution of the Soviet regime and current corruption. Particularly, themes that spring from the prospect of EU accession and Russian retaliatory measure underpin the professed mission of the TV show. *The Hour of Reckoning* discusses at length topics such as remittances from Moldovans working in the EU and Russia, the Russian ban on Moldovan exports, the unionist message

and the opposition of pragmatic non-unionists, etc. Much like the country itself, media industry is a battleground for conflicting political creeds and aesthetic rhetoric. Conclusively, making the country modern and European, this is to say Westernising Moldova, is the main concern of **JurnalTV**, regardless of the language it uses in order to promote the political culture of the West.

2 Casting Out the Evil Eye

On 13 March 2015, *The Hour of Reckoning* celebrated its 5th year anniversary with a traditional live event, in front of a 2000 strong crowd. Next to Anatol Durbala and Constantin Cheianu, who hosted the show, the entire cast of the TV programme was on the stage of Chisinau National Palace Theatre. According to the website of **JurnalTV**, the purpose was to clear the public of evil spirits. Explicitly, Durbala and Cheianu advertised their ability to set Moldovan citizens free from whatever is binding them into political submission. They suspect that the Moldovan political elite resort to magic charms cast with evil intent. The current condition of the country is humorously described as being a consequence of the curses spelled out by politicians on TV, in door-knocking campaigns, etc. The two performers impersonated the figure of the traditional diviner who can rid the willing of the evil eye. The full house of the National Palace Theatre hummed along with the songs of each segment in the show, was reprimanded for not acting European and praised for attending.

As a result, Moldovan disillusionment with corrupt politicians and the sway they have over the pro-European government of the country was out in the open. In the process, the political spell cast over Moldovans was effectively removed. Once evil eye was gone, Moldovans were at last able to speak their mind about indigenous policymakers and Moldovan politics. Of course, Vlad Plahotniuc and Vlad Filat were the main targets of the show. Yet, as it is the case since the minority cabinet of Chiril Gaburici has been sworn in, Vladimir Voronin, the leader of the Moldovan Communist Party, was also in the limelight. The three Vladimirs are the topic of the day in Moldovan media, and *The Hour of Reckoning* is no exception. Anatol Durbala and Constantin Cheianu introduced the topic later to be developed by Dan Melnic, Petru Oistric and Petru Gaibu in their enactment of Vladimir Voronic, Vlad Filat and Vlad Plahotniuc. In fact, the routine depicted a meeting between them in a characteristically polemical manner. The criminal record and conduct of the country's leadership are made self-evident by means of portraying laughable, underworld characters. In the words of Duraba and Cheianu:

> CHEIANU: Considering that those who have come together to form the government share the same first name – Vladimir – we believe that their alliance should bear the name of "Vladimriskii Ţentral".
>
> DURBALA: A Russian town that goes by the name of Vladimir serves as a reception and triage centre for inmates. Its prison is called Vladimriskii Ţentral".

CHEIANU: Russians have an inmate triage centre called Vladimriskii Ţentral, we are governed by Vladimriskii Ţentral[2]

The 'emphasis on storytelling' favoured by both hosts in the coverage of Moldovan events has everything to do with the tradition of socially engaged performance arts. The actions of the indigenous political establishment elicit responses from politically committed artists. Comparing Voronin to a pig with its snout in the trough brought to Constantin Cheianu accusations of libel as well as demands to compensate for damages. Unapologetically, Cheianu discusses Voronin's damage claims of 1 million Moldovan lei with his lookalike, Dan Melnic. Although he asks for an admission of guilt, Voronin would not settle for public apologies and makes out of financial penalties a means to an end. *The Hour of Reckoning* and **JurnalTV** argue that this is part of a plan to eliminate public dissent. On the stage, Cheianu states that he would gladly ask for forgiveness from pigs rather than from Voronin.

Deciding whether or not criticism is slander seems to have already resulted in attempts to browbeat the hosts of the show into silence. Consequently, Anatol Durbala and Constantin Cheianu repeatedly point out that they are subjected to various threats. They do so in some of their weekly broadcasts, and, predictably, the fifth anniversary of their show made the same point. The moment they were on the stage, they started by thanking the public for being trusted "bodyguards". Casting out the evil eye is a way to word a question on all Moldovan minds at a time when their country is once more "placed between two big attractors, namely the European Union, on one hand, and the Russian Federation, on the other hand" (Prisac 2015, p. 83). Essentially, notions of good citizenship are always at stake and shape the discourse of each and every comedian the show works with. Constantin Cheianu even spells it out to the public: "Today, we like to believe that we are not mere entertainers, while you are far from just being entertained. Together we take part in something more, if you will, this is an act of dignity".[3] All civic-minded warnings issued on behalf of the people by *The Hour of Reckoning* boil down to one question: why Moldovans seem to choose not to challenge or engage with obviously corrupt political parties, although politicians ransacked the country. The ongoing scandal in the Romanian- and English-speaking media of Moldova is the 1 billion missing from Moldovan banks and an alleged Russian involvement into the matter. Anyway, for Anatol Durbala and Constantin Cheianu, everything points to the "two

[2] My translation of "CHEIANU: Dar fiindca cei trei care au creat aceasta alianta, au acelasi prenume—Vladimir—noi credem ca Alianta lor ar trebui sa se numeasca de fapt… VALDIMIRSKII ŢENTRAL.

DURBALA: In Rusia exista un oras cu numele Vladimir, care este un important centru […] de triere a puscariasilor. […] Centrul respectiv se cheama "Vladimriskii Ţentral".

CHEIANU: Rusii au un centru de triere a puscariasilor Vladimirskii Ţentral, noi avem la guvernare un Vladimirskii Ţentral!".

[3] My translation of "Ne place sa credem ca astazi aici nu vom prezenta pur si simplu un spectacol, iar d-voastra pur si simplu il veti privi. Noi impreuna cu d-voastra vom participa astazi aici la ceva mai mult, la un act de demnitate, daca vreti".

gangsters Filat and Plahotniuc".[4] As far as they are concerned, in cahoots with the banker Ilan Shor, they must have stolen the money. Insistently, the three of them are indicted for fraud, embezzlement, robbery, etc. It becomes painfully obvious that state officials are to be blamed for the February 2015 crush of the Moldovan currency.

These steps taken in removing the evil eye are meant to entertain and place Moldovan self-identification in the context of popular storytelling. Such proceedings are conducted in a way that exposes the gap between average citizens and the leadership of the country. Filat, Plahotniuc, Gaburici, Shor (and all others mentioned on a weekly basis) disrupt whatever sense of community might have been in place prior to their arrival on the scene of Moldovan politics and finance. However, they are next in line to all those who have driven the country into moral bankruptcy. Particularly, the lookalike of Vladimir Voronin emphasises the fact that his newfound allies have reached great heights in making money for themselves, since they won the elections of 2009. In his words, the parties of Filat and Plahotniuc worked together, under the names of the two "Alliances for European Integration" and the "Pro-European Coalition", in order to plunder the resources of Moldova.

Voronin harbours a grievance against the other two for not sharing the proceeds of corruption: their work meant that public funds were being "stolen by the billion".[5] The exchange he had with Constantin Cheianu on the topic of damage claims is telling: he grew fed up with being robbed of the chance to embezzle funds himself. Dan Melnic/Vladimir Voronin discloses the reason behind the libel suit he has brought against **JurnalTV** and Constantin Cheianu: "Now that I am a pig the way they are [Filat and Plahotniuc] I have to do whatever they tell me to, they have been pigs for quite a while and know better".[6] Finally, his current support for PDM and PLDM signifies that he seised the opportunity to join in on the experience of defrauding the state of billions.

While revealing the power structure in the troika consisting of Plahotniuc, Filat and Voronin, *The Hour of Reckoning* essentially exposes Vlad Plahotniuc for the 'wizard' he is, i.e., for being the one who pulls the strings. According to Ileana, 'the old hag' who customarily casts out the evil eye in traditional Moldovan society, Vlad Filat and Vladimir Voronin "are bearers of the evil eye, but they find themselves under a spell too. If they were to ask for my help, I would cast evil out, because they are under the deep spell of Plahotniuc".[7]

In order to achieve the end of European Moldova, *The Hour of Reckoning* resorts to Stephen the Great, the Moldovan hero, and to his most glorious reign in Moldovan/Romanian history. Under his rule, the medieval principality of Moldova

[4] My translation of "doi banditi Filat si Plahotniuc".

[5] My translation of "aişţea fură cu miliardu".

[6] My translation of "Nu, şî eu, de-amu dacî-s porc ca şî dânşâi, trebu sî fac ci-ni spun ii. Ii, cum v-am spus, au staj di porci mai mari, ştiu mai ghini ci şî cum".

[7] My translation of "[Filat şî cu Voronin] I+i îmblî sî dioachi oamini, da ii sânguri îs diocheţ. Dacî ar vini la mini, eu le-aş scoati diochiu, cî ii îs diocheţ amândoi di doamni fereşti di Plahatniuc".

stood up to the Ottoman Empire and other traditional enemies. The response of the indigenous public to the legacy of the iconic prince, who proved that a stable Moldovan polity is fully sustainable, has always been enthusiastic. Stephen enjoyed a political and historical afterlife that is instrumental to national self-identification both in present-day Romania and the Republic of Moldova. Anatol Durbala famously impersonates an inspiring Stephen who stands out in collective memory as the finest example of Moldovan identity. The prince lectures his Moldovans whenever he gets a chance to do so. His life performance on *The Hour of Reckoning*'s fifth anniversary is particularly noteworthy. As a matter of principle, Stephen the Great engages Vladimir Ilyich Lenin in single ideological combat over the heart and minds of his people, while various 'guests' might also take part in their exchange (mostly Moldovan statesmen). Anatol Durbala passes for both characters, and Lenin is in the background, featured on a video wall. This time he is casually expelled from the stage so that Stefan has a word with the public:

> Or maybe there's a tinge of honour and decency left here? . . . Eh? . . . Well then, if there's, let's speak our minds and stop fooling about with casting the evil eye and the like. If here (pointing to his chest), instead of a heart and virtues, there is fear and servility, it follows that any disenchantment is useless. But if there is honour and decency, then neither the sword strikes them off, nor the spear runs them through, nor the fire burns them down! Say, then, is there any honour and decency in that chest of yours?. . . I can't hear you! .... I can't hear you! There, I've just heard you!.[8]

3 The European Ethos of Romanian-Speaking TV

JurnalTV took on the task to realign Moldova with Europe. Much, if not everything, in current Moldovan patterns of self-identification is linked to the significance of the events that took place a quarter of a century ago in the former Soviet Republic. The 1991 independence of Moldova, eagerly recognised by the post-communist Romanian state, resulted in the cultural liberalisation best exemplified by *The Hour of Reckoning*. The TV show's main aim is to showcase the wider European and Eurasian contexts of the Moldovan narrative of identity. Now that the Russian threat looms over the Southeast of Europe once again, Europeanism has gained cultural and political currency in Moldova.

Accession to the EU is the cornerstone of the country's future, and Constantin Cheianu together with Anatol Durbala estimate Moldova's position in the 21st century by means of modern Romanian literary culture, coupled with a strong sense of Moldovan identity. **JurnalTV** sees itself as the watchdog of the community with

[8] My translation of "Sau poati o mai rămas pe-aici v-o sămânţî di demnitati şî vârtuti?. . . Ha?. . . Apoi dacî o rămas, hai sî grăim cinstit şî sî nu mai prostim cu diochiuri, cu discântici, cu vrăj şî alte asemine. Dacă aici (cu mâna la piept) în loc di inimă şî vârtuti îi spaimî şî slugărnicii, însamnî că nu agiutî niş on discântat. Da dacî este demnitati şî vârtuti, apu niş saghia nu li tai, niş suliţa nu li străbati, niş focu nu li ardi!. . . Ci zâciţ, mai esti demnitati şî vârtuti în keptu vostru?. . . N-aud. . . N-aud!!. . . Iac-amu v-am auzât".

the greater good of society at the heart of its mission. *The Hour of Reckoning* blows the whistle on corruption in local and national government and hopes for the protection of Moldovans on whose behalf the show campaigns for Westernising the country. Concerned as they are with the major players in Moldovan politics, Cheianu and Durbala are not simply concerned with the hope that past mistakes will catch up with the three Vladimirs and, particularly, with Vlad Plahotniuc. The TV show and the station are among the chief advocates of the European Union in the former Soviet Republic. The language of **JurnalTV** is keenly aware of impending dangers and broadcasts a sense of shared insecurity most Moldovans experience. If and only if 'Europe' is coming in Moldova, there is hope for the better. Throughout the election campaign of 2014, the TV station ran a video campaign[9] for everything Europe means to the average Romanian-speaking Moldovans, a campaign that actually said "Europe I am waiting for you".

It is conceivable that commercial TV stations based in Moldova will gradually replace the social function previously performed by Russian and Romanian media. Effectively, the local cultural elite have already gained access to means of expression particular to highly developed media environments. As a result, Moldovans are increasingly less dependent on media content produced abroad. In comparison with all other re-broadcasters of foreign content, **JurnalTV** and *The Hour of Reckoning* do not fail in the attempt to model themselves on the Moldovan ethnic self-designation. Time will tell if home-grown entertainment will counter Russian propaganda in the Republic of Moldova, which seems to go hand in hand with Russian-dubbed American films and TV shows.

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[9] http://www.jurnaltv.md/ro/news/2014/6/19/Europa-te-astept-promo, retrieved on 13.04.2015.

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Baltic–Russian Innovation Cooperation in the Context of EU Eastern Partnership

Eunice Omolola Olaniyi and Gunnar Klaus Prause

Abstract Innovation is the key driving factor for economic growth and social wealth. Innovative products and services emerge more often as a result of cross-sectorial combination of technologies, design and business models. Schumpeter (The theory of economic development: an inquiry into profits, capital, credit, interest, and the business cycle. New Brunswick, New Jersey 1934: Translated from the 1911 original German, Theorie der wirtschaftlichen Entwicklung, 1911) emphasised that it is important to constantly revise economic structures in order to get better or more effective processes and products, introducing his famous word—"creative destruction".

The European Union is one of the leading places on innovation in the world, but the innovation position of Europe is not so homogeneous due to its existing diversity. In order to better link the innovation activities all over continental Europe, the Eastern Europe Partnership (EaP) was launched in 2004 to develop a closer relationship with EU countries and their neighbouring countries to ensure improved cooperation and integration of innovation activities and related markets of involved countries.

This paper highlights the current situation and ongoing activities within the frame of the EU Eastern Innovation cooperation as it has to do with innovation within the Baltic States and Finland (which is on the one hand side) using Russia to mirror the EaP countries (on the other hand side).

1 Introduction

Innovation and research in the twenty-first century are increasingly becoming international endeavours, and most innovations originate from multiple countries, with many drawing in components or technologies developed in multiple locations.

E.O. Olaniyi (✉) • G.K. Prause
Tallinn School of Economics and Business Administration, Tallinn University of Technology, Tallinn, Estonia
e-mail: eunice.olaniyi@ttu.ee; gunnar.prause@ttu.ee

T. Kerikmäe, A. Chochia (eds.), *Political and Legal Perspectives of the EU Eastern Partnership Policy*, DOI 10.1007/978-3-319-27383-9_17

High-grown economies like the USA and the UK are increasingly involved in this process.[1] Schumpeter defined innovation as:

"The commercialisation of all new combinations based on the application of: New materials and components; the introduction of new processes; the opening of new markets; and the introduction of new organisational forms." For this work, the emphasis will be on the word "combination", which means that innovation could be one or all of new processes, materials, markets or new organisational form. There is no clear cut on what it must be or how it should take place, and as Schumpeter further explained, innovations are a combination of two domains: the technical and the commerce (business). Whenever there is a change in technology it is called an invention, but once the invention is commercialised it becomes an innovation. Also, Janszen[2] stated that innovation should be seen not as an "isolated" incident but rather as a trajectory, consisting of many small unique incidents which sum up to a beneficial change. This connotes that before an incident is described as innovation, one must have studied the sequence and manner in which the events took place.

Innovation is the key driving factor for economic growth and social wealth. Innovative products and services emerge more often as a result of cross-sectorial combination of technologies, design and business models. Schumpeter emphasised that it is important to constantly revamp economic structures in order to get better or more effective processes and products. This has brought about his famous word—"creative destruction". The scientific competence of a country is a vital source for its technological performance, which is why today this has become a regular and popular discussion at different political and academic platforms.[3] Just like firms are expected to adjust to the changing environments, countries too must be able to adapt to changing situations—relying on classified planning and strategic decision-making during turbulent situations. A country must be able to include into its policies and agendas a certain amount of flexibility which can in turn reflect on its citizenry positively.

The diversity of Europe (its traditions and creativities) has led Europe to becoming one of the major home markets in the world, and evidence is seen with the presence of renowned researchers, entrepreneurs and organisations across the continent and each country in the EU actively contributing to emerging markets of the world.[4] The European Union Eastern Europe Partnership (EaP) was launched in 2009 in an effort to develop a closer relationship with EU states and six neighbouring countries, comprising Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine, to ensure the cooperation and integration of the markets of such countries.[5] Some of the reasons why such collaborations are suggested were to reduce disparities among players, reduce inefficiencies and lapses and reduce

[1] Schmoch et al. (2011).

[2] Janszen (2000).

[3] Hayek (2002).

[4] COM (2010).

[5] Schmoch et al. (2011).

political rancour and ideologies.[6] However, despite all the effort of the EU Commission, the development is slowed down constantly and has not been able to yield the desired results due to little investment in knowledge foundation, poor framework conditions, some of which can be attributed to inability of researchers to have access to funds or exhaustion of funds, fragmented and expensive innovation imitations, the key actors moving on, or there is a reduction in supporting management and the incentive to published analysis of such termination was not encouraged.[7] Sometimes even when all of the issues listed are not the case, circumstances can change so abruptly that it will leave the actors stranded for want of how to carry on.[8]

Thus, it is important for the countries concerned to develop open policies to support this type of international positioning and to align their support accordingly—implicitly and explicitly: implicitly by not duplicating unnecessary initiatives of others but looking for differentiation and explicitly by aligning efforts to encourage the building of critical mass and complementarities through cooperation. The EaP was flagged off as a regional development programme for this reason—to help bordering countries to address similar structural changes in order to reduce the disparities that are vividly evident among them, especially economically and socially.[9] So far, there is still a huge gap between the scholarly discussions and the actions on ground for cross-border cooperation, and because competitive advantages change over time due to the constantly evolving globalisation, technology and tastes, there is a need to consistently pause to re-access and upgrade national policies. This paper highlights the current situation and the ongoing cooperation activities within the Baltic States and Finland (which is on the one hand side) together with Russia (on the other hand side). It pointed out the potentials and benefits of their international positioning and how these activities can be used to translate the ongoing discussions to tangible and beneficial outcomes. While the authors recognised that Russia is not part of the EU EaP, Russia is being used as a "mirror" for a reality check because not only does it border the Eastern and Central EU (Fig. 1), but also Russia influence on the six EaP countries cannot be undermined as most of them are still in part under the political control of Russia. They were also all former Soviet bloc countries and consequently have similar political and cultural system as Russia.

Regional development is an important policy concern for the European Union (EU), and the EU Structural Funds are aimed at supporting regions lagging behind in their development or facing structural problems.[10] This work moves forward the geographical approach to innovation in relation to smart specialisation, a regional

[6] Freeth (2001), pp. 37–49.

[7] Communication From The Commission (COM) To The European Parliament also Freeth (2001), pp. 37–49.

[8] Freeth (2001), pp. 37–49.

[9] EuropeAid (2011).

[10] Park (2014).

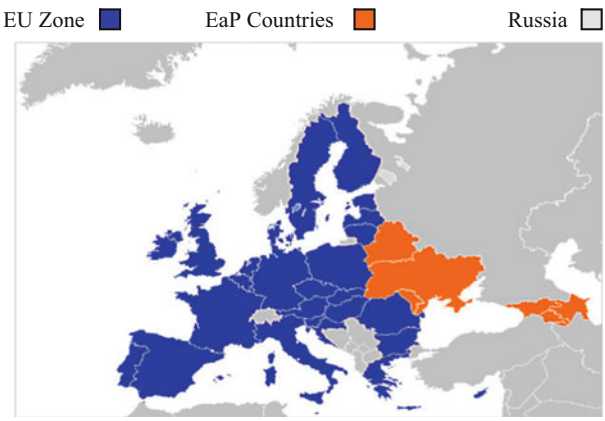

Fig. 1 The Eastern Partnership EaP countries. *Source*: Park J. 2014 'The European Union's Eastern Partnership'

innovation tool that can be applied to Baltic regional development. While it is widely accepted and discussed that collaborations will foster great prosperity within the Baltics and its neighbours, the EU and Baltics will have to strategically build structures to foster such activities. What are these structures, and what are their characteristics that should be taken into consideration for future policies and strategies for border cooperation in the Baltic States, especially with their Eastern neighbours? Furthermore, how can these structures be used to align the Baltics to this international positioning? These reflections are important in order to gain broader insights into key issues that are important for institutional considerations and for the implementation.

A conceptual analysis was carried out integrating sources of data and literatures, both at the EU and at the EU regional level. Data relating to the Baltics innovative performance were gotten from the European Innovation Scoreboard of 2014 and Eurostat. Cross-border development within the European Union was gotten from the EXLINEA's 2003 report, Cross Border Cooperation and Entrepreneurship Development (CBCED) 2007 report and 2013 ESPON report. The Hofstede 6-Dimension was used to address and analyse the multicultural differences between these countries.

This work is presented in the following ways: the next section gives a general overview of the EU strategy for regional development and the innovation activities of the Baltic States. In Sect. 3, Smart Specialisation is discussed as a tactical innovative tool that can be used to resolve related structural and societal challenges of the collective Baltic region. Section 4 presents the EU–Russian Platform cooperation and how cross-border collaboration with a country like Russia could open a new world of possibilities for the EU in its totality. Section 5 presented the cultural similarities and differences of each country, how it affects and fosters the

possibilities of cooperation. Section 6 puts forward policy considerations for innovation opportunities drawn from the discussions from previous sections. The concluding thoughts were given in the last section.

2 Innovation in EU and Eastern Baltic Sea Region

For today's economic growth, investments in the creation of knowledge assets, acquisitions of new skill sets or market initiatives are of equal importance to different forms of factor stocks.[11] Knowledge assets, acquisitions of new skill sets or market initiatives not only affect economic growth; they also have major influence on both levels of income and economic well-being, and they persist over time. All these cumulative processes in turn have historical consequences, although sometimes they happen by chance. This has always been the subject of historical and economic discussions—for example, analyses of regional differences started with the presence of different industry structure[12] or population specifics[13] and also differences in institutional settings and skill set. Geographic approaches to innovation have moved different regions into the focus of research despite the fact that most contributions only focus on well-performing regions and neglecting other places, focusing mainly on internal and endogenous factors within the regions of interest.[14]

The annual innovation performance comparisons between the EU members and their global competitors, "Innovation Union Scoreboard (IUS)", is based on the evaluation of three types of indicators called the enablers, firm activities and outputs. There are eight Innovation dimensions, which includes human resources; open, excellent attractive research systems; finance and support; firm investments; linkages and entrepreneurship; intellectual asserts; innovations; and economic effects (Fig. 2). The 2014 IUS measured the performance of each EU country's innovation systems, and result places Finland on the 4th position, Estonia on the 13th position, while Lithuania and Latvia were in the 24th and 27th places, respectively (Fig. 3).

A closer look at the current innovation development in the European Union shows that all Eastern European countries, except Estonia and Slovenia (which belong to the group of innovation followers), all belong to the group of moderate or modest innovators representing two low groups of countries on innovation performance.

Considering the growth rates of innovation performances from the period of 2008–2014, the picture looks promising for a large number of the Eastern European

[11] OECD (2010), pp. 214–215.

[12] Iammarino and McCann (2006).

[13] Ciccone and Hall (1996), p. 70 and further look at Carline et al. (2007), pp. 389–419.

[14] Anselin et al. (1997), also Hadjimichalis and Hudson (2007), pp. 99–113.

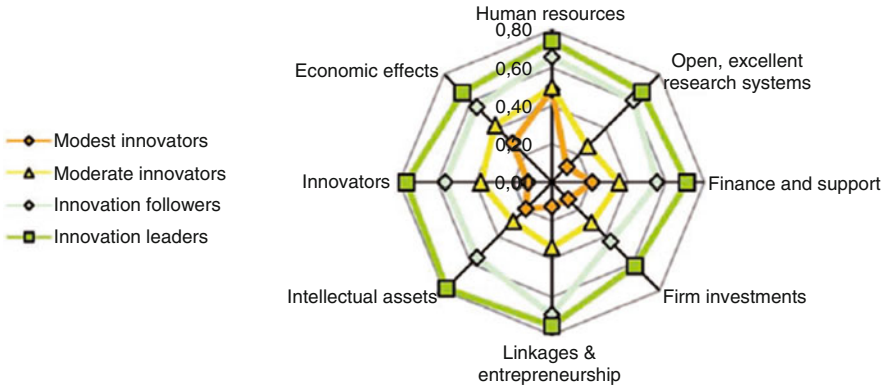

Fig. 2 Innovation performance per dimension. *Source*: Innovation Union Scoreboard, © European Union 2014. Reproduction is authorised by the European Union

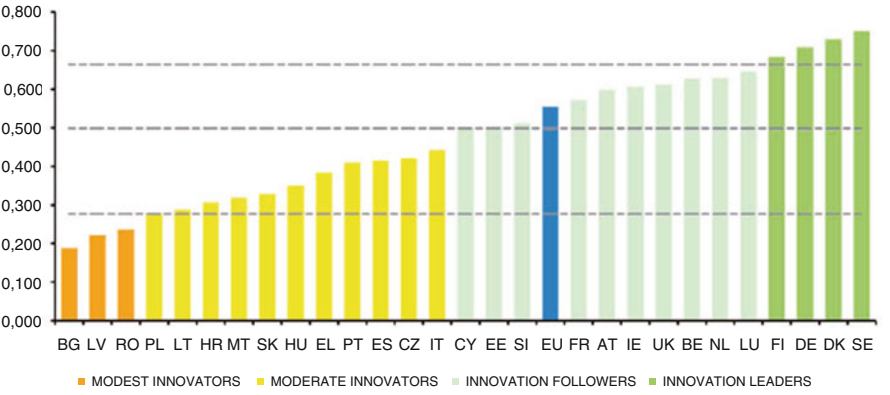

Fig. 3 EU Member States' innovation performance. *Source*: Innovation Union Scoreboard, © European Union 2014. Reproduction is authorised by the European Union

member because the average annual growth rates were above the EU average for most of the belonging countries. Even if the picture for the annual growth rates in innovation performance between the above-mentioned years had not looked as promising for the Eastern European countries, it has to be stated that for 2012 the process of convergence which was noticeable with European Union countries until 2011 has been reversed to one of divergence from 2012.[15]

Using the IUS 4 group classification of EU countries on innovation performance (innovation leader, innovation follower, moderate innovators and modest innovation), Finland was ranked as a member of the EU innovation leaders, Estonia was part of innovation followers, close to the EU average, whereas Lithuania and Latvia

[15] Eurostat (2014).

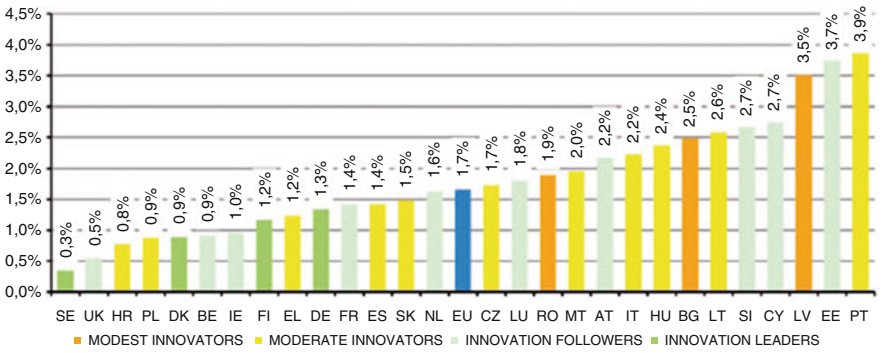

Fig. 4 EU Member States' innovation annual growth rate. *Source*: Innovation Union Scoreboard, © European Union 2014. Reproduction is authorised by the European Union

were part of the group of moderate and modest innovators, respectively. There is a notable improvement for Lithuanian, which was ranked a modest innovator in 2013.[16]

The differences within the EU countries are significantly high, and this has confirmed the huge disparities in the performances of the EU countries and further emphasises the need to foster cooperation between them to complement the smart specialisation growth throughout their region, which is important to promote inclusive growth in order to reduce wide gap of growth between the states.[17]

The 2008/9 financial meltdown brought a sudden end to the hopes of ceaseless economic growth in most part of Europe, especially the eastern part. There was a massive destruction of capitals through bad investments, unemployment and increase in import prices due to currency devaluation; hence, some countries in the east and south European countries are currently in a catching up mode. They have been, however, successful in closing the wide technology gap towards their western counterparts.[18] However while almost all Member States improved their innovation performance, Estonia has been consistent in its growth pattern, and when compared with the innovation followers it ranked highest in its innovation growth. In 2014, Estonia was the second most improved with performance of an average annual rate of 3.7 % (Fig. 4).

The EU (2012) in "Creating an Innovative Estonia" explains that even though Estonian innovation system has been astonishing for two decades now, this is considered to be non-reflective in major part of its economic outcomes, which in turn have had very little influence on an average Estonian.[19] This suggests that it is very important that effective innovation system be focused on economic outcomes. The overview of the Estonian Research, Development and Innovation (RDI)

[16] IUS (2014).
[17] Dudzińska (2013).
[18] Thurner (2014).
[19] EU (2012), p. 28.

performance is such that, even though the Estonian annual gross domestic products (GDP) is growing, the economy is still considered small. This reflects in the country's GDP per capita, which according to 2014 Eurostat report is lower than the EU average—this is a major structural problem. Lithuania and Latvia innovation performances were below average, which followed closely that of Estonia on innovation growth rate and improved at average annual rates of 2.6 % and 3.5 %, respectively. However, both countries are in similar economic states as Estonia.[20] Arguably, it can be said that the economic interactions among Estonia, Latvia and Lithuania in itself are not sufficient to move them from the present economic status mostly because of the wide income gap and the differences notable in the socio-economic development in these countries, which is low when compared to Finland, whose GDP per capita is 20 % higher than that of the EU average[21] even though the innovation growth rate of 1.2 % on the surface is lower.[22]

3 Smart Specialisation and Regional Innovation

Since 1995, the widening productivity gap between the USA and Europe became a concern to EU policymakers, which in turn searched for new policy responses. When the European Commission turned to the expert group "Knowledge for Growth", the team suggested the "Smart Specialisation" approach.[23] In line with systematic perception of innovation, the concept focused increasingly on the regional context of innovation activities; the European Union consequently followed these principles and stressed the importance of *embeddedness* and *connectedness* as criteria for fund allocation. Tripartite cooperation such as university—research institution—company cooperation, peer assessment of R&D programs which can spur creativity and entrepreneurial spirit became the new paradigm.[24] Regional innovation strategies for smart specialisation build on a region's capabilities, competences, competitive advantages and potential for excellence in a global perspective. They foster stakeholder engagement and are evidence based. Regional policymakers were advised to create the necessary conditions, like human capital formation and development of new "knowledge needs" once the regions abandon their traditional industries and adopt new technologies.[25]

A database on the regional innovation taxonomy of the European regions was developed in 2012 which differentiates five regions. A region with the highest

[20] IUS (2014). Innovation Union Scoreboard 2014.

[21] Eurostat (2014).

[22] EU (2013).

[23] Read McCann and Ortega-Argiles (2013a), pp. 187–216, and McCann and Ortega-Argiles (2013b).

[24] Camagni and Capello (2013), pp. 355–389.

[25] McCann and Ortega-Argiles (2013a), pp. 187–216.

innovation performance was named European science-based area, and as it turned out, there is a large concentration of science-based areas in Central Europe and centres like Paris, London or Helsinki, and the areas with the lowest knowledge and innovation intensity are placed in the new EU member states in Central-Eastern Europe revealing that a one-size-fits-all innovation policy would fail, depicting that smart specialisation approach has to be integrated into regional policy promoting regional technological diversification among the regionally dominant industries.[26]

Several empirical works have supported geographical (national and regional) approach to innovation, and in today's Europe, the patterns of innovation which are majorly territorial and often recognised are as follows:

- imitative innovation area,
- smart and creative diversification area,
- smart technological application area,
- applied science area,
- European science-based area.[27]

An evolutionary pathway for a regional innovation system like smart specialisation is dependent on inherent structures and existing dynamic so that an adequate transformation approach can be found in an "open economy industrial policy" which focuses on connections among domestic firms and linking them to the world market.[28] The objective of open economy industrial policy is to increase economic openness by enhancing knowledge flows and fostering productive innovation and non-traditional exports.[29]

4 EU–Russian Platform Cooperation

Following the theory that population density has a positive effect on Research Information Systems (RIS) efficiency, as R&D activity is more productive in urban than in rural areas,[30] Russia stands as the largest potential Eastern partner for the EU innovation activities, mostly because it is a large country that stretches across Europe and Asia and it has vast wealth in natural resources, technology, large, skilled workforce, and nearly 150 million consumers with endless needs and supply of well-educated R&D personnel and a heavy presence of high technology expertise in several area of its dynamic market. Even though both the EU and Russia have different agenda for 2020, both agendas highlighted entrepreneurship, public–private partnership building of regional innovation and competence networks as

[26] Capella and Lenzi (2012).
[27] Prause (2014), pp. 3–19.
[28] Foray et al. (2011).
[29] Kuznetsov and Sabel (2011).
[30] Thurner (2014).

areas of priorities.[31] Aside from this, Russia is at a critical juncture where it could grow very rapidly and catch up with Europe in the same way that poor European countries are catching up with rich Europe under the motivation of international trade and capital flows. Efforts have been made by Russia since the year 2000 to re-launch different economic links in order to reduce the technology gap between itself and countries of Western Europe and the USA as attention has now been geared towards innovation as a proper response to Russia internal system restrictions, globalisation processes and open economy challenges.[32]

Russia's diversity as the world's largest state can be challenging, especially in keeping up with the twenty-first century innovation that is regarded to have great speed, complexity and reliance on cooperation between both internal and external knowledge bases.[33] However, cross-border collaboration with a country like Russia could open a new world of possibilities for the EU in its entirety. Judging from the results of EU 2014 Innovation Scoreboard, both the Russian Federation and the Baltic countries could be facing different but complimentary innovation challenges.[34] Thus, an international cooperation of these platforms can lead to combined research efforts, better solutions and a faster application in different industries that can be tailored for each country concerned and are likewise industry specific.[35] For example, EaP has an interest in increasing energy efficiency and the use of renewable resources because the gap of improvement in the EU is quite wide; this is an excellent basis for partnership with Russia, which is interested in the expansion of its renewable energy and networks.[36]

This can be also replicated in similar sectors that are opened to exploration in terms of collaboration for each country. Russia will be a strategic partner for Europe in cross-border cooperation like this, and it can attract highly skilled workers and researchers that will combine efforts to bring about changes and resolutions to pressing societal challenges.[37] Furthermore, collaborations like this will foster relevant knowledge transfer, which in turn could gradually upgrade the Baltic States' industrial sector towards more competitive and innovative activities.[38]

Organisations gain knowledge through different sources and actors at various spatial scales of interactions by pooling local expertise which are easily accessible and at the same time using different levels and scales of interactions with international actors in order to gain complementary competitiveness. The major regions for market potentials are cities and diversified regions with the presence of other multinational companies. Saint Petersburg, for example, in Russia which borders

[31] Prause (2014), pp. 3–19.
[32] Thurner (2014).
[33] Thurner (2014) and Prause (2014), pp. 3–19.
[34] EU (2013).
[35] ITP (2012).
[36] EU (2009).
[37] ITP (2012).
[38] Thurner (2014).

the Baltics has a large and diversified industrial sector with remarkable stances of civil and military shipbuilding, automobile cluster, machinery, food and electronic equipment industries, etc. Its logistic connection also gives it an appeal for foreign investors. However, this pathway can be challenging for Russia because its system is characterised by weak business innovation and insubstantial academia-industry links as various active linkages between innovation actors have been intercepted during the rough times of privatisation. The Russian science and innovation profile, however, has been able to demonstrate areas of strong performance for future development.

The Seven EU Research Framework Programme (FP7), which has been in existence for 7 years now (2007–2013), is a vital instrument of European research funding because the framework emphasises cooperation with other countries, especially non-EU countries. The sixth framework is majorly on Russia; this has made Russia the world's most successful third country in the Research Framework Programme and Europe's strongest partner in cross-border research collaboration. Some research institutions in Russia are being funded by the FP7 due to Russia's strength in aerospace, nanotechnology, biotechnology and ICT and research. As at June 2011, the FP7 had a budget of 46.6 million euro highlighted for Russian research institutions alone, and presently 226 of Russian institutions are involved with and also managing 218 EU projects. Also, Russia is a strong partner of Germany, and there are in existence 155 Germany–Russia collaborates (71 % of EU projects). There is also 816.5 million euro funding made available for the German–Russian cooperation by the FP7—this forms an excellent foundation for further EU–Russian collaboration.[39]

The analysis of the centre for strategic research "north-west" finds metropolis (Moscow and Saint Petersburg) as innovation-ready region, also as a region with unrealised intellectual potential and minimum level innovation. The cross-border cooperation of Baltic States with Russia therefore could centre on this North-Western Federal District part of Russia which borders the European Union.[40] EU countries which by nature borders around these regions could benefit from well-established industry-based environments and can in the long run improve their own economic value, especially through the traditional channels of export and import.[41] But it has to be kept in mind that one key concept of the smart specialisation approach is the self-discovery or entrepreneurial discovery process; in other words, Smart Specialisation has to be flanked by supporting entrepreneurial self-discovery as well as by fostering innovation activities in the different regions.[42] Therefore, the success of regional development activities heavily depends on the entrepreneurial performance and related capacity to build public–private partnerships and cooperation. Referring to the Global Entrepreneurship Monitor, there is a huge difference

[39] ITP (2012).

[40] Volkova and Romanyk (2011).

[41] Thurner (2014).

[42] OECD (2014).

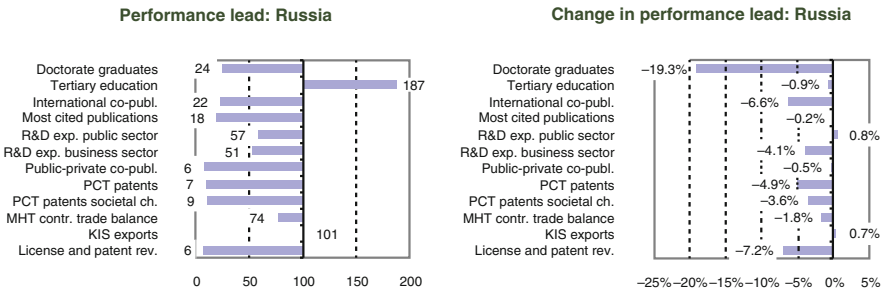

Fig. 5 EU member states-Russia comparison. *Source*: Innovation Union Scoreboard, © European Union 2014. Reproduction is authorised by the European Union

between the European Union and Russia in the field of entrepreneurship because according to the 2011 and 2014 GEM Reports,[43] Russia belonging to the efficiency-driven economies shows significantly lowers rates for all kinds of entrepreneurial activities when compared to the Central European EU member states. A particular weakness in Russian entrepreneurial activities is seen in the high-tech sector where Russian figures are significantly lower than even EU underperformer states like Romania.[44]

But according to the IUS, the EU is performing better than Russia in most indicators and Russia seems to be performing better in the tertiary education (Fig. 5). The Russian Federation is also scored as a one of the major competitors of the EU based on its position in the BRICs. Russia is considered by the EU as a major potential for partnership for growth by virtue of its strategic geographical location as a major neighbouring country to EU states. Aside from this, it is a much larger market compared to Finland, Estonia, Latvia and Lithuania.

The innovation gap between the EU and arguably the most important non-EU Eastern European state, Russia, is seen to have increased. The growth performance is lower than the EU, especially when compared with the indicators. At least, Russia falls short in 10 indicators and mostly with doctorate graduate (although an impressive 87 % of the population is said to have completed tertiary education), R&D expenditures in the business sectors, patent applicators and latent patent revenues from abroad.[45] This result is surprising because the Russian Federation did not show the same dramatic downturn as the EU after the financial crisis in 2008/9.[46]

Cross-border cooperation can be a strong driver for innovation, knowledge transfer and regional growth. A study by ESPON in 2013 on cross-border development within the European Union made a discovery of specific integration

[43] GEM (2011), also GEM (2014).
[44] GEM (2011).
[45] EU (2013).
[46] Thurner (2014).

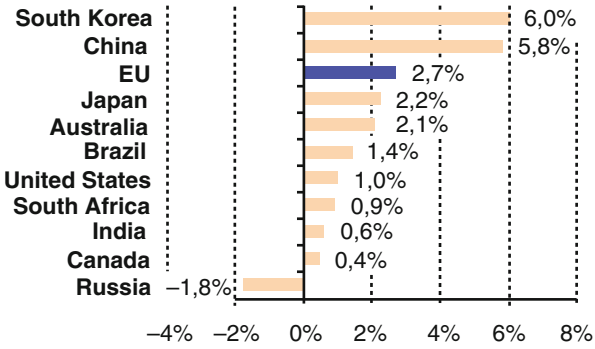

Fig. 6 EU innovation growth rate compared to main competitors. *Source*: Innovation Union Scoreboard, © European Union 2014. Reproduction is authorised by the European Union

patterns of integration of connectivity and influence. Also, a few of ESPON projects since 2006 had given factors for successful cross-border cooperation, which are as follows:

- Integration is not only about growing similarity and connectivity but also about complementariness as driving force of integration processes (e.g. labour markets).
- Functional integration is selective and scale sensitive: border spaces can be integrated in European metropolitan networks and/or in local cross-border flows.
- In times of multilevel governance, a three dimensional perspective on integration seems necessary as integration on the local, regional and national level does not necessarily take place in parallel.

Furthermore, the ESPON researches on cross-border development were able to prove empirically an older assumption of multilevel governance: "Multi-level relationships between territories can be quite complex [. . .]. Hierarchical relationships clearly exist between different territorial scales which combine with horizontal relationships between similar territorial units", i.e. successful cross-border integration has to come along with the intensification and the institutionalisation of cooperation on all levels, i.e. on local level, on regional level and on transnational level. Several case studies of "mis-matches" and "misfits" that hindered successful cooperation show that institutional cooperation between institutions on the same level does not automatically mean that all partners have comparable competences. Cross-border institutionalisations hardly ever bring together all important institutional partners, and the fitting perimeter confirming that the political implication from this insight is not a one-size-fits-all institutionalisation in cross-border and transnational context is hardly possible and further emphasises the importance of soft and flexible instruments and horizontal and vertical linkage of hard competences (Fig. 6).[47]

These reflections have to be kept in mind by creating a more open and integrated innovation ecosystem based on cross-border cooperation. Already the EU through

[47] ESPON (2013).

the FP7 has set the ball rolling for EU countries to collaborate with other countries with the 7th EU Research with a budget of over 50 billion euros, which is considered as the world's largest public funding.[48]

5 Cross-Border Partnership and Business Culture

One major challenge that cross-border partnership is facing has to deal with the additional difficulties of cultural differences. Culture influences literally every aspect of human perception and behaviour.[49] Culture is reflected in the ways of reasoning, believing and behaving within a society or national boundary[50] and common attitudes, code of conducts and expectations that unconsciously control people's behavioural patterns.[51] Cultural dimensions can help to interpret the process of collaboration in the countries in questions because the process of any relationship is encapsulated in communication strategies and interactions that involve cultures.[52] A lot of industries and countries alike use culturally determined styles in the ways of doing business, which are acquired primarily through their national culture.[53]

Layers of culture exist at national, regional, ethnic, religious, linguistic, gender, generational and social class levels. Culture is shared and is consisting of patterns, values, symbols and meanings; it is socially constructed, and therefore it is learned.[54] However it does not automatically correspond to any country borders or ethnic groups, but rather it refers to all forms of social environment that shares common and cultural values which eventually lead to shared behavioural patterns.[55] A particular set of people are usually prejudged and are positively or negatively accepted by the way the members of that cultural group are perceived and related due to common inference before personal contact with anyone from that cultural group.[56]

This challenge can be easily understood through Hofstede's cultural dimension analysis.[57] The Hofstede 6-Dimension was formulated as follows: **Power Distance—**attitude of the people towards inequalities and acceptance of hierarchy; it shows that people are not equal in a society; **Masculinity** shows if a society is

[48] Russland – Federal Ministry of Education and Research, Bonn.v 2012 ITP report.
[49] Griffith et al. (2000), pp. 303–324. Also Xiaohua (2004), pp. 35–47.
[50] Hofstede (2001), pp. 11–17.
[51] Deresky (2003), p. 85.
[52] Yunxia et al. (2005), pp. 63–84.
[53] Nguyen et al. (2007), pp. 1–18.
[54] Hofstede (2001), pp. 11–17.
[55] Xiaohua (2004), pp. 35–47.
[56] Conway and Swift (2000), pp. 1391–1413.
[57] Kogut and Singh (1988), pp. 411–432 also Tung and Verbeke (2010), pp. 1259–1274.

Table 1 Hofstede analysis of Russia and the Baltics states

	Countries' scores				
Dimensions	Russia	Finland	Estonia	Lithuania	Latvia
Power distance	*93*	33	40	42	44
Individualism	*39*	63	60	60	70
Masculinity	36	26	30	19	9
Uncertainty avoidance	95	59	60	65	63
Pragmatism	81	*38*	82	82	69
Indulgence	20	*57*	16	16	13

Source: Hofstede (2015)

driven by achievement or success or by the quality of life and value for others; **Individualism/Collectivist**, a reflection of the level of independence of an individual, put it as the extent to which a culture relies (and has allegiance to self or group); **Uncertainty Avoidance** is how much a society is inclined towards controlling the future; **Pragmatism/Normative** explains a society's orientation towards the need to understand the complexity of life; and **Indulgence** is used to define how the society gives way or controls impulses and desires.[58]

Looking at the result of the Hofstede analysis on Russia and the Baltics (Table 1), starting from the Baltics, the general low scores (33–44) of the Baltic States show their tendencies towards equality. They prefer teamwork and dislike formal supervision; this is mostly demonstrated among the younger generation. They are individualistic countries that prefer loosely knit relationships.

All are feminine countries that prefer modesty and fairness. The Latvians especially feel awkward about praise—they are exceptionally modest among the four countries. With the relative high score in uncertainty avoidance, the Baltic States can be said to have high preference for rigid codes and behaviour. It does not matter if the rules are not working; they are emotionally attached to these rules.

Estonia, Lithuania and Latvia are very pragmatic, believing that the truth is tied to circumstances and locations. They can also be said to be pessimist and restrained in nature, unlike Finland, which has a normative culture, is always interested in absolute truth and has a very indulgent culture.

The Russians are extremely power conscious. Practically everything is centralised. There is a huge disparity between the less and the powerful people. Thus, Russia is unlike the Baltics, which pay little attention to hierarchy. As explained by EXLINEA's 2003 report, *Russia is complicated due to the multiple bureaucratic barriers as the regional authorities have to submit all projects of agreements for the approval of the federal authorities*. The low score in individualism shows that relationships are very important to the Russians. They take everything personal and are not so formal in their approach to business. This is also confirmed in the EXLINEA report that *social interaction remains important. . .on the Russian side*.[59]

[58] Hofstede (2015).

[59] EXLINEA (2003).

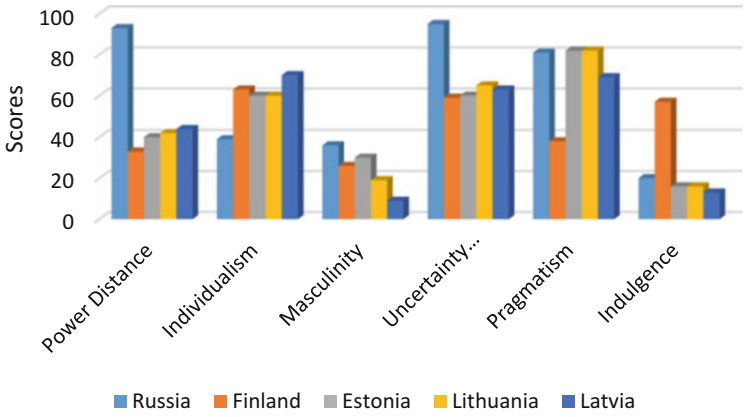

Fig. 7 Hofstede analysis of Russia and the Baltics states. *Source*: Hofstede (2015)

Ironically, Russia's low score in masculinity suggests that it is a feminine country that although will not mind power dominance from work will resist such from friends. Russia also has high preference for codes and rules and is highly threatened by vague circumstances, no wonder it has one of the most intricate governance in the world. Like the Estonians, Lithuanians and Latvians, the Russians are also very pragmatic and restrained in nature by not giving easily in to impulses. This could suggest why it is difficult for any of these countries to establish concrete actions on the cross-border interactions among them (Fig. 7).

On a general scale, the Baltics and Russia have a lot of culture orientations in common. Major difference can be seen when Russian power distance and individualism are compared to the rest and when Finland's pragmatism and indulgence are compared with other countries.

Referring to the ESPON projects' result again, it can be deduced that in order for inter-border collaborations to function properly and for greater impact, regions and local government's independence level will have to be increased. What can be seen is that in the Baltics as well as in Russia, the activities of the local authorities are being regulated by the Local Government Organisation Act, which makes them incompetent to deal with border issues.[60] Bureaucracy in Russia makes collaboration more complicated because all regional projects are subjected to approval from the federal government, which takes unnecessary time and scrutiny from personnel who lack competence or expertise on regional matters. Legislation that defines local authority's participation on international cooperation should no longer be vague but be clearly stated; this was emphasised in the 2003 EXLINEA report, that regional and local administrations are most effective when it comes to dealing with cross-border cooperation.[61]

[60] CBCED (2007).

[61] EXLINEA (2003).

Trust is the behavioural intent that shows reliance on a partner and a determinant of relational outcomes.[62] Again, trust the "glue" that brings all relationship together.[63] Economic situations of neighbouring countries, past histories, geographical proximity or cultural proximity which is otherwise known as psychic distance are all important factors that affect trust.[64] People in different countries vary in their general willingness to trust, citing, for example, Asian countries such as Hong Kong, Japan or China, which are characterised by a lower propensity to trust as compared to the Western countries, such as the United States, which trusts more readily.[65] The presence of trust in any type of cooperation shows how healthy it is, which is demonstrated through active collaboration, satisfaction, effective communication, cooperation and a long-term perspective of both partners.[66] When connections in a network are strong and reliable, trust may be transferred from one entity to another; at this point, trust is based on the trustworthiness of the former associations.

6 Policy Considerations

Firstly, in order to achieve profitable cross-border cooperation, it is essential for each country to provide industries and enterprises with opportunities to participate more actively in the strategy work, as economic competitiveness depends on strong links between research, innovations and actors in industry.[67] One of the patterns of structural changes is about the discovery of regional diversification through the development of a new line of productive activity. Here, the "discovery" has to do with potential synergies (economies of scope, spillovers) that are likely to materialise between an existing branch of economic activity that is already well-established and another that is new and still underdeveloped.[68] Some of the linkages could include the traditional cooperation between higher institutions and enterprises, one border to another, increasing the participation of SMEs, scientific commercialisation/transfer which can be achieved through innovation,[69] by making available cost-effective support to SMEs in order to grow local knowledge. This calls for the creation of suitable regulatory policies at the regional level, as well as mobilising needful funding.[70]

[62] Barry and Doney (2011), pp. 305–323.
[63] Dion et al. (1995), pp. 1–9.
[64] Dikova (2009), pp. 38–49.
[65] Schumann (2009).
[66] Rotter (1967), pp. 651–665.
[67] Foray (2012).
[68] Foray et al. (2011).
[69] EU (2012), p. 28.
[70] EU (2009).

Secondly, the Baltics need rise up to create competent networks at all levels, develop support organisations and business associations. Report studies conducted by Cross Border Cooperation and Entrepreneurship Development (CBCED) in 2007 stated that some of the factors that will ensure and encourage cross-border collaborations are EU policies, business regulations such as trade policies, supply chain/logistics policies, economic environment and development, regional disparities and competent entrepreneurs. There is urgent need, especially for awareness creation, among the entrepreneurs about the benefits of strong inter-border corporation and for them to incorporate them into their business activities. Creation of awareness among entrepreneurs will make them begin to see the government (local, regional and national) as partners. Factors such as language, history, kinship, ethnicity, governance structures and regional formations have also been known to affect perception and entrepreneurial behaviour. Some of these initiatives can be through bank sponsorship and partnerships of SMEs to create market access for small and medium enterprises through presentations, exhibitions and opportunities to networks.[71]

Furthermore, most of the Baltic States suffer insufficient skillful workers because of low regional attractiveness such as low earning power; collaboration with a more diversified country like Russia will boost their potentials.[72] Therefore, to keep up with the present growth rate and to complement the smart specialisation growth throughout the Baltics, it is important, however, to promote inclusive growth to reduce disparities among the states.[73] This is also because most societal challenges are not limited or constrained to a particular country as they can be either universal or regionally similar and can be better solved jointly among or between closely related countries or those concerned. One of such solutions is to connect or form a linkage between the public sector and private sector and develop policies and practices that will be advantageous for a successful public–private partnership either nationally or internationally.[74] There was an argument by Foray[75] during the 2012 Smart Specialisation Conference in Bulgaria that the selection of smart specialisation should take place only when local entrepreneurial commitment and development have achieved a sufficient level of stability and coherence. There is a need to allow a new concept to enrich or enhance the existing policymaking process to better serve in organising a flexible and diversified framework and implementation.

Again, it is not far-fetching to say that countries with Estonia's, Latvia's or Lithuania's size and population cannot by themselves adequately address some of their societal challenges as they lack the critical mass and economies of scale to do so. In order to succeed, each of these countries will need to take advantage of the

[71] CBCED (2007).
[72] Prause (2014), pp. 3–19.
[73] Dudzińska (2013).
[74] EU (2012), p. 28.
[75] Foray (2012).

programmes of the European research, and innovation support instruments utilise the opportunities of synergies and opportunities that are beginning to arise within and outside the Baltic region. Because the basic driver of this approach is the strengthening of local innovation of each ecosystem, this will require the Baltic States to shift their focus on the process of alignment in a wider value chains in order to contribute to global challenges and be different from the traditional division of labour in fragmented global value chains.[76]

Also, one of the major obstacles to cross-border cooperation can be sum up as "political-economic", and it has to do with, one, the low purchasing power and insufficient market size of the eastern Baltics and, two. the cold political relations between countries like Estonia and Russia, which have created a major setback in gaining real economic benefits among these countries. In this light, it is advised that social interaction among involving parties in cross-border cooperation is very important, especially for a country like Russia. Personal relations can help participants to ease the tension created by "wrongful" perception, create a lasting bond, help them communicate better and lose inhibitions to mistrust and prejudge each other. Hence, this will serve as an indicator of the health and future well-being for a continued and lasting interest, and one of its major outcomes is trust. Already there are accusations cast on the EU and its role in the EaP from the Russian quarters that "the EU cast the partnership as a bureaucratic and economic project, without sufficiently mapping out the politics to prepare for certain contingencies". Arguably, some of those contingencies could be in their unresolved political confrontation with Russia. Apart from a unilateral political agreement, the states can put policies in place for the support of the traditional models of technology transfer such as licensing, science park, teaching company scheme model research clubs, all of which can be done through higher education trainings. It is imperative that the focal partners work towards resolving issues of mistrust. "Baby" steps taken one at time can foster long-lasting mutual reliance from both sides.

Lastly, although the decentralised alignment of bottom-up innovation and entrepreneurial activities can be accelerated and given direction by political leadership, the adoption of common objectives and common roadmaps across the regions that are concerned and the common societal challenges between concerned states are a powerful trigger for bundling energies. This will require shifting focus on the alignment of wider value chains, i.e. inter-border exchange, in order to contribute to global solutions and be distinguished from the traditional division of labour in fragmented global value chains. Hence, the Baltic States' strategies should apply to all regional blocks that have common projects and can also be extended in principle to other parts of the world and not just EU since it concerns policies for structural change or transitions with a global character (societal challenges that create new international markets).[77] The most pressing challenge now should be finding out how the "seemingly" excellent performing national research and innovation policy

[76] Further read EU (2012), p. 28.

[77] COM (2010).

can play a role to support sustainable growth, economic renewal and structural change through cross-border cooperation because cross-border cooperation will open up a convergence in each state.[78] The alignment of these efforts will be based on the recognition of the entrepreneurial dynamics—bottom-up and top-bottom—as a driver of these change process. RDI strategies should be employed to promote basic change in the economy and should not be treated as an objective in itself but should be used to resolve some of the societal challenges such as expanding and creating new business opportunities, especially in fast-growing sectors, that will be focused on economic outcome, one of which is the commercialisation of scientific activities with a global mindset.

7 Conclusions

Smart Specialisation will be the core of the EU agenda between 2014 and 2020; therefore, it will have significant impact on EU regional policy, especially on EU innovation development. This influence will not only affect the EU internally, but it will set the frame for future EU Eastern innovation partnership. Both the EU as well as Russia have their own Agendas 2020, but both lay as special focus on entrepreneurship, public–private partnerships and building of regional innovation and competence networks even if there exist still significant differences between the current situations in the EU and Russia. An important difference between the European Union and Russia lies in the international orientation of innovation and R&D strategies. Whereas the European approach has a high transnational agenda, the Russian innovation cooperation is still low. The European experience in transnational innovation projects could spur the reorientation and restructuring of the Russian innovation system. The EU needs to increase its efforts to partner with Russia. It is not enough to offer mutually exclusive trade deals with just the EaP countries. This thought was emphasised by Germany's new chief of relations with Russia and the eastern neighbourhood, Gernot Erler, in February 2015 when he said, "EU have to make sure there is no pressure between the Eastern Partnership and the Russian Customs Union".

The Baltic States need to rise up to create competent networks at all levels and develop support organisations and business associations. According to studies like the Cross Border Cooperation and Entrepreneurship Development, factors that will ensure and encourage cross-border collaborations are EU policies, business regulations such as trade policies, supply chain/logistics policies, economic environment and development, regional disparities and competent entrepreneurs. So there is urgent need for awareness creation among entrepreneurs, innovators and researchers about the benefits of strong inter-border corporation and for them to incorporate them into their development activities. But like the ESPON projects

[78] IUS (2014).

revealed, the creation of awareness is not enough; further aspects like multilevel governance approaches, networking activities, as well as factors such as language, history, business culture, transparency and trust have a strong impact on successful cross-border cooperation.

By zooming into the innovation frame conditions in both parts of the world, common issues on both sides of the EU borders appear and the main topics are related to finance, R&D transfer and entrepreneurship, so with an integrated EU Eastern innovation approach the cross-boundary cooperation could lead to a win-win situation for the EU and its Eastern partners, especially for EU innovation activities and innovative companies. Russia is a highly interesting area due to its well-educated R&D personnel, the still existing high-tech expertise in different areas and its huge and dynamic market.

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