

All Form but No Substance? A Critical Examination of the ENP's Success in Promoting Democracy and Good Governance in the EU's Neighbourhood

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As a key European Union (EU) foreign relations instrument, the European Neighbourhood Policy (ENP) governs the relations between the Union and sixteen countries to the east and south of EU territory.¹ These countries are primarily countries which aspire to become an EU member, or to pursue closer integration policies with the EU in general.² The key focus of the ENP is that of stabilising the EU neighbourhood in terms of economy, politics, and security.³ In exchange for EU financial assistance, countries must meet strict conditions for governance and economic reforms, as articulated in the EU Association Agreements between its own government and Brussels.⁴ Association Agreements concluded between the EU and partner countries typically stipulate commitments to economic and human rights reforms to be carried out, in exchange for tariff-free access to parts of the single market, and various forms of technical assistance.

In 2011, the European Commission (EC) articulated in its 'Review of The European Neighbourhood Policy' that the ENP's focus was

to build 'deep and sustainable democracy and inclusive economic development'.⁵ The Joint Communication issued the same year conceptualised the ENP as a guardian of the 'stability, prosperity and resilience of the EU's neighbourhood', rather than a custodian of democratic advancement, suggesting a slight shift from the original focus on promoting democracy as one of the ENP's foreign policy initiatives to an emphasis on promoting the EU's security interests.⁶ Nilsson and Silander argue that the paradigm change from promoting democracy to enhancing regional security manifestly confirms the EU's implicit admission of the ENP's inadequacies in fulfilling the former endeavour.⁷

I argue that the ENP has largely been effective in promoting formal democratic reform, in terms of setting up electoral institutions and legislative infrastructure in the Eastern Neighbourhood,⁸ but has

1 The sixteen countries include Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine in the East, and Algeria, Morocco, Egypt, Israel, Jordan, Lebanon, Libya, Palestine, Syria, and Tunisia in the South.

2 Florian Carmona, Kirsten Jongberg and Christos Trapouzalnis, 'The European Neighbourhood Policy | Fact Sheets on the European Union | European Parliament' (2021) <<https://www.europarl.europa.eu/factsheets/en/sheet/170/the-european-neighbourhood-policy>> accessed 18 April 2022.

3 *ibid.*

4 *ibid.*

5 European Commission, 'Review of the European Neighbourhood Policy' (European Commission 2011) <https://www.europarl.europa.eu/doceo/document/A-7-2011-0400_EN.html> accessed 6 June 2022.

6 European Commission, High Representative of the Union, 'Joint Communication to The European Parliament, The Council, The European Economic and Social Committee and The Committee of the Regions. A New Response to a Changing Neighbourhood' (European Commission 2011) <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:52011DC0303>> accessed 6 June 2022.

7 Martin Nilsson and Daniel Silander, 'Democracy and Security in the EU's Eastern Neighbourhood? Assessing the ENP in Georgia, Moldova, and Ukraine' (2016) 12 Democracy and Security 44-61.

8 The Eastern Neighbourhood comprises Armenia, Azerbaijan, Belarus,

failed in promoting democratic values and adopting principles of good governance, for example by implementing anti-corruption policies or empowering civil society. In addition, I suggest that the limited progress of democratic advancement in the EU's neighbourhood is a result of the ENP's intergovernmental organisational logic; the existing institutional structure enables elites to strategically adopt an ostensibly democratic apparatus while neglecting the promotion of normative democratic principles.

This essay draws on quantitative and qualitative evidence and focuses its discussion on the Eastern Neighbourhood. Conventional literature on the EU's democratising impact has highlighted conditionality as one of the main causal modes.⁹ It assumes that EU target states are rational actors in the international system, motivated to maximise their economic and security interests, and that strategic exchange between actors is conditional upon their relative bargaining power.¹⁰ It follows that the larger the gains target states perceive from adopting the EU's conditionality requirements, the greater the likelihood of reforming their internal governance structures.¹¹ While the EU does not initiate coercive intervention under this model, the domestic adoption costs may upset the target state's internal status quo, particularly if presiding governments are soft authoritarian regimes.¹²

Throughout the years, the Southern Neighbours have struggled to gain EU membership; Turkey's progress has been tumultuous and uncertain, and Morocco's application was rejected in 1987. Considered against the later enshrinement of the geographic membership criterion, scholars have asserted that the Eastern Neighbours generally have more incentive to adopt democratic reforms as compared to the Southern Neighbours.¹³ The Southern Neighbours vary widely in terms of the depth of their economic links to the Union; Scazzieri's study is illuminative regarding the lesser economic gain these countries perceive from potential EU membership, particularly in view of the substantial government reforms needed to adhere to EU conditionality requirements.¹⁴ The regional strife and political turmoil following the Arab Spring in 2011 has also rendered many of these states hesitant to adopt institutional democratic reforms.

The causal mechanism between conditionality and the relative success of formal democracy over substantive democracy has not been addressed thoroughly enough in existing literature and warrants further discussion. To this end, this paper illustrates how conditionality under the ENP is effective in promoting democracy among the Eastern Neighbours, only to the extent that their governments have been able to perceive economic benefits from instituting reforms. I begin by surveying the organisational logic of the ENP and the Eastern Partnership, after which I examine the skewed progress of democratic advancement among the Eastern

Georgia, Moldova, and Ukraine.

9 Frank Schimmelfennig and Hanno Scholtz, 'Legacies and Leverage: EU Political Conditionality and Democracy Promotion in Historical Perspective' (2010) 62 *Europe-Asia Studies* 443-460.

10 *ibid.*

11 *ibid.*

12 Naim Mathlouthi, 'The EU Democratisation of The Southern Neighbours Since the 'Arab Spring': An Inherently Inadequate Approach' (2021) 4 *International Journal of Social Science Research and Review*.

13 Schimmelfennig and Scholtz, (n 9) 2.

14 Luigi Scazzieri, 'Rethinking The EU's Approach Towards Its Southern Neighbours' (Centre for European Reform 2020) <<https://www.cer.eu/publications/archive/policy-brief/2020/rethinking-eus-approach-towards-its-southern-neighbours>> accessed 22 April 2022.

Neighbours in relation to indicators of formal democracy and substantive democracy. I then discuss how elites have abused the ENP's top-down operational practices and manifestly slanted the democratic advancement of the Eastern Neighbourhood towards the formal adoption of democratic apparatus, and at the expense of substantive democracy. I conclude by refuting the purported significance of Russian influence as inhibitory towards democratic advancement in the region.

The ENP was originally conceptualised as a catalyst of 'democracy, rule of law, respect for human rights and social cohesion' for states without EU membership prospects.¹⁵ Ever since its official establishment in 2004, this foreign policy initiative has run in tandem with the EU's policy aim of enlargement.¹⁶ Under this framework, the EU formulates bilateral Association Agreements which set tangible goals for democratic governance. Fulfilment of such conditionalities allow target countries access to economic and technological rewards.¹⁷ Critics have often described the relationship as 'coercive' and 'asymmetrical'; nevertheless, it is largely the EU's attempt at transforming its neighbourhood through soft, ideational power as opposed to military intervention.¹⁸ The Eastern Partnership (EaP) was launched in 2009 as an Eastern dimension of the ENP; with a particular focus on the Eastern Neighbourhood including Caucasian and former Soviet states.¹⁹

While formal democracy is contingent upon electoral practices and mechanisms, substantive democracy is based not only on 'citizens' [participation] in the making of decisions that concern them, but also that decisions must not be served wrapped in a shroud of ignorance'.²⁰ Measurement of substantive democracy therefore requires an examination of the outcomes of democratic governance and practice, with a focus on fairness, equality, and justice. Insofar as democratic procedures alone cannot overcome inequalities between individuals by mobilising political resources to their benefit, certain democratic principles must be incorporated into governance structures and policies.²¹ Addink further operationalises the definition of substantive democracy to encapsulate 'good governance' principles such as establishing strong democratic norms, accountability systems, independent anti-corruption institutions, and legal-rational guarantees of media freedom and independence.²²

Building on this, Pridham conceptualises the ENP's promotion of democracy as a two-track model.²³ Under this model, the ENP

15 European Commission, 'Wider Europe - Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours' (Office for Official Publications of the European Communities 2003) 11-12 <<https://www.europarl.europa.eu/sides/getDoc.do?objRefId=31192&language=EN>> accessed 18 April 2022.

16 Mor Sobol, 'It's the Member States, stupid! The deadlock which bedevils the European Neighbourhood Policy' (2015) 68 *Studia Diplomatica* 63-76.

17 *ibid.*

18 Ondřej Horák-Hlucháň and Petr Kratochvíl, 'Nothing Is Imposed in This Policy!: The Construction and Constriction of the European Neighbourhood' (2014) 39 *Alternatives: Global, Local, Political* 252-70.

19 Frank Schimmelfennig, 'Europeanisation Beyond the Member States' (2010) 8 *Zeitschrift für Staats- und Europawissenschaften* 319-39.

20 Manuel Courte Branco, *Political Economy for Human Rights* (Routledge 2020) 88.

21 Johanna Severinsson, 'Defining Democracy in The European Union: Assessing the Procedure and the Substance' (PhD, Lund University Department of Political Science 2022) 4-22.

22 Henk Addink, *Democracy and Good Governance* (Oxford University Press 2019) 91-96.

23 Nilsson and Silander, (n 7) 1.

promotes both formal and substantive elements, but in a disjointed manner. As a result, a country may succeed in the former while completely neglecting the latter. This is apparent in Moldova's electoral development: in the early 2000s, Moldova's parliament required at least 6% share of the primary vote for political parties to be represented in the legislature, 9% for two-member electoral blocks, and 2% for three and more member-coalitions.²⁴ This arrangement severely undermined pluralism in the Moldovan parliament, as measured by the number of parties as an indicator for formal democracy. In 2005, the European Parliament Resolution on Parliamentary Elections in Moldova directed the country to reduce this threshold to 4% for political parties and 8% for electoral blocks, so that smaller parties could have greater representation in civic discourse.²⁵ Furthermore, the EU-Moldova Action Plan (2005) exemplifies the formal aspects of democracy by prioritising the 'the stability and effectiveness of institutions guaranteeing democracy [and] ensuring the democratic conduct of parliamentary elections... in accordance with European standards'.²⁶

Moldova's significant degree of adherence to formal democratic reform has not, however, been matched by attention to aspects of substantive democracy. Despite recommendations on the empowerment of civil society, media transparency, and attempts at combating corruption, official descriptions of such initiatives have been equivocal and rarely been scaled against a quantitative benchmark.²⁷ The stark contrast as observed between indicators of formal democracy and substantive democracy is indicative of how the Moldovan government has pursued the two tracks of democracy with different degrees of commitment.

As per this two-track model, it is evident that while the ENP has successfully influenced Eastern Neighbours into adopting formal aspects of democracy through electoral mechanism reform, the latter have not undergone further development in terms of substantive democracy. Inhibitors of substantive democracy and good governance such as corruption and elite nepotism, media repression, and poor political representation of civil society have not been eradicated. As will be explained in the following sections, this two-track model results in the consistently poor scores of Eastern Neighbours in various democracy indicators. In particular, negative trends have been reported, based on heavily-weighted substantive democracy factors.

Ukraine's case further demonstrates the uneven development and entrenchment of formal democracy and substantive democracy. Having consistently improved its electoral integrity per the EU directive, the International Election Observation Mission concluded that 'voters [were able to make] informed choices between distinct alternatives and to freely and fairly express their will' in Ukraine's 2006 parliamentary elections.²⁸ In July 2019, the Parliament

²⁴ The European Commission for Democracy Through Law (Venice Commission, Council Of Europe), The Office for Democratic Institutions and Human Rights of the OSCE, 'Joint Recommendations on the Election Law and the Election Administration in Moldova' (Organization for Security and Co-operation in Europe 2004) <<https://www.osce.org/odihr/elections/moldova/41959>> accessed 6 June 2022.

²⁵ Nilsson and Silander (n 7) 1.

²⁶ European Commission. (2005). *EU-Moldova Action Plan* (Office for Official Publications of the European Communities) 4 <https://eeas.europa.eu/archives/enp/pdf/pdf/action_plans/moldova_enp_ap_final_en.pdf> accessed 6 June 2022.

²⁷ ibid.

²⁸ Yhiah Information Agency, 'Ambassador Maasikas: IMF, EU financial aid, visa-free travel depend on fighting corruption' (2020) <<https://www.unian.info/politics/ambassador-maasikas-imf-eu-financial-aid-visa-free-travel-depend-on-fighting-corruption-11218355.html>> accessed 22 April 2022.

approved a new Electoral Code that had begun being drafted in 2015, providing for a proportional representation system which combined an open and closed party list system, as well as a new system for local elections.²⁹ The EU-Ukraine Association Agreement established the primary reform objectives in the country, and following these developments, Ukraine held open and democratic presidential and legislative elections in 2019, marking the country's first peaceful shift of power since the events of Euromaidan.³⁰ These examples demonstrate how EU directives have substantially improved formal democracy in Ukraine.

Nevertheless, factionalism continues to account for conflictual relationships between elites, at times even leading to constitutional crises; power struggles over anti-corruption reforms between the Constitutional Court of Ukraine, the Ukrainian Parliament, and the President have gripped the country since October 2020.³¹ As for media freedom, Ukraine has consistently ranked around 90th out of 180 countries from 2006 to 2020; its Freedom House score of 62 in 2020 only puts it in the 'partly free' range.³² Ukraine's EIU democracy index has dropped from 6.94 in 2006 to 5.81 in 2020, further demonstrating the dearth of substantive democratic norms in the country.³³ Prevailing corruption problems also remain a contentious issue. Although Ukraine revamped its anti-corruption legislation in 2011 and 2014, selective law enforcement severely hampers its operation.³⁴ In 2019, Zelensky's presidency even commenced with the pursuit of a corruption investigation against his predecessor.³⁵ Although the country's Corruption Perceptions Index (CPI) score has incrementally improved from 2.8 in 2006 to 3.3 in 2020, anti-corruption campaigns still emphasise form over substance.

In Moldova and other Eastern Neighbours, there is a similar trend of unequal development between official (formal) democracy and genuine (substantive) democracy. The EU-Moldova Action Plan established a framework for Moldova's domestic institutions and foreign policy that was compatible with EU membership standards; the Law on Whistleblowers was implemented in November 2018, following major democracy-related aspects of the EU Action Plan.³⁶ New regulations provide legal protection for anyone ready to testify about wrongdoings and irregularities, as well as a specialised

²⁹ www.unian.info/politics/ambassador-maasikas-imf-eu-financial-aid-visa-free-travel-depend-on-fighting-corruption-11218355.html> accessed 22 April 2022.

³⁰ Oksana Huss and Oleksandra Keudel, 'Ukraine: Nations in Transit 2021 Country Report' (Freedom House, 2021) <<https://freedomhouse.org/country/ukraine/nations-transit/2021>> accessed 18 April 2022.

³¹ ibid.

³² Emily Channell-Justice, 'Can the High Anti-Corruption Court Fix Ukraine's Corruption Problem? Q&A with REECA Grad Ivanna Kuz' <<https://huri.harvard.edu/high-anti-corruption-court-ivanna-kuz>> accessed 20 April 2022.

³³ The Economist Intelligence Unit, 'Democracy Index 2020: In Sickness and in Health?' (The Economist 2020) <<https://www.eiu.com/n/campaigns/democracy-index-2020/>> accessed 18 April 2022.

³⁴ ibid.

³⁵ Andrew McDevitt, 'The State of Corruption: Armenia, Azerbaijan, Georgia, Moldova and Ukraine' (Transparency International 2015) 8-11 <<https://www.transparency.org/en/publications/the-state-of-corruption-armenia-azerbaijan-georgia-moldova-and-ukraine>> accessed 18 April 2022.

³⁶ Al Jazeera, 'Ukraine probes ex-leader Petro Poroshenko in intelligence case' (2010) <<https://www.aljazeera.com/news/2020/6/10/ukraine-probes-ex-leader-petro-poroshenko-in-intelligence-case>> accessed 18 April 2022.

³⁷ Victor Gotisan, 'Moldova: Nations in Transit 2021 Country Report' (Freedom House, 2021) <<https://freedomhouse.org/country/moldova/nations-transit/2021>> accessed 18 April 2022.

reporting mechanism.³⁷ Moldova held its first parliamentary elections in February 2019, adopting a mixed electoral system of one national constituency in which fifty one legislators were elected by first-past-the-post in single-member constituencies and fifty were elected by proportional representation from closed party lists.³⁸

Nevertheless, while Moldova's Bertelsmann Transformation Index (BTI) score – which sheds light on the quality of substantive democracy – has seen incremental improvement from 5.40 in 2006 to 5.80 in 2020,³⁹ this trend is often attributed to the protests in 2009, 2015, and most recently, in 2019.⁴⁰ In 2009, in the wake of an allegedly fraudulent election in which the governing Party of Communists of the Republic of Moldova (PCRM) won a majority of seats, civic unrest rocked several Moldovan cities.⁴¹ The movement represented a turning point in contemporary Moldovan politics. Having held snap elections after Parliament was dissolved, the Alliance for European Integration, a centre-right anti-communist ruling coalition, was created in response to the PCRM's victory in the July 2009 polls, paving the way for closer Moldovan-EU relations and a greater drive to fulfil EU conditionality requirements in the years to follow.⁴² After the fall of the PCRM in 2009, the unfulfilled hopes that Moldova may institute governmental reforms of transparency and accountability ultimately paved the way for the 2015 protests, far exceeding the scale of their predecessor.

Finally, in 2019, a constitutional crisis and subsequent attempts to form a new government culminated in the positions of President, Prime Minister, and Speaker of the Parliament being contested by competing claims.⁴³ This unleashed a movement of protests in which opposing factions rallied their support for different candidates. Apart from calls for the government's resignation and the annulment of recently approved laws, the protests have illuminated how Moldovan-EU relations have transcended the institutional level by galvanising democratic advancement, having socialised the Moldovan polity to expect higher standards of transparency and accountability from their government. With the internalisation of democratic values and good governance principles, these examples demonstrate the inextricability of Moldovan-EU relations from democratic progress and political awakening in the country on the level of both institutions and the citizenry.

In comparison, Belarus' BTI score remained the same at 4.38 throughout 2006 to 2020.⁴⁴ It is worth noting that while Belarus did experience protests against President Alexander Lukashenko in 2005, followed by a subsidiary movement in 2006, these were quickly and heavily suppressed by the police.⁴⁵ Similarly, Azerbaijan's BTI score has even noted a 0.37 fall from 3.80 in 2006 to 3.43 in

³⁷ ibid.

³⁸ ibid.

³⁹ The Economist Intelligence Unit, (n 33) 6.

⁴⁰ Cristian Cantir and Ryan Kennedy, 'Balancing on the Shoulders of Giants: Moldova's Foreign Policy toward Russia and the European Union' (2014) 11 *Foreign Policy Analysis* 397–416.

⁴¹ Ellen Barry, 'Protests in Moldova Explode, With Help of Twitter' *The New York Times* (New York, 7 April 2009) <<https://www.nytimes.com/2009/04/08/world/europe/08moldova.html>> accessed 18 April 2022.

⁴² ibid.

⁴³ Patrick Kingsley, 'Moldova Had Two Governments One Has Finally Resigned' *The New York Times* (New York, 14 June 2019) <<https://www.nytimes.com/2019/06/14/world/europe/moldova-new-government.html>> accessed 18 April 2022.

⁴⁴ 'BTI Index. Political Transformation' <<https://btiproject.org/en/>> accessed 6 June 2022.

⁴⁵ ibid.

2020.⁴⁶ Although protests against an alleged government fraud in parliamentary elections erupted in Azerbaijan in mid-2005, the movement subsided after five months when the police eventually suppressed riots with tear gas and water cannons.⁴⁷ These examples illustrate that progress in various democracy changes remains negligible, if not regressing, among certain states of the Eastern Neighbourhood.

I will now consider the reasons for the incongruence between formal and substantive democratic norms as brought about by the institutional framework under the ENP. An examination of the causal mechanism necessitates a dual consideration of the role played by elites as well as the EU policy net. The ENP imposes rigid conditionality requirements on partner countries. As elites in target states fail to perceive reasonable prospects for EU membership, they also believe that there is little to gain from adopting substantive democratic reforms in their countries, since the economic benefits of EU membership are closed off to them. They are also wary of potential domestic costs, as they are likely to bear the largest costs of political instability. Elites therefore strategically adopt formal forms of democratisation (for which benefits from the EU are more easily achieved) while neglecting the development of good governance principles. This problem is exacerbated by the lack of organisational guidelines through which the European Commission may review the progress of substantive reforms in partner countries and adopt signalling measures.

As EU-EaP cooperation initiatives have largely adopted a top-down approach, I argue that incumbent EaP government office-bearers strategically adopt formal forms of democratisation while neglecting the promotion of normative democratic and good governance principles. Caiser similarly attributes the phenomenon to elite perception of unlikely EU-membership prospects, as well as a fear of losing power.⁴⁸ This discussion warrants a closer examination of the role of elites in hindering democratic advancement. Given the inequality of bargaining power between the two actors, democratisation conditions are imposed by the EU upon EaP states as a crucial criterion to receive economic rewards.⁴⁹ The adoption of EU legislation, legal acts, and court decisions in Moldova serves as a prime example – having repeatedly demanded Moldova adopt EU electoral standards and laws, the ENP has demonstrated its leverage over EaP governments via potential economic incentives.⁵⁰

Elites seek both to legitimise their regimes and to extract economic benefits from the EU; thus, they strategically adopt democratic reforms, such as legislative overhauls, which are most perceptible to their EU partners.⁵¹ In contrast, improvements in substantive democracy, such as establishing independent anti-corruption agencies, safeguarding media freedom, and empowering civil society, are not only less quantifiable and recognisable indicators of

⁴⁶ ibid.

⁴⁷ OECD, 'Anti-Corruption Reforms in Azerbaijan: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan' (2022) <<https://www.oecd-ilibrary.org/content/publication/3ae2406b-en>> accessed 6 June 2022.

⁴⁸ Tom Caiser, 'The EU's two-track approach to democracy promotion: the case of Ukraine' (2011) 18 *Democratization* 956–77.

⁴⁹ Sonja Grimm, 'Democracy Promotion and the European Union' in Peace Research Institute Frankfurt / Leibniz-Institut Hessische Stiftung Friedens- und Konfliktforschung, *Democracy Promotion in Times of Uncertainty: Trends and Challenges* (Peace Research Institute Frankfurt 2018) 16–19.

⁵⁰ ibid.

⁵¹ ibid.

democracy to EU partners, but are also perceived to be potentially disruptive towards the hierarchical entrenchment of the incumbent regime.⁵²

Civic society in former Soviet states such as Moldova often lacks channels of political representation and participation. Coupled with failed authoritarianism, the circumstances give rise to a political pluralism that renders substantive governance reforms extremely precarious to elites seeking to preserve their power.⁵³ Furthermore, elites interpret the ENP's rigid policy conditionality and its reluctance to offer a reasonable prospect of EU membership as indicative of the minimal economic benefits to be gained by adopting substantive democratic reforms.⁵⁴ Given that these reforms also create possibilities of upsetting vested interests and decrease support for the governing administration, which may directly threaten elites' hold on power, their cost-benefit analysis produces an incongruence between formal and substantive democratic norms in these countries.

Office-bearers must be convinced of the value of abandoning the old equilibrium – as elites are primarily concerned with preserving their power and vested interests, the incentives towards instituting substantive democracy must, to some extent, benefit them also. In this respect, a parallel may be drawn between EaP states and the Southern Neighbours: as the latter's geographical location preemptively refutes the possibility of EU membership, they are also less incentivised towards improving the quality of democracy.⁵⁵ The 2017 EU-EaP Summit Joint Declaration has negated any possibility for EU membership entry for at least the coming decade.⁵⁶ Given that EU membership prospects are expected to be confined within the Association Agreements, elites are understandably deterred from abandoning the current equilibrium to institute substantive democratic reforms.⁵⁷

Here, Ukraine again serves as an apt illustration. In keeping with EU recommendations, Ukraine has introduced proportional representation to improve electoral inclusivity.⁵⁸ This development did not, however, resolve entrenched issues of factionalism, selective law enforcement, and large-scale electoral fraud, and largely failed to clarify the power distribution between the Prime Minister and the President.⁵⁹ Zelensky's administration has continued to stifle media freedom by banning opposition news outlets such as Yandex and RosBiznes Consulting (RBC), despite EU recommendations.⁶⁰

Although an independent High Anti-Corruption Court of Ukraine (HACC) was established in April 2019, the vested interests of the

judicial elite continue to threaten the rule of law.⁶¹ During mid-2020, members of the Constitutional Court made a series of decisions which threatened to destroy the HACC.⁶² The following August saw the Constitutional Court declaring Artem Sytnyk's appointment as director of the National Anti-Corruption Bureau (NABU) in 2015 as unconstitutional, a move that was deemed 'politically motivated' by officers of the NABU.⁶³ By autumn, the blockage of a judicial reform initiative was backed by the Parliament, the President, and by twenty members of the High Council of Justice, some of whom face corruption charges. This marks the culmination of democratic backsliding; attempts to adopt transparency reforms are being reversed.⁶⁴ Although contemporary Ukrainian elites reportedly identified the institution of democratic reforms as a prerequisite for EU candidacy, they also contended that only formal democratic measures should be implemented.⁶⁵ These examples not only demonstrate the endorsement of formal democracy over substantive democracy, but also illuminate the extent to which vested interests have subsumed attempts at improving the transparency and accountability of the government, particularly in view of the low EU membership prospects.

The model is also evident in other EaP states. Following EU recommendations, Georgia introduced proportional representation in its 2004 constitutional reform.⁶⁶ Although the initiative purportedly promotes pluralism, critics have pointed out that the demarcation of electoral districts do not reflect geographical distribution of voter density.⁶⁷ Georgia is yet one more example where the advancement of substantive democracy has been considered subsidiary to that of formal democratic apparatus.

The lack of precise organisational guidance is one of the principal shortcomings of this top-down strategy, as it provides elites with substantial flexibility to circumvent the adoption of substantive democratic reforms, and deprives the European Commission of the ability to follow up with countermeasures, should elites fail to meet the original commitments.⁶⁸ Although the European Commission can in principle sanction regressions by withdrawing the conditional EU economic benefits, this watchdog function is greatly hampered by the fact that democratic backsliding or stagnation itself is not reflected in the current indicators. To the extent that top-down EU policies neglect the quantification and appraisal of procedural democratic elements, the European Commission remains powerless in closing this policy loophole. This limitation creates an especially undesirable effect for the EU's normative power: elites interpret it as a sign of weakness or general apathy, creating a positive feedback loop which further encourages the incongruence of formal and substantive democratic reforms.

⁵² Schimmelfennig and Scholtz (n 9)
⁵³ ibid.

⁵⁴ Heather Grabbe, 'European Union Conditionality and the *Acquis Communautaire*' (2002) 23(3) *International Political Science Review* 249–68.

⁵⁵ Tanja Börzel and Frank Schimmelfennig, 'Coming Together or Drifting Apart? The EU's Political Integration Capacity in Eastern Europe' (2017) 24 *Journal of European Public Policy* 122–40.

⁵⁶ Petra Kuchyňková and Juraj Hajko, 'Ten years of EaP: successes but also new challenges' (2019) 28 *International Issues & Slovak Foreign Policy Affairs* 73–83.

⁵⁷ ibid.

⁵⁸ ibid.

⁵⁹ Kenneth Geers, *Alliance Power for Cybersecurity* (Atlantic Council 2020) 11–16.

⁶⁰ 'Russian Media Organisations Banned for Three Years in Ukraine' (Safety of Journalists Platform, 31 July 2018) <<https://fom.coe.int/en/alerte/detail/36211014>> accessed 6 June 2022.

⁶¹ Diane Francis, 'Ukraine's reforms remain hostage to corrupt courts' (Atlantic Council, 15 September 2020) <<https://www.atlanticcouncil.org/blogs/ukrainealert/ukraines-reforms-remain-hostage-to-corrupt-courts/>> accessed 22 April 2022.

⁶² Channell-Justice (n 32) 5.

⁶³ ibid.

⁶⁴ ibid.

⁶⁵ Geers (n 64) 10.

⁶⁶ Neil MacFarlane, 'Afterword' in Stephen Jones and Neil MacFarlane (eds) *Georgia: From Autocracy to Democracy* (University of Toronto Press 2020) 229–36.

⁶⁷ ibid.

⁶⁸ Morten Broberg, 'Furthering Democracy through the European Community's Development Policy: Legal Limitations and Possibilities' (International IDEA 2010) <<https://www.idea.int/sites/default/files/publications/chapters/the-role-of-the-european-union-in-democracy-building/eu-democracy-building-discussion-paper-12.pdf>> accessed 6 June 2022.

To conclude this essay, I will refute the purported inhibitory effect of Russian influence upon democratic advancement in the Eastern Neighbourhood. Such arguments assert that the Russian administration has interfered with democratic and governance reforms of EaP states to hamper their chances at EU membership.⁶⁹ Scholars have argued that geopolitical interests have characterised the Russian administration's perception of Eastern Europe, meaning that Moscow will seek to frustrate EaP states' attempts at building harmonious relations with the EU.⁷⁰ There is, however, insufficient evidence to suppose a clear relationship between Russia's autocratic influence and the stagnant democratic development among EaP states. While theoretical predictions associate geographical proximity to Russia with democratic foreclosure, Armenia demonstrates that the success of democratic advancement is also largely dependent on strategic policy formulation. While Armenia abandoned the Association Agreement for membership in the Russian-led Eurasian Union in 2013,⁷¹ the country has articulated plans for judicial reform pursuant to the EU-Armenia justice policy dialogue and continued its partnership with the EU.⁷² Alongside the installation of a pro-democracy government following the 2018 Armenian Revolution, these developments have holistically improved its EIU democracy index from 4.09 in 2012 to 5.35 in 2020.⁷³

It is apparent that the ENP has yielded skewed results in promoting formal democracy over substantive democracy, calling for a thorough understanding of the underlying causes to remedy this situation. This essay has argued that the top-down intergovernmental promotion of democracy has manifestly encouraged elites to adopt an asymmetrical approach towards democratic reforms. Ultimately, attempts to promote the EU's democratic norms must go beyond the formal apparatus – they must focus on the operational logic of the ENP, and work towards empowering civil society from the level of the citizenry.

⁶⁹ ibid.

⁷⁰ Jean Crombois, 'Conflicting Narratives? Geopolitical and Normative Power Narratives in the EU Eastern Partnership' (2017) 49 *Politeja* 109–26.

⁷¹ Stanislav Secrieru and Sinikukka Saari (eds) *The Eastern Partnership a Decade On* (European Union Institute for Security Studies 2019) 84–95 <https://www.iss.europa.eu/sites/default/files/EUISSFiles/cp153_EaP.pdf> accessed 22 April 2022.

⁷² ibid.

⁷³ The Economist Intelligence Unit, (n 33) 6.