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EASTERN PARTNERSHIP? MORE LIKE MUTUAL DEPENDENCE

The case of EU home affairs cooperation with Moldova

Roderick Parkes, Head of Brussels Office, Stiftung Wissenschaft und Politik (SWP)
Elina Viilup, Research Fellow, CIDOB

Signs of political progress in Moldova, much in the news in March 2012, have been heartily greeted by the EU. The bloc has invested heavily in this little neighbour, both in financial and political terms, and the investment now seems to be paying off. But there is a slight whiff of desperation in the EU's tone, and something a little unsettling about the assessment by local analysts that Moldova's political parties are only cooperating because of EU pressure. There's good reason for concern. The stated goal of EU policy in the region is to build partnerships with countries like Moldova. Yet, the EU and Moldova are not strong partners able to rely upon one another; they are weak actors unwillingly reliant upon one another. The example of home affairs cooperation, a central plank of their "partnership", highlights this state of mutual dependence. In particular the incentive and conditionality mechanisms employed by the EU to cajole Moldova into reforming its security apparatus indicate the pitfalls of their relationship.

The EU has invested heavily in both political and financial terms in Moldova, the poorest and one of the smallest countries in the EU's eastern neighbourhood;

Due to the EU's security and stability sensitivities, as well as the high priority accorded to visa liberalisation by Moldova, governance reform in justice and home affairs has emerged as a central element in the EU-Moldova partnership;

March 2012 brought long-awaited signs of progress in the Moldovan reform process, but there is no real sense that Chisinau is in the driving seat and the country is showing signs of 'development dependence' on the EU;

Analysts warn the EU must learn to watch its strength - a lack of local input in and ownership for governance reforms risks undermining the Moldovan government, leaving it dependent for its legitimacy upon policy processes taking place elsewhere;

If the EU has fallen too easily into the pattern of legislative transfer and conditionality, however, this is also a sign of its weakness: the bloc is not robust enough to deal with true partners which have the capacity to present their own priorities;

Effective cooperation requires a more even-handed approach. Although conditionality and incentivisation mechanisms have a part to play in this process, especially given the extremely difficult political situations in the eastern neighbourhood, these should focus more on ensuring greater local capacity for independent action.

Partnership for an orderly neighbourhood

In mid-2009, fresh from setting up the Union for the Mediterranean with North Africa, the EU recognised that it had to engage more with its new neighbours to the east, even at the risk of tension with Moscow. With the latest round of enlargement behind it, the EU initiated a so-called Eastern Partnership with six former countries of the Soviet Union—Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. The choice of the term "partnership" was the subject of some public interest, and the EU-27 have from the first been keen to stress that the approach is motivated by something more than a desire to find an alternative to enlargement ("partnership" instead of "membership"). The bloc is genuinely concerned to improve the capacity of its Eastern neighbours to think and act for themselves. Only through true partnership could the EU hope for a strong and stable neighbourhood, let alone reignite enthusiasm at home for a further round of eastern enlargement.

It is Moldova—amongst the smallest of the eastern partners with an estimated resident population of 3.5 million and ranked a lowly 111 of 187 on the 2011 Human Development Index—that has reacted most positively. In a cohort of countries that are often assertive and happy to play the EU off against Russia, Moldova is unusual for its clear pro-European position: in the mid-2009 parliamentary election, the Moldovan Communists were once again returned as the largest party in the 101-seat parliament, but they were replaced in government by an alliance of centrist parties with a slim majority and a strongly pro-EU orientation. The outgoing government had been only nominally Communist of course—employing the symbols of the past—but it had been only nominally pro-European too—vacillating between Russia and the EU. By seeking partnership with the EU, the country now risked angering Russia, despite the fact that it was dependent upon Moscow for its gas supplies and an estimated 60% of its diaspora-population is based in Russia.

Justice and Home Affairs (JHA) have emerged as a key field of this cooperation. At the end of the 2011 alone, a Com-

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mission Communication and Council Conclusions were devoted to the issue of governance reform in the justice and security sectors within the framework of the Eastern Partnership. This is unsurprising. Governance problems in the eastern neighbourhood can have a very direct effect upon the EU. In 2009-2010 nationals of Georgia (10th place), Armenia (16th) and Azerbaijan (28th) featured amongst the largest numbers of asylum-seekers in the EU by origin. As for illegal border crossings, although the eastern border route has been rather eclipsed by Mediterranean routes, the EU reports large numbers of incidents of wrong documentation on its eastern border, a likely indicator of so-called visa-overstaying. Meanwhile, criminal routes originally thought to emanate from the Western Balkans have recently been retraced to the eastern partners. For the partners themselves, there is a strong interest in the EU reforming its own JHA rules, particularly its restrictive visa rules which prevent nationals of the eastern partners entering and leaving the EU.

As a result, JHA is amongst the most substantial budget lines in the EU's support for Moldova, amounting to over 100 million euros or around 1/8 of the whole portfolio of macro-financial help and cross-border programmes available to the country (other international donors are said to contribute only around 10 MEUR). According to the EU delegation in Moldova, almost two-thirds of the EU support is

allocated to judicial reform (50 MEUR budget support and 10 MEUR technical aid) and the rest is divided between telecommunications equipment for border guards and biometric passports (20 MEUR), migration-related projects (5 MEUR), anti-torture (2 MEUR) and other smaller projects (around 2 MEUR). Three projects are drawing to an end in the area of assistance to the judicial and prison systems, and for the fight against corruption (7 MEUR). On a political level, two flagship projects guide the reforms. First, a visa liberalisation programme sees the EU lift its rules on short-term visas for Moldovans in return for four blocks of reforms (document security; migration and asylum management; criminal justice; fundamental rights and regional cooperation). Second a so-called mobility partnership sees individual EU members offer labour market access to Moldovan nationals in return for an improvement in Moldova's management of migration through around 85 initiatives.

The last week of February 2012 bore evidence of the sense of engagement on both sides and to the EU's openness to partnership. Chisinau received a delegation from the European Commission's Home Affairs directorate, which

was invited above all to *listen* to recommendations for migration and security cooperation. Meanwhile, delegations from at least two large member states were in town to discuss the labour-market access enjoyed by Moldovans in the EU, to boost efforts to combat human trafficking, and more generally to discuss streamlining the package of

85 measures housed under the so-called EU-Moldova "Mobility Partnership"—an agreement giving greater scope for Moldovans to work in the EU in return for domestic reforms. And the EU trade commissioner, Karel De Gucht, was visiting to launch talks on a trade agreement designed in part to help boost the local labour market so that Moldovan migration flows are not outward only.

Frustration

Despite all this activity, behind the scenes on both sides – Chisinau and Brussels – there seems to be deep frustration. For their part, Moldovan officials complain about the difficulties of implementing the reforms asked for by the European Union, particularly considering that there is not even a long-term EU-membership perspective in sight. They are, for example, pushing through anti-discrimination laws in the face of strong resistance on the part of the vocal Moldovan Orthodox Church as well as from the parliamentary groups of some of the governing parties themselves. And they are seeking to improve the standards of the security documents issued in the country, despite the existence of the breakaway region Transnistria which neither recognises their authority to do so nor shares records of those individuals born after 1991-2 when the internal conflict froze. Indeed, the Moldovan authorities are being asked

to strengthen supervision of the movement of goods and persons coming from Transnistria, although this could be tantamount to recognising that a border exists between the two parts of the Moldovan territory.

Worse, Chisinau has very little to show for these politically tricky efforts. In carrying out the justice and security sector reforms, Chisinau is principally motivated by the question of “mobility” – of gaining greater opportunities for Moldovan nationals to travel and work in the EU but also to return home for extended periods without losing rights of residence in the EU. An Action Plan on the lifting of visa requirements for short-term travel to the Schengen Area has been agreed, but it is far more open-ended than the equivalent Road Maps offered to Western Balkan countries, and the authorities are not wholly convinced that the EU will deliver. Meanwhile, a deal agreed in 2008 to make it easier for Moldovans to receive a tourist or business visa is being renegotiated because of EU concerns about the security of so-called “service passports” for officials – of which Moldova has issued only 279. An Open Skies Agreement, supposed to bring cheap air-travel to Moldova, and initialled by both sides, has been delayed by an embarrassing lack of coordination from the EU, just at the moment when the closure of the Hungarian airline Malyev makes travel in the region more expensive.

On the EU side, Moldova is viewed with increasing frustration—as a class swot of a rather mindless variety. Chisinau has been keen to show how good it is at taking on EU-inspired reforms, but in the implementation it has been unthinking and clumsy. Moldovan politicians have taken to making ill-advised promises about what and when the EU will deliver. They have for example been unclear about the nature of the mobility concessions won from the EU, portraying agreements over short-term tourist and business visas as issues of labour migration. And they have been over-optimistic about the speed with which the EU will produce the goods (some EU states are in favour of visa liberalisation with Russia but sceptical about relations with Ukraine and Moldova, whilst others have the exact opposite preferences; others still want to deal with these third countries as a bloc). Most recently, prime minister Vlad Filat promised the Open Skies agreement would be in place by April 2012 and foreign minister Iurie Leanca pledged that the country would fulfil the criteria for visa liberalisation by the end of the year, otherwise he would resign. None of these promises look likely to materialise (the signature of the Open Skies agreement has, for example, been set for June 2012).

At the heart of these implementation problems are deficits in Moldova’s readiness to engage at the beginning of the policy process. EU officials complain that they hear little from the Moldovan side about local priorities and capaci-

ties. Chisinau is thus emerging as the classic “policy-taker” – good at demanding examples of best practice under the EU’s TAIEX knowledge-exchange schemes or participating in the joint policy and implementation committees established for the eastern partners, but unable to determine for itself which model might actually fit its specific needs; good at legislative transfer, but poor at working out whether it has the capacity actually to implement its commitments; good at abolishing corrupt institutions in the justice sector – for example the economic courts set up to settle business disputes, and where outcomes are said to be largely defined by the bribes that pass hands – but poor at creating a replacement; good even at thinking strategically, but the papers being produced by the government on the country’s long-term development – “Moldova 2020” – are said to contain little in the way of communication strategy or other serious thoughts of implementation.

It has left EU officials disappointed that so much of the government’s reform effort hangs on the existence of the incentive of visa liberalisation rather than a home-grown agenda. But although they would prefer Moldova to decide on and

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implement EU assistance programmes, its state structures are hardly solid enough for decentralised management. Given its lack of a clear EU-accession perspective, the government Moldovan is not too keen to call for a stronger leadership role.

Conditionality as a sign of strength or weakness?

The EU must take a measure of responsibility for the situation. The one-sidedness of the relationship between Brussels and Chisinau is reflected in a conceptual shift in EU thinking from partnership to dominance over the past years. In 2008, when the EU and Chisinau signed their mobility partnership, the talk was all of pursuing common goals and goods on the basis of compromise. This was to be a true partnership designed in the joint interests of the EU, Moldova and Moldovan nationals—a “triple win” to enhance regional stability and prosperity. By increasing regional labour mobility, the EU would gain economically from a temporary labour force; Moldova would gain from remittances and an injection of expertise from workers who had been in the EU; Moldova’s citizens would gain chances to work legally. This exchange would form a basis for regional prosperity and reform. Instead, however, the mobility partnership has become a model of “semi-enlargement”: Moldova is offered en-

hanced access to one of the EU's internal goods, in this case its labour market, in return for implementing certain rules, agreed upon jointly but nevertheless heavily EU-inspired.

What has subsequently emerged is a form of "development dependence". A lack of local input in and ownership for political reforms risks undermining the Moldovan government, leaving it dependent for its legitimacy upon policy processes taking place elsewhere and trying to implement sensitive reforms which it has not had a proper say in formulating. As in other cases of development dependence, the remedy is simple: the EU must learn to watch its strength. The bloc has fallen too easily into the pattern of legislative transfer and conditionality that it knows from EU enlargement. On sensitive issues of home affairs, it has been unwilling to compromise on its standards and values, let alone to foster the openness and mutual trust necessary for real partnership, and its officials – more used to viewing home affairs as a domestic issue than an international one – have proved hesitant to build up local capacities that might entail compromise or local resistance. With private

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consultants suggesting that the EU will channel a further 100 MEUR worth of monetary and non-monetary support to the country in the period 2012-2015 in the JHA sector, the need for the EU to learn to let go is clear.

It is perhaps surprising that the EU has not learnt to watch its weight by now. After all, if the EU is currently facing a crisis of implementation on the part of its own members in the Schengen passport-free travel area, this is largely because of the failings of the enlargement method. Accession states subject to EU-conditionality tend to focus on adopting legislation, the mid-point of the policy cycle. This focus on legislative transfer creates real deficits at the beginning of the policy cycle – on tasks such as impact assessment or communications strategy. And this in turn can have an impact at the end of the policy cycle, leading to a lack of local ownership and a lack of implementation capacities. Some accession states are even tempted to sign up to norms which they have no real intention of implementing. In the case of the Eastern Partners, these familiar lacunae are exacerbated by the fact that this is only a "partial enlargement": in the classic enlargement model, accession states eventually graduate to become full members, shifting de facto from policy-takers to policy-makers. In the partial-enlargement model, the eastern neighbours will be expected to continue to adopt EU-inspired norms to retain their access to EU goods.

It is easy to see why the EU might use its superior position in this way. In its eastern neighbourhood, it is dealing with a group of states in which political progress of any kind is an uphill struggle. The governments of these states need to show tangible results to keep their populations aboard for otherwise unpopular reforms demanded if they are to attain real acceptance from the international community. Yet, the European Union's inability to make headway without holding out incentives raises the question whether it is the bloc's strength or rather its weakness that has pushed it towards this model of conditionality.

The EU's reliance on short-term incentives and sanctions betrays the failure of its other foreign-policy efforts - its long-term capacity-building and joint policymaking, its political as opposed to technical efforts, and its more general policy of acting as a magnetic pole within the region. The EU's flagging appeal is further eroded by the economic meltdown that is threatening the welfare state as well as the principles of liberal democracy within many EU countries, thus decreasing the attractiveness of the EU as a

model and the reforms that the EU is advocating with its neighbourhood policy. Put simply, the EU uses the conditionality model because it is not strong enough to pursue partnership and as a result it has fallen into the most exhausting form of foreign policy, offering access to its internal goods in order to have some kind of external leverage. In order to keep these states permanently on side, the EU must

come up with ever more intrusive incentives, increasing the risk that it will eventually renege.

The EU's preference for conditionality may thus seem like a risk-averse strategy, often inferring the one-to-one transfer of European standards to third countries, but it is in reality a risky approach. It creates a situation of reliance on the part of third countries whilst preventing the bloc pursuing regional free movement or enlargement for their own sake. In other words it increases the EU's resort to incentivisation thereby diminishing its scope to pursue a more normal or sustainable foreign policy engagement. This underlines the situation of mutual dependence that can develop between the EU and its eastern neighbours. If the EU has singled out Moldova to be its success story, it is in large part because the country is small, poor, short of energy resources and unlikely to cause a fuss. It is a measure of the EU's own weakness in the region that Brussels has chosen the country perhaps least capable of partnership to be its partner. Since the EU has not managed to establish a more robust presence in the neighbourhood, it can only really afford to have weak and pliant states around it. The necessity to feed and sustain this reliance will drain it further—seeing the emergence of a situation of mutual dependence as opposed to partnership between robust actors.

Lessons and outlook

There are voices of sense. The EU's current approach is deeply resented by the bloc's interior ministries, which are tired of seeing access to the Schengen Area or national labour markets used as a substitute for foreign policy. The home affairs officials who judge Moldova's adoption and application of justice sector reforms argue, for example, that they cannot be expected to skimp on their evaluation just so as not to rock the EU's relations with the neighbourhood. Yet, precisely this is the implication if visa liberalisation is used to substitute for a proper foreign policy—the EU's home affairs standards will inevitably be made subservient to foreign policy goals. Their complaints may explain the EU's current efforts to create a "roadmap" coordinating its home affairs with its foreign and security goals. Such a roadmap should at least leave the bloc better able to deal with the political and even geopolitical ramifications of its technical assistance in areas like home affairs – of its 15 odd high-level experts in Moldova operating in highly political areas such as public prosecution, or of the trade sanctions introduced by Russia when the EU border mission was created in 2005 along the Ukrainian/Moldovan border. But it is at best a partial solution.

A roadmap to coordinate the EU's home affairs and foreign policy will not work so long as the EU has no foreign policy proper. Sadly, the creation of a classic – well-resourced and politically robust – foreign policy will take time, and has emerged as something of a philosopher's stone for the bloc. The temptation will be remain to use access to Schengen and the EU's internal goods as a source of conditionality. But it is not the only option. Even in the absence of a foreign policy proper, the EU can work to move from mutual reliance to partnership. Instead of focusing on incentives and conditionality, it could usefully focus on the rather modest goal of building the capacity of third countries for independent action, helping them, for example, to master the early stages of the policy cycle. This would help create stronger regional partners and wean them off EU incentivisation structures. As these states grow in confidence, the EU will be under pressure to match their engagement with engagement of its own.

In Moldova's case, the necessity of building local capacity and ownership may soon become critical. According to 2010's flagship Visa Liberalisation Action Plan, Moldova will shortly move from the first phase (legislative transfer) to the second (implementation) in its justice and security sector reforms. In February 2012, the EU published its second evaluation of progress (SWD(2012) 12 final) and, with the exception of issues such as corruption, gave Moldova a generally clean bill of health. Yet, even as they are beginning to shift the emphasis to implementation, EU officials are secretly worried that this implementation phase will prove quite beyond Chisinau.

Moldova is supposed to be nearing the end of the policy cycle, but has completely missed out the beginning.

In helping Moldova build its capacity for independent action, much can be learnt from the European Union's most recent member states. On their accession to the Union in 2004 and 2007, the 12 new member states also had to go from being policy-takers to policy-makers, establishing expertise in naming their priorities, developing ownership and communication strategies, carrying out impact assessments. This was not least because they had to start properly implementing the full range of commitments that they had signed up to before entering the EU. Chisinau and Brussels can draw much from the reform processes that helped turn the new member states into fuller and more responsible partners.

This above all requires the EU members and eastern partners to change their mindsets, just as occurred after the 2004 and 2007 accessions. EU member states must cease looking upon the easterners solely as pupils; the easterners must

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cease regarding the 27 solely as teachers. The EU's incentivisation and conditionality structure should refocus on third countries increasing their capacity to input at the early stage of joint policy formulation. In the case of the 2004 and 2007 enlargements, the change of mindsets occurred because the new members gained the formal status of policy-makers and were simply expected to act as responsible and equal partners. They no longer had an excuse for implementation failures. A similar approach could be introduced for third countries. 2011's Council conclusions, for example, call upon the Commission to create an information-gathering mechanism whereby the eastern partners could better make their priorities known. This does not go far enough: the eastern partners should be actively expected to provide this information. They should know that progress in areas such as visa liberalisation will not go ahead until they do so, and recognise that the creation of this mechanism also removes any validity from excuses about non-implementation.

Yet it is also clear that operational, rather than policymaking, cooperation is often the best tool of partnership. In the immediate aftermath of the 2004 and 2007 enlargements, it became apparent that some of the accession states had formally adopted the EU's JHA acquis with little or no intention of

actually applying it. A lack of resources and expertise meant implementation was not a priority. With the establishment/strengthening of Frontex (the EU borders agency), the European Asylum Support Office and Europol, the focus has gone from formal legislative harmonisation to operational cooperation. Through operational cooperation, weaker states boost their capacity to understand and implement their commitments; stronger states learn the limitations and local expertise of their partners. With the EUBAM border mission, the EU has begun a similar approach in Moldova. The EU officials there have developed a joint *acquis* with Moldovan and Ukrainian officials which takes advantage of local knowledge and has provided something of a regional blueprint. They have also helped develop approaches tailored to the region, such as mobile customs units that focus particularly on the crossings to Transnistria without giving the impression of recognising that a border between the two exists.

Even at this low level, however, much remains to be done. Europol does not look set to sign any further operational agreements with countries in the region until 2014, leaving it

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dependent upon ad-hoc police cooperation between the EU member states and the partners. Perhaps more importantly given the existing preponderance of repressive, executive instances in the eastern countries and the lack of expertise in human rights, the EU's Fundamental Rights Agency (FRA) is not foreseen a function in the neighbourhood before the review of the neighbourhood instruments after 2013. Although the Commission communication on JHA cooperation with the Eastern partners named an increased role for the FRA as a priority, its founding regulation limits cooperation to those countries which have signed Stabilisation and Accession agreements with the EU. Negotiations of such an Agreement have been ongoing with Moldova since 2010 and the upcoming reshuffle of EU aid instruments is talked of as an opportunity to improve FRA's external role: firstly, in monitoring whether EU and member state actions in JHA cooperation respect human rights standards, and secondly, in advising the EEAS and the Commission on whether the neighbourhood countries are complying with the human rights conditions set by the EU. But the most important task would be to open a channel for exchange and capacity-building on the practical elements of human rights protection, to balance the more repressive priorities of Frontex and Europol.

Against this background, two broader political developments in Moldova give hope. First, after 30 months of constitutional limbo, the Moldovan parliament has managed to elect as

President of Moldova Nicolae Vasile Timofti, a 63 year-old former senior judge. It has raised hopes that the governing coalition will concentrate on home-grown political reforms rather than in-fighting. Second, the recent election of the former speaker of the Transnistrian "parliament", a comparatively young moderate Yevgeny Shevchuk, as "president" of breakaway Transnistria could boost confidence in the Tiraspol-Chisinau dialogue. With reportedly smooth multi-lateral talks in Dublin in February, and Transnistria's lifting of import taxes for products from the rest of Moldova, the omens are good. And yet, the tide has not decisively turned. Citizens have been taking to the streets, whipped up by the Communists, disgruntled at high heating bills following a prolonged cold spell, and disenchanted about the way the governing alliance and Constitutional Court seemed to bend the democratic principle during the presidential limbo simply to stave off the prospect of new elections. Moreover, a new round of political infighting may start: Timofti's elevation to the presidency will not free up political positions elsewhere, meaning there will be no reshuffle to pay off the various alliance parties. Meanwhile, the messages from Transnistria are

ambivalent, with much continuity on core issues such as international recognition. There is much at stake in this small republic.