

# **THE IMPACT OF THE EUROPEAN UNION UPON DEMOCRATIZATION IN UKRAINE**

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## **Abstract**

This research explores the effectiveness of EU democratization policies towards Ukraine. The time-frame covers the period from the signing-up of the Partnership and Cooperation Agreement between the EU and Ukraine in June 1994 till February 2007, when the latest evaluation of the implementation of the ENP Action Plan for Ukraine was done. After the qualitative assessment of the content of EU democratization policies, I will argue that the EU strategic interests towards Ukraine always predetermined the character of democratic conditions and the size of the rewards suggested to Ukraine for the implementation of democratic reforms. The fact that the EU is not yet ready to integrate Ukraine into its institutions explains the vagueness of the democratic conditions and the mere scope of political incentives. Nevertheless, even providing precise and ‘negative’ democratic conditionality for Ukraine, the EU hardly intends to break the relationship and leave Ukraine out of the European orbit even if Ukraine violates democratic provisions. After the Orange revolution of December 2004, the shift in the political regime of the country proved that pro-democratic government can implement democratic reforms even under imprecise conditions from the side of EU. Still, integration incentives could have contributed to the stability of democratic initiatives of new Ukrainian government.

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## Introduction

The last wave of the EU enlargement marked an important stage in the economic, political and cultural development of Europe. The full membership of seven Central Eastern European countries and three Baltic states in the European Union ought to prove their achievement of democratization. The most powerful project of economic integration among European countries demanded ‘adherence to liberal democracy, market economy, rule of law and minority rights,’<sup>1</sup> known as Copenhagen criteria for accession. These criteria were completely different from the de-facto essence of the state socialist system.

Consequently, after the latest wave of accession into the EU, the following questions appeared to be in the focus of intensive scholarly debates. The first question was: ‘To what degree will the EU change its approach towards the new EU-geographically neighboring countries? The second can be formulated as follows: ‘Should the EU change its policy towards these countries?’ The prospect of acquiring new direct neighbors together with the new members raised the issue of reevaluating policies towards non-member states.

Thus the answers to the stated questions have partially found reflection in the European Neighborhood Policy developed in 2004 just before the accession of Romania and Bulgaria. Such scholars as Karen E. Smith<sup>2</sup> and Flemming Splidsboel Hansen<sup>3</sup> asserted that the European Neighborhood Policy was obviously an attempt to approximate the values and beliefs of new directly neighboring countries to European norms and values. ‘The newly

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<sup>1</sup>European Council in Copenhagen, “*Conclusions of Presidency*,” 21-22 June 1993. . [http://ue.eu.int/ueDocs/cms\\_Data/docs/pressdata/en/ec/72921.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/ec/72921.pdf) (accessed on the 23d of April, 2007).

<sup>2</sup> Karen E. Smith, “The outsiders: the European neighborhood policy,” *International Affaires* 81, no. 4 (2005): 757-773.

<sup>3</sup> Flemming S. Hansen, “The EU and Ukraine: Rhetorical Entrapment?” *European Security* 15, no. 2 (June 2006): 115 -135.

enlarged European Union [should] be surrounded by a ‘ring of friends’.<sup>4</sup> Among those values and beliefs, which the newly-neighboring countries, obviously, should share, ‘democratic norms’ appear to be of the highest priority.

Following the geographical expansion of the EU borders, the issue of faster democratization became one of the key priorities in the agenda towards the new directly-neighboring countries, especially to those that express their desire to become EU members in the nearest future. The reason for this is that the quality of democratic performance inside a country has a considerable impact upon the overall character of cooperation with the EU. Moreover, the EU has always positioned itself ‘as a strong normative center, and the success of democratization in a new direct neighborhood would only support this idea.’<sup>5</sup>

Among all the countries included into the European Neighborhood Policy, Ukraine is one of the most interesting cases. The history of the relationship of the EU with Ukraine started long ago in 1994 when *the Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine* (PCA) was signed. Since 1996 Ukraine has been repeating that EU membership remains its strategic objective.<sup>6</sup> Nevertheless, it seems that the inability to meet certain economic and political criteria prevents its movement towards accession and convergence with EU norms and values.

The political criteria generally encompassed the issues connected with ‘[strengthening] the stability and effectiveness of institutions guaranteeing and the rule of law, further judicial and legal reforms, ensuring the effectiveness of the fight against corruption, fostering the development of civil society’<sup>7</sup>. These criteria actually answered the essence of the definition of ‘substantive democracy’ suggested by many scholars on democratization,

<sup>4</sup> Karen E. Smith, “The outsiders: the European neighborhood policy,” *International Affairs* 81, no. 4 (2005): 757.

<sup>5</sup>Jeffrey Pridham, *The Dynamics of Democratization. A Comparative Approach* (Library of Congress, 2000), 299.

<sup>6</sup>Kataryna Wolczuk, “Integration the European without Europeanization: Ukraine and Its Policy towards Union,” *EUI Working Papers* RSCAS No. 2004/15: 8.

<sup>7</sup>Jeffrey Pridham, *The Dynamics of Democratization. A Comparative Approach* (Library of Congress, 2000), 4-5.

such as Geoffrey Pridham<sup>8</sup> and Laurence Whitehead<sup>9</sup>. The main problem is then why the process of implementing EU democratization policies takes so long in Ukraine. This question becomes more interesting regarding EU acquisition of new direct neighbors and EU desire to create a ‘ring of friends’ around it and the democratic breakthrough in Ukraine of 2004, known as the Orange revolution.

Therefore, this thesis will investigate the conditions under which the EU becomes a successful external driving force which democratizes a country that has never been granted the status of an accession candidate, namely Ukraine. Therefore, the main research question is follows what determines the successful democratization policy of the EU towards a country without the status of an accession candidate, namely Ukraine. In order to answer this research question, I will test the following hypotheses.

The first hypothesis suggests that the absence of clear and elaborated democratic conditions for the fulfillment by Ukraine and credible rewards in exchange for this fulfillment from the side of the EU hinders democratization. The second hypothesis suggests that ‘the costs and capabilities of the agency implementing conditionality’<sup>10</sup> actually determine the success or failure of EU policies towards democratization in Ukraine. Taking into consideration that it is Ukrainian government that was supposed to implement democratic reforms, the established regime type and the existence of veto-players that would oppose democratization or as in case of Ukraine question the legitimacy of Kuchma’s regime can explain marginal impact of the EU upon democratization in Ukraine.

The elaboration of the hypotheses demands to split the main research question into several sub-points that are supposed to reflect the interaction between EU policies as an

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<sup>8</sup> Ibid.

<sup>9</sup> Laurence Whitehead, *The International Dimensions of Democratization: Europe and the Americas* (Oxford University Press, 1996).

<sup>10</sup> Frank Schimmelfennig and Ulrich Sedelmeier, ‘Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe,’ *Journal of European Public Policy* 11, no.4 (August 2004): 666



international institution and domestic internal politics. The sub-issues revealing the performance of the EU are the following:’ What kind of policy does the EU download in order to guarantee the certain outcome of democratic reforms in countries with non-candidate status, namely Ukraine? What is the scope and content of these democratic conditions? Could too rigid democratic conditionality in exchange for minor rewards actually hinder democratization? Does EU perception of the benefits for the implementation of democratic reforms coincide with Ukrainian one?

The next group of sub-questions addresses the domestic reaction towards EU policies: ‘What is the character of domestic regime established in Ukraine after gaining its independence? How does it influence the performance of democratic reforms? Are there any veto-players that can foster or oppose democratization?’

I will argue that the content of EU democratization policies towards Ukraine have not changed over time. The scope of democratic principles to adhere or to fulfill is broad embracing both the concept of ‘formal’ and ‘substantial’ democracy. But the problem is that EU never fully elaborated the precise steps to attain these democratic conditions, thus leaving room for the interpretation of the success of achievements by both sides: EU and Ukraine.

Moreover, I will show that the perception of rewards for the implementation of the whole package of reforms including democratic ones was different between the two sides. While at the present moment Ukraine is interested in getting a strategic reward like ‘perspective of full membership,’ the EU shows itself as a cautious actor aiming at getting, firstly, the guarantees of a pro-democratic course taken by President Yushchenko and his government.

Thirdly, I will argue that at the earlier stage of relationship between the EU and Ukraine, the regime of President Kuchma did not allow a democratic breakthrough in terms of reforms. While the regime of Yushchenko even under the conditions of the lack of the

expected rewards and the vagueness of some democratic conditions started the implementation of EU democratization policies.

Taking into consideration the research question and hypotheses, the concept of democratization will be argued from two different dimensions: the international and domestic ones. Literature on democratization provides various explanatory factors for the transition to and consolidation of democratic systems mostly focusing on evaluating ‘necessary economic, social and cultural preconditions for democracy: functionalist theories’<sup>11</sup> or putting ‘emphasis on political choice and actions of the elites: genetic theories’<sup>12</sup>.

The study of the impact of the international context upon democratization appears to be more difficult. Firstly, it embraces a number of actors: ‘either international organizations, foreign governments of superpowers and countries in the same region or a range of non-governmental transnational actors’<sup>13</sup>. Secondly, due to the absence of the unitary type of influence by international actors it is difficult to propose a common theoretical framework for explaining the linkage between the international context and domestic policies.

Since this thesis deals with the impact of the EU upon democratization, I will primarily concentrate on the ‘Europeanization’ theoretical framework that focuses on EU capacity to influence the processes of domestic change including democratization. Thus ‘Europeanization’ appears to be a means of fostering democratic transition and further democratic regimes’ consolidation. The ‘Europeanization’ framework can serve as a bridge between different theories of democratization, since its mechanisms can successfully unite explanatory variables of different democratization theories: EU democratization policies to influence the domestic changes inside a targeted country, the political choice and actions of the domestic elites, cultural preconditions for democracy.

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<sup>11</sup> Jeffrey Pridham, *The Dynamics of Democratization. A Comparative Approach* (Library of Congress, 2000), 5.

<sup>12</sup> Ibid.: 9.

<sup>13</sup> Jeffrey Pridham, Eric Herring, and George Sanford, *Building Democracy? The International Dimension of Democratization in Eastern Europe* (St. Martin’s Press, 1994), 11.

The ‘logics of consequentialism’<sup>14</sup> as one of the mechanisms of ‘Europeanization’ theoretical framework is applicable towards explaining the success or failure of the EU in the process of Ukraine’s democratization. Firstly, since it presents a tested explanatory scheme of the linkage between the EU and domestic ruling actors in terms of internal policy changes. Secondly, since it was basically tried on the current new members, it could be interesting to apply the scheme towards a non-member state with a special focus on the EU policies and Ukrainian domestic adaptation or resistance to them after the introduction of the ENP.

In this research, the concept of ‘democratization’ includes not only the definition of ‘formal democracy’<sup>15</sup> used by scholars of democratization to describe the transition to a new type of political regime as the first phase of democratization but also the definition of ‘substantive democracy’. The definition of ‘substantive democracy’ is used to evaluate the consolidation of the democratic regime in a country and to judge the establishment of liberal democracy<sup>16</sup>. The fact that I do not restrict myself only to one of the two definitions of democratization is justified since this will actually allow me to explore at which phase of democratization Ukraine is actually standing due to the impact of the EU. Each of the definition of democracy includes certain features according to which this exploration will be performed.

In order to test the suggested hypotheses and to answer the main research questions and its sub-questions I will employ the following methodology. Firstly, the analysis of the legal basis of the relationship between the EU and Ukraine will help to distinguish what kind of democratic commitments are demanded from Ukraine by the EU. This kind of analysis will actually help to evaluate the dynamics of the development of the EU democratic demands towards Ukraine. From this evaluation I will infer whether the essence of those demands has

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<sup>14</sup> James G. March and Johan P. Olsen, “The Institutional Dynamics of International Political Orders,” *International Organization* 52, no. 4 (1998): 943-969.

<sup>15</sup> Jeoffrey Pridham, *The Dynamics of Democratization. A Comparative Approach* (Library of Congress, 2000), 4-5.

<sup>16</sup> *Ibid.*: 4-5

changed over time regarding the domestic policies' performance in Ukraine or not. Moreover, the documents reflect the character of the rewards suggested in exchange of the democratic reforms' implementation. Thus, I will also assess the dynamics of the change of the rewards' content for the implementation of the democratic reforms.

The documents' analysis will include 2 basic agreements, mutually binding Ukraine and the EU to certain commitments: *Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine* (PCA)<sup>17</sup> signed in 1994 and ratified in 1998 and *the European Neighborhood Policy EU/Ukraine Action Plan*<sup>18</sup> adopted by the Ukraine- EU Cooperation Council on the 21<sup>st</sup> of February 2005. These documents present the central pillar of the relationship between the EU and Ukraine elaborating the issue of 'political dialogue and reform'.

The next step is the analysis of Ukrainian legislature in terms of the introduction of new laws under the impact of the EU that will prove the instrumentalization of democratic rules and procedures from the side of Ukraine. Moreover, that kind of analysis will help to reveal the scope of democratization reached whether the laws concern only the concept of 'formal' or 'substantial' democracy. The main point here is actually to judge whether the introduction of new laws supposed to improve democratic performance in the country is performed with reference to EU incentives. That can be traced by reviewing plans of measures on the implementation of the basic Ukraine-EU agreements and reports on the implementation issued by both Ukrainian and EU side, unilaterally and jointly. The reports from both sides should be regarded since it will allow looking for gaps in the evaluation of democratic performance in Ukraine by EU and Ukrainian officials if there are any.

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<sup>17</sup> Partnership and Cooperation Agreement between the European Communities and their Member States and Ukraine, 16 June 1994. [http://ec.europa.eu/external\\_relations/ceeca/pca/pca\\_ukraine.pdf](http://ec.europa.eu/external_relations/ceeca/pca/pca_ukraine.pdf) (accessed May 31, 2007).

<sup>18</sup> EU/Ukraine Action Plan [http://ec.europa.eu/world/enp/pdf/action\\_plans/ukraine\\_enp\\_ap\\_final\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf) (accessed May 31, 2007).

Since the legal documents and reports reflect the final outcome of the interaction between the EU and Ukraine over democratic performance, it is interesting to look at the statements of EU and Ukrainian officials regarding democratization in Ukraine and the Ukrainian aspirations to enter the EU. These statements actually aggregate uncertainty and shifts in the evaluation of the possible rewards for democratization in Ukraine from the side of EU officials. The statements released by Ukrainian officials could help to judge whether there is dissemination of democratic values among the ruling elites at least on the level of rhetoric and what the values' orientation of those elites is.

The limits of this research lie in the fact that the international dimension of democratization in Ukraine covers not only the impact of the EU, but the influence of other actors that are engaged in democracy promotion in third countries such as the USA, NATO, the Council of Europe and OSCE. Thus, in order to have a full vision of international dimension of democratization in Ukraine, it is necessary do further research about the influence of the enumerated actors. The next limit of the research is the issue of cross-conditionality. As Kahler<sup>19</sup>, Killick<sup>20</sup>, Schimmelfennig and Sedelmeier argued 'EU conditionality would not be effective if the target government had other sources offering comparable benefits at lower adjustment costs.'<sup>21</sup> In case of Ukraine it can be further comparative study of such an intervening variable as Russian policy towards Ukraine in terms of suggested economic benefits and adjustment costs versus EU policies of democratization and its adjustment costs.

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<sup>19</sup> M Kahler, "External Influence, conditionality, and the politics of adjustment," in *The Politics of Economic Adjustment*, ed. S. Haggard and R. Kaufman, (Princeton: Princeton University Press, 1992), 104-111.

<sup>20</sup> Tony Killick, 'Principles, Agents and the Failings of Conditionality,' *Journal of International Development* 9, no. 4 (1997): 483-495.

<sup>21</sup> Frank Schimmelfennig and Ulrich Sedelmeier, 'Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe,' *Journal of European Public Policy* 11, no.4 (August 2004): 666.

# Chapter 1: Explaining Democratization by External Actors:

## Theoretical Framework

### ***Introduction***

This chapter deals with the conceptualization of the term ‘democratization’ for the research. Thus, firstly, it gives a theoretical outline of what is meant under ‘democratization’. Secondly, the chapter explains the relevance of ‘Europeanization’ theoretical framework and its mechanisms for the evaluation of the causality between EU democratization policies towards Ukraine and the character of democratic performance in this country. Thirdly, the chapter elaborates upon the main characteristic features of the two mechanisms of ‘Europeanization’, namely the ‘logic of consequentialism’ and ‘the logic of appropriateness’.

### ***1.1 Conceptualizing Democratization***

Democratization as the study of political regime change attracted a new wave of scholarly interests from political scientists and sociologists after the collapse of the communist regime in Eastern Europe and disintegration of the Soviet Union. Such prominent scholars as Rustow<sup>22</sup>, Schmitter and G. O'Donnell, Kaldor and Vejvoda<sup>23</sup>, Pridham<sup>24</sup> and Whitehead<sup>25</sup>, Linz and Stepan devoted a number of their works towards studying the factors that led to the successful democratic transition in the former post-communist countries and later consolidation of a liberal democratic regime. These factors included structural, namely, social, economic, political, cultural prerequisites as well as the preconditions determined by

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<sup>22</sup> David Rustow, “Transitions to democracy: towards a dynamic model,” *Comparative Politics* (April 1970): 343.

<sup>23</sup> M. Kaldor and I. Vejvoda, ‘Democratization in Eastern and Central European countries’, *International Affairs* 73 (January 1997): 62.

<sup>24</sup> Geoffrey Pridham, *The Dynamics of Democratization: a comparative approach*. London: Continuum, 2000.

<sup>25</sup> Laurence Whitehead, *The International Dimensions of Democratization: Europe and the Americas*. Oxford University Press, 1996

the agents'- elites' desire to implement reforms. Some focus was given to the international context in which the domestic changes occurred.

The fact is that all the authors of this field acknowledge the multi-stage and multi-dimensional character of this process. The difference was to what kind of approach each of them adhered in determining explanatory factors of democratization: functionalist, transnational or genetic.

Since this research is aimed at evaluating the impact of the supra-national institution, namely the EU upon democratic performance in Ukraine, it seems reasonable to look at the definitions of democratization given by the scholars who study the international context of democratization. Thus, democratization is defined as 'the process of regime change from authoritarian or totalitarian rule to the rooting of a new liberal democracy'<sup>26</sup>.

Consequently, one can infer from this definition that the final outcome of democratization process is the consolidation of a liberal democracy in a country. That's why in order to evaluate the impact of the EU upon democratization in Ukraine it is necessary to define the character of which stage of democratization will be judged: democratic transition or democratic consolidation or both.

The fact is that each of the mentioned stages implies a certain type of democracy that is supposed to be reached in a country, thus a country is often referred to as either to a country of democratic transition or to a country of consolidated democracy. Democratic transition is characterized by the achievement of the level of 'formal' or 'procedural democracy' in a country which serves as the basis for 'substantive democracy' as an essential feature of 'consolidated' democratic regime. Thus, I infer that democratization in Ukraine can be conceptualized as the process of regime change from the former communist system to such an

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<sup>26</sup>Laurence Whitehead. *The International Dimensions of Democratization: Europe and the Americas* (Oxford University Press, 1996): 16

transitory status as ‘procedural’ or ‘formal’ democracy and finally resulting in the establishment of a liberal democratic regime.

Assessing impact of the EU upon democratization in Ukraine will imply the evaluation of the influence upon both stages of democratization: democratic transition with the establishment of formal democracy and democratic consolidation into a liberal democratic state. Both stages are taken into consideration since only in this case I can judge about how comprehensive and strategic EU democratization policy is. Finally, the impact of the EU upon democratization in Ukraine is the influence that the EU exerts upon the establishment of rules and procedures that answer, firstly, the concept of ‘formal’ or ‘procedural’ democracy regime and, secondly, the concept of a liberal democratic regime.’

The definition of ‘formal or procedural’ democracy belongs to the minimalist one. Still among the scholars of democratic theory there is a debate to what degree this definition should be minimal. One of the classical definitions of ‘formal democracy’ was suggested by American social scientist Joseph Schumpeter. He referred to democracy as an ‘institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote.’<sup>27</sup> Thus, the concept of ‘formal democracy’ has the following characteristic features: the competitive form of access to the positions of political decision-makers by means of elections.

Robert Dahl has offered the most generally accepted listing of the ‘procedural minimum’ conditions that must be present for modern political democracy. Thus, in his *‘Polyarchy: Participation and Opposition’* and later *‘Dilemmas of Pluralist Democracy’* he referred to these characteristics:

- “Control over government decisions about policy is constitutionally vested in elected officials;

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<sup>27</sup> Joseph Schumpeter, *Capitalism, Socialism and Democracy* (London: George Allen and Unwin, 1943), 269



- Elected officials are chosen in frequent and fairly conducted elections in which coercion is comparatively uncommon;
- Practically all adults have the right to vote in the election of officials;
- Practically all adults have the right for elective offices in the government;
- Citizens have a right to express themselves without the danger of severe punishment on political matters;
- Citizens have a right to seek out the alternative sources of information. Moreover, alternative sources of information exist and are protected by law;
- Citizens also have the right to form relatively independent associations or organizations, including independent political parties and interest group.”<sup>28</sup>

Evaluating the impact of the EU upon democratization in Ukraine, I will judge whether the content of EU democratic conditions suggested to Ukraine for the implementation in exchange for certain benefits cover by its essence the concept of ‘formal democracy’ or goes beyond it. The second stage of the research implies that I will look whether any measures were taken to implement these conditions. The fact that such measures were not considered by Ukrainian side prior to EU democratic conditionality will confirm the impact of the EU upon democratization in Ukraine.

## **1.2 The ‘Europeanization’ Concept as an Instrument for Democratization**

The concept of democratization by the EU may be defined through the concept of the ‘Europeanization’ traditionally used by scholars studying the impact of the EU upon domestic policies of candidate-countries or member-states. Thus I consider the ‘Europeanization’ concept as a means for democratization of Ukraine by the EU due to the following factors. Firstly, the ‘Europeanization’ is a theoretical framework defined by many scholars of the IR theory and Comparative Politics to explain the essence and effects of EU policies on candidate-countries and EU member - states in the most general sense. Secondly, the same theoretical approach is used to evaluate the success of EU impact on the concrete domestic issue-areas, such as administrative reforms or economic policies.

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<sup>28</sup> Robert Dahl, *Dilemmas of Pluralist Democracy* (New Haven: Yale University Press, 1982), 11

Thus the first stage in theorizing the process of democratization by the EU is the conceptual analysis of the ‘Europeanization’ phenomenon. The second step is obviously the assessment of the possibility to employ the most relevant theoretical models within the ‘Europeanization’ concept to explain the contribution of the EU towards democratization of countries with non-candidate status, namely Ukraine. Moreover, the study of EU influence upon democratization becomes more challenging when the targeted countries are characterized by relative inexperience with democracy and by former communist political background.

Probably, the main difficulty in referring the theoretical concepts of Europeanization to democratization process is the problem of defining Europeanization itself. Johan Olsen noticed that there is ‘no single precise or stable meaning’<sup>29</sup> of this concept. Currently, one can distinguish two main theoretical definitions regarding the issue of Europeanization. The first one used by such scholars as Thomas Risse, Maria Green Cowles and James Caporaso interprets Europeanization as ‘the emergence and development at the European level of distinct structures of governance’<sup>30</sup>. Naturally, this definition may be relevant for one who is interested in studying institutions at EU level. This definition deals with the analysis of the strengthening of European institutions and authorities. One can certainly apply this term doing research of how a supranational European political system is institutionalized. But since the main research questions of this work imply the assessment of the correlation between the performance of domestic reforms in countries – non-members of the EU and external actors’ role in the improvement of that performance, another concept of Europeanization seems to be more applicable.

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<sup>29</sup> Olsen, P. Johan. 2002. ‘The many faces of Europeanization’. *Arena Working Papers* WP 01/2. [http://www.arena.uio.no/publications/wp02\\_2.htm](http://www.arena.uio.no/publications/wp02_2.htm) (accessed December 11, 2006).

<sup>30</sup> Radaelli M. Claudio, ‘The Europeanization of Public Policy’, in *The Politics of Europeanization*. eds. Kevin Featherstone and Claudio Radaelli (Oxford: Oxford University Press, 2003), p. 29

Thus it seems to be quite reasonable for this research to elaborate the second theoretical definition of ‘Europeanization’ concept. This second approach, as Peter Mair underlined in his article ‘*The Europeanization Dimension*’<sup>31</sup>, presents ‘Europeanization as being itself part of the domestic change’<sup>32</sup>. Such a conceptual approach to Europeanization was firstly suggested by Robert Ladrech<sup>33</sup> and then more broadly developed by such scholars on European integration as Kevin Featherstone and Claudio Radaelli. Thus Claudio Radaelli assumed that Europeanization implies:

“Processes of a) construction, b) diffusion, and c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’, and shared beliefs and norms which are first defined and consolidated in the making of EU public policy and politics and then incorporated in the logic of domestic discourse, identities, political structures, and public policies.”<sup>34</sup>

This definition appears to be relevant for theorizing the process of democratization by the EU, since it involves two components that can disclose democratization by the EU. Firstly, the EU as an external driving force for democratization of third countries should possess a shared understanding of what democracy is in order to implement democratic reforms successfully.

Secondly, Radaelli’s definition of Europeanization suggests that ‘shared beliefs and norms’, supposedly democratic ones, are then embedded into domestic practices. Moreover, ‘the degree of embeddedness may certainly vary from mere institutionalization of EU norms to the domestic elites’ identification with democratic values in the decision-making process.’<sup>35</sup>

<sup>31</sup> Peter Mair, *The Europeanization Dimension*. *Journal of European Public Policy* 11, no. 2 (2004): 337-348.

<sup>32</sup> *Ibid.*: 339

<sup>33</sup> Robert Ladrech, “Europeanization of Domestic Politics and Institutions: The Case of France,” *Journal of Common Market Studies* 32, no.1 (1994): 69-88.

<sup>34</sup> Radaelli M. Claudio, ‘The Europeanization of Public Policy’, in *The Politics of Europeanization*. eds. Kevin Featherstone and Claudio Radaelli (Oxford: Oxford University Press, 2003), p. 30

<sup>35</sup> *Ibid.*: 33

Thus having assessed the appropriateness of the second definition of the ‘Europeanization’ concept regarding the issue of democratization policies, I rather define the Europeanization concept as a means of democratization by the EU in the following way, paraphrasing Radaelli’s definition:

“Processes of a) construction, b) diffusion, and c) institutionalization of democratic rules, procedures, policy paradigms, styles, ‘ways of doing things’, and shared beliefs and norms which are first defined and consolidated in the EU policies and documents and politics and then incorporated in the logic of domestic discourse, identities, political structures, and public policies.”<sup>36</sup>

Consequently, one can infer three main questions out of this analysis of Radaelli’s definition and final definition of the ‘Europeanization’ as a means of democratization. The inference of these questions can actually help to elaborate the main research question of this paper, pinpointing the linkage between the policies of the EU and domestic politics performance. The questions are the following: ‘Does the EU possess clear and exact characteristics of what a democratic regime should be in a third country? What mechanisms does the EU employ to implement democratic reforms successfully in non-member states?’ And the last but not the least one is under what conditions targeted countries tend to comply with EU democratic norms and change the existing domestic practices by EU policies.

One of the most widely-spread explanatory logics of answers to these questions goes around the ‘logic of consequentialism’. The basis for this logic is a rationalist bargaining model in which two sides bargain over the implementation of certain policies. The one side is actually initiating these policies. The other appears to be targeted. Therefore, it is interesting to evaluate to what degree this logic accounts for the success or failure of the EU impact upon democratization in Ukraine. Can one conclude that the non-fulfillment of certain conditions of this model by the participating ‘sides’ leads towards hindering of democratization processes?

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<sup>36</sup> Ibid.: 30

Thus in order to apply this model towards the Ukrainian case one needs to elaborate upon its peculiarities.

The logic claims that all the actors interacting with each other are ‘utility- maximizers interested in the maximization of their own power and welfare’<sup>37</sup>. It means that the targeted states will incorporate EU democratic norms only if the rewards for this maximize the prosperity of a state. Thus applying the theory towards Ukrainian case, one can infer that for any non-member state the incentive to perform EU rules’ transfer into certain issue-areas should be strong enough in comparison with the costs of this adjustment. Naturally, the incentive ought to be underpinned by rewards, which according to Frank Schimmelfennig and Ulrich Sedelmeier ‘consist of assistance and institutional ties ranging from trade and co-operation agreements via association agreements to full membership’<sup>38</sup>.

These prominent scholars on European integration underlined in their work ‘*Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe*’ that the core of a rationalist bargaining model is the conditionality which the EU exerts towards non-member states. The notion of conditionality emphasizes the ‘fulfillment of certain conditions assigned by international organizations to non-member countries in exchange for the distribution of certain benefits for these states.’<sup>39</sup> Geoffrey Pridham who investigated the causal impact of international institutions, namely the EU upon democratization in Eastern Europe asserted:

“...it is the EU that has come to be most associated with democratic conditionality since the prize is no less than eventual membership for new democracies.”<sup>40</sup>

<sup>37</sup> Frank Schimmelfennig, and Ulrich Sedelmeier, “Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe,” *Journal of European Public Policy* 11, no. 4 (2004): 661-679, p.663

<sup>38</sup> Ibid.: 663

<sup>39</sup> Ibid.: 663-664

<sup>40</sup> Pridham, J. ‘The European Union, democratic conditionality and transnational party linkages: The case of Eastern Europe’, in *Democracy without Borders: Transnationalization and Conditionality in New Democracies*, eds. Jean Grugel (Routledge/ECPR studies in European political science, 1999), p.62

Thus the external pressure of the EU revealed in a number of political conditions seems to carry its weight only if the final prize of meeting the suggested democratic criteria by non-member states is their full membership in the EU institutions. By its essence, full membership appears to be the source of extraordinary economic, political and security benefits. Therefore, the clear sign of the possibility to become a full member is the most effective instrument of making candidate states to comply with the formal and informal norms and rules suggested by the EU. Furthermore the clarity of the type of a reward, the exactness of the promise to give this reward and the threat to withhold rewards in case of non-compliance are the set of factors that constitute one of the basic principles for the success of conditionality.

This basic principle for the success of conditionality strategy was named by Frank Schimmelfennig and Ulrich Sedelmeier as ‘credibility of conditionality’<sup>41</sup>. The other important principles formulated by the same authors are ‘determinacy of conditions’, ‘veto players and adoption costs in a country implementing the suggested conditions’ and ‘the size and speed of rewards’<sup>42</sup>.

As a result, if one wants to explain democratization processes in Ukraine and the contribution of the EU towards these processes within the logics of consequentialism, the following steps should be performed. Firstly, one should ask about the formality and clarity of democratic conditions suggested to Ukraine. Only if the determinacy of conditions was high enough, the possibility of manipulation and interpretation of the rules was avoided by both sides and the effectiveness of EU policies transfer increased.

Secondly, one should evaluate how significant for Ukraine the proposed reward was. Was it the promise of full inclusion into the EU institutions or just the acceleration of the

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<sup>41</sup> Frank Schimmelfennig, and Ulrich Sedelmeier, “Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe,” *Journal of European Public Policy* 11, no. 4 (2004): 661-679, p.665

<sup>42</sup> Ibid.: 664-665

relationship in certain issue-areas? Since the higher the reward from the EU, the more likely conditions are implemented by a non-member country.

As for the ‘credibility of conditionality’ and ‘veto players and adoption costs’, these two variables are often regarded in the literature on European integration as being in deep correlation with each other. Accordingly Frank Schimmelfennig, Stefan Engert and Heiko Knobel claimed that even ‘if credibility is high, rule adoption will depend on the size of governmental adoption costs.’<sup>43</sup> The Ukrainian case should not be an exception.

The study of democratization in Ukraine is supposed to include the elites’ political orientation before the introduction of conditionality and afterwards and, naturally, the degree to which the EU rewards’ promises are considered to be reliable and satisfiable. The success of the EU influence upon the democratization will certainly be predetermined by the elites’ identification with the EU norms and values and by the high credibility of its conditionality. Still it is important to indicate that even if the elites’ initial decisions are not considered to be liberal ones, the EU explicit conditionality can contribute to the political empowerment and consolidation of the liberal opposition around certain exact values, and moreover to the societal resonance against the government that fails to implement the EU agenda. The promising young scholar as Milada Anna Vachudova<sup>44</sup> performed a detailed case study analysis of this type of EU influence referring to the examples of Bulgaria and Romania.

However, conditionality and its essential principles within the logics of consequentialism is not the only one approach that can explain the success or failure of EU external pressure upon Ukraine democratization. One should be aware of the existence of the rival theory explaining why the ‘Europeanization’ concept becomes a means of democratization. The rival theory called sociological institutionalism presents an alternative

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<sup>43</sup> Frank Schimmelfennig, Stefan Engert and Heiko Knobel. ‘The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey’, in *Europeanization of Central and Eastern Europe*, eds. Schimmelfennig and Sedelmeier (Cornell University Press, 2004), p. 29-50.

<sup>44</sup> Vachudova, Milada Anna. 2001. ‘The Leverage of International Institutions on Democratizing States: Eastern Europe and the European Union’. *European University Institute, Working Paper. № 2001/33*.

mode of EU influence in strengthening democracy in third countries. This theory based on the ‘logic of appropriateness’<sup>45</sup> implies that actors have a common understanding of what behavior is socially acceptable. Thus they are ready to follow the policies suggested by the EU, if they consider these policies to be in accordance with their collective identity. Thus the main mechanism of EU influence upon non-member countries could appear to be socialization processes. It means that the ‘actors are socialized into new norms ...to redefine their interests and identities accordingly’<sup>46</sup>.

Suppose, that Ukraine has its own understanding of democracy shared among elites. Regarding this fact the successful impact of the EU upon Ukrainian democratization will depend upon two factors. How does the EU legitimize its perception of democratic values? And how effectively does this international institution employ its ‘persuasive power’ through social learning? Thus the theory of sociological institutionalism demands two procedures to explain the success or failure of the EU impact upon democratization in Ukraine. Firstly, one needs to look at the existence and development of the so-called ‘norm entrepreneurs’<sup>47</sup> who persuade the ruling elites to change their stable and precise identities according to EU norms. Secondly, the presence of informal institutions that will help to formulate new political culture should be analyzed.

In this paper I suggest to analyze democracy promotion by the EU mostly within the logics of consequentialism. This model was definitely successful for CEE’s countries and the Baltic states that also had former communist past as an intervening variable in democratization. Probably, the success of this model in the countries of former communist block made the EU try to apply to Ukraine. Thus one can see whether the success or failure of democratization in Ukraine will be determined by the conditions that a rationalist bargaining

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<sup>45</sup> James G., March, and Johan P. Olsen. *Rediscovering Institutions*. New York: The Free Press, 1989.

<sup>46</sup> Ibid.: 66

<sup>47</sup> Tanja A. Borzel and Thomas Risse. ‘When Europe Hits Home: Europeanization and Domestic Change’. *EUI Working Paper RSC*. N 2000/56, p.12



model proposes. The studying of democratization within the logics of appropriateness will demand further research. It includes such diplomacy tools as persuasion through personal communication that cannot be accessed by the outside observer, since much goes on ‘behind the door.’ The logic of consequentialism presents an opportunity to study EU influence upon democratization through institutional methods that are available for the research to the outside observer.

## Chapter 2: On the Way to the European Neighborhood Action Plan

### ***Introduction***

This chapter evaluates the relationship between the European Union and Ukraine in terms of the implementation of EU democratization policies in the period from 1994 till 2004. Thus, the chapter concentrates upon the analysis of democratic provisions that were initially included into the *Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine* (PCA). It was the first legal, mutually binding document establishing an institutional framework for political dialogue and covering co-operation in various spheres between the European Union and Ukraine. Secondly, the chapter assesses whether there was any shift in the content of EU policies towards Ukraine concerning the attention given to democracy promotion during the given period. Thirdly, the chapter explores the political power costs of performing democratic reforms for the ruling elites in Ukraine.

### ***2.1 The PCA and its Consequences for the Implementation of Domestic Democratic Reforms in Ukraine***

The PCA became the first legal document between Ukraine, the European Union and its member-states emphasizing the necessity to develop close political relations. Signed on the 14<sup>th</sup> of June in 1994, but ratified only in March 1998 it meant that both sides would have legally binding commitments. As Schneider argued ‘the political, economic and social goals, laid down by the PCA, reflect both the political vision and the economic realities at the time.’<sup>48</sup> The second parliamentary elections were just held in Ukraine in March-April 1994 at

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<sup>48</sup> Klaus Schneider, “The Partnership and Co-operation Agreement (PCA) between Ukraine and the EU – Idea and Reality,” in *Ukraine on the Road to Europe*, ed. Lutz Hoffmann and Felicitas Moullers (New York: Physica-Verlag, 2001), 69.

a time of deep economic crisis characterized by the decline of living standards by 80 percent since the independence, the unemployment rate of 40 percent and more with the inclusion of those on unpaid leave.<sup>49</sup> Logically, Ukraine was interested in the framework of the relationship with the EU that would help its integration into the world economy and would assist in breaking with the former command administrative economic system in the most painless way. The PCA seemed to address these concerns.

Thus, the PCA recognized four key objectives of the established partnership, namely:

- “to provide an appropriate framework for the political dialogue between the Parties allowing the development of close political relations;
- to promote trade and investment and harmonious economic relations between the Parties and so to foster their sustainable development;
- to provide a basis for advantageous economic, social, financial, civil scientific technological and cultural co-operation;
- to support Ukrainian efforts to consolidate its democracy and to develop its economy and to complete its transition into a market economy.”<sup>50</sup>

The main point in the analysis of the PCA for this research is to evaluate the balance between the economic and political issues covered by this agreement. The PCA was the first document between the EU and Ukraine that encompassed the priority of supporting the consolidation of Ukrainian democracy. Can one then regard the PCA as an EU long-term strategy for democracy promotion in Ukraine?

Looking at the key-priorities of the PCA for Ukraine, I can preliminary conclude that this agreement was meant to become a document reflecting EU policies upon Ukraine within the first pillar of the EU, namely matters related to economic co-operation. As Kubicek asserted ‘while one could have seen the PCA as a means to promote Ukrainian –EU contact

<sup>49</sup>Taras Kuzio, *Ukraine under Kuchma. Political reform, Economic Transformation and Security Policy in Independent Ukraine*, (London: Macmillan, 1997), 25-137.

<sup>50</sup> Partnership and Cooperation Agreement between the European Communities and their Member States and Ukraine, 16 June 1994: 7-8 [http://ec.europa.eu/external\\_relations/ceeca/pca/pca\\_ukraine.pdf](http://ec.europa.eu/external_relations/ceeca/pca/pca_ukraine.pdf) (accessed May 31, 2007).

and thus convergence of democratic norms, in practice the PCA focused on efforts to facilitate trade by helping to bring Ukraine up to WTO standards.<sup>51</sup>

Further analysis of the PCA can only prove that priority for the consolidation of democracy in Ukraine was subordinate to economic co-operation. 109 articles of the PCA are allocated among the following areas of cooperation:

1. *“eneral principles*
2. *political dialogue*
3. trade in goods
4. provisions affecting business and investment

Chapter 1: labor conditions, co-ordination of social security

Chapter 2 conditions affecting the establishment and operations of companies

Chapter 3 cross border supply of services between the Community and Ukraine

Chapter 4: general provisions

5. current payment and capital
6. competition, intellectual, industrial and commercial property/protection and legislative co-operation
7. economic cooperation
8. industrial co-operation
9. investment promotion and protection,
10. public procurement
11. co-operation in the field of standards and conformity assessment
12. mining and raw materials
13. co-operation in science and technology
14. education and training
15. agriculture and agro-industrial sector
16. energy
17. co-operation in the civil nuclear sector
18. environment
19. transport
20. space
21. postal services and telecommunications
22. financial services
23. money laundering
24. monetary policy
25. regional development
26. social co-operation
27. tourism
28. small and medium-size enterprises
29. consumer protection
30. customs
31. statistical co-operation

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<sup>51</sup> Paul Kubicek, 'The European Union and democratization in Ukraine,' *Communist and Post-Communist Studies* 38 (2005): 275

- 32. economics
- 33. drugs
- 34. cultural co-operation, financial co-operation
- 35. institutional general and final provisions”<sup>52</sup>

Out of these numerous areas of co-operation only the first two have a direct connection with democratization processes. In the first area ‘general principles’ underpinning the relationship between the European Communities and their members, and Ukraine, Article 2 states that:

‘respect for the democratic principles and human rights as defined in particular in the Helsinki Final Act and the Charter of Paris for a New Europe, as well as the principles of market economy included those [...] in the documents of the CSCE Bonn Conference, underpin the internal and external policies of the Parties and constitute an essential element of the partnership of this Agreement.’<sup>53</sup>

The clarity of Article 2 is strong. It sets the rule of adhering to certain democratic provisions. These provisions are contained in the documents describing what actually a liberal democratic state should be. Thus, both the Helsinki Final Act<sup>54</sup> and the Charter of Paris<sup>55</sup> for a New Europe stressed the importance of fundamental freedoms, the universal significance and necessity of guaranteeing human rights: political, economic, social for developing co-operation among the states. Moreover, the Charter of Paris for a New Europe emphasized the key features of democratic governance like free and fair elections, accountability to the electorate, justice administered impartially<sup>56</sup>.

Moreover, I can say that Article 2 sets the rule of not breaking certain democratic principles as a condition for the preservation of the PCA. This article is considered to be ‘an essential element of the partnership.’ As Hillion asserted ‘the concept of “essential element” implies that its violation by any of the Parties constitutes a “case of material breach of the

<sup>52</sup> Partnership and Cooperation Agreement between the European Communities and their Member States and Ukraine, 16 June 1994. [http://ec.europa.eu/external\\_relations/ceeca/pca/pca\\_ukraine.pdf](http://ec.europa.eu/external_relations/ceeca/pca/pca_ukraine.pdf) (accessed May 31, 2007).

<sup>53</sup> Ibid.: 8

<sup>54</sup> Conference on Security and Cooperation in Europe, “*Final Act*,” Helsinki, 1 August 1975. <http://www.hri.org/docs/Helsinki75.html#H4.7> (accessed May 31, 2007)

<sup>55</sup> Conference on Security and Cooperation in Europe, “Charter of Paris,” Paris, 19-21 November 1990. <http://www.hri.org/docs/Paris90.html#Sec1.1.1> (accessed May 31, 2007)

<sup>56</sup> Ibid.

Agreement” and in turn a “case of special urgency” which, in derogation to the rules attached to the dispute settlement mechanism established by the PCA, allows the Party injured to suspend unilaterally the implementation of the Agreement.’<sup>57</sup> Therefore, the breach of the provisions of the Helsinki Final Act or the Charter of Paris for a New Europe could actually deprive Ukraine of the benefits suggested by the PCA and lead to the dissolution of the agreement.

Analyzing this “democratic conditionality” as an instrument of democracy promotion by the EU, firstly, I need to look at the “determinacy of conditions,” “the size of the suggested rewards,” and “the capabilities and costs of the agency employing conditionality.”<sup>58</sup>

In case of Ukraine, ‘democratic conditions’ had clear behavioral implications for Ukrainian side. Article 2 implied that Ukraine should not infringe certain democratic principles in order to get benefits. Thus, I can infer that there was the formality and clarity of rule as the basis for ‘determinacy of conditionality’<sup>59</sup>. Nevertheless, it seemed that there was a problem with this ‘determinacy of democratic conditions’. Article 2 did not actually specify necessary steps to be undertaken to establish and ensure a liberal democratic state especially with regard to the political practices of the communist past in Ukraine. Thus, the content of ‘democratic conditions’ was clear, still, it could have been different regarding the political background of Ukraine.

The nature of the PCA with regard to democratization was reactive. It worked upon reports either approving the progress made or specifying the areas of strengthening in terms of democratic performance but only in a recommendatory way. Besides, the problem is when

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<sup>57</sup> Christophe Hillion, ‘Common Strategies and the Interface Between E.C. External Relations and the CFSP: Lessons of the Partnership Between the EU and Russia’ : 290-291.

<sup>58</sup> Frank Schimmelfennig and Ulrich Sedelmeier, ‘Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe,’ *Journal of European Public Policy* 11, no.4 (August 2004): 663-666.

<sup>59</sup> Ibid.: 664

there are no enumerated steps for the implementation in terms of strengthening the rule of law or ensuring human rights, it is difficult to evaluate any impact of the EU upon democratization. The development of precise measures concerning the consolidation of democracy was purely within the responsibility of Ukraine, completely inexperienced with democracy. At the same time, I must say, for the specification of any steps for Ukraine, the EU needed to have expertise knowledge about the practices of internal domestic policies and the peculiarities of the transformation from state socialism to liberal democracy.

The next article that had reference towards democratization in Ukraine was Article 6 in the area of ‘political dialogue.’ The articles in the area of ‘political dialogue’ underlined the necessity of various formats and procedures of dialogue over the issues significant for Ukraine and the EU. Democracy was pinpointed as one of those issues. Thus, Article 6 in the area of ‘political dialogue’ stressed:

‘[dialogue] shall foresee that the Parties endeavor to cooperate on the matters pertaining to the strengthening of stability and security in Europe, the observance of the principles of democracy, the respect and promotion of human rights, particularly those of minorities and shall hold consultations, if necessary on the relevant matters.’<sup>60</sup>

This kind of provision actually meant that though the EU specified neither for itself nor for Ukraine measures to consolidate a liberal democratic state, it did not intend to leave the discussion of this issue out of its focus. The inclusion of the area of ‘political dialogue’ and Article 6 attempted at the process of socialization of the Ukrainian elites into European norms and values and at explaining the legitimacy of suggested behavioral rules. Thus, from the side of the EU, I can observe the creation of an opportunity for mutual learning and that is a characteristic feature of ‘the logic of appropriateness’ within ‘Europeanization’ theoretical framework.

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<sup>60</sup> Partnership and Cooperation Agreement between the European Communities and their Member States and Ukraine, 16 June 1994, p.11. [http://ec.europa.eu/external\\_relations/ceeca/pca/pca\\_ukraine.pdf](http://ec.europa.eu/external_relations/ceeca/pca/pca_ukraine.pdf) (accessed May 31, 2007).

As Schimmelfennig argued the mechanism of Europeanization, namely, conditionality will work only if the provider of the conditions is able to reward or withhold the benefits depending upon the success in the implementation of the suggested conditions<sup>61</sup>.

The greatest merit of this document lied in the fact that it implied the possibility of further evolution depending on the performance of Ukraine. As Schneider firmly asserted ‘the provisions of the PCA are clearly designed to be only a stage in the rapprochement between Ukraine and the EU so that the evolution of the relationship would primarily depend on the way Ukraine would handle its political and economic transition to a democratic society and functioning market economy.’<sup>62</sup> However, the political steps of integrating into the community of democratic states were not as precise as the economic steps to become a market democracy.

The most ambitious reward for Ukraine within the PCA was the potential establishment of a free trade area. But, this kind of reward was not explicitly conditioned upon respect for democracy and human rights. Thus, Article 4 of ‘general principles’ stated that:

‘The Parties undertake to consider, in particular when Ukraine has further advanced in the process of economic reform, development of the relevant Titles of this Agreement, in particular Title III and Article 49 with a view to the establishment of a free trade area within them. [...] The Parties shall consult each other in the year of 1998 whether circumstances, and in particular Ukraine’s advances in market oriented economic reforms and the economic conditions prevailing there at that time, allow the beginning of negotiations on the establishment of a free trade area.’<sup>63</sup>

Moreover, I can conclude that there was a slight rewards’ differentiation within the PCA, or at least preferential treatment with regard to the priority of the conditions’

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<sup>61</sup> Frank Schimmelfennig and Ulrich Sedelmeyer, “Introduction: Conceptualizing the Europeanization of Central and Eastern Europe,” in *Europeanization of Central and Eastern Europe*, ed. Frank Schimmelfennig and Ulrich Sedelmeyer (Ithaca, NY: Cornell University Press, 2005), 10.

<sup>62</sup> Klaus Schneider, “The Partnership and Co-operation Agreement (PCA) between Ukraine and the EU – Idea and Reality,” in *Ukraine on the Road to Europe*, ed. Lutz Hoffmann and Felicitas Moullers (New York: Physica-Verlag, 2001), 69.

<sup>63</sup> Partnership and Cooperation Agreement between the European Communities and their Member States and Ukraine, 16 June 1994, p.9 [http://ec.europa.eu/external\\_relations/ceeca/pca/pca\\_ukraine.pdf](http://ec.europa.eu/external_relations/ceeca/pca/pca_ukraine.pdf) (accessed May 31, 2007).



implementation in order to get certain benefits. But still the role of provisions on democracy and human rights, namely Article 2, had the effect of a ‘stick’ since the EU reference to the non-fulfillment of this article could legally threaten the existence of the whole agreement.

The other reward included in the PCA was granting each other most-favored nation status for goods, but it was already included into the Trade and Co-operation Agreement between the EC and the Soviet Union. Besides the PCA also confirmed the prohibition of the use of quotas on imports but with certain exceptions. On the EU side, this included quotas on textiles and steel, contained in special sectoral agreements that began operating in 1993 and 1995, respectively.<sup>64</sup> Definitely, the PCA guaranteed some benefits. However, the problem was that the quotas in the most competitive sectors of Ukraine undermined the equity of the partnership.

As for the costs that the EU could incur, employing ‘democratic conditionality’, there was one question that remained in this field. Was the EU really ready to leave Ukraine out of the European orbit, if it violated the provisions of Article 2? The case of the journalist Gongadze proved the opposite. At the EU-Ukraine Summit in September 2001, just a year after the murder of the journalist, there was no even slightest mentioning of the case in the joint statement of Ukraine and the EU. On the contrary, the statement welcomed ‘[Kuchma’s] commitments to the rule of law, human rights, and democracy.’<sup>65</sup> The EU did not even employ the policy of ‘shaming.’

Thus, I can hardly argue that the PCA presented a coherent long-term or even a medium-term strategy for democratization of Ukraine, since the document was not pro-active in terms of putting emphasis on the implementation of certain democratic reforms. Moreover, it worked on the basis of reports the provisions of which bear recommendatory not obligatory

<sup>64</sup> Ann Lewis, ed., *The EU and Ukraine – Neighbors, Friends, Partners?* (Federal Trust, 2002), 269-283

<sup>65</sup> Joint Statement of EU-Ukraine Summit, 11 September 2001.

[http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/er/11772.en1.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/er/11772.en1.pdf) (accessed on 28 May, 2007).

character. The determinacy of ‘democratic conditionality’ lied in the fact that Ukraine was supposed to adhere to the key principles of a liberal democratic state. But the EU restricted itself from giving any advice on building such a state in Ukraine. The development of concrete steps in the implementation of democratic reforms was left within the responsibility of Ukrainian ruling elites.

Moreover, mostly elaborating upon the area of economic co-operation, the PCA did not really imply democracy promotion as a long-term top-priority goal. Establishing an institutional framework for the relationship, the PCA ‘de-emphasized democracy.’<sup>66</sup> Thus, none out of seven subcommittees that focused on specific issues and was created under the auspices of the EU-Ukraine Cooperation Committee, considered the issues referring to democracy. Strategically it is possible to explain such a position of the EU. If the EU developed more detailed political criteria for co-operation with Ukraine, it would imply greater political benefits. The greatest political reward for the implementation of specified democratic reforms could be only the integration into the EU. The most puzzling question lied in the fact whether in the nearest future the EU would be ready to dissolve the agreement if Ukraine violated Article 2 of the PCA.

## ***2.2 The Elaboration of EU democratization policies towards Ukraine. Between PCA and the European Neighborhood Policy***

### **2.2.1 EU democratization policies towards Ukraine in the period from signing-up till ratification of the PCA (1994-1998)**

Since ‘the PCA mainly aimed at trade and economic co-operation, and just modestly extended the 1989 Trade and Co-operation Agreement between the European Communities and the Soviet Union, compared with the Europe Agreements between the EU and the

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<sup>66</sup> Iryna Solnenko, “The European Union as Democracy Promoter: the Case of Ukraine,” *Romanian Journal of Political Science* 2 (2005): 61.

countries of Central and Eastern Europe’,<sup>67</sup> in the early 1990s ‘the EU has been started to be criticized for not promoting a consistent Eastern Strategy, namely towards Ukraine.’<sup>68</sup>

Thus, before entering into force of the PCA, a series of unilateral documents were adopted reflecting the attempt to present a comprehensive and consistent EU strategy towards Ukraine. The importance of the analysis of these documents for the research lies in the question whether these documents devoted attention to the elaboration of democratization policies towards Ukraine or the policies still remained a vague agenda for the EU. I trace it by assessing whether the EU started to specify measures by means of which it is going to support Ukrainian efforts to consolidate democracy. No focus was given to this specification in the PCA. The importance of distinguishing these measures was obvious. These measures were supposed to clarify the areas of EU concern in the field of democracy, rule of law and human rights in Ukraine. The specification of EU measures in certain dimensions can serve as a hint for the government of the targeted country that these dimensions demand improvement.

The first document in this framework of a more consistent strategy towards Ukraine became ‘*A Common Position on the objectives and priorities of the European Union towards Ukraine*’,<sup>69</sup> adopted on 28 November, 1994. In terms of democratization policies of the EU towards Ukraine this document cannot be regarded as a real breakthrough. But at least, it pinpointed the priorities for action for the EU that could have been taken into consideration by the Ukrainian side as well. Thus, the second main objective after the intensification of political dialogue was:

‘To support democratic development in Ukraine, through offering advice on legislation and practical assistance in establishing democratic institutions, and through contacts

<sup>67</sup> Gower, Jackie, ‘The EU and Russia’ in *Russia and Europe: Conflict or Cooperation?* ed. Mark Weber (Macmillan, 2000), 74.

<sup>68</sup> Zielonka, Jan ‘Policies without Strategy: the EU’s Record in Eastern Europe,’ in *Paradoxes of European Foreign Policy* ed. Jan Zielovka (Kluwer Law International, 1998).

<sup>69</sup> The Council of the European Union, “*Common Position on the objectives and priorities of the European Union towards Ukraine*,” 94/779/CFSP <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31994E0779:EN:HTML> (accessed on 31 May, 2007)

between Ukrainian and European officials, parliamentarians and non-governmental organizations at different levels'<sup>70</sup>.

The second document in that series was the Commission's Action Plan for Ukraine adopted by the Council of the European Union in December 1996<sup>71</sup>. It seemed to confirm the main areas of strategic interest of the EU towards Ukraine. Thus, the issue of democratic performance, rule of law and human rights was included into the area of 'social transformation', one of the key six areas in which the support of the Community and its Member States was supposed to be developed. The area of 'social transformation' implied that:

'the EU will back the legislative and administrative reforms which will promote the emergence of a pluralist society, the consolidation of democratic institutions and of a state based on the rule of law, the protection of individual rights, (in conformity with the political principles of the Council of Europe).'<sup>72</sup>

One can observe that from the side of the EU the measures to promote the consolidation of democratic institutions bear the characteristics of 'logic of appropriateness.' The implementation of certain conditions envisaged in the documents is just the instrumentalization of European norms and standards. According to the Action Plan adopted in 1996, the EU was more interested in the internalization of the norms and values among the representatives of the political elites through political dialogue, education and training. Finally, there should appear resonance of the norms and values of Ukrainian ruling elites with EU norms and values. The measures to achieve such a goal were 'the opening and modernization of educational systems, the development of human resources, the training of the officials of the civil administration, the private sector...'.<sup>73</sup>

However, all those documents, presenting a signal from the EU on the progress or shortcomings of Ukraine's reformist attempts in various fields, were recommendatory not

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<sup>70</sup> Ibid.

<sup>71</sup> Communication from the Commission to the Council, "Action Plan for Ukraine," Brussels, 20.11.1996, COM (96) 593, final. [http://aei.pitt.edu/6288/01/003457\\_1.pdf](http://aei.pitt.edu/6288/01/003457_1.pdf) (accessed on 28 May, 2007).

<sup>72</sup> Ibid.: 8-9.

<sup>73</sup> Ibid.: 8-9

imposing by nature. The provisions of those documents were not enforceable for Ukraine. Moreover, the documents did not enlarge the scope of incentives for the implementation of the previous conditions. The enlargement of the scope of incentives was especially important with regard to the rhetoric vis-à-vis Europe. In 1996, President Kuchma claimed that ‘the cradle of Ukrainian culture is European Christian civilization. That is why our home is, above all, Europe.’<sup>74</sup> Moreover, in front of the Parliamentary Assembly of the Council of Europe, Kuchma announced its strategic goal was integration into European structures, with priority on full membership.<sup>75</sup> Still full membership as the golden ‘carrot’ ever suggested by the EU was excluded from EU agenda for Ukraine.

Any other economic benefits were also not within the content of the the Commission’s Action Plan for Ukraine of 1996. In principle, the framework of the relationship between Ukraine and the EU in terms of democratization policies for the former remained almost the same. No new commitments from the side of Ukraine and no new incentives for the implementation of the reforms. The EU recognized the signals of democracy promotion inside Ukraine, namely: the adoption of new Constitution 1996 that which ‘conforms to the traditional principles of separation of powers, executive responsibility, application of the rule of law and independence judiciary’<sup>76</sup> and the entry of Ukraine into the Council of Europe. Only the logic of promoting democracy changed. It became more within ‘the logic of appropriateness’, emphasizing socialization of Ukrainian elites.

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<sup>74</sup> Roman Solchanyk, *Ukraine and Russia: the post-Soviet transition* (Lanham, MD: Rowman and Littlefield, 2001), 92.

<sup>75</sup> Paul Kubicek, ‘The European Union and democratization in Ukraine,’ *Communist and Post-Communist Studies* 38 (2005): 275

<sup>76</sup> Communication from the Commission to the Council, “Action Plan for Ukraine,” COM (96) 593 final, 9-5 [http://aei.pitt.edu/6288/01/003457\\_1.pdf](http://aei.pitt.edu/6288/01/003457_1.pdf) (accessed on 31 May, 2007).

## **2.2.2 European Council Common Strategy on Ukraine and its role for democracy promotion by the European Union**

The next stage in the relationship between the EU and Ukraine that deserves attention regarding EU democratization policies was the adoption of Common Strategy on Ukraine in 1999. As Smith argued the ‘priorities moved away from more traditional Cold War concerns about military security and nuclear weapons, with the limited aim of rudimentary political and economic stability, towards establishing the rule of law’<sup>77</sup> This new document was adopted at the Helsinki European Council in December 1999 reflecting EU policies towards Ukraine For the first time among various strategic goals and priorities stated by the EU concerning Ukraine the issue of democracy got the first place among three strategic goals and among three identified principle objectives. Thus, the strategic goal sounded as:

‘to contribute to the emergence of a stable, open and pluralistic democracy in Ukraine, governed by the rule of law and underpinning a stable functioning market economy which will benefit all the people of Ukraine.’<sup>78</sup>

The elaboration of the principle objective ‘support for the democratic and economic transition process’ in some way resembled the evaluation report of the progress in terms of democratic performance included in the 1996 Action Plan for Ukraine. Thus, the EU acknowledged as the main achievement of Ukraine’s democratic performance the establishment of a multiparty system and the adoption of a parliamentary constitution. That was not so much different from the previous Action Plan for Ukraine in terms of the progress achieved in the area of democratic performance.

Though the document was not based on ‘democratic conditionality’ and was recommendatory in character; for the first time, the EU advised Ukraine to undertake very specific steps to foster democracy in a country and asserted that it would support these efforts.

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<sup>77</sup> Hazel Smith, *European Union Foreign Policy – What it is and What it Does*, (Pluto Press, 2002), 232.

<sup>78</sup> European Council, “*Common Strategy of 11 December 1999 on Ukraine*,” 1999/877/CFSP, 1. [http://ec.europa.eu/external\\_relations/ceeca/com\\_strat/ukraine\\_99.pdf](http://ec.europa.eu/external_relations/ceeca/com_strat/ukraine_99.pdf) (accessed on 31 May, 2007)

In the area of ‘*Principal Objectives*’, in the objective ‘*Support for the democratic and economic transition process in Ukraine*’<sup>79</sup> the EU ‘urges Ukraine to fulfill its commitments to adapt its legislation to meet the norms and standards of the Council of Europe, in particular its obligations to which Ukraine signed up on its accession to the Council of Europe in 1995.’<sup>80</sup> The EU did not put ‘democratic conditionality’ itself. However it linked its work to the fulfillment of the democratic conditions of the other European Institution to which Ukraine was bound. In another area of Common Strategy, in the area of ‘*Specific Initiative*’:

‘[the EU] encourag[ed] Ukraine to sign, ratify and implement the relevant international instruments in the field of Human Rights, especially the second Optional Protocol of the United Nations Convention on Civil and Political Rights and the sixth Additional Protocol of the European Convention on Human Rights as well as the United Nations Convention on the Status of Refugees.’<sup>81</sup>

Kubicek argued that ‘while the document is often high on rhetoric and short on detail, it does list some specific democratization efforts, including supporting Ukraine’s efforts to sign and observe international human rights obligations, encouraging an ombudsman-institution in Ukraine, and contributing to the development of free media in the country’<sup>82</sup>

Still the main problem remained that Common Strategy was not a document to which the EU and Ukraine were mutually committed. Its provisions could not be enforceable for Ukraine. Recommendation on signing or ratification of specific obligations did not equal the rationality of ‘democratic conditionality.’ In terms of the size of rewards Common Strategy on Ukraine also presented a new stage in the development of EU-Ukraine relationship. For the first time, it acknowledge[ed] Ukraine’s European aspirations and welcome[ed] Ukraine’s

<sup>79</sup> European Council, “*Common Strategy of 11 December 1999 on Ukraine*,” 1999/877/CFSP, 2. [http://ec.europa.eu/external\\_relations/ceeca/com\\_strat/ukraine\\_99.pdf](http://ec.europa.eu/external_relations/ceeca/com_strat/ukraine_99.pdf) (accessed on 31 May, 2007)

<sup>80</sup> Ibid.: 3

<sup>81</sup> Ibid.: 6

<sup>82</sup> Paul Kubicek, ‘The European Union and Democratization in Ukraine,’ *Communist and Post-Communist Studies* 38 (2005): 279.

pro-European choice.’<sup>83</sup> But the document also noted that ‘the full implementation of the PCA is a pre-requisite for Ukraine’s successful integration.’<sup>84</sup>

Thus, the EU seemed to consider Ukrainian rhetoric about European integration, but it connected the progress in the fulfillment of these aspirations with the implementation of the former mutually binding document. In terms of the content of EU democratization policies, there was a certain shift concerning the specification of the steps that Ukraine was supposed to undertake. But the main problem was the same as with the previous documents. Common strategy was an internal document; its recommendations were not enforceable.

### **2.3 ‘Kuchma’ Political Regime in Ukraine and the Implementation of EU Democratization Policies. The Period of 1994 till 2004**

‘The process of Europeanization [within any logics of democracy promotion] does not eliminate the established national structures and practices; it entails a degree of internalization of European values and policy paradigms at the domestic level.’<sup>85</sup> Certainly, the domestic level embraces different type of actors. The ‘logic of consequentialism’ suggests looking at ‘political power costs of adopting liberal democratic rules.’<sup>86</sup> Schimmelfennig and Sedelmeier explained that the adoption of liberal democratic rules may question ‘the bases of political power and the governments may fear that it will lead to a loss of office.’<sup>87</sup> Therefore, Ukrainian elite’s desire to implement democratic reforms remained significantly important since the basic mutually binding document did not suggest any specified steps to attain Article 2 of the PCA. Any kind of democratic reforms was within the responsibility of the domestic elites.

<sup>83</sup> European Council, “Common Strategy of 11 December 1999 on Ukraine,” 1999/877/CFSP, 2.

<sup>84</sup> [http://ec.europa.eu/external\\_relations/ceeca/com\\_strat/ukraine\\_99.pdf](http://ec.europa.eu/external_relations/ceeca/com_strat/ukraine_99.pdf) (accessed on 31 May, 2007)

<sup>85</sup> Ibid.: 2

<sup>86</sup> John P. Olsen, ‘The Many Faces of Europeanization,’ *Journal of Common Market Studies* 40, no. 5 (2002): 921-51

<sup>87</sup> Frank Schimmelfennig and Ulrich Sedelmeier, ‘Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe,’ *Journal of European Public Policy* 11, no.4 (August 2004): 663.

<sup>88</sup> Ibid.: 671



According to the PCA, Ukraine was suggested to respect democratic principles stated in the Helsinki Final Act and the Charter of Paris for a Wide Europe as the basis for the preservation of the PCA. This kind of ‘democratic conditionality’ did not imply pro-active position from the side of Ukraine in fostering democratic consolidation inside a country. However, EU strong leverage upon the development of the political regime in Ukraine was implied. Article 2 of the PCA was an ‘essential element’. The puzzle was whether the EU could afford breaking any kind of co-operation with Ukraine in accordance with ‘the concept of an essential element’ and whether the type of the domestic ruling elites could afford adhering to democratic principles and at the same time preserving power.

The ‘logic of consequentialism’ demands not only to look at ‘political power costs’ of implementing democratic reforms but also to consider the non-existence of ‘multiple veto points’ for effective ‘Europeanization’, in the case of this research ‘democratization.’ As Borzel and Risse wrote ‘the more power is dispersed across the political system and the more actors have a say in political decision-making, the more difficult it is to foster the domestic consensus or ‘winning coalition’ necessary to introduce changes in response to Europeanization pressures.’<sup>88</sup> For Ukraine, the existence of veto players opposing democratization and having access to political decision-making was not the case. By contrast, the whole political regime seemed to confront the consolidation of liberal democracy. All the political power was vested in the executive branch: president Kuchma and his administration. Thus, it is important to evaluate whether there were veto-players towards Kuchma’s policies and whether these veto-players could participate in political decision-making.

Wolzcuk analyzed that in the two terms of Kuchma presidency from 1994 till 2004 one observed ‘the continued prominence of ex-communist power elites and, second, the

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<sup>88</sup> Tanja A. Borzel and Thomas Risse, ‘When Europe Hits Home: Europeanization and Domestic Change,’ EUI Working Paper RSC № 2000/56: 9

dominance of the executive, embodied in the presidency, over other branches of power.’<sup>89</sup> In the first term, there were some initiatives to show adherence to democratic principles. Thus, in November 1995 Ukraine entered the Council of Europe, in June 1996 Ukraine adopted the Constitution that ‘constitute[ed] decisive progress in the stabilization of the political system’<sup>90</sup>, followed in 1997 by the ratification of the European Convention on Human Rights. Certainly, these were not demands put forward by the EU in PCA. Nevertheless, I can hardly conclude that these initiatives were performed under the influence of the PCA since the PCA was ratified only in March 1998 and the program regarding the implementation of the PCA was issued in June 1998. To what degree did this sort of initiatives actually reflect the elites’ desire to implement reforms? As Sherr asserted, ‘Ukraine’s political leaders have sometimes acted as if they could achieve integration by declaration, or simply by joining and participating in international organizational and political clubs rather than by undertaking concrete structural changes’<sup>91</sup>

Moreover, I can say that in the *Joint PCA Work Program* that was adopted by the first EU-Ukraine Co-operation Council in June 1998, neither of the sides distinguished the area underlined by Article 2 as the special priority for attention during the course of 1998-1999<sup>92</sup>. The document covered 17 domains; democracy promotion was not among them. In addition, ‘out of seven subcommittees that dealt with specific issues within the PCA and established under the EU-Ukraine Cooperation Committee, none dealt with issues pertaining to democracy.’<sup>93</sup>

<sup>89</sup> Kataryna Wolczuk, “Integration without Europeanization. Ukraine and its Policy towards the European Union,” *EUI Working Papers*, RSCAS No. 2004/15: 5

<sup>90</sup> Communication from the Commission to the Council, “*Action Plan for Ukraine*,” COM (96) 593 final, 9. [http://aei.pitt.edu/6288/01/003457\\_1.pdf](http://aei.pitt.edu/6288/01/003457_1.pdf) (accessed on 31 May, 2007)

<sup>91</sup> Sherr, James. (1998) *Ukraine’s New Time of Troubles* (Camberly: Conflict Studies Research Center): 12

<sup>92</sup> Joint PCA Work Program for 1998/1999.

[http://ue.eu.int/ueDocs/cms\\_Data/docs/pressData/en/er/01054EN8.doc.htm](http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/er/01054EN8.doc.htm) (accessed on 31 May, 2007).

<sup>93</sup> Iryna Solnenko, “The European Union as Democracy Promoter: the Case of Ukraine,” *Romanian Journal of Political Science* 2 (2005): 61. 61

Additionally, as Solonenko asserted ‘among the domains that [*the first Joint Report on Implementation of the Partnership and Cooperation Agreement between Ukraine and the EU*] recognized as having the potential for development under the PCA, no issues pertaining to democracy were included.’<sup>94</sup> Moreover, concerning the PCA priority, namely ‘*to support Ukrainian efforts to consolidate its democracy and to develop its economy and to complete the transition into a market economy*’, the Report stressed again that ‘the achievement of this goal is the responsibility of Ukraine.’<sup>95</sup> Therefore, the type of the political regime in Ukraine appeared to be a significant variable.

The most prominent scholars studying the process of Europeanization of Ukraine, namely Katarina Wolczuk<sup>96</sup> and Taras Kuzio<sup>97</sup>, agree upon the fact that during the second term of Leonid Kuchma presidency ‘actual deepening of democratization, corruption combating and strengthening the rule of law were far beyond the EU expectations.’<sup>98</sup> Firstly, there was the lack of real system of ‘check and balances’ with the predominance of presidential power over the other branches. Secondly, as Wolczuk asserted, the control over the composition of the legislature, the suppression of the freedom of media did not confirm the credibility of the elites’ pro-European declarations. The case with the disappearance and murder of journalist Gongadze became one of the most famous public disclosures of the essence of Kuchma regime in 2000 and 2001.

Nevertheless, there is a clear necessity to address one more important question concerning the issue of political power distribution inside the country. The question is whether there were any important veto-players that had access to political decision-making

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<sup>94</sup> Ibid.: 61

<sup>95</sup> Joint Report on the Implementation of the Partnership and Cooperation Agreement between the EU and Ukraine (2003):3 [http://ec.europa.eu/external\\_relations/ukraine/intro/pcarep.pdf](http://ec.europa.eu/external_relations/ukraine/intro/pcarep.pdf) (accessed on 31 May, 2007)

<sup>96</sup> Wolczuk, K. ‘Integration without Europeanization: Ukraine and Its Policy towards the European Union’. *EUI Working Papers* RSCAS No. 2004/15

<sup>97</sup> Kuzio, Taras. 2003. EU and Ukraine: a turning point in 2004? *Occasional Papers*. N47. <http://www.iss-eu.org/occasion/occ47.pdf> (accessed on December 11, 2006)

<sup>98</sup> Wolczuk, K. ‘Integration without Europeanization: Ukraine and Its Policy towards the European Union’. *EUI Working Papers* RSCAS No. 2004/15: 27

and could oppose Kuchma regime. In this case I should say that the matrix of veto players towards Kuchma regime overlapped with the set of ‘change agents’<sup>99</sup>. Thus, these veto-players could become ‘norm- and idea-promoting agents that try to influence policy-makers and persuade other [political] actors to reconsider their preferences.’<sup>100</sup> Thus, democratization of Ukraine can be explained also within ‘the logic of appropriateness.’

It seems to be that 2002 parliamentary elections became a turning point for changing the character of formal institutions and the distinct appearance of veto-actors in the Parliament. The 2002 Parliamentary elections resulted in the appearance of rather powerful factual veto-players towards Kuchma policies. This group was represented by the block ‘*Our Ukraine*’ led by Victor Yushchenko, former Prime Minister dismissed in 2001. His block finally got 111 seats in the parliament, having outrun ‘*Communist Party*’ (66 seats) and pro-presidential ‘*For United Ukraine*’ (102 seats)<sup>101</sup>. Together with the right-wing opposition bloc led by Yulia Tymoshenko that got 21 seats<sup>102</sup> they formed the core of the anti-presidential right-wing forces at Verkhovna Rada. The EU marked these parliamentary elections as a dividing-line for democratization process in Ukraine evaluating the elections as demonstrating Ukraine’s commitment to achieving further democratization of Ukrainian society<sup>103</sup>. That meant that the new constellation of domestic political actors in the Parliament was acknowledged as having potential for reforms’ implementation.

Still the problem was that oppositional forces: ‘*Our Ukraine*’, *Tymoshenko Block*, ‘*Communist Party*’ as well as socialists failed to create majority in the parliament and consolidate their efforts. Thus, I can infer that though the veto-players explicitly appeared and

<sup>99</sup>Tanja A. Borzel and Thomas Risse, ‘When Europe Hits Home: Europeanization and Domestic Change,’ EUI Working Paper RSC № 2000/56: 12

<sup>100</sup> Ibid.: 12

<sup>101</sup> James Sherr, ‘Ukraine’s Parliamentary Elections: The Limits of Manipulation,’ *Conflict Studies Research Centre* 91 (21 April, 2002): 11 <http://www.globalsecurity.org/military/library/report/2002/OB91.pdf> (accessed on May 30, 2007)

<sup>102</sup> Ibid.: 11

<sup>103</sup> European Union-Ukraine Summit. *Joint Statement* (Copenhagen, 4 July, 2002): 1. <http://ue.eu.int/newsroom> (accessed on December 14, 2006)

were supported by the electorate, they were weak. Finally, as Jeffries stated, ‘using the mechanism of bargaining, the President achieved his overwhelming preference of legislature subordinated to the executive branch: parliament signed to support the pro-presidential government.’<sup>104</sup> Therefore, I infer that these parties could hardly function as veto-players anymore. Still, they remained effective agents transferring democratic ideas to the civil society and helping to develop new type of political culture. Moreover, the electorate support in favor of ‘Our Ukraine’ showed that democratic ideas became dispersed among the population.

The fact is that the PCA did not imply any specific provisions to guide the establishment of liberal democracy in Ukraine. Actually, any kind of the reforms’ implementation was left at the discretion of Ukrainian government. It meant that the political elite of Ukraine that had access to political decision-making unilaterally decided the course of reforms’ development and was responsible for reforms’ stagnation. Therefore, the type of the political regime in Ukraine became a very significant variable for the effectiveness of EU democratization policies. The problem was that “under the office of president Kuchma Ukraine’s regime has been described as a ‘delegative democracy,’ where an inactive population participates in the political system only during elections.”<sup>105</sup> The attempts of the veto-players towards Kuchma’s regime to consolidate their efforts in 2002 failed. There were certain outbursts of civil society’s resentment, like with the movement of ‘Ukraine without Kuchma,’ but they became easily suppressed by the executive power.

The political veto-players, remaining the opposition forces greatly, were greatly supported by the electorate during the last 2002 elections. They could start to prepare themselves for presidential elections 2004 and try to mobilize more population in favor of true

<sup>104</sup> Jan Jeffries, *The countries of the former Soviet Union at the turn of the twenty-first century: the Baltic and the European states in transition* (New York: Routledge, 2004), 538-541.

<sup>105</sup> Taras Kuzio, “The 2002 Parliamentary Elections in Ukraine: Democratization or Authorization?” *Journal of Communist Studies and Transition Politics* 19, no. 2 (June 2003): 28-29.

democratization. Thus, I can infer that though the content of the PCA could have been different regarding the political background of Ukraine and could have provided more specified democratic steps for the implementation, the constellation of domestic political actors was not favorable for the attainment of any kind of democratic reforms.

## Chapter 3: The Impact of the European Neighborhood Action Plan upon Democratization in Ukraine

### *Introduction*

This chapter applies ‘Europeanization’ as a theoretical framework towards the process of democratization in Ukraine. The chapter covers the time period from 2004 till 2006, when the EU due to its historical enlargement introduced the European Neighborhood Policy as a new differentiated mechanism of dealing with neighboring countries. Therefore, the chapter assesses the effectiveness of the new EU policies towards democratization of Ukraine. This assessment is performed through the analysis of the determinacy of ‘democratic conditionality’ from the side of the EU and the character of the incentives for the implementation of the reforms. The chapter studies the magnitude of the domestic changes produced in Ukraine under the influence of the EU policies. The domestic changes under the EU policies are conceptualized as ‘the transportation of the EU legislation into domestic law, the restructuring of domestic institutions according to EU rules, or the change of domestic political practices according to EU standards.’<sup>106</sup> Moreover, the chapter evaluates whether the new political elite that came to power in Ukraine was interested in pursuing ‘democratic conditionality’ suggested by the EU in its new policies.

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<sup>106</sup> Frank Schimmelfennig and Ulrich Sedelmeier, ‘Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe,’ *Journal of European Public Policy* 11, no. 4 (August 2004): 662

### **3.1 The Implication of the European Neighborhood Policy for the Study on Democratization in Ukraine**

The latest and currently the most important steps in the relationship between the EU and Ukraine became the EU adoption of the European Neighborhood Policy in 2004 and the adoption of the Ukraine – EU Action Plan at the meeting of the Ukraine EU Cooperation Council in February 2005. The significance of the ENP for the EU and the non-member countries was highlighted in the very beginning of the document. It was aimed at ‘[reinforcing] relations between the EU and partner countries, which is distinct from the possibilities available to European countries under article 49 of the Treaty on European Union’<sup>107</sup>. This kind of reinforced cooperation implied ‘strengthening the stability, security and well-being for all concerned’<sup>108</sup>. Thus, the ENP could obviously suggest to Ukraine as well as to other countries included into the document some new benefits in terms of political or economic cooperation, setting a series of new ‘rewards’ for the implementation of the rewards that were never mentioned before.

Moreover, the ENP asserts that any kind of further relationship with the countries will be based on the so-called ‘traditional set of values’ of the EU such as the rule of law, good governance or respect for human rights. These two points, namely the differentiated reinforcement of the cooperation and the commitment to common values of the EU members are basically the most significant fundamental principles of the whole policy paper. As Kelley asserts in her work *‘New Wine in Old Wineskins: Policy Adaptation in the European Neighborhood Policy’*, the ENP emphasized the necessity of ‘the new environment to

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<sup>107</sup> Commission of the European Communities, “Communication from the Commission. European Neighborhood Policy Strategy Paper,” Brussels, 12.5.2004 COM(2004) 373 final : 3  
[http://ec.europa.eu/world/enp/pdf/strategy/strategy\\_paper\\_en.pdf](http://ec.europa.eu/world/enp/pdf/strategy/strategy_paper_en.pdf) (accessed on 31 May, 2007)

<sup>108</sup> Ibid.: 3



promote reforms based on human rights, democracy and the rule of law'<sup>109</sup>. Thus, it could be implicitly inferred that the past policies towards these ENP countries in promoting these values were relatively weak<sup>110</sup>.

Consequently, three facts appear to be important for studying the impact of the EU upon democratization in Ukraine in the light of the ENP: commitment to common EU values, differentiated cooperation and the implicit recognition of the weaknesses of the former policies to those ENP countries. They are actually the guidelines to look at the content of the new EU policy to Ukraine. The significance of commitment to common values will probably predetermine the presence of 'democratic conditionality' of the EU towards Ukraine in new documents. A differentiated approach might imply a new quality of the 'reinforced cooperation' suggested in exchange for the reforms' implementation. Concerning the latter, as Smith suggests, the ENP became one of the numerous attempts by the EU 'to design a strategy for relating to European neighbors without letting them in'<sup>111</sup>.

The central tool of the ENP in which the priorities of cooperation for each country were underlined became the ENP Action Plans. Thus, the implementation of the Ukraine- EU Action Plan was supposed to become the top agenda for Ukraine since it was certainly 'the Union's main policy document' towards each country included in the concept of 'Wider Europe', the earlier prototype of the ENP.

As the ENP stated, each of the ENP Action Plans would 'reflect the existing state of relations with each country, its needs and capacities'. Thus, the Ukraine-EU Action Plan seemed to represent itself the consistent and logical continuation of the previous relationship between the EU and Ukraine. Presenting the legal basis of this relationship for three years

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<sup>109</sup> Judith Kelley, "New Wine in Old Wineskins: Promoting Political Reforms through the New European Neighborhood Policy," *Journal of Common Market Studies* 44, no.1 (2006): 31.

<sup>110</sup> Ibid.:31

<sup>111</sup> Karen E. Smith, "The outsiders: the European neighborhood policy," *International Affairs* 81, no.4 (2005): 761.

from 2005 till 2008, the document underlined the areas of improvement in this relationship from the side of Ukraine in order to bring it closer to the European standards and norms. It also set out a number of rewards to foster Ukraine to do so. Therefore, the studying of the ENP Ukraine-EU Action Plan could actually answer the questions about the content of ‘democratic conditionality’ and the size of rewards for the reforms’ implementation suggested by the EU.

### **3.2 ‘Democratic Conditionality’ within the ENP Action Plan for Ukraine**

#### **3.2.1 The Scope and Determinacy of ‘Democratic Conditions’ suggested for Ukraine**

The issue of democracy promotion found its reflection in the ENP Strategy Paper as the umbrella cover for the ENP Ukraine-EU Action Plan in the very beginning. The ENP Strategy Paper stated ‘the Union’s aim at upholding and promoting the values of respect for human dignity, liberty, democracy, equality, the rule of law’<sup>112</sup>. Obviously, the incorporation of this kind of agenda by the EU was not something new or specific just to the ENP Strategy Paper. The EU logically included the same basic principles of the relationship between the EU and non-member states that were defined in the previous contractual documents. For Ukraine, such a document was Partnership and Cooperation Agreement. The PCA underlined the conviction of both sides that ‘the paramount importance of the rule of law and respect for human rights, particularly those of minorities [and] the establishment of a multiparty system with free and democratic elections’<sup>113</sup> are significant for future relations. Thus, on the earlier stage of the communication between the EU and Ukraine, the attainment of democratic principles was regarded and accepted by both sides as the starting point and basis for the development of the relationship.

<sup>112</sup> Commission of the European Communities, “Communication from the Commission. European Neighborhood Policy Strategy Paper,” Brussels, 12.5.2004 COM(2004) 373 final : 12-13  
[http://ec.europa.eu/world/enp/pdf/strategy/strategy\\_paper\\_en.pdf](http://ec.europa.eu/world/enp/pdf/strategy/strategy_paper_en.pdf) (accessed on 31 May, 2007)

<sup>113</sup> Partnership and Cooperation Agreement between the European Communities and their Member States and Ukraine: 4-5. [http://ec.europa.eu/external\\_relations/ceeca/pca/pca\\_ukraine.pdf](http://ec.europa.eu/external_relations/ceeca/pca/pca_ukraine.pdf) (accessed on 31 May, 2007)

The situation was a little bit different with the inclusion of the provision about the commitment to democratic principles into the ENP Strategy Paper and the ENP Action Plan. As Schimmelfennig admitted, ‘democracy and human rights promotion already played a dual role in the ENP judging by its content’<sup>114</sup>. Firstly, ‘[it was] a pre-condition for participation in the ENP and, [secondly], [it was] an objective of ENP actions’<sup>115</sup>.

This kind of analysis by Schimmelfennig actually meant that the very inclusion of a country into the ENP, Ukraine in the case of this research, could be interpreted as the recognition of some achievements in the democratic reforms’ performance from the side of the EU. The drawing up and negotiating of the ENP Action Plan on the basis of the results reached within the previous agreements should only re-evaluate and pinpoint the needed areas of improvement. As for the quality and scope of rewards, the ENP Strategy Paper clearly states that ‘the EU’s ambition in developing links with each partner through the ENP will take into account the extent to which [the common] values are effectively shared’.<sup>116</sup> As Kelley commented upon this point, ‘[it] is essentially a softly phrased reference to conditionality’<sup>117</sup>. Thus, for Ukraine as well as for other countries included into the ENP one could observe the high level of policy continuity in terms of democratization by the EU and the same character of the implementation tool from the side of the EU, namely ‘conditionality’.

The more specific priorities for Ukraine in terms of ‘democracy promotion’ are defined already in the content of the Ukraine-EU Action Plan. As Smith argued, ‘the action plans are prominent for the priority of political objectives, including –most notably- respect

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<sup>114</sup> Frank Schimmelfennig, ‘*European Neighborhood Policy: Political Conditionality and its Impact on Democracy in Non-Candidate Neighboring Countries*’, Paper prepared for the EUSA Ninth Biennial International Conference, Austin, March 31- April 2, 2005: 4.  
[http://aei.pitt.edu/3302/02/European\\_Neighborhood\\_Policy.doc](http://aei.pitt.edu/3302/02/European_Neighborhood_Policy.doc) (accessed on 31 May, 2007)

<sup>115</sup> Ibid.: 4.

<sup>116</sup> Commission of the European Communities, “*Communication from the Commission European Neighborhood Policy Strategy Paper Brussels*,” 12.5.2004 COM(2004) 373 final : 8.  
[http://ec.europa.eu/world/enp/pdf/strategy/strategy\\_paper\\_en.pdf](http://ec.europa.eu/world/enp/pdf/strategy/strategy_paper_en.pdf) (accessed on 31 May, 2007)

<sup>117</sup> Judith Kelley, ‘New Wine in Old Wineskins: Promoting Political Reforms through the New European Neighborhood Policy,’ *Journal of Common Market Studies* 44, no. 1 (March 2006): 30.

for human rights and democratic principles.’<sup>118</sup> Analyzing the ENP Action Plan for Ukraine, I consider several questions that should be addressed in terms of the scope and content of the democratic priorities set for Ukraine. These questions are the follows. To what extent are actually these priorities clearly defined? Can one easily infer a number of measures to implement the suggested priorities and goals? Would it be possible for both Ukrainian and the EU sides to supervise this kind of implementation? Can one observe the shift in the scope and content of the suggested key priorities in comparison with the previous documents between the EU and Ukraine? Logically, the series of questions are aimed at evaluating one of the components of the ‘logics of consequentialism’, namely ‘the determinacy of the conditions’ proposed to the targeted state.

First of all, the objectives of promoting democracy in Ukraine appeared in the top ones among the key fourteen ‘priorities for action’ enumerated in the very beginning of the ENP Action Plan document. They covered three basic provisions typically included into any kind of definition of the concept of democracy.

These three ‘priorities for action’ appear to be:

- “Further strengthening the stability and effectiveness of institutions guaranteeing democracy and the rule of law;
- Ensuring the democratic conduct of presidential (2004) and parliamentary (2006) elections in Ukraine in accordance with OSCE standards;
- Ensuring respect for the freedom of the media and freedom of expression.”<sup>119</sup>

Among those three priorities for action the second priority was the most clearly defined since it had reference towards the concrete OSCE standards which serve as the evaluation-benchmarks for presidential or parliamentary elections in different countries. The other two priorities left possibilities for the interpretation about the steps, degree and success

<sup>118</sup> Karen Smith, ‘The Outsiders: the European Neighborhood Policy,’ *International Affairs* 81, no. 4 (2005): 765.

<sup>119</sup> EU/Ukraine Action Plan. 2005: 3

[http://ec.europa.eu/world/enp/pdf/action\\_plans/ukraine\\_enp\\_ap\\_final\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf) (accessed May 31, 2007).

of fulfillment by both sides: the EU as the provider of the priorities and Ukraine as the implementer of the reforms.

It is rather difficult to judge to what degree this kind of vague formulation of priorities for action was a deliberate strategic attempt from the side of the EU. Both the ENP Strategy Paper and the ENP Action Plan for Ukraine emphasized that further contractual links will be reviewed on the basis of the progress achieved in meeting priorities for action. Therefore, when the priorities are imprecisely defined, there is always space for political maneuver concerning the progress of the implementation of democratic reforms. This becomes especially important for Ukraine, as Deputy Minister of Foreign Affairs Andriy Veselovskiy voiced ‘the main goal [is] full-fledged membership in the EU.’<sup>120</sup> The EU, on the contrary, tries to show ‘the door is neither closed, nor open’.<sup>121</sup>

The vagueness of the priorities for action together with the amorphic contours of a future enhanced cooperation agreement as the incentive may actually become one of the best strategic ways for the EU to preserve Ukraine in the European orbit without ‘full membership’. As for the rhetorical and legal justification of the vagueness of EU priorities, Kelley stated in one of her works that ‘[the] Commission staff stress[ed] that the Action Plans cannot solicit the same content and specificity as the Accession Agreements did’<sup>122</sup>.

The fact is that the EU attempted to particularize these ‘democratic priorities for action’ by addressing them in a special section ‘*Political Dialogue and Reform*’<sup>123</sup>, namely in a subsection ‘*Democracy, rule of law, human rights and fundamental freedoms*’<sup>124</sup>. Thus, the key priorities were split into 12 tasks with special bullet points for meeting these tasks.

<sup>120</sup>International Center for Policy Studies Newsletter 42, no. 346 (18 December 2006): 1. [http://www.icps.com.ua/doc/nl\\_eng\\_20061218\\_0346.pdf](http://www.icps.com.ua/doc/nl_eng_20061218_0346.pdf) (accessed on 31 May, 2007).

<sup>121</sup>European Commission Delegation Press Event, (January 13 2005): 13. [http://europe.eu.int/comm/external\\_relations/us/news/press\\_wash130105.pdf](http://europe.eu.int/comm/external_relations/us/news/press_wash130105.pdf) (accessed on 31 May, 2007)

<sup>122</sup>Judith Kelley, ‘New Wine in Old Wineskins: Promoting Political Reforms through the New European Neighborhood Policy,’ *Journal of Common Market Studies* 44, no. 1 (March 2006): 33.

<sup>123</sup> EU/Ukraine Action Plan: 5 [http://ec.europa.eu/world/enp/pdf/action\\_plans/ukraine\\_enp\\_ap\\_final\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf) (accessed May 31, 2007).

<sup>124</sup> Ibid.: 5

The scope of these 12 tasks with special bullet points for the implementation could easily embrace both the definition of the ‘formal or procedural’ democracy as well as ‘substantive’ democracy. Nevertheless, the formulation of these tasks and bullet points did not answer the criteria of clarity and exactness in terms of the implementation.

The concept of ‘formal democracy’ was supposed to be enhanced through the fulfillment of such tasks as:

- ‘Strengthen the stability and effectiveness of institutions guaranteeing democracy and the rule of law;
- Further judicial and legal reform, so as to ensure the independence of the judiciary and strengthen its administrative capacity, and to ensure impartiality and effectiveness of prosecution.’<sup>125</sup>

But most of the attention from the side of the EU seemed to be paid to the fulfillment of the priorities that actually address the issue of ‘substantial democracy’. A huge block of tasks was split into 30 bullet points. These bullet points addressed such issues as ‘respect for various types of human rights: rights of persons belonging to national minorities, children’s rights, trade unions’ rights, rights of detainees and equal treatment of men and women in a society.’<sup>126</sup>. Moreover, such important criteria of ‘substantial democracy’ as the development of civil society and respect for media freedom and expression are also set up as the significant democratic tasks for Ukraine.

The most important question in the assessment of these tasks is the follows. To what degree did these tasks specify a number of actions that Ukraine was supposed to undertake in order to meet them?’ The clearer the tasks are formulated, the easier to distinguish steps that correspond to their attainment. By contrast, the vagueness of the ‘democratic’ tasks can cause the impossibility to identify the evaluation criteria of their attainment. There is one more significant question that should be answered, namely whether the scope of introduced democratic priorities and tasks for Ukraine seriously different from those mentioned in the

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<sup>125</sup> Ibid.: 5

<sup>126</sup> Ibid.: 6-8

previous mutually binding document. This question can help to check the continuity and the presence of evolution in the determinacy of ‘democratic conditionality’ suggested to Ukraine.

Clarity of the steps to achieve the enumerated tasks does not seem to a merit of the sub-section ‘*Democracy, rule of law, human rights and fundamental freedoms*’.<sup>127</sup> The Policy Paper issued by one of the most credible think-tanks in Ukraine, the Razumkov Center ‘*Public Monitoring of the Ukraine-EU Action Plan Implementation: Preliminary Assessments*’ emphasized that the Action Plan ‘does not specify which measures should be accomplished for the attainment of the relevant goals and priorities of the Action Plan’<sup>128</sup>.

Thus, the task of ‘*strengthening the stability and effectiveness of institutions guaranteeing democracy and the rule of law*’<sup>129</sup> encompassed the following steps like:

- ‘Ensure democratic conduct of presidential (2004) and parliamentary (2006) elections, in accordance with OSCE standards and OSCE/ODIHR recommendations, including on the media;
- Ensure that any further legislative reforms to be conducted in line with international standards;
- Continue administrative reform and strengthening of local self-government, through appropriate legislation, in line with those standards, contained in the European Charter on Local Self Government.’<sup>130</sup>

Among these steps the second appears to be rather vaguely formulated. It does not clarify concrete measures that will help to conduct legislative reforms in compliance with the international standards.

Actually, each task stated in the Action Plan in the subsection ‘*Democracy, rule of law, human rights and fundamental freedoms*’ contains at least one step specified in rather an arbitrary form. For example, the task that addresses the criterion of ‘formal democracy’ as ‘the rule of law’ includes the following ambiguous formulations of steps:

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<sup>127</sup> Ibid.: 4

<sup>128</sup> ‘Public Monitoring of the Ukraine Action Plan Implementation: Preliminary Assessment,’ *National Security and Defense* 2, no. 86 (2007): 4. [http://www.uceps.org/additional/NSD86\\_eng.pdf](http://www.uceps.org/additional/NSD86_eng.pdf) (accessed on May 31, 2007).

<sup>129</sup> EU/Ukraine Action Plan: 5 [http://ec.europa.eu/world/enp/pdf/action\\_plans/ukraine\\_enp\\_ap\\_final\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf) (accessed on May 31, 2007).

<sup>130</sup> Ibid.: 5

- ‘Address reported shortcomings in the work of the law enforcement organs and prosecution;
- Complete and implement reform of the court system to ensure independence, impartiality and efficiency of the judiciary;
- Enhance training of judges, prosecutors and officials in judiciary, administration, police and prisons, in particular on human rights issues.’<sup>131</sup>

Such steps may really imply rather a wide interpretation of the actions that allow their attainment.

At the same time, one could not say that all the tasks addressing certain priorities of strengthening democratic institutions or furthering judicial or legal reforms are rather general by its essence. There is such a task as ‘*[s]trengthen the stability and effectiveness of institutions guaranteeing democracy and the rule of law*’<sup>132</sup> that give directions towards implementing reforms according to concrete European standards. Thus, it includes the steps of conducting parliamentary elections of 2006 in accordance with OSCE standards and OSCE/ODIHR recommendations or continuation of administrative reform according to the standards of the European Charter on Local Self Government<sup>133</sup>. In the case of furthering legal and judicial reforms there are some tasks from which the Ukrainian government can infer the undertaking of some really concrete steps like:

- ‘Continue the reform of the prosecution system in line with the relevant Council of Europe Action Plan;
- Effective implementation of ECHR judgments;
- Implement relevant actions envisaged in the EU-Action Plan on JHA matters and the implementation scoreboard.’<sup>134</sup>

Consequently, one can observe the mixture of clarity and vagueness in the formulation of the ‘democratic’ tasks that will enable the government to establish ‘formal democracy’ in a country. Not only ‘democratic’ tasks that constitute the concept of ‘formal democracy’ suffer from a certain level of ambiguousness. Such tasks as ‘*fostering the development of civil society [or] ensuring the respect for the freedom of the media and*

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<sup>131</sup> Ibid.: 5-6.

<sup>132</sup> Ibid.: 5-6

<sup>133</sup> Ibid.: 5-7

<sup>134</sup> Ibid.: 6-7



*expression [or] ensuring the respect for rights of persons belonging to national minorities*,<sup>135</sup>

have a series of steps that are rather indefinite. For example, in respect to the development of civil society it is suggested that respect of freedom of association should be ensured. Different measures could be undertaken by the Ukrainian side to do so and which ones will be regarded by the EU as enough in order to fulfill the stated priority.

The same situation concerns the issue of freedom of media. The Action Plan task demands the steps of ‘effective respect of freedom of media, including journalists’ rights’<sup>136</sup>. But what are the criteria of this effectiveness’ assessment? The ‘Razumkov Centre’ came to the conclusion that due to the vagueness of the formulation of ‘democratic conditions’ for Ukraine ‘any action may be qualified as the accomplishment.’<sup>137</sup>

Still, in comparison with the democratic provisions contained in *the Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine*, one could observe the elaboration of specific steps to consolidate democracy in Ukraine. The PCA included the objective ‘to support Ukraine’s efforts to consolidate its democracy and to develop its economy and to complete the transition into a market economy’<sup>138</sup> as one of the four top priorities of the partnership. But it did not elaborate at all what steps are implied under ‘Ukraine’s efforts to consolidate its democracy’. Therefore, the PCA provided even broader space for the interpretation by both sides than the ENP Action Plan, leaving any responsibility for the elaboration of the reforms upon Ukraine. The explanation for this could be regarded as the following. The PCA was signed in 1994 and came into force on the 1<sup>st</sup> of March, 1998 after the ratification by the EU member states. In the period of the establishment of this joint agreement, the EU was probably more interested

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<sup>135</sup> Ibid.: 7

<sup>136</sup> Ibid.: 7

<sup>137</sup> ‘Public Monitoring of the Ukraine Action Plan Implementation: Preliminary Assessment,’ *National Security and Defense* 2, no. 86 (2007): 4 [http://www.uceps.org/additional/NSD86\\_eng.pdf](http://www.uceps.org/additional/NSD86_eng.pdf) (accessed on May 31, 2007).

<sup>138</sup> Partnership and Cooperation Agreement between the European Communities and their Member States and Ukraine: 8. [http://ec.europa.eu/external\\_relations/ceeca/pca/pca\\_ukraine.pdf](http://ec.europa.eu/external_relations/ceeca/pca/pca_ukraine.pdf) (accessed on 31May, 2007).

in developing economic co-operation and guarantying sovereignty, territorial integrity of Ukraine, and the creation of a basic framework of the relationship with a newly independent state. Thus, Solonenko argued that ‘the PCA was an agreement that in reality put emphasis on more specific economic issues that needed immediate regulation between the EU member states and Ukraine.’<sup>139</sup>

Therefore, I can conclude that in comparison with the PCA, ‘democratic conditionality’ of the ENP Action Plan presented itself a qualitative shift in the interests of the EU with regard to democratic performance in Ukraine. It proved that the EU is eager to exert influence not only upon the establishment of ‘formal democracy’ in Ukraine limited by the concept of free and fair elections but also upon the democratic consolidation in the targeted country. But the problem was that even though the provisions added to the content of ‘democratic conditionality’ of the previous legal document still did not fully answer the criteria of preciseness.

The ENP Action Plan left enough room for the interpretation of various steps that could be undertaken to attain the suggested democratic conditions. Therefore, at a certain moment Ukraine could claim success in the achievement of democratic conditions but the EU could argue that the fulfillment of the democratic tasks was not satisfactory enough. Such scholars as Dimitrova and Pridham pinpointed that impreciseness is one of the characteristics of ‘weak conditionality’<sup>140</sup>. Thus, the monitoring of democratic performance in a country can become the object of political manipulation by both sides depending on their strategic interests. The EU could point at the non-fulfillment of certain vaguely formulated democratic tasks trying to retain the main reward, ‘perspective of full membership’. Ukraine, on the contrary, could declare the success in the implementation of democratic reforms since not all

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<sup>139</sup> Iryna Solonenko, ‘The European Union as Democracy Promoter: the Case of Ukraine,’ *The Romanian Journal of Political Sciences* 2 (2005): 61-62

<sup>140</sup> Antoaneta Dimitrova and Geoffrey Pridham, ‘International Actors and Democracy Promotion in Central and Eastern Europe: The Integration Model and its Limits,’ *Democratization* 11, no. 5 (December 2004): 94-95

the steps summarized in the ENP Action Plan are clearly defined. Thus, weak ‘democratic conditionality’ raises entrapment for both parties.

### **3.2.2 The Scope of Incentives provided for the Implementation of Democratic Reforms**

Logically, the next step that could contribute to the clear vision of the evolution of EU policy on Ukraine is the analysis of the size of rewards for the implementation of democratic reforms by Ukraine. The size and speed of the rewards is one of the main determinants of the success of the EU ‘political conditionality’ on Ukraine. As Kubicek stated ‘the carrots must be viewed as valuable enough for elites in the target state to embark upon a potentially risky change in policy’<sup>141</sup>.

Therefore, I consider the following questions as a logical framework for the consistent evaluation of the size and speed of rewards suggested by the EU to Ukraine in the newly launched policy. Can one observe a real shift in the scheme of the rewards for democratic reforms’ implementation for Ukraine within the ENP Action Plan? Are there any strong incentives for the Ukrainian political elites to foster the attainment of priorities enumerated in the ENP Action Plan for Ukraine? Would there be any package of rewards without the membership perspective effective for the implementation of reforms in Ukraine? Should the EU actually differentiate rewards for the implementation of the priorities in different areas? These are the questions.

On the one hand, the ENP Action Plan for Ukraine reflects the main principles adopted by the EU in respect to Ukraine. As the previous documents institutionalizing the relationship between the EU and Ukraine, the ENP Action Plan, firstly, presented a non-differentiated package of rewards for the implementation of the whole series of priorities, not only those concerning ‘democracy, rule of law, human rights and fundamental freedoms’.

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<sup>141</sup> Paul Kubicek, ‘The European Union and democratization in Ukraine,’ *Communist and Post-Communist Studies* 38 (2005): 273.

Secondly, the ENP Action Plan for Ukraine seems to provide a lot, but not the perspective of future membership. Thus, Dannreuther asserts that ‘the ENP is not, therefore, designed as a radically new policy and does not seek to replace but rather to reinforce the aquis of earlier policies and the institutions and policies set up by the PCAs ...’<sup>142</sup>

These two points: non-differentiation in the system of rewards and the absence of ‘future membership’ perspective appear to be crucial for the analysis of the granted incentives for reforms’ implementation. Differentiation would have implied the existence of a sort of reforms’ matrix for the achievement of certain reforms. Thus, the fulfillment of reforms in the area of democracy, rule of law and human rights would have been rewarded by a number of incentives independent of the achievements in the sphere of economics, for example. On the contrary, the ENP Action Plan as well as the previous legal documents towards Ukraine link the enumerated rewards with the overall progress in the domains of political dialogue and reform; economic and social reform and development; trade, market and regulatory reform. Thus, the language of the ENP Action Plan stated that ‘the pace of progress of the relationship will acknowledge fully Ukraine’s efforts and concrete achievements in meeting commitments to common values’<sup>143</sup>.

Actually, it is rather difficult to say to what degree the differentiation of rewards could be effective for the attainment of reforms in a specific area, namely democratization, since the EU has never really employed such a strategy in its legal documents. As Kelley explained in her work ‘if the EU wants to reward partial progress in certain areas, the country may infer that lack of progress in other areas is acceptable’<sup>144</sup>.

<sup>142</sup> Roland Dannreuther, ‘Developing the Alternative to Enlargement: The European Neighborhood Policy,’ *European Foreign Affairs Review* 11 (2006): 190.

<sup>143</sup> EU/Ukraine Action Plan: 1 [http://ec.europa.eu/world/enp/pdf/action\\_plans/ukraine\\_enp\\_ap\\_final\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf) (accessed May 31, 2007).

<sup>144</sup> Judith Kelley, ‘New Wine in Old Wineskins: Promoting Political Reforms through the New European Neighborhood Policy,’ *Journal of Common Market Studies* 44, no. 1 (March 2006): 36.

Obviously, if there is no differentiation of rewards from the side of the EU for democratic performance, the next step which I can consider in my research is the scope of overall incentives suggested by the EU in the ENP Action Plan. The main question here is the exclusion of the EU membership perspective for Ukraine and the consequences of this issue's exclusion. The importance of the question, especially for Ukraine, can hardly be overestimated.

Traditionally, the opportunity of full membership in the EU is regarded as the most effective mechanism of reforms' promotion. Such scholars in the field of 'Democratization' and 'Europeanization' as Michael McFaul<sup>145</sup>, Antoaneta Dimitrova and Geoffrey Pridham<sup>146</sup> agree that the credible promise of the EU full membership accelerated the process of democratic transition and consolidation, becoming an effective tool of democracy promotion.

For Ukraine, the rhetoric of the full integration into the EU institutions has predominated in the speeches of governmental officials and legal documents such as starting from 1993. Moreover, on the 25<sup>th</sup> of January 2005 President Yushchenko addressed the Parliamentary Assembly of the Council of Europe and clearly stated that 'the ENP Action Plan is regarded in Ukraine as the step towards a new agreement that should contain a prospect of membership.'<sup>147</sup> Could this statement of Ukraine's President actually mean that the suggested number of the incentives by the EU towards Ukraine on the one hand and the anticipation of the possibility of full integration on the other hand will be enough for the implementation of the whole package of reforms?

The question appears to be rather debatable. A number of Russian and Ukrainian analysts specializing in post-Soviet developments argue that the credible opportunity of full

<sup>145</sup> Michael McFaul, 'Democracy Promotion as a World Value,' *The Washington Quarterly* 24, no. 1 (Winter 2004-05): 157.

<sup>146</sup> Antoaneta Dimitrova, and Geoffrey Pridham, 'International Actors and Democracy Promotion in Central and Eastern Europe: The Integration Model and its Limits', *Democratization* 11, no. 5 (December 2004): 95

<sup>147</sup> Press-Service of Ukraine's President, *Address of the President of Ukraine Viktor Yushchenko at the plenary session of the first 2005 part-session of the Parliamentary Assembly of the Council of Europe* (25 January 2005) [http://www.yuschenko.com.ua/eng/Press\\_centre/168/2197/](http://www.yuschenko.com.ua/eng/Press_centre/168/2197/) (accessed on 31 May, 2007)

membership is actually the main determinant in the attainment of the whole package of the suggested reforms. Thus, Andrei V. Zagorski, Associate Professor at the Moscow State Institute of International Relations, asserted that ‘conditionality will not be the efficient tool for dealing with Ukraine unless the EU decides to grant Kiev a prospective membership option’.<sup>148</sup>

Moreover, the Ukrainian side assesses the number of rewards in the ENP Action Plan for Ukraine even more rigidly. Kuzio stated in his work *‘Is Ukraine Part of Europe’s Future’*, ‘the EU has still not offered anything substantial to Ukraine, although it is under increasing pressure from the European Parliament, which voted on two resolutions praising Ukraine’s democratic progress’.<sup>149</sup> Thus, the ENP Action Plan was designed as the next among various mechanisms employed by the EU to transform the targeted state’s external and internal policies. But the fact is that ‘when the EU failed to substantially reward reformers, this created resentment’.<sup>150</sup> Therefore, I can conclude in the preliminary assessment of the incentives’ package that it did not imply any differentiation and, what is important, did not include the ‘golden carrot of the EU’<sup>151</sup> - the credibility of full membership.

Regarding the fact that the EU did not include the perspective of full membership for Ukraine in the recent documents and there was no special differentiation of rewards for the improvement of democratic performance, I will concentrate on the following main points in the further analysis. How was the scheme of rewards designed in the ENP Action Plan? What kind of rewards were actually suggested for the attainment of the whole agenda of various reforms? To what degree was the package of rewards clearly formulated and broad? Was there any timetable for the delivery of those rewards?

<sup>148</sup> Andrei Zagorsky, ‘Policies towards Russia, Ukraine, Moldova and Belarus’, in Dannreuther, ed., *European Union foreign and security policy*, p.94.

<sup>149</sup> Taras Kuzio, ‘Is Ukraine Part of Europe’s Future?’, *The Washington Quarterly* 29, no.3 (Summer 2006): 90.

<sup>150</sup> Richard Youngs, ‘Democracy Promotion: The Case of European Union Strategy’, *Centre for European Policy Studies*, Working Document № 167 (2001): 27-28 [http://shop.ceps.eu/BookDetail.php?item\\_id=77](http://shop.ceps.eu/BookDetail.php?item_id=77) (accessed on 31 May, 2007)

<sup>151</sup> F. Stephen Larrabee, ‘Ukraine and the West’, *Survival* 48, no. 1 (Spring 2006): 97.

As the Commission President, Romano Prodi, stated: ‘We have to be prepared to offer more than partnership and less than membership, without precluding the latter’<sup>152</sup>. Historically, international organizations apply different types of rewards as a part of political conditionality. These rewards vary from financial assistance, trade liberalization to military protection.<sup>153</sup> In the case of Ukraine, the series of rewards encompassed eight incentives summarized in the beginning of the document under the title ‘*New partnership, economic integration and cooperation perspectives*’. Basically, these rewards might be subdivided into types. Firstly, these are the incentives promising ‘the [upgrading] in the scope and intensity of political cooperation’ and ‘the overall evolution of EU-Ukraine relations in the form of a new enhanced agreement’. This relates to the political domain.

The second group of rewards embraces mainly the incentives in the economic sphere, namely:

- ‘The perspective of moving beyond cooperation to a significant degree of integration, including through a stake in the EU’s Internal Market, and the possibility for Ukraine to participate progressively in key aspects of EU policies and programs;
- Convergence of economic legislation, opening of the economies and reduction of trade barriers;
- Increased financial assistance through a new European Neighborhood and Partnership Instrument;
- Deepening trade and economic relations, including review of the feasibility of the establishment of a FTA following Ukraine’s accession to the WTO.’<sup>154</sup>

Besides the economic and political areas, the incentives attempted to suggest Ukraine’s participation in programs that would promote ‘cultural, educational, environmental, technical and scientific links’.

<sup>152</sup> Romano Prodi, ‘A wider Europe - A Proximity policy as the key to stability’, Speech to the Sixth ECSA-World Conference, Brussels. 5-6 Dec. 2002, Speech/02/619.

[http://ec.europa.eu/external\\_relations/news/prodi/sp02\\_619.htm](http://ec.europa.eu/external_relations/news/prodi/sp02_619.htm) (accessed on 31 May, 2007)

<sup>153</sup> Frank Schimmelfenning, ‘European Regional Organizations, Political Conditionality, and Democratic Transformation in Eastern Europe’, Paper prepared for Club de Madrid – IV General Assembly, Prague, 10-12 November 2005, p.4.

<sup>154</sup> EU/Ukraine Action Plan: 2-3. [http://ec.europa.eu/world/enp/pdf/action\\_plans/ukraine\\_enp\\_ap\\_final\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf) (accessed May 31, 2007).

The first group of incentives seems to be more important for a long time perspective, since it does not entirely preclude the opportunity of full membership. The inclusion of the provision about a new enhanced agreement may become the strongest determinant in the implementation of democratic reforms.

Still some of Ukrainian analysts assess this kind of vague incentive for the nearest future rather critically. Thus, Taras Kuzio states that ‘the EU is seeking to avoid offending Ukraine’s reformist leadership by continuing to keep the door to membership closed but pretending it has opened slightly’.<sup>155</sup> The main point in the case of this incentive is to what degree it will be regarded by the Ukrainian officials as credible. The fact is that even the high officials of the EU acknowledge that the EU faces the problem of finding new mechanisms of promoting changes in the external and internal policies of the targeted countries. The prospect of ‘full membership’ does not seem to belong to these mechanisms anymore. Thus, Chris Patten, the former external relations’ commissioner, made rather a rigid statement regarding the type of reforms that the EU could actually suggest for the implementation of any reforms by non-member states:

‘Over the past decade, the Union’s most successful foreign policy instrument has undeniably been the promise of EU membership. This is not sustainable. For the coming decade, we need to find new ways to export the stability, security and prosperity we have created with the enlarged Union.’<sup>156</sup>

Moreover, Benita Ferrero-Waldner, European Commissioner for External Relations and European Neighborhood Policy, continued the same rhetoric already in 2006, when such countries as Ukraine started to implement the priorities of the ENP Action Plan hoping for the

<sup>155</sup> Taras Kuzio, ‘Is Ukraine Part of Europe’s Future?’ *The Washington Quarterly* 29, no.3 (Summer 2006): 95.

<sup>156</sup> Ronald Dannreuther, ‘Developing the Alternative to Enlargement: the European Neighborhood Policy’, *European Foreign Affairs Review* 11 (2005):187.



perspective of full membership. He stated that '[y]et it is clear that the EU cannot enlarge ad infinitum. ... First, the impetus for meaningful reforms must always come from within.'<sup>157</sup>

Actually, this kind of statements of the EU officials decreased the credibility of such an incentive as the possibility of a new enhanced agreement in the sense that the Ukrainian officials could understand it, namely the possibility of 'full membership' perspective. The Ukrainian officials conceptualized 'the possibility of a new enhanced agreement' in their own way. For the EU, the '[the ENP] is designed to offer a privileged form of partnership now, irrespective of the exact nature of the future relationship with the EU'.<sup>158</sup> Therefore, one could conclude that there is a gap in the understanding of the accepted size of rewards among the Ukrainian and European officials. Moreover, there is space for a different interpretation of the included incentives' provisions by the two sides. That undermines the credibility of such an incentive as 'a new enhanced cooperation agreement'. Performing reforms in the field of 'democracy, rule of law and human rights' and trying to be successful in the attainment of other priorities, Ukraine obviously hopes to get the credible encouragement for full membership. The EU, on the contrary, is more inclined to address the issues of stability and prosperity by the tools different from enlargement mechanism.

Since the strongest incentive for the improvement of democratic performance in the country seemed to be left out of the ENP Action Plan for Ukraine, the only part that remains for the analysis of the size and speed of rewards is the scope of incentives in other spheres, the exactness of their formulation and time-framework for delivery. According to the Council of the European Union, 'action plans should be comprehensive but at the same time identify clearly a limited number of key priorities and offer real incentives for reform'<sup>159</sup>. But the fact

<sup>157</sup> Benita Ferrero-Waldner, 'The European Neighborhood Policy: The EU's Newest Foreign Policy Instrument', *European Foreign Affairs Review* 11 (2006): 139-140.

<sup>158</sup> Ibid.: 140

<sup>159</sup> The Council of the European Union, 'European Neighborhood Policy – Council conclusions', 14 June 2004, Press release 10189/04 (press 195): 12 [http://ue.eu.int/ueDocs/cms\\_Data/docs/pressData/en/gena/80951.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/gena/80951.pdf) (accessed on 31 May, 2007).

is that among eight enumerated in the ENP Action Plan incentives few can claim the clarity of the formulation. These clear incentives belong primarily to the economic sphere. These are ‘the opportunity for convergence of the economic legislation, the opening of economies to each other’, ‘review of the feasibility of the establishment of a FTA following Ukraine’s accession to the WTO’, ‘EU financial assistance through a new European Neighborhood and Partnership Instrument (ENPI)’.

The rest of the incentives can hardly be called determined. They allowed a high degree of flexibility for the EU due to the wording of these incentives. How would one define ‘an upgrade in the scope and intensity of political cooperation’ or ‘possibilities of gradual opening of, or reinforced participation in, certain Community programs, promoting cultural, educational, environmental, technical and scientific links’. Therefore, the content of the ENP Action Plan raised a number of critical remarks among the scholars. As the scholar F. Stephen Larrabee who holds the Corporate Chair in European Security at the RAND Corporation mentioned in his work *‘Ukraine and the West’*, ‘the EU is banking on being able to string out a series of small rewards- market economy status, relaxation of visa restrictions, expanded educational activities, etc. – to encourage Ukraine to move forward with reform without committing itself to offering Ukraine membership.’<sup>160</sup>

As for the speed of rewards’ granting, one could observe the so-called gradual approach suggested by the ENP Action Plan for Ukraine. It implied three types of review procedures: joint assessment, unilateral reports by the European Commission and country’s position papers. ‘A first review of the implementation of the Action Plan [was supposed] to be undertaken within the two years of the adoption.’<sup>161</sup> Monitoring can encourage or prevent the

<sup>160</sup> F. Stephen Larrabee, ‘Ukraine and the West’, *Survival* 48, no. 1 (Spring 2006): 97.

<sup>161</sup> EU/Ukraine Action Plan: 42. [http://ec.europa.eu/world/enp/pdf/action\\_plans/ukraine\\_enp\\_ap\\_final\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf) (accessed May 31, 2007).

suggestion of ‘a more wide-ranging contractual framework, ‘A European Neighborhood Agreement’, the content and scope of which demanded further definition.’<sup>162</sup>

Thus, I can infer that the size and speed of rewards suggested for Ukraine for the implementation of the reforms in the sphere of democratic performance and other areas presented itself a rather flexible for the EU matrix. This matrix encompassed mostly a number of vaguely defined incentives for the implementation of a huge number of priorities without any differentiation mechanism. Preciseness concerned only a small number of economic rewards. For Ukraine, the transformative power of the EU was still based on the exclusion of explicitly defined full membership perspective. As the President of the European Commission Jose Manuel Barroso declared: ‘Our door remains open, the future of Ukraine is in Europe. The best way to get there is not to talk about EU membership all the time but achieve concrete results, show commitment to European values and standards.’<sup>163</sup>

Therefore, in terms of the reward, I can consider that the following formula was suggested for Ukraine. The significant progress in the attainment of the mentioned priorities in various areas: political, economic, environmental should be achieved first, and then will be followed by the re-consideration of the imprecisely formulated incentives. Neither Ukraine nor the EU led ‘the re-conceptualization of their interests and policies’<sup>164</sup>. Though the EU tried to offer ‘the benefits previously associated only with membership, such as a stake in [the] internal market, involvement in EU programs’<sup>165</sup>, this offer did not satisfy Ukraine. The targeted country was still concerned with ‘membership’<sup>166</sup>. The framing of the incentives’

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<sup>162</sup> European Commission, ‘Communication on the Commission proposals for action plans under the European Neighborhood Policy (ENP)’. COM (2004) 795 final, 9 Dec. 2004: and ‘European Neighborhood Policy strategy paper’, COM (2004) 373 final. 12 May 2004.

<sup>163</sup> Jose Manuel Barroso, ‘Ukraine Told that the EU Door is Open’, BBC News, October 6, 2005, <http://news.bbc.co.uk/1/hi/world/europe/4313906.stm> (accessed on 31 May, 2007).

<sup>164</sup> Roland Dannreuther, ‘Developing the Alternative to Enlargement: The European Neighborhood Policy,’ *European Foreign Affairs Review* 11 (2006): 185.

<sup>165</sup> Benita Ferrero-Waldner, ‘The European Neighborhood Policy: The EU’s Newest Foreign Policy Instrument’, *European Foreign Affairs Review* 11 (2006): 140.

<sup>166</sup> Press Service of Ukraine's President Viktor Yushchenko, “Europe lacks Ukraine” 11:44, 31 January 2005. [http://www.yuschenko.com.ua/eng/present/Mass\\_media/2274/](http://www.yuschenko.com.ua/eng/present/Mass_media/2274/)

issue by Ukraine was consistent before and after the introduction of the ENP Action Plan. Thus, ‘strategic’ gap in each others’ interests was added to the impreciseness of the content of rewards. According to the classical scholars on ‘Europeanization’, namely Frank Schimmelfennig and Ulrich Sedelmeier, the reinforcement by vague rewards in order to make the targeted country comply with the suggested conditions limits the effectiveness of ‘democratic conditionality’<sup>167</sup>.

### 3.3.3 The Constellation of Domestic Political Actors and the Implementation of EU Democratization Policies

The year of 2004 was marked not only by the adoption of the final version of the initiative ‘*Wider Europe – Neighborhood: A new Framework for relations with our Eastern and Southern Neighbors*’ that aimed to ‘prevent new dividing lines between the enlarged EU and its new neighbors.’<sup>168</sup> For the domestic politics of Ukraine, the year of 2004 was distinguished among others by the events referred to as the Orange Revolution. Prominent political scientists such as Aslund, McFaul and Wilson argue that ‘Orange Revolution’ became a pivotal moment in the history of Ukraine after the collapse of the Soviet Union.<sup>169</sup> The Orange Revolution covered the period from the 21st of November 2004, the second round of the presidential elections 2004 till the 23d of January 2005, when the official ceremony of President Yushchenko’s inauguration took place. The presidential elections of 2004 put an end to the second term of Kuchma’s office.

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Ukrainian President Yushchenko, “Yushchenko’s Address before Joint Session of U.S. Congress,” 6 April 2005 [http://www.yuschenko.com.ua/eng/Press\\_centre/168/2894/](http://www.yuschenko.com.ua/eng/Press_centre/168/2894/) (accessed on 31 May, 2007).

<sup>167</sup> Frank Schimmelfennig and Ulrich Sedelmeier, ‘Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe,’ *Journal of European Public Policy* 11, no.4 (August 2004): 664-665.

<sup>168</sup> Communication from the Commission European Neighborhood Policy Strategy Paper Brussels, 12.5.2004 COM (2004) 373 final :3

<sup>169</sup> Wilson, Andrew. (March 2006). *Ukraine’s Orange Revolution*. Yale University Press: 205

The victory of President Yushchenko offered the prospects of change in the domestic and foreign policies. This consideration had its foundation in the fact that ‘during his spell as prime minister in 2000-2001, Yushchenko built a track record as a liberal but pragmatic reformer aiming at improving Ukraine’s ties with the West.’<sup>170</sup> President Yushchenko seemed to get complete acknowledgement as a democratic leader from the EU. Moreover, the Orange Revolution could bring one more result in terms of the relations between the EU and Ukraine. The success of the Orange Revolution could have initiated the reconsideration of the political benefits suggested for Ukraine in the ENP Action Plan that was not yet adopted. Thus, in the resolution of the European Parliament set on the 13th of January 2005, it was stated that ‘[the European Parliament] calls on the Council and the Commission to consider at the same time a revision of the European Neighborhood Policy Action Plan, which must take account of the new situation, thus giving the new Ukrainian government the opportunity to renegotiate the Plan in the light of its deep aspirations for European Integration.’<sup>171</sup>

However, the EU cautiously decided not to change the negotiated framework of the relationship with Ukraine within the ENP Action Plan. One of the reasons for this was the fact that ‘a decade of muddled reforms, political corruption and ‘oligarchic’ capitalism cannot easily be undone.’<sup>172</sup> Therefore, the question was whether the new ruling elite would be able to balance between the interests of former financial supporters, the necessity of economic reforms and the consolidation of democratic results of the presidential elections of 2004.

From the first days of his term, Yushchenko’s rhetoric did not differ from the statements of predecessor. In his inaugural speech, address to the Parliamentary Assembly of the Council of Europe on 25th January 2005, address to the World Economic Forum in

<sup>170</sup> Kataryna Wolczuk, “Ukraine after the Orange Revolution,” *Centre for European Reform*, Policy Brief (February 2005): 1

<sup>171</sup> Results of Ukraine Elections European Parliament Resolution on the results of Ukraine election P6\_TA(2005)0009: 3 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P6-TA-2005-0009+0+DOC+PDF+V0//EN> (accessed on 31 May, 2007).

<sup>172</sup> Kataryna Wolczuk, “Ukraine after the Orange Revolution,” *Centre for European Reform*, Policy Brief (February 2005): 3

Davos, address before Joint Session of U.S. Congress, President Yushchenko constantly repeated one and the same idea that the place of Ukraine is among the members of the European Communities. As Olga Shumylo argued, ‘the discourse on European Integration in Ukraine did not change in essence even with the shift of political elites.’<sup>173</sup> The following statements of the President are the most representative in this case:

‘Not long ago many people thought joining the European Union a long-term prospect. Yet free European nations quickened their steps many times. The symbols of speedy changes are the ruins of Berlin wall, Warsaw round table and our Maidan in Kyiv. Ukraine opens European history of the third millennium. We are not Europe’s suburbs anymore. We are the center of Europe.’<sup>174</sup>

‘We welcome the intention of the European Union to develop a new strategy of relations with Ukraine. This is an important signal. I am convinced that the new paper should contain a prospect of membership. We believe that the EU-Ukraine Action Plan should be reviewed.’<sup>175</sup>

‘Our third strategic target is Ukraine in the European Union. My country’s history, economy and interests clearly show that Ukraine’s way to the future is the way which is taken by the united Europe. Renewed Ukraine hopes for the backing of EU institutions, and recalls a vote by the European parliament on January 13 which called for my nation to be offered a clear European perspective with a view to joining the 25-nation bloc. We welcome an EU commitment to intensify relations with Ukraine. We would like its purpose to be to open the EU door to our nation. The application for EU membership is intended to be filed in the near future.’<sup>176</sup>

Thus, from the very beginning of his term, the new leader of Ukraine firmly claimed that the issue of full membership in the EU is the top political agenda. The problem was that the rhetorical entrapment was one of the most obvious characteristic features of the previous

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<sup>173</sup> Olga Shumylo, ‘The Debate on the EU Membership Prospects of Ukraine’, Policy Paper Institute of Public Affairs:

<sup>174</sup> Inaugural address of the President of Ukraine Victor Yushchenko to the Ukrainian people on Independence Square [http://www.yuschenko.com.ua/eng/Press\\_centre/168/2167/](http://www.yuschenko.com.ua/eng/Press_centre/168/2167/) (accessed on 31 May, 2007)

<sup>175</sup> Address by Ukraine’s President Victor Yushchenko on the occasion of the first part of the 2005 Ordinary Session of the Council of Europe Parliamentary Assembly (Strasbourg, 24-28 January 2005) 17:48, 25 January 2005. [http://www.yuschenko.com.ua/eng/Press\\_centre/168/2197/](http://www.yuschenko.com.ua/eng/Press_centre/168/2197/) (accessed on 31 May, 2007).

<sup>176</sup> Victor Yushchenko’s address to the World Economic Forum in Davos 21:46, 28 January 2005 [http://www.yuschenko.com.ua/eng/Press\\_centre/168/2253/](http://www.yuschenko.com.ua/eng/Press_centre/168/2253/) (accessed on 31 May, 2005)

‘Kuchma regime’. Moreover, the European Union had previous experience of dealing with Ukrainian announcements of the intention to join the EU in the nearest future. Therefore, obviously the EU had a right to regard the demand of a clear full membership perspective from Ukraine as premature.

From the very beginning, the European Neighborhood Policy was a strategy which sought ‘to promote the EU’s transformational diplomacy but without the incentive of a perspective of future membership.’<sup>177</sup> The new type of political elite that came to power in Ukraine was supposed to prove its commitment to European norms and standards by real reforms. Uncertainty about the stability of political orientation of President Yushchenko and his team predominated in the EU. The consequences of this EU decision were rather controversial especially for the new ruling elite. The denial of the full membership perspective for Ukraine could have become manipulated by the opposition forces to the Yushchenko camp the parliamentary elections in 2006. D’Anieri argued that ‘re-organized forces of Victor Yanukovych could actually play the card of the disillusionment with the EU during the parliamentary elections of 2006.’<sup>178</sup>

That was actually the description of the domestic starting point on the eve of the adoption of the ENP Action Plan. Strong, rhetorically pro-European and pro-democratic President whose powers were still regulated by the constitution of 1996. This fact actually meant that:

- ‘the right of legislative initiatives was in the hands of President and the Cabinet of Ministers
- in the parliament there was a pro-presidential majority to approve the prime-minister, to support presidential legislative initiatives and to adopt new laws,
- members of the Cabinet of Ministers as well as the chairmen of local state administrations were appointed without any approval the parliament.’<sup>179</sup>

<sup>177</sup> Roland Dannreuther, ‘Developing the Alternative to Enlargement: The European Neighborhood Policy,’ *European Foreign Affairs Review* 11 (2006): 185.

<sup>178</sup> Paul D’Anieri, ‘What Has Changed in Ukrainian Politics? Assessing the Implications of the Orange Revolution,’ *Problems of Post-Communism* 52, no. 5 (September/October 2005): 84.

<sup>179</sup> Taras Kuzio ‘Ukraine under Kuchma. Political Reform, Economic Transformation and Security Policy in Independent Ukraine’: 130

Thus, the domestic situation in terms of power-distribution after the Orange revolution was favorable for the development and the implementation of steps to attain democratic conditions enumerated in the ENP Action Plan.

The ENP Action Plan became the first mutually binding document adopted in the first term of President Yushchenko. Success in the implementation of the democratic conditions suggested in this document in exchange for financial assistance and other benefits can actually prove the commitment of the new ruling elite to the principles of liberal democracy and show the impact of the EU policies upon democratization in Ukraine.

Actually, there are three actors that are supposed to assess the implementation of the ENP Action Plan for Ukraine: firstly, the EU side, unilaterally and annually, then the unilateral monitoring by the Government of Ukraine and then joint monitoring by both sides. The joint monitoring of the two sides should come up within the two years of the adoption of the Action Plan.

The EU did not clearly specify all the actions that Ukraine should undertake in order to fulfill 12 tasks in the area of '*democracy, rule of law, human rights and fundamental freedoms*,'<sup>180</sup> in the chapter '*2.1. Political dialogue and reform*,'<sup>181</sup> of the ENP Action Plan. Therefore, it became the responsibility of the Cabinet of Ministers of Ukraine to elaborate measures to implement Ukraine-EU Action Plan.

From the side of the EU, the European Commission was supposed to perform the unilateral assessment of the implementation of the ENP Action Plan. The most recent report upon the implementation was issued on the 4<sup>th</sup> of December 2006. It pinpointed the areas of success and failure in terms of democratic reforms' performance by Ukraine. The most concrete democratic objective of the fourteen key priorities addressed in the very beginning of

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<sup>180</sup>EU/Ukraine Action Plan: 5-6. [http://ec.europa.eu/world/enp/pdf/action\\_plans/ukraine\\_enp\\_ap\\_final\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf) (accessed May 31, 2007).

<sup>181</sup> Ibid.: 5-6



the ENP Action Plan was ‘[e]nsuring the democratic conduct of presidential (2004) and parliamentary (2006) elections in Ukraine in accordance with OSCE standards’<sup>182</sup>, the attainment or disregard of this priority could not be left unnoticed by the European Commission.

The European Commission asserted that ‘[w]ith the preparation and conduct of overall free and fair parliamentary elections in March 2006, Ukraine consolidated the breakthrough in conducting a democratic election process that began with the Orange Revolution.’<sup>183</sup> Actually, the compliance with the OSCE/ODIHR standards is often referred as the main success in the achievement of ‘democratic conditions’ suggested by the ENP Action Plan. Here one can observe solidarity in the acknowledgement of the main success by different sides: the EU monitors, the Ukrainian government and public monitors from Ukraine.

Thus, *Position Paper on Ukraine – EU Action Plan Implementation by Ukrainian side for 2005 – 2006* issued by the Ukrainian side also stated that “the Parliamentary elections in Ukraine in 2006 have been conducted democratically and transparently what was acknowledged by the international observers on behalf of OSCE, the council of Europe, the European Union and other international organizations and states.”<sup>184</sup> The fact is that one cannot regard the fair and free parliamentary election of 2006 as the direct impact of the ‘conditionality’ of the ENP Action Plan. Ukraine is the member of such organizations as OSCE and Council of Europe that presented similar demands of free and fair elections as the ENP Action Plan.

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<sup>182</sup> Ibid.: 5.

<sup>183</sup> Commission Staff Working Document Accompanying the: Communication From the Commission to the Council and the European Parliament On Strengthening the European Neighborhood Policy. *ENP Progress Report Ukraine*, Brussels, 4 December 2006 SEC(2006) 1505/2 : 2

<sup>184</sup> Position Paper on Ukraine – EU Action Plan Implementation by Ukrainian side for 2005 – 2006: 5  
<http://www.kmu.gov.ua/document/41022823/%D0%B0%D0%BD%D0%B3%D0%BB%20%D0%B2%D0%B5%D1%80%D1%81%D1%96%D1%8F%20Position%20Paper.doc> (accessed on 31 May, 2007)

Still, *Position Paper on Ukraine – EU Action Plan Implementation by Ukrainian side for 2005 – 2006*<sup>185</sup> is important for the research since the document actually summarizes all the democratic initiatives implemented by Ukrainian Government as under the influence of the priorities of the ENP Action Plan. Thus, in order to evaluate whether rhetorically pro-democratic and pro-European Yushchenko started to elaborate specific measures to fulfill the democratic tasks enumerated in the ENP Action Plan, I trace the history of the laws introduced as supposedly under the influence of EU democratization policies. These laws provide the basis for the establishment of the rules and procedures that cover both the concept of ‘procedural’ as well as ‘formal’ democracy.

The fact is that out of all the laws introduced within the two years of the ENP Action Plan functioning, only the projects of the laws within the field of ‘*ensuring of freedom of media*’ were suggested for the discussion in the Parliament earlier, just before the presidential elections in 2003<sup>186</sup> (for detailed analysis: Appendix 1). They were not adopted since they were regarded as allowing too much freedom to the journalists especially on the eve of presidential elections 2004. President Kuchma and his administration were afraid that the laws regarding media would help opposition force to mobilize the electorate against President Kuchma or his candidate for presidency even in the eastern regions.

Thus the analysis of the history of the laws introduced under the influence of the EU shows that more pro-democratic government started to implement the reforms even under the vagueness of the rewards suggested as well as under the certain impreciseness of the democratic conditions.

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<sup>185</sup> Ibid.

<sup>186</sup> Appendix 1 of the Thesis.

## Conclusion

The goal of this research was to evaluate the influence of the EU upon democratization in Ukraine. Democratization was conceptualized as the establishment of the rules and procedures that cover, firstly, the concept of 'procedural' democracy, secondly, the concept of 'liberal democracy.' Therefore, the sign of the leverage of the EU upon democratization in Ukraine was considered the introduction of the laws that corresponded to the principles either of 'procedural' or 'formal' democracy. These laws were not supposed to be elaborated before the entry into force of EU democratization policies.

The impact of the EU as a democracy promoter in Ukraine was studied within 'the logics of consequentialism' and 'logic of appropriateness.' The logics were not mutually exclusive. They are basically the foundation principles of 'Europeanization' theoretical framework. The importance of this theoretical framework lied in the fact that it connected within two schemes various explanatory factors of democratization, namely the influence of structural, agency and international environment's variables.

Thus, evaluating the dynamics of change in EU democratization policies towards Ukraine, firstly I considered the determinacy of democratic conditions suggested to Ukraine and the size of rewards proposed for their implementation. The determinacy of conditions was defined as the content of democratic conditions that has clear behavioral implications. The size of rewards varied from mere financial and technical assistance, a prospect of Free Trade Area between the EU and Ukraine to the acceptance of Ukraine as a candidate for membership. The first stage of the relationship between Ukraine and the EU in the period of 1994 to 2004 was regulated by a mutually binding Partnership and Co-operation Agreement (PCA).

In this period, the EU suggested Ukraine ‘democratic conditionality’, but of specific kind. The democratic conditions of Article 2 PCA for the attainment by Ukraine were clear. Article 2 referred to the democratic principles enumerated in the Helsinki Final Act and the Charter of Paris for a New Europe. The problem was in the formulation of Article 2. It was not pro-active. It meant that Ukraine was not supposed to undertake any actions that would contradict to the enumerated principles. However, Article 2 did not give any guidelines to Ukraine to attain the state of liberal democracy. For a state inexperienced with democracy, the absence of democratic conditions in the form of guidelines was a substantial drawback.

Nevertheless, the inclusion of Article 2 was significant, since it presented the essential element of the PCA. The breach of this article can be the ground for the dissolution of the agreement. Strategically, as the years of the relationship between the EU and Ukraine showed, namely such a case as the murder of journalist Gongadze in 2001, that the EU was not ready to leave Ukraine out of the European orbit just because of the violations of democratic principles.

In terms of the size of the rewards for the implementation of the reforms which is also part of the analysis within the ‘logics of consequensialism,’ the PCA was regarded as a modest extension of the Trade and Co-operation Agreement previously existing between the EU and the Soviet Union with the quotas on the goods in the most competitive sectors of Ukrainian economy.

However, since it was purely at the discretion of Ukraine to implement any kind of actions so that to show the adherence to democratic norms and standards, the existence of the political regime opposing democratization and having access to political decision-making hindered democratization. This research showed that the absence of the system of ‘check and balances’ and the predominance of presidential power over all other branches of power, the unification of President and his administration with oligarchic clans created the situation in

which the adherence to democratic principles became costly for the ruling elite that had access to political decision-making.

Thus, I argue that at the early stage of the relationship between the EU and Ukraine regulated by the PCA, it was the combination of three factors that accounted for marginal effect of democratization policies of the EU towards Ukraine: specific kind of democratic conditions characterized by clarity but not by guidelines for the establishment of a democratic polity, the low size of rewards contradictory to the constant Ukrainian rhetoric of integration into the European Union and the high costs of the implementation of the reforms for the domestic elites. Democratic conditionality contained mere size of rewards, clarity of the democratic conditions in terms of the adherence to the principles of both ‘procedural’ as well as ‘liberal democracy’ but without specified guidelines for the establishment of a liberal democratic state.

Therefore, I conclude that the PCA could hardly become a long-term strategy for the democratization of Ukraine. Still from the side of the EU that could have been explained strategically. The specific guidelines for the implementation are offered only when the stake for rewards is high. Since the EU did not plan the integration perspective for Ukraine as the highest reward, the responsibility in terms of how to establish a liberal democratic state was put upon Ukrainian officials. Moreover, for the development of recommendations for Ukraine, the EU obviously needed the expertise about the peculiarities of the domestic situation in Ukraine after the collapse of the communist system. Logically, social learning from the side of the EU also demanded time.

The reconsideration and creation of another mutually obligatory policy came with the enlargement of the European Union. Thus, Ukraine and the EU entered another stage of relationship regulated already by the European Neighborhood Action Plan based on the provisions of the PCA. The characteristics of the ENP Action Plan improved in comparison to

those of the PCA in terms of democratization policies. The ENP Action Plan suggested in addition to Article 2 of the PCA the matrix of precise and vague democratic guidelines for the implementation and left the responsibility for the elaboration of the steps concerning their achievement upon Ukraine.

The mixture of vague and clear incentives implied the flexibility and manipulation in the assessment of their attainment. Still, that was already progress in terms of EU policies towards democratization in Ukraine, since the EU offered the scheme of guidelines. In terms of rewards, the highest political reward for the implementation of the reforms was the possibility of a new enhanced agreement under which the team of President Yushchenko understood the clear perspective of full membership. Moreover, the shift from one type of ruling elite to the other really had an effect upon the development and implementation of specific steps to reach democratic tasks and key priorities enumerated in the ENP Action Plan. Almost all the laws introduced after the entry into force of the ENP Action and enumerated in the *'Position Paper On Ukraine-EU Action Plan Implementation by Ukrainian Side For 2005-2006'* were never considered under the two terms of the office of President Kuchma.

The Orange revolution really became a trigger for democratization process in Ukraine. It gave the opportunity for the political veto-players towards Kuchma's regime to show to the EU and to Western liberal democratic states that the political culture of the civil society changed over the two terms of Leonid Kuchma. The society and the political veto-players united together to perform a peaceful transfer from one political regime to the other.

As for EU democratization policies, I infer that there was no considerable shift in towards Ukraine within the ENP Action. It presented the framework of precise and vague democratic tasks. Still, that was already progress in comparison with the PCA. The implementation of these tasks was underpinned by the political reward which was rather

frustrating for Ukraine. The EU left room for manipulation in the assessment of the success of reforms' implementation and in the interpretation of the format of a future agreement conditioned upon the implementation. Still the coming of new President Yushchenko proved that any pro-democratic government is capable of carrying out EU democratization policies even with the controversial determinacy of democratic conditions and rather vague future political rewards.

The case of the EU impact upon democratization in Ukraine can show that the preciseness of democratization policies of any international organization or supra-national power actually depends upon its strategic interests towards a targeted country. If the main goal of the suggested policy is really democratization, the attention towards the breach of democratic conditions should be really high, democratic conditions should be specified in the form of tasks necessary to achieve them, and the rewards should be supposed to be high. At the same time the analysis of the domestic situation in Ukraine during the period of the implementation of the PCA and then the ENP Action Plan can prove that truly pro-democratic government can start to implement the suggested policies effectively, even in the situation of the lack of the preciseness of conditions and the vagueness of the rewards.

## Appendix 1

*“Strengthen the stability and effectiveness of institutions guaranteeing democracy and the rule of law”<sup>187</sup>*

1. ‘the Law of Ukraine “On election of people’s deputies” (the Law of Ukraine No. 2777)’<sup>188</sup>

The history of the Law is the following:

‘the adoption of the law: **07.07.2005**; the project of the law : **28.04.2005**; the suggestion of the law: 28.04.2005; the clarifying letter to the project of the law: 28.04.2005; the subject initiating legislature procedure: people’s deputy’<sup>189</sup>

2. ‘the Law of Ukraine “On election of the deputies of the Verkhovna Rada of Autonomous Republic of Crimea, deputies of local councils and of village and city mayors” (the Law of Ukraine No. 3253)’<sup>190</sup>

The history of the Law is the following:

‘the adoption of the law: **21.12.2005**; the project of the law : **29.11.2005**; the subject initiating legislature procedure: people’s deputy’<sup>191</sup>

3. ‘the Law of Ukraine “On the Cabinet of Ministers of Ukraine”’<sup>192</sup>

The history of the Law is the following:

‘the adoption of the law: **13.10.2006**; the project of the law : **13.10.2006**; the suggestion of the law: 13.10.2006; the clarifying letter to the project of the law: 21.12.2006; the subject initiating legislative procedure: Cabinet of Ministers’<sup>193</sup>

*“Further judicial and legal reform, so as to ensure the independence of the judiciary and strengthen its administrative capacity, and to ensure impartiality and effectiveness of prosecution”<sup>194</sup>*

<sup>187</sup> Position Paper on Ukraine – EU Action Plan Implementation by Ukrainian side for 2005 – 2006: 5  
<http://www.kmu.gov.ua/document/41022823/%D0%B0%D0%BD%D0%B3%D0%BB%20%D0%B2%D0%B5%D1%80%D1%81%D1%96%D1%8F%20Position%20Paper.doc> (accessed on 31 May, 2007)

<sup>188</sup> Ibid.

<sup>189</sup> The Portal of Ukrainian Government. [http://gska2.rada.gov.ua/pls/zweb\\_n/webproc4\\_1?pf3511=24432](http://gska2.rada.gov.ua/pls/zweb_n/webproc4_1?pf3511=24432) (accessed on 31 May, 2007)

<sup>190</sup> Position Paper on Ukraine – EU Action Plan Implementation by Ukrainian side for 2005 – 2006: 5  
<http://www.kmu.gov.ua/document/41022823/%D0%B0%D0%BD%D0%B3%D0%BB%20%D0%B2%D0%B5%D1%80%D1%81%D1%96%D1%8F%20Position%20Paper.doc> (accessed on 31 May, 2007)

<sup>191</sup> Ibid. [http://gska2.rada.gov.ua/pls/zweb\\_n/webproc4\\_1?pf3511=26262](http://gska2.rada.gov.ua/pls/zweb_n/webproc4_1?pf3511=26262) (accessed on 31 May, 2007)

<sup>192</sup> Position Paper on Ukraine – EU Action Plan Implementation by Ukrainian side for 2005 – 2006: 5

<sup>193</sup> Ibid. [http://gska2.rada.gov.ua/pls/zweb\\_n/webproc4\\_1?pf3511=28275](http://gska2.rada.gov.ua/pls/zweb_n/webproc4_1?pf3511=28275) (accessed on 31 May, 2007)

<sup>194</sup> Position Paper on Ukraine – EU Action Plan Implementation by Ukrainian side for 2005 – 2006: 6  
<http://www.kmu.gov.ua/document/41022823/%D0%B0%D0%BD%D0%B3%D0%BB%20%D0%B2%D0%B5%D1%80%D1%81%D1%96%D1%8F%20Position%20Paper.doc> (accessed on 31 May, 2007)



1. ‘The Law of Ukraine “On access to court decisions” (the Law of Ukraine adopted on 22 December 2005 No. 3262-IV takes effect on 1 June 2005),’<sup>195</sup>

The history of the Law is the following:

‘the adoption of the law: **22.12.2005**; the project of the law : **31.08.2005**; the suggestion of the law: 31.08.2005; the clarifying letter to the project of the law: 31.08.2005; the subject initiating legislative procedure: people’s deputy.’<sup>196</sup>

2. ‘To ensure the fulfilment of the decisions and application of the decision of the European Court of Human Rights the relevant Law of Ukraine No. 3477,’<sup>197</sup>

The history of the Law is the following:

‘the adoption of the law: 23.02.2006; the project of the law : 21.03.2005; the suggestion of the law: 21.03.2005; the clarifying letter to the project of the law: 21.03.2005; the 2<sup>nd</sup> project of the law: 23.09.2005; the subject initiating legislative procedure: people’s deputy.’<sup>198</sup>

*“Ensure respect of human rights and fundamental freedoms, in line with international and European standards”*<sup>199</sup>

1. ‘On 9 February 2006 the Verkhovna Rada of Ukraine ratified the Protocols No.12 and No.14 to the Convention on Human Rights and Fundamental Freedoms (the Law of Ukraine No 3435),’<sup>200</sup>

The history of the Law is the following:

‘the adoption of the law: **09.02.2006**; the project of the law : **04.02.2006**; the suggestion of the law: 04.02.2006; the clarifying letter to the project of the law:04.02.2006; the subject initiating legislative procedure: people’s deputy,’<sup>201</sup>

*“Ensure respect for the freedom of the media and expression”*<sup>202</sup>

1. ‘The Civil Code of Ukraine was amended with a view to ensure its conformity with legislation on information (the Law of Ukraine adopted on 22 December 2005 No.

<sup>195</sup> Ibid.

<sup>196</sup> Ibid. [http://gska2.rada.gov.ua/pls/zweb\\_n/webproc4\\_1?pf3511=25297](http://gska2.rada.gov.ua/pls/zweb_n/webproc4_1?pf3511=25297) (accessed on 31 May, 2007)

<sup>197</sup> Position Paper on Ukraine – EU Action Plan Implementation by Ukrainian side for 2005 – 2006: 7

<sup>198</sup> The Portal of Ukrainian Government: [http://gska2.rada.gov.ua/pls/zweb\\_n/webproc4\\_1?pf3511=24096](http://gska2.rada.gov.ua/pls/zweb_n/webproc4_1?pf3511=24096) (accessed on 31 May, 2007)

<sup>199</sup> Position Paper on Ukraine – EU Action Plan Implementation by Ukrainian side for 2005 – 2006: 8  
<http://www.kmu.gov.ua/document/41022823/%D0%B0%D0%BD%D0%B3%D0%BB%20%D0%B2%D0%B5%D1%80%D1%81%D1%96%D1%8F%20Position%20Paper.doc> (accessed on 31 May, 2007)

<sup>200</sup> Ibid.

<sup>201</sup> The Portal of Ukrainian Government: [http://gska2.rada.gov.ua/pls/zweb\\_n/webproc4\\_1?pf3511=26800](http://gska2.rada.gov.ua/pls/zweb_n/webproc4_1?pf3511=26800) (accessed on 31 May, 2007)

<sup>202</sup> Position Paper on Ukraine – EU Action Plan Implementation by Ukrainian side for 2005 – 2006: 9  
<http://www.kmu.gov.ua/document/41022823/%D0%B0%D0%BD%D0%B3%D0%BB%20%D0%B2%D0%B5%D1%80%D1%81%D1%96%D1%8F%20Position%20Paper.doc> (accessed on 31 May, 2007)

3261).<sup>203</sup>

The history of the Law is the following:

‘the adoption of the law: **22.12.2005**; the project of the law : **23.05.2003**; the suggestion of the law: 23.05.2003; the clarifying letter to the project of the law: 23.05.2003; the subject initiating legislative procedure: people’s deputy; the 2<sup>nd</sup> project of the law: **29.06.2004**; the amendments to the second project of the law: **16.12.2005**’<sup>204</sup>

2. ‘On 12 January 2006 there was adopted a new wording of the Law of Ukraine “On Television and Radio Broadcasting” (the Law of Ukraine No. 3317), which in particular regulates the share of foreign investors in statutory fund of a TV and radio broadcasting organization.’<sup>205</sup>

The history of the Law is the following:

‘the adoption of the law: **12.01.2006**; the project of the law : **19.06.2003**; the suggestion of the law: 19.06.2003; the clarifying letter to the project of the law: 19.06.2003; the subject initiating legislative procedure: people’s deputy; the 2<sup>nd</sup> project of the law: **11.01.2006**.’<sup>206</sup>

*“Prevention of ill-treatment and torture”*<sup>207</sup>

1. ‘The State Criminal Executive Service is authorized to perform single government policy in execution of criminal punishments (the Law of Ukraine adopted on 23 June 2005 No. 2713).’<sup>208</sup>

The history of the Law is the following:

‘the adoption of the law: **23.06.2005**; the project of the law : **12.11.2003**; the suggestion of the law: 12.11.2003; the clarifying letter to the project of the law: 12.11.2003; the subject initiating legislative procedure: people’s deputy; the 2<sup>nd</sup> suggestion of the project: **13.05.2005**; the text of the project for the second reading: 21.06.2005’<sup>209</sup>

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<sup>203</sup> Ibid.

<sup>204</sup> The Portal of Ukrainian Government: [http://gska2.rada.gov.ua/pls/zweb\\_n/webproc4\\_1?pf3511=15103](http://gska2.rada.gov.ua/pls/zweb_n/webproc4_1?pf3511=15103) (accessed on 31 May, 2007)

<sup>205</sup> Position Paper on Ukraine – EU Action Plan Implementation by Ukrainian side for 2005 – 2006: 9-10

<sup>206</sup> The Portal of Ukrainian Government: [http://gska2.rada.gov.ua/pls/zweb\\_n/webproc4\\_1?pf3511=15335](http://gska2.rada.gov.ua/pls/zweb_n/webproc4_1?pf3511=15335) (accessed on 31 May, 2007)

<sup>207</sup> Position Paper on Ukraine – EU Action Plan Implementation by Ukrainian side for 2005 – 2006: 10. <http://www.kmu.gov.ua/document/41022823/%D0%B0%D0%BD%D0%B3%D0%BB%20%D0%B2%D0%B5%D1%80%D1%81%D1%96%D1%8F%20Position%20Paper.doc> (accessed on 31 May, 2007)

<sup>208</sup> Ibid.

<sup>209</sup> The Portal of Ukrainian Government: [http://gska2.rada.gov.ua/pls/zweb\\_n/webproc4\\_1?pf3511=16266](http://gska2.rada.gov.ua/pls/zweb_n/webproc4_1?pf3511=16266) (accessed on 31 May, 2007)

*“Ensure respect for rights of persons belonging to national minorities. Ensure equal treatment. Ensure respect of Children’s rights”<sup>210</sup>*

1. ‘Ukraine ratified the Council of Europe Convention on the Rights of the Child (the Law of Ukraine adopted on 3 August 2006 No. 69)’<sup>211</sup>

The history of the Law is the following:

‘the adoption of the law: **03.08.2006**; the project of the law : **03.07.2006**; the suggestion of the law: 03.07.2006; the clarifying letter to the project of the law: 03.07.2006; the subject initiating legislative procedure: President of Ukraine’<sup>212</sup>

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<sup>210</sup> Position Paper on Ukraine – EU Action Plan Implementation by Ukrainian side for 2005 – 2006: 10  
<http://www.kmu.gov.ua/document/41022823/%D0%B0%D0%BD%D0%B3%D0%BB%20%D0%B2%D0%B5%D1%80%D1%81%D1%96%D1%8F%20Position%20Paper.doc> (accessed on 31 May, 2007)

<sup>211</sup> Ibid

<sup>212</sup> The Portal of Ukrainian Government: [http://gska2.rada.gov.ua/pls/zweb\\_n/webproc4\\_1?pf3511=27506](http://gska2.rada.gov.ua/pls/zweb_n/webproc4_1?pf3511=27506) (accessed on 31 May, 2007).

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