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The Future of the EU's Eastern Partnership Policy: “Back to the Basics and Value Origins”

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The EU's Eastern Partnership (EaP) has been profoundly challenged by the Russian increased aggression against Ukraine and geopolitical rifts in Europe. This meant a certain sidelining of the policy as a regional framework - especially in its multilateral dimension - and a deliberate shift of focus into bilateral ties with Ukraine, Moldova and to some extent also Georgia represented in the Associated Trio. However, for many, this also brought the long-awaited benefits of granting Ukraine and Moldova the EU candidacy status and EU perspective to Georgia, for which, arguably, the EaP was a pre-room since the very beginning.

The necessity to cope with the Russian war against Ukraine with all its implications for Eastern Europe as well as the EU and West itself, engendered a much higher degree of pragmatism and *realpolitik*, which the EU has long tried to avoid. On a more positive side, the Russian aggression changed the European mindset on providing direct support for Ukraine's military and resilience, now seen more as an investment into a common European defence. Unfortunately, it also – for example – pushed the EU to again compromise its long-term stance on human rights and fundamental freedoms with the Azerbaijani oppressive regime, particularly regarding the energy dialogue.

In any case, developments around the EU Council transferring Ukraine and Moldova into the category of EU candidates (and a pre-step for Georgia too) reminded everybody of the long path towards the final membership in the EU by the number of pre-conditions that the European Commission articulated. Among them, the rule of law (RoL) and judiciary reforms, fight against corruption as well as building resilient, independent and accountable institutions were at the core of the EU's assessment. And it was Ukraine's signal of adopting the new Anti-Corruption Strategy for 2021-25¹ before the EU Council on 23-24 June – meant to

1 <https://nazk.gov.ua/en/news/the-verkhovna-rada-adopted-the-anti-corruption-strategy-for-2021-2025/>

satisfy European leaders and electorates that Ukraine will recommit to mutual cooperation based on norms and values – which has traditionally been central to the EaP.

Rule of Law as the Ultimate Challenge

The enormous pressure facing the EaP countries today, combined with Western attempts to support the suffering societies threatened by Russia as well as domestic tensions, uplifts the need to concentrate on the fundamental rights and freedoms, and RoL in particular. This became clear not only when Ukraine began to observe the enormous influence of corruption on the Russian armed forces, but also by the European Commission's proposed gigantic plan of Ukraine's post-war reconstruction under the #rebuildUkraine motto of hundreds of billions of euros.

Current circumstances in Ukraine and beyond has exposed in particular the rule of law principle among other founding principles of the EaP.² It is this principle that is now being undermined both by Russia and some of the EaP countries themselves and stood, for example, at the beginning of the larger political crisis between the EU and Georgia over the past year.

The question is now how to balance withstanding pressure from Russia with domestic reform processes and moving closer to the EU in terms of resources and capacities of the EaP countries. This has been a constant struggle most prominently in Ukraine, which has faced an ongoing aggression since at least 2014, but also needed to promote the well-being of its citizens while meeting conditions to its international partners and creditors. Nevertheless, it is also the Ukrainian example, which after many years shows that despite the complexity of the reforms, it is not only possible, but also necessary to make steps towards improving the RoL architecture and thus increasing citizens' trust of public governance. In this context, RoL reforms proved almost impossible to detach from good governance or the overall political and security situation in the region, which only in at least somehow stable conditions may move forward, as showed by President Volodymyr Zelensky's attempted, long overdue judiciary reforms still before the new phase of the Russian aggression started.

Since 2009, it became obvious that the reforms even in the more progressive countries can be reversed and are not linear in their development, most recently illustrated by Ukraine, Moldova or Georgia. It became clear that each country needs an individual and tailored-made approach.³ Research and national consultations into the state of play of the five active members of the EaP in 2021 documented that only very mixed results in the RoL area were achieved so far despite an enormous investment from the EU.⁴ This is the case for judiciary, state prosecution as well as police and other law enforcement bodies across the region. One of the outstanding problems identified was the lack of accountability, when independence from the political will and veto players was achieved at all. Especially in smaller countries, it was a particular problem to find new elites that would replace the "old guard-elites", often compromised by corruption, nepotism or political loyalties. Socio-economic factors and stable position of the key persons in the RoL architecture proved to play an important role too.

2 https://www.consilium.europa.eu/media/31797/2009_eap_declaration.pdf

3 <https://eap-csf.eu/eastern-partnership-index/#section-fillup-1>

4 https://dgap.org/sites/default/files/article_pdfs/Input%20Paper%20on%20RoL_Pavel_Havlicek.pdf

Putting Fundamental Principles in the Middle of EaP Again

What is currently happening in Eastern Europe is a battle between two systems and approaches to norms and values. One of which is the “dog-eats-dog” represented by the Russian barbarian war against Ukraine where no rules and principles apply and everything is possible. Contrary to that, the EU’s vision for the region is based on multilateralism, international law as well as fundamental rights and freedoms for all citizens. This civilisational choice is something that each of the EaP societies needs to make for itself. However, when such a decision is made - as it was in the case of Ukraine, Georgia and Moldova - the EU and Western community must help it materialise. This also includes keeping the doors open for Armenia and to some extent Azerbaijan, while supporting the opposition and civil society of Belarus.

Thus, the so far mostly unsuccessful EU support in this area must be adapted given the complex circumstances, and enhanced with a number of other practical instruments. The EU needs to step up its normative power as well as public communication towards the governments and societies alike under the “rule of law diplomacy”⁵, exercising more pressure but also offering more concrete benefits. This needs to be coordinated with a number of like-minded actors, including the United States as well as international partners, such as the Council of Europe that has together with its Venice Commission long worked on the issue.

The current monitoring exercise of needs and requirements as part of the EU accession talks is a useful and powerful instrument to exert pressure on the EaP governments to finally act, and it would be useful to have in Armenia, Azerbaijan and in the future also Belarus too. It gives new hooks and opportunities to the pro-reform actors across the region, including civil society, SMEs and representatives of the RoL bodies. These are the best allies of the West that are willing to support the change from inside, as proved particularly useful thanks to the so-called “sandwich effect” of combined pressure from inside and outside that helped to push for some of the transformative changes in the region after 2014.

Nevertheless, to look credible to support such a complex endeavor, it is necessary to put the EU’s own house in order and reverse the negative tendencies inside of the European project. Czechia and Sweden – the current and incoming Presidencies of the EU Council - are both in this context rather privileged by having strong democratic and RoL credentials, and both deeply engaged in the EaP region. Therefore, it might be their turn to re-evaluate the current EU’s policies and strategies promoting democracy and human rights in the world and Eastern Europe and prioritising those tools and instruments that are really helping the EaP countries to achieve the one overarching goal of building resilient societies that would withstand the pressure from both inside and outside.

Policy Recommendations:

- The EU must stop censoring itself in pointing out the actors that obstruct rule of law progress. Rather than primarily offering technical solutions, it could publicly highlight political deadlocks. Here, the EU ambassador at least in each of the three associated trio countries should have the backing of a vocal HR/VP. There could also be a more coordinated approach between member states, their embassies, EU delegations, and EU institutions. To identify and publicly challenge actors that block reforms, the EU will also have to rely on local whistleblowers, and it should therefore offer them protection.
- To help build the necessary sustainable consensus within the three associated countries,

5 <https://dgap.org/en/research/publications/rule-law-diplomacy>

the EU can cooperate with other multilateral institutions and democratic countries. While the Council of Europe and its Venice Commission also have to address internal weaknesses, they remain key institutions in this field. The United States under the Biden administration has also shown some renewed, albeit still very limited interest in democracy promotion in the region and it could become another vocal partner.

- The “sandwich effect” will be crucial not only to create political will but also to promote a deep-rooted RoL culture. Therefore, it is vital to include a wider range of civil society actors more systematically. The EU could involve professionalized and grassroots civil society in the monitoring of reform processes. For CSOs, better access to EU representatives and a platform for communication is important. At the same time, the EU delegations could foster transparent debates on the RoL within the wider public at a truly grassroots level and in local languages.
- The EU itself needs to put its own “house” in order to look more credible and achieve the desired results in its policy towards the EaP countries, especially the associated trio which is striving to become a part of the EU one day. The situation in Poland and Hungary is of particular concern in this respect, however, it is not only the two of them. The proactive and preventive exercise of rule of law monitoring reports, which not only identifies the key problems, but also helps to prevent further degradation of the rule of law culture in each of the EU members, could be implemented in the EaP region too.



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