Jatulyte, Edita (2015) *To what extent does the European Union promote the Rule of Law in the Eastern Partnership: case studies of Moldova and Georgia.*
[Undergraduate degree]

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To what extent does the European Union promote the Rule of Law in the Eastern Partnership: case studies of Moldova and Georgia

Presented in partial fulfilment of the requirements for the Degree of M.A. in Politics and French

University of Glasgow
March 2015

Acknowledgments

I thank Professor Stephen White for all the help and guidance during the process of writing this dissertation. His knowledge and expertise have inspired my interest and encouraged me to pursue further research in the field.

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Abstract

This dissertation aims at assessing to what extent the European Union promotes the rule of law in the Eastern Partnership countries. The study is developed under the Most Similar Systems Design in order to observe how and why one policy has different outcomes in two countries. Firstly it overviews the EU role in exporting values to the neighbouring states and examines what instruments and mechanisms it uses. Subsequently, Chapter 2 provides case studies of Moldova and Georgia, and examines the progress achieved in the rule of law in legislative, executive and judiciary sectors. The results indicate that the advance has been relatively limited and that while a number of laws have been adopted, their implementation remains doubtful. The main reasons for such an outcome are the asymmetrical relationship between the EU and the partner countries, the dominating top-bottom approach and still relevant presence of Russia. In order achieve more positive results in the future, this dissertation recommends the EU taking a more pluralist approach towards the partner states and becoming more geopolitically strategic.

Introduction:

The expansion of European Union (EU) values and rules to the Eastern neighbourhood has been one of the most important dimensions of EU external policy since early 1990s (Dragneva and Wolczuk, 2011:218). After the fall of the Soviet Union, the Eastern European countries found themselves at the crossroads between the East and the West, whilst the then-European Commission saw an opportunity to finally end the division of the continent. At the time the EU was preoccupied with the accession of the Scandinavian countries and the reunification of Germany; however, it recognized that inaction might cause the newly independent states turn back to the East and destabilize Western Europe. Therefore, the EU shifted its foreign policy and started promoting European values in its Eastern neighbourhood.

The EU's export of values included but was not limited to spread of democracy, human rights, the rule of law, and trade liberalization[1]. The impact was considered positive by the 2000s, and transition towards European values in the post-Soviet countries was sustainable. The success of EU foreign policy was crowned in 2004 when the Union welcomed ten new member states. Subsequently, the enlargement was perceived as a green light for the EU to further extend its foreign policy in the East, thus in 2004 it launched the European Neighbourhood Policy (ENP) 'to promote stability and prosperity within and beyond the new borders of the Union' (Commission of the European Communities, 2003). The initiative was to become the main vehicle for the EU's normative projection to the neighbourhood countries; however it received strong criticism – it was argued that the policy lacked focus and effective reform, as well as it did not recognize the differences between the Southern and Eastern neighbours (Lapczynski, 2009:144). Furthermore, EU member states appeared to have different expectations and perceptions of the ENP: France wanted to promote development in the energy supply sector, the United Kingdom saw it as a tool to fight terrorism, while Poland lobbied for

[1] Please note that in this context the content and meaning of the term "European values" corresponds to the term found in the official documents published by the European Commission. More extensive approach of the EU's perception of the rule of law will be presented later in the paper.

promotion of a community of values (Lippert, 2008:10). As a consequence, two new partnerships were launched – the Union for the Mediterranean and the Eastern Partnership (EaP) – that were supposed to respond to different needs of the Southern and Eastern European neighbours.

The newly emerged Eastern Partnership established a framework for EU relations with six neighbourhood countries – Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine. The key aim of the initiative was to move beyond the already existing European Neighbourhood policy and on to establishing a more ambitious and 'permanent formula for multilateral co-operation in the region' (Lapczynski, 2009:146). According to the Joint Declaration of the Prague Eastern Partnership Summit, the EaP was based on 'commitments to the principles of international law and to fundamental values, including democracy, the rule of law and the respect for human rights and fundamental freedoms, as well as to, market economy, sustainable development and good governance' (Council of the European Union, 2009: 5). Among many other clauses, the declaration included EU intentions to develop Comprehensive Institution-Building Programmes, as well as stated that 'legislative and regulatory approximation is crucial to those partner countries willing to make progress in coming closer to the EU' (Council of the European Union, 2009:8). The implication of the Eastern Partnership was that with support and guidance from the EU the partner countries were to undertake various political and socio-economic reforms in order to embrace European values. Subsequently, the EU established itself as an exporter of European values in the Eastern European region.

While the spectrum of values that the EU promotes in the Eastern Partnership countries is broad, this dissertation will focus on the EU export of the rule of law. The principle of the rule of law is considered to be a core pillar of the European Union and thus a crucial requirement for the partner countries. Therefore, the aim of the dissertation is to assess the extent to which the EU is successful in promoting the rule of law and to examine if the EU framework is appropriate for the Eastern Partnership countries. The dissertation will also attempt to observe impediments to better performance and will provide recommendations for policy makers. The research will firstly review the EU role as an exporter of the rule of law and then will focus on the framework that the EU uses to

promote it, including normative, technical and progress assessment aspects. Research methodology will then follow presenting aims and expectations of the research, as well as explaining the choice of the case studies – Moldova and Georgia. Chapter 2 will be dedicated to the case studies where each country will be assessed in terms of progress made in legislative, executive and judicial sectors. Chapter 3 will attempt to present explanations of the case studies results and will provide suggestions on how to maximize the EU impact in the EaP. The conclusion of the study will demonstrate that multiplication of EU norms promotion activities has established the EU as a normative power and in order to improve its performance the EU needs to adopt more differentiate approach as well as become more strategic towards the Eastern Partnership countries.

Chapter 1: The European Union and the Rule of Law

1.1 Why does the European Union export the rule of law?

Rule of law promotion in the transition countries is not a new policy; however, it seems to be reliving its momentum. According to Thomas Carothers, one cannot get through a foreign policy debate without someone proposing the rule of law as an elixir that is supposed to cure a country's problems (Carothers, 2006: 6). The Western policy makers believe that the rule of law allows countries to move past political and market liberalization towards deeper and more sustainable reform, thus increasing transparency, fortifying government institutions, and fighting corruption seem to be an appropriate place to start (Carothers, 2006:7). Subsequently, the concept is perceived having universal quality and is regarded as an absolute necessity for modern democratic societies (Kochenov, 2009:8). In this regard, the EU is not an exception since the rule of law has been on its foreign policy agenda since 1990s, and it started flourishing during the Eastern enlargement. For the EU the rule of law is a core vehicle that is able to facilitate partner states' progress in political and economic sectors, as well as to encourage their cultural shift from the East to the West. The EU Justice Agenda for 2020 suggests that it is crucial for the EU to protect its citizens in their business with partner countries (European Commission, 2014), meaning that for the EU the export of the rule of law is

more about partner's reliability and approximation to European values rather mere institutional building (Burlyuk, 2014:5).

1.2 The contested nature of the Rule of Law concept

As the discussion above indicates, the rule of law principle is applied universally; however its normative concept appears to be extensively debatable. Depending on empirical situation, the meaning of the term tends to vary from general statements of shared values, such as respect of fundamental human rights, to specific references to a set of laws that bind individuals or states (Nicolaidis and Kleinfeld, 2012:8). And even though the first scholarly texts on the rule of law 'were written more than century ago, no generally accepted definition of the concept exists to date' (Wichman, 2010:52). In the "Introduction to the study of the law of the constitution" first published in 1885, British constitutional theorist Albert Venn Dicey identifies three key principles of the concept: firstly, 'no man is punishable except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land; secondly, no man is above the law; thirdly, the constitution is pervaded by the rule of law on the ground that the general principles of the constitution are with result of decisions determining the rights of private persons' (Dicey, 1960: 188-195). While these principles are often found in official documents, they are not able to sufficiently define the rule of law. Israeli political philosopher Joseph Raz suggests dividing the concept that allows distinguishing formal and substantive understanding of the rule of law; however, the definition of the substantive part remains controversial (Wichmann, 2010:53). More recently Rachel Kleinfeld suggests distinction between a means/institutional approach and an end-based approach. While the institutional approach focuses on strengthening of institutions, the end-based approach attempts to achieve such results as 'government bound by law, equality before the law, law and order, predictable and efficient rulings, and human rights' (Kleinfeld, 2012:14). The debate indicates the difference between already existing definitions and attempts to extend the scope of the rule of law concept. However, as it has been mentioned above, the eventual definition has not been yet designated.

The contested nature of the concept has subsequently led the EU to its own formulation of the notion of the rule of law. It is important to note in this context that the

EU promotes the rule of law because ‘it is a Community of Law, in which all legal acts are adopted in conformity with the law’ (Wichmann, 2010:54). In this regard, the European Court of Justice (ECJ) has provided the definition of the rule of law in the ruling of *Les Verts v. Parliament* [1986] ECR 1339, para. 23 as for the first time it described the European Community as a ‘Community based on the rule of law’ (Pech, 2009:10). In the 1992 Maastricht Treaty the term was included among other EU fundamental principles (Article 6) and was further reinforced by the 1997 Amsterdam Treaty, thus acknowledging importance of the concept (Wichmann, 2010: 54). As for the 2007 Lisbon Treaty, it simply ‘reproduced the provision previously contained in the Constitutional Treaty, which meant that the Treaty on European Union (TEU) now contained a provision known as Article 2 TEU and which provided that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities’ (Pech, 2012:10). Nevertheless, neither of the documents actual provides what the principle encompasses. Such difficulty comes from the fact that the principles of the rule of law have different meanings depending on the constitutional traditions of the member states.

One of the most apparent contrasts is between the legal tradition in European Continental and Anglo-Saxon countries. According to Dyson, Continental Europe has a different ‘understanding of the relationship between the role of law and of the state, which was structured to provide information on values and how individuals were to conduct themselves in their relations with one another and with the state’ (Dyson, 1980:116, cited in Mineshima, 2002:74) while the Anglo-Saxon tradition tends to give primacy ‘to both rights-as-the-“Rule-of Law” and law over the State, while upholding the sovereignty of the Parliament’ (Nicolaidis and Kleinfeld, 2012:29). The disparity of approaches indicates that among the member states there is a different normative perception of what is the relationship between the law and state, as well as between the state and society. Consequently, the member states do not have a defined concept but rather share the “we recognize it when we see it” attitude (Nicolaidis and Kleinfeld, 2012:27). Nevertheless, the normative differences between the British *Rule of Law*, the German *Rechtsstaat* and the French *État de droit* do not necessarily mean that in practice

the member states are unable to find common ground. Furthermore, lack of definition provides space for contextual sensitivity and facilitates states' integration within the European framework (Burlyuk, 2014:5).

1.3 The rule of law export mechanism within the Eastern Partnership

According to Mineshima (2002:75), the European Commission revolves around implementation of the rule of law rather than its definition. Within the Eastern Partnership framework, guidelines for the rule of law are established under a number of multilateral and bilateral mechanisms that provide technical and financial assistance. In 2007, the European Instrument for Democracy and Human Rights (EIDHR) replaced the European Initiative for Democracy and Human Rights and among many other objectives, intended to support activities strengthening the rule of law, promoting equality and encouraging judicial independence (European Commission, 2007). With the budget of € 1.1 billion for 2007-2013 and with € 1.3 billion for 2014-2020 (European Parliament and the Council of the European Union, 2014), the EIDHR is supposed to complement other instruments such as the European Neighbourhood and Partnership Instrument (ENPI), as well as the Instrument for Pre-Accession Assistance (IPA). The ENPI was first established in 2007 with the financial envelop of € 12 billion and in 2014 it was replaced by the European Neighbourhood Instrument (ENI) with the budget of €15.4 billion, thus providing the most substantial financial assistance to the ENP countries (European Parliament and the Council of the European Union, 2014a). The primary aim of the ENPI and IPA is helping partner states in approximation of their legal and administrative frameworks to the EU standards by providing financial assistance to relevant activities (Pech, 2012:19). Article 2 of the IPA Regulation indicates the scope of such activities that includes strengthening law enforcement, public administration reform, progressive alignment with the EU *acquis communautaire* and others, while Article 15(2) offers technical assistance through administrative cooperation measures involving public-sector experts dispatched from Member States (Council of the European Union, 2006). In this regard, multiple mechanisms are designed to provide partner states with thorough assistance at all levels of cooperation.

Considering bilateral relations with the Eastern Partnership countries, the EU has adopted Action Plans that set out agenda for political and economic reforms. If successfully implemented, Action Plans provide foundation for Association Agreements that in turn extend opportunities for trade and investment, as well as establish deep and comprehensive free trade zones (Council of the European Union, 2009:7). Unlike membership and accession documents, Action Plans provide relatively vague frameworks where the EU is not in a position to impose anything on the partner states and operates within differentiation and joint ownership principles instead (Burlyuk, 2014:4). In terms of content, Action Plans are political documents setting out overarching strategy targets, complemented where necessary by more detailed plans for sector-specific cooperation (Commission of the European Communities, 2003:16).

1.4 Measurement of compliance to the rule of law

Similarly to the concept of the rule of law, the measurement of its compliance is considered crucial; yet has not been universally established. Scholars and policy makers agree that the rule of law indicators are valuable tools that allow showing areas of state failure, as well as highlight deficits and areas of inequality (Merry, 2011:S85). Moreover, the reliance on numbers produces an unambiguous and easily replicated area for judgment, thus compliance to the rule of law becomes more comprehensive and more open for assessment (Merry, 2011: S88). Subsequently, despite highly contested nature of the concept, a few attempts to establish rule of law measurement indicators were made by a number of international organizations. The World Bank has been regarded as the frontrunner regarding development measurement tools and its World Governance Indicators (WGI) project is particularly impressive as it reports aggregate and individual governance indicators for 215 economies over the period 1996–2013, for six dimensions of governance, one of which is the rule of law (Pech, 2012:36). However, it relies on 'perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence' (Kaufmann *et al*, 1999:8), which aggregates too many discrete elements into one term, thus suggests poor conceptualization (Ginsburg, 2011:271). Another attempt was made by La Porta, Lopez

de Silvanes, Shleifer, and Vishny (LLSV), who have produced a number of studies purporting to show the long-run impacts of the quality of legal institutions. Their studies look at the quality of corporate law, the structure of equity and debt markets, judicial quality, corruption, and many other variables, including economic growth. They find a consistent pattern that countries with French legal origin perform worse than those of English legal origin. Such an approach ties into old notions that the common law was a superior mode of regulation, because of its case-by-case incremental approach (Mahoney, 2000: 1). Unfortunately, the papers were riddled with a number of miscoding, as well as with a poor definition of legal origin, thus were not considered as providing a credible foundation (Ginsburg, 2011:277).

Last but not least is the attempt made by The World Justice Project (WJP), a non-governmental organization based in Washington D.C. The WJP Rule of Law Index comprises nine aggregate indicators (or factors) further disaggregated into 47 specific indicators (sub-factors)[2]. The nine factors are: (1) Constrains on Government powers; (2) Absence of Corruption; (3) Open Government; (4) Fundamental Rights; (5) Order and Security; (6) Regulatory Enforcement; (7) Civil Justice; (8) Criminal Justice; (9) Informal Justice (The World Justice Project, 2014). The framework is noteworthy, because instead of focusing on inputs, it provides a more holistic approach and identifies a number of specific outcomes that the rule of law intends to promote. Due to numerous sources of norms coming from different local and national legislative bodies, administrative rulemaking and informal bodies like G-20, countries are often subjected to multiple levels of governance, thus measuring output becomes more coherent way to approach measurement of the rule of law (Barendrecht, 2011:288). Even though it has been indicated that in some cases the Index suffers from mistreatment of missing values, a number of scholars argue that it provides the most advanced rule of law measuring framework so far (Pech, 2012; Ginsburg: 2011; Saisana and Saltelli:2011).

Under the Eastern Partnership framework, compliance to the rule of law and implementation of Action Plans is monitored by the European Commission and the European External Action Service (EEAS) that once in a year publish detailed reports

[2] See Annex for the full list of sub-factors

assessing the progress made towards the objectives of the Action Plans and the Association Agreements (Commission of the European Communities, 2005). The assessments and recommendations contained in the Progress Reports form the basis for EU policy towards each ENP partner under the "more for more" principle which suggests that the more deeply a partner engages with the Union, the more fully the Union can respond (European Commission, 2010:2). Accordingly, the pace of progress of the relationship between the EU and a partner state highly depends on the latter’s ability to implement jointly agreed commitments. Such observation leads to conclusion that in the absence of a uniform concept of the rule of law, at the political level the EU operates with an abstract rule of law ideal and determines its concrete institutional attributes for each partner state at the practical co-operation level (Burlyuk, 2014:4).

Methodology of the study

As the introduction and Chapter 1 indicate, the EU has a comprehensive rule of law promotion framework that delivers normative, technical and financial assistance to the partner countries. Subsequently, this dissertation will examine to what extent the EU framework is appropriate for the Eastern Partnership countries, and will attempt to observe impediments to better performance.

The research methodology used in this dissertation is modelled according to the Most Similar Systems Design (MSSD) that is based on choosing objects as similar as possible, ‘except with regard to the phenomenon, the effects of which we are interested in assessing’ (Anckar, 2008:289). It allows comparing similar subjects while keeping irrelevant variables constant, thus increasing the focus of the study. Furthermore, it allows observing why the outcome is different between the two subjects. In this regard, the effects of the EU Eastern Partnership policy will be observed in two partner states that are regarded the most similar. After considering a number of variables, Moldova and Georgia were selected for the case studies. Both countries are largely rural, very-low income, have no developed industrial base, have very limited natural resources, are involved in territorial disputes and share similar history. Furthermore, they both have a

similar pace of progress in the relationship with the EU, which makes them the most appropriate countries for the study.

While the MSSD is theoretically the most suitable for the research, practically it suffers from one shortcoming – it is difficult to keep constant all comparative factors. To eliminate potential deviation, the case studies will employ structured and focused comparison method, 'thereby making systematic comparison and cumulation of the findings of the cases possible' (George and Bennett; 2004:67). The case studies will analyze progress made in the same sectors – legislative, executive and judicial, as well as use the same sources thus ensuring coherence of the study.

The official data used for the case studies is gathered from the EU Communications, Country Progress Reports as well as from publications by The World Justice Project. The choice to employ the WJP Rule of Law Index comes from the reasons provided by the literature review. Such method provides both EU and non-EU evaluation of the progress achieved by the partner states and thus allows avoiding bias. At the time of writing, the most recent Country Progress Report published by the EEAS dates to 27 March 2014, therefore the analysis examines the progress made from the launch of the Eastern Partnership on 7 May 2009 till 31 December 2013. For the same reason the dissertation will use the World Justice Project Rule of Law Indexes 2012-2013 and 2014. Both quantitative and qualitative analysis is used to interpret the data in order to provide integrate approach. Moreover, the official data as the primary source increases reliability of the study.

Finally, the content analysis of the study is based on secondary sources consisting of articles from academic journals, peer reviews, and policy papers published by acknowledged scholars, professors and think-tanks thus ensuring credibility and reliability of sources.

Chapter 2: Case studies of Moldova and Georgia

The following chapter will provide empirical data on the EU export of the rule of law to Moldova and Georgia and will evaluate the extent to which the reforms indicated in the Actions Plans have been successfully implemented. Both case studies will firstly provide brief review on the bilateral relations between the EU and the partner state, and then will focus on the progress made in legislative, executive and judicial sectors. Legislative sector will include evaluation of elections, situation of non-governmental actors and opposition parties, as well as passing and amending laws. Executive sector will involve evaluation of public administration reform, civil service reform and law enforcement agencies. Judicial sector will evaluate independence and efficiency of courts, competence of judges, as well as equality before the law. The conclusion of each case study will provide general assessment of overall progress achieved by the partner state.

2.1 Case study of Moldova

2.1.1 Background of the EU – Moldova relations

The beginning of bilateral EU – Moldova relations dates back to 1994 when the two signed a Partnership and Cooperation Agreement (PCA), opening up small scale trade in the region. In 1996, President Petru Lucinschi expressed Moldova's wish to become an associate member of the EU, and in 1997-1998 Moldova attempted to establish closer relationship with the West (Cantir and Kennedy, 2014:6). However, at the time the EU response was relatively passive due lack of expertise in the post-Soviet conflicts, as well as unwillingness to interfere in Russia's sphere of influence (Shapovalova and Boonstra, 2012: 53). In early 2000s the cooperation was nevertheless fuelled by the 1998 Russian economic and the Transnistrian crises. Considering the former issue, Moldova found itself in an unfortunate economic situation that encouraged seeking for alternative markets. In 1997, Russia accepted the largest portion of Moldova's exports that significantly dropped in 1998. As a consequence, Moldova shifted its trade towards the West and by 2004 the EU has surpassed Russia as a target for

its exports (Cantir and Kennedy, 2014:11). It had similar effect on imports, as is in 1997 the gap between imports from the European Union and those from Russia was only about $116 million while by 2008, that gap was more than $1.4 billion (National Bureau of Statistics of the Republic of Moldova, 2010). Consequently, the economic factor has become one of the main reasons that caused Moldova's approximation to the EU.

The Transnistrian crisis in 2003 had more geopolitical impact on the bilateral relationship between the two actors. In 2001, the Party of Communists of the Republic of Moldova (PCRM) led by Vladimir Voronin won the elections and came into power promising to improve relations with Russia (Quinlan, 2004: 485). In 2003, a memorandum proposed by Dmitri Kozak, an aide to the Russian President Vladimir Putin, was presented as the foundation for reunification of Moldova within an asymmetric federal state. The settlement also intended to guarantee Russian military presence in Moldova for 20 years (Cantir and Kennedy, 2014:7). Initially President Voronin fully supported the Memorandum; however, after facing growing opposition, backed down at the very last minute. In 2005 Chișinău requested the EU to become an official observer of the negotiation process, which has significantly accelerated Moldova's cooperation with the EU but damaged its relationship with Moscow (Quinlan, 2008:139).

Moreover, in 2005 Moldova successfully negotiated the Action Plan under the ENP framework, and started implementing both political and economic reforms (Korosteleva, 2010:1269). However, after the local elections in 2007 that barely secured the PCRM victory, President Voronin decided to turn back to the East (Korosteleva, 2010:1280) and started mending fences with Moscow (Cantir and Kennedy, 2014:17). Such retraction invoked sharp criticism from the pro – European opposition, and in 2009 Moldova entered a period of civil unrest. During that time the EU was supporting Moldova under the ENPI framework with financial envelope of € 209.7 million for 2007-2010 (European Commission, 2007a: 3) and €273.14 million for 2011-2013 (European Commission, 2011: 12), with 25-35% and later with 35-40% dedicated to the support of fundamental freedoms, rule of law and good governance. Considering that, the following part of the chapter will overview the path taken by Moldova in 2009-2013 and will track

the progress that the country achieved in terms of the rule of law in legislative, executive and judicial sectors.

2.1.2 The rule of law progress in the legislative sector

As it has been indicated above, in 2009 Moldova entered a political turmoil that lasted for several years. Allegedly fraudulent elections and later Parliament's inability to elect a President prevented achieving stability and accelerating political reforms. According to EU observers, the 2009 parliamentary elections campaign saw many breaches of legislation, namely the use of administrative resources by the governing party, as well as unequal access of opposition parties to the media (Shapovalova and Boonstra, 2012:61). The reaction of opposition parties and civilians led to protests and post-electoral crisis that lasted for a few years. The Election Code was amended twice in 2010, and it was strongly criticized by the parliamentary opposition on the grounds that the timing of its adoption – four months before the elections and without public consultation – was widely perceived as being designed to benefit the parties in power, and was qualified by the Organization for Security and Co-Operation in Europe (OSCE) as a breach of the Venice Commission's Code of Good Practice in Electoral Matters (European Commission, 2011a:4). Parliamentary elections took place in November 2010 with the PCRM obtaining 42 seats, Liberal Democratic Party of Moldova (PLDM) – 32, Democratic Party of Moldova (PDM) – 15 and Liberal Party (PL) – 12 (The Parliament of the Republic of Moldova, 2010). Even though the PCRM emerged as the winning party, the PLDM, PDM and PL formed an Alliance for European Integration (AEI) coalition, thus placing the Communists to the opposition. As a consequence, the Parliament became very polarized, with three pro-European parties on one side, and pro-Kremlin party on the other (Secrieru, 2014:5).

The polarization and strong position of the PCRM caused a number of issues in terms of ability to facilitate implementation of the EU promoted reforms. Firstly, in line with the recommendations of the Venice Commission, a centralized voters' register that aimed at improving quality and transparency of voters' lists was intended to be set up in 2011, but was launched and extended only in November 2012 (European Commission, 2013:5). Secondly, it took five years to adopt the anti-discrimination law ensuring

equality and in particularly addressing anti-discrimination against the LGBT persons, as it was required by Moldova's international obligations (European Commission, 2013:2). Furthermore, in 2009 the EU recommended constitutional reform that intended to provide sustainable framework for the checks and balances among the Moldovan institutions; however, in 2013 the reform has not been yet implemented (European Commission, 2014a:5). Nevertheless, some progress was achieved in terms of civil society and anti-corruption. In September 2012, the Parliament approved the civil society development strategy for 2012-2015 and the action plan for its implementation. A new institutional unit responsible for cooperation with civil society, including representatives of the government and civil society, was also set up (European Commission, 2013:9). In terms of fighting corruption, in July 2011 the Parliament adopted a national anti-corruption strategy, which was complemented by an action plan in February 2012 (European Commission, 2012:5). The same year the Centre for Combating Economic Crimes and Corruption (CCECC) was transformed into a National Anti-Corruption Centre and was made directly subordinate to Parliament (European Commission, 2013:7); however, on 9 May 2013 the government took over the monitoring of the Centre, thus casting doubt on its fighting corruption capabilities (European Commission, 2014:7). In December 2013 a package of anti-corruption laws was adopted, allowing tougher penalties for bribery and illicit actions committed by law enforcement officers, and providing for a significant increase in judges' salaries (European Commission, 2014:7). Consequently, it can be suggested that while Moldova addressed a number of legislative issues proposed by the EU, the progress was rather limited.

2.1.3 The rule of law progress in the executive sector

The political deadlock in the Moldovan government was not solved by the 2010 elections. Due to internal conflicts within the AEI coalition, in March 2013 the Parliament dismissed the government of Prime Minister Vlad Filat through the vote of no-confidence on the grounds of corruption (European Commission, 2014:5). New government was formed in May 2013, but the political crisis severely damaged credibility of the Moldovan institutions. Moreover, the situation had significantly affected reforms promoted by the EU, namely those including public administration, decentralization and

civil service. Under the EaP Comprehensive Institution Building programme and with additional financial support from the World Bank, the Government has 'embarked on an ambitious public administration reform program, aimed at strengthening institutional capacity of the public administration for better policymaking, policy implementation, and efficient use of public resources' (European Commission, 2013:8). However, the reform was hampered by unwillingness to devolve decision-making powers and responsibilities to non-political civil servants (European Commission, 2014:8). Moreover, the laws on 'access to information and on the transparency of the public decision making process continued to be poorly, or selectively, enforced' (European Commission, 2012:8). Considering decentralization, a National Strategy for Regional Development was approved in March 2010 in order to promote local democracy; however, due to resistance of regional governments as well as due to lack of local resources, reform was postponed to 2015 (European Commission, 2014:9). Finally, civil service reform was first initiated in July 2011, 'aiming at monitoring the assets and private interest declarations of public officials, handling conflict of interest complaints, and checking observance of the rules on limitations and incompatibilities in the exercise of public office' (European Commission, 2012:5); however by the end 2013 it has not been yet implemented. As a consequence, it can be concluded that there was no significant progress in terms of the rule of law promotion within the executive sector.

2.1.4 The rule of law progress in the judicial sector

Judicial reforms recommended by the EU mainly included constitutional and institutional changes, as well as fight against corruption. A number of laws regarding the judicial sector were amended – in 2010, the Law on the Status of Judges was amended to increase judges' responsibility, the Law on the Bar was amended to create a self-governing body for lawyers, introduce a system of mandatory training, reform the apprenticeship system, and forbid representation in court by non-lawyers, while in July 2012 criminal and the civil procedure codes were amended 'in order to increase the efficiency and transparency of the litigation process' (European Commission, 2011a:4, 2013:6). In March 2012, the Economic Court of Appeal - widely perceived as being prone to corruption - was abolished (European Commission, 2013:6). Moreover, the

Superior Council of Public Prosecutors was established, although the General Prosecutor's Office is yet to undergo serious reform. A national action plan to implement the justice sector reform strategy 2011-2016 was adopted in February 2012. The EU committed EUR 70 million to support this fundamental reform (European Commission, 2013:6). Nevertheless, in April 2012, the Audiovisual Coordination Council withdrew the broadcasting license of the opposition television channel NIT for alleged failure to comply with the principle of pluralism. The appeal of the NIT channel was postponed several times until it was dismissed by the Chisinau Court of Appeal in February 2013. 'Both the withdrawal of the license as well as the lengthy court procedure raised questions as to the independence of the Audiovisual Coordination Council and of the judiciary' (European Commission, 2014:6). Furthermore, some progress was achieved in tackling impunity for ill-treatment and torture, however, judicial treatment of torture remained biased in favour of the perpetrators (European Commission, 2014:3). As a consequence, it can be suggested that over the period of 2009-2013, the Moldovan judicial sector withstood a great number of constitutional changes; however, it is yet too early to observe the consequences.

The discussion above indicates that there has been a great effort to promote the rule of law in the three sectors; however, the outcome is rather unsatisfactory. While legislative and judicial sectors have adopted many constitutional amendments, the overview of the executive sector suggests that the implementation of the reforms is poor. Such conclusion is further supported by Table 1 and Table 2 that present the WJP Rule of Law Index 2012-2013 and 2014 (The World Justice Project, 2013 and 2014), respectively:

Table 1. The WJP Rule of Law Index Report 2012-2013: Moldova

Income
Lower middle
Region
Eastern Europe & Central Asia
Population
4m (2012)
48% Urban
27% in three largest cities

WJP RULE OF LAW INDEX FACTORS		SCORE	GLOBAL RANKING	REGIONAL RANKING	INCOME GROUP RANKING
Factor 1:	Limited Government Powers	0.43	77/97	16/21	16/23
Factor 2:	Absence of Corruption	0.33	79/97	17/21	12/23
Factor 3:	Order and Security	0.77	35/97	11/21	4/23
Factor 4:	Fundamental Rights	0.54	66/97	15/21	12/23
Factor 5:	Open Government	0.43	66/97	17/21	12/23
Factor 6:	Regulatory Enforcement	0.39	84/97	20/21	19/23
Factor 7:	Civil Justice	0.42	87/97	21/21	19/23
Factor 8:	Criminal Justice	0.40	75/97	16/21	12/23

Table 2. The WJP Rule of Law Index Report 2014: Moldova

Overall Score	Regional Rank	Income Rank	Global Rank
0.45	11/13	17/24	75/99

	Factor Trend	Factor Score	Regional Rank	Income Rank	Global Rank
Constraints on Government Powers	—	0.43	8/13	17/24	79/99
Absence of Corruption	—	0.32	11/13	19/24	88/99
Open Government	—	0.44	6/13	11/24	58/99
Fundamental Rights	—	0.51	8/13	13/24	68/99
Order and Security	—	0.77	6/13	6/24	40/99
Regulatory Enforcement	—	0.41	12/13	15/24	79/99
Civil Justice	—	0.41	13/13	14/24	76/99
Criminal Justice	▼	0.33	11/13	17/24	82/99

▲ Trending up ▼ Trending down Low Medium High

The data shows that the rule of law situation slightly improved in 2014; however, its low regional and global rankings indicate that the reforms have not been successful. Especially alarming are the scores of corruption and criminal justice, which indicate certain necessity for further reform. It can be argued that low scores are due to the fact that most of the changes are only at the commencement stages; however, the first steps of the reforms do not look particularly promising. Subsequently, having examined the case of Moldova, the discussion will now move to the study of Georgia.

2.2 Case study of Georgia

2.2.1 Background of the EU – Georgia relations

Georgia's cooperation with the EU started in 1996 when the two signed a Partnership and Cooperation Agreement (PCA). Similarly to the Moldovan case, at the time the EU was not particularly interested in deep bilateral relations but rather was seeking stability in the region. Under the President Eduard Shevardnadze, Georgia attempted to establish closer ties to the West, but it was to great extent because the United States provided Georgia substantial loans (Cory: 2006:34). Nevertheless, the big changes took place during the Rose Revolution in 2004 when President Shevardnadze had to resign and President Mikhail Saakashvili was elected. The new leader was celebrated by Georgian citizens as well as non-governmental organizations because he was supposed to bring the country democracy and EU membership along with it, even though the EU remained sceptical on the question (Khutsishvili, 2009:68). Despite that, the EU welcomed Georgia's transition, especially in terms of active non-governmental sector, which played crucial role during the civil unrest (Wheatley, 2005:145). Moreover, after the revolution bilateral relations between Georgia and Russia severely deteriorated due to Georgia's wish to pursue membership in NATO, thus as soon as in 2006 Russia imposed Georgian wine embargo, Georgia started turning its trade to the West (Fean, 2009:15). Subsequently, when in 2006 Georgia signed the ENP Action Plan with the EU, the country was considered to be on the way towards sustainable development.

The situation significantly changed in 2008 due to the parliamentary elections in May and the Russo-Georgian war in August. At the time Saakashvili was enjoying local and international support, but the elections revealed that the ruling United National Movement (UNM) – the president's party – had a constitutional majority with practically non-functional opposition. The former revolutionaries seemed to be unwilling to share power: non-state television channels could not function without state interference and domestic business were strictly supervised by the government (Khutsishvili, 2009:69). Furthermore, the Saakashvili's administration insisted on initiating major reforms, allocating more than $1 billion to military spending (Khutsishvili, 2009:70). However, the outcome of the Russo-Georgian war demonstrated that the budget allocation and management suffered from corruption and insufficiency. The conflict also became the turning point in the Georgia – EU relationship. EU investigation of the events concluded that the Georgian military assault on the breakaway region of South Ossetia was illegal and that none of the government's explanations could justify its actions. Russia's military response to Georgia, the EU investigators found, 'was initially defensive, and legal, but quickly broke international law when it escalated into air bombing attacks and an invasion pushing into Georgia well beyond South Ossetia' (Waterfield, 2009). Claiming both sides guilty the EU attempted not to deteriorate its relationship with Russia, even though in the report it stated that 'several elements suggested the conclusion that ethnic cleansing was indeed practised against ethnic Georgians in South Ossetia' (Waterfield, 2009). Subsequently, it can be suggested that in 2009 the relationship between Georgia and the EU was intense; however, substantially based on the EU's geopolitical strategy. During the period of 2007-2010, the EU provided Georgia with a financial envelope of € 120.4 million, 26% of which went to support for democratic development, rule of law and governance (European Commission, 2007b:4). The support increased to €180.29 million for 2011-2013 (European Commission, 2011c:10). Considering such fact, the following part of the chapter will analyze steps taken and progress achieved by the EU rule of law promotion in Georgia.

2.2.2. The rule of law progress in the legislative sector

The 2008 elections demonstrated that the ruling UNM party was not eager to share power, and in October 2012 parliamentary elections such approach became even more apparent. Firstly, even though a number of amendments of the Election Code were adopted in 2011, namely allowing participation of independent candidates and reducing residency requirements, the Code failed to address some substantial issues such as the different number of votes required to elect a deputy in different electoral districts and lacked a clause concerning ambiguities in the electoral dispute mechanisms (European Commission, 2012a:4). Furthermore, between March and July 2012 a large number of fines were imposed on the main opposition parties, giving raise to criticism for selectivity, for the perceived lack of proportionality in the size of the fines and for the lack of due process (European Commission, 2013a:5). Nevertheless, the UNM made relative progress in terms of institutional checks and balances, as their constitutional reform in 2010 aimed at 'reducing presidential powers, strengthening the capacity of the parliament and reinforcing the independent judiciary' (European Commission, 2011b:3). And even though most of the amendments went into force in 2013, their adoption was considered to be a step towards a more sustained democracy.

Outcome of the 2012 parliamentary and 2013 presidential elections was positively received by both Georgian population and the EU, and was considered to be the most democratic power transition in the independent Georgia's history (European Commission, 2014b:6). The UNM gained 40.34 percent of the vote but lost the election to the opposition Georgian Dream coalition that gained 54.97 percent of the vote (CEC, 2012). The Georgian Dream was led by Bidzina Ivanishvili, a Georgian businessman who made his fortune in Russia, and comprised six parties that were substantially diverse in their ideological beliefs; however, managed to find common ground, which was determination to push the UNM to the opposition. From the first day after elections Ivanishvili took a strong grip of the Parliament and insisted that President Saakashvili resigned, even though the presidential elections were to be held only in 2013 (Kirchick, 2012). Only after receiving criticism from international observers Ivanishvili decided to reclaim his call and Giorgi Margvelashvili was elected as a President in November 2013

(European Commission, 2014b:2). Nevertheless, in the end of 2013 Georgia still faced a number of issues as observed by the EU. Firstly, civil society raised concerns regarding a number of ambiguities in the law that made it harder for civil society to be active on political issues (European Commission, 2012a:4). Secondly, despite giving parties financial support to improve gender balance, women remain generally under-represented (European Commission, 2013a:7). Finally, the electoral reform needs to be re-assessed as in the beginning the policy making process was transparent, but by the end of 2011 it became politically charged (European Commission, 2012a:2). Subsequently, it can be suggested that while the democratic transition is apparent, there are still a number of concerns that need to be addressed.

2.2.3 The rule of law progress in the executive sector

The progress in the executive sector was not as substantial as in the chapter above. In the Action Plan the EU particularly emphasized the need for the civil service and for decentralization reforms. Considering the former, there are 'still no laws or legal provisions regulating salaries or training of civil servants' (European Commission, 2011b:4). The first civil service reform donor coordination meeting took place in May 2013 aiming at implementing a reform allowing de-politisation of the civil service by clearly drawing a line between bureaucratic and political positions (European Commission,2014b:10) however, no certain steps have been taken so far. In terms of decentralization, no significant progress has been achieved either. The EU reports that in November 2010 an Action Plan on Regional Development was adopted, as well as provision to include regional reform was mentioned in the constitutional amendments; however, both the Action Plan and the provision remained vague, and no actual steps were taken (European Commission, 2011b: 4). Furthermore, progress needs to be accelerated in terms of performance and accountability of the law enforcement agencies. Concerns were raised 'over the use of excessive force during apprehension and detention, mistreatment by prison staff, and doubts over the uniformity of the application of the law' (European Commission, 2012a:5). Even though prison population halved, the government remained with nearly 20 000 complaints filed by citizens relating to perceived injustices of past administration, torture or ill-treatment (European

Commission, 2014b:3). Finally, despite the constitutional reform, Georgia remained to be characterized by the dominant executive power, with weak checks and balances system among its institutions.

2.2.4 The rule of law progress in the judicial sector

The judicial sector withstood a number of reforms that brought rather ambiguous outcomes. The Law on Rules of Communication with Judges in Common Courts and the Law on Disciplinary Responsibility and Disciplinary Proceedings of Judges were amended in order to increase fines for illegal correspondence and to minimize possibility of political influence over disciplinary procedures against judges (European Commission, 2011b:4). Furthermore, as part of the strengthening of the independence of judiciary reform, the Criminal Procedure Code entered into force in October 2010. The Code introduced a 'number of substantial changes to the current system of criminal proceedings in Georgia, notably the introduction of jury trials in criminal cases' (European Commission, 2011b:4). Amendment to the Code entered force in November 2011, particularly enhancing the control of judiciary over the plea bargaining (European Commission, 2012a:5). Even though the adoption of the Code was in line with the EU requests, the implementation of it was doubtful.

Despite the reform, the prosecutor remained in a strong position and the independence of the judiciary was not fully established. In 2011 that was evidenced with high prosecution rates (98%) which was coupled with severe punishments that resulted in excessive plea bargaining (European Commission: 2012a:5). 'In the first nine months in 2012, 88% of all criminal cases were resolved through plea bargaining' (European Commission, 2013a:5). According to the public polls, Georgians considered it to be an unjust way to increase the state's budget (European Commission, 2013a:6). Furthermore, as it was already suggested in the previous section, the new government was eager to get a grip on power, thus in 2013 alone 35 former officials of the previous government had been charged with criminal offences, varying from embezzlement to abuse of power and torture (European Commission, 2014b:7). In that context the EU reminded the need to ensure the process of fair trial along with the investigation based on the evidence. Finally, the Chief Prosecutor resigned in November 2012, 'citing differences over the pace of

reforms with incoming and outgoing Prime Ministers and only one of the three Deputy Chief Prosecutors kept their post', (European Commission, 2014b:7). Subsequently, it can be suggested that by the end of 2013, the judiciary was still characterized by strongly hierarchical structure and was often under influence of the executive power in Georgia.

Considering the discussion above, it can be concluded that while Georgia adopted a number of legislation requested by the EU, its implementation remains ambiguous. Such approach is further reinforced by Table 3 and Table 4 that present the data provided by the WJP Rule of Law Index (The World Justice Project, 2013 and 2014):

Table 3. The WJP Rule of Law Index Report 2012-2013: Georgia

Income
Lower middle
Region
Eastern Europe & Central Asia
Population
5m (2012)
53% Urban
41% in three largest cities

WJP RULE OF LAW INDEX FACTORS		SCORE	GLOBAL RANKING	REGIONAL RANKING	INCOME GROUP RANKING
Factor 1:	Limited Government Powers	0.48	66/97	11/21	12/23
Factor 2:	Absence of Corruption	0.77	21/97	2/21	1/23
Factor 3:	Order and Security	0.84	19/97	2/21	2/23
Factor 4:	Fundamental Rights	0.61	49/97	13/21	4/23
Factor 5:	Open Government	0.47	54/97	11/21	7/23
Factor 6:	Regulatory Enforcement	0.63	25/97	2/21	1/23
Factor 7:	Civil Justice	0.61	31/97	5/21	1/23
Factor 8:	Criminal Justice	0.66	25/97	4/21	1/23

Table 4. WJP Rule of Law Index Report 2014: Georgia

Overall Score	Regional Rank	Income Rank	Global Rank
0.6	1/13	1/24	31/99

	Factor Trend	Factor Score	Regional Rank	Income Rank	Global Rank
Constraints on Government Powers	—	0.53	2/13	9/24	55/99
Absence of Corruption	▼	0.71	1/13	1/24	24/99
Open Government	—	0.48	2/13	5/24	43/99
Fundamental Rights	—	0.58	5/13	6/24	51/99
Order and Security	—	0.85	2/13	2/24	17/99
Regulatory Enforcement	—	0.57	1/13	1/24	31/99
Civil Justice	—	0.59	2/13	1/24	32/99
Criminal Justice	▼	0.51	2/13	1/24	36/99

▲ Trending up ▼ Trending down Low Medium High

The data shows that the rule of law situation in Georgia has not improved over the years, and in some cases numbers even indicate decline. Corresponding to remarks made by the EU reports, especially alarming is the data presenting high level of corruption and decline of the rule of law in the criminal justice sector. Subsequently, it can be suggested that while many reforms are under way, the government of Georgia needs to take further steps to accelerate changes allowing more effective implementation of the rule of law.

To conclude, the empirical part of this dissertation indicates that the reforms promoted by the EU under the Eastern Partnership framework have been successful only "in the books", while their implementation remains doubtful. While Georgia demonstrates significantly more positive results than Moldova, both countries suffer from similar issues such as corruption, non-accountable governments and weak judiciary. As it was indicated above, a number of laws were adopted or amended in order to approximate them to those of the EU; however, the outcome did not provide satisfactory results. Even in the areas where some achievements were noted, the progress was not as significant as it was projected. Subsequently, the following chapter will discuss the reasons why the EU promotion of the rule of law has not managed to meet its expectations, and will attempt to provide some recommendations for further policy making.

Chapter 3: Discussion and Recommendations

Empirical part of the study shows that both the EU and the Eastern Partnership countries are responsible for lack of progress in the rule of law field. On one hand, the EU promotion of its values in the Eastern neighbourhood is substantially based on the top-bottom approach, which depicts the EU as an imposing power and thus questions its intentions for the Partnership. On the other hand, the partner governments are often unwilling to adjust their policies and thus to approximate themselves to the EU. The following chapter will be dedicated to analyzing reasons for such issues, namely the lingering euphoria of the Eastern enlargement, dominating top-bottom approach and still relative presence of Russia. Recommendations for each sector will be provided, while the conclusion will attempt to evaluate the Eastern Partnership from a broader perspective.

3.1 Lingering euphoria of the Eastern enlargement

The first reason why the EU has not been successful in promoting the rule of law in the Eastern Partnership countries emerges from the fact that the EU attempted to use the same policy template as it did for the Central and Eastern European (CEE) countries before their accession in 2004 and 2007. The Eastern enlargement is often considered to be the biggest achievement of the EU foreign policy as it helped to facilitate democratic transition in the former communist countries. Institution-building programmes and financial aid provided by the EU enabled the CEE countries to achieve significant democratic progress and comply with the EU *acquis communautaire,* which ultimately led to the EU membership. In this regard, despite of being revered as a victory, the Eastern enlargement also became a victim of its own success (Lavenex and Schimmelfennig, 2009:793). The following two sections will indicate differences between the Eastern enlargement and the Eastern Partnership, and will suggest that absence of the membership perspective as well as the asymmetric relationship between the EU and the partner state have had substantial implications for successful development.

3.1.1 Partnership instead of membership

Aiming to achieve the same results in terms of democratic progress, the EU failed to employ the same "carrots-and-sticks" approach that accelerated CEE countries' approximation. Under the Eastern Partnership framework, the EU launched the "more for more" campaign, insinuating that the amount of support from the EU directly corresponded to the partner's will to reform; however the "golden carrot" of the eventual membership was not promised (Kasciunas *et al*, 2014:68). At the time of drafting the EaP, the predominant sentiment among especially the older EU member states was against further enlargement, whereas the newer member states considered it to be 'a natural perspective' (Nielsen and Vilson, 2014:249). To avoid disagreements within the EU, the enlargement topic was excluded from the talks and thus was not even mentioned in the ENP Action Plans. As a consequence, the Eastern Partnership countries were expected to approximate themselves to the EU under the same price but without the same perks as the CEE countries. Such approach raised concerns that the EU wanted to

influence the region without engaging into commitment, and a number of scholars suggested that the Eastern Partnership was substantially part of the EU geopolitical strategy that aimed at establishing security in the region. According to Cadier, the EU preferred stabilizing the periphery rather than running the risk of the periphery destabilizing the EU (2013:53). His observation was reinforced by Bosse, who claimed that the Eastern Partnership was constructed to be an "assimilation zone" between the EU and Russia (2014:99). Such stance had direct effect on the EU perception by the partner states, namely that the EU was a soft and principally toothless power (Nielsen and Vilson, 2014:255). As a consequence, governments entered an asymmetrical partnership that lacked mutual trust, interest and motivation to achieve the same results that the CEE countries managed to achieve before the accession.

3.1.2 Misleading estimation of appeal

The second issue related to the Eastern enlargement is that for the Eastern Partnership countries the EU is not as appealing as it was for the CEE countries. After the fall of the Soviet Union, most of the CEE countries immediately announced their wish to join the EU and started implementing reforms allowing approximation to the EU standards. And even though there were a number of shortcomings regarding the conditionality fulfilment, general transition towards the EU was sustainable. In contrast, opposition towards the EU in the Eastern Partnership countries is fairly apparent. As Chapter 2 indicates, despite all the efforts to implement numerous reforms, partner governments are not able to demonstrate positive results. Scholars suggest that this is due to lack of interest demonstrated by the governments, and due to low demand coming from the public. According to Youngs and Pishchikova, if the EU wants to establish a framework that motivates dynamics of transition, it has to acknowledge the domestic barriers to reform (2013:11). Chapter 2 suggests that such barriers might include high corruption rates, unwillingness to decentralize power, as well as to establish effective checks and balances system among the government institutions. Considering the public demand, it can be implied that the revolutions that have taken place in early 2000s indicate will to reform; however, the elections show that despite pro-European government coalitions, the communist rule is still very influential. Therefore, the EU has

to reassess its own appeal and to acknowledge the fact that its magnetism should not be taken for granted (Dragneva and Wolczuk, 2011:219).

3.2 Altering the Eastern Partnership

The asymmetric relationship between the EU and the partner states has also had impact on what reforms and in what manner they were implemented. The dominating stance taken by the EU resulted in the top-bottom approach with little input coming from governments or civil society. Subsequently, the following two sections will provide insights on why and how the Eastern Partnership mechanisms should be altered, namely moving towards ends-based approach, as well as establishing more mutual responsibility.

3.2.1 Moving towards the ends-based approach

The EU export of its values including the rule of law is mostly based on institutional approach that often fails to take into account broader relationship between the state and society (Kleinfeld, 2012:9). The EU employs practice that Nicolaidis and Kleinfeld call "legal institutional mimetism" which initially means that instead of establishing institutions that are necessary for the rule of law building within the state, the EU emphasizes the necessity of legal approximation and prefers one bankruptcy law over another simply because the former aligns closer to one of the EU's, despite both being equally valid for a rule of law-based state (2012:15). According to Dragneva and Wolczuk, the EU treats the Eastern Partnership countries as if they were "empty vessels" for the export of European values without any regard to already existing legal frameworks (2011:227). The latter approach may seem a little extreme; however, as the empirical chapter indicates, amending a number of laws or firing a few judges does not necessarily mean that the rule of law is being followed. Furthermore, even though the EU insists on the differentiation principle, its policy has often been defined as "one size fits all". Corresponding to what has been mentioned above, Bicchi alters the expression into "our size fits all" (2006:289), showing that EU export of values is often insensitive to partners' characteristics.

As Carothers indicates, 'the primary obstacles to the reform are not technical or financial, but political and human' (2006:4), thus it is necessary to shift the policy

making towards the bottom-up approach that supports local civil society organizations, increases citizens' access to justice, and encourages demand for the rule of law through building relevant constituencies. Civil society in the Eastern Partnership countries is particularly weak, thus demand for reform is inconsistent (Lavenex and Schimmelfennig, 2011:900). Moreover, cultural causes have profound impact on the progress of reforms: a ten-city survey in Albania found that more than two-thirds of Albanians felt that 'a student who gives his teacher a gift in the hope of receiving a better grade is either not corrupt or is justified', while the same share of people 'condemned a flower seller for corruption for raising prices during the holidays, and nearly half thought such a flower seller deserved a punishment' (Kleinfeld, 2012:11). Such example demonstrates one out of many cases how the same notion has different perception in the Western and the post-Soviet communities. Therefore, in order to facilitate democratic transition, it is necessary to build a more pluralist framework that is sensitive to historic and cultural experiences (Mineshima, 2002:79) and is able to integrate local non-governmental actors.

3.2.2 Lack of benchmarks

As it has been discussed in Chapter 1, measurement mechanisms are necessary to track development and to provide more clear evaluation on what has been achieved, therefore, it can be suggested that the EU needs to adopt a more specific way to assess progress in the partner countries. The annual country reports outline what has been done over the year; however, are not able to evaluate the outcomes or to consider the results in a broader perspective. The language that the reports use is general and vague, and the term "progress" is nowhere defined. Moreover, they vary depending on the 'most exciting or urgent issues of the day: the lack of a fair election one year, the treatment of Roma another, the manipulation of the civil service in a third' (Nicolaidis and Kleifeld, 2012:13). Such approach has significant impact on the partner countries performance as they are not bound by any specific regulations and are not obliged to reach certain targets. As a consequence, it becomes difficult to set certain aims and to ensure their achievements. Furthermore, the failure of conditionality during the Eastern Enlargement sends the Eastern Partnership countries an ambiguous signal that despite some shortcomings, they can still earn appraisals from the West (Kochenov, 2008). While

Romania and Bulgaria are often used as examples of countries that struggled to meet the European *acquis communautaire*, other prospective members also experienced drawbacks. For example, in the 1998 report, the European Commission stated that free and fair elections took place in Latvia, despite the fact that huge sections of population were deprived of citizenship and electoral rights (Kochenov, 2008:162). Similar cases happened to the Estonian administrative reform, Slovakian legislative reform or the judicial reform in the Czech Republic where by the end of 2000, only four percent of judges received training in Community Law (Kochenov, 2008). Such examples lead to double standards and thus seriously damages perseverance of the EU.

In order to avoid that, the EU needs to establish at least general benchmarks and subsequently to take responsibility for its policies. In 2010 the European Parliament called for quantifiable indices and benchmarks in order to measure the effectiveness of human rights dialogues so as to avoid any ambiguities (European Parliament, 2010); however, no certain steps have been taken so far. Considering vagueness of the values that the EU attempts to promote, it is not necessary to establish particularly specific benchmarks. Nevertheless, some scholars suggest the EU consulting the Venice Commission, as the Council of Europe remains one of the leading actors in the field (Pech, 2012:29). Another alternative is cooperating with the WJP and trying to adopt their Rule of Law Index according to the EU needs. Finally, the adoption of the general indicators does not necessarily imply defining the rule of law; therefore, should not be regarded as reducing the scope of the principle.

3.3 Presence of Russia

Having considered multiple impediments to progress in terms of bilateral relations between the EU and the Eastern Partnership countries, the discussion will now assess the impact of the major external actor, which is Russia. As Chapter 2 indicates, Russia remains a significant player whose decisive power directly affects the Eastern neighbourhood countries in economic, political and security areas. Considering the EU position, it can be observed that while some member states acknowledge the fact that Russia's actions against Georgia in 2008 were one of the main factors behind the EaP, others reject Russia's claims that the EaP has been directed against it (Nielsen and

Vilson, 2014:249). The EU seeks to avoid being perceived as forcing the EaP countries to make a zero-sum choice between Moscow and Brussels, and formally rejects Russia's realpolitik approach; however, its ambivalent position makes the positive-sum approach highly improbable (Youngs and Pishchikova, 2013:6). Subsequently, the Russian factor remains the "elephant in the room" that finds itself at the very foundation of the Eastern Partnership (Nielsen, 2014:249). In the meantime, Russia has a particularly strong stance regarding the Eastern Partnership and emphasizes that no regional cooperation is possible without Russia's involvement (Zogaroski, 2011:46). In March 2009, Russian Foreign Minister Sergei Lavrov rhetorically asked 'what is the EaP, if not an attempt to extend the EU's sphere of influence', suggesting that Russia perceives the Eastern Partnership as a geopolitical strategy aiming at EU dominance in the region (Cornell, 2014:118).

Scholars suggest that such discrepancy of attitudes coming from the EU and Russia have direct consequences on their perception by the Eastern neighbourhood countries, and in order to accelerate their approximation to the West, the EU needs to alter its stance. As it has already been suggested above, the EU does not have the same appeal for the EaP countries as did for the CEE countries and with Russia providing them an alternative – the Eurasian Economic Union (EEU) – EaP countries are faced with a difficult decision (Kasciunas et al, 2014:73). While their desire to approximate to the West is still apparent, the EaP countries are disinclined to implement all reforms recommended by the EU. In the meantime, Russia offers facilitated trade, cheap energy supplies and high tolerance for corruption, only in exchange of loyalty to the East (Matcov, 2014:2). Subsequently, the EU needs to reassert its role in the region by putting more flesh on the bones. That does not necessarily mean increasing financial assistance as the EU aid cannot compete with sums of money at stake in the Russian control of gas prices, but rather suggests focusing more on the positive mode of attraction, such as enabling the EaP countries facilitated approximation to the EU (Youngs and Pishchikova:2013:8). As a consequence, the EU needs to go back to the fundamental issues that encouraged establishment of the Eastern Partnership, as well as to reassess its foreign policy in broader terms.

Considering the discussion above, it can be suggested that while the Eastern Partnership intended to follow the Eastern Enlargement success, the outcome has not been so positive. Different position by the EU member states on a great number of issues, namely the membership or foreign policy towards Russia has significantly affected the perception of the EU by the Eastern neighbourhood countries, thus damaging its perseverance. Furthermore, the top-bottom approach needs to be shifted towards the ends-based mechanism that allows taking more pluralist perspective. Finally, the EU needs to reassess its role in region by providing a more substantial offer as well as demonstrating that it has intentions for deeper engagement with the Eastern Partnership countries.

Conclusion

This dissertation attempted to provide an insight to the EU export of the rule of law to the Eastern Partnership countries and to examine to what extent the EU policy has been successful. The study firstly discussed the reasons why the EU promoted the rule of law in the Eastern neighbourhood as well as overviewed what methods and mechanisms it used. The empirical part of the study presented two case studies that demonstrated the progress achieved by Moldova and Georgia in 2009-2013, resulting in an observation that the pace of transition towards approximation to the EU has not been particularly successful. Discussion of the study provided possible reasons and insights for such an outcome and produced recommendations for further policy making. One of the main aims of the study was to provide broader perspective of the EU foreign policy in the Eastern neighbourhood, and as the outcome suggests, the EU intentions are substantially based on geopolitical strategies aiming at establishing stability and security in the region by facilitating the partner countries shift from the East to the West. However, the empirical part of the study suggests, that the EU needs to become even more strategic.

The study shows that one of the greatest impediments to the progress is the EU's dominant approach towards the partner countries. Its prevalent attitude has affected both the content and the manner of the reforms, as well as established an asymmetric partnership that undermined its perseverance. In order to avoid that in the future, the EU needs to adopt more pluralist approach and to establish a framework that is sensitive to partner countries characteristics. The policy-making process also needs to become more open to the non-governmental organizations and the civil society, thus increasing the input by the partner state. Such approach would deepen engagement and responsibility of the partner state and would allow promoting more equal partnership with the EU. Furthermore, the EU needs to acknowledge that Russia is still a significant decisive power in the region that is able to provide an alternative to the neighbourhood countries. Subsequently, if the EU wants the Eastern Partnership to succeed in the future, it has to reconsider its approach and to include more factors into its geopolitical strategy.

Word Count: 10,753

Appendix

47 sub-factors of The World Justice Project (The World Justice Project, 2012-2013 and 2014)

Factor 1: Constraints on Government Power
1.1 Government powers are effectively limited by the legislature
1.2 Government powers are effectively limited by the judiciary
1.3 Government powers are effectively limited by independent auditing and review
1.4 Government officials are sanctioned for misconduct
1.5 Government powers are subject to non-governmental checks
1.6 Transition of power is subject to the law

Factor 2: Absence of Corruption
2.1 Government officials in the executive branch do not use public office for private gain
2.2 Government officials in the judiciary branch do not use public office for private gain
2.3 Government officials in the police and the military do not use public office for private gain
2.4 Government officials in the legislative branch do not use public office for private gain

Factor 3: Open Government
3.1 The laws are publicized and accessible
3.2 The laws are stable
3.3 Right to petition the government and public participation
3.4 Official information is available on request

Factor 4: Fundamental Rights
4.1 Equal treatment and absence of discrimination
4.2 The right to life and security of the person is effectively guaranteed
4.3 Due process of law and rights of the accused
4.4 Freedom of opinion and expression is effectively guaranteed
4.5 Freedom of belief and religion is effectively guaranteed
4.6 Freedom from arbitrary interference with privacy is effectively guaranteed
4.7 Freedom of assembly and association is effectively guaranteed
4.8 Fundamental labor rights are effectively guaranteed

Factor 5: Order and Security
5.1 Crime is effectively controlled
5.2 Civil conflict is efficiently limited
5.3 People do not resort to violence to redress personal grievances

Factor 6: Regulatory Enforcement
6.1 Government regulations are effectively enforced

6.2 Government regulations are applied and enforced without improper influence
6.3 Administrative proceedings are conducted without unreasonable delay
6.4 Due process is respected in administrative proceedings
6.5 The government does not expropriate without lawful process and adequate compensation

Factor 7: Civil Justice
7.1 People can access and afford civil justice
7.2 Civil justice is free of discrimination
7.3 Civil justice is free of corruption
7.4 Civil justice is free of improper government influence
7.5 Civil justice is not subject to unreasonable delay
7.6 Civil justice is effectively enforced
7.7 ADR is accessible, impartial, and effective

Factor 8: Criminal Justice
8.1 Criminal investigation system is effective
8.2 Criminal adjudication system is timely and effective
8.3 Correctional system is effective in reducing criminal behavior
8.4 Criminal system is impartial
8.5 Criminal system is free of corruption
8.6 Criminal system is free of improper government influence
8.7 Due process of law and rights of the accused

Factor 9: Informal Justice
9.1 Informal justice is timely and effective
9.2 Informal justice is free of improper government influence
9.3 Informal justice respects and protects fundamental rights

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