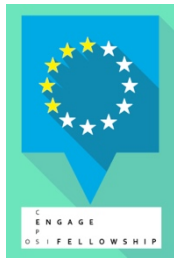


# EU policy on strengthening resilience in Moldova, Ukraine and Georgia Between the rule of law and oligarchic influence

Denis Cenuşa

No. 2019-02, May 2019

CEPS Papers in Liberty and Security in Europe offer the views and critical reflections of CEPS researchers and external collaborators on key policy discussions surrounding the construction of the EU's Area of Freedom, Security and Justice. The series encompasses policy-oriented and interdisciplinary academic studies and comment on the implications of Justice and Home Affairs policies within Europe and elsewhere in the world.



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## Abstract

The state capture and oligarchic control of political power and electoral processes in the associated countries of the Eastern Partnership – Georgia, Moldova and Ukraine – are acknowledged by EU institutions, civil society organisations and in public opinion. That inevitably puts pressure on the resilience of these three countries, in addition to Russia’s aggressive campaigns, carried out with or without the use of conventional weaponry. This policy brief looks at the EU’s actions to invest in and consolidate the rule of law, in the direction of stimulating internal resilience. It provides a range of arguments supporting the idea that the EU is not sufficiently tackling the oligarchic influences in Moldova, Ukraine and Georgia. These are followed by timely recommendations for the EU institutions to remedy the situation.

## 1. Introduction

High levels of ‘state capture’ and oligarchic control of political power and electoral processes in the associated countries of the Eastern Partnership (Georgia, Moldova and Ukraine) have frequently been acknowledged by EU institutions, civil society organisations and in public opinion. The downward spiral of these drawbacks has undermined the implementation of the reform-driven Association Agreements in terms of building a more functional rule of law. This state of affairs runs counter to the ambitions of the 2015 review of the European Neighbourhood Policy, the 2016 EU Global Strategy and the 2017 Strategic Approach to Resilience in External Action, which emphasised the need to strengthen the rule of law in third states. The EU aimed to create more resilience in the region, viewed in tight connection with the transformative capacity within the states, which via reforming can withstand and recover from internal and external crises.<sup>1</sup> The reality on the ground illustrates that internally the three analysed countries are vulnerable because of the appetite of informal groups to infiltrate government in order to manipulate the reforms and benefit from their ineffectiveness. Consequently, such behaviour puts pressure on the resilience of Moldova, Ukraine and Georgia, in addition to Russia’s aggressive campaigns, carried out with or without the use of conventional weaponry.

The entire range of the EU’s above-mentioned framework documents invites the European institutions to engage with the eastern neighbours to strengthen their resilience. A special

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<sup>1</sup> European Union, “A Global Strategy for the European Union’s Foreign and Security Policy”, 2016, p. 23.

focus of the EU's external action is on fortifying the functionality of states in ensuring the rule of law together with other aspects – democracy, human and fundamental rights. By doing that, the EU pursues a larger, and to some extent idealistic goal, of building inclusive, secure and prosperous societies in its surrounding regions.<sup>2</sup>

The EU envisages the Association Agendas, which form the operational side of the Association Agreements with Moldova, Ukraine and Georgia, as avenues to achieve more resilience.<sup>3</sup> Even if these countries have been involved in the implementation of Association Agendas for the last few years, the oligarchic groups have interfered with or diminished the rule of law, inevitably affecting the countries' resilience. In semi-consolidated democracies like Moldova, Georgia and Ukraine, the oligarchic regimes possess a destructive potential for the rule of law and pulverise resilience. The oligarchic factors either represent the cause of a backward rule of law or a serious obstacle impeding the reforms.<sup>4</sup> Because the EU is interested in obtaining resilience through reforms, it should take into consideration more rigorously the oligarchic factor, which interferes with reforms and hinders the rule of law.<sup>5</sup> Thus, this policy brief sets out the EU's actions in consolidating the rule of law in the direction of stimulating internal resilience on the one hand, and on the other hand argues that the oligarchic influences are not sufficiently being tackled in Moldova, Ukraine and Georgia.

Primarily, the policy brief raises attention to the fact that while the EU has financed various actions to improve the rule of law in these countries, the influence of the oligarchs has not lessened but rather adapted. First, the policy brief analyses the content of the Association Agendas with Moldova, Ukraine and Georgia, in order to identify what measures the EU agreed to apply on the rule of law in relation to ongoing reforms so that the ruling oligarchy is tackled by direct or indirect means. Second, the attention turns to the programmes implemented by the EU, with the financial support of the ENI, for areas covering the rule of law that consequently can erode the oligarchic governance in each of the three countries. Third, the outcomes of the EU's actions that pertain to the rule of law are studied by examining the implementation reports. The timespan of the analysis extends from 2015 until 2018. In 2015, the review of the European Neighbourhood Policy incorporated resilience; in 2018 the latest implementation reports under the Association Agreements with Moldova, Ukraine and Georgia were issued. Lastly, the policy brief includes a set of recommendations that are meant to constrain oligarchic governance.

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<sup>2</sup> *Idem*, pp. 25-26.

<sup>3</sup> European Commission, "Strategic Approach to Resilience in the EU's external Action", 2017, p. 15.

<sup>4</sup> W. Konończuk, D. Cenuşa and K. Kakachia, "Oligarchs in Ukraine, Moldova and Georgia as key obstacles to reforms", 24 May 2017, [http://www.3dcftas.eu/system/tdf/Oligarchs\\_14%20June\\_FINAL\\_0.pdf?file=1&type=node&id=358%20](http://www.3dcftas.eu/system/tdf/Oligarchs_14%20June_FINAL_0.pdf?file=1&type=node&id=358%20).

<sup>5</sup> *Idem*.

## 2. Defining the problem: More ‘rule of law’ is not equal to less oligarchic influence

The relationship between the EU and Georgia, Moldova and Ukraine has grown to the strongest extent so far due to the Association Agreements and the degree of commitments assumed by the governments of the three associated countries. Reform agendas for each of the three countries have never been so packed, or closely followed by the European institutions, in particular after full enactment of the agreements and the serious and diverse political crises that could be witnessed there. In Moldova, the banking fraud unveiled in 2015 exposed the deficiencies of the anti-corruption mechanism. The backslide continued when the electoral legislation was changed in 2017 to favour the oligarchic groups and ended with the 2018 invalidation of local elections in Chisinau. In the case of Ukraine, the targeting of civil society with anti-corruption policies became one of the major shortcomings that caught attention.<sup>6</sup> Though Georgia is frequently assessed as the least problematic country out of the three, the oligarchic influence showed that it is not giving up attempts to strengthen its grip on power by deciding to write off the debts of 600,000 voters amid presidential elections,<sup>7</sup> swaying the elections against the opposition.<sup>8</sup>

The European institutions underlined on various occasions the shortcomings of the rule of law in Moldova, Ukraine and Georgia. That represents an indirect confirmation that the EU’s efforts to fortify their resilience are insufficient, and that the biggest enemy of the rule of law are the vested interests. Moldova’s case perfectly exemplifies the declining rule of law, showing at the same time the failure of the EU to exercise conditionality, but also the ability of the local elites, with oligarchic links, to undermine the rule of law. Neither the two resolutions of the European Parliament adopted in 2018, nor the decision of the European Commission to suspend the macro-financial assistance and the budgetary support, provided enough energy to make a breakthrough.<sup>9</sup> While Ukraine and Georgia, which have their own oligarchic systems in place, are not suspected of similar degradation of the rule of law, the Moldovan case underscores that the oligarchic governance can ignore the commitments at any point. Empirically, the attempts of oligarchic groups to diminish the mechanisms of the rule of law explain that the former view the latter as an obstacle to their political-economic interests. Concomitantly, the resilience of these states is improbable without a robust rule of law, which is shielded from oligarchs’ targeting. Therefore, the EU should strategize around the reform of rule of law

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<sup>6</sup> European Commission, “Second Report under the Visa Suspension Mechanism”, 19 December 2018.

<sup>7</sup> “Debts of 600,000 Georgian citizens to be cleared just before second round of presidential elections”, <https://jam-news.net/debts-of-600000-georgian-citizens-to-be-cleared-just-before-second-round-of-presidential-elections/>.

<sup>8</sup> OC-Media, “Ivanishvili returns to frontline Georgian politics”, 26 April 2018, <http://oc-media.org/ivanishvili-returns-to-frontline-georgian-politics/>.

<sup>9</sup> D. Cenuşa, “Year of disruptions in Moldova’s European integration: Top 3 accomplishments and failures in 2018”, 26 December 2018, <http://ipn.md/en/special/95557>.

mechanisms in Georgia, Moldova and Ukraine in order to reduce the oligarchization phenomenon and thus increase the level of resilience.

### 3. Association Agendas: Boosting the rule of law without constraining the oligarchic governance?

Association Agendas represent important ‘road maps’ that help to arrange the actions, which derive from the provisions of the Association Agreements, for a two-year period. These operational documents are negotiated between the EU and the associated country, and therefore require a political and diplomatic consensus. Evidently, the national parties will reject the agendas if they include a straightforward mention of any measure directed against oligarchic interests. Also, the EU takes a careful approach to sensitive aspects, such as admitting blatantly that the oligarchs run a country under an EU Association Agreement. So, this policy brief depicts those elements of the agendas that correlate with the rule of law, but which hint at the oligarchic presence as well.

**Moldova.** The EU–Moldova dialogue produced two Association Agendas, for 2014–16 and 2017–19 respectively. The first document was adopted after the Association Agreement was signed, and the second one after the agreement entered into force in July 2016. This also coincided with improvement of the structure of the agendas, with short- and medium-term goals introduced by the European side for Moldova and the other two countries. Moreover, the two agendas practically separate the period before and after the state capture by oligarchic groups reached its maximum level, when the Democratic Party fully monopolised political power at the end of 2015.<sup>10</sup>

The first Association Agenda for 2014–16 specifies clearly an area of action involving the rule of law. Out of five measures one had a limitative meaning with regard to the oligarchic factor, and it referred to upgrading the framework for financing political parties. The increased transparency of the financing that goes to political parties can impede or at least discourage the actions of infiltration in political equations by the vested interests. The measures proposed (ten actions) under the imperative of justice and judiciary reform have a cumulative role as well, in diminishing the ability of the financially powerful centres to exercise unlimited influence. The second agenda includes twenty-three short-term actions from which three can create barriers against oligarchic interference. They refer to financing parties and electoral campaign financing, which are also cited in the block of twenty-two medium-term actions.

**Ukraine.** There is only one Association Agenda (of 2015) based on which the EU and Ukraine agreed to transpose the provisions of the Association Agreement and also to conduct reforms. The area concerning the rule of law includes five actions, out of which two can be qualified as actions that increase resilience against the oligarchy, but only with an indirect touch – justice

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<sup>10</sup> D. Cenușa, “How did Moldova become a ‘captured state’?”, 2 May 2017, <http://www.ipn.md/en/special/83596>.

reform and the financing of political parties. Frequently, the ascension of oligarchs to power takes place through ‘colonising’ the political party system.<sup>11</sup> Therefore, the introduction of transparency and reporting mechanisms for financial flows into the political parties, as suggested by the agenda, is essential to exclude the financial operations of the oligarchic circles with or without ‘offshore’ participation.

**Georgia.** The first agenda adopted for Georgia was composed of six actions under the area of the rule of law. Only one measure can have effects on both improving the rule of law and limiting the impact of oligarchic interference – reinforcing the independence of the judiciary. In the second agenda, the rule of law part includes three actions, and one of them repeatedly concerns the judiciary.

Overall, the agendas for Moldova are more extensive in terms of the rule of law. That creates the expectation that the oligarchy is much more exposed to constraints. However, the invalidation of elections in Chisinau in the courts and the subsequent freezing of financial support by the EU testify that the expectations do not match the results.<sup>12</sup> The Association Agendas of Ukraine and Georgia draw less attention to the issue of the rule of law. The Ukrainian document shows that the EU’s attention is absorbed with a few priorities at once – on anti-corruption measures, administrative reform, the energy market, etc. Therefore, the existentialist reforms related to public order issues and against the perils resulting from Russia’s actions may seem to compete with the transformation sustained in the field of the rule of law. The content of the agenda for Georgia reflects a rather positive perception of the EU about how the rule of law functions in this country. Nonetheless, the recent presidential elections in Georgia gave rise to a unique case of ‘electoral bribery’ (the nullification of the banking debts of 600,000 individuals).<sup>13</sup> This scheme involved the financial institutions controlled by the leader of the ruling party, Georgian Dream, the influential oligarch Bidzina Ivanishvili, who has set the domestic political agenda since 2012. Civil society has also warned that the justice system is under pressure because of the clan-based functioning of the judiciary,<sup>14</sup> although it has not connected the issue with the oligarchic presence.

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<sup>11</sup> W. Konończuk, D. Cenuşa and K. Kakachia, “Oligarchs in Ukraine, Moldova and Georgia as key obstacles to reforms”, 24 May 2017, [http://www.3dcftas.eu/system/tdf/Oligarchs\\_14%20June\\_FINAL\\_0.pdf?file=1&type=node&id=358%20](http://www.3dcftas.eu/system/tdf/Oligarchs_14%20June_FINAL_0.pdf?file=1&type=node&id=358%20).

<sup>12</sup> D. Cenuşa, “Decay of EU-Moldova relations until a new electoral test”, 18 September 2018, <http://ipn.md/en/integrare-europeana/93594>.

<sup>13</sup> “Unprecedented move by Cartu Group to nullify debts for 600 000 Georgian citizens”, <https://www.georgianjournal.ge/politics/35282-unprecedented-move-by-cartu-group-to-nullify-debts-for-600-000-georgian-citizens.html>.

<sup>14</sup> Transparency International Georgia, “Manifesto – For Saving Justice”, 25 February 2019, <https://www.transparency.ge/en/post/manifesto-saving-justice>.

Table 1. Rule of law aspects of the Association Agendas for Moldova, Ukraine and Georgia

	Rule of law actions and relevance for reducing the presence of the oligarchy in the decision-making process	
Moldova	2014–16	1 out of 5 actions
	2017–19	3 out of 23 short-term actions
Ukraine	2015	2 out of 5 actions
Georgia	2014–16	1 out of 6 actions
	2017–20	1 out of 3 actions

Source: Official documents of the EU, and the assessment of the author.

#### 4. The EU's measures: A reactive approach instead of a preventive one

The key financial support for reforms in Moldova, Ukraine and Georgia derives from the European Neighbourhood Instrument (ENI), scheduled for 2014–20 and designed to aid the reform process. Ensuring the rule of law and sustainable democracy are the ENI's official targets.<sup>15</sup> These financial resources are allocated through the annual action programmes for the neighbouring countries. The profile of the projects financed via the ENI for Moldova, Ukraine and Georgia during 2015–18 reveals whether the EU sets priorities that are linked to the rule of law. This policy brief claims that such priorities can contribute to diminishing the oligarchic influence in the three countries.

An examination of the programmes financed by the EU through the ENI shows that the actions on the rule of law included in the Association Agendas are not covered. Understandably, the European institutions first rely on the self-determined commitments of the national governments in Moldova, Ukraine and Georgia. However, the reasoning of these same financing programmes exemplifies that the EU is ready to initiate programmes that deal with the rule of law, but only when a crisis breaks out. Moldova represents a descriptive case of such situations. In the aftermath of the banking fraud<sup>16</sup> and other crimes in the financial sector, facilitated by high-level corruption, the EU decided to initiate a programme aimed at strengthening the rule of law and the anti-corruption mechanisms. The above-mentioned shortcomings were already known in 2015, but it took two years to propose measures that could address them (see Table 2). In 2018, the programme was announced, accounting for about €8 million, which has the goal to reduce public tolerance of corruption and boost the mechanisms meant to fight it.<sup>17</sup>

<sup>15</sup> ENI, <https://www.euneighbours.eu/en/policy/european-neighbourhood-instrument-eni#new>.

<sup>16</sup> M. Emerson, D. Cenuşa, T. Kovziridze and V. Movchan, *The Struggle for Good Governance in Ukraine, Georgia and Moldova*, Brussels and London: CEPS and Roman & Littlefield, 2018, [http://3dcftas.eu/system/tdf/Struggle\\_For\\_Good\\_Governance.pdf?file=1&type=node&id=472&force=.](http://3dcftas.eu/system/tdf/Struggle_For_Good_Governance.pdf?file=1&type=node&id=472&force=)

<sup>17</sup> [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/annex\\_3\\_clean\\_anti\\_corruption\\_final.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/annex_3_clean_anti_corruption_final.pdf).



A different approach evolved for Ukraine, where the EU began to work on the rule of law two years after the 'Euromaidan' events of 2014. Under the ENI, a special measure was adopted in 2016 to support the rule of law, a programme also called 'PRAVO', worth €52.5 million.<sup>18</sup> It envisaged the reformation of the judiciary with regard to the rule of law, in addition to police reform. Another project of 2016, also motivated by post-Euromaidan political changes, links with anti-corruption policies. It combines investment in the capacity of anti-corruption bodies with larger oversight means for the legislative branch, and fosters engagement with and of civil society organisations (€16.34 million).<sup>19</sup> By contrast, between 2016 and 2018, the Ukrainian authorities regularly delayed the fully-fledged operationalisation of anti-corruption institutions. During 2018, civil society reportedly faced around 50 attacks from elements of the old system resisting the anti-corruption actions.<sup>20</sup> Many times these attacks go unreported and ignored by the central authorities,<sup>21</sup> which amplifies the mistrust towards the office of the president, still controlled by the oligarch Petro Poroshenko.

No specific programme concerning Georgia was designed between 2015 and 2018, which proves again that the EU evaluates in a satisfactory manner the situation of the third associated country.

As Table 2 shows, the EU is reactive rather than preventive in its approach to support the reforms focused on the rule of law. Thus, Moldova and Ukraine benefited from the EU's programmes, though in reactive thinking instead of preemptive. Nevertheless, even after that, the situation is changing very slowly and in some respects only slightly, as shown by the assaults on anti-corruption NGOs in Ukraine.<sup>22</sup> At the same time, the initiative of Moldova was very much discredited by the invalidation of elections in Chisinau, which exemplified a systemic deficiency of the country's rule of law. For instance, the ruling party, linked to an oligarchic entourage, attempted to transfer responsibility for the failure of the justice reform, which led not only to suspension of EU support and the previous pro-EU ruling coalitions,<sup>23</sup> but also the European experts.<sup>24</sup>

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<sup>18</sup> [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/eni\\_2016\\_039835\\_action\\_document\\_roldocx.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/eni_2016_039835_action_document_roldocx.pdf).

<sup>19</sup> [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/c\\_2016\\_4719\\_039657\\_anti-corruption\\_initiative.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/c_2016_4719_039657_anti-corruption_initiative.pdf).

<sup>20</sup> A. Wishart, "Ukrainian civil society under attack", 8 November 2018, <http://neweasterneurope.eu/2018/11/08/ukrainian-civil-society-attack/>.

<sup>21</sup> Idem.

<sup>22</sup> "Second Report under the Visa Suspension Mechanism", 19 December 2018, op. cit.

<sup>23</sup> Statement of the Ministry of Justice, 12 October 2017, <http://www.justice.gov.md/libview.php?l=ro&idc=4&id=3629>.

<sup>24</sup> [https://adevarul.ro/moldova/politica/dionis-cenusa-guvernarea-contrapune-intentionat-reformele-cerute-fmi-cele-atribuite-ue-1\\_5b42fa1edf52022f75023f6a/index.html](https://adevarul.ro/moldova/politica/dionis-cenusa-guvernarea-contrapune-intentionat-reformele-cerute-fmi-cele-atribuite-ue-1_5b42fa1edf52022f75023f6a/index.html).

Table 2. ENI Annual Action Programmes for Moldova, Ukraine and Georgia, 2015–18  
(€ millions)

		Moldova <sup>25</sup>	Ukraine <sup>26</sup>	Georgia <sup>27</sup>
2015	Overall amount	€90	€90 + €70	€100
	Rule of law projects	No project	No project	No project
2016	Overall amount	€89	€52.5 + €104 + €43.5	€109.5
	Rule of law projects	No project	2 projects – Support for Rule of Law Reforms in Ukraine (€52.5); Anti-Corruption Initiative in Ukraine (€16.34)	No project
2017	Overall amount	€10	-	€96.5
	Rule of law projects	No project	-	No project
2018	Overall amount	€50.75	-	€79.14
	Rule of law projects	1 project – Strengthen the rule of law and anti-corruption mechanisms in the Republic of Moldova (€8 million) <sup>28</sup>	-	No project

Source: Author's compilation from the European Commission's webpage.

The remaining associated country, where in spite of a vote-buying scandal no serious political crisis has occurred yet, and where the EU is reluctant to invest efforts in preserving the rule of law and prevent the negative impacts of oligarchic interference, is Georgia. The EU seems to ignore the fact that the dysfunctions in the rule of law in countries with which it has Association Agreements and Deep and Comprehensive Free Trade Agreements keep the door open to

<sup>25</sup>“Financial allocation to Moldova via ENI”, [https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/moldova\\_en](https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/moldova_en).

<sup>26</sup> Financial allocation to Ukraine via ENI, [https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/ukraine\\_en](https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/ukraine_en).

<sup>27</sup> Financial allocation to Georgia via ENI, [https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/georgia\\_en](https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/georgia_en).

<sup>28</sup> Annex 3 of the Commission Implementing Decision on the Annual Action Programme 2018 in favour of Republic of Moldova, [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/annex\\_3\\_clean\\_anti\\_corruption\\_final.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/annex_3_clean_anti_corruption_final.pdf).

oligarchic interference.<sup>29</sup> Moldova's dominant oligarch, Vladimir Plahotniuc,<sup>30</sup> and the one in Georgia, Bidzina Ivanishvili, keep absorbing political power, while in Ukraine there are attempts to readjust to the ongoing reforming realities – by Petro Poroshenko and other oligarchs.

## 5. Looking at the results: Rule of law aspects vary from one country to another

The outcomes of the EU's measures on the rule of law can be learned mainly from the implementation reports, which attempt to give an objective assessment. The European Court of Auditors assessed the quality of budgetary support for justice sector reform only for Moldova (2009–14)<sup>31</sup> and, collectively for Moldova, Ukraine and Belarus (for the years 2000–05).<sup>32</sup> The Court's assessment of the ongoing rule of law-related programmes financed via the ENI in Moldova and Ukraine could help to mitigate the existing deficiencies, given the troubles faced by these countries, in particular the suspension of assistance for Moldova.<sup>33</sup> The two reports assess the EU's assistance offered before the implementation of the Association Agreements and respectively the Association Agendas (September 2014 for Moldova and Georgia, and November 2014 for Ukraine). Still, the 2016 report on Moldova is partially relevant because it refers to the \$1 billion fraud in the Moldovan banking system, and criticises the slowness and inefficiency of the EU's conditionality.<sup>34</sup>

Strictly connected to the implementation of the Association Agreement, the implementation reports describe the results of measures included in the Association Agendas set up bilaterally by the EU with the authorities of Moldova, Ukraine or Georgia. These documents, published yearly, lack any analysis of the effects from the EU's actions on the rule of law in the associated countries, carried out via programmes financed by the ENI. This shows a disconnection between the agendas, the programmes carried out under the ENI and the implementation reports. On the one hand, the programmes realised by the EU are in line with the goals of the agendas. On the other hand, the implementation report measures the degree of accomplishment of the agendas and leaves aside ENI-related programmes and actions.

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<sup>29</sup> S. Blockmans, N. Hriptievski, V. Panasiuk and E. Zguladze, "Integrity on Trial: Judicial reform in Georgia, Ukraine and Moldova", CEPS, Brussels, 2018, <https://www.ceps.eu/publications/integrity-trial-judicial-reform-georgia-ukraine-and-moldova>.

<sup>30</sup> "Report on Implementation of the EU Association Agreement with Moldova", 15 October 2018, <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A8-2018-0322&format=XML&language=EN>.

<sup>31</sup> European Court of Auditors, "EU assistance for strengthening the public administration in Moldova", 2016, [https://www.eca.europa.eu/lists/ecadocuments/sr16\\_13/sr\\_moldova\\_en.pdf](https://www.eca.europa.eu/lists/ecadocuments/sr16_13/sr_moldova_en.pdf).

<sup>32</sup> European Court of Auditors, "The Effectiveness of EU Support in the Area of Freedom, Security and Justice for Belarus, Moldova and Ukraine", 2008, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008SA0009&rid=2>.

<sup>33</sup> D. Cenuşa, "Scanning of EU macro-financial assistance to Moldova, Ukraine and Georgia: frontrunners and laggards", 24 September 2018, <http://ipn.md/en/integrare-europeana/93705>.

<sup>34</sup> "EU assistance for strengthening the public administration in Moldova", 2016, op. cit., pp. 19 and 29-34.

Moldova's progress is reflected in two implementation reports. In the first report,<sup>35</sup> under the chapter on good governance, the aspects of financing political parties and political interference in justice are included. In a separate chapter on justice, freedom and security, the EU exposes the major shortcomings of the judiciary, prosecuting and anti-corruption bodies, including the legislation constraining money laundering. The second report<sup>36</sup> follows the same structure. Examination of both implementation reports indicates that they mismatch the structure of the Association Agendas, which explicitly point out the goal of strengthening the rule of law. Moreover, they overlook the programmes financed under the ENI.<sup>37</sup>

A similar structure as that for Moldova is applied in the two implementation reports on Ukraine. Both of the reports have the same incongruity between the Association Agendas and the parts of the reports related to goals on the rule of law. The first report<sup>38</sup> puts the focus on financing political parties in the part related to good governance, and then comes with detailed information about reforming the anti-corruption and justice institutions in the chapter on justice, freedom and security. The EU keeps an eye on the adoption of anti-money laundering legislation in Ukraine, similar to Moldova. This piece of legislation can be combative against the vested interests. The role of civil society in anti-corruption activities is observed in both reports,<sup>39</sup> but only starting with the second one are concerns about the attacks on NGOs emphasised.

The least coverage of rule of law aspects is found in the implementation reports on Georgia. In the first report of 2016, the rule of law aspects are vaguely mentioned under the chapters on governance and on justice, freedom and security.<sup>40</sup> The second report<sup>41</sup> does not refer to the rule of law under the chapter regarding good governance, but introduces substance in the chapter on justice, freedom and security by presenting the issues related to justice and judiciary reform. Legislation on fighting money laundering is also mentioned. These reports do not yet cover the government's attacks<sup>42</sup> against those NGOs<sup>43</sup> that monitor and criticise the

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<sup>35</sup> Association Implementation Report on the Republic of Moldova 2017.

<sup>36</sup> Association Implementation Report on Moldova 2018.

<sup>37</sup> It is referred to in the programmes mentioned in Table 2.

<sup>38</sup> Association Implementation Report on Ukraine 2017.

<sup>39</sup> Association Implementation Report on Ukraine 2018.

<sup>40</sup> Association Implementation Report on Georgia 2016.

<sup>41</sup> Association Implementation Report on Georgia 2017.

<sup>42</sup> "Government's coordinated attack on civil society harms democracy in Georgia", 24 October 2018, <https://www.transparency.ge/en/post/governments-coordinated-attack-civil-society-harms-democracy-georgia>.

<sup>43</sup> D. Cenuşa, "Difficult coexistence between civil society and oligarchic regimes in Moldova and Georgia", 5 November 2018, <http://www.ipn.md/en/integrare-europeana/94551>.

clientelistic networks established by the oligarchic regime within the state institutions, which display “increasing signs of state capture”.<sup>44</sup>

In all three cases, the rule of law goals as with many other aspects included in the Association Agendas are not reflected or properly evaluated in the implementation reports. Improvement of the monitoring and evaluation mechanisms can bring more clarity about both the EU’s efforts to promote the rule of law and their effectiveness.

## 6. Conclusions and recommendations

The EU takes into account the significance of reinforcing the rule of law in Moldova, Ukraine and Georgia, which is promoted via the Association Agreements in place with all three countries. The Association Agendas reflect a range of measures thought to strengthen the rule of law. Nevertheless, this policy brief underscores that the serious interference by oligarchic influences in Moldova and Ukraine undermines the efforts to fortify the supremacy of law. Though in the last five years Georgia has avoided crises identical to the ones that have happened in Moldova (the 2014 banking fraud and the 2018 invalidation of elections) or in Ukraine (the 2013–14 Euromaidan anti-governmental protests), the presence of oligarchic elements endangers the rule of law there too, and the ‘electoral bribery’ in Georgia’s 2018 presidential elections confirmed it.

There are three major conclusions of this policy brief. First, the content of the Association Agendas contain actions that serve to improve the rule of law. But only some of these actions can reduce the push from oligarchic interests. This results from reluctance to confront the oligarchic issue in a straightforward way. At the same time, the situation is degrading at different speeds in each of the three countries, where oligarchs go through a metamorphosis according to the particularity of the reforms. In this regard a serious change would be the open recognition by the EU of the consequences that the narrow business interests have on the functioning of the state.

Second, the policy brief concludes that though the implementation reports attempt to describe the degree of accomplishment of the Association Agendas, they do not strictly follow the agendas’ structure. In a particular way, this triggers a disconnection between the rule of law objectives set in the agendas and the assessments provided by the implementation reports, which otherwise could be a useful tool to measure how effective the EU’s efforts are in the rule of law area. Moreover, the reports do not include information about the outcomes of rule of law programmes undertaken under the umbrella of the ENI.

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<sup>44</sup> Transparency International, “Alarm over Increasing Signs of State Capture and Pressure on Civil Society in Georgia”, 16 October 2018, <https://www.transparency.ge/en/post/alarm-over-increasing-signs-state-capture-and-pressure-civil-society-georgia>.

Last but not least, the projects financed by the ENI are not proactive and have mostly been launched after the crises have occurred. In addition, the actions launched by now omit to directly target the issue of oligarchic interference.

Until the oligarchic influences are constrained, resilient rule of law in Moldova, Ukraine and Georgia is at risk. An urgent change of this approach requires the EU to adjust the reforms under the Association Agendas, proportionate to the financial resources from the ENI, and to ensure a comprehensive monitoring tool.

## Recommendations

### *Association Agendas*

- The documents should include more specific measures under the goals for the rule of law that target oligarchic interests, besides the financing of political parties and independence of the justice system.
- Apart from the Association Agendas, the EU should develop ‘de-oligarchization road maps’, supported by a conditionality mechanism aimed at reducing the influence of oligarchic groups on politics, justice and the economy.

### *Programmes under ENI*

- The current financial frameworks as well as future ones should foresee finance for eventually developing de-oligarchization road maps. Such investments will be more sustainable and complementary to the existing projects separately addressing the justice, judiciary or anti-corruption reforms.
- The programmes financed under the ENI should adopt a permanent proactive and preemptive approach rather than a post-crisis management one on the rule of law.

### *Reporting mechanisms*

- The implementation reports should become more comprehensive and include all actions in the Association Agendas under the goals for the rule of law, as well as all projects currently implemented and targeting the rule of law.
- Additionally, the implementing reports need to cover the causes of the shortfalls in the rule of law with the same approach and objectivity for all three countries – Moldova, Ukraine and Georgia – which have serious problems with oligarchic groups interfering with or being part of the decision-making process.

### *Other aspects*

- The European Court of Auditors should be involved in more frequent monitoring of the rule of law-oriented programmes financed by the EU in Moldova, Ukraine and Georgia. Furthermore, in future evaluations the Court could include the three associated countries in the same assessment report, offering a comparative perspective about the

effectiveness of the EU's actions dedicated to the rule of law and the policies targeting (in)directly the vested interests.

- The resilience policies applied by the EU, such as the Global Strategy or the Strategic Approach to Resilience, need reviewing in order to address the issue of oligarchic influence on the rule of law, which inevitably weakens the rule of law.
- Dedicated resources are needed to explore the nature, levers of intervention and top-down clientelistic network within which the oligarchic groups operate in Moldova, Ukraine and Georgia, in order to constrain the oligarchization and other derived phenomena, such as state capture. In this regard, an important focus should be on how deeply the oligarchic groups are connected with domestic and cross-border criminality.

# Engage II Fellowship Programme

The ENGAGE II Fellowship Programme is coordinated by CEPS with support by the Open Society Initiative for Europe (OSIFE). This one-year programme aims to involve academic, civil society and think tank actors from Central and Eastern Europe, the Western Balkans and Eastern Partnership countries in EU policy debates. It entails training, study visits, public events and the publication of policy papers. It culminates in the active participation of the selected fellows at the annual CEPS Ideas Lab.

The ENGAGE II Fellowship focuses on the significance of the rule of law in different policy domains, including rights and security, foreign and economic affairs.

The programme is coordinated by the CEPS Justice and Home Affairs (JHA) Unit. It is conducted under the supervision of CEPS Senior Research Fellows Sergio Carrera (Head of the JHA Unit), Cinzia Alcidi (Head of the Economic Policy Unit) and Steven Blockmans (Head of the Foreign Policy Unit).

For the period 2018–19, six highly-qualified Fellowship members were selected:

- Denis Cenuşa, Researcher at the Institute for Political Science and PhD candidate at the Justus-Liebig University in Giessen, and Associated Expert at Expert-Grup, Chisinau
- Judit Bayer, Professor of Media Law and International Law at the Budapest Business School
- Simonida Kacarska, Director and co-founder of the European Policy Institute, Skopje
- Naim Rashiti, Executive Director and Senior Balkan Analyst, Balkans Policy Research Group, Pristina
- Maria Repko, Deputy Director at the Centre for Economic Strategy, Kiev
- Berat Thaqi, Policy Analyst at the GAP Institute, Pristina







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