



EUROPEAN NEIGHBOURHOOD POLICY AT THE CROSSROADS

Evaluating the Past to Shape the Future

Tanja A. Börzel and Bidzina Lebanidze

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Abstract

This paper provides an overview of the modes of political integration of the EU in the Eastern Partnership countries. It discusses the role of EU membership, and the absence thereof, as well as alternative modes at the EU's disposal and explores how the EU has been using different instruments to achieve its goals in EaP countries, specifically in two areas: state- and institution building and the reform of the judicial system. Overall, over the past two decades, we observe continuity rather than change. Although the EU has sought to improve its strategy by introducing new incentives, strengthening the non-governmental channels of influence, increasing the amount of financial assistance for domestic reforms and encouraging more competition among EaP countries, its transformative impact has remained rather moderate. In this regard, our analysis highlights the neglect of security concerns of EaP countries by the EU as the greatest challenge to the EU's external integration capacity in its Eastern neighbourhood. Accordingly, it remains questionable whether the opening of membership perspective can serve as a game-changer under these conditions when the political and economic reforms in the EaP countries are challenged by the presence of acute security threats.

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1. Introduction

Ten years after its introduction, the European Union (EU) has announced to reinvent the European Neighbourhood Policy yet again. The Arab Spring had already triggered a reform of the Southern dimension resulting in “A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean” launched in March 2011 (European Commission 2011a), followed by a strategic review of the European Neighbourhood Policy (ENP) released in May 2011 (European Commission 2011b). Civil war in Syria, turmoil in Libya, political instability in Egypt and Lebanon, the ongoing deadlock in the Israel-Palestine peace process in the South, the war in Ukraine and an ever more aggressive Russia seeking to de-stabilize the EU’s Eastern neighbours have put an entire “region in flames” (EUobserver 2015). The apparent failure of the EU to stabilize its neighbourhood has motivated the Commission to initiate a renewed debate on how to revive the ENP. On 4 March 2015, Federica Mogherini, the EU’s foreign affairs chief, and Johannes Hahn, Neighbourhood Commissioner, presented the joint consultation paper “Towards a new European Neighbourhood Policy” (European Commission 2015a). Its altogether 74 questions challenge virtually every aspect of the ENP, putting its entire relevance on trial. Before entering a debate on whether and how to reinvent the ENP, however, we need to take stock of why the EU has largely failed to transform its neighbourhood by exporting its standards for good governance – or has it?

Despite subsequent reforms, the transformative impact of the ENP appears to be marginal and selective. In the Mediterranean, authoritarianism has always proven rather resilient to the EU’s and other external actors’ efforts at promoting political change (van Hüllen 2015). The Eastern neighbourhood, by contrast, underwent transition and hence provided a “most likely case” for the transformative power of the ENP. Yet, Belarus and Azerbaijan have never shown any serious interest in the ENP in the first place (Kostanyan/Delcour 2014). Armenia, once a pragmatic pioneer of the ENP, turned its back on the EU at the last minute and decided to join the Russia-led Eurasian Economic Union (EEAU). Azerbaijan continues to stick to its approach of “choosing not to choose”, refusing to associate itself with either the EU or the EEAU (Paul 2015). Georgia, Moldova and Ukraine have signed Association Agreements (AA) with the EU. Georgia and Moldova, however, experience acute security and economic problems and are engaged in a territorial conflict with Russia over secessionist regions. Ukraine, for which the program was designed in the first place, is at the edge of economic collapse and state breakup due to the ongoing confrontation with Russia-backed rebels in the Eastern part of the country. Irrespective of their relations with the EU, none of the six countries in the Eastern neighbourhood have made substantial progress in the fields of democracy and rule of law (Börzel 2014).

The remainder of the paper reviews the literature regarding the modes of political integration which the EU has developed and applied to foster state-building and democratization in the Eastern Neighbourhood Countries. We start with discussing the role of EU membership, and the absence thereof, which is usually blamed for the failure of the EU to induce political reforms in its neighbourhood. In the second part of the paper, we investigate alternative modes at the EU’s disposal and explore how the EU has been using conditionality and other instruments to achieve its goals in Eastern Partnership (EaP) countries in two areas: state- and institution building and the reform of the judicial system. The paper concludes by summarizing

the main changes in the modes of political integration the EU has used over the past two decades towards its Eastern neighbourhood. We argue that we see continuity rather than change. The Eastern Partnership has sought to broaden the involvement of non-state actors and strengthened conditionality. Yet, the role of civil society and business continues to be very limited. Association, in turn, is still not consistently used by the EU to reward progress; nor is it sufficient to compensate for the costs of political and economic reforms. Most importantly, the EaP has turned a blind eye to the security concerns of EaP countries. This is the greatest challenge to the EU's external integration capacity, a challenge the EU can no longer choose to ignore.

2. Everything but Institutions: The Myth of the Golden Carrot

The ENP was thought of as “a strategic approach to the post-enlargement situation” (Whitman/Wolff 2010b). It had two main objectives: “to spread stability, security and prosperity in the EU’s neighbourhood [...] and to prevent feelings of exclusion within the new neighbours” (Whitman/Wolff 2010b). By offering “everything but institutions” (Prodi 2002), the ENP denied “the golden carrot” of membership, which has been considered the crucial factor for the success of the EU’s enlargement policy (Börzel/van Hüllen 2011). Accordingly, the literature has blamed the ENP’s failures on the lack of a membership perspective (Schimmelfennig/Scholtz 2008; Haukkala 2010; Whitman/Wolff 2010b; Börzel/Böttger 2012; Lehne 2014; Gromadzki 2015). The absence of the golden carrot not only undermined the effectiveness of ENP by weakening conditionality – a key component of the EU’s active leverage (Haukkala 2010; Börzel/van Hüllen 2011). It also affected its legitimacy. From the very beginning, the EU and its Eastern neighbours had diverging expectations about the objectives and functions of the ENP. Ukraine, Moldova and Georgia, countries which aspired nothing less than membership, were unsatisfied with the format of the new EU policy (RFE/RL 2006; Paul/Belmega 2011). The disappointment went so far as to the Ukrainian Foreign Minister declaring in 2006 that the EU-Ukraine relations in recent years have progressed “not because of, but despite” the ENP (Rettman 2010). Armenia and Belarus in turn considered the lack of sizeable incentives as the confirmation of their foreign-policy expectations that the ENP could not in any way replace their privileged relations with Russia (Melikyan 2014). For Georgia and Ukraine, finally, membership in another Western institution, the North Atlantic Treaty Organization (NATO), served as an outright substitution to a lacking EU accession perspective, at least during the first years of the ENP. In particular the Georgian public and political elite expected that joining NATO would be the easier task and equally instrumental in propelling the country into the Western orbit¹. NATO-membership was conceived not only as a security guarantor but also as a fast-track for European integration (Sasse 2010). Public support in Georgia for NATO and EU membership has been accordingly high (NATO 60-70%, EU 65- 75%).²

In Ukraine, aspirations for NATO membership served as the important impetus for reforms. In contrast to Georgia, however, the Ukrainian public has always been divided over the issue (Larrabee 2011). Opposition

1 Interviews with David Darchiashvili - Former Head of Defence Committee in Parliament, Vasil Tchikoidze - former Head of Parliamentary Committee on Foreign Relation, Tbilisi, 19 - 20 February 2011.

2 For the public attitudes towards NATO over time see: Caucasus Barometer time-series dataset Georgia, The Caucasus Research Resource Centers (CRRC) <http://caucasusbarometer.org/en/cb-ge/EUSUPP/>, [last access 2015-01-01].

to NATO-membership had quickly increased after the Orange Revolution, reaching its peak in 2006 when 63% of the population were against joining the Alliance. Thus, in Ukraine, the quest for NATO-membership was rather an elite-driven project without significant public support.³ EU-membership has enjoyed a stable average support among Ukrainian public varying between 40% and 60% since 2002. More importantly, the percentage of opponents of the EU accession has never exceeded 38% over the last twelve years.⁴ Moreover, in 2006 when the frustration of population with the “Orange Revolution” government peaked, almost half of the population (48.5%) were still in favor of EU-membership.

Both in Ukraine and Georgia, NATO membership aspirations induced elite-driven reforms in many areas, most importantly in the security sector and the military. This changed in 2008, however, when NATO – due to European concerns about the security implications of NATO membership of the two post-Soviet states – denied Georgia and Ukraine the pre-accession stage of a Membership Action Plan (Asmus 2010; Larrabee 2011). The only incentives for domestic reform were now offered by the EU in the form of Association Agreements (AA), including a Deep and Comprehensive Free Trade Agreement (DCFTA). Enhanced association and the free trade agreement had already been part of ENP. They took a new and more specific shape after the launch of the Eastern Partnership in 2009. The implementation of AA and DCFTAs have often been equated with the pre-accession process of candidate countries, making the EaP countries ‘shadow member states’ of the EU (Wolczuk 2014). Ukraine, Moldova, and Georgia, which were most critical of the ENP for not offering a membership perspective, have gradually adapted to the new realities and accepted the AA as a necessary step towards their self-proclaimed goal of full membership. Armenia followed suit despite its close relations with Russia and started to negotiate the AA in 2010 only to abandon it last minute in 2013.

In sum, despite the absence of a membership perspective, those Eastern partners with EU aspirations have still been willing to engage in costly economic and administrative reforms in exchange for other carrots, such as an enhanced association with the EU and a visa-free regime. These incentives have been strong enough to promote the approximation with EU policies in specific sectors, e.g. migration and energy (Ademmer/Börzel 2013), environment (Buzogány 2013), or technical standards and shareholder’s rights (Langbein 2012). As we will see in the remainder of the paper, they have been far less effective in bringing about domestic changes in core areas of state institutions, such as rule of law and democratization. Ukraine, Moldova, Georgia and Armenia experienced at best stagnation when negotiating further integration with the EU (Börzel 2014). We argue that this is due to three reasons: First, the high political costs of integration that are almost prohibitive for non-democratic elites; second, the EU’s inconsistent use of market access and visa facilitation as a reward for reforms; and, third, the refusal of the EU to deal with the security concerns of EaP countries that suffer from more or less frozen conflicts with Russia.

3 For the public attitudes towards NATO over time see: Caucasus Barometer time-series dataset Georgia, The Caucasus Research Resource Centers (CRRC) <http://caucasusbarometer.org/en/cb-ge/EUSUPP/>, [last access 2015-01-01].

4 For the public attitudes towards NATO over time see: Caucasus Barometer time-series dataset Georgia, The Caucasus Research Resource Centers (CRRC) <http://caucasusbarometer.org/en/cb-ge/EUSUPP/>, [last access 2015-01-01].

3. Building State Capacities and Reforming the Judiciary

During previous enlargement rounds, the EU had developed different modes of political integration for inducing reforms in the candidate states. The following sections will analyze by which modes the EU has sought to affect domestic change in the six EaP countries. We will start with a general overview that reveals a clear bias towards state-building rather than promoting democracy, which is due to the EU's reluctance to use political conditionality and its strong reliance on financial and technical government assistance aimed at strengthening the capacities of states to effectively adopt EU norms and rules. Zooming in on judicial reform confirms the predominance of a state-centric approach of strengthening state institutions rather than transforming them.

3.1 *Conditionality: Polity vs. Policy*

3.1.1 *Political conditionality*

The political or so called “Copenhagen” conditionality has been instrumental in the successful transformation of the Central and Eastern European (CEE) states (Schimmelfennig/Sedelmeier 2004). In the EaP countries, however, the application of conditionality has largely lacked what the literature has identified as key to its transformative power in the CEE states: sizeable and credible rewards. As we have argued in the previous section, this is less related to the lack of a membership perspective but to the attractiveness and inconsistent use of the EU's alternative incentives. Both have varied considerably across the six Eastern neighbouring countries. In Azerbaijan, which, due to its rich energy resources, is almost independent of Western assistance, the EU has hardly invoked political conditionality (Boonstra 2008; Popescu 2012; Amani 2013; Amani/Austin 2013). The EU's energy and security interests have almost completely overshadowed any aspirations for political reforms. Although the Organization for Security and Co-operation in Europe (OSCE) and some EU officials have criticized the Azeri government for violating basic principles of human rights, democracy, and the rule of law, the EU has intensified its energy and trade relations with Azerbaijan. Since the oil-rich regime in Baku does not show any interest in institutional relations with the EU, there are hardly any sizeable rewards the EU can offer in return for costly political reforms (Kobzova/Alieva 2012; Gromadzki 2015; Paul 2015).

In the case of Armenia, by contrast, EU leverage is quite high due to the country's reliance on foreign aid and foreign direct investments; however, the EU has remained reluctant to link its financial and technical assistance to political reforms. Similar to Azerbaijan, the default strategy has been to criticize elections but not invoke negative conditionality or any other punitive action. The EU accepted, for instance, the disputed results of Armenia's 2008 presidential elections, when the power change occurred within the ruling political elite, without much protest (Human Rights Watch 2009). The unprecedented opposition rallies did not bring about any changes and were dispersed by the police, resulting in the death of eight people (Human Rights Watch 2009). Western indifference has been considered one of the most important reasons for the survival of the Armenian authoritarian regime (Levitsky/Way 2010).

Georgia and Ukraine, on the other hand, provide some evidence for the effective use of political conditionality. In Georgia, two power changes have taken place since its independence and the Western strategy differed significantly between the two cases. In the early 2000s, the United States (US) and the EU empowered opposition movements and civil society actors through various capacity-building measures that contributed to the peaceful electoral revolution triggered by election fraud. In 2011-2012, the EU, together with the US and the NATO, sought to persuade the incumbent regime to participate in the electoral power transition. For instance, the White House used the meeting between US president Barack Obama and Georgian president Mikhail Saakashvili to urge the latter in an unprecedented clear language to support “the formal transfer of power” (Sherwood-Randall 2012). The EU was less sound in voicing its expectations for a peaceful power transition. However, free and fair elections were mentioned in all documents issued prior to the 2012 parliamentary elections (European Commission 2012a; Füle 2012). Moreover, the EU High Representative Catherine Ashton and the Commissioner for Enlargement Štefan Füle in their joint statement explicitly mentioned the linkage between the fair conduct of elections and “the quality and intensity of the relations with the EU in the future” just a few days before the 2012 elections (Ashton/Füle 2012). In how far its statements facilitated the first peaceful power transition in Georgia is difficult to establish. The EU is not the only actor in the post-Soviet region but acts along with other actors, such as the US, NATO, the Council of Europe, the OSCE, the International Monetary Fund (IMF) and the World Bank (Mitchell 2009; Bosin 2012; Atoyán et al. 2014). All these actors had a role in promoting political change in Georgia.

In Ukraine, the EU and the US have been active in propelling political reforms since the beginning of the 2000s. In particular, the Western scrutiny of the 2004 presidential elections was exemplary for the whole ENC region. The last years of Leonid Kuchma’s presidency were characterized by increased authoritarian tendencies marked by a high-profile murder of opposition journalist Georgiy Gongadze (“Kuchmagate”) (Kuzio 2009; McFaul 2010; Bunce/Wolchik 2011), corruption scandals related to illegal arms sales (Kuzio 2002), and the rigged presidential elections in 2004. When protests broke out after the incumbent president Kuchma had declared victory, the EU Foreign-Policy Chief Javier Solana threatened that the future of EU-Ukraine relations were at stake in the ongoing Ukrainian standoff (RFE/RL 2004c). Neither the EU nor the US accepted the official results of the elections (RFE/RL 2004b). The White House and the European Parliament openly pled in favor of election reruns (European Parliament 2004). Moreover, NATO uninvited the Ukrainian foreign minister saying that it would invite the foreign minister of “a new and legitimate government” and that it was not willing to “legitimize the existing government” (RFE/RL 2004a). Increased external pressure and the series of large opposition protests, later dubbed as “Orange Revolution”, forced the Ukrainian government to rerun the second round of elections between governmental candidate Victor Yanukovich and opposition challenger Victor Yushchenko, which ended with Yushchenko’s victory (Karatnycky 2005).

A few years later, the EU again stepped up its pressure when Victor Yanukovich took power and attempted to roll back the democratic reforms introduced by his predecessor. Moreover, since the inception of the EaP, the EU has become more determined and consistent in its insistence on democratic reforms from Kyiv. It has used the negotiation process on DCFTA and AA to address problems of democracy and rule of law in

Ukraine (Stewart 2011; Dragneva/Wolczuk 2012; Pifer 2013). The EU made the ratification of the AA with Ukraine conditional on the release of former Ukrainian Prime Minister Yulia Tymoshenko whose imprisonment was widely considered as politically motivated.⁵ Moreover, on 10 December 2012 the Foreign Affairs Council of the EU adopted a document on Ukraine making the signing of the AA conditional on “determined action” and “tangible progress” of the Ukrainian government in three areas: elections, selective justice, and overall reforms as set out in the Association Agenda.⁶ With the Vilnius summit approaching, where the AA should have been signed by both parties, the EU became increasingly demanding in its claims. In the end, the application of strict conditionality towards Ukraine may have resulted in the Ukrainian government withdrawing from the AA a few days before the Vilnius Summit. The Russian involvement in the process through its carrot-and-stick-approach has surely negatively affected the process of political dialogue between Ukraine and the EU and has decreased the leverage of EU conditionality. Many authors considered the U-Turn of Ukrainian government as a failure of EU conditionality, because it underestimated the Russian influence on its near abroad for too long (Delcour/Wolczuk 2013; Böttger 2014; Liik 2014).

After the change of government in Kyiv and the eruption of the conflict between Russia and Ukraine, the EU has further stepped up its activities in Ukraine. Its focus has, however, shifted towards the solution of military conflict in Eastern Ukraine and the financial and humanitarian assistance to the Ukrainian government. Moreover, the EU has also considerably increased its support for Ukraine’s economic and political reforms and pledged € 11 billion for the next few years (European Commission 2015b). However, the lack of political and economic reforms has recently discouraged even the most Ukraine-friendly EU states to make new financial promises (Financial Times 2014). The EU tried to encourage further pro-EU reformer forces in crisis-hit Ukraine by increasing the credibility of its long-term incentives. Although it did not explicitly offer EU membership, the European Council concluded on 10 February 2014 that the AA did not constitute “the final goal in EU-Ukraine cooperation” (European Council 2014).

Belarus is the only country of the Eastern neighbourhood, where the EU made full use of political conditionality. Its participation in the ENP/EaP has been limited to technical dialogues on specific topics of common interest and the multilateral track of the Eastern Partnership (European Commission 2013a). Multilateral platforms include the regional programs and projects in the areas of environment, education, cross-border cooperation, the eradication of landmines, waste governance, air quality, and nuclear safety (European Commission 2013a). Belarus participates in projects such as Integrated Border Management along the Ukraine-Belarus border (European Commission 2011c) and the establishment and strengthening of a regulatory framework in nuclear safety (European Commission 2013b). Moreover, the EU has remained committed to a policy of critical engagement towards Belarus (European Commission 2013a). After the multiply fraudulent elections and the crackdown on political opposition, the EU introduced targeted sanctions against the governing elite and its proxies: visa bans and asset freezes on 250 individuals, arms embargoes and asset freezes on 32 Belarusian companies (Bosse 2012). However, as in the case of

5 For more information see: “Declaration by the High Representative Catherine Ashton on behalf of the European Union on the verdict in the case of Ms. Yulia Tymoshenko,” press release 364 at http://europa.eu/rapid/press-release_PESC-11-364_en.htm, [last access 2015-01-01].

6 For more information see: “Signature of Association Agreement with the EU will depend on Ukraine’s performance”, press release at http://europa.eu/rapid/press-release_IP-13-436_en.doc, [last access 2015-01-01].

Azerbaijan, inconsistency in the strategy of the EU has prevailed. Personal sanctions and visa bans were often accompanied by financial loans of the IMF and the World Bank, which, especially during the global economic crisis in 2007-2008, had stabilized the economic situation in the country, strengthening the regime of President Alexander Lukashenko (VOA 2009). In a nutshell, in the case of Belarus, the EU has applied democratic conditionality, which, however, has been undermined by other Western institutions providing politically unconditional financial assistance to the last dictatorship in Europe.

The ineffectiveness of political conditionality in the Eastern neighbourhood is blamed on the lack of a (credible) membership perspective on the one hand, and the presence of Russia as an illiberal power on the other. Market access and visa facilitations are not sizeable enough to pay off the costs of political reforms that undermine the very power base of incumbent regimes as long as they have no genuine interest in Western democracy. The Association Agreements promise more for more but also more of the same; the DCFTA shall grant comprehensive access to the Internal Market once the EaP countries have adopted EU standards requiring costly adaptations by both business, which has to comply with stricter regulations, and public authorities, which have to first legally adopt and later effectively enforce them. The same applies to the promised visa free regime, which presupposes effective border controls and the adoption of EU rules for immigration and asylum. Given the high costs of the implementation alone, the AA are above all a means of Western integration, which is as much or even more driven by security than by economic interests. To many in Ukraine, “the EU is also a geopolitical project offering [...] an escape from the country’s historical dependency upon Russia” (Sherr 2013). To what extent they are motivated by the attempt of reform-minded elites to introduce and lock in democratic reforms remains to be seen. Even in Ukraine, it may be doubted whether democratization has been the main driver for signing and implementing the AA (Sherr 2013). The government of President Poroshenko consists of multiple parties, some of which have no interest in democratic reforms. With the military conflict over Eastern Ukraine and an economy at the verge of breakdown, any political reforms have been side-lined and the implementation of the AA suspended. The Government of Georgia, by contrast, has published a Report of the 2014 National Action Plan for the Implementation of the AA with 345 planned and implemented activities in 2014 (Office of the State Minister of Georgia on European and Euro-Atlantic Integration 2015). During the first EU-Georgia Association Council session in November 2014, Georgian efforts in implementing the AA were praised by the EU as satisfactory (Agenda.ge 2014). These efforts, however, steer clear from political reforms focusing on the harmonization of technical standards and administrative reforms.

At the same time, Russia has been offering financial, political and military assistance to the non-democratic regimes in Belarus, Armenia and Ukraine under Yanukovich in exchange for political loyalty. Gas subsidies, cheap military technique and financial credits are designed to boost the power base of incumbent regimes, at least in the short run (Ambrosio 2010; Levitsky/Way 2010; Pikulik/Melyantsou 2012). Not surprisingly, (semi-)authoritarian post-Soviet elites prefer short-term benefits provided by Russia over long-term and painful reforms demanded by the EU that undermine their very power-base (Obydenkova/Libman 2015). However, the EU itself often appears to prioritize authoritarian stability over democratic transformation, particularly when the outcome is uncertain (Youngs 2004; Börzel/van Hüllen 2014). This stability-democratization dilemma (Jünemann 2003) is pertinent in the countries of the Eastern neighbourhood, which have

been experiencing serious problems of limited statehood. Most of them are involved in military conflicts with Russia or with each other; their states neither hold the monopoly over the use of force nor do they have the capacity to set and enforce collectively binding rules throughout their entire territories. Under such conditions, pushing too hard for democratic change might further erode the already limited statehood undermining the stability of EaP countries. It may be legitimate for the EU to balance its (short-term) security and economic interests against its (long-term) normative agenda of promoting human rights and democracy since all good things do not always go together (Grimm/Leininger 2012). But this comes at the price of the EU losing credibility and legitimacy in the eyes of the local population and civil society (Babayan 2011; Gromadzki 2015).

In sum, the EU has at best inconsistently applied political conditionality vis-à-vis its Eastern neighbours (Börzel/Pamuk 2012). Its focus has been on ensuring stability in the region by building the state capacities of EaP countries through promoting changes that shall assist governments in adopting EU policies. By focusing on building state-capacities, the EU has often compromised on democratic reforms.

The Eastern Partnership Integration and Cooperation (EaPIC) programme adopted in 2012 was meant to reinforce political conditionality by establishing “the more-for-more” and “the less-for-less” principle. Countries that make more progress towards democratic reform – free and fair elections, freedom of expression, of assembly and of association, judicial independence, fight against corruption and democratic control over the armed forces – should be rewarded with closer relations. However, reinforcing the principle of conditionality has not been matched with stronger financial incentives. In 2013, the total budget of the program was € 87 million (EU Neighbourhood Info Centre 2013), which was distributed among three EaP countries Armenia, Georgia and Moldova. In comparison, the whole amount of Official Development Assistance (ODA) received by the three countries in 2012 amounted to € 1,408 million, almost twenty times as much as the EaPIC. In 2014, three Eastern partners were granted additional funding from the umbrella programme: Ukraine (€ 40 million), Moldova (€ 30 million) and Georgia (€ 30 million) (EuropeAid 2014). In fact, the European Neighbourhood and Partnership Instrument (ENPI) already had a similar reward-based mechanism in the form of the Governance Facility, introduced in 2006 for providing additional support to well-performing countries. However, its budget was not much higher. In 2007, Ukraine received € 50 million from this facility due to the democratic conduct of elections and increased media freedom (Sasse 2010).

3.1.2 Policy Conditionality

The absence of credible and sizeable incentives and the inconsistent application of political conditionality have certainly undermined the EU’s leverage over political change in EaP countries. Conditionality, however, has been more effective at the policy level aimed at the adoption of the *acquis* (Langbein 2012). For instance the prospect for visa free regime has been a strong incentive to induce reforms in the policy areas related to Justice and Home Affairs (JHA) (Ademmer 2012; Langbein 2012), whereas the DCFTA was instrumental for fostering regulatory convergence in trade-related policy fields (Langbein 2012; Langbein/Wolczuk 2012).

The EU has been quite successful in applying policy conditionality concerning JHA issues in the EaP states, especially in Georgia, Moldova and Ukraine. Georgia's commitment to the Visa Liberalisation Dialogue has been especially remarkable: It adopted laws in the fields of document security, asylum, anti-corruption and money-laundering, and made important changes to the legal framework for the protection of personal data just within nine months (European Commission 2014a). The high level of compliance of the Eastern Partners with the EU's visa norms is understandable as visa facilitation constitutes the biggest EU carrot next to the AA and DCFTA. Ukraine, like Georgia, is in the 2nd phase of the visa liberalization process (European Commission 2014b), whereas Moldova has met all requirements and signed the visa free agreement with the EU in 2014 (Council of the European Union 2014). Thus, through the Visa Liberalization Dialogue, the EU has managed to induce substantial changes in the EaP states in policy areas such as document security, border management, migration and asylum, public order and security, and external relations and fundamental rights (European Commission 2013c). Moreover, sometimes sectoral compliance with the EU norms is possible even in the EaP states with limited integration ambitions. For instance, in Armenia the EU has been successful in transferring its norms in areas of sanitary and phytosanitary standards (SPS), regulation of state aid and visa liberalization (Delcour 2015). Under the "DCFTA-conditionality", Armenia established a State Service for Food Safety, a risk assessment centre and a network of specialized laboratories and has adopted a series of laws and normative acts on food hygiene, fishery products and other phytosanitary issues (Delcour 2015). All these examples clearly show that even small EU carrots can trigger change in the EaP states, albeit at policy level.

3.2 *Political Dialogue and Persuasion*

Given its reluctance to use political conditionality, the EU has strongly relied on alternative instruments to induce political reforms.

The political dialogues with the EaP countries were first introduced after the ratification of Partnership and Cooperation Agreements (PCA) at the end of the 1990s. With the inception of the ENP, the EU intensified regular political dialogue with the EaP countries. Political dialogue has been used to regularly monitor and discuss the jointly agreed Action Plans (Börzel et al. 2008). Moreover, it has been the EU's main strategy "to communicate the principles of human rights, democracy, the rule of law and good governance as basic values of the cooperation partnership" (Börzel/Pamuk 2011). In the first years of ENP, when political conditionality was nearly absent, political dialogue together with assistance used to be the main mode of direct influence in the Eastern neighbourhood to promote costly economic and political reforms. Later, after the inception of EaP and the clear formulation of major incentives in the form of market access and a free visa regime, the leverage of the EU towards the EU-oriented post-Soviet states has increased. This has also affected the political dialogue between the EU and these states

An example is the successful attempt of the EU to persuade the pro-Western Georgian government under Mikhail Saakashvili to allow a peaceful transition of government, even if it meant that his party would lose power (Lebanidze 2014). In a similar vein, the EU encouraged the pro-European political forces in Moldova to build a new governmental coalition after the long period of political crisis in 2013 (Rinnert 2013). The

existence of a European or pro-Western identity among incumbent political elites in some post-Soviet states increases the effectiveness of political dialogue and the persuasive power of the EU, which might even lead to changes in the democratic core of good governance, such as elections and the rule of law. (Lavenex/Schimmelfennig 2011; Ademmer 2012; Langbein/Wolczuk 2012).

3.3 Assistance

Financial and technical assistance has been the main EU instrument in the Eastern neighbourhood since the 1990s. After the break-up of the Soviet Union, the EU initiated the TACIS (Technical Assistance to the Commonwealth of Independent States) programme "to support the process of transition to market economies and democratic societies in the countries of Eastern Europe, South Caucasus and Central Asia" (Frenz 2007). It started in 1991 and was replaced in 2007 by the European Neighbourhood and Partnership Instrument (ENPI). TACIS covered a wide range of issues, such as support for privatization processes and the development of the private sector, reforms of public administration, education and social services, of the transport, energy, agricultural and telecommunication sectors as well as nuclear safety and environmental policies (Börzel et al. 2008). The main element of TACIS was the transferring of know-how and expertise to organizations (mostly governmental agencies) in the partner countries to strengthen effective government. Besides TACIS, some of the EaP countries benefited from other loans of the European Investment Bank, the Food Security Programme and humanitarian aid managed by the European Commission Humanitarian Office (ECHO) (Börzel/Pamuk et al. 2008; Delcour/Duhot 2011).

Table 1: EU Assistance to EAP 1991-2005 (€ million)⁷

	Armenia	Azerbaijan	Belarus	Georgia	Moldova	Ukraine
TACIS national	100	116,5	66,55	129	137,6	1512
Humanitarian Assistance (ECHO, Food Aid)	120	92	10	102,2	5,5	20,5
Food Security	199	77	-	65	35,9	-
Total of EU Assistance	380	409	221	505	320	2413,2

After the inception of the ENP, the TACIS programme was replaced by the European Neighbourhood and Partnership Instrument (ENPI) – the main financial instrument of the updated neighbourhood programme. The ENPI covered the period 2007-2013 and amounted to € 3.8 billion for the post-Soviet region. It consisted

7 Sources: European Commission Implementation of the European Neighbourhood Policy Statistical Annex. Brussels. URL: http://eeas.europa.eu/enp/pdf/2014/stats/statistical_annex_2014.pdf [last access 2014-11-28]; European Commission 2001. Country Strategy Paper 2002 - 2006. Georgia. URL: http://eeas.europa.eu/georgia/csp/02_06_en.pdf [last access 2015-01-01]; European Commission 2001. Country Strategy Paper 2002 - 2006. Republic of Armenia. URL: http://eeas.europa.eu/armenia/csp/02_06_en.pdf [last access 2015-01-01]; European Commission 2004. Country Strategy Paper. National Indicative Programme. Belarus 2005-2006. URL: http://eeas.europa.eu/belarus/csp/05_06_en.pdf [last access 2015-01-01]; European Commission 2004. Country Strategy Paper 2004-2006. National Indicative Programme 2005-2006. Moldova. URL: http://eeas.europa.eu/moldova/csp/csp04_06_nip05_06_en.pdf [last access 2015-01-01]; European Commission 2006b. Ukraine Country Strategy Paper 2007-2013. URL: http://eeas.europa.eu/enp/pdf/pdf/country/enpi_csp_ukraine_en.pdf [last access 2015-01-01].

of several components: budgetary support for national reforms, support for institution-building, support for civil society and support for regional projects.

If we look at the amount of financial assistance at the country level between 2007 and 2014, it more or less reflects the reform progress of the EaP countries over time (table 2). The three pioneers of domestic reforms – Ukraine, Moldova and Georgia – received the biggest part of the funding whereas Armenia, Azerbaijan and Belarus lagged behind.

Table 2: EU Financial Support to Eastern Partners: Commitment Amounts Under ENPI (€ million)⁸

	2007	2008	2009	2010	2011	2012	2013	Total	Average
Armenia	21	24	24,7	27,7	43,1	35	66	241,5	34,5
Azerbaijan	19	22	20	7	31	19,5	25	143,5	20,5
Belarus	6	5	10	10	17,1	22,3	23,8	94,2	13,5
Georgia	24	90,3	70,9	37,2	50,7	82	97	452,1	64,6
Moldova	40	62,3	57	66	78,6	122	135	560,9	80,1
Ukraine	142	138,6	116	126	65	149	199	935,6	133,7

In addition, the EU provides assistance explicitly dedicated to (state) institution-building. Since the launch of the ENP, the EU has introduced three main instruments of institution-building – Twinning, TAIEX and SIGMA. Twinning was an important pre-accession instrument which, from the end of 2003, has been available to some of the EaP countries, coinciding with the launching of the ENP. It is a joint implementation tool of cooperation between the public administration of an EU member state and of a neighbouring country to support the efforts of neighbour countries to harmonize their regulations with EU legislation. It aims at modernizing the institution of the EaP countries through training, reorganization as well as drafting of laws and regulations modelled after the EU *acquis* (European Commission 2014c). Moreover, Twinning goes beyond giving advice or other classical technical assistance by covering the projects of administrative co-operation in a specific field that must yield “mandatory results”, which is a key feature of the project (European Commission 2012b). In this respect, Twinning also implies voluntary legal enforcement, which is generally a rare phenomenon in the ENP/EaP.

TAIEX (Technical Assistance and Information Exchanges) was launched in 2006 to assist capacity-building in the EaP countries. It was initially developed in 1996 to provide short-term and targeted technical assistance to the candidate countries. In the context of ENP, it supports countries in the approximation, application and enforcement of EU legislation and the EU *acquis* (European Commission 2013d; European Commission 2014c). It is mostly demand-driven, channels requests for assistance, and contributes to the delivery of appropriate tailor-made expertise to address problems at short notice (European Commission 2014c). Assistance is given through expert missions, workshops or seminars and study visits.

⁸ Source: European Commission. Implementation of the European Neighbourhood Policy Statistical Annex. Brussels. URL: http://eeas.europa.eu/enp/pdf/2014/stats/statistical_annex_2014.pdf [last access 2014-11-28].

In 2008, the EU launched another capacity-building project – the Support for Improvement in Governance and Management (SIGMA). SIGMA is a joint initiative of the Organization for Economic Cooperation and Development (OECD) and the EU. It focuses on strengthening public management in areas such as administrative reform, public procurement, public sector ethics, anticorruption, and external and internal financial control. SIGMA assists the countries in installing governance and administrative systems appropriate to a market economy, functioning under the rule of law in a democratic context (European Commission 2014c). In sum, all three instruments – Twinning, TAIEX, and SIGMA – are considered by the EU as institution-building instruments acting as “facilitators of the sharing of experience, know-how and best practices between EU Member States and our partner countries” (European Commission 2013d).

In 2009, the EU initiated the “Comprehensive Institution-Building Programme” (CIB). CIB is a component of the EaP and provides institutional capacity building to key governmental bodies towards the creation of prerequisites for the implementation of future Association Agreements and DCFTAs (EaPCommunity 2011). At the same time, the CIB programmes represent a new management procedure aimed at improving coordination in support of capacity building. In other words, it is designed to improve the coherent use of other instruments (Tulmets 2011). Its objective is to strengthen the capacities of the core institutions that are instrumental in the preparation process of the Association Agreements, and the setting up of Deep and Comprehensive Free Trade Areas (EuropeAid 2011).

Despite the much criticized regional approach of the ENP/EaP, distribution of institution-building resources among the EaP countries once again positively correlates with their reform progress and level of European integration aspirations. Georgia, Moldova and Ukraine have received the most CIB funding and were targets of the most TAIEX projects. The distribution of Twinning and SIGMA projects, however, deviates from the regional trend with Azerbaijan and Armenia as frontrunners in terms of the number of projects conducted.

Table 3: EU Capacity-Building Support to EaP Countries: Number of Twinning (2005-2013) and SIGMA (2008-2013) Projects and Amounts of CIB Funding (2011-2013) per Country⁹

Country	Twinning Projects 2005-2013			SIGMA Projects 2008-2013			CIB Funding per Country 2011-2013 (€ million)
	concluded	ongoing	Total	2008-2011	2011-2013	Total	Total
Armenia	6	6	12	10	6	16	9
Azerbaijan	15	8	23	3	4	7	19
Belarus	-	-	-	-	-	-	-
Georgia	9	5	14	7	4	11	31
Moldova	5	5	10	3	6	9	41
Ukraine	26	11	37	5	4	9	42

⁹ Source: European Commission. Implementation of the European Neighbourhood Policy Statistical Annex. Brussels. URL: http://eeas.europa.eu/enp/pdf/2014/stats/statistical_annex_2014.pdf [last access 2014-11-28].

Table 4: EU Capacity Building Support to EaP Countries: TAIEX Single EaP Partner Events 2007-2013¹⁰

	2006	2007	2008	2009	2010	2011	2012	2013	Total
Armenia	1	2	21	11	22	20	25	20	122
Azerbaijan	1	1	6	2	11	17	36	20	94
Belarus	-	1	3	14	28	29	38	38	151
Georgia	1	4	12	19	36	34	23	21	150
Moldova	-	24	14	21	38	67	69	119	352
Ukraine	3	14	14	38	73	72	61	49	324

Overall, the EU has mostly relied on financial and technical assistance to strengthen the state capacities of EaP countries in the adoption and implementation of EU policies that are aimed at making governments more effective in the provision of collective goods and services.

3.4 Competition

The EU has sought to encourage competition among countries seeking closer relations with the EU in meeting its demand for domestic change (Börzel 2014). During the first years of the ENP, however, competition among EaPs in making reform progress was undermined by a number of factors. Most importantly, the ENP pursued a regional “one-size-fits-all” approach (Börzel/Risse 2009). For instance, even though the main facilitator of the extension of the ENP to the South Caucasus was Georgia’s peaceful electoral revolution in 2003 (“Rose Revolution”), the EU decided to include in the programme also the other two countries of the region, which featured lower levels of both democracy and EU membership aspirations. In a similar vein, the signature of the action plans of all three South Caucasus states was delayed in 2005-2006 due to the opening of a commercial line between Baku and Northern Cyprus, despite the protests of Georgia and Armenia (Delcour/Duhot 2011). Fully-fledged EU delegations in Baku and Yerevan were opened simultaneously, in order to avoid a political asymmetry between the two sides of the Nagorno-Karabakh conflict (Delcour/Duhot 2011). Ukraine, in turn, was quite frustrated about being placed in the same league as the South Caucasus states (Tumanov et al. 2011). Besides the regional approach, and partly related to it, the ENP lacked differentiated rewards. Regardless of the aspirations or the progress of the EaPs, the carrots remained the same: financial assistance on the one hand, and an enhanced association agreement and free trade in the midterm perspective on the other. The EU finally acknowledged the need for more differentiation when it launched the EaP in 2009 (see above). However, there was no increase in funding which the EaPs could have competed for. The need for further strengthening of a bilateral track has been acknowledged by recent EU studies (Gromadzki 2015). Five years after the launch of the EaP, some EU studies differentiate between two distinct groups of states having emerged in the EaP area: a group of willing partners – the signatory states of AA and DCFTA – which should be dealt with by the EU as more than

10 Source: European Commission. Implementation of the European Neighbourhood Policy Statistical Annex. Brussels. URL: http://eeas.europa.eu/enp/pdf/2014/stats/statistical_annex_2014.pdf [last access 2014-11-28].

partners but less than candidates countries, and the group of reluctant partners, which should be a target of more tailor-made EU policies (Gromadzki 2015).

3.5 *Emulation*

The multilateral approach of the ENP could have fostered emulation among the EaPs. Yet, lesson drawing and mimicry have been undermined by the EU's reluctance to differentiate and single out front-runners and best-practices which others could emulate. We lack research that has systematically analyzed processes of functional or normative emulation. But EU policies can help incumbent regimes to address problems, such as their energy dependence on Russia. Georgia, for instance, used the EU Energy Community to diversify its energy supply (Ademmer/Börzel 2013). Yet, such instances of functional emulation are rare. EU policies and institutions have been designed by and for industrial democracies. Their adoption not only tends to be costly; they are also not easy to be transferred given their embeddedness in a specific economic, social and political context that is substantially different in each of the countries. Nor do EU policies and institutions necessarily address the most pressing problems which (post-socialist) transition countries face (Börzel 2009). What we do see is the selective and instrumental adoption of EU policies by incumbent regimes in order to boost their power. The fight against corruption is a case in point. Presidents Yanukovich and Saakashvili used EU anti-corruption norms to prosecute political opponents and undermine their power bases by cutting into their clientelistic networks (Börzel/Pamuk 2012).

What we can also observe are instances of normative emulation particularly in those EaP countries whose political elites identify themselves as a part of the European family. This applies, first of all, to Ukraine, Georgia and Moldova, and to some extent also to Armenia. Georgia, for instance, strives to adopt even costly EU policies as part of a strategy of "accession by stealth", i.e. by behaving as if it had a clear membership perspective.¹¹

3.6 *Channels of Influence: From State-centric to Multi-agent?*

The EU's approach has been rather state-centric. During the first years of the ENP, the EU's almost exclusive focus was on governmental agencies. Non-governmental actors, most notably the representatives of civil society, were left largely out of the focus of the ENP. Moreover, the idea of "joint ownership", which was already embedded in the previous Partnership and Cooperation Agreements with the EaPs, has been further enhanced in the ENP (Tocci 2006). The EU considered the development and reform in the EaP as "sovereign responsibility" of the neighbours (European Commission 2006). Accordingly, the EU refrained from "imposing" reforms on the neighbours, and confined itself to supporting "the region's own reforms" (Ferrero-Waldner 2007). Such an attitude, on the one hand, has undermined the prospects of the consistent application of political conditionality, and, on the other hand, has given EaP governments the leverage to shape the content of the ENP Action Plans. The development of funding instruments followed the same logic: Country Strategy Papers, National Indicative Programmes, and Annual Programmes were consulted

11 Authors' Interview with Kakha Gogolashvili from the Georgian Foundation for Strategic and International Studies, 8 October 2014, Tbilisi, Georgia

only with governments (Falkenhain/Solonenko 2012). Governmental agencies have also been the main target of the ENP funding. According to one estimate, 70% of the national component of the ENPI funding has been allocated as a budgetary support to national development priorities (Gumeniuk 2010; Falkenhain/Solonenko 2012).

Many authors have criticized the state-centred approach of the EU as flawed and inadequate because the state actors in the EaP countries predominantly act as veto-players to reforms and the political opposition is too weak to pressure the incumbent regime for reforms (Falkenhain/Solonenko 2012).

With the introduction of EaP in 2009 the EU tried to change its state-centric approach by incorporating non-state actors in its programs. The European Commission has repeatedly declared “the partnership with civil society and other stakeholders as a priority of the EaP” (European Commission 2014c). With the EaP, the EU introduced a number of instruments to diversify its targets in the EaP countries. In 2009, the EU launched the Eastern Partnership Civil Society Forum, where civil society organizations from the EU and EaP countries meet and organize themselves around several themes (Charniakovich 2013). The funding possibilities for Civil Society Organizations (CSO) have also increased: the EU Instrument for Democracy and Human rights (EIDHR), the European Endowment for Democracy (EED) and the Development Cooperation Instrument (DCI) offer civil society actors in the EaP countries various sources of possible funding (Charniakovich 2013). These programmes are aimed at helping civil society actors develop their advocacy capacity, the ability to monitor reform and their role in implementing, monitoring and evaluating EU programmes (European Commission 2012c). To achieve these goals, the EU launched the Neighbourhood Civil Society Facility with an initial budget of € 23,380,434.00 for the first two years. According to a Communication issued by the Commission, the “overall objective of the Eastern Neighbourhood Civil Society Facility is to strengthen and promote civil society’s role in reforms and democratic changes taking place in the Eastern Neighbourhood countries, through increased participation in the fulfilment of Neighbourhood Policy objectives” (European Commission 2012c).

Despite the increased attention in recent Communications, most of the changes have remained superficial and, even after the inception of the EaP, the civil society component remains one of the most underfinanced parts in the ENP/EaP programs. According to one study, CSOs received only 1.4% of total EU funding that went to the EaPs within the frame of the ENPI (Hale/Ursu 2011). A cross-case study conducted on request of the European Parliament in 2012 examined the weaknesses of the EU strategy towards civil society organizations and heavily criticized the EU for a number of shortcomings. According to the study, “although the EU discursively treats civil society as a reform partner, the rhetoric has not been followed up on the ground and reflected in EU policy instruments towards EaP countries. Such a strategy would have to be based on a comprehensive set of instruments, which would ultimately empower civil society vis-à-vis the authorities in EaP countries” (Bousac et al. 2012). Thus, the financing of civil society actors and their insufficient inclusion in the policy dialogues with the EaP countries remain two of the most important problems of the ENP.

Another weakness of the EaP has been the lack of focus on business stakeholders. Even the very technical

governance assistance is mostly limited to state authorities and does not include private actors (Langbein 2012). This is a missed opportunity in the region, where money generally plays an extraordinary role in influencing the political process. Ukraine is widely seen as the most oligarchic country in Europe with the fifty richest people holding almost half of the country's GDP. Ukrainian oligarchs are especially vulnerable to EU pressure as they have a broad financial interests in getting access to European markets (Matuszak 2012). Armenia is not less an oligarchic country than Ukraine. According to one estimate, 44 families in Armenia control 52% of the GDP (Petrosyan 2013). Correspondingly, the first peaceful power transition in Georgia was only possible due to financial wealth of the billionaire Bidzina Ivanishvili. The political struggle between the authoritarian government of Mikhail Saakashvili and the opposition coalition led by Ivanishvili was widely labelled as money versus power (OSCE/ODIHR 2012). Thus, everywhere in the post-Soviet space, the financial circles, once dealt with in a consistent and conditional way, might be turned into the agents of democratic change even against their own will (Kuzio 2013).

The EU has recently acknowledged the need for involving EaP business communities in the EaP and launched the EaP Business Forum (EPBF) in 2011 aiming "to strengthen cooperation between businesses from the EU and partner countries" (European Union 2011). Since 2011, the EPBF has been meeting regularly on the eve of EaP summits. So far, however, it has only dealt with issues of rather technical nature, such as how to improve the conditions for small and medium enterprises (SME), expertise sharing of European business associations with the business in EaP countries, and discussing ways to increase EU trade and FDI in EaP countries (European Investment Bank 2013).

In sum, the EU has continuously been favoring the intergovernmental channel since the 1990s. There have been a few deviations, as in the case of Georgia prior to the "Rose Revolution" in 2003. The state-centred approach has started to change slightly after the inception of the EaP in 2009. The main focus of the EU, however, still remains limited to governmental agencies. Civil society organizations and other non-governmental agents are at best complementary.

In the next chapter we zoom in on the modes of political integration in the area of judicial reform, which has been one of the priority areas of the EU's engagement in the EaP region.

4. Mission Impossible: Judicial Reforms in the EaPs

Supporting judicial reforms has been one of the main areas of cooperation between the EU and the EaP countries. Strengthening the independence and efficiency of judicial systems was identified as one of the priority areas in the Action Plans signed with the Eastern neighbours after the inception of the ENP. In the following years, this was reiterated in all documents issued by the EU, including the country strategy papers 2007-2013, Action Plans and annual National Indicative Programs.

In the Action Plans (AP), signed with the EaP states in 2005 and 2006, general priorities and specific actions in judiciary area for the six neighbour countries were defined. They include common goals such as

independence, impartiality and effectiveness of the judiciary, reforms of criminal and administrative codes and necessary capacity building measures such as training of judges and other officials (European Union 2005a, 2005b; European Union 2006a, 2006b, 2006c). There are also important differences. Azerbaijan's Action Plan is the most moderate in its priorities and objectives (European Union 2006b), whereas the APs of Moldova and Ukraine are the most straightforward and ambitious (European Union 2005a; 2005b). In the following years the EU mostly followed the priorities written down in APs in its relations with the EaP countries.

In Azerbaijan, for instance, the EU limited its assistance to the justice sector reforms by allocating € 18 million in budget support in 2009 – 2014. The main objective of the assistance was the provision of better access to justice in rural areas by the development of the Academy of Justice and improvement of conditions for inmates in the prison system (European Commission 2013e).

In Georgia and Armenia the EU has been far more active. In 2004 it launched a one year Rule of Law Mission to Georgia (EUJUST THEMIS) which was the first of its kind in the context of the European Security and Defence Policy (ESDP) (European Council 2005). The EUJUST THEMIS assisted the Georgian authorities to develop a strategy for reforming Georgian criminal legislation (European Council 2005). In 2008 – 2012 the EU allocated € 18 million in budget support for the reform of the criminal justice system in line with Council of Europe standards, which also included reforms of juvenile justice, improvement of the Probation Service and access to justice for the citizens of Georgia and much else (European Commission 2014d). For 2012-2016 the EU has allocated another € 24 million in budget support for criminal justice system reform in Georgia (European Commission 2013e). The aims of the assistance included the enhancement of the implementation of new laws, building institutional capacity of the Ministry of Justice and the improvement of the coordination with key institutions of the justice system (European Commission 2013e).

In 2009-2012 the EU assisted judicial reforms in Armenia with € 18 million in budget support, which, according to the Commission, have increased overall transparency, accountability and access to judicial services for citizens (European Commission 2013e). In particular, the results of EU support were manifested, among others, in an increase of the number of public defenders, online publication of Council of Justice decisions, a new system of document management, and the construction of new court houses (European Commission 2013e). Since 2012, the EU has also been providing the Armenian authorities with strategic advice and assistance for the implementation of the "Strategic Program for Legal and Judicial Reforms in the Republic of Armenia for 2012-2016", which was adopted in 2012. The program covers a number of areas: criminal, civil and administrative justice, institutional developments in the judiciary, prosecution, advocacy, legal education, and other legal services such as arbitration, notaries and public registries (European Union Advisory Group to the Republic of Armenia 2015). Compared to the previous reform programs, which lacked consistency and long-term orientation, the 2012 strategy document marks an improvement "in that it looks holistically at reforms across the justice sector and takes a longer-term perspective" (European Union Advisory Group to the Republic of Armenia 2015). Already in 2013, with the help of the EU, Armenian authorities have acted on many issues of judicial reform: legislative amendments to the judicial code to strengthen the independence of the judiciary were proposed, drafts of criminal and

civil procedure codes were submitted for intergovernmental discussion, and a new Justice Academy was opened (European Commission 2014e).

In the field of judicial reform, Moldova has received the largest direct budget support by the EU. It has amounted to € 60 million for the implementation of the Justice Sector Reform Strategy 2011-2016 and an additional € 10 million in technical assistance and Twinning projects (European Commission 2012d; European Commission 2012e; European Commission 2014f). The EU support includes assisting the reform process in prosecution and pre-trial investigation institutions, and penitentiary and probation systems, as well as a better coordination of various justice sector institutions to implement the Justice Sector Reform Strategy (European Commission 2014f).

In Ukraine, the EU has allocated € 11,5 million in 2011-2013 and again € 10 million in 2013 in support of justice reform. The focal areas have included police and prosecution reforms, enhanced defence rights such as the right to be represented by a lawyer, enhancement of the independence of the judiciary and the strengthening of the fight against corruption (EU Co-operation News 2013).

Overall, EU support for judicial reform has been encompassing capacity building activities and the improvement of legislation in various areas of the EaP countries' justice systems. The reform of criminal justice systems seems to be a focal area of the EU, not least because of the EU's emphasis on the fight against corruption (Börzel/Pamuk 2012), which is a recurrent issue in all EaP states. The EU also seems to prefer cooperation with the EaP countries under the framework of Justice Reform Strategies, which last three to four years and tend to have a more structured character.

As for instruments of influence, in the first years of the ENP, the EU mostly relied on political dialogue and technical assistance, such as budget support, strategic advice or expertise. Channels of influence have not changed significantly over the last two decades with state authorities remaining the primary recipients of EU assistance in the justice sector.

Considering the low level of EU leverage, conditionality was hardly used as an instrument for promoting the independence of justice or other judicial reforms under the ENP. With the inception of EaP, however, this started to change. The EU has made the signing and ratification of AA and DCFTA conditional upon progress in the areas of democracy and rule of law. This change has been most prominent in the area of the judiciary when the EU actively started putting pressure on the Yanukovich government demanding the release of imprisoned opposition politicians and addressing the problem of selective justice. Since 2012, Georgian authorities have also become the target of EU conditionality, being under the permanent criticism on issues of selective justice and a lack of independence of the country's judiciary (Ashton 2012; RFE/RL 2012; U.S. Department of State 2014).

Table 5 summarizes the EU activities in the area of judicial reform in the last decade. As we can observe, the engagement of the EU in the sphere of the judiciary has been following the general patterns identified in the previous section, in terms of both targets and instruments. As regards targets, the EU has been almost

exclusively focusing on state authorities and only marginally on non-state agents. In terms of instruments, the EU has been mostly using budget supports and technical and advisory assistance, with conditionality, however, gaining some prominence in the case of the three EaPs that signed an AA.

It is fair to argue that EU support has helped to improve the overall quality of the judicial systems in the EaPs. The EU successfully assisted state authorities in the construction and updating of court buildings, improving the electronic court statistics, enhancing transparency in the court system and in adopting relevant legislation on anti-discrimination and other human rights - related issues (European Commission 2014c). However, the political reform of the judiciary has remained unfinished. Even in the EaP countries with sound EU membership ambitions, such as Ukraine, Moldova and Georgia, the independence of the judiciary remains the Achilles' heel with the governments dragging their feet on reforms. Political control of the judiciary remains an important instrument for ruling elites in all EaP countries to ensure their political survival. For instance, the constitutional courts have time and again been used by incumbent regimes to legitimize contested results of elections. This has often been the case in Armenia when the constitutional court ruled in favor of official results after the decisive presidential elections in 2003 (Human Rights Watch 2003), 2008 (Human Rights Watch 2009), and 2013 (Asbarez 2013). Next to electoral support, the (loyal) judiciary is the main instrument of authoritarian governments to silence political opponents (Kuzio 2011) and boost their own power base (Olszański 2010). Moreover, the EU still lacks sizeable incentives to force the incumbent EaP governments to give up their political control of the judiciary. In sum, the engagement of the EU in the area of judicial reforms reflects its overall strategy in the Eastern neighbourhood. In this regard, two common layers are identifiable: focus on state authorities in terms of channels, and financial and technical assistance in terms of instruments.

Table 5: List of the EU Projects related to Justice Sector Reforms with a Budget of over € 1 Million¹²

Project	Duration	Budget	Targets	Implementation bodies	Type of Assistance
Enhancing Judicial Reform in the Eastern Partnership Countries – All ENC's	2011-2013	€ 0,9 million	Governmental agencies	Council of Europe	Expertise, advice, best practice sharing
EU Advisory Group to the Republic of Armenia	2012-2016	€ 4,2 million	Governmental agencies	EU, UNDP	strategic advice and assistance, best practice sharing, Twinning, TAIEX
EU Budget Support programme: Support to Justice Reform in Armenia	2009-2012	€ 18 million	Governmental agencies	EU	Budget support
Access to Justice in Armenia	2009-2011	€ 4,2 million	Governmental agencies	Council of Europe; EU	Expertise, advice, best practice sharing

EU support of justice reform in Azerbaijan	2009-2015	€ 16 million	Governmental agencies	EU	Budget support
EU Rule of Law Mission to Georgia (EUJUST THEMIS)	2004-2005	-	Governmental agencies	EC, Member states, Council of Europe	Mentoring, advise
Sector Budget Support Programme on Criminal Justice in Georgia	2008 - 2012	€ 16 million	Governmental agencies	EU	Budget support
EU support of criminal justice system reform in Georgia	2012-2016	€ 24 million	Governmental agencies	EU	Budget support
Support for Justice Sector Reforms in Moldova (budget support)	2013 - 2015	€ 60 million	Governmental agencies	EU	Budget support
Support to Justice Sector Reform in Ukraine, Super-Twinning	2013 - 2017	€ 8,6 million	Governmental agencies	EU Member states	Expertise, advise, best practice sharing,
Support to the Criminal Justice Reform in Ukraine	2013-2015	€ 1,8 million	Governmental agencies	Council of Europe	Expertise, advice.

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5. Calling the Shots: the ENP at the Crossroads

This paper analyzed the evolution of the modes of political integration the EU has developed and applied to foster state-building and judicial reform in the Eastern Partnership countries. Figure 6 summarizes the overall findings.

In terms of targets, with the exception of Belarus, the EU's approach mainly focused on governmental agencies of the EaP states. The state-centred approach remained intact until the late 2000s. After the inception of the Eastern Partnership in 2009, non-state actors have gained some prominence. Governments, however, still remain the main target of EU attempts to induce domestic change.

We observe a similar continuity in the instruments. The EU has employed a developmental approach in the EaP countries, relying on assistance and political dialogue as the two main instruments of direct influence. Only in the case of Belarus, the EU consistently invoked political conditionality towards the government ("critical engagement") (European Commission 2013a). The Association Agreement and DCFTA as the backbone of the Eastern Partnership provided the EU with a new set of incentives it used to step up its use of political conditionality. To what extent the EU will be consistent in their use and whether their implementation will be sizeable enough to pay-off the enormous costs, both political and economic, remains to be seen though. The AA arguably offer an albeit distant membership perspective. Yet, political conditionality has worked in Georgia and Ukraine without the golden carrot of membership when the promise of closer relations with the EU empowered pro-reform coalitions. Where these are weak/ened or absent, EU reform pressures will be futile. While the EU can still use policy conditionality to promote regulatory convergence with the *acquis*, it will have to keep relying on political dialogue and assistance to induce political change. Indirect modes, first of all competition and normative emulation, have also been at play; their transformative power, however, has been undermined by the regional "one-size-fits-all" approaches of the EU and the different social, economic and political contexts on the ground.

Irrespective of the EU modes of integration, Russia's intensified attempts at destabilizing EaP countries increasingly threaten to undermine the closer integration of EaP countries with the EU. Heightened security concerns put political change, such as judicial reform, on the back burner and give the EU's attempts at building state capacities a new twist.

The resolution of territorial conflicts has not been a direct focus of the EU, although the European Security Strategy of 2003 called for an increased role of the EU in conflict resolution. So far, the EU has sought to address problems of unresolved or frozen conflicts in the EaP countries by a combination of political dialogue and diplomatic activity with the deployment of Common Security and Defence Policy (CSDP) civil monitoring missions in conflict areas (Diez et al. 2006). The reluctance of the EU in engaging in conflict resolution was more evident during the first years after the inception of the ENP. The EU has repeatedly ignored the requests from the Georgian government for internationalization of the conflict over South Ossetia and Abkhazia through deploying an EU observation mission on the borders. In a similar vein, the EU preferred to distance itself from the Nagorno-Karabakh conflict and relied for its limited activities on the OSCE Minsk Group (Babayan 2011). The full-scale war between Russia and Georgia in 2008 over the break-away region

of South Ossetia, which took the EU by surprise, acted as a catalyst forcing the EU to step up its conflict management activities. After the war, the EU quickly deployed a civil monitoring mission (EUMM) to oversee the implementation of the cease fire plan negotiated by French President Nicolas Sarkozy (European Union 2008). EUMM, even though it was denied access to the Russia-controlled parts of the conflict area, has had a surprisingly pacifying effect. The number of military incidents has fallen sharply soon after its deployment (BBC 2009). At the same time, the EU has not put pressure on Moscow to comply with the peace plan agreed under the Geneva process. It has also looked the other way when Russia consolidated its hold on the two breakaway regions by concluding a Treaty on Alliance and Strategic Partnership with Abkhazia, tabling a treaty with South Ossetia that shall grant Russia full control over this part of Georgian territory, and erecting border fences between Abkhazia, South Ossetia and territory under the control of Tbilisi (Paul 2015). While the EU has become a major security actor in the area, it has stabilized rather than solved the conflict by ignoring the state-building activities of Russia in the two break-away regions.

The August War of 2008 between Russia and Georgia was conceived by the Russian political establishment as a successful step in halting the Western expansion in the Russian sphere of influence (Civil Georgia 2011). In contrast, rather than interpreting this as a geopolitical event of regional scale, the EU took it as one of Russia's punitive measures against an impulsive Georgian government and its NATO aspirations (EUobserver 2008; King 2009). This may explain why Brussels was surprisingly optimistic about the prospects of the EaP, misreading Russian concerns and not anticipating Putin's decisiveness to counter the engagement of the EU in the shared neighbourhood at any cost.

With the events of the Ukraine crisis unfolding, the EU finally came around to acknowledging the crucial role of Russia for the EU's attempts to transform its Eastern neighbourhood. "While the EaP is not confrontational in nature, Russia has proven extremely sensitive to developments in neighbouring countries. Partner countries are now faced with new and increasingly complex realities and pressures (European Commission 2014c). A study conducted upon a request of European Parliament identified Russia as "a persistent destabilising element since the birth of the EaP" (Gromadzki 2015). The emergence of a "competitive regionalism" in the shared neighbourhood with Russia was not factored into the EU strategy until the Eurasian Economic Union (EAEU) came into force on 1 January 2015 and Armenia withdrew its intention to sign an AA with the EU to join the EAEU. Till then, "the EU had been exceedingly confident that its offer would be accepted by EaP countries, not least because there was no viable alternative" (Delcour/Wolczuk 2013).

To sum up, Russia's destabilization strategy has become an increasingly important factor impairing political and economic reforms in the region, and threatening the very goal of the ENP: peace and stability. The EU has recently acknowledged the lack of stability as one of the main challenges and the failure of ENP of not being able "to offer adequate responses to these recent developments, nor to the changing aspirations of our partners" (European Commission 2015a). With security as the number one concern of most EaP countries and economies whose competitiveness is limited, the benefits of the costly implementation of the AA are at best long-term. EaP effectiveness in bringing about political change will be further undermined by Russia using destabilization as a stick and closer integration through the EAEU as a carrot. A credible

EU membership perspective might strengthen the EU's soft power of attraction for the pro-Western parts of the Ukrainian, Moldavian and Georgian societies and empower them to push for political reforms. However, it will not calm their security concerns, which pose a major threat to both state-building and democratic and economic modernization.

Table 6: Modes of political integration

	Targets	State actors	Non-state actors
Instruments			
<i>Direct</i>			
Enforcement (<i>leverage</i>)			
Conditionality (<i>leverage</i>)		<i>acquis</i> conditionality (DCFTA related) EaPIC ("more for more")	
Political dialogue (<i>linkage</i>)		Informal Eastern Partnership Dialogues (neighbours)	People-to-people
Assistance (<i>linkage</i>)		European Neighbourhood and Partnership Instrument (ENPI) The ENPI Cross Border Cooperation (CBC) Neighbourhood Investment Facility (Boniface et al.) Institution-building assistance (TAIEX, SIGMA, Twinning) Governance Facility Comprehensive Institution-Building (CIB)	FP7 Eastern Partnership Culture Programme European Initiative for Democracy and Human Rights Civil Society Facility
<i>Indirect</i>			
Competition		regatta principle (AA/DCFTA/Visa) Governance Facility	
Lesson-drawing		OMC	Eastern Partnership Civil Society Forum
Mimicry			

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