



From status quo to status reform:  
Accountable Governance in  
Ukraine, Georgia and Moldova  
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## About the author

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## Eastern Partnership 2.0

is the project of the Center for Liberal Modernity (LibMod) that aims to bring innovative ideas and political recommendations for action from the region to the stakeholders in political Berlin. It was launched together with the Open Society Foundation in October 2019.

The program includes workshops, policy papers, briefings, and public discussions in the German capital. The overall focus of the project is to promote political debate and EU engagement with the Eastern Partnership countries, especially Ukraine, Georgia and Moldova.

The three association countries are to be provided with an opportunity to strengthen their mutual relations and establish intensive cooperation with partners and actors from politics, think tanks and civil society in Berlin.

# Executive summary

Since the 1990s, the states of the Eastern Partnership have wrestled with the challenge of reforming their justice systems and electoral legislation, fighting corruption and gradually bringing themselves into line with European standards. More than two decades down the road, the central question remains the same: how can these states free themselves from a tenacious status quo, in which each step forward is followed by another step back, to arrive at a stable programme of reforms? Since the establishment of the Eastern Partnership (EaP) in 2009 and the signing of the Association Agreements with Ukraine, Georgia and Moldova, an increase in the significance of these countries for the EU can be recorded; it is no longer restricted to minimal goal of a stable periphery and the development of secure corridors of action. Now, the focus is on the aim of deepening the political and economic integration of these countries.

**To provide effective support for rule-of-law reforms, the EU could adapt the newly revised West Balkan methodology for application to the associated countries.**

The analyses of all three categories – corruption, justice system and electoral reform – show that it is essential for reforms strengthening rule of law to continue in all three Eastern Partnership countries. A clear agreement on objectives and new instruments for assessing progress achieved are needed in order for this to happen.

## Introduction

The Achilles heel of the European Neighbourhood Policy lies in the delivery of sustainable progress towards democracy and the rule of law. In light of the new geopolitical situation, in which Russia and China are increasingly active in Europe, this strategy paper attempts to provide an overview of the current status of reforms and the political setbacks. It also describes specific steps needed to bring Ukraine, Georgia and Moldova closer to the EU. There has long been a firm awareness, in both the EU and the partner countries,

Enhanced cooperation – including financial support – in all areas should be grounded in the principle of “more for more”.

Greater priority should be attached to the rule of law and democratic governance within the framework of the EaP. The civil societies and the democratic political forces in the associated countries have high expectations for the role of the EU in these areas. The experiences in the area of visa facilitation have shown that negotiations on reforms that are of mutual interest can proceed very successfully if based on concrete criteria and jointly defined objectives.

To provide effective support for rule-of-law reforms, the EU could adapt the newly revised West Balkan methodology for application to the associated countries. The EU’s new Justice Scoreboard is another tool that would be useful. This kind of conditionality could facilitate the implementation of the principle of “more for more” and introduce new assessment tools to replace past approaches that have proven unsatisfactory. Investing a greater degree of commitment in relations between the EU and the associated countries would also involve introducing the possibility of financial sanctions (with the exception of the assistance provided to civil society) in the event that agreements are violated.

We urgently recommend that the methodology developed for the accession process with the Balkan states also be used for the associated countries, without prejudice to the question of EU accession on their part. However, an affirmation of article 49 of the Treaty on the European Union would be more than welcome: the prospect of EU membership remains the most powerful motivation for reforms in the partner countries. The liberal democratic state governed by the rule of law must be the goal and the guiding standard in this regard. The Federal Republic of Germany should use its presidency of the EU Council to call for this European prospect for and vis-à-vis the associated countries.

that a more differentiated approach for the associated countries would facilitate appropriate cooperation and inject greater dynamism into the Eastern Partnership (EaP). This strategy paper is based on country-specific analyses and suggestions provided by Dmytro Shulga (Ukraine), Olena Halushka (Ukraine), Eugene Krapyvin (Ukraine), Olga Aivazovska (Ukraine), Mikheil Benidze (Georgia) and Mihai Mogildea (Moldova). We would like to take this opportunity to extend sincere gratitude to them for this input.

# 1. Expectations in the associated countries vis-à-vis Germany and the EU

The planned Eastern Partnership summit meeting in March of 2021 represents a crucial juncture. At this meeting, the heads of state and government will set a new framework for the next decade of the Eastern Partnership (EaP). If substantial progress is to be made, a more binding relationship and a recognisable political will be necessary. The emerging “smallest common denominator” will not suffice to provide fresh impetus to the EaP.

Once the structured consultation on the future of the EaP in the autumn of 2019 drew to a close,<sup>1</sup> the new Commission faced the – not undaunting – task of producing a new concept that it could present by March of 2020.<sup>2</sup> Many observers predicted that the description of the concept would remain very general, and this was indeed the case. The joint communication on the Eastern Partnership<sup>3</sup> released in March lacks concretisation and binding commitment. It maintains an eloquent silence regarding a joint initiative put forth by the three associated countries to negotiate matters of common concern in an EaP-plus format. In short, the status quo is being perpetuated. The EU, though it routinely reiterates the importance of the principle of “more for more”, offers no concrete political prospects should the “more” actually be delivered.

The joint communication contains only one short passage addressing the three subject areas discussed in this paper and offers nothing in the way of a strategy for moving forward with cooperation in this area. It is worth recalling that this is a framework document and that the next steps will involve defining indicators for tracking its implementation.

The prospect of accession has never been set forth *expressis verbis* but has also never been explicitly ruled out, and it is no secret that this has always been problematic for the Eastern Partnership.<sup>4</sup> Increasingly, though, the lack of concrete prospects and a declared

**Germany should put redesigning the Eastern Partnership on the European agenda and give greater substance to the policy framework proposed by the European Commission.**

political will make the EaP appear to be nothing more than a castle in the air, incapable of developing any momentum for reform.

Examined in the cold light of day, the Eastern Partnership has never been a priority in the EU’s foreign policy. It has always been eclipsed by other issues and flashpoints competing for attention and dominating the political agenda. This is still true today.

Nevertheless, the majority of the population in the associated countries trust the European Union, also and especially for normative reasons. The EU definitely should not count on this to remain the case over the longer term. The new geopolitical competition (particularly with Russia and China) lends greater urgency to the need for a binding, results-oriented concept for the economic and political integration of Europe. For this reason, too, it is imperative that the Eastern Partnership be upgraded. The democratic forces in the partner countries are hoping that pressure from the EU can push their ruling elites to undertake reforms. Irrespective of relations with the individual national governments, the EU should strengthen cooperation with civil society and build up its toolkit for supporting city partnerships, cultural exchanges, research collaboration, education and training programmes, etc.

The German EU Council presidency can play a crucial role in revitalising the EaP. Germany should put redesigning the EaP on the European agenda and give greater substance to the policy framework proposed by the European Commission. In this context, it is important that greater emphasis should be placed on the dialogue on the rule of law and on democratic governance. People in these countries are essentially counting on Germany to take a leading role and get things moving forward during its Council presidency. The EU has the resources that would enable it to influence the internal transformation of these states from the outside, and it should make greater use of this potential.

1 See the press release of the EU Commission headed The European Union opens a structured consultation on the future Eastern Partnership, 26 Jul. 2019: [https://ec.europa.eu/commission/presscorner/detail/en/MEX\\_19\\_4770](https://ec.europa.eu/commission/presscorner/detail/en/MEX_19_4770)

2 Cf. Cristina Gherasimov, An Eastern Policy Update, but No Upgrade, DGAP Policy Brief, no.5, March 2020, p.4, at: [https://www.ssoar.info/ssoar/bitstream/handle/document/66932/ssoar-2020-gherasimov-An\\_Eastern\\_Policy\\_Update\\_but.pdf?sequence=1&isAllowed=y](https://www.ssoar.info/ssoar/bitstream/handle/document/66932/ssoar-2020-gherasimov-An_Eastern_Policy_Update_but.pdf?sequence=1&isAllowed=y)

3 See the Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions. Eastern Partnership policy beyond 2020. Reinforcing Resilience - an Eastern Partnership that delivers for all, 18 Mar. 2020, JOIN (2020) 7 final: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/joint\\_communication\\_on\\_the\\_eap\\_policy\\_beyond\\_2020.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/joint_communication_on_the_eap_policy_beyond_2020.pdf)

4 See the motion of the CDU/CSU and SPD accepted by the German Bundestag entitled Zehn Jahre Östliche Partnerschaft der Europäischen Union – Für eine intensive Zusammenarbeit auf dem Weg zu Wohlstand, Sicherheit und Demokratie. Printed paper 19/9916, p. 2.

## 2. Summary of the status quo in and challenges facing the individual countries

### A. Ukraine

No other country has fought for its European path with such determination. The Revolution of Dignity made it poignantly clear that people in Ukraine were prepared to put their lives on the line for the sake of a European future and European values like freedom, democracy and the rule of law. Despite ceaseless Russian aggression and a state of war, Ukraine has, with strong financial support from the EU, pursued ambitious reforms. Their realisation continues to pose a challenge for the Ukrainian government. One year into the presidency of Volodymyr Zelensky, a first, tentative appraisal suggests that the new president and his team do not yet have a clear vision of reforms that are needed. The political changes in 2019 do not appear to have brought much in the way of change to the political culture or habits of power. At any rate, there is no evidence of sense of certainty about the stability and sustainability of the political course being steered.

#### i. The fight against corruption

In 2018, Ukraine introduced an anti-corruption reform that was quite impressive.<sup>5</sup> Of particular note in this respect is the creation of the High Anti-Corruption Court (HACC) to preside over corruption cases involving high ranking officials; its creation had been a key condition laid down by the EU. At the urging of the Venice Commission, the decision was taken that the HACC judges should be selected in a transparent procedure. This resulted in a precedent-setting process: following an initiative of Ukrainian civil society, international experts were able to directly influence the selection of judges for the first time.

Nonetheless, the newly created institutions will still have to demonstrate the will and ability to successfully prosecute cases (that are not politically motivated) of corruption at the highest levels. Recent events suggest that the new government may not be fully equal to the demands entailed by the principles of transparency and accountability that it itself set down. Thus, ensuring the independence of the anti-corruption institutions created in the last few years remains a challenge.

#### ii. The justice system

Reforms of the judiciary and law enforcement systems introduced important changes in 2016, and new framework legislation on the judiciary, public prosecutors, the police and the Constitutional Court was adopted. The outcome was basically that a new Supreme Court was established, and the qualifications of nearly half of sitting judges underwent evaluation. There were several, largely unsuccessful attempts to fill judgeships and posts in the public prosecutor's office and the police. One third of the country's judges voluntarily resigned due to the more extensive transparency requirements. After the 2019 elections, the Ukrainian government enacted a new wave of legislation<sup>6</sup> aimed at breathing new life into the flagging justice system reforms, but the verdict is still out on whether an independent judiciary has indeed been created. Civil society, in cooperation with the international community, has an especially important role to play in this area. Freeing the justice system of political influence and thus generating trust in state institutions amongst the public remains one of the most important challenges and requirements for the EU's integration of the Ukraine.<sup>7</sup>

#### iii. Electoral reform

In 2019, Ukraine implemented an electoral reform aimed at introducing a system of proportional representation with open party lists. In 2016, public funding for political parties was introduced with the aim of eliminating their dependence on (pseudo) donations from the business sector. Ukraine held free presidential, parliamentary and local elections by secret ballot in 2014, 2015 and 2019. The first local elections to be held after the electoral reform are slated for October of 2020; one can expect a number of conflicts between the central (president) and local (mayors of cities/heads of local councils) levels to accompany them.

**One year into the presidency of Zelensky, a first, tentative appraisal suggests that the new president and his team do not yet have a clear vision of reforms that are needed.**

<sup>5</sup> Cf. the report of the Open Government Partnership (OPG), Independent Reporting Mechanism (IRM): Ukraine Design Report 2018- 2020, p.7: [https://www.opengovpartnership.org/wp-content/uploads/2020/02/Ukraine\\_Design-Report\\_2018-2020\\_EN.pdf](https://www.opengovpartnership.org/wp-content/uploads/2020/02/Ukraine_Design-Report_2018-2020_EN.pdf)

<sup>6</sup> For a detailed list see pages 27 – 28 of the Ukrainian government's 2019 AA implementation report: [https://eu-ua.org/sites/default/files/inline/files/ar\\_aa\\_implementation-2019-4\\_eng.pdf](https://eu-ua.org/sites/default/files/inline/files/ar_aa_implementation-2019-4_eng.pdf); and page 9 of the EU's report on AA implementation of the same year: [https://eeas.europa.eu/sites/eeas/files/swd\\_2019\\_433\\_f1\\_joint\\_staff\\_working\\_paper\\_en\\_v4\\_p1\\_1056243.pdf](https://eeas.europa.eu/sites/eeas/files/swd_2019_433_f1_joint_staff_working_paper_en_v4_p1_1056243.pdf)

<sup>7</sup> See Cristina Gherasimov and Iryna Solonenko, Rule of Law Reform after Zelensky's First Year, DGAP Analyses, 26 May 2020: <https://dgap.org/en/research/publications/rule-law-reform-after-zelenskyis-first-year>

## B. Georgia

Georgia has been following an ambitious path of democratic transformation since 1991: it is not by chance that the Caucasian state has declared that European integration is its foreign policy aim. Despite the Russian occupation of 20 per cent of Georgia's territory, the country has persevered in moving forward along the path to the EU and is seen as a forerunner among the Eastern Partnership countries to date.

The country faces several major challenges relating to the rule of law and democratic development, however.<sup>8</sup> While it is true that Georgia's various national governments have carried out successful reforms – especially during their first terms in office – there have also been several instances when the political leadership has used tactics from the fake-democracy playbook in order to retain power. While the Euro-Atlantic course enjoys strong public support in Georgia, democratic backsliding over the recent years has raised concerns about whether the current governing party is maintaining a strong and ambitious commitment to this path. In light of this, the elections taking place in autumn of 2020 may turn out to be some of the most decisive elections in the country's recent history.

### i. The fight against corruption

After the Rose Revolution in 2003, Georgia made important headway in its battle against corruption, particularly with respect to the elimination of day-to-day corruption in public administration. Surveys show that these efforts were sustained in the various governments, and petty corruption has remained consistently low.<sup>9</sup> In its 2019 Corruption Perception Index, Transparency International ranked Georgia as the 44th least-corrupt nation, which places it above some of the EU states. However, higher-level "elite corruption" continues to be a serious problem, the more so as power is concentrated among a small group of persons in the various administrations.

The oligarch monopoly over decision-making has been the greatest challenge facing Georgia's state institutions and government structures in recent years. Persons with

key authority in these institutions and structures are de-facto personally accountable to an oligarch. This degree of informal governance is simply unacceptable by European standards. Georgia's anti-corruption and law enforcement authorities are neither willing nor able to respond appropriately to instances of top-level corruption, for instance that involving party or campaign financing. Georgia should therefore take swift action to set up an independent anti-corruption agency capable of fighting corruption among top-level elites.<sup>10</sup>

### ii. The justice system

Georgia has been trying to establish an independent judiciary for decades. Unfortunately, courts continue to be subject to substantial political interference.<sup>11</sup> Despite vigorous objections from civil society, the Georgian Dream party enacted legislation in 2019 giving an influential group of judges the power to nominate candidates loyal to the governing party for Supreme Court judgeships. As a result, the list of nominees included several candidates with ties to the governing party.<sup>12</sup> Georgia's parliament approved 14 of the 19 nominees, including individuals who clearly lacked the appropriate expertise and independence. Their appointment has changed the composition of the Supreme Court for years to come, and secured the interests of influential groups of judges. In taking these actions, which have been strongly criticised by the OSCE,<sup>13</sup> the parliament disregarded recommendations of the Venice Commission regarding the optimal number of judges to be appointed. The European Parliament's current draft report on the implementation of the Association Agreement with Georgia calls on Georgia to revise the procedure for the selection of judges to ensure that the recommendations of the Venice Commission are fully implemented. It also mentions that the recent procedure for the selection of Supreme Court judges suffered from severe shortcomings.<sup>14</sup>

8 See Freedom House, *Freedom in the World 2019*. Georgia, 21 Feb. 2020: <https://freedomhouse.org/country/georgia/freedom-world/2019>.

9 Uwe Halbach, *Korruption und Korruptionsbekämpfung im Südkaukasus*, SWP-Studie 8, May 2020, p.9: <https://www.swp-berlin.org/publikation/korruption-und-korruptionsbekaempfung-im-suedkaukasus>

10 Cf. The report of the Open Government Partnership (OPG), Independent Reporting Mechanism (IRM): Georgia Design Report 2018– 2020, p. 10: [https://www.opengovpartnership.org/wp-content/uploads/2020/04/Georgia\\_Design-Report\\_2018-2019\\_EN\\_for-public-comment.pdf](https://www.opengovpartnership.org/wp-content/uploads/2020/04/Georgia_Design-Report_2018-2019_EN_for-public-comment.pdf)

11 See the report of the Eastern Partnership Civil Society Forum Eastern Partnership Index 2017. Charting Progress in European Integration, Democratic Reforms, and Sustainable Development, Dec. 2018, p. 57: <https://eap-csf.eu/wp-content/uploads/EaP-Index-2017.pdf>

12 See the statement issued by the Parliamentary Assembly of the Council of Europe (PACE) on 13 Dec. 2019, headed "Monitors regret appointment of 14 judges by Georgian parliament" at: <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=7737&lang=2>

13 See the OSCE/ODIHR press release headed "Political wrangling compromises the independence of appointments to Georgia's highest court, ODIHR report finds", dated 09 Jan. 2020: <https://www.osce.org/odihr/443500>. See also ODIHR, *Second Report on the Nomination and Appointment of Supreme Court Judges in Georgia*. June – December 2019, ODIHR Report, 09 Jan. 2020, <https://www.osce.org/files/f/documents/2/6/443494.pdf>

14 In the draft report on the implementation of the EU Association Agreement with Georgia, (2019/2200(INI)), Committee on Foreign Affairs, Rapporteur: Sven Mikser, 23 Mar. 2020

## C. Moldova

### iii. Electoral reform

Despite significant improvements in the electoral process in Georgia, the process continues to be weak in some respects, including the creation of an even playing field before the elections and rules governing the allocation of parliamentary seats.<sup>15</sup> Georgia's system for parliamentary elections has long been criticised as giving an unfair advantage to the governing party. It is de-facto impossible for the opposition and the parliament to realise efficient control over the executive. In this area, too, the chairman of the governing party clearly wields a disproportionate influence.

Following a series of bloody protests carried out by young persons and the united opposition and under strong diplomatic pressure from Europe and the USA, the Georgian Dream party and the opposition parties reached what may turn out to be a breakthrough agreement on 8 March 2020. The parties agreed that the 2020 parliamentary elections will be held under a new mixed electoral system (as will any subsequent early elections held between 2020 and 2024). They also agreed that a fully proportional parliamentary system will come into effect in October of 2024, which is what the current Constitution calls for.

Despite the fact that the deal does not provide for an immediate transition to the fully proportional system, it was welcomed by civil society organisations, who hailed it as a milestone for the creation of a pre-election environment conducive to free and fair elections.

**While the Euro-Atlantic course enjoys strong public support in Georgia, democratic backsliding over the recent years has raised concerns about whether the current governing party is maintaining a strong and ambitious commitment to this path.**

Every Moldovan national government in office since the Association Agreement with the EU was signed in 2014 has declared European integration to be their chief foreign policy aim, but the country's European ambitions are severely constrained by a lack of the ability to carry through reforms.

Moldova has a mixed record in its implementation of its Association Agreement. On the positive side, it has achieved a number of important results in areas like trade, transport, mobility, the energy network and border security, some of which have resulted in substantial benefits for the Moldovan population. On the negative side, efforts to reform the justice system, fight corruption and move forward with democratisation have stalled. The justice system can be described as political, to an extent including interference by private interests in the judiciary. Given these circumstances, the EU has, rightly, adopted a more rigorous conditionality and recalibrated its financial support to Moldova.

### i. The fight against corruption

Several important reforms were developed at the institutional level in the last few years. First, in 2016, the National Integrity Commission (NIC) in the National Integrity Agency (NIA) was restructured. 2017 saw the creation of the Agency for the Recovery of the Criminal Assets (ARCA), charged with carrying out financial investigations aimed at the seizure and confiscation of assets deriving from criminal activities.

However, the new bodies did not noticeably accelerate the trial against Moldova's "bank fraud masterminds".<sup>16</sup> Despite the fact that the Kroll reports<sup>17</sup> point to a number of patterns and enterprises and politicians that were involved in the fraudulent cartel, very few results have been obtained. No political decision-makers have been convicted in the "Russian laundromat" case. At this time, investigations against 16 judges are still underway. Both cases testify to a lack of political will to reduce the influence of interest groups on the institutions of government and thus contribute to the prevention of and fight against corruption at the highest level.<sup>18</sup>

<sup>15</sup> Under Georgia's current electoral system, 77 out of a total of 150 seats in the unicameral parliament are allocated on the basis of proportional representation by a national constituency, and 73 seats are won by majority vote in single seat districts.

<sup>16</sup> The Moldovan bank fraud scandal of 2014 involved the disappearance of over a billion dollars from the country's banking system. It led to a suspension of financial assistance from the EU, the International Monetary Fund and the World Bank in 2015.

<sup>17</sup> The corporate investigation firm Kroll was hired by the National Bank of Moldova to investigate the theft.

<sup>18</sup> Cf. the Open Government Partnership (OPG) report, Independent Reporting Mechanism (IRM): Moldova, Design Report 2018–2020, p.7: [https://www.opengovpartnership.org/wp-content/uploads/2020/05/Moldova\\_Design-Report\\_2019-2020\\_EN\\_for-public-comment.pdf](https://www.opengovpartnership.org/wp-content/uploads/2020/05/Moldova_Design-Report_2019-2020_EN_for-public-comment.pdf)

## ii. Reform of the justice system

A number of structural reforms in the Moldovan justice system have been carried out in the last few years.<sup>19</sup> In 2018, the Ministry of Justice drew up a policy paper entitled the “Small-Scale Justice Reform” which defined the objective of establishing the autonomy of the judiciary vis-à-vis the Superior Council of Magistracy. Introducing a single-term limit for members of the Supreme Council of Magistracy was another objective. The paper was never adopted by the parliament.

In 2019, Maia Sandu’s government called for a revised system for the evaluation of judges and public prosecutors with the involvement of external experts and through more rigorous revision mechanisms. The current government has taken over the first reform strategy initiative, but rejected other elements of it, including the external evaluation. There is great concern among civil society about whether a transparent procedure be developed given these circumstances.

## iii. Electoral reform

The last few years have brought several changes in the laws governing presidential and parliamentary elections. In a controversial decision in 2016, the Constitutional Court ruled that the Moldovan population was entitled to elect its president directly, taking this power away from the legislature, where it had rested for several years. One year later, a parliamentary majority led by the Democratic Party changed the electoral system from one based fully on proportional representation to a mixed electoral system. Then, in August of 2019, the system was changed back to a proportional representation system by a joint vote of the Socialist MPs and those of the ACUM<sup>20</sup> bloc.

Aside from the electoral formula, the election process in Moldova is currently influenced by three important issues. The first of these is the participation of the Moldovan diaspora in elections, which is very low. Only 76,000 of the more than one million Moldovan citizens living abroad (7.6 per cent) exercised their right to vote in the last parliamentary elections. The second is election corruption, a widespread phenomenon in Moldova. The third issue is the independence of the Central Electoral Commission and the integrity of its members, which have been fiercely disputed in recent years.

The justice system in Moldova can be described as political, to an extent including interference by private interests in the judiciary.

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<sup>19</sup> Ministry of Justice of the Republic of Moldova, The Justice Sector Development Strategy for the Years 2019-2022, p. 7, 28 Jan. 2020.

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<sup>20</sup> ACUM is an electoral bloc formed by two main pro-European parties: Party of Action and Solidarity and the Dignity and Truth Platform Party.

### 3. How can the EU effectively support reforms that will strengthen the rule of law in the associated countries? Which instruments might stimulate new efforts?

It must be stated that there are substantial deficits in the area of Accountable Governance in all three countries. Insufficient independence and integrity in the justice system, the misuse of state institutions by political actors for the purposes of retaining power and widespread elite corruption are the core problems in this respect. Moreover, none of the three countries has managed to implement reforms resulting in the creation of a stable party system made up of parties that are anchored in society and have programmes that reflect shared convictions.

Judging by past experience, the greater the EU's involvement in a reform process is and the more specifically the objectives of the reform are spelled out, the more successful its implementation turns out to be.

The European Commission draws up annual reports within the scope of its monitoring of AA implementation; the individual governments also prepare their own reports. Civil society plays a role in monitoring implementation as well, the aim being to obtain a picture that is as objective as possible. In addition, the EU can draw on a broad set of tools that are available within the framework of the Eastern Partnership: resolutions of the Association Council, financial and technical assistance, public statements or calls directed at the national governments, consultations with individual governments with the participation of independent experts, etc. Use of these instruments varies from one issue to the next, though. An example of effective practise in this regard are the negotiations on visa facilitation with all three associated countries, which went very successfully, using specific criteria and conditionality. This successful model should be adopted in other areas of activity as well.

It should be noted, though, that the success achieved in the area of visa facilitation is linked to the actual result being targeted: no reform has made it possible for people to experience European freedom to the extent that the visa-free regime does. A visa-free regime was introduced for Moldova in 2014 and for Ukraine and Georgia in 2017, after their governments had acted to amend the relevant legislation. Since then, all three countries have been subject to annual assessment by the EU within the framework of the visa suspension mechanism, to ensure that fulfilment VLAP<sup>21</sup> requirements continue to be met.

<sup>21</sup> Visa Liberalisation Action Plan

The area of rule of law presents a quite different picture: here, the EU does not seek to have countries implement concrete action plans with well-formulated benchmarks and deadlines. The language on political cooperation in the Association Agreements is very general compared to that in the chapters dealing with economic matters, and the only instrument used to assess the quality of political cooperation in this area is the annual implementation report. These reports provide a general overview of reforms that have or have not been implemented.<sup>22</sup> The agreements themselves do not provide for sanctions. Moreover, the reports, crucially, do not contain recommendations for actions to be taken during the next period, whose implementation could be assessed in the following report.

The EU Justice Scoreboard is an example of a potentially helpful tool for use with the EaP countries. In 2019, the new EU Commission proposed the establishment of a new, comprehensive European rule of law mechanism that would be binding for all member countries and is intended to provide a standardised approach for monitoring and reporting on every member state. The main feature of the new set of tools is the introduction of a regime for monitoring practices relating to the rule of law. Within the scope of its rule of law monitoring, the Commission will prepare an annual report based on intensive and continual dialogue with all member states. In addition, the proposed mechanism would enable the flow of EU financial support into states with rule of law deficiencies to be restricted.<sup>23</sup>

<sup>22</sup> See the current reports on the implementation of the association agreements and „20 Deliverables for 2020“: <http://ipre.md/2019/10/30/9070/?lang=en>; <https://www.eap-csf.md/wp-content/uploads/2019/12/Evaluation-of-the-implementation-of-20-Deliverables-for-2020-RM.pdf>; <https://www.civic-synergy.org.ua/en/analytics/ukraine-s-implementation-of-20-eastern-partnership-deliverables-for-2020-2/>; [https://eu-ua.org/sites/default/files/inline/files/ar\\_aa\\_implementation-2019-4\\_eng.pdf](https://eu-ua.org/sites/default/files/inline/files/ar_aa_implementation-2019-4_eng.pdf); see also <https://osgf.ge/en/assessment-of-implementation-of-eu-georgia-association-agenda>.

<sup>23</sup> Cf. Molly O'Neal, The European Commission's Enhanced Rule of Law Mechanism, SWP Comment, no. 48, December 2019: [https://www.swpberlin.org/fileadmin/contents/products/comments/2019C48\\_oneal.pdf](https://www.swpberlin.org/fileadmin/contents/products/comments/2019C48_oneal.pdf), and also the EU factsheet The EU's Rule of Law Toolbox: [https://ec.europa.eu/info/sites/info/files/rule\\_of\\_law\\_factsheet\\_1.pdf](https://ec.europa.eu/info/sites/info/files/rule_of_law_factsheet_1.pdf).

The methodology developed recently by the European Commission for the accession negotiations with the Western Balkan countries is another tool that might be useful for the associated countries and is perhaps a more realistic option from a political perspective. Announced in February of 2020, the approach proposed by the EU Commission is intended to give the EU integration process greater credibility and a stronger political steer.<sup>24</sup> By incorporating a strong focus on reforms in the area of the rule of law in the annual progress reports, including defined benchmarks and more institutionalised control, the EU hopes to avoid of some of the less than successful outcomes seen in this area in the past. Also new in the methodology is the increased involvement of member states, which are invited to send experts to participate in monitoring on the ground in the individual countries. Member states will also have regular opportunities to review and monitor overall progress. Moreover, the revised methodology includes a sanction mechanism for use in the event of serious or prolonged backsliding. The member states can decide to suspend negotiations and to adjust the scope and intensity of funding (with the exception of support to civil society). It would also be possible to withdraw previously granted concessions for internal market access.

Whether the EU is willing to use these tools in its cooperation with the associated countries as well will be a key question for the next stage of the EaP. Civil society and the pro-European forces in these countries are looking to the EU to come out with a long-term future-oriented agenda defining political aims and new benchmarks for the Eastern Partnership that will pave the way for the establishment of closer relations.

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<sup>24</sup> See COM(2020)57, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Enhancing the accession process – A credible EU perspective for the Western Balkans, p. 5 and 6: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/enlargement-methodology\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/enlargement-methodology_en.pdf)

## 4. Recommendations for the German presidency of the EU Council

1. Germany should work towards increasing the importance of the Eastern Partnership for the EU's political agenda.
2. The framework document presented by the EU Commission should be expanded to include concrete goals, benchmarks and indicators with which to assess progress achieved.
3. During the German presidency of the EU Council, political cooperation with Ukraine, Georgia and Moldova should be deepened and reoriented. This new orientation should include a more active involvement by the EU in the reforms in the area of the rule of law and a greater emphasis on them. This would strengthen civil society in the three associated countries; newly won faith in the possibility of a successful reform process would increase the pressure on the government in the individual countries.
4. Berlin should work towards the creation of a new and broader set of tools for use in assessing progress towards reforms strengthening the rule of law. The methodology developed for candidate countries in the Western Balkans could, without prejudice to the question of EU accession, serve as a blueprint for this. The tools it offers could provide new momentum to the reforms in these countries.
5. Clearly defined conditionality (*quid pro quo*) should be introduced in relation to the future provision of macro-financial assistance (with the exception of support for civil society), enabling progress towards reforms to be linked directly to financial benefits.
6. The Federal Government should work within the EU to arrive at a binding European prospect for the EaP that is based on conditions that are demonstrably rational and on the transparent analysis of progress achieved. Under article 49 of the Treaty on European Union, associated countries are entitled to apply to become members of the EU provided that they meet the stipulated requirements. Viewed from another perspective, their accession would contribute to a consolidation of democracy, the rule of law and security in Europe, all of which are also in the EU's interests.
7. Germany should support the creation of a special EU-plus-associated countries format. Through regular meetings with the representatives of the EU institutions, this format should facilitate the identification of challenges and interests shared by the EU and the partner countries and the development of joint strategies to address them. In particular, strong involvement by the Baltic states, the Visegrad states and Sweden in this format would be beneficial. The format should help keep the convergence process with partner states on track and moving forward.
8. Ways for associated states to gradually form closer ties with well-established EU organisations should be created. Observer status at the European Judicial Network (EJN) might be one option, for instance. Another possibility might be regular participation in COEST (EU Council Working Party on Eastern Europe and Central Asia). Stepping up the exchange of views and information between associated states and the European Parliament also seems advisable.
9. Rapid reactions: the mere pretence of reform should trigger the swift use of diplomatic pressure. Various experiences have shown that this tool can have a substantial impact (electoral reform in Georgia being a case in point).
10. Stronger support for and involvement of civil society (city partnerships, cultural exchanges, research collaboration, cooperation with NGOs). It is in civil society that the strongest will for the implementation of reforms lies.



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This paper argues that greater priority should be attached to the rule of law and democratic governance within the framework of the Eastern Partnership. The civil societies and the democratic political forces in the associated countries have high expectations for the role of the EU in these areas.



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