

Conditionality and election performance within the framework of the European Neighbourhood Policy: the case of the 2012 and 2013 elections in Armenia, Georgia and Ukraine

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Veröffentlichungsversion / Published Version

Arbeitspapier / working paper

Empfohlene Zitierung / Suggested Citation:

Nasieniak, M., & Depo, B. (2013). *Conditionality and election performance within the framework of the European Neighbourhood Policy: the case of the 2012 and 2013 elections in Armenia, Georgia and Ukraine*. (IEP Policy Papers on Eastern Europe and Central Asia, 3). Berlin: Institut für Europäische Politik e.V. (IEP). <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-393111>

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CONDITIONALITY AND ELECTION PERFORMANCE WITHIN THE FRAMEWORK OF THE EUROPEAN NEIGHBOURHOOD POLICY

The Case of the 2012 and 2013 Elections in
Armenia, Georgia und Ukraine

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IEP Policy Papers on Eastern Europe and Central Asia

No. 3
published in June 2013

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Published in June 2013

Dialog Europa

Otto Wolff - Stiftung

Abstract

In the aftermath of the Arab Spring, the EU brought conditionality to the fore of the reviewed European Neighbourhood Policy. This paper examines the substance and application of conditionality based on the example of the recent elections in the Eastern Partnership countries. It is contended that the new approach offers more clarity with regard to the application of conditionality. The analysis of the EU's response shows stronger conditionality as positive election assessments are rewarded with additional financial assistance and facilitation of the Association Agreements' negotiations (including trade and visa liberalisation). However, even though 'free and fair elections' now constitute the most concrete benchmark of democratisation, there is still a lack of coherent methodology to assess election performance in this respect. In the final section, the authors present recommendations for the EU's approach to election performance in the countries of the Eastern Partnership.

Keywords: conditionality, democratisation, election assessment, European Neighbourhood Policy

Table of Contents

1.	Introduction	6
2.	Democratisation, Conditionality and the European Neighbourhood Policy	7
3.	Election Performance and the Eastern Partnership	8
4.	Testing EU's conditionality in action - the 2012/2013 parliamentary and presidential elections	10
4.1	The 2012 Parliamentary Elections in Georgia	10
4.2	The 2012 Parliamentary Elections in Armenia	15
4.3	The 2013 Presidential Elections in Armenia	18
4.4	The 2012 Parliamentary Elections in Ukraine	20
5.	Conclusions and Recommendations	24

List of abbreviations

AA	Association Agreement
CEC	Central Election Commission
CoE	Council of Europe
CSCE	Conference for Security and Cooperation in Europe
CVU	Komitet Vyborciv Ukrainiciv (Committee of Ukrainian Electors)
DCFTA	Deep and Comprehensive Free Trade Agreements
EaP	Eastern Partnership
EaPIC	Eastern Partnership Integration and Cooperation
EEAS	European External Action Service
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood Partnership Instrument
EP	European Parliament
EURONEST	EU Neighbourhood EAST Parliamentary Assembly
GYLA	Georgian Young Lawyers Association
IRI	International Republican Institute
ISFED	International Society for Fair Elections and Democracy
NATO PA	North Atlantic Treaty Organisation Parliamentary Assembly
NDI	National Democratic Institute
OPORA	Civil Network “All Russian Union of Business Associations”
OSCE/ODIHR	Organisation for Security and Cooperation in Europe’s Office for Democracy and Human Rights
OSCE PA	Organisation for Security and Cooperation in Europe Parliamentary Assembly
PACE	Council of Europe Parliamentary Assembly
UNM	United National Movement

1. Introduction

The events of the Arab Spring reinforced the accusations aimed at the EU's double-standard practice of pursuing relations with authoritarian regimes under the normative framework of the European Neighbourhood Policy (ENP). The new approach, as presented in the Joint Communication by the High Representative for Foreign Affairs and Security Policy, Catherine Ashton, and the Commissioner for Enlargement and European Neighbourhood Policy, Štefan Füle, in May 2011, brought the issues of democracy and human rights to the fore of the EU's action. Under the new buzz phrase 'more for more and less for less'¹, the EU aimed to reinforce its conditionality by increasingly adjusting the level of financial assistance and cooperation to match the pace of economic and political reform in the neighbouring countries. This - combined with more concrete benchmarking and flexible incentivisation - was supposed to address long-standing issues limiting the effectiveness of the European Neighbourhood Policy.

The aim of this paper is to examine the substance and application of the reinforced conditionality in the case of the Eastern Partnership (EaP) in the example of election performance. The importance of conducting elections according to international standards has been included in bilateral and multilateral documents between the EU and its neighbouring countries and further emphasised under the new approach. The Joint Communication by Ashton and Füle in May 2011 listed 'free and fair elections' as one of the main measurements of a 'deep and sustainable democracy'. It is thus argued that election performance, which is now at the core of the ENP's conditionality, presents one of the most concrete benchmarks used by the EU to determine the level of assistance and cooperation with the neighbouring countries. This paper will thus analyse what the EU's indicators

of 'free and fair' elections are and how the EU's assessment is then translated into the framework of the ENP's conditionality. Subsequently, with the example of the recent elections in Armenia, Georgia and Ukraine, it examines how this new approach is applied in practice.

This analysis demonstrates that the EU's assessment of the elections is based predominantly on the preliminary reports by the Organisation for Security and Cooperation in Europe's Office for Democracy and Human Rights (OSCE/ODIHR), since neither the European Commission nor the European External Action Service (EEAS) are directly involved in the election observation missions in the EaP countries. The 2012 parliamentary and 2013 presidential elections in Armenia were generally assessed positively since improvements were registered in comparison with the 2008 presidential elections. In the case of Georgia, the positive assessment of the 2012 parliamentary elections was based on the peaceful recognition of the results by the current president Mikheil Saakashvili and the subsequent transfer of power to the opposition forces. Both Armenia and Georgia received additional financial assistance and further facilitation of the negotiations on the Association Agreements (AA), including further trade and visa liberalisation. With regard to Ukraine, the 2012 parliamentary election performance constituted a significant deterioration of standards compared to the previous elections. The signing of the AA was further conditioned by progress made on the problematic issues identified by the EU, two of which were electoral reform and application of selective justice. Consequently, the positive or negative nature of the EU's assessment was determined by the conduct of the previous elections and does not sufficiently reflect on the actual level of democratisation of the country. Although 'free and fair elections' now constitute the most concrete benchmark of democratisation, there is still a lack of a coherent methodology to assess election performance in this context. In the final section, the authors present recommendations for the EU's approach to election performance in the EaP countries.

1 High Representative and the European Commission, 'A New Response to a Changing Neighbourhood: A Review of European Neighbourhood Policy', Joint Communication COM(2011) 303, accessed April 4, 2013, http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf.

2. Democratisation, Conditionality and the European Neighbourhood Policy

The 2004 European Neighbourhood Policy was an answer to the EU's recent enlargement and the shifting of its borders further to the East and South. Based on the same operating principle of positive conditionality as the enlargement policy, the EU's aim was to foster democratisation and stabilisation in its direct neighbourhood by offering financial assistance and political dialogue.² However, the policy lacked sufficient conditionality without the powerful incentive of membership. Furthermore, it was often criticised for its vague formulation of intended outcomes, which undermines the effective assessment of the countries' progress. The EaP initiative was an attempt to address these shortcomings and offer a framework for cooperation based on tangible benchmarks, clear timelines and on-going evaluation linked to the subsequent differentiation of the EU's support.³ The lack of membership perspective was to be compensated for by several smaller incentives: Association Agreements including Deep and Comprehensive Free Trade Agreements (DCFTAs), visa liberalisation, and additional funding to help with costly and laborious adjustments.⁴ However, the already weak conditionality was constantly challenged by uneven application caused by the

divergence of the EU's – and, more importantly, of its Member States' – interests and values. The interests-versus-values approach has undermined the EU's effectiveness and credibility in both the southern and eastern neighbourhood. The events of the Arab Spring challenged this contradictory approach and forced the EU to admit its arguably hypocritical inconsistency and bring its interests in line with its values.

The new approach called for a greater role of the civil society, the strengthening of mutual accountability and the feeling of joint ownership, particularly in the neighbouring countries. Reinforced conditionality in the form of 'more for more and less for less' was to allow for a greater differentiation among the partner countries, providing a framework of cooperation and assistance that would respond to their expectations and allow for tailor-made approaches 'in dealing with rapidly evolving partners and reform needs – whether they are experiencing fast regime change or a prolonged process of reform and democratic consolidation.'⁵ The EU has also recognised the role of the civil society, which is supposed to become much more involved in the policy planning, implementation and assessment. The emphasis was boosted by the establishment of the Civil Society Facility in September 2011, with an initial budget of €26 million for 2011. Additional funding would be the main incentive to keep the neighbouring countries on the path of democratisation and economic transition.⁶ The funding is to become more flexible in order to allow for swift adjustments in response to the performance of the neighbouring countries.⁷

2 The 2003 European Commission's Communication provided the foundations for positive conditionality by stating that 'in return for concrete progress demonstrating shared values and effective implementation of political, economic and institutional reforms, including aligning legislation with the *acquis*, the EU's neighbours should benefit from the prospect of closer integration with the EU'. European Commission, 'Wider Europe — Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours Wider Europe', Communication COM(2003) 104 final, accessed April 4, 2013, http://ec.europa.eu/world/enp/pdf/com03_104_en.pdf.

3 European Commission, 'Eastern Partnership', Commission SEC(2008) 2974, accessed April 5, 2013, <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0823:EN:NOT>.

4 A new financial instrument, the Governance Facility, was designed in 2008 to be used flexibly for additional funding, rewarding the neighbouring countries most advanced in their reforms and thus strengthening the application of the EU's positive conditionality. European Commission, 'Principles for Implementation of a Governance Facility under ENPI', Note, accessed April 5, 2013, http://ec.europa.eu/world/enp/pdf/governance_facility_en.pdf.

5 The High Representative and the European Commission, 'A New Response to a Changing Neighbourhood: A Review of European Neighbourhood Policy', Joint Communication COM(2011) 303: 1, accessed April 4, 2013, http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf.

6 The European Commission has announced a €1.24 billion increase of its financial assistance in the period 2011-13.

7 In December 2011, the European Commission introduced a new European Neighbourhood Instrument, which is to replace the current European Neighbourhood and Partnership Instrument in 2014. It is to be much more policy-driven in order to allow for greater differentiation. European Commission, 'Regulation of the European Parliament and of the Council establishing a European Neighbourhood Instrument', COM(2011) 839 final, accessed April 4, 2013, http://ec.europa.eu/world/enp/docs/2011_prop_eu_neighbourhood_instrument_reg_en.pdf.

As stressed in the Joint Communication, the EU would base its financial assistance for 2014 onwards on the reform track record as presented in the annual progress reports. This assistance would refer to the indicators of a ‘deep democracy’ as well as to the individual goals set in the bilateral documents. Consequently, it can be argued that the new approach set conditions for stronger application of conditionality by introducing more flexible funding instruments and clearer benchmarking. The emphasis on the normative dimension of the policy was reflected by setting the ‘progress in building and consolidating democracy and respect for the rule of law’ as the general benchmark⁸. Under the term of a ‘deep democracy’, the EU specified political indicators, with reference to which progress would be evaluated, with the conduct of free and fair elections being set as one of the main principles.⁹ The example of the latter indicator will be used to examine the application of the new approach in practice.

The three countries in question, Armenia, Georgia and Ukraine, are heterogeneous. They differ significantly in terms of size, geographical location, European ambition and their relationship with Russia. Both Ukraine and Georgia underwent colour revolutions in 2003/2004, which triggered

democratic and economic transformations. Until recently, Ukraine was the frontrunner among the EaP countries in terms of democratic transition and integration with the EU. Georgia’s impressive economic transition did not result in an equally impressive democratic record. Armenia’s authoritarian style of governance was reinforced in the aftermath of the contested presidential elections in 2008. The EU’s influence on transformation in these countries has been limited by the ambiguity of its offer and the lack of a sufficient incentive, namely membership, as well as by the geopolitical relevance of the Russian factor. The lack of significant engagement of the EU in conflict resolution in the cases of Georgia and Armenia has also limited the credibility of the EU’s action in this region. Consequently, rather than strictly applying the ENP’s conditionality, the EU’s efforts to foster the democratisation of this region have been limited to rhetorical declarations.

3. Election Performance and the Eastern Partnership

The conduct of free and fair elections has been emphasised in the ENP’s bilateral and multilateral documents as one of the key measurements of the progress toward democratisation and good governance. Nevertheless, the EU has not been directly involved in election observation in the neighbouring countries, and the reference to election performance was rather narrowly defined in the Action Plans, referring to the OSCE/ODIHR assessments and recommendations (see table 1). Consequently, the EU assessment is based on the OSCE/ODIHR methodology of assessing election performance.

The OSCE/ODIHR has been the primary election observer in all of its 57 member states, with a particular focus on the transition countries. The importance of holding democratic elections was emphasised in the founding documents and further stressed in the so called 1990 Copenhagen Document issued by the Conference for Security and Cooperation in Europe (CSCE), which clarified and defined the term “genuinely democratic elections” as universal, equal, fair,

The EU’s financial structure underwent further restructuring in June 2012 through the addition of the new financial ‘umbrella’ programme Eastern Partnership Integration and Cooperation Programme (EaPIC), which is modelled on the previously operating Governance Facility. European Commission, ‘Enhanced cooperation in the Eastern Partnership: the Eastern Partnership Integration and Cooperation (EaPIC) programme’, MEMO/12/491, accessed April 5, 2013, http://europa.eu/rapid/press-release_MEMO-12-491_en.htm.

8 High Representative and the European Commission, ‘A New Response to a Changing Neighbourhood: A Review of European Neighbourhood Policy’, Joint Communication COM(2011) 303: 1, accessed April 4, 2013, http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf.

9 The remaining indicators are: (...) b) freedom of association, expression and assembly and a free press and media; c) the rule of law administered by an independent judiciary and right to a fair trial; d) fighting against corruption; e) security and law enforcement sector reform (including the police) and the establishment of democratic control over armed and security forces. The High Representative and the European Commission, ‘A New Response to a Changing Neighbourhood: A Review of European Neighbourhood Policy’, Joint Communication COM(2011) 303: 3, accessed April 4, 2013, http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf.

Table 1. Priorities for election performance for Armenia, Georgia and Ukraine

Countries	Priorities for election performance according to the Action Plans 2005/2006	Priorities for election Performance according to the Progress Reports 2012
Armenia	‘ensure that the electoral framework is in full compliance with OSCE commitments and other international standards for democratic elections, by amending the Electoral Code and improving electoral administration in line with OSCE/ODIHR and CoE Venice Commission recommendations (during 2006)’	‘ensure free and fair parliamentary elections, in line with internationally recognised democratic standards; address identified shortcomings in the electoral legislative framework, in a consultative and inclusive manner, in good time before the elections’
Georgia	‘ensure the local (2006), parliamentary (2008) and presidential (2009) elections in Georgia are conducted in accordance with international standards, through implementation of OSCE/ODIHR and Council of Europe recommendations, notably regarding the need for a reliable voter registry and a functioning and transparent electoral commission’	‘ensure that the presidential elections scheduled for 2013 are in line with international standards by addressing the shortcomings identified by the Office for Democratic Institutions and Human Rights (ODIHR) of OSCE concerning the May 2012 parliamentary elections’
Ukraine	‘ensuring the democratic conduct of presidential (2004) and parliamentary (2006) elections in Ukraine in accordance with OSCE standards’	‘prepare and conduct the 2012 parliamentary elections in line with the standards of the Organisation for Security and Cooperation in Europe - Office for Democratic Institutions and Human Rights (OSCE/ODIHR), including full co-operation with monitoring missions’

Table 2. The OSCE/ODIHR’s standards for genuinely democratic elections
Source: OSCE/ODIHR Election Observation Handbook (2010).¹

<ul style="list-style-type: none"> • Hold free elections at reasonable intervals; • Permit all seats in at least one chamber of the legislature to be popularly elected; • Guarantee universal and equal suffrage; • Respect the right of citizens to seek office; • Respect the right to establish political parties and ensure that parties can compete on the basis of equal treatment before the law and by the authorities; • Ensure that political campaigning can be conducted in an open and fair atmosphere without administrative action, violence, intimidation or fear of retribution against candidates, parties or voters; • Ensure unimpeded media access on a non-discriminatory basis; • Ensure that votes are cast by secret ballot and that they are counted and reported honestly, with the results made public; and • Ensure that candidates who receive the number of votes necessary to be elected are duly installed in office and are permitted to remain in office until their term expires.

1 OSCE, ‘Election Observation Handbook: Sixth Edition’, (Warsaw: Poligrafus Andrzej Adamiak, 2010), 18. Also available online, accessed February 12, 2013, <http://www.osce.org/odihr/elections/68439>.

secret, free, transparent and accountable (for further standards see table 2).¹⁰ The OSCE/ODIHR recommendations are indirectly referred to in the EaP's documents as one of the key indicators of democratisation and good governance.

The ENP's new approach was further operationalized in the new EaP Roadmaps presented in May 2012 in order to 'to serve as a practical tool for monitoring and assessing the progress of the Eastern Partnership'¹¹ ahead of the Vilnius summit in 2013. Under the bilateral dimension, the benchmark is set as 'the progress made towards the political reforms needed to implement the Eastern Partnership's common values, and the overall state of EU relations with partner countries'¹²; which refers in particular to the upcoming elections. With reference to election performance, the objective is, yet again, narrowly defined as 'conduct of democratic and credible elections, in accordance with international standards'.¹³ There is no reference to election performance in the case of Ukraine, only indirectly to 'building and strengthening institutions linked to democracy and the rule of law.'¹⁴ In Ukraine's Association Agenda, the reference is limited to 'ensuring the effectiveness of the electoral framework and environment so as to continue the conduct of presidential and parliamentary elections in accordance with international standards for democratic elections and the recommendations made by OSCE/ODIHR'¹⁵.

Under the multilateral dimension, election performance is included in the first thematic platform 'Democracy, good governance and stability'.¹⁶ The main tool for improving election performance is to be implemented by the OSCE, predominantly within the framework of the EU-funded EaP Facility. Further references are made to reforms in fields such as judicial reform and the fight against corruption, the strengthening of Ombudsman institutions, public administration reform, and pluralism of the media. Therefore, the EU's pre-election assistance is supposed to result in improved compliance with and awareness of European electoral standards in the EaP countries by means of an administration that is better prepared and through the alignment of NGO and media sectors with the Code of Good Practice in Electoral Matters.¹⁷

As demonstrated above, the 2012 EaP Roadmaps show progress toward further operationalization and comprehensiveness of the EU's approach to election assistance, with a particular emphasis on the role of civil society. Nevertheless, benchmarking of election assessment is still based on the OSCE/ODIHR assessments.

4. Testing EU's conditionality in action - the 2012/2013 parliamentary and presidential elections

4.1 The 2012 Parliamentary Elections in Georgia

Georgia's track record of rigged elections culminated in the 2003 parliamentary elections. The widespread and systematic fraud triggered street protests, leading to the Rose Revolution,

10 CSCE, 'Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE', CSCE Document, accessed April 5, 2012, <http://www.osce.org/odihr/elections/14304>. This has been the key OSCE document outlining commitments in the field of elections, rule of law and other fundamental rights and freedoms.

11 The High Representative and European Commission, 'Eastern Partnership: A Roadmap to the autumn 2013 Summit', Joint Communication JOIN(2012) 13 final: 3, accessed April 5, 2013, <http://ec.europa.eu/world/enp/>.

12 High Representative and European Commission, 'Eastern Partnership Roadmap 2012-13: the bilateral dimension', Joint Staff Working Document SWD(2012) 109 final: 6, accessed April 5, 2013, http://ec.europa.eu/world/enp/docs/2012_enp_pack/e_pship_bilateral_en.pdf.

13 Ibid.

14 Ibid, p. 8.

15 European Commission, 'EU-Ukraine Association Agenda to prepare and facilitate the implementation of the Association

Agreement', Note: 6, accessed April 5, 2013, http://www.eeas.europa.eu/ukraine/docs/2010_eu_ukraine_association_agenda_en.pdf.

16 High Representative and European Commission, 'Eastern Partnership: A Roadmap to the autumn 2013 Summit', Joint Communication JOIN(2012) 13 final: 3, accessed April 5, 2013, <http://ec.europa.eu/world/enp/>.

17 Council of Europe/Venice Commission, 'Code of Good Practice in Electoral Matters', accessed April 5, 2013, [http://www.venice.coe.int/webforms/documents/CDL-AD\(2002\)023rev-e.aspx](http://www.venice.coe.int/webforms/documents/CDL-AD(2002)023rev-e.aspx).

which brought Mikheil Saakashvili to power as President. The parliamentary elections that were subsequently held in March 2004 were assessed as ‘the most democratic since independence’¹⁸. They provided strong democratic credentials for the new President, with his party winning two thirds of the seats in Parliament. The subsequent nine-year period brought a mixed record for Georgia. Extensive economic reforms, the visa liberalisation programme and the effective fight against corruption contributed to a modernised image of the country and a thriving business environment characterised by friendly legislation and, most of all, a reliable and predictable political environment.¹⁹ However, the democratic record was less favourable; according to the EaP Index, Georgia did not fully meet the criteria of ‘electoral democracy’²⁰, and Freedom House still assesses Georgia as only ‘partly free’.²¹ The lack of a genuinely competitive and pluralistic political system as well as media politicisation was identified as obstacles to further democratisation.²²

The reformist decision-making process implemented by President Saakashvili and his party created a system characterised by a dominant and virtually unchecked executive and a political landscape dominated by the ruling party United National Movement (UNM)²³. The marginalised opposition attempted to challenge the consolidation of power under Saakashvili’s leadership on the streets. This must also be seen

in light of the fact that the subsequent elections fell short of meeting international standards. In 2010, the Georgian parliament approved a set of constitutional amendments, which aimed at providing a more balanced model of governance by limiting some of the presidential powers and shifting them to the office of the prime minister. Shortly after, efforts were undertaken to put Georgia on the path toward a parliamentary republic.²⁴ The rather ambivalent democratic record of President Saakashvili prompted accusations that this legislative move was supposed to prolong his term in power by enabling him to take over the position of prime minister.²⁵ The EU-Georgia relations intensified in July 2010 with the launch of negotiations on the Association Agreement, which was seen as the EU’s recognition of the reformist approach of President Saakashvili. The further intensification of the relations was to be conditioned by the 2012 parliamentary election performance as indicated in the 2012 Action Plan’s priorities.²⁶

Pre-election assessment

The pre-election period called the democratic commitment of President Saakashvili into question. In October 2011, a new political figure, billionaire Bidzina Ivanishvili, announced his plans to establish a political party and compete in the election. His citizenship was immediately revoked on the grounds that he held both the French and the Russian citizenship, despite the fact that Georgian citizens are not allowed to hold multiple citizenships.²⁷ The emphasis on the democratic conduct of the elections was expressed in the

18 For the assessment of Georgia’s elections see the OSCE/ODIHR reports: <http://www.osce.org/odihr/elections/georgia>.

19 The World Bank and the International Finance Corporation, ‘Doing Business 2012 Doing Business in a More Transparent World’, Report: 12-13, accessed February 20, 2013, <http://www.doingbusiness.org/reports/global-reports/doing-business-2012>.

20 Iryna Solonenko, ed, European Integration Index for Eastern Partnership Countries, (IRF and OSF, 2012), 28. Also available online: http://www.eap-index.eu/sites/default/files/EaP%20Index%202012_0.pdf.

21 Freedom House, ‘Freedom in the World 2012’, Report, accessed February 20, 2013, <http://www.freedomhouse.org/country/georgia>.

22 Iryna Solonenko, ed, European Integration Index for Eastern Partnership Countries, (IRF and OSF, 2012), 28. Also available online: http://www.eap-index.eu/sites/default/files/EaP%20Index%202012_0.pdf.

23 Transparency International, ‘The Georgian National Integrity 2011’, Report, accessed February 20, 2013, <http://transparency.ge/nis/>.

24 For more on the constitutional reform see: Welt, C., ‘Georgia’s Constitutional Reform’, Central Asia-Caucasus Institute John Hopkins University, 2010, accessed April 5, 2013, <http://www.cacianalyst.org/?q=node/5443>; Matusiak, M., ‘Constitutional reform in Georgia: changing to stay the same?’ (Centre for Eastern Studies: Warsaw, 2010).

25 Jackson, A., ‘The New Georgian Constitution: Reading Saakashvili’, The Foreign Policy Centre, accessed February 20, 2013, <http://fpc.org.uk/fsblob/1295.pdf>.

26 For details on the text see table 2.

27 Barry, E., ‘From Philanthropist to Public Enemy in Georgia’, The New York Times, April 5, 2012, accessed April 5, 2013, http://www.nytimes.com/2012/04/06/world/europe/jump-to-politics-turns-georgian-billionaire-into-public-enemy-no-1.html?pagewanted=all&_r=0.

Conclusions of the Council of the European Union in February 2012.²⁸ The EU also encouraged the Georgian authorities to address issues prevalent in the previous elections, such as lack of electoral code, irregular party funding and media access as well as the intimidation of opposition activists.²⁹ The substantial differences in size between the single-member parliamentary districts were also identified as one of the key issues.

The President's administration managed to address some of the outstanding issues with a new electoral code, which was approved by Parliament in December 2011. Along with the new law on Political Unions of Citizens, these steps were aimed at regulating the area of party finance and campaign funding. The legislation, however, did not correspond sufficiently to the recommendations made by the Venice Commission, and its drafting process lacked proper consultations with the main political players, thus undermining the general trust in the election process. It was criticised by civil society actors that the electoral environment had deteriorated rather than improved.³⁰ Furthermore, new election-related institutions were established – the Commission for Ensuring Voter List Accuracy and the Financial Monitoring Department of the State Audit Agency – to provide efficient electoral management.

Civil society was actively engaged in the pre-election period. In February 2012, the joint campaign 'This Affects You Too' was launched by various NGOs and media outlets.³¹ Activists targeted the EU with a petition that demanded new amendments to the election legislation.³² In

July, the ruling party announced a four-point code of conduct³³, which was seen as insufficient and consequently rejected by the opposition and civil society. The latter drew up their own 17-point code of conduct³⁴, which was accepted by the two main parties. Prior to the elections, the EU-Georgia relations intensified with the launch of the DCFTA talks in March 2012 and the visa dialogue in June 2012.³⁵ In July 2012, during his visit to Georgia, Štefan Füle announced that an additional €22 million would be provided from the EaPIC to facilitate adjustments to the ongoing visa dialogue in the fields of criminal justice and border and migration management.³⁶

During a pre-election visit in August 2012, the OSCE Parliamentary Assembly recognised the 'obvious pre-election efforts that aimed to ensure accuracy of the voters' list, provide transparency in campaign finance, and expand media accessibility throughout the country.'³⁷ However, observers also noted a growing political polarization in the country and the political targeting of opposition parties with high penalties by the State Audit Office. Georgian authorities were called on to ensure 'a level playing field for all parties including access to media and the protection of journalists'³⁸. The OSCE/ODIHR interim reports confirmed that progress had been made in terms

<http://www.eap-csf.eu/en/news-events/news/georgian-national-platform-letter-to-commissioner-Štefan-fule>

28 Council of the European Union, 'Council Conclusions on the South Caucasus', 3149th Foreign Affairs Council February 27, 2012), accessed February 2, 2013, http://eeas.europa.eu/delegations/georgia/documents/news/20120305_01_en.pdf.

29 For example in the 2010 municipal elections – see Waal de, T., 'Political Reform in Georgia', Carnegie Endowment for International Peace, 2010, accessed April 15, 2013, <http://carnegieendowment.org/2011/06/20/reform-in-georgia/xf>

30 For example see Open Society Georgia Foundation, 'This Affects You Too', accessed April 5, 2013, http://www.osgf.ge/index.php?lang_id=ENG&sec_id=15&info_id=2640.

31 The website of the campaign www.esshengexeba.ge, the Facebook page of the campaign <https://www.facebook.com/esshengexeba>.

32 Georgian National Platform, 'Letter to Commissioner Stefan Füle' (Tbilisi, March 12, 2012), accessed April 1, 2013,

33 According to the code, the parties bind themselves (...) 'to reject vote-buying; to follow recommendations of civil society organizations and Inter-Agency Task Force for Free and Fair Elections at the National Security Council in respect of use of administrative resources; to recognize election results summarized by the Central Election Commission and deemed legitimate by observer organizations with credible reputation'. The code is available at <http://www.civil.ge/eng/article.php?id=25003>, accessed April 4, 2013.

34 Civil Georgia, 'Parties Called to Agree on Broader Code of Conduct Ahead of Elections', Civil. Ge, July 16, 2012, accessed April 5, 2013, <http://www.civil.ge/eng/article.php?id=25010>.

35 EEAS, 'EU-Georgia relations', EEAS website, accessed April 5, 2013, http://eeas.europa.eu/georgia/index_en.htm.

36 Civil Georgia, 'The Eastern Partnership, Georgia and the European Union', Civil. Ge, July 10, 2012, accessed May 4, 2013, <http://www.civil.ge/eng/article.php?id=24983>.

37 OSCE, 'OSCE PA concluded pre-election visit to Georgia', Press Release August 22, 2012, accessed January 1, 2013, <http://www.oscepa.org/news-a-media/press-releases/1055-georgia-previsit-end>.

38 Ibid.

of the legislative framework, but also pointed out existing problems relating to party financing and the use of administrative resources by the incumbent authorities.³⁹ The second report further emphasised the confrontational and rough tone of the campaign and the uneven playing field.

In September's joint statement, High Representative Ashton and Commissioner Füle restated that the elections would determine the intensity of further relations and called for 'a peaceful, enabling and competitive electoral environment and also a healthy media environment'.⁴⁰ They also pointed out that the growing polarisation could produce a lack of recognition of the final results among political actors. The final run-up to the elections was marked by further tensions over recorded instances of prisoner abuse, which prompted accusations and street protests against the Saakashvili administration.⁴¹

Election assessment

The parliamentary elections held in Georgia on October 1, 2012 resulted in the victory of the Ivanishvili-led opposition block *Georgian Dream*. After initially claiming victory, President Saakashvili accepted the results and announced his party's move to the opposition. This peaceful transfer of power established cohabitation and was in stark contrast to the violent political rhetoric of the pre-electoral phase. The preliminary statement issued jointly by OSCE/ODIHR, OSCE Parliamentary Assembly, PACE, EP and NATO Parliamentary Assembly stated that the 'elections marked an important step in consolidating the conduct of democratic elections (...) although certain key issues remain to be addressed. (...) The environment (...) was polarized and tense, characterized by the use of harsh rhetoric and

some instances of violence. The campaign often centred on the advantages of incumbency, on the one hand, and private financial assets, on the other, rather than on concrete political platforms and programs'.⁴²

Similarly to the opinion of the international community, the Georgian national platform of the Civil Society Forum recognised the election performance as 'an important step forward for Georgia's democratic development, which lays the ground for accelerating the country's integration with the EU'.⁴³ The NDI's statement restated that 'the elections were the most competitive in a decade and marked an important step in establishing a pluralist legislature'.⁴⁴ The observers also called for the development of 'a consultative and participatory legislative process the parliamentary minority will have to share in the responsibilities of governing'.⁴⁵

EU's response

In their joint statement, High Representative Ashton and Commissioner Füle acknowledged the OSCE/ODIHR preliminary statement and assessed election performance as generally positive, indicating Georgia's commitment to a democratic path. They called for the development of constructive cohabitation and reaffirmed the EU's further cooperation with a new government.⁴⁶ The peaceful transition of power reinforced the overall positive assessment of the election performance, which was seen as an indicator of

39 OSCE/ODIHR, 'Election Observation Mission Georgia Parliamentary Elections', Interim Report No. 1, 22, accessed April 4, 2013, <http://www.osce.org/odihr/elections/93609>.

40 High Representative Ashton and Commissioner Füle, 'On EU-Georgia relations and the upcoming elections', MEMO/12/640, accessed April 15, 2013, http://europa.eu/rapid/press-release_MEMO-12-640_en.htm.

41 This was also reflected in the EU's criticism by High Representative Ashton. Nielsen, N., 'EU condemns Georgia prison rape, torture', EU Observer, September 21, 2012, accessed February 20, 2013, <http://euobserver.com/foreign/117627>.

42 OSCE/ODIHR, OSCE PA, et al., 'International Election Observation Georgia — Parliamentary Election' Statement of Preliminary Findings and Conclusions, accessed April 4, 2013, <http://www.osce.org/odihr/94593>.

43 Georgian National Platform, 'Statement by the Eastern Partnership's Georgian National Platform on the parliamentary election and the role of civil society', Statement 5.10.2012, accessed April 4, 2013, http://www.eap-csf.eu/assets/files/Downloads/english/NP_Post_Election_Statementgeorgia2012_ENG.pdf.

44 NDI, 'Statement of the NDI Election Observer Delegation to Georgia's 2012 Parliamentary Elections', Statement October 2, 2012, accessed April 5, 2013, <http://www.ndi.org/files/Georgia-Election-Statement-100212-ENG.pdf>.

45 Ibid.

46 The High Representative Ashton and Commissioner Füle, 'On the results of Georgia's parliamentary elections', Joint Statement A 433/12, accessed May 4, 2013, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/132699.pdf.

progress towards democratic transition on the part of President Saakashvili.⁴⁷

During his post-election visit to Tbilisi, Commissioner Füle confirmed the EU's support for Georgia and its new government. Expressing satisfaction with the overall election performance, he also called for the new government and the opposition to create a constructive political environment of cooperation. During her visit to Tbilisi in November, High Representative Ashton launched negotiations on joint crisis management operations, and she further acknowledged the commitment to a rapid conclusion of the DCFTA, improving the mobility as well as ensuring the continuation of high-level exchanges and the EU's support.⁴⁸

The subsequent period of cohabitation between Prime Minister Ivanishvili and President Saakashvili resulted in the further polarisation of the political situation. The prosecution cases launched in the post-election period against former governmental officials⁴⁹ prompted fears of selective justice and were characterised by the EU as 'retribution against political rivals'⁵⁰. Furthermore, President Saakashvili and his opposition party, perceiving recent steps to improve relations with Russia as attempts to divert the course of Georgian foreign policy from the path of European integration, called for enshrining a European orientation of Georgian foreign policy in the constitution.⁵¹ In December 2012, the ruling

party presented a draft of constitutional changes, which aimed at further restricting the powers of the president's office. The post-election period indicated that Georgia might be reneging on its commitment to democratisation, following consolidation of power under the new prime minister Ivanishvili.⁵²

High Representative Ashton, visiting Georgia in November 2012, called for an impartial and transparent investigation of previous authorities in order to clarify accusations of selective justice.⁵³ As part of the Informal EaP Dialogue hosted by Georgia on February 12, 2012, Commissioner Füle signed an agreement providing an additional €20 million to support the reform process in Georgia.⁵⁴ During the EURONEST Parliamentary Assembly Political Committee's visit on February 15, the European People's Party asserted that the 'national political harassment of President Saakashvili and his supporters has resulted in the outcome that the conditions for the EU-Georgia dialogue are not being met any more'.⁵⁵

Nevertheless, the Prime Minister and his administration confirmed that European integration is the key policy objective for Georgia. Current authorities also welcomed the Venice Commission's assistance with constitutional revision and other legislative reforms.⁵⁶

47 Central Election Commission of Georgia, 'Summary Protocol of the Elections of the Parliament of Georgia of October 1, 2012', Summary Protocol, accessed May 4, 2013, http://cesko.ge/files/2012/SUMMARY_PROTOCOL_2012.pdf.

48 Catherine Ashton, 'Remarks by High Representative/Vice President Catherine Ashton at the end of her visit to Georgia,' MEMO/12/903, accessed May 4, 2013, http://europa.eu/rapid/press-release_MEMO-12-903_en.htm.

49 Gorchinskaya, K., 'In Kyiv, Saakashvili says he does not fear arrest', *Kyiv Post*, November 27, 2012, accessed May 5, 2013, <http://www.kyivpost.com/content/kyiv/in-kyiv-saakashvili-says-he-does-not-fear-arrest-316779.html>.

50 Catherine Ashton, 'Remarks by High Representative/Vice President Catherine Ashton at the end of her visit to Georgia,' MEMO/12/903, accessed May 4, 2013, http://europa.eu/rapid/press-release_MEMO-12-903_en.htm.

51 Civil Georgia, 'PM Rules Out Trade-Off on Constitutional Changes with UNM', *Civil.ge Daily News Online*, February 5, 2013, accessed April 4, 2013, <http://www.civil.ge/eng/article.php?id=25719>.

52 For more analyses of the post-election situation in Georgia see ISFED's reports on Monitoring the Developments in Local Self-Government Agencies following the October 1 Parliamentary elections and the Reports from the Conference International Society for Fair Elections and Democracy, '100 Days in Government: Rule of Law and Human Rights', ISFED Conference Report, accessed February 20, <http://www.isfed.ge/eng/>.

53 European Commission, 'Catherine Ashton travels to Georgia', Press Release Rapid IP/12/1263, accessed April 4, 2013, http://europa.eu/rapid/press-release_IP-12-1263_en.htm.

54 European Commission, 'Informal Eastern Partnership Dialogue in Georgia: Advancing European values', Press Release Rapid MEMO/13/100, accessed April 4, 2013, http://europa.eu/rapid/press-release_MEMO-13-100_en.htm.

55 European People's Party, 'EPP Georgia: EPP shocked by violent acts against UNM parliamentarians; conditions for EU-Georgia dialogue not anymore meet', EPP Press Release, accessed February 20, 2013, http://www.epp.eu/sites/default/files/content/press_releases/pdf/Georgia130213.pdf.

56 Council of Europe, 'Venice Commission and Georgia Agree to Co-operate on Constitutional Revision and Legislative Reforms', Venice Commission webpage, accessed February 20, 2013, <http://www.venice.coe.int/webforms/events/?id=1655>.

Furthermore, they agreed to the implementation of a mission to observe the trials and further investigation into accusations of selective justice by ODIHR.⁵⁷ These steps are intended to enhance the transparency of the government's actions.

The February visit of Commissioner for Home Affairs Cecilia Malmström was accompanied by the presentation of the visa liberalisation plan for Georgia.⁵⁸ The post-election situation paints a mixed picture of Georgia's democratisation level. While the peaceful transfer of power presents a powerful argument for Georgia's further democratisation, the first few months of Ivanishvili's government indicated instances of selective justice and lack of political willingness to pursue constructive cohabitation. As stressed in the Council's February 2013 conclusions, 'the pace of reforms will determine the intensity of cooperation, and partners most engaged in reforms will benefit most from their relationship with the EU'.⁵⁹ The 2013 presidential elections will be an important indicator of Ivanishvili's intent and political commitment to further democratisation.⁶⁰

4.2 The 2012 Parliamentary elections in Armenia

Since 1996, none of the elections held in Armenia have met international standards. The parliamentary elections in 2007 and the presidential elections in 2008 showed some improvements, but serious problems relating to vote count, restricted media access and abuse of administrative resources were still widely recorded.⁶¹ In both cases, the election

results were rejected by opposition parties and sparked street protests. In 2008, protests resulted in violent clashes with the police, involving numerous casualties and political arrests. A state of emergency was declared, accompanied by further restrictions to the freedom of expression and assembly. Nevertheless, EU-Armenia relations progressed with the launch of negotiations on the Association Agreement in July 2010.

In February 2011 the events of the Arab Spring triggered street protests in Yerevan with the oppositionist Armenian National Congress led by the former president Levon Ter-Petrosyan calling on the success of revolutions organised in Tunisia and Egypt.⁶² The Armenian government responded with a relaxation of the measures implemented during the 2008 crackdown: the remaining political prisoners were released, the restriction on the freedom of assembly in Yerevan's Freedom Square was lifted and investigations into casualties were reopened. These steps were perceived as a consequence of international pressure rather than as demonstrating President Sargsyan's regime's commitment to democracy. Nonetheless, they resulted in the intensification of cooperation between the EU and Armenia. In September 2011, the European Commission proposed opening visa facilitation talks with Armenia⁶³, and the official dialogue was launched in February 2012.⁶⁴

In recent years, Armenia has demonstrated a growing willingness to move toward European integration, carrying out reforms in sectors such as energy, transport and business⁶⁵. The bilateral political dialogue has intensified accordingly.

57 OSCE, 'OSCE/ODIHR starts trial monitoring work in Georgia', OSCE Press Release, accessed February 20, 2013, <http://www.osce.org/odihr/99716>.

58 European Commission, 'Commissioner Malmström presents Action Plan on Visa Liberalisation with Georgia', Press Release IP/13/156, accessed April 4, 2013, http://europa.eu/rapid/press-release_IP-13-156_en.htm.

59 Council of the European Union, 'Council Conclusions on the Eastern Partnership', 3222nd Foreign Affairs Council Meeting, accessed April 4, 2013, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/135513.pdf.

60 For further analysis of the new Georgian authorities see Matusiak, M., 'Georgia: 100 days of the new government', Centre for Eastern Studies EastWeek, accessed February 25, 2013, <http://www.osw.waw.pl/en/publikacje/eastweek/2013-02-20/georgia-100-days-new-government>.

61 OSCE/ODIHR's reports are available at <http://www.osce.org/>

odihr/elections/armenia, accessed April 26, 2013.

62 Grigoryan, M., 'Armenia: Egypt events energizing opposition in Yerevan', Euroasia.net, February 03, 2011, accessed May 29, 2013, <http://www.tert.am/en/news/2011/02/03/yerevanopposition/>.

63 European Commission, 'The Commission proposes to open negotiations on Visa Facilitation and Readmission Agreements with Armenia' Press Release IP/11/1053, accessed April 4, 2013, http://europa.eu/rapid/press-release_IP-11-1053_en.htm.

64 Delegation of the EU to Armenia, 'Travel to the EU to become easier', Delegation website, accessed April 4, 2013. http://eeas.europa.eu/delegations/armenia/press_corner/all_news/news/2012/2012-02-23_en.htm.

65 Iryna Solonenko, ed, European Integration Index for Eastern Partnership Countries, (IRF and OSF, 2012), 36. Also available online: http://www.eap-index.eu/sites/default/files/EaP%20Index%202012_0.pdf)

Additionally, the financial assistance allocated to Armenia under the ENPI in the period 2011-2013 amounted to €157 million, twice the amount allocated in the previous period.⁶⁶ However, as indicated in the EaP Index, ‘the progress reported refers more to intention, than to actual improvements’.⁶⁷ The Freedom House ranking characterises Armenia as ‘partially free’, emphasizing, inter alia, the lack of media freedom.⁶⁸

Pre-election assessment

The 2012 elections were held under a new electoral code, adopted in 2011, which, though an improvement over its predecessor did not incorporate suggestions made by opposition parties. Both OSCE/ODIHR interim reports on the pre-election period noted a vibrant and competitive environment with a generally sound legislative framework under the new electoral code as well as balanced media coverage. Most of the reported violations concerned the misuse of administrative resources.⁶⁹ The campaign centred on the issue of electoral integrity and revealed a deep mistrust within the Armenian society.⁷⁰ In the statement on the pre-election visit issued on March 14, 2012, the PACE delegation acknowledged the vibrant electoral environment but also voiced concerns regarding the accuracy of voting lists. President Sargsyan’s declarations of holding the freest and fairest elections in Armenia’s history were mostly

perceived as attempts to secure further financial assistance from international actors.

Elections assessment

The elections were held on May 6, 2012 with a turnout of 62.3%. The ruling Republican Party won 44.02% of the votes, followed by its current coalition partner, Prosperous Armenia Party (30.12%). The opposition Armenian National Congress block obtained 7.08%, Heritage party 5.76%, the Armenian Revolutionary Federation Dashnaksutyun 5.67% and Ornats Yerkir party 5.51%. According to the joint preliminary statement by the OSCE/ODIHR, OSCE PA, PACE, and EP, the elections were conducted within ‘an improved legal framework [and] were characterised by a competitive, vibrant and largely peaceful campaign, which was, however, marked by a low level of confidence in the integrity of the process.’⁷¹ The observers pointed out that among others the implementation of the Electoral Code, the quality of the voter lists, the use of administrative resources, and the application of procedures by the Central Election Commission still fell short of international standards.

The Armenian Human Rights Defender generally supported this positive assessment, stating that the recorded level of violations, namely the abuse of administrative powers, violence against journalists and observers, instances of vote buying and problems with vanishing stamps, did not threaten the final results and demonstrated progress compared to the previous election performance.⁷² A statement by non-governmental group ‘It’s Your Choice’ similarly regarded the election performance as progress, despite the recorded irregularities.⁷³

66 New financing agreements for reforms in Armenia (Yerevan, September 27, 2012), accessed April 4, 2013, http://europa.eu/rapid/press-release_IP-12-1035_en.htm.

67 Iryna Solonenko, ed, European Integration Index for Eastern Partnership Countries, (IRF and OSF, 2012), 37. Also available online: http://www.eap-index.eu/sites/default/files/EaP%20Index%202012_0.pdf

68 Freedom House, ‘Freedom in the World 2012’, Report, accessed February 20, 2013, <http://www.freedomhouse.org/country/armenia>.

69 OSCE/ODIHR, ‘Election Observation Mission Republic of Armenia Parliamentary Elections’ Interim Report No. 1 10–16 January 2013, accessed April 2, 2013, <http://www.osce.org/odihr/elections/armenia>; OSCE/ODIHR, ‘Election Observation Mission Republic of Armenia Parliamentary Elections’ Interim Report No. 2, accessed April 2, 2013, <http://www.osce.org/odihr/elections/armenia>.

70 For further details see European Friends of Armenia, ‘Poll: A Snapshot of Pre-Electoral Armenia Main findings’, (2013), accessed April 4, 2013, http://www.eufoa.org/uploads/OpinionPoll_EN.pdf.

71 OSCE/ODIHR, ‘Republic of Armenia Parliamentary Elections’, Final Report, accessed April 4, 2013, <http://www.osce.org/odihr/91643>. For other assessment see Council of Europe Ad hoc Committee of the Bureau, ‘Observation of the parliamentary elections in Armenia’, Election observation report Doc. 12937, accessed April 4, 2013, <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=18720&lang=EN>.

72 European Friends of Armenia, ‘The Armenian Human Rights Defender’s Ad-hoc Report on the Parliamentary Elections 2012’, Ad-hoc Report, accessed April 4, 2013, <http://www.eufoa.org/uploads/Ad-hoc%20Report%20of%20Ombudsman%20on%202012%20Parliamentary%20Elections.pdf>.

73 It’s Your Choice, ‘On the results of IYC’s monitoring mission

A group of eleven local NGOs published one of the most critical assessments, pointing out ‘perpetual sophistication and “improvement” of election fraud mechanisms’ and characterising the elections as ‘yet another failure of Armenia to honour her international commitments of implementing democratic reforms’.⁷⁴ The special report by Policy Forum Armenia referred to the problem of election fraud as ‘not gone but instead transformed into less obvious and observable forms, while remaining largely outcome-neutral’.⁷⁵ A statistical analysis provided evidence of widespread electoral manipulation to the advantage of the incumbent authorities.

The election performance demonstrated the growing capacity of civil society in Armenia, in particular the increasing civic activism of the youth⁷⁶ and the use of modern technologies such as the joint IDitorD Platform by Media Diversity Institute and Transparency International Armenia. The latter, a website in form of a digitalized map of Armenia providing citizens a platform for reporting and posting elections-related violations, proved to be a successful self-policing tool of election violations.⁷⁷

EU’s response

In their joint statement, High Representative Ashton and Commissioner Füle praised the 2012 elections as ‘progress towards more transparent and competitive elections’ and called for a ‘constructive dialogue between authorities and the opposition as an important tool consolidating

democracy’.⁷⁸ Armenian authorities were urged to address the shortcomings identified by OSCE/ODIHR ahead of the presidential elections scheduled for 2013.⁷⁹ These words were echoed by Krzysztof Lisek, the head of the EP’s election delegation, who noted that, for Armenia, this was only ‘the beginning of the process, not the end.’⁸⁰

The generally positive assessment of the elections prompted the EU to apply its ‘more for more’ response, which was confirmed by the President of the European Council, Herman van Rompuy, during his visit to Yerevan in July 2012. His acknowledgment of Armenia’s progress on democratic reform coincided with the announcement of additional financial assistance and the official start of preparations for a donor conference. The Annual Action Programme 2012 for Armenia, announced in August 2012, assigned €60 million for judicial reform and the strengthening of the country’s institutional capacity in support of the Association Agreement and DCFTAs negotiations.⁸¹ A further €15 million were assigned later that year in a clear manifestation of ‘more for more’ under the EaP Integration and Cooperation Programme.⁸² In September 2012, the EU signed two additional financing agreements worth €43 million with Armenia.⁸³ Commissioner Füle also proposed

during the RA National Assembly elections of May 6, 2012’, Preliminary Statement, accessed February 20, 2013, http://www.iyc.am/eng/documents/IYC_preliminar_y%20statement.pdf.

74 Policy Forum Armenia, ‘Special Report Armenia’s 2012 Parliamentary Elections’, Special Report, accessed April 4, 2013, <http://www.pf-armenia.org/press-release/pfa-special-report-armenias-2012-parliamentary-election>.

75 Ibid.

76 Snip. I. ‘Youth NGOs in Armenia and the 2012 Parliamentary Elections’, Caucasus Analytical Digest No. 39, accessed April 4, 2013, <http://www.css.ethz.ch/publications/pdfs/CAD-39-11-13.pdf>.

77 For more details on the project see ‘Armenian Elections Monitoring: Crowdsourcing + Public Journalism + Mapping’, Internews Center for Innovation & Learning, accessed on May 29, 2013, <http://innovation.internews.org/blogs/armenian-elections-monitoring-crowdsourcing-public-journalism-mapping>.

78 High Representative Ashton and Commissioner Füle, ‘On the Parliamentary elections in Armenia on 6 May 2012’, Statement A 212/12, accessed April 4, 2013, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/135599.pdf.

79 Ibid.

80 Links Analysis, ‘Armenian Elections: International Monitors look at the bright side, leaving the Armenians to deal with the dark side’, Caucasus Elections Watch May 12, 2012, accessed April 4, 2013, <http://electionswatch.org/2012/05/12/armenian-elections-international-monitors-look-at-the-bright-side-leaving-the-armenians-to-deal-with-the-dark-side/>.

81 European Commission, ‘European Commission allocates new funding for judicial reform and economic integration in Armenia’, Press Release IP/12/918, accessed April 4, 2013, http://europa.eu/rapid/press-release_IP-12-918_en.htm.

82 European Commission, ‘New financing agreements for reforms in Armenia’, Press Release IP/12/1035, http://europa.eu/rapid/press-release_IP-12-1035_en.htm.

83 According to the Press Release IP/12/1035 mentioned above, these two documents are the ‘Framework Programme in support of the EU-Armenia agreement’ (€19.1 million) and the ‘Support to the Government of Armenia for the implementation of the ENP Action Plan and the preparation for the future Association Agreement’ (€24 million).

to upgrade the Armenia-EU Action Plan to an Association Agenda, which would involve a more advanced framework of cooperation focused on the implementation of AA provisions.

In October 2012, Armenia announced the removal of the visa requirement for EU citizens, followed by the initiation of visa facilitation and readmission agreements between the EU and Armenia.⁸⁴ The intention was to increase the areas of cooperation between the EU and Armenia on immigration. As demonstrated above, the bilateral relations between the EU and Armenia significantly intensified in the aftermath of the 2012 elections.

4.3 The 2013 Presidential Elections in Armenia

Ahead of the 2013 presidential elections, the EU stressed the importance that the election performance meets international standards. The main criteria for a positive assessment would be the OSCE's evaluation, with particular reference to the shortcomings identified during the parliamentary elections in May 2012.⁸⁵ The official declaration by Armenian President Sargsyan pledged 'to transform registered progress into a firm trend and to hold free, fair, transparent and democratic presidential elections'⁸⁶. Nonetheless, the pre-election period was marked by the emergence of an increasingly uneven playing field. The revocation of the immunity and formal charging of Vartan Oskanian, leader of the opposition Prosperous Armenia Party (PAP) and former Foreign Minister of Armenia, sparked fears of politically motivated misuse of the state judiciary.⁸⁷ The major

opposition parties decided to withdraw from the presidential competition; consequently, the pre-election period could not provide a meaningful competitive environment.⁸⁸ Although on one of the candidates, Paruyr Hayrikyan, was threatened by an assassination attempt and another candidate went on hunger strike, the pre-electoral period can be regarded as 'largely peaceful'⁸⁹ and as generally lacking any substantial political debate on the merits of the respective candidates' programmes.⁹⁰

Election assessment

The presidential elections held on February 18, 2013 confirmed the current president Serzh Sargsyan in power (59%) and Raffi Hovannisian from Heritage Party as the runner up (37%). The joint report by OSCE/ODIHR, OSCE PA and PACE noted that:

'Armenia's presidential election was generally well-administered and was characterized by a respect for fundamental freedoms, including those of assembly and expression (...). [However,] a lack of impartiality on the part of the public administration and the misuse of administrative resources resulted in a blurred distinction between the activities of the state and those of the ruling party'.⁹¹

The rather positive tone of the assessment was echoed by Karin Woldseth, the Head of the PACE delegation, who stated that 'there have been clear improvements in the electoral process since the previous presidential elections, and we have noted progress in many areas, including the

84 The latter agreement would reduce the number of documents needed for visa application, thus lowering the costs involved in the application process. Certain groups such as official delegations, scholars, students and businessmen would obtain multi-entry visas.

85 Delegation of the EU to Armenia, 'Speech on elections by the Head of the EU Delegation to Armenia', Delegation website, accessed April 4, 2013. http://ceas.europa.eu/delegations/armenia/press_corner/all_news/news/2012/2012-02-23_en.htm.

86 Serzh Sargsyan, 'Statement by President', Statement at European People's Party Convention, accessed April 4, 2013, <http://www.a1plus.am/en/official/2012/10/17/serzh>.

87 NA, 'Armenian politician charged', Caucasus Elections Watch October 8, 2012, accessed April 4, 2013, <http://electionswatch.org/2012/10/08/armenian-politician-charged/>.

88 In December 2012, the largest parties in the National Assembly – Prosperous Armenia, Armenian National Congress, and the Armenian Revolutionary – announced their decision to neither nominate candidates of their own nor support any other candidates. Furthermore, Armenia's first president Levon Ter-Petrosyan announced his decision not to run for the presidency.

89 OSCE 'Armenian elections competitive and largely peaceful, but shortcomings undermined confidence in the process, observers say' Press Release, accessed May 29, 2013, <http://www.osce.org/odihr/elections/90334>.

90 For more information on the re-election period see: Giragosian, R. 'Special Pre-election Assessment', RSC Special Briefing Summary Notes, accessed February 20, 2013, http://www.academia.edu/2499344/Regional_Studies_Center_RSC_Special_Armenian_Pre-Election_Briefing.

91 OSCE et al, 'International Election Observation Mission Republic of Armenia – Presidential Election', Statement of Preliminary Findings and Conclusions, accessed March 20, 2013, <http://www.osce.org/odihr/elections/99675>.

media environment and the legal framework'.⁹² She also noted that several important areas still needed to be improved, specifically with regard to ensuring full public trust in the electoral process. The EP's assessment endorsed the preliminary OSCE/ODIHR findings and pointed out a lack of substantive political debate and real competition.⁹³

The elections were overseen by almost 6000 observers representing 26 civic organisations, with most of these organisations presenting more critical assessments along with evidence of electoral manipulation and fraud.⁹⁴ The press conference held by the OSCE/ODIHR observation team was interrupted by a domestic observer who objected to the positive assessment. The newly launched European Platform for Democratic Elections, a network of civic groups from the EU Member States, the EaP member states and Russia⁹⁵, presented a rather critical evaluation, pointing out that the commitment of the electoral administration and the sound legislative framework had been the only two positive signs; generally, the elections had been hindered by a lack of political competition, low-key campaigning and by the fact that the main opposition parties decided not to compete. The latter circumstance, in combination with instances of electoral fraud such as ballot stuffing, multiple

voting and intimidation of voters, resulted in a rather negative assessment.⁹⁶ The statement by the NGO 'It's Your Choice' noted some shortcomings with regard to 'voter lists, vanishing stamps, presence of unauthorized people at the polling stations, violation of election procedures, cases of intolerance against proxies and monitors, isolated cases of illegal voting, cases of violation of confidentiality of voting, attempts to vote instead of others, attempt of ballot stuffing in one of the polling stations, as well as certain inaccuracies connected with the location of polling stations.'⁹⁷ Nonetheless, it concluded that these shortcomings 'were not widely spread and according to CEC couldn't have had an influence on election results'.⁹⁸

The Iditord.org platform registered almost 350 instances of irregularities with regard to voting lists, election bribery and pressure, and election day violations.⁹⁹ Some instances of violence against journalists and journalists' professional activities were also recorded.¹⁰⁰ The preliminary analysis by Policy Forum Armenia challenged the level of violations registered by the OSCE/ODIHR observers, with their final assessment ultimately '[calling] into question the role of foreign election observers in the Armenian context, specifically their impartiality and ability to detect election fraud that is becoming ever more sophisticated.'¹⁰¹ Their assessment mentioned a lack of competition,

92 OSCE, 'Armenian election generally well-administered with fundamental freedoms respected, but some key concerns remain, international election observers say', Press Release, accessed February 20, 2013, <http://www.osce.org/odihr/elections/99676>.

93 European Parliament AFET, 'Armenia's 2013 presidential elections: calm but no real competition', Committees Committee on Foreign Affairs Press Release, accessed February 20, 2013, <http://www.europarl.europa.eu/news/en/pressroom/content/20130218IPR05915/html/Armenia's-2013-presidential-elections-calm-but-no-real-competition>.

94 The two most extensive accounts of fraud in the Armenian elections have been given by Lena Nazaryan, an observer from the Europe in Law Association, and Narine Esmaeili, the Transparency International observer - for details see: Barsoumian, N. 'A Story of Defiance: Activists Reject International Observers' Assessment of Election', Armenian Weekly February 23, 2013, accessed February 24, 2013, <http://www.armenianweekly.com/2013/02/23/a-story-of-defiance-activists-reject-international-observers-assessment-of-election>.

95 NA, 'Domestic Election Observation in Europe - Strategy and Perspectives', European Platform for Democratic Elections Policy Paper, accessed February 24, 2012, http://www.european-exchange.org/fileadmin/user_upload/Warsaw_10-13.12.12/Policy_Paper_European_Platform_Election_Observation_en_warsaw.pdf.

96 European Platform for Democratic Elections, 'On Presidential Elections', Statement, accessed February 24, 2013, http://hca.v.am/wp-content/uploads/2013/02/EPDE-Statement-Presidential-Election-Armenia-18022013_final_EN.pdf.

97 It's Your Choice, 'on Observation Mission during Presidential Elections', Preliminary Statement, accessed February 21, 2013, http://www.iyc.am/eng/documents/Post-election_report_2013_engl.pdf.

98 Ibid.

99 Another example is the hotline launched by the Civil Society Institute, which registered 54 calls and 60 additional reports from their observers - for details see NA, 'Elections 2013. Summary of the calls received on the hotline', Civil Society Institute NGO February 18, 2013, accessed April 4, 2013 <http://hra.am/en/point-of-view/2013/02/18/elections2013>.

100 Barseghyan, A. 'Armenian Presidential Election 2013: Incidents of Threats and Violence Against Journalists', Media.Am, accessed February 20, 2013, <http://media.am/en/presidential-elections-professional-activities-of-journalists-hindered>.

101 Policy Forum Armenia, 'Armenian's 2012 Parliamentary Election', Report, accessed February 24, 2013, <http://www.pf-armenia.org/document/armenians-2012-parliamentary-election>.

mistrust of electoral processes, widespread misuse of administrative resources and violence during the election day, and reports of duplicate voting, ballot stuffing, bribery, and substitute voting.¹⁰²

EU's response

In their joint statement, High Representative Ashton and Commissioner Füle welcomed the OSCE/ODIHR assessment and remarked that it had been a progress 'to hold these presidential elections in line with international standards, notably through improved administration of the electoral process, ensuring possibilities for candidates to campaign freely and better quality of the voter lists'.¹⁰³ They also emphasised their expectation that the OSCE/ODIHR's recommendations will be acted upon.¹⁰⁴ This rather positive assessment indicates the further application of the 'more for more' approach as the EU's response.¹⁰⁵

The official results were challenged by the runner up Raffi Hovannisian and some of the opposition parties; Hovannisian launched a series of rallies across the country under the slogan of 'Barevolution'¹⁰⁶. The widespread support for his actions clearly demonstrated the Armenian society's lack of trust in the conduct of the presidential elections, the integrity of the electoral process, and, above all, in the current political system.¹⁰⁷ Neither the 2012 parliamentary nor the

2013 presidential elections fully met international standards for democratic elections. Nevertheless, the 2012 election was met with additional financial assistance by the EU and further facilitation of the Association Agenda, in particular of the visa liberalisation. The EU's rather positive assessment on the basis of the OSCE/ODIHR preliminary reports was primarily owed to the progress that had been made in comparison with the 2008 presidential elections and did not necessarily reflect the political commitment of the incumbent authorities to further the country's democratisation.

4.4 The 2012 Parliamentary Elections in Ukraine

From the 2004 Orange Revolution until recently, Ukraine has demonstrated 'a habit of good elections'¹⁰⁸. The 2010 presidential elections, which were assessed by the OSCE as an 'impressive display of democracy',¹⁰⁹ gave hope for the continuation of the democratic developments triggered by the 2004 presidential elections. However, recent developments involving a deterioration of democratic standards have brought Ukraine to the attention of the international community. Therefore, the preparation and conduct of the 2012 parliamentary elections became an important test of democracy.

For the EU, the parliamentary elections of 2012 were to be 'a litmus test of Ukraine's democratic credentials'¹¹⁰, the two-year incumbency of president Yanukovich having been marked by an increasing level of corruption, an emergence

102 Some of the issues were reflected in the third OSCE/ODIHR report issued on March 2nd 2013.

OSCE, 'Post-Election Interim Report', Report, accessed February 20, 2013, <http://www.osce.org/odihr/elections/99931>. Furthermore, the OSCE/ODIHR election observer Dermot Ahern issued a letter detailing some of the violations. Ahern, D., 'OSCE Observer's Surprised Letter On Elections', Letter, accessed March 20, 2013, <http://www.lragir.am/index.php/eng/0/politics/view/29237>.

103 The High Representative Ashton and Commissioner Füle, 'On elections in Armenia', Joint Statement A 212/12, accessed May 4, 2013, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/136186.pdf.

104 Ibid.

105 Preliminary indications can be found in the 2013 Progress Report presented by Commissioner Füle on March 20, 2013. During the press conference, he also reported progress on the organisation of a donor conference for Armenia.

106 This is a combination of an Armenian and an English word. It means "the revolution of greetings" and is supposed to emphasise the peaceful character of the struggle.

107 Hovannisian tried to challenge the results before the Highest Court, which on March 14, 2013 upheld the final results. NA,

'Decision 2013: Highest Court upholds Sargsyan victory', Armenia Now March 14, 2013, accessed March 14, 2013, http://www.armenianow.com/vote_2013/44461/armvote13_constitutional_court_decision_raffi_hovannisian_serzh_sargsyan.

108 High Representative, 'After EU-Ukraine Ministerial', *Euronest Blog*, accessed February 20, 2013, <http://euronest.blogspot.com.es/2010/10/remarks-by-hrvp-ashton-after-eu-ukraine.html>.

109 Turner, L. 'Why the election strengthens Ukraine's EU case', Foreign and Commonwealth office blog, accessed April 4, 2013, <http://blogs.fco.gov.uk/leightturner/2010/02/12/why-the-election-strengthens-ukraines-eu-case>.

110 The High Representative Ashton and Commissioner Füle, 'On the upcoming parliamentary elections in Ukraine', Press Release MEMO/12/857, accessed May 4, 2013, http://europa.eu/rapid/press-release_MEMO-12-857_en.htm.

of the ‘family’ notion¹¹¹, pressure on the mass media¹¹², and the emergence of selective justice as demonstrated by the example of former Prime Minister Tymoshenko and former Interior Minister Yuriy Lutsenko.

The trials of Tymoshenko and Lytsenko¹¹³ were criticized regularly by the OSCE PA, PACE and EP as well as by other EU institutions. At the same time, the EU was the only entity that had political leverage with its ability to postpone the signing of the long-awaited Association Agreement. While the EU failed to convince President Yanukovich to adhere to democratic values, he in turn did not manage to convince EU leaders to proceed with the AA’s signing and subsequent implementation. In March 2012, the AA was initialised in Brussels¹¹⁴, followed by the initialisation of the Deep and Comprehensive Free Trade Agreement on July 19, 2012. The subsequent signing was made conditional on ‘the compliance of the 2012 parliamentary elections with the international standards and follow-up actions, progress in addressing the issue of selective justice and preventing its recurrence, implementation of reforms defined in the jointly agreed Association Agenda’.¹¹⁵ Nevertheless, instances of selective justice have become a major factor in the deterioration of EU-Ukraine relations; they are

perceived by the EU and by the international community as attempts to eliminate opposition figures prior to the parliamentary elections. Therefore, the 2012 election performance became an important indicator for the survival of Ukraine’s unstable democracy.

Pre-election assessments

Ukraine lost ground in most rankings and indexes evaluating the level of democracy in the country. Freedom House noted that – in preparation for the elections in 2011 – ‘Yanukovich launched a systematic campaign to eliminate any viable opposition to the ruling Party of the Regions ahead of parliamentary elections set for 2012’.¹¹⁶ Although Ukraine has remained among ‘partially free’ states, Freedom House experts have lowered its ranking by one point (from 3 to 4) due to ‘the authorities’ efforts to crush the opposition, including the politicized use of the courts, a crackdown on media, and the use of force to break up demonstrations’.¹¹⁷

The OSCE/ODIHR pre-election report brought to attention a number of improvements stemming from the new electoral law. Nevertheless, it also mentioned alarming shortcomings and reported several cases of violence against candidates and campaign staff as well as an absence of mechanisms for monitoring compliance with provisions for balanced media coverage.¹¹⁸

Based on this assessment, the EU expressed its concern about the lack of political pluralism. In the joint statement by High Representative Ashton and Commissioner Füle, Ukrainian authorities were urged to follow up on the findings of the OSCE report. Furthermore, they were encouraged to ensure political pluralism on public television, full transparency of the activities of the Central Election Commission, and to create an inclusive election environment.

111 This term is widely used in the Ukrainian and meanwhile in the European mass media to depict the benefits and preferential treatment enjoyed by Yanukovich’s family and friends.

112 This was also reported by Reporters Without Borders in the World Press Freedom Index, which placed Ukraine on the 116th position in the ‘Difficult Situation’ category, preceded by Peru and followed by Cambodia. Reporters Without Borders, ‘World Press Freedom Index: Dashed hopes after spring’, Press Freedom Index 2013, accessed April 4, 2013, <http://en.rsf.org/press-freedom-index-2013,1054.html>.

113 Tymoshenko has been sentenced to seven years in prison for ‘criminal abuse’ during her term as prime minister, and Lutsenko is serving a sentence of four years for abuse of office and embezzlement. The latter was pardoned by the President of Ukraine, Yanukovich and was set free on April 7, 2013.

114 Initialisation is a technical procedure, during which the parties involved verify the final text of the agreement. It usually precedes the official signing and the subsequent stage of ratification. The latter two are highly political processes, while the former is purely technical.

115 This statement is taken from the Factsheet prepared by the Council for the EU-Ukraine Summit, which was held on February 25, 2013. However, it was articulated for the first time in the Council Conclusions from December 10, 2012.

116 Freedom House, ‘Freedom House Report on Ukraine for 2012’, Report, accessed April 4, 2013, <http://www.freedomhouse.org/report/freedom-world/2012/ukraine>.

117 Freedom House, ‘Freedom in the World 2013: Democratic Breakthroughs in the Balance’, Report, accessed April 4, 2013, <http://www.freedomhouse.org/sites/default/files/FIW%202013%20Charts%20and%20Graphs%20for%20Web.pdf>.

118 OSCE, ‘Interim Report No. 1 conducted by OSCE 12–28 September 2012’, Report, accessed April 5, 2013, <http://www.osce.org/odihr/94829>.

Election Assessment

The elections were held on October 28, 2012. The final results were close to the exit polls' prediction, with the Ruling Party winning one-third of the votes, the Fatherland Party, previously led by the former Prime Minister Tymoshenko, receiving 25,5% and the Communist Party receiving 13,2%. The two newcomers, UDAR and Svoboda, enjoyed significant support. UDAR, led by former boxer Klitschko, obtained 14%, while the ultra-right party Svoboda received 10,4%. The latter two formed the United-Opposition.

The 2012 parliamentary elections were generally assessed positively in the reports but were criticized in the political discourse. In its Final Report, OSCE/ODIHR gave an overall positive assessment of the elections but also brought to attention some deficiencies caused by the reinstated mixed electoral system and a lack of CEC involvement in the consistent implementation of the electoral law. The report also brought to attention the elimination of two strong opposition candidates, Tymoshenko and Lutsenko; as stated during the OSCE's press conference, 'one should not have to visit a prison to hear from leading political figures in the country.'¹¹⁹ The 'virtual absence of editorial autonomy on television and limited political pluralism' was noted as a strong deficiency.

The common assessment of the observer missions – OSCE/ODIHR OSCE PA, PACE, EP and the NATO Parliamentary Assembly (NATO PA) – was more critical. In their preliminary statement, the elections were characterized 'by the lack of a level playing field, caused primarily by the abuse of administrative resources [supporting the Party of the Regions], lack of transparency of campaign and party financing, and lack of balanced media coverage'.¹²⁰ The PACE President summed up the post-electoral developments in Ukraine as follows: 'according to the observers, they have stated that democracy is regressing. That

means, not stagnating, but actually regressing.'¹²¹

Assessment by domestic observers

According to the CVU, the elections were characterized by systematic violations in most Ukrainian constituencies. Although the international observation mission did not note systemic violations in their reports, the CVU did register cases of bribery, as well as attempts to manipulate data during vote counting. Collected evidence includes photos of cast ballots as proof of vote bribery, attempts to carry ballots outside the voting premises and other illegal actions. No person implicated in the bribery was held responsible. The report also pointed out the obstruction of official observers and other persons who had a right to be present at the meetings and the voting premises without permission or invitation from the Commission.¹²²

The other nation-wide network of organizations, OPORA, reported the systemic violation of electoral law and the decline of the democratic conduct of the election process in Ukraine. In addition to the already noted violations, the report emphasized the interference of law enforcement bodies in the process of vote counting in more than ten electoral districts¹²³ as well as massive bribery and systemic violation of procedural norms. Therefore, according to OPORA, the elections could be classified as not complying with democratic norms due to the lack of equal opportunities to participate in the elections, the unprecedentedly high number of 'technical parties', the partiality of the electoral committees, as well as the unbalanced coverage of

119 OSCE, 'Ukrainian elections marred by lack of level playing field, say international observers', Press Release, accessed April 4, 2013, <http://www.osce.org/odihr/elections/96673>.

120 OSCE et al., 'Statement of Preliminary Findings and Conclusions', Joint Statement, accessed April 4, 2013, <http://www.osce.org/odihr/96675>.

121 Donnelly, C. 'Democracy in Ukraine regressing' NewEurope (08.11.2012), accessed February 20, 2013, <http://www.neweurope.eu/article/democracy-ukraine-regressing>.

122 CVU, 'Звіт ВГО «Комітет виборців України» № 7 за результатами спостереження за виборами' (Translation from Ukrainian: 'Report # 7 on the Elections made by all-Ukrainian NGO 'Committee of the Electors of Ukraine'), Report, accessed February 10, 2013, <http://izbirkom.od.ua/content/view/5519/39/>.

123 OPORA, 'Підсумковий звіт за результатами загальнонаціонального спостереження за парламентськими виборами-2012' (Translation from Ukrainian: 'Final Report on the All-national Monitoring of the Parliamentary Elections 2012'), Final Report, accessed February 20, 2013, <http://oporaua.org/news/3573-pidsumkovyj-zvit-za-rezultatamy-zagalnonacionalnogo-sposterezhenja-za-parlamentskymy-vyboramy-2012>.

the parties and candidates in the mass media.

Compared to the observation missions held by international organisations, the domestic network recorded significant bribery during the process of casting ballots, which was not noted by several other missions. Even though both domestic organizations, but especially CVU, have a strong network across Ukraine, only ENEMO cooperated with the domestic networks.

EU's response

The first official EU reaction to the elections was the Joint Communication of Commissioner Füle and the High Representative Ashton on November 12, 2012. They expressed concern about delays in the vote count and a lack of transparency in the electoral commissions. The statement noted that the shortcomings indicated in the OSCE/ODIHR interim reports had not been addressed, despite the fact that the Ukrainian authorities had agreed to cooperate. All things considered, there has been deterioration in several areas compared to the standards achieved in previous elections.¹²⁴

The subject of the Ukrainian elections was taken off the agenda of the Foreign Affairs Council meeting on November 19, 2012 due to the situation in Gaza and was consequently addressed at December's Foreign Affairs Council. In its conclusions, the Council referred to the mixed picture of the parliamentary elections, which were characterised by deterioration of democratic standards in several areas. The statement also reiterated its strong concern about politically motivated convictions of former governmental officials, making their participation in the elections impossible.

In Brussels, there was no clear agreement on how to proceed with Ukraine, especially with regard to the signing of the AA. On one hand, the OSCE/ODIHR assessment was generally positive, but on the other hand, it was alarming that the issues identified in the pre-election period had not been addressed. Therefore, the EU took time for reflection. As a short-term consequence,

Yanukovich was not invited to the Brussels, and the annual EU-Ukraine Summit was postponed indefinitely.

The December Council Conclusions identified three conditions, with which Ukraine has to comply: international standards and follow-up actions after the elections, progress in addressing the issue of selective justice and preventing its recurrence, and implementation of the reforms defined in the jointly agreed Association Agenda.¹²⁵ In the February 2013 Conclusions on the EaP, the Council repeatedly confirmed these three areas as indicators of Ukraine's European aspirations and a commitment to build a deep and sustainable democracy.¹²⁶ The highly anticipated EU-Ukraine summit took place on February, 25 2013. In the joint statement, both sides acknowledged the importance of full Ukrainian compliance with the OSCE/ODIHR recommendations by establishing a reliable electoral legislation, insuring balanced media coverage, and addressing the inconclusive results in single mandate constituencies.

The above analysis of the EU's response to the 2012 Ukrainian elections does not clarify the renewed ENP's conditionality. There is no real application of 'less for less' but rather a preservation of the *status quo* by postponing the signing of the AA and DCFTA. This, together with further financial assistance from the EU, now depends on progress made by Ukraine.

124 The High Representative Ashton and Commissioner Füle, 'On parliamentary elections in Ukraine', Joint Statement MEMO/12/857, accessed February 20, 2013, http://europa.eu/rapid/press-release_MEMO-12-857_en.htm.

125 Council of the European Union, 'Council Conclusions on Ukraine', 3209th Foreign Affairs Council Meeting, accessed February 20, 2013, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/134136.pdf.

126 Council of the European Union, 'Council Conclusions on the Eastern Partnership', 3222nd Foreign Affairs Council Meeting, accessed April 4, 2013, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/135513.pdf.

5. Conclusions and Recommendations

The analysis of the EU's response to the recent elections in Armenia, Georgia and Ukraine has arguably clarified the utilisation of conditionality under the new approach. The positive assessment of the 2012 Armenian and Georgian elections was translated by the EU into short-term incentives such as additional financial assistance and further facilitation of the negotiations on the Association Agreements, including further trade and visa liberalisation. Furthermore, the medium-term incentives in Armenia were conditioned by the conduct of the 2013 presidential elections and in Georgia by a constructive period of cohabitation of the new prime minister and the president. Following the negative assessment of the Ukrainian elections, the EU's response – the signing of the AA – was further conditioned by improvements on the problematic issues of electoral reform, application of selective justice, and progress on the reforms outlined by the Association Agenda. The EU did not invoke negative conditionality. Consequently, under 'more for more', the EU's short- and long-term response evidenced stronger positive conditionality, facilitated by more flexible funding. Nevertheless, there is still neither a clear definition nor are there indicators of negative conditionality.

By basing its assessment on the OSCE/ODIHR reports, the EU benchmarks the election performance against its performance in meeting international standards relative to previous elections, rather than benchmarking it against international standards as such. This approach explains the difference between the assessments of the Armenian and Ukrainian elections in 2012: the Armenian elections showed substantial improvements with regard to democratic standards, while the Ukrainian elections were perceived as a step backwards. Even though electoral violations were recorded during the 2012 Armenian parliamentary elections and the 2013 presidential elections, they were nonetheless improvements compared to the 2008 presidential elections. This approach demonstrates a lack of precise and consistent standards for assessing

election performance within the framework of the EU's 'more for more' or 'less for less' response.

Whereas the task of the international election observers is to give a technical assessment of election performance, the EU could use the technical assessments as a base for further political evaluation of positive or negative democratic developments in the countries. Electoral assessments published by international actors play crucial a role in legitimising election results, however, it is only the EU that can incentivise those countries to comply with the recommendations stated in the technical reports. Using the OSCE/ODIHR technical reports as a base for the EU's own assessment, the EU could further develop it into political evaluation on the democratic process achieved by a given EaP country in the process of preparation and conduction of the elections as well as taking into account post-electoral developments. For this a proper methodological framework would be required in order to make evaluation impartial. This political evaluation could be similarly structured as the evaluation published in form of the Progress Reports by the EEAS and the European Commission. Otherwise, the application of positive conditionality in the case of partially flawed elections can create the perception that the EU legitimises the manipulation of elections. This enables incumbent authorities to claim victory without being accused of serious violations by international organisations. Only by introducing a political aspect to election assessments it is possible to reflect the authorities' political will to conduct genuinely free elections as well as the domestic political capacity to form viable alternatives. Ultimately, the EU should assess the political willingness of the incumbent authorities to implement a genuine democratic transition.

Positive conditionality should only be applied when election performance fully meets international standards. In case of partially positive assessments, the EU should further condition its response by implementing the OSCE's recommendations. The European Commission, EEAS and the EU Delegations should be closely involved in the OSCE/ODIHR follow-up missions, and the recommendations

should be incorporated in the Association Agendas and any new Roadmaps in order to create precise indicators of post-election performance. This should foster further policy convergence of election performance in terms of legislation and, most of all, implementation.

The analysis of the election performance highlighted three main problems: election manipulation, lack of public trust in the election process and the underdeveloped political scene. In all elections analysed, manipulation of elections created an uneven playing field. The fact that political parties are based on the personalities of their leaders and not on economic, social and political programmes emerges as the greatest impediment to further democratisation of these countries. The lack of funding for political parties and their insufficient institutional capacity is one of the key factors preventing the emergence of an inclusive political scene that could produce viable alternatives to incumbent authorities. Furthermore, with the pre-election periods lacking real debate, elections are dominated by personalities and not political programmes. The EU should further support the development of the political scene in its neighbouring countries. A stronger emphasis needs to be put on bilateral and multilateral assistance to support the development of political pluralism and foster genuine competition, which is essential for the existence of a 'deep and sustainable democracy'. The newly launched European Endowment for Democracy should target political parties and support their transformation from highly personalised platforms into programme-based organisations. European political groups should assist their partners in the neighbouring countries with capacity building and political development. They could also exert additional pressure on their partners to commit to genuine democratic elections by jointly developing electoral codes of conduct.

The EU's declared emphasis on the role of civil society has still not been put into practice as far as EaP's election performance is concerned. The EU's evaluation of the election process should present a more extensive assessment of both governmental and non-governmental organisations. Domestic NGOs should not only

be targeted when they provide election assistance but should also be included in the formulation of the election assessment and subsequent recommendations. Under the new approach, the aim was to 'move beyond simply providing financial support to non-state actors, towards enhancing engagement with civil society and increasing its involvement in the policy dialogue at the partner country level'¹²⁷. Therefore, the EU should streamline the proposed policy dialogue by supporting instruments aimed at establishing dialogue between government and civil society in the respective countries.

Civil society needs further development with regard to election performance; for example, the development of a national Task Force under the leadership of the EU Delegation would act as an umbrella, uniting efforts of various international and local organisations and allowing for greater involvement of civil society, maximisation of available funds, and a more comprehensive approach. It could become a hub for coordination between interested organisations, providing assessments of needs, technical assistance, training management, and most of all a platform for knowledge and best practice sharing. At the same time, it would increase awareness of the political context in the targeted country and would create space for discussions on improvements, for example the integration of technology into the election system. Additionally, joint press conferences would create a space for presenting and discussing findings and recommendations. The presence of NGOs would further the perception of impartial and non-partisan assessment. Furthermore, such cooperation would result in a harmonisation of recommendations across various organisations. Finally, the Task Force would become an additional actor involved in monitoring the implementation of recommendations.

Since the ruling parties of the neighbouring countries joined the European political groups as observers, the impartiality of the European Parliament's observing missions can be called

127 European Commission, 'Action Fiche for Neighbourhood Civil Society Facility 2011', Notes, accessed February 20, 2013, http://ec.europa.eu/europeaid/documents/aap/2011/af_aap-spe_2011_enpi.pdf.

into question. The EP's delegation should be expanded to include representatives of the EU Neighbourhood EAST Parliamentary Assembly (EURONEST); this expansion would not only strengthen the neutrality and non-partisan character of the subsequent assessment but would also further the feeling of joint ownership within the EaP framework. Therefore, the recently launched EaP Civil Society Forum Election Task Force should be used to further develop the civil society's capacity and strengthen its role in EaP's election assessment. Finally, based on the already functioning Visa Liberalisation Index¹²⁸, an Election Performance Index¹²⁹ could be created to serve as an additional watchdog tool for civil society. The index would rank countries of the EaP in terms of their performance in a number of fields, including various aspects of election administration as covered by the OSCE/ODIHR assessments. While the current approach demonstrates a greater commitment to democratisation and a willingness to apply stronger and more consistent conditionality, the EU still needs to ensure that election assistance and performance is translated into democratic change through a comprehensive strategy that would foster the emergence of a 'deep and sustainable democracy' in its neighbouring countries.

128 Eastern Partnership Visa Liberalisation Index is an assessment of the progress in visa liberalisation efforts conducted by a team of experts from the countries of the EaP and Poland. For details see the website <http://monitoring.visa-free-europe.eu/> (accessed March 10, 2012).

129 A similar project has been implemented with regard to US elections. The Pew Charitable Trusts released the first assessment of the US states' election administration, in which it attempted to rank them by benchmarking their performance against 17 indicators, including the accuracy of voting technology and the percentage of voters experiencing problems with registering or casting an absentee ballot. For details on the project see the website <http://www.pewstates.org/research/reports/elections-performance-index-85899445029> (accessed March 10, 2013).