



**DIRECTORATE-GENERAL FOR EXTERNAL POLICIES  
POLICY DEPARTMENT**



# **HUMAN RIGHTS IN EASTERN PARTNERSHIP COUNTRIES**

**DROI**



DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION

**DIRECTORATE B**

POLICY DEPARTMENT

**BRIEFING PAPER**

## **HUMAN RIGHTS IN EASTERN PARTNERSHIP COUNTRIES**

### **Abstract**

The paper gives an account of the state of human rights and democratic institutions in the EaP countries and discusses the EU concepts and tools for human rights and democracy promotion in the region, including the proposals related to the May 2011 ENP Communication (ENPI Civil Society Facility, European Endowment for Democracy, etc.), as well as the role of the Euronest. It concludes the EaP region has not been presenting a bright picture over the last couple of years; with some exceptions, the human right records have deteriorated and the democratic development have been backsliding. It suggests possible ways how the European Parliament could make a better use of the existing and emerging EU tools to promote human rights and democratization of the EaP countries.

This briefing paper was requested by the European Parliament's Committee on Subcommittee on Human Rights.

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## TABLE OF CONTENTS

|     |  |    |
|-----|--|----|
|     | LIST OF TABLES .....   | 4  |
| 1.  | EXECUTIVE SUMMARY .....  | 5  |
| 2.  | INTRODUCTION .....   | 6  |
| 3.  | STATE OF DEMOCRATIC GOVERNANCE AND HUMAN RIGHTS IN THE EAP COUNTRIES.....          | 7  |
| 3.1 | OVERVIEW.....  | 7  |
| 3.2 | MAIN REGIONAL COMMITMENTS AND MECHANISMS.....                                      | 18 |
| 3.3 | PERCEPTION OF THE OSCE AND COUNCIL OF EUROPE’S ACTIVITY IN THE REGION.....         | 19 |
| 4.  | ENP REVIEW.....  | 20 |
| 4.1 | BENCHMARKS.....  | 21 |
| 4.2 | ENPI CIVIL SOCIETY INITIATIVE (FACILITY) .....                                     | 22 |
| 4.3 | EUROPEAN ENDOWMENT FOR DEMOCRACY (EED) .....                                       | 23 |
| 5.  | EU’S PROMOTION OF DEMOCRACY AND HUMAN RIGHTS – SELECTED INSTRUMENTS AND TOOLS..... | 24 |
| 5.1 | EUROPEAN INSTRUMENT FOR DEMOCRACY AND HUMAN RIGHTS (EIDHR) .....                   | 24 |
| 5.2 | HUMAN RIGHTS DIALOGUES .....   | 25 |
| 5.3 | COUNCIL CONCLUSIONS ON DEMOCRACY SUPPORT .....                                     | 26 |
| 6.  | HOW TO INCREASE POLICY EFFECTIVENESS AND THE ROLE OF THE EUROPEAN PARLIAMENT ..... | 27 |
| 6.1 | EURONEST – CONTEXT AND OPPORTUNITIES.....  | 27 |
| 6.2 | THE POLISH PRESIDENCY .....  | 27 |
| 6.3 | ROLE OF THE CIVIL SOCIETY .....  | 28 |
| 7.  | REFERENCES.....  | 29 |

**LIST OF TABLES**

Table 1: Democratic Score (overall evaluation).....8

Table 2: Media .....9

Table 3: Civil Society..... 11

Table 4: National Democratic Governance ..... 12

Table 5: Corruption..... 14

Table 6: Corruption Perception Index..... 14

Table 7: Electoral Processes ..... 15

Table 8: Judicial Framework ..... 16

Table 9: Local Democratic Governance..... 17

## 1. EXECUTIVE SUMMARY

- The Eastern Partnership region has been presenting a disturbing picture over the last couple of years; with the exceptions (Moldova) the human rights records have deteriorated and the democratic developments have been backsliding. The results of EU policies (ENP, Eastern Partnership) cannot be assessed as positive with exception of some countries (Moldova), and some sectoral reforms.
- The efforts of the Council of Europe and of OSCE especially are perceived with mixed feelings in the region. In order to ensure the effective use of EU resources, the European Parliament should closely scrutinize the projects funded from the EU budget that are implemented by those organizations.
- The European Parliament should launch a dialogue with the relevant civil society actors, academia and other EU institutions on the issue of ENP/EaP benchmarking in order to develop list of available indexes, methodologies and agree on comprehensive cost-benefit approach that would not consume unnecessary time, and on the measures that would follow the non-compliance with the benchmarks.
- The European Parliament should try to instigate a parallel process of EaP benchmarks identification within the inclusive consultative process in relevant EaP countries; Euronest can be used as one of the forums promoting the idea.
- The recent ENP review suggests new concepts and instruments for the neighbouring countries. European Parliament should engage actively in shaping their content. The idea of European Endowment for Democracy is worth considering but not on the expense of terminating the EIDHR; the overall result could be diminished, not increased funding of human rights and democracy support.
- European Parliament should use the opportunity and build an alternative forum for discussion on the human rights and democratization as other EU tools are not delivering (HRDs), using the Euronest Committee on Political affairs, human rights and democracy and Committee on Social affairs, culture, education and civil society. The efforts could be shored up by real-time communication with the civil society in the EaP countries. For this purpose, specific contact points can be established for facilitating cooperation with EaP Civil Society Forum and other civil society networks.
- Euronest should offer an added value to the Polish Presidency as a complementary communication channel with the EaP countries, and with its focus on the issue of political parties in the EaP countries. In most of the EaP countries the political parties are not the driving forces of the reforms. Within the Euronest context, an assessment of the notion of a political party, and of the state and influence of the existing political parties should be conducted by the European Parliament; the niches for involvement and change should be determined; the Political Foundations at European Level and other political foundations should play a role in this process.
- The European Parliament should further strengthen its ties with the civil society, namely provide a room for the genuine local civil society to be regularly listened to on the issues of human rights and democratization in the EaP countries (via presentations or regular monitoring reports) and adopt simple rules for engaging with local civil society when on official visits to the EaP countries (meeting with the civil society as a condition of the visit).

## 2. INTRODUCTION

Many analysts, experts<sup>1</sup>, as well as renowned international NGOs, think tanks, international organizations and the European Union itself agree that the Eastern Partnership region has been presenting a disturbing picture over the last couple of years; with the exception of Moldova, the human rights record has deteriorated and the democratic developments have been backsliding. Even though human rights are guarded by several international covenants, treaties and declarations, the actual adherence to their provisions at domestic level remains problematic and weak in these countries, leaving the EU with dysfunctional tools like Human Rights Dialogues and limited leverage despite the growing complexity of mutual relations both at the bilateral and multilateral level.

The results of EU policies (ENP, Eastern Partnership) implemented vis-à-vis the six Eastern neighbours cannot be assessed as positive; as also reflected in the recent Communication on the ENP review<sup>2</sup>. The democratic transformation is not happening and the semi-authoritarian and mostly corrupt regimes are either stagnating or consolidating in their positions (again with the exception of Moldova and Georgia to some extent). Alternative modernization has recently become a new buzzword in many of these countries, replacing or supplying democracy and democratic development, and promising more efficient and effective governance with an objective to (re)assert control over society and further limit a space for dissenting opinions. Some believe the EU should accommodate these discursive changes when reformulating its policies, and abolish the “enlargement-lite” (Popescu, Wilson, 2011) approach<sup>3</sup> as the incentives for the partner countries are too weak, the mimesis of leveraged policies often takes place rather than the real policy implementation with the EU and the foreign donors falling into the policy imitation traps (fight against corruption, for example), and the EU carrots and resources being used within the wider political game in the region, playing various actors against each other. In some cases, the very process of adopting EU norms and standards faces dissenting opinions even from the side of the genuine pro-European local civil society; the most visible case are the negotiations over the new Deep and Comprehensive Free Trade Area (DCFTA) agreements that in the eyes of many impose redundant and unnecessary conditions and rules upon the Eastern partners. The reviewed policy principles offered by the last Communication provide for a certain room for change and bring democracy back into the main discourse (“deep democracy”), however, the very content of some of the new policy concepts, as well as the implementation method, remain to be seen.

Despite the fact the EU is (and will be) increasing its presence in the EaP countries via enhanced number of EEAS personnel, and also the presence of the member states is quite robust in the region, the level of understanding of local developments and conditions seem not to have improved substantially. The call for greater involvement and reliance on the alternative sources of information, especially on broadly defined civil society, when shaping the policy is understandable and should be widely encouraged not only in relation to formal or institutionalized cooperation, but on permanent basis. The importance of civil society is further underlined by way some of the EaP regimes effort to discredit the genuine local civil society actors and platforms by establishing competing organizations (GONGOs), groups and networks. In this regard, also the Eastern Partnership Civil Society Forum, EU induced civil society network, and its National Platforms have not been prevented from problems of this kind, for example in

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<sup>1</sup> For example, 59% of experts polled by the Centre for European Policy Studies in 2010 said ENP had “little or no impact” (Emerson, 2010).

<sup>2</sup> Joint Communication by the High Representative of The Union for Foreign Affairs and Security Policy and the European Commission, *A New Response to a Changing Neighborhood, A review of European Neighborhood Policy*, May 2011

<sup>3</sup> “The EU engages in a huge number of sector and country-specific actions, with systematic monitoring of how far the partner states are adopting or converging upon EU norms and standards. The reason is that the Commission has been transposing its experience of the enlargement process, with a similar long list of chapters.” (Emerson, 2011)

Armenia, Georgia or Azerbaijan. It is thus necessary to increase efforts to sustain the genuine civil society in these countries as it is not only a source of important information but also of expertise and know-how that is lacking in the public governance sphere, and a potential vehicle for change. Therefore it is necessary to consider carefully all aspects and potential implications of any reform proposals regarding the EU civil society funding in order not to throw the baby out with the bath water.

Without the commitment to the future EU membership at least for those Eastern Partnership countries that would be interested (Moldova, Georgia, Ukraine), which is definitely not, and in the near future will not be, part of the EU discourse the sex-appeal of the EU's soft power in the Eastern Partnership countries is rather based on its image, not on the implementation of its *acquis*. As the EU's approach to the EaP countries taken so far was assessed rather negligent by some analysts (Popescu, Wilson, 2011), with the developments related to the Arab Spring, and with the EU still struggling with the internal problems mainly of the economic nature, it is necessary to keep the focus on the region and promote the necessary policy modifications.

### **3. STATE OF DEMOCRATIC GOVERNANCE AND HUMAN RIGHTS IN THE EAP COUNTRIES**

#### **3.1 Overview**

The European Neighborhood Policy was conceived in 2003, and became fully operational in 2006. The Eastern Partnership was officially launched on May 7 2009, and its bilateral and multilateral framework (Intergovernmental Platforms and expert panels) has been operational roughly for two years, with some of the elements still in pipeline (expert panel on judiciary, etc.). The Eastern Partnership policy was prompted in part by the discontent with the ENP, particularly in the region itself. The EaP is far more explicitly multilateral in intention; not only does it finally at least acknowledge the specific character of the Eastern neighbours, but it promises more engagement, joint ownership and regional initiatives. It remains too early to judge the EaP definitively, not least because the Association Agreements that will explicitly incorporate the EaP's four thematic platforms (democracy, good governance and stability; economic integration and convergence with EU sector policies; energy security; contacts between people) mostly remain to be completed. Nevertheless, there are significant reasons to doubt EaP's effectiveness; critics have argued that it repeats the ENP's Eurocentric vision of partnership, with principal tensions over hegemony versus partnership (the asymmetry of EU power politics in the relations with neighbours), conditionality versus ownership (the logic of coercion and order versus that of consent and equality) and bilateralism versus multilateralism with an emphasis on regional co-operation potentially vitiated by hegemonic EU conditionality (March, 2011).

The graphs in the following text summarize the five years development in the Eastern Partnership countries (2006-2010) in the areas covering democratic processes and human rights monitored by the Nations in Transit<sup>4</sup> of the Freedom House (NiT). The supplementary graph on fight against corruption is based on the Corruption Perception Index of the Transparency International<sup>5</sup> (the best scoring country always on the top). There are other indexes like World Banks Institute's (Control of Corruption Indicator),

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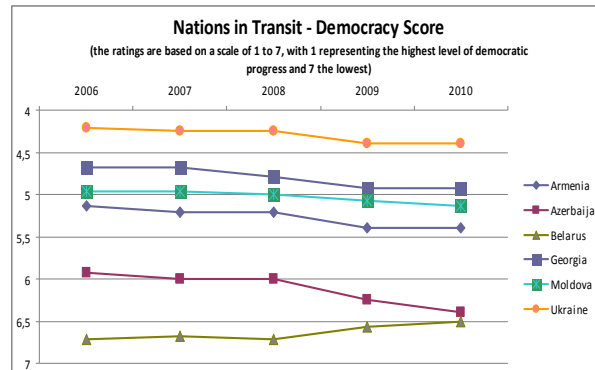
<sup>4</sup> The Nations in Transit ratings reflect the consensus of Freedom House, its academic advisers, and the author(s) of the country reports. The ratings are based on a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest. These ratings are generally used by the experts for comparison; however, the methodology can be questioned as in case of any indexation.

<sup>5</sup> TI's CPI ranks perceptions of the degree of corruption as seen by business people and analysts. It ranges from 10 (highly clean) to 0 (highly corrupt).



Reporters without Borders (World Press Freedom Index), etc. that might be used for further comparison. It is important to note that the last NiT reports published for 2010 were in some cases issued rather early and thus do not cover the latest developments, namely in case of Ukraine and Belarus where the picture provided by 2010 NiT contradicts or does not mirror accurately the current negative trends, and vice versa in case of Moldova. Overall, the indexes confirm the tendency to worsening situation on the ground in terms of democratic governance and human rights (Table 1), with the exception of some countries' performance in some policy areas. The EU Eastern neighbourhood experiences consolidation of semi-authoritarian regimes and parallel weakening of the structures of the state (Popescu, Wilson).

**Table 1: Democratic Score (overall evaluation)**



Source: Freedom House

As the EaP countries are becoming weaker states and with the zero-sum approach often dominating the political life in the area, also their capacity to carry out all necessary reforms and adopt the EU standards is decreasing.<sup>6</sup>

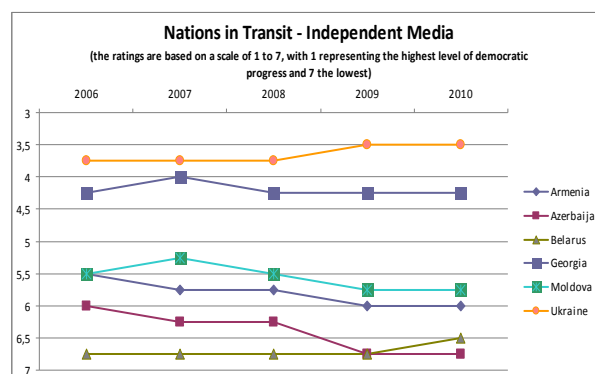
Together with the ENP review, the individual country reports on the ENP implementation in the 5 EaP countries, with the exception of Belarus, were also released. These documents cover progress made between 1 January and 31 December 2010 taking into consideration the developments going beyond the framework, and overall are in line with the findings mentioned below. The methodology of drafting the progress reports rests on a common joint framework that includes points to be addressed. The assessment is carried out by the local EU Delegations, EEAS and relevant bodies of the European Commission. Such an approach provides rather incoherent picture, as the bits and pieces are inserted by different actors with differing priorities and cannot be measured against a joint level of standards or benchmarks. In some cases the latest developments are not fully reflected, allowing for a softer evaluation (Azerbaijan). The process and methodology of drafting the progress reports should be streamlined on the basis of the output of the benchmarks debate (see below), the timeline of delivery should be improved in order to maximize the impact, and there should be more involvement of external actors, namely the civil society into the monitoring exercise.

<sup>6</sup> The EU sponsors Comprehensive Institution Building Programme (CIB) and other twinning programs, however, most of them are underfunded and mainly cover EU experts' stays in the region. Also, the EU in cooperation with the national authorities runs EU High Level Advisory Group in Armenia, and recently similar mission to Moldova was established. The mission of the advisors is co-defined by the national (Armenian, Moldovan) authorities, and there are doubts on their efficiency in these terms, especially in the politically sensitive fields (Armenia). Therefore, a thorough research on Armenia and Moldova case would be needed on this tool before going on with the implementation in other EaP countries.

## Armenia

The political system of the country is centralized around the president, involving political and business clientele. The post-electoral unrest in May 2008<sup>7</sup> contributed further to reduced legitimacy of the government and worsened the situation for the opposition; the political prisoners appeared for the first time and the media censorship was introduced for 20 following days. On May 26 2011, the general amnesty was adopted by the parliament on proposal of President Serzh Sargsyan and no more activists remain in jail for political reasons after the amnesty. The opposition was granted permission to run a public rally in April 2011 for the first time since the post-electoral developments, after strong criticism of the state of freedom of assembly in the country. Yet still on 15-17 February 2011 a blockage of a rally, and an attack on peaceful demonstration on 3 March 2011 took place. Since 28 May 2010 the centrally situated Yerevan Freedom Square was taken under permanent control by the police without any justification and remains so until today. Within the latest developments president also promised an investigation of the violent events of March 2008 that haven't been closely scrutinized so far. The unresolved conflict over Nagorno-Karabakh remains to be distinctive feature of the domestic and foreign politics. The political rapprochement with Turkey (protocols that might lead to opening the borders were signed but their ratification later on suspended) caused departure of one of the ruling coalition parties from the government and brought about controversial feedback from the media and intellectual elite of the country. Political opposition remains marginalized and disintegrated. The civil society reports continuing executive restrictions imposed on right to freedom of conscience, expression, assembly and association. The worrying trend is the effort to further limit the freedom of media by using the process of digitalization and related legislation amendments to tighten the control over the media outlets (Table 2). As a result of legislative changes in 2010, articles related to freedom of speech, in particular, slander and insult, are decriminalized, but a penalty of two thousand EUR was introduced, which is often enough to destroy a small media outlet if imposed; the Venice Commission of the Council of Europe passed two negative conclusions on the law amendment. Also the amendments to law on public organizations have been introduced, aiming at increasing control over the NGOs (program and financial audit of the NGOs can be carried out by the state authorities on this basis). Despite the progressive legislative electoral framework, the local and municipal elections held since 2008 were hampered by lack of public trust and reported undemocratic practices (Table 7). According to the 2010 ENP progress report, some headway was made on enhancing transparency in the court system but none on enhancing the independence of the judiciary; the progress was made on strengthening the Human Rights Defender's Office.

**Table 2: Media**



Source: Freedom House

<sup>7</sup> Ten people reported dead, over 200 wounded

Corruption still remains a major deterrent to the country's democratic and economic development; despite new anticorruption strategy for 2009–12 adopted by the government no cases of corruption were investigated and prosecuted (Table 5 and 6). The context of tolerance towards corruption as a legitimate instrument of social interaction affects deeply the country's governance. The absence of civil control over armed forces is still in place. Ill-treatment and use of torture from the side of the police forces was also reported from the NGOs side<sup>8</sup>.

The parliamentary elections are to be held in 2012, the presidential in 2013. Despite the latest joint statement of Presidents Obama, Medvedev and Sarkozy, Co-chairs of the OSCE Minsk Group, urging Armenia and Azerbaijan to move ahead with the process, the resolution of the Nagorno Karabakh region issue is likely to stagnate. The imminent main challenge for the country is to overcome the serious impacts of the economic crisis, and with regard to democratic governance a creation of viable political opposition before the 2012 elections. The 2010 ENP progress report acknowledges some positive steps taken on decriminalization of those arrested after post-2008 electoral developments, however, the overall progress in the area of human rights standards implementation is either assessed slow or stagnating.

### **Azerbaijan**

In October 2008 elections President Ilham Aliyev secured his second term in office and confirmed the inheritance of power along the family line; the elections failed to meet a number of international standards. Consequently, there were further setbacks to Azerbaijan's democratization; March 2009 referendum eliminated the constitutional limits for two consecutive presidential terms, potentially paving the way for Aliyev's life-long presidency and another 41 constitutional amendments were approved in public voting that was largely seen as a rubber stamp exercise. The OSCE ODIHR found that during the parliamentary elections, conducted under the amended election code<sup>9</sup> in November 2010, the fundamental freedoms of peaceful assembly and expression were limited and a vibrant political discussion facilitated by free and independent media was almost impossible. A deficient candidate registration process, restrictive political environment, unbalanced and biased media coverage, disparity in access to resources to perform an effective campaign, misuse of administrative resources as well as interference by local authorities in favour of candidates from the ruling party created an uneven playground for candidates.<sup>10</sup> On 2 April 2011, peaceful protesters were beaten and arrested in Baku, and others were arrested in pre-emptive police action before the 2 April public gatherings calling for democratic reforms in Azerbaijan. Some of the civil society leaders, journalists and youth activist were arrested consequently. The government is increasingly ignoring the international community's criticisms of its democratic performance and its obligations as a party to European Convention on Human Rights. The self-confidence of the government is shored up by the oil and gas revenues, and the energy interests of the major actors, the EU included (Nabucco project). In the last 5 years freedom of assembly has been severely restricted.<sup>11</sup> Together with political activists detained in the first 3 months

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<sup>8</sup> Monitoring Report on the Human Rights Situation in the Eastern partnership Countries, Eastern Partnership Civil Society Forum, May 2011 (EaP CSF Human Rights Monitoring Report, 2011)

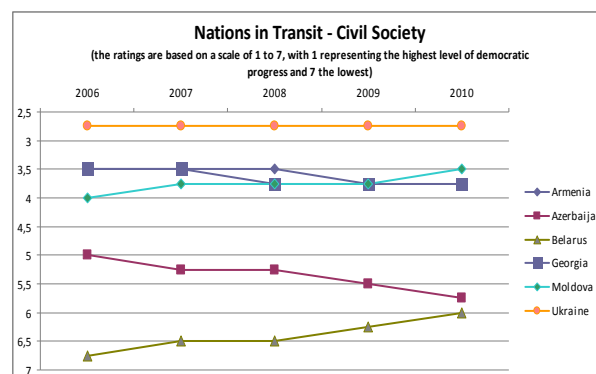
<sup>9</sup> According to amendments to the Election Code, adopted by the Parliament in 2010, election campaign period was shortened from 75 days to 60 days and allocation of state funds to the registered candidates to conduct election campaign was abolished.

<sup>10</sup> EaP CSF Human Rights Monitoring Report, 2011

<sup>11</sup> The executive authorities did not permit any peaceful rally to be held in the city centre in Baku. Political parties attempted to hold rallies and pickets 9 times in 2010 and 4 times in 2011. However, these events were not permitted by the Baku City Executive Authority and were dispersed by the police with mass detention of the participants. In 2007-2009, the European Court of Human Rights issued 5 judgments against Azerbaijan on violation of Article 11 on the right to freedom of assembly

of 2011, more than 70 persons remain imprisoned or in jail, in total those who have been arrested on political grounds since 1993.<sup>12</sup> One of the obligations that Azerbaijan undertook while joining the Council of Europe is the simplification of registration procedure of the NGOs. Despite the absence of the requirement of state registration, unregistered NGOs are severely limited in their actions, while obtaining the registration remains troublesome (90 days period). According to the Law on Non-Governmental Organizations, if a non-governmental organization receives more than three warnings within a year, it can be liquidated by the court.<sup>13</sup> The space for civil society has continued to shrink (Table 3). Detentions and pressure put on journalist and bloggers has further worsened (Table 2) and recent changes to the legislation banning local and international media outlets (namely international radio broadcasters) suggest that freedom of speech in Azerbaijan is practically non-existent.

**Table 3: Civil Society**



Source: Freedom House

The independence of judiciary is guaranteed by the legal framework, however, in reality the judiciary is towed by the executive. Judiciary is inefficient and considered highly corrupt (Table 8). More than 2400 complaints were submitted to the European Human Rights Court (EHRC) between 2001-2011 suggesting citizens are forced to look for justice outside the country.<sup>14</sup> Corruption is considered one of the gravest and most deeply rooted obstacles to the democratic development (Table 5 and 6). Although an anticorruption legislative framework is in place, corrupt practices permeate all spheres of public life.<sup>15</sup> The regime's ability to take further grip over the society is also facilitated by strong revenues from the country's vast energy resources; and the energy card is being skilfully played vis-à-vis the other actors at the international level, including the EU. Prospects for a genuine breakthrough within the Nagorno-Karabakh conflict resolution process remain unlikely from the side of Azerbaijan, too. Also the latest ENP progress report suggest Azerbaijan needs to make significant efforts to meet ENP Action Plan's commitments in the field of democracy, including electoral processes, the protection of human rights and fundamental freedoms and the independence of the judiciary.

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and association of the Convention on Human Rights and Fundamental Freedoms (EaP CSF Human Rights Monitoring Report)

<sup>12</sup> Eynulla Fatullayef, the chief-editor of „Daily Azerbaijan“ newspaper was, however, finally released from jail at the end of May 2011.

<sup>13</sup> A controversial draft law on NGOs was discussed in Parliament in June 2010, and the most restrictive provisions were toned down after strong domestic and international opposition. The Council on State Support to NGOs increased its funding, but it is believed that most funds go to GONGOs or non-influential NGOs.

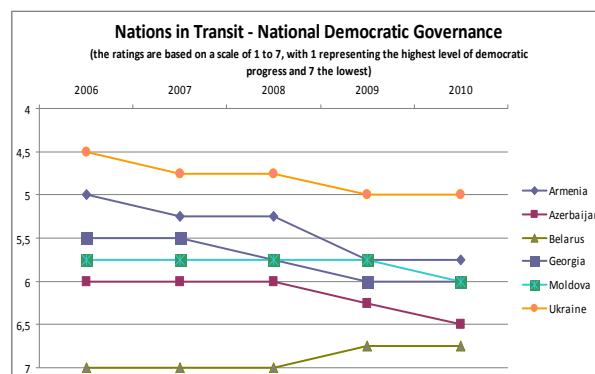
<sup>14</sup> Also because of the limited access to legal help given by low number of advocates.

<sup>15</sup> Nations in Transit, Country Report Azerbaijan, 2010

## Belarus

President Alyaksandr Lukashenka has been at the helm of the country since 1994, curbing the rule of law and human rights. EU sanctions and various policy approaches taken, as well as that of other actors, has not challenged the in-country situation and the authoritarian concentration of power. The modest liberalization attempts of the regime experienced on the course of 2008-2010 that inspired hope in the EU and led to suspension of travel and asset sanctions, as well as to the full involvement of the country into the than initiated Eastern Partnership (Table 4) were watered down by the crackdown on the political opposition and civil society after December 19 2010 presidential elections. Human rights defenders, journalists, and opposition presidential candidates and their aides were detained by authorities on the very day of elections during a rally, or on the following days.<sup>16</sup> The political opposition, however, remained dispersed and uncoordinated before the elections, and also on the course of the post-electoral developments. During the “détente” period, the regime managed to imitate liberalizing policy changes while employing other forms of rather non-flagrant repressive behavior towards its inner opponents. On the other hand, some analysts claim that engaging Belarus in a deeper dialogue with the EU allowed for more room for independent civil society to operate in the country, and facilitated close cooperation of various platforms and networks, including the emancipation of the Belarusian national platform of the EaP Civil Society Forum (Table 3). However, while the activity of unregistered organizations is criminalized, obtaining legal status still remains very difficult for political and human rights organizations. Prominent Belarusian organizations get their applications turned down on false grounds and none of such decisions has been overruled by the court. The amendments to the Law on Political Parties and the Law on Civic Associations, which came into force on 5 February 2010, further enlarges room for denying registration.<sup>17</sup>

**Table 4: National Democratic Governance**



Source: Freedom House

<sup>16</sup> The incident that took place on the election day was viewed by the government as “mass riots”, often presented in the media as an attempt of overthrowing the government, drafted and ordered from abroad, and served as grounds for mass repressions against opposition and civic activists. Over 700 participants of the demonstrations were arrested, 38 people were charged with “organization of mass protests” (including seven ex-presidential candidates) with four activists already convicted from three to four years of imprisonment, 165 cases of searches in the offices and homes of political activists, human rights defenders and journalists offices were reported, several thousand citizens were interrogated in connection to their participation in the protests. The torture was reported on those arrested and pressure was imposed on lawyers defending the demonstrators, including the withdrawal of licenses in at least six cases. (EaP CSF HR Monitoring Report, 2011)

<sup>17</sup> The requirement of a legal address in a non-residential building with a commercial rent rate continues to be problematic for new and established associations alike; in number of cases it even forced organizations to close down. An opposition party Belarusian Popular Front has been ordered to leave their office in the center of Minsk, which for twenty years has been the center of cultural and political life of the capital. Activists believe that the reason for this order lies in organizing fundraising for the persecuted after the December demonstrations (EaP CSF HR Monitoring Report, 2011).

Current restrictions on fundamental freedoms and political reprisals against political and civic activists as well as religious and ethnic minorities continue to cause concern. Discriminatory economic conditions, laws restricting access to information, non-transparent and discriminatory decisions on accrediting journalists, and flawed legislation on defamation and extremism continue to hinder the development of independent and pluralistic media in Belarus, although the government abstained from censoring the internet<sup>18</sup> so far (Table 2). The latest direct warning to the media from the regime concerned the distribution of information on the terrorist attack of 11 April 2011.

The state of local self-governance has not improved after the April 2010 local elections and the country scores the lowest out of the EaP countries (Table 9). The president appoints the heads of regions and districts with the elected local councils serving a secondary role.

Belarus continues to exercise the death penalty. The execution of Andrei Zhuk and Vasil Uzepchuk, sentenced in 2009, took place in March 2010, despite the fact that the UN Human Rights Committee sent requests for interim measures of protection. More death penalty verdicts were announced in 2011; the alleged perpetrators of the Minsk metro blast are also facing the capital punishment.

### **Georgia**

After the events of 2007, the questioned May 2008 elections, and the war with Russia in August 2008, a new political crisis unfolded in 2009. From April to late June<sup>19</sup>, a handful of opposition parties organized protest rallies demanding the resignation of President Mikheil Saakashvili and new national elections. With the situation calming down, further democratic reforms were announced; commission drafting the new constitution was established, as well as a working group preparing the new election code. Strengthening of independent media and judiciary was also promised. In July 2009 the parliament adopted amendments seriously undermining legal environment conducive of peaceful public protests. The amendments were adopted during an extraordinary session of the parliament, despite the call from human rights groups to wait for the legal opinion from the CoE's Venice Commission. The amendments introduced a blanket ban on assemblies in certain public areas (i.e. within 20 meters of the government buildings), police received the right to use special means (rubber bullets, pepper gas, etc.), and the requirement to proportionate use of force to the legitimate aim pursued was not anchored in the legislation. The term of administrative detention was increased from 30 to up to 90 days. On January 3 2011 police officers violently dispersed the protest demonstration of the war veterans in Tbilisi, and on 26 May 2011 another demonstration of the opposition politician was dispersed while using excessive force. Though under the Georgian legislation, this demonstration was unauthorized, the violence resulted in the loss of human lives and the demonstrators were obviously ill-treated by the law enforcement.

The Georgian media landscape is well developed and the media legislation is recognized as fully compliant with international standards. However, there are reports free access to information is limited by authorities, and the government-associated media are challenged on the basis of insufficient level of editorial independence (Table 2); cases of defaming Georgian human rights NGOs by the pro-

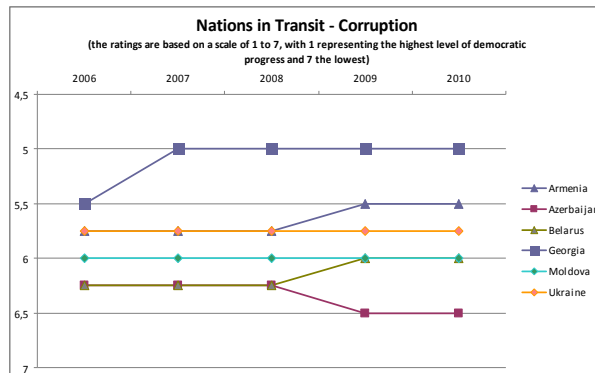
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<sup>18</sup> However, according to the presidential decree from July 2010, all online access devices (computers and mobile phones) as well as all internet café users are to be identified and registered with the internet service providers who are obliged to store the data for a full year and to hand that information over to law-enforcement agencies upon request. It also requires internet service providers to block access to any website within 24 hours of request by government regulators.

<sup>19</sup> On 6 May and 15 June 2009 police dispersed peaceful demonstrations with the use of excessive force. Dozens of attacks and harassment of demonstrators committed by unidentified people have been documented in the course of demonstrations starting from April till July 2009 while the police remained inactive. The cases remain uninvestigated. Young demonstrators attacked the cameraman of the one of the central TV stations and were arrested (EaP CSF HR Monitoring Report, 2011).

government media were also reported.<sup>20</sup> The Georgian judiciary has been struggling to free itself from political pressure (Table 8). The newly created Ministry for Corrections and Legal Assistance should deliver on improving conditions in prisons as well as the penitentiary and probation system in general. There have been some positive results achieved so far.<sup>21</sup> Georgia is praised for its efforts to curb corruption and its know-how on the issue became an export article thorough the region. Despite the fact the level of petty corruption has decreased significantly and the general perception of corruption within the public improved, doubts are remaining over the ability to tackle the top-level corruption (Presidential Fund), and over the legislation related to privatization systems (Table 5 and 6).

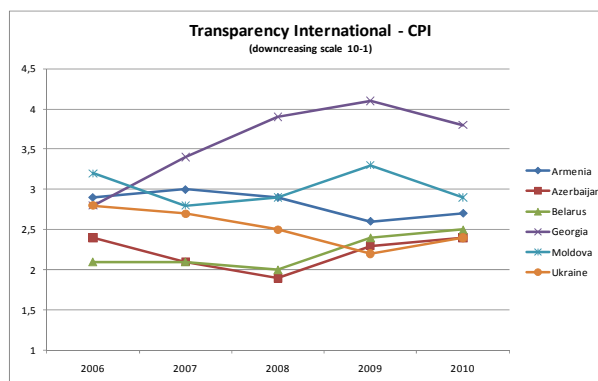
**Table 5: Corruption**



Source: Freedom House

The ENP progress report concludes that Georgia made progress in implementing the Action Plan throughout 2010, especially in reforming the justice system, improving the conduct of elections, increasing women’s rights, carrying out constitutional reform, reforms in trade and business related areas, and regional development. At the same time, Georgia needs to accelerate its efforts to consolidate democracy, especially as regards political and media pluralism, and the rights and integration of minorities.

**Table 6: Corruption Perception Index**



Source: Transparency International

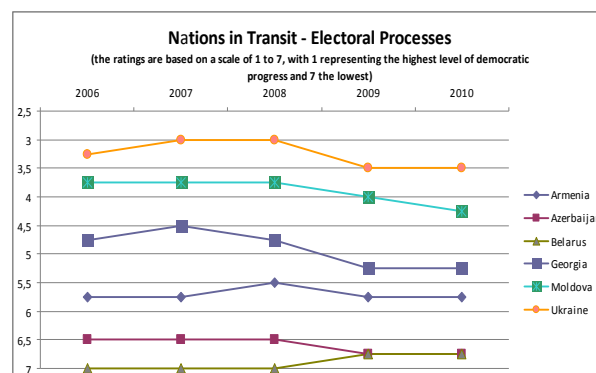
<sup>20</sup> EaP CSF HR Monitoring Report, 2011

<sup>21</sup> Nations in Transit, Country Report Georgia, 2010

## Moldova

Moldova is an archetypal weak state, often unable to operate effectively within its own borders, let alone outside them (March, 2011). The separation of the region of Transnistria east of the Nistru (Dneestr) river (in 1990) not only deprived Moldova of most of its industrial infrastructure, but created a frozen conflict which turned Moldova into a net consumer of security; the separatist republic became a zone of authoritarian lawlessness and regional tension.<sup>22</sup> The country remained relatively pluralist even when returning to the Russian orbit and indeed it is the only CIS state where every single transition of power has taken place peacefully after contested elections. By 2008, the EUMAP and Partnership and Cooperation Agreement expired, but were prolonged indefinitely pending a new agreement.<sup>23</sup> Moldova has been regarded as one of the ENP's and EaP's front-runners, although this was a relatively rather than absolutely strong achievement. Moldova remained, for example, significantly behind Ukraine and with a larger number of implementation problems, caused in large part by a lack of domestic institutional capacity and lack of consistent political will from the previous Communist government, who tended to adopt European rhetoric primarily for electoral reasons. The concerns over the Communists' authoritarian leanings led to a deterioration in EU-Moldova relations in 2008-2009. Only after the more pro-European Alliance for European Integration (AEI) took office in September 2009, the relations substantially improved, with a new Association Agreement promised for 2011. Nevertheless, a pertaining domestic political crisis, meaning that Moldova has only had an interim president since April 2009 despite repeat elections, has contributed to continuing implementation problems.

**Table 7: Electoral Processes**



Source: Freedom House

Moldova has a poor human rights record; in 2010, 945 applications were registered by the European Court on Human Rights and 20 judgments were delivered in violation of at least one human right guaranteed by the European Convention on Human Rights.<sup>24</sup> There is a general consensus within the EU that Moldova still has much to do in this area, however, there have been notable achievements; the abolition of the death penalty (2008), initiation of reform of the Interior Ministry (2010) and the adoption

<sup>22</sup> There is very limited freedom of speech, as well as other human rights in the separatist Transnistrian region that is not controlled by the constitutional authorities of the Republic of Moldova. The few independent newspapers and radio stations are subject to censorship and are intimidated and persecuted, either by administrative means and legal harassment, or through public defamation campaigns. The freedom of assembly is severely restricted, too, the permits for holding public meetings are rarely issued, and mainly to groups that support the Transnistrian administration or for anti-Moldovan protests (EaP CSF HR Monitoring Report, 2011)

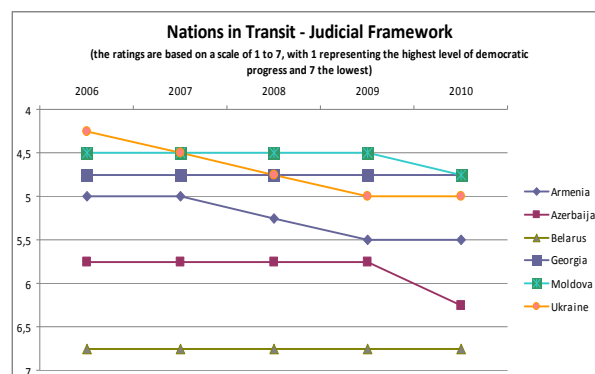
<sup>23</sup> EU also runs the border assistance mission EUBAM on the Moldovan-Ukrainian borders.

<sup>24</sup> Council of Europe, Moldova and the Council of Europe, 2011, [http://www.coe.int/t/dc/files/themes/pays\\_membres/moldova/default\\_en.asp](http://www.coe.int/t/dc/files/themes/pays_membres/moldova/default_en.asp)



of several international conventions.<sup>25</sup> In 2010, the CoE ceased monitoring Moldova in terms of religious freedom and a new legal framework guaranteeing the freedom of expression was enforced. Nevertheless, in October 2009 the UN Committee for Human Rights signaled lasting failures in areas such as improving conditions in detention facilities, pre-trial terms, people-trafficking, judicial independence, participation of women in decision-making bodies and discrimination of Roma.<sup>26</sup> During Moldova's post-election crisis in April 2009 in response to violent public demonstrations, the Communist authorities interned upwards of 300 people without trial<sup>27</sup> and imposed visa restrictions on Romanian nationals using the groundless justification that Romania had instigated a coup. Under the AEI government since September 2009, the visa restrictions were quickly repealed and there appears more domestic and EU political will to overcome the significant human rights challenges. Moldova remains a pluralist state with relatively free and fair elections. According to international democracy audits, Moldova is still a front-runner in CIS democratization. However significant problems remain, above all in the manipulation of state resources (for example, bias in the pro-state media), occasional harassment of opposition candidates, opaque voter lists, the lack of a fully independent judiciary and poor rule of law.

**Table 8: Judicial Framework**



Source: Freedom House

On the other hand, number of measures has begun to create a more positive dynamic – for instance the electoral code has been changed to lower the electoral barrier to four percent, and remove restrictions on holders of dual citizenship and electoral blocs (Table 7). The introduction of electronic register of voters planned for 2011 aims to settle lasting problems with the quality of voter rolls. Legal reform is promised, with reform of the Prosecutor's Office and a more substantial focus on professional training and compliance with international law.

According to the 2010 ENP progress report, Moldova made good progress in most areas of the Action Plan; however the underlying political uncertainty and resource constraints prevented large scale reform. More sustained efforts are needed to fight corruption, to reform the judiciary, prosecution and police, and to implement certain human rights commitments.

<sup>25</sup> Like the UN Convention concerning the Rights of Persons with Disabilities, for example.

<sup>26</sup> UN, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mission to the Republic of Moldova, 12 February 2009,

[http://www.adh-geneva.ch/RULAC/un\\_resolutions\\_and\\_reports.php?id\\_state=147](http://www.adh-geneva.ch/RULAC/un_resolutions_and_reports.php?id_state=147)

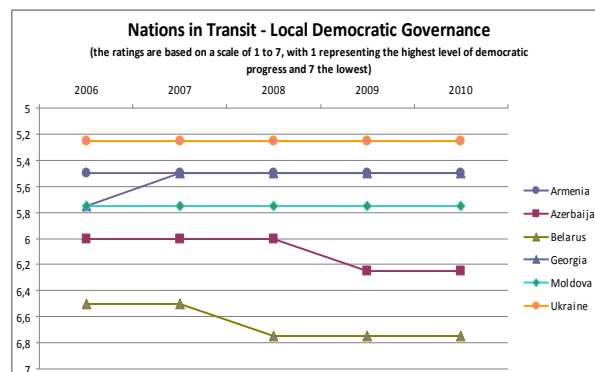
<sup>27</sup> Three people died in custody and there were numerous allegations of torture and ill-treatment (March, 2011)

## Ukraine

Ukraine displayed pluralistic and competitive, although fragile political system, relatively free media and adherence to basic human rights. Since the presidential election in February 2010 and the victory of Victor Yanukovich, the political landscape has changed with President Yanukovich gradually taking grip over the government and controlling the parliament; erosion of some of the gains of the previous period has been taking place. According to reports, including the last ENP progress report, the state of human rights in country has deteriorated; the inadequate measures are frequently used to fight political opponents, journalists and the civic activists. Progress on political and constitutional reforms in particular has been slow or sporadic.

In relation to the 2010 Presidential election campaign the issue of corruption in the media sector was reported, as indicated by a large number of ordered and biased stories on political competitors. On the course of 2010 the efforts to limit the independence of the media from the side of new administration emerged, critical reports on the government within national media were banned, and attacks on journalist were reported<sup>28</sup>; all members of The National Council on Television and Radio were substituted between April and June 2010, and the Council has been fully controlled by one political party (Party of Regions) since. According to the new law "On Personal Data Protection" in effect as of June 2010, the mass media distribution of any personal data of a person without his or her consent shall be prohibited; the definition of "personal data" is rather vague within the law. The new provision is believed to curb reporting on the high-level corruption cases.

**Table 9: Local Democratic Governance**



Source: Freedom House

The system of judiciary enjoys low level of public trust; violations of the right to adequate judicial defense, corruption, ineffective procedures of judicial examination, and a lack of professionalism were reported (Table 8). In September 2010 four judges were replaced in the Constitutional Court; the Court now displays pro-presidential majority. The president and the ruling Party of Regions have now all the necessary levels of judiciary under control. Corruption is still pervasive, policy reforms rather imitated and the experience show there is a threat the anticorruption reforms are reversed after a change of government (Table 5 and 6). The adoption of the anti-corruption legislation (anticorruption package) was a rather twisted and torturous process under the previous administration. Drafts of the three laws were on hold in the Parliament for almost two years before their ultimate approval. On 7 April 2011, the Ukrainian Parliament adopted a new law on "Prevention and Combating Corruption in Ukraine" that

<sup>28</sup> Kharkov journalist and editor-in-chief of the newspaper "The New Style" Vasyl Klymentyev disappeared in August 2010. No proper investigation followed (EaP CSF Monitoring Report, 2011).

should become effective on 1 July 2011, and that contains, among other provisions, list of persons who may be held liable for committing corruption offences including explicitly heads of NGOs.

According to the 2010 ENP Progress Report, the respect for fundamental freedoms deteriorated in Ukraine (freedom of media and assembly), as well as the democratic standards; it has been clearly proven clearly during the local elections held in October 2010.

Ukraine has also not achieved any progress on the constitutional reform, as well as on comprehensive reform of the judiciary. On the positive side, Public Procurement Law was adopted, and the new Gas sector reform law paved the way for Ukraine's accession to the Energy Community in February 2011.

### **3.2 Main regional commitments and mechanisms**

Eastern Partnership countries inherited from the Soviet Union a membership in a number of international organizations dealing with human rights, most notably the UN and UN framed international conventions the Soviet Union signed.<sup>29</sup>

All six Eastern Partnership countries joined important international conventions:

- Convention Relating to the Status of Refugees (1954)
- Convention on the Elimination of All Forms of Racial Discrimination (1965)<sup>30</sup>
- International Covenant on Civil and Political Rights (1976)
- International Covenant on Economic, Social and Cultural Rights (1976)
- Convention on the Elimination of All Forms of Discrimination Against Women (1981)
- Convention on the Rights of the Child (1990)

Only Georgia and Moldova ratified the International Criminal Court Statute. Ukraine and Armenia signed it but not ratified. Belarus and Azerbaijan did not sign it.

All six countries are members of Organization for Cooperation and Security in Europe (OSCE), a successor to the Cold War CSCE. Although the Soviet Union was the founding member of CSCE, Eastern Partnership countries did not join until 1992 after gaining their independence. OSCE is active in the area of human rights too, however sometimes referred as toothless in this regards.<sup>31</sup> OSCE's main human rights body is the Office for Democratic Institutions and Human Rights (ODIHR), based in Warsaw. ODIHR is active throughout the OSCE area in the fields of election observation, democratic development, human rights, tolerance and non-discrimination, and rule of law. However, according to its critics, the only efficient activity consists of electoral observation missions which are also a sort of flagship activity of the OSCE as a whole.

In 1992 OSCE set-up the Minsk Group aimed at resolution of the Nagorno-Karabakh conflict between Armenia and Azerbaijan; the Group's works consisting of diplomatic negotiations have so far achieved only mixed results while facing criticism from both Armenia and Azerbaijan. The latter perceives negatively especially the co-chairing principle by France, United States and Russia (according to Azerbaijan all those three countries favour Armenian cause as they harbour large Armenian minorities).

After the fall of communism and collapse of the Soviet Union, all six countries looked for membership in the Council of Europe (and its related conventions). Five of them, with the exception of Belarus, joined the Council of Europe in 1992. Belarus has planned to join the Council of Europe on several occasions

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<sup>29</sup> The Soviet Union, however, abstained together with Ukraine and Belarus (two separate UN members) from support to Universal Declaration of Human Rights in 1948.

<sup>30</sup> Belarus and Moldova do not recognize competence under article 14 (mechanism for individual complaints)

<sup>31</sup> Chairmanship of OSCE by Kazakhstan in 2010 was much criticised in this context.

but its application has always been rejected due to human rights concerns. Belarus is also the only European country to have not yet abolished the death penalty.

Other five countries joined the related conventions:

- European Convention on Human Rights
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- Convention on Action against Trafficking in Human Beings
- Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse
- European Social Charter
- Framework Convention for the Protection of National Minorities

As far as the European Charter for Regional or Minority Languages is concerned, only Ukraine and Armenia fully joined. Moldova and Azerbaijan did not ratify it and Georgian did not sign (all of them for obvious political reasons).

Also the CoE's Venice Commission (European Commission for Democracy through Law), advisory body composed of independent experts on constitutional matters and reforms, efforts to be active in the region; All Council of Europe member states are members of the Venice Commission; Belarus is associate member. The CoE groups GRECO and Moneyval are involved in the monitoring and policy recommendations in the areas of fighting corruption, and anti-money laundering measures respectively.

### **3.3 Perception of the OSCE and Council of Europe's activity in the region**

At the declaratory level, the EU operates as multilateral actor that promotes actively cooperation with the international organizations (e.g. Council of Europe, OSCE) and other crucial actors in the region, applying global rules (e.g. various international conventions), advocating regional cooperation and forging mixed fora with non-state actors. In reality it often means massive EU funding for large projects implemented by these established IGOs without having an efficient control over their effectiveness, impact and added value.<sup>32</sup> The funding to the projects implemented by OSCE and CoE goes from different EU budget lines, including the EIDHR. At the same time, the activity and visibility of the Council of Europe and OSCE in the EaP countries is perceived with mixed feelings across the region. Both organizations work in respective countries on the basis of a pre-defined mandate with priorities considered general and "amorphous". The OSCE efforts to mediate on some of the neuralgic spots (Minsk Group) have not delivered so far, and after the summit in Astana in December 2010 the organization discredited itself in the eyes of many. Also in the eyes of many local civil society stakeholders it has overall worse image than Council of Europe, for it has not been much visible and active in some of the EaP countries but its study trips and meetings abroad are widely enjoyed by the representatives of public authorities who are not at the same time ready to take OSCE recommendations seriously enough. The Council of Europe is more active in the region, mediating for example solutions for the current internal political crisis in Moldova (presidential elections), and its recommendations and opinions are considered to have greater impact on the national authorities. Out of the policy fields, both organizations are mostly active in the electoral observations and electoral legislation (CoE's Venice Commission), and their reports, findings and recommendations enjoy

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<sup>32</sup> According to some experts, the impact of previously implemented OSCE and CoE annual programs in selected policy areas (media of public service, for example, in Ukraine) that run partly on the EU funding, is not visible at all. The local authorities usually do not take the recommendations emerging from these programs and projects seriously, and the projects do not respond to the real needs of the countries (Belarus).

credibility and legitimacy in this particular area. To differing extent and with specific country priorities, they also cover the issues of media, judiciary, corruption, human trafficking, migration management, conflict prevention, gender, youth, law enforcement, environmental issues, and democratic civil control over the armed forces. However, their contribution is mostly limited to monitoring of the situation and articulation of the problems instead of engaging in pro-active strategies influencing democratic changes.

Within the framework of Eastern Partnership, the European Commission and Council of Europe launched in May 2011 the new facility (Eastern Partnership – Council of Europe Facility) funded by the EU for 2011-2013 period. The total budget of 4 million EUR is divided unevenly into four projects: Good governance and fight against corruption, Support measures against serious forms of cybercrime, Supporting electoral standards especially in pre-election periods, and Enhancing judicial reform. The projects' preparations are at different stage and were presented during the meeting of the EaP Intergovernmental Platform 1 on May 6 2011 in Brussels. The general project framework for all four areas envisages use of usual tools (assessment, trainings and workshops) with the CoE engaging only at the level of state authorities with a priori limited access of non-state actors into the whole project cycle. In some areas like judiciary the civil society will be most likely totally excluded, in others an advice was given to consult the local authorities first on the issue of possible niche to be filled by the local non-state actors or the civil society is expected to contribute during the project dissemination phase only. The CoE does not want to engage directly with the local civil society and involve their expertise and knowledge into the project framework despite the fact some policy areas (fight against corruption, judiciary) are prone to the policy imitation traps.

- In order to ensure the effective use of resources, it would be highly advisable for the European Parliament to scrutinize the projects, to be represented in the meetings of the Facility Steering Committee and oversight actively the projects implementation (the midterm review is scheduled for May 2012). Further pressure on involving the local civil society into the relevant stages of the project cycle should be developed; the Eastern Partnership Civil Society Forum can serve as an interlocutor of these efforts.

#### **4. ENP REVIEW**

The Commissioner for Enlargement and European Neighborhood Policy Stefan Füle and the High Representative Catherine Ashton presented the results of the review of the European Neighborhood Policy on May 25 2011. In their generally well received Communication that contains new ambitious concepts and instruments, and re-launch of some of the incentives, the idealism on the ENP approach remains present. The “deep democracy concept” should provide for clear and more comprehensive approach, clarifying on the experience with the stability objective that has been gathered especially in the MENA region over the last decades and that taught the international actors that stability cannot be decoupled from democracy and democratic development further on. The principle of conditionality is understood as “mutual accountability”, as the EU policies and “lecturing” to the neighboring partners were overtaken by the events, and the rule “more for more” shall apply further on. Also the fact the EU is aiming at “partnership with societies”, not governments is definitely a step in the right direction given the state of democratic development in the EaP countries.

- At the same time, it is quite unclear how some of the new concepts suggested in this document will materialize in reality and what the implementation substance will be. In many cases the European Parliament can play a crucial role in shaping the future of the concepts and instruments (European Endowment for Democracy, Civil Society Initiative in the ENPI region, Human rights

dialogues etc.), as the European Commission and the EEAS seem not to have a clear idea and substance of the proposals ready. In relation to “more for more” principle, the Commission is working on the new conditionality of the financial support that should have a mechanism allowing for decreasing support to the partner governments while increasing the support to the civil society when the benchmarks are not met. At the same time the Commission acknowledges problems with channeling resources to the CSOs; they are currently working on a scheme of a “clearing house” when the funding would be going through a consortium of CSOs.

- *The European Parliament should call for streamlining the methodology of the ENP country (progress) reports against the background of the debate on benchmarks allowing for delivery of a more coherent output; for improved timeline of delivery in order to maximize the impact of the reports, and for more involvement of external actors, namely the civil society into the monitoring exercise, possibly in the form of providing complementary scoreboard to the results achieved. In some EaP countries quite advanced methodologies are already applied for issuing the parallel reports (Armenia, Ukraine, Georgia), in others such an initiative could encourage further alternative monitoring efforts from the side of non-state actors.*

#### **4.1 Benchmarks**

The ENP review and Commissioner Füle suggest new set of benchmarks should be developed along the areas of free elections, freedom of association, free media, rule of law and independent judiciary, fight against corruption and democratic control over the armed forces in the second half of 2011.<sup>33</sup> It is already obvious the benchmarks will turn again the weakest spot of the review and the policy implementation as such, as nobody has an answer on the principle or optimal methodology to be followed. If there is one general set of benchmarks, and given the various state of development in the ENP countries, how these will be applied and compared in reality, especially with regard to “more for more” principle is unclear. In case of the EaP countries, the question whether a specific set of EaP benchmarks should be developed and what would be the added value of such an approach should be addressed first.<sup>34</sup> The new benchmarks for EaP countries make sense only if acknowledged and internalized by the EaP governments as with the exception of Georgia, the reforms and transitions are externally-driven, and any set of even loose benchmarks if the EaP governments are committed to it, would be a step forward that could initiate not only reaction on the assessment but policy response to the criticism. If such a set of criteria is agreed and acknowledged by both sides within an inclusive process, the local civil society should be given a mandate to do part of the official monitoring. However, some countries already signaled they are not interested in any new set of benchmarks (Ukraine). The question how best can be the benchmarks operationalized if there is a need for acknowledgement from the both sides (EU and EaP countries) is not easy to answer. Following the goal of approaching the EaP countries to the EU and its standards, the operationalization should follow the EaP Thematic platforms using the framework of international agreements adopted both by the EU and EaP countries for developing specific roadmaps and benchmarks, and in the absence of such a frame on the basis of EU *acquis* that should be adopted in the future by the partner countries.

Some suggest the “more for more” principle can be based only on country-specific, concretely formulated benchmarks, as some of the suggested areas for benchmarking are not relevant in some countries (namely Moldova), some would like to go along the Copenhagen criteria.

<sup>33</sup> (Medium Term Programme for a renewed European Neighbourhood Policy (2011-2014), May 2011)

<sup>34</sup> According to observations of Belarusian NGOs new set of benchmarks is necessary because the existing methodologies often don't fit specificity of transformation in the countries of post-soviet region; they can't reflect the dynamic of changes and can't be used for the management of these changes.

The solution should be probably a combination, with the civil society playing specific role in formulating and monitoring the country-specific targets. There are already several projects implemented by the civil society aiming at developing new methodologies of benchmarking, including the *European Integration Index for the Eastern Partnership Countries* implemented by the International Renaissance Foundation (Ukraine) that offer promising results. And there are natural candidates for generally accepted benchmarking in some of the policy areas (GRECO – fight against corruption, etc.). During the second EaP Civil Society Forum Belarusian delegation already proposed idea of using the Open Method of Coordination (OMC) for management, monitoring and evaluation of transformation process in EaP countries.

There are also reservations towards spending too much energy and time on developing new benchmarking as this process could be a good reason why not to do anything; the focus should be rather put on implementation of the existing methodologies and indexes in selected policy areas (fight against corruption, monitoring of judiciary, etc.)

- *The European Parliament should launch a dialogue with the relevant civil society actors, academia and other EU institutions on the issue of benchmarking in order to develop list of available indexes, methodologies and agree on comprehensive cost-benefit approach that would not consume unnecessary time, and on the measures following the non-compliance with the benchmarks.*
- *The European Parliament should try to instigate the parallel process of EaP benchmarks identification within the inclusive consultative process in relevant EaP countries; Euronest can be used as one of the forums promoting the idea.*

#### **4.2 ENPI Civil Society Initiative (Facility)**

The incentive for new facility from which the civil society would be funded, and that would work within the ENPI has emerged within the Eastern Partnership Civil Society Forum and was taken on board by the EEAS and the European Commission when preparing the ENP review. It is one of the elements which is already under discussion, including the implementation side that is being prepared by the DG DEVCO. The facility should run in 2011-2013 on preliminary allocation of 60 million EUR (20 million EUR distributed each year of the cycle) with no a priori geographic distribution of the funding between East and South. The DEVCO proposal speaks about non-state actors (NSAs) defined in a broader way than the civil society as the targets of the new initiative. Out of the three proposed components, the Component 1 (Strengthen NSA capacities to promote reform and increase public accountability) that is to be implemented in 2011 most likely aims at the ENP South, as it mainly focuses on the trainings and capacity building. A “comprehensive analysis” of the needs in every ENP country done by the European Commission and EEAS should precede the programming of the call under the Component 1. Given the still understaffed EU delegations in most of the countries and lack of strategy on how to involve the local actors into the preparations of the comprehensive analysis, the quality of the outputs and the timeline of delivery remain unclear, although DG DEVCO envisages the first calls for proposals to be launched in the second half of October 2011, as the final financial decision on the Initiative should be adopted sometime at the beginning of October 2011. The multi-stakeholder consultations at national level involving NSAs should be also supported under Component 1. Component 2 (Strengthening NSAs through support to regional or country projects) should run on the course of the whole programming cycle, and provide funding for projects related to ENP implementation (mostly monitoring projects), Eastern Partnership and Union for Mediterranean based on regular calls for proposals under still unspecified terms, regulated, however, by the existing Financial Regulations and Implementing Rules. A specific call for regional flagship project can be launched, most likely on the issue of improving the environment for NSAs, which is generally well-selected priority in relation to the EaP region.

Component 3 (implementation in 2012 and 2013) should aim at encouraging partner governments to propose and implement bilateral programs aiming at reinforcing the civil society.

- *The division of funding among the three components should be specified, with the regional allocations defined at least under Component 2, including the allocations for regional initiatives (EaP and Union for Mediterranean).*
- *The maximum flexibility of funding should be employed, using the EIDHR template and some of its specificities (funding of non-registered NGOs).*
- *Support to the ENP monitoring projects under Component 2 should be closely linked to the debate on benchmarking.*
- *Specific allocation to structural support for couple of selected organizations within the facility, following the features of the framework used by the EACEA for the intra-EU calls for structural support of think-tanks etc. should be considered.*
- *Component 3 should be abolished in relation to the EaP countries, possibly with the exception of Moldova and Georgia, as it is quite clear it would deliver undesired outcome (funding of GONGOs). The EaP allocation within the Component 2 should be proportionally increased.*
- *If the proposed facility's eligibility criteria allow for proposals from Russian organizations the EP should try to lobby against it as there are other sources of EU funding for Russian NGOs.*

### 4.3 European Endowment for Democracy (EED)

One of the new ideas mentioned in the ENP Review is the proposal to establish the European Endowment for Democracy. The concept has been promoted by Poland and is going to be one of its flagship initiatives during the upcoming Polish EU Council Presidency (second half of 2011). At the moment, neither the Commission and EEAS, nor Poland has a clearer idea on the substance of the proposal. In the Polish non-paper one can read "we are open to all proposals" regarding the substance and organization of the EED but also that the EED should be built along the lines of USA's NED, however, such a structural mimesis would bring inherent difficulties not least because of NED works on partisan principle.<sup>35</sup> The representatives of the EEAS when asked about the implementation outline of the EED provide no concrete answer. A policy paper of the influential Polish think-tank (The Institute of Public affairs) listing recommendations to the Polish Presidency in the area of democracy support<sup>36</sup> suggests building on the existing European Partnership for Democracy that emerged in relation to the 2006 clash over the EIDHR reform, and that is currently supported by several member states. The very idea to establish a foundation through which a certain part of the EU democracy and human rights assistance would be granted to the civil society and NGOs is even older.<sup>37</sup>

- *The EED concept is worth considering but not on the expense of terminating EIDHR as it is hardly imaginable similar budget line would be allocated to the newly established body from the Community budget as the Commission would not be keen on giving up control over such spending; the overall result could be diminished, not increased funding of human rights and democracy support. The*

<sup>35</sup> (Emerson, 2011)

<sup>36</sup> (Svarovska, Kucharczyk, 2011)

<sup>37</sup> The idea was not new even before 2006. European Initiative for Democracy and Human Rights was in mid-1990's run by an external agency - European Human Rights Foundation, (EHRF) that enabled the initiative to avoid lengthy processes typical for programmes administered directly by the European Commission. The EHRF provided at first solely technical assistance, later it took over the complete management of the initiative. However, in 1999 the swirl of events radically changed the ownership of the instrument. The decision to take the EIDHR as an in-house project of the European Commission was partly also a consequence of suspicion towards the so called "submarines", independent agencies outside of the European Commission, to which the Commission outsourced some of its operations. Such aversion was a natural repercussion in the aftermath of the resignation of the Santer Commission for mismanagement of EU funds.



*Commission in its open consultation already tested ground for abolishing EIDHR in 2013-2020 and the launch of EED could serve as further argument.*

## **5. EU'S PROMOTION OF DEMOCRACY AND HUMAN RIGHTS – SELECTED INSTRUMENTS AND TOOLS**

### **5.1 European Instrument for Democracy and Human Rights (EIDHR)**

Since its introduction in January 2007, and *de facto* implementation from the second half of 2008, the reformed European Instrument for Democracy and Human Rights (EIDHR) has opened up the possibility of more flexible funding reaching civil society organizations and individuals (Human rights defenders). However, the EIDHR remains a standard instrument implemented via a technical approach rather than a political tool with the potential to support or promote democracy and transition in EaP countries. Democracy support remains overshadowed by human and social rights issues within EIDHR programming and implementation. Moreover, the EIDHR Strategy Paper 2011- 2013 does not raise the priority of democracy support closer to the level of priority given to human rights support. The 2007 reform of the EIDHR (and Financial Regulation and Implementing Rules) brought about new implementation possibilities and flexibility, but full use is not being made of the changes<sup>38</sup> due both to lack of practical experience on the side of the EU Delegations in the EaP countries and the European Commission (DG DEVCO), and also lack of knowledge of the possibilities from the side of civil society. In countries where the EU seemingly faces no problems at the political level and the country leadership adheres to commonly shared goals, there is generally less commitment to tackle sensitive issues related to the state of democracy. At the same time, a large proportion of funding is dedicated to specific human rights areas which can in turn have a positive impact on the governance structures of a given country. The EIDHR should have a stronger focus on political pluralism (as, in fact, stipulated in the Strategy Paper 2011-2013), creating alternatives for political dialogue and for projects targeting political parties, including capacity building of political parties in selected third countries. The argument that in some countries there is no need for support of particular political actors, since they are already receiving a lot of funding and training, is in some instances a valid one, but the EIDHR should work primarily through civil society actors that can offer innovative ways of enlarging the political space. Despite the positive steps taken towards making the instrument more flexible, civil society organizations still consider applications for funding under the EIDHR difficult and time-consuming. The European Commission argues that it has its hand tied by the Financial Regulation and Implementing Rules that are envisaged to be further amended and reformed in 2014; on the other hand, implementation practice from the area of direct support provided to human rights defenders and from implementation of *ad hoc* measures could be used in regular grant-making activities within the Instrument. Within the recently published public consultation, DG DEVCO unveiled some of its ideas for 2014-2020 external assistance. Within the tested ideas, the suggestion to abolish EIDHR as a self-standing instrument re-emerged again; similarly to the 2006 argumentation, the human rights and democracy promotion would be mainstreamed within the geographic instruments (ENPI for EaP). The objectives and tools of the Instrument (CBSS, Global calls, etc.) are currently under review commissioned by DG DEVCO.

- *Despite all shortcomings<sup>39</sup>, the EIDHR is the most flexible tool currently at hand that runs on the standard financial and control processes of the European Commission, and whose programming and*

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<sup>38</sup> (Rihackova, 2010)

<sup>39</sup> For detailed analysis please see (Rihackova, 2010)

*budget can be directly influenced and modified by the European Parliament. It is thus advisable to counter the efforts for abolishing it as a self-standing tool in 2014-2020.*

- *The Democratic Scrutiny process<sup>40</sup> allowing the European Parliament to oversight the implementation of EIDHR via scrutinizing the Annual Work Programmes and Strategy Papers should be better used by the MEPs.*
- *The new concept of European Endowment for Democracy should be considered on the basis of its actual content (likely to be debated at the July Foreign Affairs Council as suggested by Poland) and envisaged funding. If a useful complementarity can be achieved with the EIDHR, and activities of the political foundations (and Political Foundations at European Level if active within Euronest in the EaP countries), the idea should be promoted.*
- *European Parliament should lobby for further relaxation of Financial Regulation and Implementing Rules, as these frameworks regulate use of funding within the other instruments of external action, too (ENPI); the EP Committee Budget should be allied on the issue.*

## **5.2 Human rights dialogues**

In order to advance better the policy on human rights in its external relations, the EU adopted a set of guidelines that are not legally binding; they are adopted at the level of the EU foreign ministers and as such send a strong political signal to its partners, describe EU priorities and provide for practical implementation tools. While the EU efforts to include the human rights issues into all meetings and discussions with third countries (mainstreaming) and ensures that a reference to human rights is included in programming discussions and in country strategy papers, in some cases the only forum for discussing the issue are the Human Rights Dialogues, involving not only state authorities but also the civil society. The objectives of human rights dialogues vary from one country to another and are defined on a case-by-case basis.<sup>41</sup> The EU opened HRD with Armenia (the second round in December 2010), Azerbaijan (within dialogue on Justice, Freedom, Security, Human Rights and Democratization, the first round held in December 2010), Belarus (the first round was held in June 2009, only a preliminary consultations with the NGOs were held), and Moldova (launched in February 2010). There is no specific HRD with Ukraine; the first meeting between the EU and Ukraine on human rights took place only on May 27 2011 but was closed to the civil society and no information from the meeting was disclosed.

The format of the HRDs has been criticized for several reasons by experts, NGOs and the European Parliament<sup>42</sup> that also sought more involvement. The persistent issues are lack of consistent benchmarks review mechanism; benchmarks are set when the dialogue is open but not made public. Understanding the HRDs as a complementary policy instrument but, in fact, limiting the discussion on

<sup>40</sup> In order to foster its position in the comitology procedure over sighting programming of the Instrument, the European Parliament demanded its engagement within the Democratic Scrutiny procedure. This procedure rests upon the inter-institutional agreement among the main legislative bodies from 2006 which elaborated on the involvement of the EP under aspects of democratic scrutiny and coherence of external actions (Inter-institutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (2006/C 139/01), p. 25)

<sup>41</sup> These objectives may include: discussing questions of mutual interest and enhancing cooperation on human rights inter alia, in multinational fora such as the United Nations; registering the concern felt by the EU at the human rights situation in the country concerned, information gathering and endeavouring to improve the human rights situation in that country; signing, ratification and implementation of international human rights instruments, cooperation with international human rights procedures and mechanisms, combating the death penalty, combating torture, combating all forms of discrimination, children's rights, and in particular those of children in armed conflicts, women's rights, freedom of expression, the role of civil society and the protection of human rights defenders, international cooperation in the field of justice, in particular with the International Criminal Court, promotion of the processes of democratisation and good governance, the rule of law and the prevention of conflict. (EEAS, EU guidelines on human rights dialogues with third countries 2008:7)

<sup>42</sup> The Functioning of Human Rights Dialogues and Consultations on Human Rights with Third Countries, AFET/6/44519

human rights to it (HRDs serving as an excuse not to talk about human rights on other occasions) is another issue, as well as the principle of reciprocity and poor strategic planning. From the side of the EaP countries, there is lack of political will to conduct dialogue on continuous basis in a transparent manner and to implement the steps recommended within the framework of international agreements the countries are parties of; the pressure to comply from the side of the international community is weak and thus contributing to such an attitude.

In the EaP countries, the NGOs (genuine NGOs as well as GONGOs) are involved into the process but the whole issue is mostly considered rather formalistic and the motivation to take an active part is generally lacking. In some countries, the process has not been considered transparent with the EU not disclosing information to civil society (Georgia, Ukraine).

- *The HRDs can become an effective tool only if they are not isolated efforts but continuous processes, including consistent work with the local NGOs and using the information, assessment and monitoring reports of independent civil society on the daily basis (not only with the next round of HRDs approaching).*
- *For such a permanent communication and flow of alternative information the EaP CSF National Platforms can be used that can also monitor the emergence of single issue networks using the internet and social networks for collecting information and civic campaigns in the EaP countries as it is a gradually frequent phenomenon in these countries.*
- *In Belarus, the authorities are unwilling to involve the civil society into the HRD; the inclusion of the NGOs into the process could be one the conditions for re-starting the overall dialogue between the EU and Belarus. As the economic situation in the country is not developing well, the regime could be more open to compromise on the human rights issues.*

### **5.3 Council Conclusions on Democracy Support**

Council Conclusions on Democracy Support in the EU's External Relations and its Agenda for Action were adopted on 17 November 2009, and 13 December 2010 (Progress Report and the List of pilot countries). In this soft law document, democracy and locally driven democratization are defined as the EU's foreign policy goal, which should be achieved *inter alia* through improvement of coherence, complementarity and co-ordination of existing EU policies and instruments. The Comprehensive report on the implementation of the Conclusions it to be presented in early 2012. Out of the EaP countries, Moldova was selected as the pilot country for the assessment that might not be the best test case of incoherencies of the EU approach to democracy promotion. The Commission is set to be the main implementing body of the Conclusions, with the EEAS and the member states contributing, The European Parliament should follow and scrutinize the process. The Commission already made reference to the Conclusions in the EIDHR Strategy Paper 2011-2013, adjusted slightly the thematic focus in line with the Conclusions, and emphasized the need for greater visibility of EU assistance and work in this field.

- *The Polish Presidency will most likely engage actively in the implementation of the Conclusions; there is an opportunity for close cooperation with the European Parliament on the policy consolidation across various instruments and tools.*

## 6. HOW TO INCREASE POLICY EFFECTIVENESS AND THE ROLE OF THE EUROPEAN PARLIAMENT

### 6.1 Euronest – context and opportunities

Besides the issues mentioned above, the European Parliament should use the potential of having established Euronest as the parliamentary platform for cooperation with the EaP countries, and turn it into an instrument contributing to enforcement of the reforms and particularly to development of political parties as true actors of change in the EaP countries. At the moment, in most of the EaP countries the political parties are not the driving forces of the reforms; other actors and specific cleavages play the main part. Some experts warn against possibility Euronest to be turned into an arena for raising sensitive regional issues (Nagorno Karabakh, relations with Russia) and consequently making some delegations resistant to any attempts to address regional conflicts, or the forum can be blocked by the issue. Especially Armenia does not feel comfortable to have the GUAM “block” against her within the assembly. The level of enthusiasm towards Euronest is different in every EaP country; for Moldova the benefits prevail, Armenians have their reservations, in Ukraine the initiative is not regarded with great expectations, as the parliament is weak and most of the important decisions are made by the President’s administration, in Azerbaijan there is not great interest among the large political parties in Euronest, and the real opposition did not get into the parliament after the 2010 elections. Belarusian authorities are generally interested in participating in Euronest as it is yet another communication channel with the EU.

- *European Parliament should use the opportunity and build an alternative forum for discussion on the human rights and democratization as other EU tools are not delivering (HRDs), using the established Euronest Committee on Political affairs, human rights and democracy and Committee on Social affairs, culture, education and civil society. The efforts could be shored up by real-time communication with the civil society in the EaP countries. For this purpose, specific contact points can be established for facilitating cooperation with EaP CSF National Platforms and other civil society networks.*
- *An assessment of the notion of a political party, and of the state and influence of the existing political parties in the EaP countries should be conducted by the European Parliament; the niches for cooperation, trainings and support of selected political actors should be determined and the objectives followed. The Political Foundations at European Level and other political foundations should play a role in this process.*
- *An instrumental approach should be taken by the EP when dealing with the representatives on non-legitimate EaP parliaments, as socialization can deliver some structural change.*

### 6.2 The Polish Presidency

Poland is taking over the EU Council Presidency at the second half of the year; it has clear ambitions vis-à-vis the Eastern Partnership, as well as the EU democracy promotion agenda. Namely the agenda of democracy support within the EU’s external relations including new tools and assessments will be one of the Polish Presidency flagships in the area of foreign policy. The September EaP Summit in Warsaw will have ambitious goals related to the ENP Review and presentation of the results achieved on the EaP roadmap; it is a key event that should boost the EU’s attractiveness to the EaP partners.

- *Poland will most likely build a group of like-minded countries and scrutinize closely the implementation of the Council Conclusions on Democracy Support and assure the comprehensive report is available on time; the European Parliament should support the Presidency efforts in this direction.*

- *On the basis of this monitoring, the first steps regarding the future reform of human rights and democracy support funding will be most likely taken, including the EED and the EIDHR; Poland already signaled it is not in its interest to abolish EIDHR as a self-standing instrument. The European Parliament should get involved early both into the process of scrutinizing the implementation of the Council Conclusions and into the starting debate on the future funding. The key Polish MEPS who are also active in the Euronest should be the interlocutors of such an involvement.*
- *Euronest should offer an added value to the Polish Presidency as a complementary communication channel with the EaP countries, and with its focus on the issue of political parties in the EaP countries.*
- *Poland is very supportive to the civil society and its actorness in the EaP; with regard to the converging opinions of Commissioner Füle on the issue, and with the involvement of the European Parliament via Euronest and other means, a strong concurrent of all key EU institutions could materialize that would support the local civil society in the EaP countries at various levels.*

### **6.3 Role of the civil society**

Given the rather negative trends related to the democratic transformation and state of human rights in the EaP countries, the local civil society plays an indispensable role of watchdogs, whistle-blowers, source of alternative information, monitoring and assessment, and pool of innovative expertise, approaches and knowledge. With the development of various platforms and networks, the civil society starts operating increasingly in the regional context, too. In parallel, further steps are taken by some of the regimes to curtail their room for operation, access to information, and to challenge the credibility of the independent actors. The problems related to the state of the local civil society have to be acknowledged, too, and taken into regard, however, the support of the genuine civil society in the EaP countries should be among the top EU and European Parliament's priorities. The European Parliament already has established relations and regular dialogues with the civil society. These efforts should be further strengthened by active engagement with the local civil society (not only) in the EaP countries. The institutionalized forum of cooperation of the EU and EaP civil society – the *Eastern Partnership Civil Society Forum* proved a viable concept over more than two years of its existence and can serve this purpose as one of the interlocutors. Its structure and composition copies the multilateral segment of the EaP, with specific issues being tackled within specialized sub-working groups. Also, all six National Platforms in the EaP countries are up and running. There are still certain deficiencies of the Forum but its added value has been already manifested.

- *The European Parliament should promote the improvement of the civil society milieu in most of the EaP countries within Euronest.*
- *The European Parliament should further strengthen its ties with the civil society, namely provide a room for the genuine local civil society to be regularly listened to (via presentations or regular monitoring reports) and adopt simple rules for engaging with local civil society when on official visits to the EaP countries (meeting with the civil society as a condition of the visit).*
- *The European Parliament should engage actively with the EaP CSF and use its potential of an alternative communication channel on the situation and development in the EaP countries (regular briefings can be established). The MEPs who engaged in the past on the issue of supporting further development of the Forum (secretariat) and its better access to the EaP meetings at various levels (permanent participant status) should continue their support.*

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