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EASTERN PARTNERSHIP UNDER RECONSTRUCTION: THE UKRAINIAN TEST

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The whole idea behind the launch of the European Neighbourhood Policy was to secure the near environment on the EU's border perimeter after the enlargement wave in 2004. Neighbouring states to the East and South, which differed drastically in terms of their geographical and historical background, political system and level of democracy have been united in "one fits all" policy with the declared aim to "foster stability, security and prosperity" in the region. As a result of a more serious division among countries in the European Union over participants of the ENP, a new Poland-Sweden initiative "Eastern Partnership" started as the EU policy in 2009. Despite some positive changes in partner-countries as well as on a bilateral track with Brussels, Eastern Partnership failed to effectively address the challenges on the ground. The only possible way to correct the Eastern Partnership policy is to take into account the present miscalculations in relations with Russia and address precisely the needs of each partner. At the moment, the preliminary results of the ENP revision seem to have difficulties in passing the Ukrainian test.

Ukraine-EU relations under the ENP phase

In general, Ukraine-EU relations during the whole cycle of the ENP were highly dependent on the political situation in the country. The level of performing reforms under the Ukraine-EU Action Plan and later Association Agenda was very low when it came to structural democratic changes and liberalization.

EU and Ukraine established contractual relations in 1994 by signing the EU-Ukraine Partnership and Cooperation Agreement (PCA), which entered into force in 1998. After the ENP launch in 2003 both sides agreed to cooperate within this initiative, which could facilitate Ukraine's access to the EU's

internal market, policies, and programmes. After the 2004-2005 Orange revolution in Ukraine, the European aspirations of new political elite in Kyiv increased the level of bilateral cooperation. Within the framework of the PCA, the EU-Ukraine Action Plan was adopted in February 2005.

In 2007, the EU and Ukraine opened negotiations on a New Enhanced Agreement and after Ukraine's accession to the WTO in May 2008, progress was achieved in talks on the DCFTA related issues. In 2009, the Action Plan was substituted by the Association Agenda. An Action Plan on Visa Liberalization was announced at the EU-Ukraine Summit in November 2010 and in 2011 Ukraine acceded to the Energy Community Treaty.

In March 2012, the EU and Ukraine initialled the text of the Association Agreement (AA) and its Deep and Comprehensive Free Trade Area (DCFTA). At the same time, Ukraine's progress in achieving important structural reforms and implementing the Association Agenda priorities remained below expectations. In December 2012, the EU reaffirmed its commitment to signing the Association Agreement as soon as Ukraine demonstrates tangible progress on addressing selective justice and the implementation of Association Agenda. Notwithstanding this fact, Ukraine embarked on the path to correct shortcomings before the EaP Summit in Vilnius, in November 2013 Ukrainian authorities decided to suspend the preparations for signing. It has contributed eventually to dramatic events of political crisis in Ukraine, the Revolution of Dignity, and Russian military aggression towards Ukraine²².

In February 2014, the Revolution of Dignity became a new reference point in the European integration of Ukraine. It brought to life new political elite with pro-European aspirations and a more empowered civil society to stand for its rights. By signing the Association Agreement the country manifested its strong will to embark on the democratic path of value-based reforms.

Ukraine signed the political provisions of the Association Agreement on March 21, 2014 and signed the provisions of the remaining parts on June 27, 2014. On September 16, 2014, the Ukrainian Parliament ratified the Association Agreement and the European Parliament gave its consent, enabling the provisional application of the relevant provisions of the agreement on November 1, 2014 and the DCFTA section of the agreement on

January 1, 2016. The second phase of the Action Plan on Visa Liberalization was commenced in June 2014.

On September 17, 2014, the Action Plan on Association Agreement Implementation for the period of 2014-2017, which includes about 490 short-term and medium-term tasks in all spheres of cooperation between Ukraine and the EU determined in the Agreement was approved by the government. In March 2015, the Association Council approved by letters' exchange the renewed Association Agenda. The agenda envisages 10 top priority reforms crucial for Ukraine.

The 17th EU-Ukraine summit took place in Kyiv on April 27, 2015. This was the first summit taking place under the framework of the Association Agreement. The European Union was represented by the President of the European Council Donald Tusk and the President of the European Commission Jean-Claude Juncker. Ukraine was represented by its President Petro Poroshenko. In Joint Statement of the Summit, the parties welcomed the first reform steps taken by Ukraine in key areas, notably the constitutional reform, decentralization, the fight against corruption, the reform of the justice sector, the restructuring of the energy sector and the improvement of the business climate²³.

As for now, there are some success stories and setbacks in the reforms implementation process under the Association Agreement and the Association Agenda in Ukraine. Some shortcomings are attributed to the internal political problems but some are directly connected to the hostile policy of Russia, which annexed the Crimea and unleashed a hybrid war in Donbas trying

²² H. Maksak Focus on Ukraine / Eastern Partnership Revisited. Associated countries in focus, the Stefan Batory Foundation, FES Representation in Poland, Warsaw, 2015

²³ 17th EU-Ukraine Summit: Joint Statement, 27 April 2015, <http://www.consilium.europa.eu/en/meetings/international-summit/2015/04/27/>



the absence of hard security assurances to the partner countries within the framework of the ENP or under other EU's policies provoked Russia to launch a hybrid war in Ukraine in 2014

to initiate a political turmoil in Ukraine coupled with economic and energy crisis.

Nevertheless, there is no doubt that the European approach towards the region of Eastern Partnership should be reconsidered and enhanced with new dimensions and recourses.

Revision of the Eastern Partnership: matching with Ukrainian expectations

Eastern Partnership as part of the European Neighbourhood Policy from the very beginning obtained some specific features, which set it apart from the previous approach towards the neighbours in the region of the Eastern Europe and South Caucasus. Firstly, on a bilateral track a partner country, which covers all the requirements and commitments, can conclude a new generation Association Agreement with the EU, including DCFTA as its integral part. Secondly, the multilateral track with intergovernmental, parliamentarian, business, civil society and other institutional levels was supposed to find a common denominator with all six partner countries needs and interests (Azerbaijan, Armenia, Belarus, Georgia, Moldova and Ukraine).

Over the time, it appeared difficult to apply the same frames and values to all six. That prompted the EU to make the next frame for the ENP with introducing "more for more" and "differentiation" principles, making progress in relations between EU and a partner-country dependant on the fulfilling

benchmarks of action plans or association agenda (as in case of Ukraine).

What is more, the European Union had underestimated the potential of Russia in undermining the political and economic stability in the region. In this regard, 2013 was crucial for Eastern Partnership when two partners-countries (Armenia and Ukraine) were forced to abandon their plans to respectively initial and sign association agreements with the EU. To make things more complicated, Armenia joined the Eurasian Economic Union along with Russia, Kazakhstan and Belarus, yet another EaP partner country with a specific interpretation of European standards and values. In parallel, Azerbaijan cherished its own stance in bilateral relations based on profound economic cooperation with Brussels while demonstrating enormous violations of human rights and lack of interest in political reforms in the country. On top of that, the absence of hard security assurances to the partner countries within the framework of the ENP or under other EU's policies provoked Russia to launch a hybrid war in Ukraine in 2014.

Against the backdrop of Russian aggression against Ukraine, prolonged crisis in Syria, and other challenges in the neighbourhood area, the European Commission took a decision to launch the revision of the ENP in early 2015. It started with a consultation process from March until June and eventually resulted in the recent joint communication "Review of the European Neighbourhood Policy" issued in November 2015. This document outlines the basic approaches for the Eastern Neighbourhood in the mid-term prospective. The ideas described will be discussed with member states and other stakeholders in EU before their transformation in the final policy document in 2016.

As stated in the joint communication, during the consultation process more than

250 inputs have been received from partner countries, think tanks and academia²⁴. Ukrainian experts have been actively participating in the consultations as well. Some ideas and recommendations were issued in personal or corporate endeavours while some have been produced in collective efforts of the Ukrainian authorities and expert community. One can single out the policy brief developed by the representatives of the Governmental Office for European Integration and experts from the Ukrainian think tanks²⁵.

Back then, the majority of experts in Ukraine agreed that the Eastern Partnership policy had to address the common challenges for the EU and partner countries. Differentiation, conditionality, “more for more” principle, co-ownership, and solidarity are the basic principles to be applied in further policy development. Although those principles were already on the table, experts agreed that it is very important to fill them with substance and make them more ambitious²⁶.

In this vein, “differentiation” principle should be levelled with real aspirations of the partner countries and their expectations in cooperation with the European Union. It has to provide a clear framework to deploy available instruments and resources of the EU in a more coherent and flexible way.

“More for more” principle should be more detailed in terms of clear benchmarks and indicators for countries with a better history record in aligning with the EU standards and norms. The invitation to participate in the



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enlargement policy could be a reward for “champions”. Yet as another option available for the European Union, one can name the possibility of further integration in spirit of “everything except institutions”. It became obvious that two groups of countries have already appeared in terms of their ambitions: Association Agreement “club” (Georgia, Moldova, and Ukraine) and “sector partners” (Armenia, Azerbaijan, and Belarus). It is even next to impossible to tally obligations taken by Ukraine with commitments of less ambitious partners, which prefer to follow their own path in European integration. Just to provide an example, under the terms of the Association Agreement Ukraine has to transpose more than 350 legal acts of the EU during the implementation process in 3 years.

“Solidarity” principle in its turn has to serve for generating a real joint answer to common challenges we face in the region, from economic crisis to the Russian military aggression.

At the moment, the level of political association and economic integration embodied in the Association Agreement can be considered as a sufficient framework for Ukraine to foster reforms provided all parts of the document are fully

²⁴ Joint communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions “Review of the European Neighbourhood Policy”, European Commission, High Representative of the Union for foreign affairs and security policy, Brussels, 18.11.2015

²⁵ European neighborhood policy review: expectations of Ukraine. Ukrainian independent experts' contribution, International Renaissance Foundation, June 2015, source: http://www.irf.ua/knowledgebase/publications/european_neighbourhood_policy_review_expectations_of_ukraine/

²⁶ H. Maksak Focus on Ukraine / Eastern Partnership Revisited. Associated countries in focus, the Stefan Batory Foundation, FES Representation in Poland, Warsaw, 2015

implemented, including DCFTA provisions. The main stress should be given to the implementation process where the EU support is highly needed.

Referring to the sector specific issues under the Eastern Partnership, the Ukrainian experts found it reasonable to ask the EU to extend its support to Ukraine predominantly in political, security, economic and energy domains. The vital appeal from expert community was to strengthen the EU's role in security dimension. The EU is promoting itself as a global security actor while it is unable or unwilling to take firm decisions about its military or peacekeeping presence in a neighbourhood area. Ukrainian experts argued that the EU should review its policy on regional presence in peacekeeping operations under the CSDP and expand the mandate on the Eastern neighbourhood with a clear focus on Ukraine. For longer-term security efforts, some steps have to be taken to develop effective military-technical cooperation between the EU states and Ukraine, creating industrial clusters in order to build Ukrainian military potential in the European joint military production cycles. In addition, cooperation in the framework of the CFSP and the CSDP could be included in the ENP instruments for preventing the threats from conflict escalations, organized crime, and terrorism.

It was explicitly stated alluding to Russia that the European Union can work out some instruments to motivate Russia to be engaged in policy but a point of departure here should be Russian compliance with demands of the EU to withdraw from Ukraine and to restore Ukrainian territorial integrity. The same approach has to be considered in relations with the Eurasian Economic Union as a political project of Kremlin.

In energy field, Brussels should not make concessions to Russia in the question of making exceptions from the Third Energy Package for establishing routes for transportation of Russian energy to the EU member-states, which are able to create additional risks to energy security for the partner countries. As a sound option in a trilateral format, the joint feasibility study can be arranged on the possible impact of the DCFTAs with Ukraine, Moldova, and Georgia on Russian economy in order to prevent further pressure and trade wars waged by Moscow under this pretext²⁷.

As a result of consultation process, the EU admits the necessity of greater differentiation and mutual ownership as hallmarks of the new ENP. There is more stress on the tailor-made approach, looking for better ways to launch reforms in each partner-country, paying more attention to civil society. At the same time, the commitments of 2015 Riga Summit referring to the EaP region will be met.

On the horizon of 3-5 years, the EU predicts that the most pressing issue on the agenda of the ENP will be stabilization. However, this goes beyond security related needs, creating additional stress for political and economic stabilization. The Eastern Partnership is not an exception in this line.

Although the document lacks some details referring to the future instruments and procedures, some ideas echo with the ones proposed by Ukrainian experts. It is especially evident in parts of the joint communication devoted to economic and energy cooperation.

To this end, EU's Macro-Financial Assistance operations will remain the main tool to foster macroeconomic stability and

²⁷ Hennadiy Maksak. Position Paper on Ukraine / Reassessing the European Neighbourhood Policy. The Eastern Dimension, F. Hett, S. Kikic, S. Meuser (Eds.), Friedrich-Ebert-Stiftung, June 2015, source: <http://library.fes.de/pdf-files/id-moe/11483.pdf>

economic reforms in the ENP target-states. For Eastern Partnership the idea of creating an economic area with those partners who signed the Association Agreement and entered DCFTA regime with European Union will be especially interesting.

As part of future Energy Union strategy, EU is ready to start a dialogue with neighbours on the issues of energy security, energy market reforms and the promotion of sustainable energy. Symbolically Ukraine was directly mentioned as a beneficiary of establishing gas reverse flow capacity to Ukraine. To attract new investments in energy sectors of the AA signatories, EU is ready to extend full energy market integration with Moldova, Georgia and Ukraine through the Energy Community.

Unfortunately, there is no direct reference to the Russian aggression against Ukraine, when it comes to security dimension of the Eastern Partnership. The focus is put traditionally on security sector reform. Other domains where the cooperation is possible are tackling terrorism and preventing radicalization, disrupting organized crime, fighting cybercrime, chemical, biological, radiological, and nuclear risk mitigation, crisis management and response²⁸. This is a solid list, but it does not fully answer the pressing needs of partner countries, especially Ukraine, which suffers from the Russian military aggression.

What is more, in part of the document devoted to “neighbours of neighbours”, Russia is not always portrayed as an aggressor and a lawbreaker of international law. Such a distorted vision of Russia from the EU side is a product of Kremlin’s endeavours to affect the public opinion in specific member-states of the European Union through various bilateral channels

(support of ultra-left and far-right political projects, business ties, engagement of national minorities and so on) and multilateral initiatives in Iran, Syria, Libya and North Korea.

Although the authors of the communication note that the EU’s relations with Russia have deteriorated as a result of the illegal annexation of the Crimea and Sevastopol and the destabilization of Eastern Ukraine, still, on a conditional level, some joint activity addressing common challenges and exploring further opportunities in the region is not excluded.

On one hand, the presence of security cooperation in the framework of the Eastern partnership policy can be regarded as a positive shift in the EU’s position toward dealing with neighbours. But if we take a closer look at the spectrum of security cooperation it becomes clear that the majority of threats of the Russian origin to the EaP region still remain unanswered in the EU’s offices in Brussels. It may provoke further escalation of the situation in partner countries, especially in areas of ongoing or frozen conflicts backed by Kremlin. Taking into account the instruments of hybrid war, waged by Russia, one cannot exclude the possibility of deterioration of the security situation in Ukraine and other EaP target countries.

Conclusions

The joint communication has indicated the formal conclusion of the consultation process within the ENP review. The year of 2016 will be devoted to the official discussion of the ideas outlined in the document. Some formats of consultation to determine the future policy shape with

²⁸ Joint communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions “Review of the European Neighbourhood Policy”, European Commission, High Representative of the Union for foreign affairs and security policy, Brussels, 18.11.2015

member-states and the EaP partners are envisaged. That is why it is important to continue efforts to address the European Commission to be more focused on enhancing security potential of the Eastern Partnership to deal effectively with immediate challenges on the ground.

To succeed in this, some additional steps should be taken by the EU itself while drafting Global EU Strategy, which is to substitute the outdated European Security Strategy of 2003. The new strategy should encompass a more sober stance towards Russia and pay much more attention to the cooperation between the European Union and NATO. The active peacekeeping role of the EU in neighbouring countries should be on the agenda as well. Only after generating a new security potential within the Global Strategy, it will be possible to extend it to the framework of the ENP.

The multilateral track should be preserved but separated according to the concentric circles of leaders in approximation with norms and standards of the EU. The club of the Association Agreement signatories deserves to be granted a more profound support even in the framework of common cooperation in the Common foreign and security policy.



The club of the Association Agreement signatories deserves to be granted a more profound support even in the framework of common cooperation in the Common foreign and security policy.

At the same time, the stress on the security sector reform should be preserved. EU officials have to be more persuading in negotiations with authorities of the EaP countries to make the SSR the priority on the national reforms agenda.

At the end of the day, Brussels has not passed the Ukrainian test yet. Nevertheless, officials in the European institutions and the EU capitals should always bear in mind that this test is vital for the future of the European Union itself.

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