

THE EUROPEAN UNION'S EASTERN PARTNERSHIP. SELECTED ISSUES AND THOUGHTS

1. Introduction

At the end of May and the beginning of June 2008 the main guidelines of the Eastern Partnership - an initiative prepared with assistance from Sweden - were presented by the Polish Minister of Foreign Affairs to the public opinion of Europe. The project promptly gained popularity and political support. As a result, on 19/20 June 2008, the European Council called on the Commission to elaborate an “Eastern Partnership” (EaP) project, emphasising the need for a differentiated approach respecting the character of the European Neighbourhood Policy as a single and coherent policy framework. The Extraordinary European Council of 1st September 2008 asked for this work to be accelerated, responding to the need for a clearer signal of EU commitment following the conflict in Georgia and its broader repercussions.² Relating to it, the Commission of the European Communities on 3 December 2008 published the Communication to the European Parliament and the Council entitled “*Eastern Partnership*”.³

The concept of the EU’s Eastern Partnership can be derived from an actual need for strengthening the European offer in the Eastern direction which has been forming in the past, as well as from the change in the Russian foreign policy towards its neighbours over the last several years.⁴

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2 It’s an interesting point that on 12 October 2008 Georgia brought an application before the International Court of Justice against the Russian Federation in connection with the armed conflict which had occurred between the countries.

3 See.: *ibid.*, COM (2008) 823 the execution version.

4 More on the issue in: K. Malak, *Strategia polityczna Rosji wobec Unii Europejskiej. Uwarunkowania strategii*, in: *Pozycja Unii Europejskiej w świecie - aspekty prawne i polityczne*, C. Mik (ed.), Toruń 2005, pp. 143-158.

In principle, the Eastern Partnership is to be based on the European Neighbourhood Policy (ENP), however going beyond their present form and reaffirming, on the one hand, the rule of differentiation towards neighbours, in accord to the ENP, as well as, on the other hand, the reinforcement of horizontal bounds between them and the European Union. In this context, the following steps were proposed:

- to strengthen bilateral co-operation in the areas where the offer of deeper integration with the European Union should engage all its Eastern partners. In the first place Ukraine will be a beneficiary; other countries will join, taking into account their ambition and achievements;
- to create a framework for multilateral co-operation, complementary to the existent frameworks of regional co-operation.

At the European Council's meeting held on 19/20 March 2009 in Brussels the declaration on launching of the Eastern Partnership was approved, presented in Annex 2.⁵ It was pointed out that promoting stability, good governance and economic development in its Eastern neighbourhood is of strategic importance for the European Union. The EU therefore has a strong interest in developing an increasingly close relationship with its Eastern partners - Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine. This proposal for an ambitious - in its promoters' opinion - Eastern Partnership to be established with these countries serves this objective. The latter should bring about a significant strengthening of EU policy with regard to its Eastern partners by seeking to create the necessary conditions for political association and further economic integration between the European Union and its Eastern partners through the development of a specific Eastern dimension of the European Neighbourhood Policy.⁶ To achieve this, the Eastern Partnership seeks to support political and socio-economic reforms, facilitating approximation and convergence towards the European Union. In the same vein, the Eastern Partnership will help to build trust and develop closer ties among the six Eastern partners themselves. Furthermore, the European Council concluded

5 *Presidency Conclusions*, Council of the European Union, Brussels - 20 March 2009, CON-CL 1, 7880/09.

6 An interesting commentary on the issue is presented in: *Białoruś – w stronę zjednoczonej Europy*, M. Maszkiewicz (ed.), Kolegium Europy Wschodniej im. Jana Nowaka-Jezioranckiego, Wrocław 2009.

that works under the Eastern Partnership will go ahead without prejudice to individual participating countries' aspirations for their future relationship with the European Union, governed by the principles of joint ownership, differentiation and conditionality. It was adopted that shared values including democracy, the rule of law, and respect for human rights will be at its core, as well as the principles of market economy, sustainable development and good governance. Increased European Union engagement will be in line with the main goals of the Eastern Partnership, depending on the progress made by individual partners.

Increased financial assistance - in line with the Commission's proposal it will bring to the total amount to € 600 million for the period to 2003 - will be granted with a respect for resources available under the multiannual Financial Framework, including adequate margins. It was clearly emphasized that no new fund or financial system had been established. The Eastern Partnership is to be an efficient complement to existing regional initiatives in the EU's neighbourhood, in particular the Black Sea Synergy. With regard to the latter, the European Council underlines the EU's positive commitment, noting that its focus is on regional cooperation in the Black Sea region, whereas the Eastern Partnership focuses on approximation and will strengthen the links of partner countries with the EU, in parallel with at least neutral influence on the co-operation between the EU and third countries. In this case it is obvious that the point concerns Russia.

The European Council envisaged that bilateral co-operation under the Eastern Partnership should provide the foundation for new Association Agreements between the EU and those partners who have made sufficient progress towards the principles of market economy, sustainable development and good governance and such values as democracy, the rule of law, and respect for human rights, and who are willing and able to comply with the resulting commitments - including the establishment, or the objective of establishing, deep and comprehensive free trade areas. The European Union's Comprehensive Institution-Building Programmes will help the participating countries to improve their administrative capacity. The Eastern Partnership will promote mobility of citizens of partner countries through visa facilitation and readmission agreements. In line with the Global Approach to Migration - the EU should also take gradual steps towards full visa liberalisation as a long term goal for individual partner countries and on a case by case

basis, provided that conditions for well-managed and secure mobility are in place. The Eastern Partnership aims to strengthen the energy security cooperation of all participants with regard to long-term energy supply and transit, including through better regulation and energy efficiency. It will put at the disposal of partners the EU's experience and expertise in economic development policies.

While the multilateral framework of the Eastern Partnership will provide for co-operation activities and dialogue serving the objectives of the Partnership. The Partnership should operate on a basis of joint decisions of EU member states and Eastern partners, without prejudice to the decision making autonomy of the EU. The European Council proposed to hold regular meetings - in principle once every two years - at the level of heads of state or government of the Eastern Partnership, and - once a year - at the level of foreign ministers. It also recommended to establish four thematic platforms according to the main areas of co-operation:

- 1 – democracy, good governance and stability;
- 2 – economic integration and convergence with EU policy;
- 3 – energy security;
- 4 – people-to-people contacts.

The European Council also supported the launching of Flagship Initiatives in order to give momentum and concrete substance to the Partnership, noting that it looks forward to an early discussion with the partners in this regard. Third countries will be eligible for participation in concrete projects, activities and meetings of thematic platforms, if it contributes to the objectives of particular activities and the general objectives of the Eastern Partnership on a case-by-case basis.

From an institutional perspective, the Eastern Partnership will engage a wide range of actors, including government ministries and agencies, parliaments, civil society, international organizations, financial institutions and the private sector.

Finally, the European Council authorized the European Commission - on the basis of the quoted document - to hold necessary consultations with the Eastern partners for preparation of the joint declara-

tion on the Eastern Partnership, which was adopted on 7 May 2009 in Prague during the summit launching the Eastern Partnership.

2. The Eastern Partnership in relation to self-determination

The preparatory works on the European Union's Eastern Partnership and adopted, up to now, official statements of the EU's institutions recognize the weakness of attempts aiming to reshape relations with the Eastern neighbours, accompanied by Russia's skeptical and sometimes negative attitude. The latter (and previously USSR) has efficiently deformed the right of self-determination of newly formed states in its former area of influence, comprehended as a classical concept of international law.⁷ The Eastern Partnership was envisaged thus to counterbalance the intervention doctrine which deforms the concept of self-determination and limits the emancipation of relevant states. Presenting the Eastern Partnership's objectives to the European Parliament and the Council (which was mentioned above), the European Commission drew public attention to the problem which had been casually or opportunistically taken into consideration, i.e. the approach to own statehood and foreign policy (including integration policy) of the countries to which the EU's Eastern Partnership is addressed. It is evident that the post-Soviet origins and the location in the non-formal, however perceptible, area of the main USSR successor's - i.e. the Russian Federation's - influence determine the both cases. Such a situation prevents the countries from independent decision-making in international relations, but often also provokes an unintentional deadlock in implementation of such concepts as market economy, competition, and even human rights. The European Union's Eastern Partnership creates important counterbalance to the situation, indirectly promoting the European concept of self-determination *sensu largo*.

It can be assumed that the countries to which the European Union's Eastern Partnership is addressed - willing to receive envisaged funds and to establish advantageous economic co-operation in general - will start the Europeanization - in explicit terms or rather indirectly. Certainly, the EU will consistently put emphasis on human rights,

7 I wrote on the subject in: *Samostanowienie w prawie międzynarodowym*, Wydawnictwa Prawnicze PWN, Warsaw 2001.

the protection of minorities, the sustainable natural resources management, etc. Even if the result is not rewarding right away, even if it is completely insignificant, it is crucial that it has the chance to be realized. In international practice the social emancipation processes have usually required only an incentive to move from the place and progress relentlessly, sometimes slowly though. It is important for the incentive to be optimal. Practice will show if the Eastern Partnership can be considered as one. And the doctrine?

So far, it is hard to find reliable bibliographical references in the doctrine, at least in a self-contained perspective. The endeavour is absolutely new and academically “virgin”. It hardly means that a researcher has to observe it, awaiting for the “appropriate time” to pass. The researcher can and should analyse the European Union’s Eastern Partnership, but from the angle of classical concepts scientifically verified. In this way, the unquestionable frame of reference is obtained. Self-determination (or the European concept of it) can undoubtedly serve as it in regard to the EU’s Eastern Partnership, based on documents, academic publications and opinions of political leaders. The Polish contribution to the EU’s Eastern Partnership concept remains of a great importance, which in addition gives credence to the national doctrine. Polish and foreign publications concerning self-determination in international law do not refer to the influence of the European integration on state formation and integration processes and on the concept of a state in the Eastern Europe and the Southern Caucasus - or do not consider the entirety of it. Thorough research in the area of the European integration and appropriate publications seems indispensable due to the lack of sources. The objective of science is to explain what is barely explored and complex to civil society - in a way as simple as possible. For this reason, the analysis of the Eastern Partnership’s influence on self-determination in the Eastern Europe and the Southern Caucasus should reach not only researchers, but also civil society.

3. The Eastern Partnership in relation to human rights

While envisaging the Eastern Partnership its originators clearly emphasized that it should be more ambitious than any other former partnership. The participants of the Prague Summit agree that the Eastern Partnership will be based on commitments to the principles

of international law and to fundamental values, including democracy, the rule of law and the respect for human rights and fundamental freedoms, as well as to, market economy, sustainable development and good governance. Thus, also here (in the EU's Eastern Partnership) the progressive character of human rights has been emphasized. It seems that there are several reasons to it.

The main goal of the Eastern Partnership is to create the necessary conditions to accelerate political association and further economic integration between the European Union and interested partner countries. The significant strengthening of EU policy with regard to the partner countries will be brought about through the development of a specific Eastern dimension of the European Neighbourhood Policy. With this aim, the Eastern Partnership will seek to support political and socio-economic reforms of the partner countries, facilitating approximation towards the European Union. This serves the shared commitment to stability, security and prosperity of the European Union, the partner countries and indeed the entire European continent.

The Eastern Partnership carries a clear political message about the need to maintain and bolster the course towards reforms. The Eastern Partnership will provide additional impetus to the economic and social and regional development of the partner countries. It will facilitate good governance, including in the financial sector, promote regional development and social cohesion and help to reduce partner countries' socio-economic disparities. In this way, the Eastern Partnership will be complementary to macro-economic assistance provided through relevant international instruments.

The priority character of human rights among other basis of the European Union's Eastern Partnership involves deeper bilateral engagement, especially by supporting mobility of citizens and visa liberalisation in a secure environment. The latter also includes energy security.

At the same time focus on multilateral co-operation is envisaged, particularly through four thematic platforms, organized by the European Commission, which will allow for target-oriented sessions and serve for open and free discussions, on the basis of the main areas of cooperation, namely Democracy, good governance and stability; Economic integration and convergence with EU sectoral policies; Energy

security; and Contacts between people. In this context, the participants of the Prague Summit invite the European Commission to develop and propose modalities for the establishment of a Civil Society Forum of the Eastern Partnership.

4. The Eastern Partnership in relation to cross-sector partnership

In the recent years, the form of co-operation between a body of public origin (at least in a formal meaning) and a private party (commercial or non-governmental) is a subject of intensive popularization, particularly in the United Kingdom and Germany. In most cases it demonstrates as public-private partnership, however, at the same there can be found such variations as: public-social partnership, project partnership and civil-law partnership. Overall they can be considered as cross-sector partnerships.⁸

International law does not contain any direct regulations concerning cross-sector partnerships directly. The issue occurs indirectly - in the areas with lack of states' operative effectiveness (ocean bed exploration, satellite activities). Whereas, as an individual notion, it is mainly raised as a postulate in works of UN-DP, UN-DESA, UN-CSD, etc.⁹

So far the EU's regulations consider only cross-sector programming in the context of the socio-economic strategy, as well as legislative attempts. It can be referred to, using the professional jargon, as a kind of "soft law".¹⁰ Nevertheless, it is worth indicating *inter alia*:

- European Commission's Guidelines for successful public-private partnerships published in 2003 (I/II);

8 On the issue see: *Partnerstwo międzysektorowe. Możliwości, zasady, realizacja*, M. Perkowski (ed.), Law and Partnership Foundation, Białystok 2009.

9 Cf.: T. Borys, *Partnerstwo jako zasada zrównoważonego rozwoju* and E. J. Stroes, *Partnerstwo Publiczno-Prywatne na rzecz zrównoważonego rozwoju*, in: *Zarządzanie zrównoważonym rozwojem. Agenda 21 w Polsce – 10 lat po Rio*, T. Borys (ed.), Białystok 2003, p. 196 et seq. and p. 213 et seq.; M. Perkowski, *Partnerstwo publiczno-prywatne w ujęciu międzynarodowym. Natura koncepcji*, in: *Partnerstwo publiczno-prywatne. Zagadnienia teorii i praktyki*, M. Perkowski (ed. - with a preface by C. Kosikowski), Białystok 2007, p. 44 et seq.

10 A. Łazowski, *Źródła prawa Unii Europejskiej*, in: *Wymiar sprawiedliwości Unii Europejskiej. Wybrane zagadnienia*, M. Perkowski (ed.), Warsaw 2003, p. 24 et seq. Cf.: A. Jurewicz, *Soft law w prawie Wspólnot Europejskich*, „Przegląd Legislacyjny. Kwartalnik Rady Legislacyjnej” 1997, no 4, p. 31-44.

- Green Paper on public-private partnerships and Community law on public contracts and concessions (30 April 2004);
- Opinion of the Committee of the Regions of 17 November 2004 on the *Green Paper on public-private partnerships and Community law on public contracts and concessions*;
- Opinion of the European Economic and Social Committee of 27 October 2004 on the *Green Paper on public-private partnerships and Community law on public contracts and concessions*;
- Opinion of the Committee of the Regions of 23 February 2005 on *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the White Paper on services of general interest*
- Eurostat’s Treatment of public-private partnership (11 February 2004).¹¹

Although, in principle, there are no EU “hard” regulations with regard to cross-sector partnership, the EU “hard law” should also be taken into consideration. While collaborating between sectors, eventually one will come across the EU fundamental legal principles such as the non-discrimination rule, economic freedom, protection of competition and the supremacy of European Union law and direct effect. Polish cross-sector partnerships are obliged to respect them! For that reason, all decision making done by the Polish legislator should be in reference to the EU law.¹² From an optimistic point of view, there is the tendency to see the Polish legislative proposals concerning cross-sector partnership presented in the European Union forum as a protection of the Polish specificity in the future EU regulation.

11 For further information on the EU’s documents concerning PPP see: B. Korbus, *Wskazówki Komisji Europejskiej dotyczące Partnerstwa Publiczno–Prywatnego*, Office of the Committee for European Integration/Institute for Public-Private Partnerships, Warsaw 2005; furthermore: K. Brzozowska, *Partnerstwo publiczno–prywatne. Przesłanki, możliwości, bariery*, Warsaw 2006, p. 135 et seq.; J. Jacyszyn, T. Kalinowski, *Partnerstwo publiczno–prywatne na tle regulacji prawnych*, R. Kujawski (ed.), Warsaw 2005, p. 15 et seq.; M. Moszoro, *Partnerstwo publiczno–prywatne w monopolach naturalnych w sferze użyteczności publicznej*, Warsaw 2005, p. 209 et seq.

12 The jurisprudence of the European Court of Justice should be also considered. The Court’s recent judgement of 11 May 2009 in the case of Carbotermo SpA, Consorzio Alisei v. Comune di Busto Arsizio, AGESP SpA. C-340/04 brings about an interesting example.

According to the Prague Summit arrangements, the Eastern Partnership should contain an innovative approach to promote joint ownership and deeper cooperation between the public and private sectors. Pro-active political support and the EU incentives and guarantees for the private sector should create the conditions for motivating the private sector to invest in the concrete projects in the partner countries and thus contributing to the attainment of the EU's Eastern Partnership goals. Hopefully, the particular feedback will occur inspiring the national trade to initiate cross-sector partnership.

5. Summary

As of today, the EU's Eastern Partnership is perceived chiefly as a great potential. It is possible to detail its priorities, the main areas of co-operation, even its innovation. So far these are, however, activities remaining in the abstract. The potential requires to be realized in practice. At that time, problems will appear as an ultimate validator to the whole concept. And it was the latter which was proposed to reform such problem situations. Will the EU's Eastern Partnership manage to achieve the ambitiously set goals? Practice will give the impatiently awaited answer.