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The Impact of EU Conditionality on Ukraine  
under the European Neighbourhood Policy**

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## Adjectival Europeanisation? The Impact of EU Conditionality on Ukraine under the European Neighbourhood Policy

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Launched by the European Union (EU) in 2004, the European Neighbourhood Policy (ENP) aims to ‘promote stability and prosperity’ through stimulating political and economic reforms in its neighbourhood. ‘Stability and prosperity’ is to be achieved by transposing the EU’s values, norms and standards in exchange for ‘access to the common market’ (Commission, 2004). The ENP relies mainly on ‘soft law’ instruments, which are added to the existing contractual basis for relations between the EU and ‘ENP partners’.<sup>1</sup> The main instrument of the ENP is a jointly agreed Action Plan, which consists of an extensive list of objectives that ‘partner countries’ are required to fulfil in order to benefit from closer integration with the EU.<sup>2</sup> The Action Plan (AP) envisages projecting not only Community norms and values, such as democracy and human rights, but the standards of the Union as a whole (that is much of the *acquis*) engendering complex, extensive and costly domestic adjustments in so-called partner countries. Yet, while modelled on the enlargement strategy, the ENP is designed to provide an alternative to enlargement or at the least, to be ‘enlargement-neutral’. In this context, as far as its Eastern neighbours are concerned, the EU is aiming to build on the successful application of pre-accession conditionality but without incurring the costs of further enlargement (Gould, 2004).

In particular, the EU seeks to mould partner countries into ‘ideal neighbours’ by emulating the strategy of creating ‘ideal members’. This strategy centres on simultaneous application of *polity conditionality*, that is reforms of political and economic structures and processes, such as democracy, minority rights, and *policy-oriented conditionality*, that is the implementation of the *acquis* (Sedelmeier, 2006).

From very early on, the effectiveness of the ENP has been questioned in academic literature, mainly on the grounds that the incentives offered by the EU are too weak to entice its neighbouring countries into domestic reforms (Batt *et al*, 2003; Haukkala, 2003; Gould, 2004; Milcher and Slay, 2005; Kelly, 2006; Smith, 2005; Hillion and Cremona; 2007). The leverage of the EU is weak not only because no membership perspective is provided (even for European ‘partner countries’) but because it is ultimately unclear what the actual award for enacting EU conditionality is. The prospect of ‘access to the market’ at a future time and to an unspecified extent casts doubts on the credibility of the EU, especially considering the powerful protectionist forces within the EU.

While the academic community has been sceptical about the effectiveness of the ENP, as one would expect, the EU has endeavoured to present the ENP as a success story. The EU officials have been promoting it as the flagship foreign policy initiative of

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<sup>1</sup> The only new legal tool is the European Neighbourhood and Partnership Instrument (ENPI), which was launched in 2007, only two years after the first wave of the Action Plans was adopted (2005), due to the need for budgetary cycle of the EU.

<sup>2</sup> The fact that the EU refers to ENP ‘partner countries’ implies a more symmetrical relationship than that engendered by enlargement. However, some scholars refer to ‘target countries’, thereby implicitly emphasising the persistent and powerful power asymmetries between the EU and the countries covered by the ENP. Indeed, the non-negotiation strategy pursued by the European Commission during the ‘negotiations’ of the Action Plans with ‘partner countries’ already means that the proclaimed ENP principles of ‘joint ownership’ and ‘mutuality’ ring hollow. To avoid the normative ambiguity entailed by the use of ‘partner countries’ and ‘target countries’, this paper mainly uses the term ‘ENP state/s’.

the Barroso Commission, making a tangible impact on the ‘partner countries’. However, in recognition of some of the weaknesses of the ENP, the Commission has been seeking to enhance the awards and instruments in its December 2006 initiative (Commission, 2006).

At the same time, the governments in ‘target countries’ have also emphasised their high degree of compliance (see, for example, ‘Position Paper’, 2006), as indeed was the case in the accession countries. However, while claiming to be a ‘success story’, the post-Soviet countries face even greater challenges in enacting EU conditionality than their counterparts in East-Central Europe. Since the collapse of communism, post-Soviet political and administrative structures, institutions and practices, have had some time to become established, despite being hampered by continued inefficiency. This sub-optimal consolidation means that the scale of domestic change required in post-Soviet states is even larger than in the ECE countries in the 1990s, notwithstanding the fact that the former have less capacity and fewer resources to enact the required changes. In other words, in countries like Ukraine enacting EU conditionality faces even greater obstacles than in the East-Central European (ECE) countries in the 1990s. This difficulty relates to both *polity conditionality* (changes to the political and economic spheres), and *policy-oriented conditionality* (the implementation of the *acquis*).

The effectiveness of the external factors influencing domestic change is contingent on intervening domestic factors. In order for EU conditionality (whether enlargement or the ENP) to engender domestic change, the prospect of moving closer to the EU needs to exercise a mobilising effect on a range of domestic actors. European integration is a complex and long drawn-out process involving virtually all parts of the state (Mayhew *et al*, 2005). Given that the ENP is modeled on enlargement and the key reward is ‘access to the common market’, the transposition of the *acquis*, besides meeting polity-related criteria, is an essential prerequisite for any ENP state to foster closer relations with the EU. Thus, the enactment of EU-defined polity and policy changes requires not only consistent, visible commitment and support from the highest state authorities, but it needs to be institutionalised in an appropriate coordinating framework and accompanied by the development of considerable administrative capacity. This is necessary for the application of EU law and in practice has some bearing on almost every aspect of public policy-making and implementation (Grabbe, 2001: 1051). In particular, it hinges on a strong, committed executive capable of overriding ‘veto players’. In the accession countries, the demands of preparation for accession were of such magnitude that the governments had no choice but to establish an effective coordinating mechanism. This imperative stemmed from the sheer volume of inter-sectoral matters to be dealt with, the depth of expertise required and time constraints (Fink-Hafner, 2005; Grabbe, 2001; Leppert *et al*, 2001).

Can a process of domestic mobilisation in response to EU conditionality similar to that observed in the accession countries be discerned in the ENP countries? With the ENP modelled on enlargement, the conditionality-compliance dynamics requires scrutiny in a number of ENP countries across a number of different areas. Such an investigation into specific modes and process of EU-driven change requires, and indeed carries the promise of, extending the field of ‘Europeanisation further East’ or, as Sedelmeier (2006) put it, ‘Europeanisation beyond enlargement’. It makes it possible to gauge how and when European integration matters for ‘domestic policies, politics, and polities’ (Börzel and

Risse, 2000: 1), even for countries without the prospect of becoming EU members, that is those which follow the EU agenda without the prospect of shaping the EU itself.

This paper examines the impact of the EU on domestic change in the most important ENP state - Ukraine. Ukraine is not only the largest ENP country to the East but also the country that has been most dissatisfied with the framework for relations with the EU, having expressed membership aspirations since the 1990s. Besides the objective of streamlining and simplifying relations with EU neighbours, placating Ukraine in terms of providing an ambitious yet feasible framework for relations (that is bypassing the vexed question of membership) gave a strong impetus to the whole endeavour of developing the ENP. Adopting an actor-centred approach, the paper explores the extent to which two types of domestic actors - political elites and the state bureaucracy - have responded to the ENP.<sup>3</sup> The particular focus will be on the extent to which the AP has stimulated Ukrainian governments to seek institutional change in order to facilitate enactment of EU conditionality. It will also assess the impact of such institutional changes on the implementation of the AP. In order to gauge the effect of the ENP on domestic change, its impact is compared with the pre-ENP period in Ukraine, and, as and when appropriate, with the enlargement process.

It will be argued that in Ukraine, the ENP has resulted in some significant differences to the pre-2005 (i.e. pre-ENP) period but the type of impact differs significantly from the accession countries. Despite the Ukrainian political elites' endorsement of Ukraine's participation in the ENP, the policy has failed to 'focus the minds' of the political class in the case of Ukraine, unlike the case of enlargement in ECE. This is not only due to the inherent vagueness of incentives and objectives of the ENP - as pointed out by the critics of the ENP - but also by domestic intervening factors, most importantly, the political instability which ensued in the aftermath of the orange revolution resulting from intense competition amongst the political elites against the backdrop of the breakdown of the constitutional order.

Due to the interplay of the external and domestic political factors, no political leadership on European matters emerged in Ukraine under the ENP. While the successive governments, regardless of political provenance endorsed the AP, they failed to establish a stable and effective institutional framework to coordinate European matters – a *sine qua non* for effective integration with the EU. Instead its implementation has been left to the discretion of middle-level bureaucrats, which have responded to EU conditionality most consistently, albeit with the permissive consensus of the political class. The AP has resulted in the selective empowerment of those sections of the state apparatus with responsibility, stakes and expertise in European integration. These emergent enclaves have been seeking to implement reforms under the banner of European integration and to that effect have even tried to exert pressure on the political class to act in line with the EU-defined reform agenda. However, without any strong political will or an effective coordinating mechanism. Progress has largely been down to the efforts of individuals within key ministries, operating without a clear set of priorities, sequencing of actions,

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<sup>3</sup> The ENP has also mobilised the non-governmental sector, such as the Razumkov Centre, which has organised an independent monitoring of the implementation of the Action Plan by the government. For the preliminary results of this monitoring see *Natsionalna Bezpeka i Oborona* (2007) No.2.

planning, monitoring, and adequate resources. In this context, this intra-bureaucracy mobilisation has delivered uneven and limited results.

However, even if the actual adjustment in Ukraine has been limited, it has been the very first time that the EU has stepped in to promote any kind of domestic change and which has been responded to by at least some domestic actors. The study indicates the potential of the EU, even without a strong and coherent framework and objective, to empower domestic actors and shape policy-making agenda when these countries open up to the EU influence. Through the AP, the ENP had an ‘unlocking effect’ in the case of Ukraine.<sup>4</sup>

In order to assess the mobilizing impact of the ENP on domestic actors, the first part of this paper provides an overview of EU-Ukraine relations and examines the salience of the so-called ‘European choice’ on domestic actors, mainly political elites, key institutions and the bureaucracy prior to the ENP. Against this background, the second part examines the impact of the ENP in three more detailed sections: firstly, on the political class, second, the institutional changes with regard to the coordinating framework, and, thirdly, actors within the bureaucracy. The paper concludes by drawing comparisons with the enlargement process and outlining some of the challenges of studying ‘Europeanisation beyond enlargement’.

## **Part I: Ukraine prior to the ENP (1998-2004)**

### **European Integration and Ukrainian Elites under Kuchma: Leadership without Commitment**

In the 1990s, the EU tended to regard the post-Soviet space (excluding the three Baltic states) as rather homogenous; all of them were offered fairly similar Partnership and Cooperation Agreements. EU assistance programmes, such as Tacis, were tailored for the entire Commonwealth of Independent States (plus Mongolia) with some differentiation between specific needs.

Ukraine was the first post-Soviet country to sign the Partnership and Cooperation Agreement (PCA) in June 1994, a fact of a considerable symbolic importance for the Ukrainian elites at the time. Although the agreement provided a framework for political dialogue, based on common values, it primarily contains legally binding provisions governing the movement of goods, services, labour and capital. The overarching aim of the PCA was to bring Ukraine into line with the legal framework of the single European market and the WTO system (Petrov, 2002).

In fact, the contractual framework that has governed EU’s relations with the post-Soviet countries offered some limited differentiation between them, depending on their

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<sup>4</sup> It is worth stressing that the finalité of Ukraine’s relations with the EU remains uncertain. Relations between the EU and ENP states, which are characterised as more than cooperation but less than integration, do not lend themselves to easy conceptual or terminological categorisation. Some EU institutions refer to ‘economic integration and political cooperation’. Within Ukraine ‘European integration’ (*Evrointegratsia*) is used to describe current relations with the EU, aspirations to membership as well as enacting EU conditionality through domestic reforms.

geopolitical and economic importance for the EU. For example, only Russia, Moldova and Ukraine were offered the possibility of establishing a free trade area with the EU; Russia and Ukraine have a more extensive institutional set up for contact with the Union; and Common Strategies, innovative foreign policy instruments, were only adopted for Russia and Ukraine among the post-Soviet states in 1999 in order to enhance the co-operation. However, for pro-European officials in Ukraine, this framework has failed to adequately differentiate between post-Soviet states.

The delay of nearly four years in ratifying the PCA by the member states (ratification was completed in 1998) caused frustration in Ukraine, which was exacerbated by the rapidity with which ECE states were moving towards EU accession. While in 1998 the 'Luxembourg Six', that is Poland, Hungary, the Czech Republic, Estonia, Cyprus and Slovenia, opened accession negotiations with the Union, in June of that year the Ukrainian president signed a decree, which formally proclaimed membership of the EU as Ukraine's long-term strategic goal and listed the key priority areas for integration (Decree, 1998).

Throughout Kuchma's second term in office (1999-2004), the presidency was the main source of proclamations of the 'European choice'. This single-handed approach reflected the powerful position of the president not only in the foreign policy domain but on domestic matters too. This domination of the presidency stemmed from the semi-presidential constitutional framework adopted in 1996 and Kuchma's growing authoritarian tendencies throughout his stay in office (1994-2004), which elevated the presidency to the supreme institution. On European integration, the presidency did not seek nor did it obtain endorsement from other representative institutions, such as parliament; neither did it seek the engagement of the non-governmental sector or society in pursuit of this goal. The key documents outlining the goals and strategy vis-à-vis the EU, namely the 1998 'Strategy for Ukraine's Integration with the European Union' and 'the Programme of Ukraine's Integration with the EU' adopted in 2000, were adopted by presidential decrees without the consent or involvement of the parliament. This was despite the fact that, according to article 85.5 of the 1996 Ukrainian Constitution, the parliament (Verkhovna Rada) 'determines the principles of domestic and foreign policy'. The fact that the intention to join the EU was initially voiced solely by the presidency reflected not only the latter's dominant position in Ukraine and the resulting institutional asymmetries, but also the relative impotence of other representative institutions, including the parliament, in foreign policy issues in general and European integration in particular (Wolczuk, 2004).

Over time, the political elites have uniformly become favourably disposed towards the 'European choice'.<sup>5</sup> By 2002, none of the main political forces represented in the Ukrainian parliament overtly opposed Ukraine's integration with the EU (Earlier some parties, the Communist Party of Ukraine in particular, were overtly opposed to a pro-western foreign policy). References to 'European integration' found their way into the programmes of most political parties and blocs, however 'virtual' some of these programmes may have been (Wilson, 2004). Similarly, during the 2004 presidential

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<sup>5</sup> This phenomenon has been common across Central and Eastern Europe where most opinion-makers, including political parties, tended to be more positively inclined towards the EU than their national public notwithstanding the high level of popular support in most of these countries for joining the EU (Pridham, 2005: 176).

campaign, none of the 26 presidential candidates campaigned against seeking closer relations with the European Union. In each post-independence parliament, a number of parties and factions evidenced a strong pro-European orientation. However, due to the inherent weaknesses of policy-making capacity of Ukrainian parties, none of them managed, or even sought, to put together a coherent policy programme on European integration or build a lasting legislative majority around integration with the EU (Protsyk, 2003: 438).

The 'European choice' therefore commanded the support of at least some of the elected representatives of the electorate at the national level and the president. Yet despite this, at best a 'neutral consensus' emerged – the absence of opponents to EU integration was complemented by a dearth of strongly-voiced and enacted support for domestic reforms. Without a positive consensus on EU integration or the active involvement of a range of domestic actors, *Evrointegratsia* was perceived as a rather hollow-sounding policy, driven by a non-committed president, and heavily based on a strategy of negotiating with Brussels rather than implementing far-reaching domestic reform. This was the pattern for much of Kuchma's presidency.

### **Institutional Adjustments, Coordination Mechanism and Bureaucracy under Kuchma**

The low priority assigned to the 'European choice' was reflected in the detachment of institutions other than presidency and the weakness of the institutional framework devoted to European integration.

In line with Soviet times, the Cabinet of Ministers played a highly circumscribed role in foreign policy matters (Protsyk, 2003). According to Kravchuk, Kuzio and D'Anieri (1999), Ukrainian ministers exercised a 'vast amounts of "micro-management"', they expended considerable time and energy on administrative minutiae, so much so that ministers and senior officials were not able to properly scrutinise the large number of decisions that were routinely made in their names. Rather than initiate and oversee policy-making, the ministers focused on reacting to the administrative gyrations generated by the *nomenklatura*. As a result, key officials devoted precious little time to policy planning and development (Kravchuk, Kuzio and D'Anieri, 1999: 105). The Cabinet was a largely technocratic body, rather than political one, meaning that prime ministers were in effect executive managers. Until 2004 the cabinet played primarily a subordinate role to that of the presidency, elaborating or implementing the policy goals defined by the presidential apparatus.

Like the Cabinet of Ministers, the parliament accepted presidential leadership on European matters (Protsyk, 2003: 437), although it lacked the commitment and capacity to assist in the process. The 2002 parliamentary elections brought the first change within the Verkhovna Rada related to European integration when a Parliamentary Committee on European Integration was created on the initiative of Borys Tarasiuk, the former Minister of Foreign Affairs. As head of this committee, Tarasiuk sought parliament's endorsement to seek EU and NATO membership, and coordinate parliamentary measures related to European integration. However, Tarasiuk failed to secure the necessary permanent powers for the Committee, equal to those of other standing committees.



In general, even though the parliament was in principle supportive of European integration, it lacked the capacity to promote Ukraine's legal approximation of the *acquis*. In addition, there was no attempt to create an effective coordinating mechanism on European matters between the executive and the legislature, cited by Korbut *et al* (2001) as one of the major causes of policy immobilisation in the area of European integration in Ukraine under Kuchma. As will be argued below, this has remained the case under the ENP.

On the initiative of President Kuchma, however, steps were taken to strengthen an institutional capacity for dealing with European integration within the executive over 2002-2004. Firstly, EU units within most ministries were created (albeit without standardised size, structure and functions). Secondly, three key ministries - Ministries of Foreign Affairs, Economy, and Justice - were singled out, and thirdly, a number of coordinating and consultative bodies was created. The first two of these institutional changes were decisive as these newly-established EU units in the key ministries became agents for the subsequent Europeanisation of Ukraine under the ENP.

In 2002 the name and portfolio of the Ministry of Economy were changed to Ministry of Economy and European Integration with a concurrent widening of its portfolio to include the coordination of technical assistance. Given the PCA's focus on economic cooperation, the MEEI was well positioned to drive the European agenda forward, although it remained narrowly focused on trade issues, leaving the political aspect of relations with the EU to the Ministry of Foreign Affairs (MFA).

The MFA was vested with the task of pursuing Ukraine's 'European choice' on a political level and to this effect a dedicated Department for European Integration was created, which was closely involved in the running of the institutions set up under the PCA (Cooperation Council and Committee).

The MFA was consistently the most pro-European institution within the executive branch. The Ministry continuously endeavoured to foster closer ties with the EU, even when the commitment from the political leadership and most other sections of bureaucracy was lacking, something the MFA was in no position to overcome.<sup>6</sup> This is because the MFA had a weak standing within the government, a corollary of the Soviet-era when foreign policy was the exclusive prerogative of the All-Soviet Ministry of Foreign Affairs in Moscow and Kyiv was a political backwater on the international stage.

Also under Kuchma, initial, crucial steps were taken towards harmonising Ukrainian legislation with that of the EU by the Ministry of Justice (under article 51 of the PCA). Within the Ministry, the Centre for Comparative and European Law established in 2003 highlighted the importance of pursuing legal approximation. In 2004, while Kuchma was still in power, following the adoption of the 'National Programme of Legal Adaptation of Ukraine's Legislation to the *Acquis Communautaire*', the Centre was transformed into the State Department for Legal Approximation (SDLA). The Programme envisaged the adoption of the *acquis* along the lines pursued by the accession states. Oversight of approximation was the responsibility of the Coordinating Council for Legal Approximation headed by the Prime Minister. From 2005, this became an institutional framework for legal approximation of Ukraine under the AP.

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<sup>6</sup> The efforts of the MFA were particularly intensified under the then deputy minister in charge of European integration, Oleksandr Chalyi, who resigned in May 2004.

However, despite all of these institutional initiatives, the lack of coordinating mechanisms and clear strategy rendered these initiatives largely ineffective. In January 2003 the State Council for European and Euro-Atlantic Integration, created by presidential decree was tasked with co-ordinating Ukraine's political, economic, security and legislative integration with the European Union and NATO but it never assumed the function.<sup>7</sup>

The lack of coordinating mechanism resulted in competition between these ministries. For example, when the 'New Neighbourhood/Wider Europe Initiative' was launched by the EU in the spring of 2003, the MFA's response was lukewarm as the initiative failed to live up to expectations as at best it was a mere stepping stone on the way towards acquiring perspective of membership. In contrast, the MEEI responded much more enthusiastically to the EU's proposal, regardless of the fact that it failed to address Ukraine's officially proclaimed goal. The latter's positive reaction stemmed from its pragmatic focus on sectoral priorities, namely securing access to the EU market. It was also driven by inter-institutional competition and the MEEI's desire to replace the MFA as the key agent for European integration within the Ukrainian government.

There is no doubt that the state apparatus was starved of skilled bureaucrats, competent in various aspects of European integration; the problem was exacerbated by the lack of a comprehensive and systematic programme of training.<sup>8</sup> At the same time, the bureaucracy lacked clear guidance of what was expected of it to advance Ukraine's relations with the EU. The normative framework consisted of Ukrainian programmes based on the PCA, too general to guide specific policy-making. For example, the Programme adopted in 2000 by a presidential decree was formulaic and excessively general to specify priorities for different sections of the government, lacking an essential assessment of budgetary implications as well as a realistic time framework.

Overall, between 1998-2004 although the presidency's pro-European foreign policy stance was frequently declared, there was no corresponding evidence of the obligations stemming from the PCA impacting on domestic policy-making. The institutional framework for European integration was created in the context of Ukraine's state apparatus which remained unreformed, and hence subject to the inefficiency, poor coordination, lack of strategic planning and resources it had long been plagued by. Most importantly, no clear priorities were agreed, implemented and monitored either by the EU or the Ukrainian government. So even though a number of stakeholders in Ukraine's European integration increased, domestic implications of the 'European choice' remained marginal.

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<sup>7</sup> The Council was chaired by the president of Ukraine who also appointed its members. The council included the Prime Minister of Ukraine, the Head of the Presidential Administration, the Secretary of the National Security and Defence Council of Ukraine, the Minister of Foreign Affairs, the Minister of Economy and European Integration, the Minister of Defence, the Minister of Justice, the President of the National Academy of Sciences, the Director of the National Institute of Strategic Studies and the Head of the National Centre for European Integration.

<sup>8</sup> During regular interactions with the EU under the auspices of the PCA the deficit of appropriate expertise within the Ukrainian bureaucracy was only too apparent and hampered cooperation with the EU on sectoral areas (Author's Interview with an Official from the Department for European Integration, MFA, Dec 2002).

## **Part II: Ukraine under the ENP**

### **Ukrainian Elites and European Integration under the ENP**

The events and significance of the so-called Orange Revolution was covered elsewhere but it is worth re-capping key points. During the presidential elections in October-November 2004, Viktor Yanukovich, backed by outgoing president Leonid Kuchma, was declared the winner. But allegations of widespread vote-rigging sent hundreds of thousands of Ukrainians into the streets to protest against fixing the elections. Amidst mass demonstrations and involvement of international negotiators (including the EU representatives), the resolution took the form of a negotiated pact between the elites – an agreement to repeat the second round of the elections in exchange for constitutional reform shifting powers from the presidency to the Prime Minister and the parliament. It is also worth emphasising that despite the coverage of the conflict of Ukraine in geopolitical terms (as a choice between Russia and the West), foreign policy issues played a marginal role during the conflict.

While Kuchma's regime followed 'integration by declaration' (Sherr, 1998: 12), the new political elites, which came to power in 2005, were energised by the orange revolution and keen to distance themselves from the Kuchma-era inertia on EU-related matters. They declared a new era in Ukraine's relations with the EU and promised to close the gap between declarations and domestic policy-making, which was so evident under Kuchma. However, insofar as political elites were concerned, two domestic factors impeded the effectiveness of the EU as an external agent of change.

Firstly, the ENP failed to raise the credibility of the EU within the Ukrainian political class. This was primarily owing to the way that Kuchma's legacy shaped the attitude to, and perception of, the EU. The litmus test of the EU's credibility in Ukraine was an offer of a membership perspective (Wolczuk, 2004). While propelling to power alternative elites, the orange revolution revived the salience of the symbolism over 'substance' in Ukraine's relations with the EU, especially in the immediate aftermath of the eventful presidential elections of 2004. Many observers in Ukraine believed that the EU could not continue to decline Ukraine's membership aspirations after its demonstration of support for European values during the tumultuous days of mass protests against electoral fraud. They believed that the 'Hour of Europe' (Stephen, 2004) in Ukraine would be reciprocated by an 'Hour of Ukraine' in Europe. Even though Ukraine's profile has been significantly raised in European media and public opinion, this has not led to the symbolic breakthrough in relations that had been hoped for in Ukraine. The EU stoutly resisted opening the 'membership question' and insisted on conducting relations in the framework of the ENP. In particular, it insisted on proceeding with the adoption and implementation of the Action Plan, which had been already finalised by September 2004 (that is still under Kuchma's presidency), on the grounds that it was a suitable 'homework' for *any* government.<sup>9</sup> The orange revolution, however, created such

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<sup>9</sup> The improved democratic credentials of Ukraine as a result of the orange revolution, however, did not go unrecognised by the EU. The Union adopted the so-called 'List of Additional Measures', which accompanied the signing of the Action Plan in February 2005. The list specified, for example, that the conduct of "free and fair" parliamentary elections was a key political condition of the AP, the fulfilment of which was sufficient for opening negotiations on a new 'enhanced agreement'. The new agreement is to

high expectations vis-à-vis the EU that the new framework for relations – with its focus on pragmatic aspects of cooperation without spelling out the end goal of relations - could not satisfy. Having expressed reservations about the suitability of the Action Plan (AP) negotiated under Kuchma, the new Ukrainian leadership only reluctantly agreed to sign the Action Plan in February 2005. Despite the lingering disappointment with the ENP, the new authorities accepted it as a temporary, rather than final, framework for relations.

The second reason as to why the salience of ENP remained low at the political level was political instability. Fierce competition between elite groupings took attention away from demands of European integration. Ukraine's politics have been anything but conducive to consensus building and 'Europe', despite being nominally supported by all mainstream political actors, has not imbued Ukrainian politics with these qualities.

In particular, the cohabitation of two protagonists from the Orange Revolution, Viktor Yanukovich as prime minister and Viktor Yushchenko as president, following the 2006 parliamentary elections, significantly exacerbated political instability in Ukraine (see below). The disagreements, however, were not concerned with 'Europe'. Despite a great number of differences with the president, the new coalitional government did not reject the EU membership objective (in contrast to NATO membership), but merely announced a more pragmatic approach to the EU. In line with the interest-driven 'logic of consequentiality', the new government implied that without a membership perspective, the degree of Ukraine's compliance with the EU-defined norms and standards would be based on a cost-benefits analysis. This reflected the fact that the interests of big business represented in the new government came to play once again an influential role in foreign policy. They dictated the focus on more 'pragmatic' aspects of cooperation, above all securing access to the European market through the Free Trade Area, while at the same time not ruling out membership of the Union in the long-term perspective (Azarov, 2007). During his visit to Brussels in September 2006, Yanukovich sought to distance himself from the 'Euroromanticism' of President Yushchenko and avoided making any further commitments vis-à-vis the EU to those already made by the 'orange' governments. Most importantly, however, the new government has not revoked the AP, thereby extending the political mandate for its implementation.

However, the consensus on the pro-European orientation could not compensate for disagreements on a number of domestic issues. With elites disagreeing on 'everything but Europe', an intensive power struggle characterised the cohabitation of the former adversaries. By late 2006, political competition between different elite groupings acquired an institutional character and the constitutional 'rules of the game' became a subject of contestation. Ukraine witnessed a debilitating conflict over competencies between the Prime Minister and the President, sparked by the unclear constitutional division of powers. The executive-legislative relations were overshadowed by the elections and then premier-presidential conflict, which in the spring 2007 embroiled the Verkhovna Rada itself. In this context of the intensive power struggle, all longer-term considerations - with EU-related matters being amongst them - were relegated to a backburner.

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replace the outdated Partnership and Cooperation Agreement at the end of the 10-year period of its functioning in 2008. This condition was deemed fulfilled during the 2006 parliamentary elections thereby paving a way to opening of negotiations on the new agreement in March 2007.

The stand-off between the orange and blue forces within the Verkhovna Rada further weakening the role of the parliament in the implementation of the AP. In the accession countries the parliaments remained marginalised in terms of managing EU-related affairs, their compliance and cooperation, however, was vital, even if only as ‘rubberstamps’ for transposing the *acquis* into national legislation (Grabbe, 2001, Fink-Hafner, 2005; Lippert *et al*, 2001: 994). In contrast, the Ukrainian parliament has not assumed such an ‘enabling role under the ENP. Law-making remained an unstructured, almost accidental process and Ukraine’s obligations vis-à-vis the EU under the ENP hardly impacted on the legislative priorities.

In these circumstances, even though European integration is regarded as desirable by the political elites, neither EU policy nor domestic developments resulted in a significantly bolstered salience of the ENP for the Ukrainian political class. Owing to the absence of the much-vaunted positive signal from Brussels on membership – the only one the Ukrainian politicians can readily interpret without being intricately familiar with the complexity of the EU - *Evrointegratsia* has remained an abstract and distant prospect for many of them, and as such incapable of overriding short-term domestic considerations.

### **EU-Ukraine Action Plan: Implementation without Leadership**

Despite the greater priority assigned to European integration by the ‘orange’ elites, the task of creating an institutional framework for dealing with European integration has fallen victim to political contingencies. Changes were instituted by each of the three governments between 2005 and 2007 without effective improvement. The institutional framework for co-ordinating issues pertaining to European integration was weak and ineffective to the extent that Mayhew *et al* believed that ‘it could not be asserted where EU-related policy making was controlled’ (2005: 7).

Amongst the orange elites, commitment to European integration follows the ‘logic of appropriateness’.<sup>10</sup> Soon after his inauguration, President Yushchenko reinstated the goal of securing EU membership for Ukraine and promised to close the gap between declarations and deeds by greater attention to ‘domestic homework’, that is the Action Plan. However, this refocusing of policy has not been backed by the requisite political will and policy-making capacity necessary to override domestic opposition to change. No effective leadership on European issues was evident during the ‘orange’ elites’ control of the Cabinet of Ministers (Jan 2005-Sept 2006).

Key documents adopted by Kuchma, such as the 1998 ‘Strategy on Ukraine’s Integration with the European Union’, which formally proclaimed membership of the EU as Ukraine’s long-term strategic goal and listed the key priority areas for integration, remained in force. Although this was meant to underscore the government’s commitment to implementation, by relying on documents, which amounted to little more than foreign policy declarations, the orange elites in effect perpetuated a culture of proclamation rather than implementation. In sum, the new regime missed an opportunity to imbue the pro-European orientation with new meaning and thereby increase its mobilising power and provide a coherent, clear and long-term strategic framework. As a result, there was no

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<sup>10</sup> The ‘logic of appropriateness’ occurs in instances when human actors’ pursuit of purpose is associated with identities more than with interests (March and Olsen: 1999: 311).

significant overhaul of the institutional framework for European integration, and, secondly, European integration became equated with the implementation of the AP. Lacking an overarching strategy, actions became uncoordinated and policy measures tended to be short-term (Mayhew *et al*, 2005: 14).

The institutional arrangements adopted by Ukraine over between 2005 and 2007 have oscillated between the Estonian and Hungarian models of the early to mid-1990s. In Hungary, the Ministry of Foreign Affairs acted as a key coordinator until 1996 (Fowler, 2006; Fink-Hafner, 2005: 16), whereas in Estonia a special EU unit in the Ministry of Foreign Affairs co-existed with the Minister without portfolio. But in Ukraine despite resorting to various institutional arrangements, no similar degree of effectiveness was attained. The model of coordination was deemed less important than the overall priority assigned to European matters in the domestic context by the political class.

In the first 'orange' government headed by Yulia Tymoshenko (January-September 2005), the post of deputy prime minister was created and made responsible for coordinating European integration. The first (and only) holder of the post was Oleh Rybachuk, a close associate of President Yushchenko. While enthusiastic, he lacked experience in working with the post-Soviet state apparatus as well as administrative resources, especially personnel, to be effective. His post was bolted onto the otherwise unreformed bureaucratic structures further limiting its effectiveness. Following Rybachuk's departure to head the Secretariat of the President in September 2005, the post was abolished.

However, during his tenure, the first annual so-called 'Road Map on the Implementation of the AP' was adopted - the most important instance of the 'domestication' of an EU-defined reform agenda. Adopted through a resolution of the Cabinet of Ministers, it became binding for the agencies within the executive branch and was renewed on an annual basis for the duration of the AP.<sup>11</sup> The 2005 Road Map listed 350 measures indicating how, when and by which institutions the priorities of the AP are to be enacted. Even though the AP itself was too general to guide policy making, the fact that it has been 'translated' into the Road Map was decisive for its mobilising impact on domestic policy making. The Road Map was the nearest thing to a governmental programme in post-Soviet Ukraine and a blueprint for reforms.

Within the cabinet headed by Yuriy Yekhanurov (October 2005 – September 2006) responsibility for coordinating European affairs shifted to the Governmental Committee on European and Euroatlantic Integration, headed by the Minister of Foreign Affairs. In a hierarchical culture of the Ukrainian bureaucracy, the fact that the Committee was led by just one ministry (and not the most powerful) put severe constraints on its ability to influence other sections of the government. The MFA pursued a political vision in political dialogue with the EU but the drive to concentrate coordinating functions turned out to be ineffectual as it actually reduced the effectiveness of the coordinating mechanism even further. The bulk of AP priorities were concerned with domestic policy, an arena beyond the MFA's competence and experience. Lacking the status of deputy prime minister, the MFA's ability to override vested institutional interests of other ministries and agencies, which feared an encroachment of their powers on 'the back of European integration', was circumscribed. At the same time, the MFA's

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<sup>11</sup> The RoadMap for 2005 was adopted by the Regulation of the Cabinet of Ministers of 22 April 2005 (no.117) and for 2006 by the Regulation of the Cabinet of Ministers of 27 April 2006 (no. 243).

prominent role in the Committee perpetuated the perception that European integration was a foreign policy project, despite the fact that the absolute majority of provisions of the AP were concerned with domestic policy making.

In September 2006, the new government led by Viktor Yanukovich allocated the European portfolio to the influential first Deputy Prime Minister, Mykola Azarov, who was also in charge of the financial portfolio. This nominally raised the profile of EU-related agenda not only owing to Azarov's formal position but also his high personal standing within the government. In practice, Azarov, however, has not raised the salience of the AP as he kept a low profile on EU-related matters, rarely speaking on the subject in public. Instead he has been a vocal supporter of Ukraine's participation in (and even eventual integration within) the Common Economic Space with Russia, Belarus and Kazakhstan.

While the institutional framework for European matters changed frequently, there was no evidence of political accountability on EU-related matters at the ministerial level. As one European commission official who had worked on enlargement, put it: 'In Poland, ministers had shivers on the eve of the publication of the Annual Progress Report [by the European Commission]. Nothing like this happens in Ukraine, there is no political accountability for not delivering on European matters...' (Author's Interview, Kyiv, November 2006).

Without clear political leadership on European issues and an effective coordinating mechanism within the government, the implementation of the AP was effectively conducted by, and left to the discretion of, middle-level bureaucrats.

## **EU-Ukraine Action Plan and Bureaucracy: Implementation without Coordination**

### *Key Actors within Bureaucracy*

The most important impact of the AP in Ukraine has been the emergence of enclaves within the bureaucracy, which possess the necessary technocratic expertise, resources, professionalism and connections with EU-level institutions, similar to what has been observed in the candidate states (Goetz, 2001: 1038). The AP empowered these sections of the bureaucracy within key ministries namely the Ministry of Foreign Affairs, the Ministry of Economy and European Integration as well as the Ministry of Justice. At the same time, even though some functional division of labour has emerged between the idealistic diplomats and pragmatic economists and lawyers, the ministries have competed for primacy exposing a lack of agreed strategy on relations with, and priorities vis-à-vis, the EU.

The importance of the MFA lies in its role in defining Ukraine's strategy towards the EU, for Ukrainian political leaders to adopt in interactions with the EU. This role was developed during the coordination of the political dialogue under the PCA. Within the MFA there is particularly strong synergy between the minister and ministerial bureaucrats. The Minister of Foreign Affairs, Borys Tarasiuk (2005-2006) who made obtaining the membership perspective his *idée fixe*, was strongly backed by ministry officials, especially in the Department of European Integration. However, as was argued

above, the overall position of the MFA in the governmental structures is relatively weak, owing to its marginal position in domestic policy making.

Insofar as the implementation of the Road Map is concerned, the MFA is responsible for political dialogue and external relations, including areas related to regional cooperation and the Common Foreign and Security Policy (CFSP), with relatively few priorities (15 in total). The MFA officials emphasise that within the ministry's portfolio, almost all priorities have been met, including the highly sensitive question of the custom regime with Transdnistria. By July 2006 MFA had aligned itself with 549 out of 589 CFSP declarations, or 93% compliance with the EU position.<sup>12</sup> This high level of compliance stems from two factors: firstly, being strongly pro-European, the MFA follows the 'logic of appropriateness' – hence its eagerness to meet the priorities it had responsibility for; secondly, the MFA's responsibilities are mainly concerned with foreign policy where opposition from domestic actors was weaker, with the major exception of the custom regime with Transdnistria (compliance on Transdnistria was a key political decision of the first 'orange' government, led by Tymoshenko, an issue on which the Kuchma administration dragged its feet).

MFA officials are viewed as 'visionary Euroromantics', ready to advance political relations with the EU regardless of economic implications. In contrast, the Ministry of Economy and European Integration and the Ministry of Justice, regard themselves as in the front line of domestic reforms, the most important aspect of the AP.

Since 2005, the Ministry of the Economy and European Integration (MEEI) has served as the real 'engine' for meeting conditionality, especially as the largest share of priorities of the AP is concerned with areas such as the economy, labour regulations and competition. This contrasts with the relatively weak position of the Ministries for Economics in EU-related decision-making in the accession countries, with the exception of Slovenia (Lippert *et al*, 2001: 994). In those countries, European integration was above all a political project with economic considerations taking a backstage during the accession process. The standing of the MEEI was further strengthened when it assumed the function of coordinating technical assistance from the EU and member states (even prior to the AP). This increased commitment under the ENP contrasted with the stance of the Ministry until 2004, when it followed a multi-vectored foreign policy which was characterised by a lack of clear priorities vis-à-vis both the EU- and Russia-led economic integration projects. Having adopted a consistent pro-European position since 2005, the Ministry focussed on accession to the WTO, which is the most important precondition for economic integration with the EU. The fulfilment of most domestic procedures required for Ukraine's accession to the WTO in late 2006 was the most significant achievement in the implementation of the AP.

The mandate of the Ministry of the Economy requires it to focus on pragmatic, sectoral issues and WTO membership, without consideration for the political vision underlying the relations. This leads to inter-bureaucracy tensions. While the MFA is keen to advance the political dimension without paying too much attention to shorter-term economic costs and benefits, MEEI's interests lies in securing access to the EU market in the short- to medium-term. It has been reluctant to give up any economic interests without reciprocal steps by the EU. As one interviewee in the MFA put it, 'the MEEI

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<sup>12</sup> While Ukraine has come close to aligning its foreign policy to the EU but has not abandoned an independent foreign policy altogether and took a different position for example, on Uzbekistan.



does not look at European integration through rose-tinted glasses' (Author's interview, Kyiv, November 2006). This difference in approaches reflects a lack of an overarching strategy on European integration shared by all the key actors in Ukraine.

The Ministry of Justice has emerged as a third key actor in AP implementation, owing to the pivotal role played by legal approximation envisaged by the AP (according to a ministry official, approximately 80 percent of AP priorities require legal approximation).

The key body within the Ministry is the State Department for Legal Approximation (SDLA) created in 2004, with funding specified in the state budget. The SDLA coordinates and leads the Programme of Legislative Adaptation. Although its key competence - legal approximation - was already explicitly envisaged by the PCA, the AP enabled the SDLA to significantly widen its mandate, owing to the central role of legal approximation in the deepening of EU-Ukraine relations. Its competencies fall into five main categories. Firstly, the SDLA acts as a gate to the *acquis communautaire* as it offers access to the *acquis* in the original EU languages (97%) or in Ukrainian to which 30% of the *acquis* was translated by November 2006).<sup>13</sup> Secondly, it coordinates the complex process of planning of legal approximation with line ministries, on the basis of which an Annual Programme is approved by the Co-ordination Council chaired by the first deputy Prime Minister. Thirdly, within the Cabinet it provides analysis of the compliance of draft laws with *acquis*. Fourthly, the SDLA is responsible for the implementation of the priorities of the AP relating to judicial reform and Justice and Home Affairs. Finally, on its own initiative, the SDLA also monitors implementation of AP on legal approximation. In fact, it pointed out a number of areas needing action and was thereby able to exert pressure on the political class in general and the parliament in particular to enact. For example, in an Overview of Legal Approximation (2006), in the section on regulations of state aid, the SDLA openly called on the government to restructure rather than subsidise the mining industry:

The more than 50 year experience of EC regulation of the coal industry shows that without proper restructuring, provision of state aid is inefficient and does not solve the problems of the industry. Therefore Ukrainian legislation [in this area] has to be radically reformed (SDLA, 2006: 13).

In contrast to 'mainstream' Ukrainian bureaucracy, notorious for being highly hierarchical, inert and closed, the SDLA's innovation and willingness to criticise the failures of the parliament and government and to place pressure on them to enact legal changes is unprecedented. This highly atypical behaviour can be explained by the empowerment emanating from the government's and parliament pledge to act rather than just declare. It is noteworthy that the age profile of SDLA staff is lower than average (at least partially because older state officials tend to lack linguistic skills and EU-related expertise. Out of 44 staff members of SDLA only three were above 30 in November

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<sup>13</sup> In terms of the implementation of the AP it offers comparative analysis of legislation in EU member states in areas where Ukraine ought to decide which an appropriate model (for example, on the organisation of the banking system).

2006).<sup>14</sup> The SDLA staff are also less fearful of being reprimanded as they have good prospects for alternative employment outside state structures.

In terms of its approach, the SDLA is closer to the MEEI in that it focuses on specific areas of cooperation. As one official described it ‘the SDLA is pragmatic, not interested in grand political plans [in relations with the EU]’ (Author’s interview, Kyiv, November 2006). However, while accumulating additional competencies, the SDLA standing within Ukraine does greatly depend on the future trajectory of Ukraine’s relations with the EU. This is because the SDLA does not regard itself as a mere EU-department in a ministry but more like a separate governmental agency. With a wide mandate, it sees itself as a nucleus of a central coordinating body modelled on the Polish State Committee for European Integration (Author’s Interview with an official from the Ministry of Justice, Kyiv, November 2006).

### *The Action Plan and Bureaucracy: the Limits of Bottom-up Implementation*

While decision-making is spread across several institutions, reporting on the implementation is the responsibility of the Secretariat of the Cabinet of Ministers. With a small staff and few experts, the Secretariat does not perform a coordinating, let alone policy-making or policy-analysis, function; it compiles information rather than monitors and enforces compliance. In practice it even relies on the three key ministries to obtain information on compliance by other ministries. The diffusion of responsibility across a number of administrative bodies creates an opaque system, where individual decisions are hard to trace through a myriad of institutions.

However, unlike most initiatives and policies, which are launched within the Ukrainian government in an uncoordinated manner, the Road Map has induced greater transparency. Thanks to quarterly and yearly reports prepared by the Secretariat (with yearly reports published on the governmental website), reporting on the implementation of the Road Map is public and transparent. However, transparency does not mean accountability; no political or administrative accountability for AP implementation failures have taken place. In AP implementation, ministries’ officials act on their own initiative, as there is no political overview, monitoring and sanctioning, making it an essentially bottom-up process, dependant on the capacity and determination of individual officials rather than institutions. This has resulted in decentralised and uneven implementation.<sup>15</sup>

The process of AP implementation exposes the inherent weaknesses of the Ukrainian post-Soviet bureaucracy namely its cumbersome decision-making processes; low administrative competence (especially in terms of modern technique of policy-planning, monitoring, evaluation and accountability); unclear division of competencies; and lack of coordination. For example, there is no effective prioritisation based on regulatory impact

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<sup>14</sup> While all three ministries suffer from a shortage of trained bureaucrats, SDLA is particularly affected in that respect. SDLA has to train staff in European law and faces a significant loss of staff to commercial sector and find it difficult to replace them.

<sup>15</sup> For an independent assessment of the implementation of the AP in Ukraine see *Natsionalna Bezpeka, 200 I Oborona*, No.2, 2007, which offers a much more critical view than the provided by the Ukrainian government and even the European Commission.

assessment analysis or cost-benefit analysis - a standard technique within the EU (Mayhew, 1998: 219-233). Ukrainian policy planning is excessively general and weak on implementation methodology. Even though the Road Map is a much more detailed document than the AP, it does not actually specify the measures required to implement the AP as 'it contains large numbers of measures, formulated so generally, that any type of action can be classified as implementation' (*Natsionalna Bezpeka*, 2007). In many respects what constitutes 'implementation' has been left to the discretion of bodies vested with the enactment of specific priorities. Simultaneously, the implementation of the AP intensified domestic competition for overall responsibility for Ukraine's integration with the EU thereby further weakening overall coordination.

However, the fact that despite the inherent shortcomings, sections of the bureaucracy have started to implement the AP, without strong and consistent support from the political class, may indicate the reform potential within the state apparatus itself and the empowering impact of the EU's conditionality. In the course of AP implementation, the unreformed bureaucratic structures have been challenged from within. In this way the AP has helped to overturn the hierarchy by departing from the exclusionary decision-making processes<sup>16</sup> and imposing more openness.

However, it cannot be presumed that the emergence of such enclaves will result in wholesale reform of public administration. Indeed, the evidence from the accession countries indicates otherwise, as according to Goetz:

Whilst institutions for accession negotiations and, more recently, legal harmonisation are comparatively well-resourced and professionally staffed, they remain largely detached from the rest of the central executive; partly by design, partly by default. No only does this concentration mean that diffusion effects throughout public administration are still very limited; it would appear to cause fragmentation in the executive machinery (Goetz, 2005: 7).

The energetic response to EU conditionality on the part of sections of the Ukrainian bureaucracy has, however, made the implementation of the AP, at least to some degree, immune from political instability, which engulfed Ukraine since the orange revolution. The impact on AP implementation of the frequent government changes followed by an eruption of a constitutional crisis in the spring of 2007 has been mitigated by the devolution of responsibility to bureaucratic rather than political actors. As no government has distanced itself from the AP, the Road Map remains a quasi-governmental programme for all governmental bodies. As one interviewee put it, the 'AP is an objective document, the machinery for its implementation exists so political controversies have no direct bearing on its implementation' (Author's Interview with an MFA official, Kyiv, November 2006).

However, the diffusion of responsibilities across a number of actors means that no horizontal capacity for coordination has developed at a time when cooperation with the EU has become much more complex and multi-dimensional, and comparable to that of accession countries (Author's Interview with a Commission official, Brussels, September 2006). Ukraine's institutional framework has no capacity to deal with such demands.

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<sup>16</sup> According to Kravchuk (2001) decisions tend to be made in a strictly exclusionary, closed manner. Rather than share authority, thereby diffusing responsibility for decisions and increasing their internal legitimacy, decisions tend to be limited to fairly tight groups of officials within the *nomenklatura* in each ministry. This accounts for multiple administrative bottlenecks capable of stifling policy initiatives.

While operational control is spread across a number of units, there is no effective coordination between them. As a result, several agencies claim to be responsible for the overall implementation of the AP. These include the Secretariat on European Integration of the Cabinet of Ministers, the Secretariat of the President of Ukraine, Ministry of Foreign Affairs, the Ministry of the Economy and European Integration, and the Ministry of Justice. This diffusion breeds competition between ministries further limiting the flow of essential information and negatively affecting Ukraine's ability to work out its strategy and priorities vis-à-vis the EU. Ukraine has failed to develop the kind of institutional infrastructure, which the ECE countries produced a decade earlier (even prior to opening accession negotiations).

In this context it is hardly surprising that in many areas the implementation of AP is something of a paper exercise. AP implementation in Ukraine often amounts to little more than sending draft laws to parliament, without due consideration to the content of the law, its subsequent adoption and enactment. The coordination between the government and parliament on EU-related matters has been particularly weak, a corollary of the volatile political climate in Ukraine, and then in spring 2007, the effective breakdown of the constitutional framework. The only exception was the concerted effort to pass legislation related to Ukraine's WTO accession, reflecting a rare coincidence of the economic interests of both the parliamentary majority and opposition in late 2006. Ultimately, without strong political leadership on European matters and an effective coordination mechanism, progress with implementation has been limited.

## CONCLUSION

The ENP was described by an EU official as 'a bureaucratic response to the political question' (Author's interview, Brussels, March 2006). Through the ENP the EU eschewed the political question on the final borders of Europe and endeavours to extend EU governance beyond its borders without addressing the question of the 'future borders of Europe'.

Scholars have been highly sceptical about the effectiveness of such an 'evasive' policy. The ENP relies on a strategy of enlargement – mainly the progressive adoption of the whole *acquis* in addition to meeting other polity-related conditions, such as democratic standards, human rights, thereby envisaging wide-ranging and comprehensive change to domestic political, economic and social structures. Yet, unlike with enlargement, not only is the membership perspective absent but the actual award and specific conditions required for achieving it have not been clearly defined by the EU. Thus, the domestic reform required by the EU is unlikely to be as prevalent in ENP states to anything like the extent it was in the accession countries.

The lack of membership perspective along with the ill-defined goal of the ENP has limited its impact in Ukraine. EU 'adjustment pressures' depend on the perceived feasibility of membership. The ENP has had the overall weak mobilising effect on the political class and it was membership aspirations rather than 'access to the market' that gave the EU the power to motivate. The ENP was seen as a stepping stone - and not an alternative to - enlargement by the first 'orange' government, which took key decisions resulting in the 'domestication' of EU conditionality. So the actual impact of the ENP can

be attributed to the opening up of Ukraine to EU influence owing to Ukraine's aspirations to membership, even if these aspirations are not recognised by the EU itself under the ENP.

Having said that, the impact of EU conditionality depends not only on the type of conditionality alone but, more importantly, on how conditionality resonates in the domestic context. In Ukraine the ENP has had a tangible empowering impact on other domestic actors - most of all the bureaucracy. In essence, the bureaucratic design of the ENP elicited a bureaucratic response in Ukraine.

Being externally validated, the AP acquired high salience for EU-oriented sections of the state apparatus. With the Road Map, the bureaucracy had the political mandate to implement the blueprint for reform. Thus, the AP empowered 'enclaves' within bureaucracy, which developed expertise on EU matters even before the ENP. The AP was a crucial intervening variable, which changed the nature of the commitment, by providing a more specific (even though still excessively vague) set of reform prescriptions and thereby enhancing the mandate of the sections of bureaucracy with relevant expertise and competencies on European affairs. This bureaucratisation of the AP largely accounts for the progress in implementation, despite the frequent changes and disinterest of governments. At the same time, the Road Map remains one of the few instruments, which allows an assessment of the performance of the governments and public administration in Ukraine. The implementation of the AP showed the organic reform potential of the Ukrainian bureaucracy, which has predominantly been regarded as a bottleneck of any reform process owing to a number of powerful 'veto players' capable of suffocating reform initiatives. This devolved domestic responses in Ukraine to EU conditionality highlights the ability of the EU to impact in non-member states for which membership is explicitly ruled out, at least for the foreseeable future.

However, the bureaucracy alone cannot deliver change on the scale envisaged under the ENP. The changes resulting from the adoption of the AP are not enough to actually prepare Ukraine to derive benefits from closer integration with the EU. The diffusion of responsibility across a range of institutional actors means that there has been no horizontal capacity for coordination at the time when, under the ENP, Ukraine's cooperation with the EU became much more complex than before. In terms of scope (but not intensity) cooperation resembles that with accession countries. Yet in the accession countries, the demands of and prospect for accession made effective horizontal coordination a pre-condition – the 'coordinate or perish' imperative demanded a 'core executive' despite a persistent diversity of models of governance in ECE (Grabbe, 2001; Lippert *at al*, 2001; Goetz, 2001). Institutional adaptation stemmed from the sheer functional pressures arising from the need to organise relations with the EU, formulate negotiating positions, and to implement EU policies (Sedelmeier, 2006). The effective framework for enactment of EU-specified domestic change, whether a centralised or decentralised model was adopted, was of critical importance during the accession process. Enactment of EU guidelines and, especially, wholesale adoption of the *acquis* requires effective coordination across a number of institutions and policy domains in order to override 'domestic veto players' and deliver costly, extensive and rapid adjustments. The institutional framework in Ukraine has no capacity to deal with such demands.

The AP represents the first time that Ukraine has acted on EU conditionality. However, unless the government defines priorities on the basis of cost-benefits analyses, as Mayhew *et al* argue, ‘Ukraine will fail to derive optimal benefits from EU integration’ (2005: 20). Despite having the strongest impact so far on domestic change, the progress made under the AP is insufficient to prepare Ukraine to derive the benefits from closer economic integration with the EU (see Jakubiak and Kolesnichenko, 2006; Shumylo, 2007), let alone bring tangible improvements to the political and economic situation in Ukraine.

### ***Methodological and Conceptual Implications for Studying ‘Europeanisation further East’***

Being focussed on the elites and bureaucratic actors and institutional framework, this paper has not aimed at providing an examination of the progress in the implementation across different sectors (for this see *Natsionalna Bezpeka*, 2007). Nevertheless, it has intrinsic value for such studies. It also highlights methodological and conceptual challenges of studying ‘Europeanisation further East’.

Firstly, without a clear coordination framework and an identifiable ‘core executive’ individual instances of (non) compliance and motivation behind them can only be traced through a laborious analysis of the myriad of decisions and institutions thereby implying a labour and time-intensive research techniques.

Secondly, the findings also highlight the potential limits of the usefulness of the rationalist institutionalist approach, which has been the most widely deployed to explain different types of adjustments in response to EU pressures in the accession countries (for an overview see Sedelmeier, 2006). In essence, accession preparations have been an executive-driven process. The Europeanisation literature implies it was the cost-benefits analysis, which determined the level of compliance (Schimmelfenning and Sedelmeier, 2005). The overarching award – membership – was the benefit for which highly costly adjustments were considered worth paying. So the approach assumes the existence of actor(s) capable of conducting such analysis, those who have an overview of domestic situation, EU adjustment pressures and actual consequences of making the required adjustments. Yet, the corollary of the diffusion of responsibility and fragmentation of policy-making on EU-related issues in Ukraine is the fact that no actor appears to have an overview of the cost-benefits of compliance. It is not only difficult to discern when, where and why decisions on (non)compliance are made but the very understanding of what constitutes compliance across different sectors needs unpacking. This fragmentation of policy-making on EU-related matters requires a more complex set of analytical tools to unearth the cognitive and decisional processes at work. In the ECE accession countries, the limits of the neo-institutional approaches were exposed in the ‘conditions of political, economic and social turbulence, uncertainty, short time horizons, low degree of institutionalisations and high degree of personalisation’ (Goetz, 2006: 3). In countries like Ukraine, the limits of this approach are even more evident.

In the case of ENP countries, the challenges of conducting extensive empirical research and conceptualising it using the conceptual apparatus developed to study Europeanisation in the existing and prospective member states are compounded by the problems related to the supply-side of conditionality under the ENP. The supply-side

challenges of ENP conditionality include: firstly, the uncertain size, nature and time of the award, secondly, the considerable lack of clarity as to what ‘partner countries’ are actually required to do (in order to get an award), and, thirdly, the question of the sheer suitability of the enlargement-like strategy for modernisation of the non-accession post-Soviet countries, like Ukraine, which faces a problem of working out a selective approach to the *acquis*, suitable for a transitional economy with a weak administrative capacity.

In Ukraine, an uncoordinated implementation of EU conditionality has resulted in, what can be best conceptualised as, *sporadic Europeanisation* – that is enactment of the EU-defined reform agenda which is localised, unsystematic and often shallow. This type of domestic change in response to EU conditionality contrasts with the much more comprehensive and systematic impact the EU exerted during the accession process in ECE. While acknowledging the differentiated impact across countries and policy areas, Sedelmeier argues that Europeanisation of the candidate states is evidenced by both ‘the significant extent to which EU actors and institutions direct and enforce the adjustment process’ and ‘the comprehensive nature of adjustment to cover the entirety of the *acquis*’ (Sedelmeier, 2006: 4). In ECE, the transformative impact of the EU, even though varied across countries, time and domains, was in such ample evidence that it justified the inclusion of the accession countries as a sub-field of Europeanisation studies.

With its sporadic Europeanisation, the country like Ukraine presents a new challenge for the field. On the one hand, the existing conceptual tools developed and refined to explain Europeanisation of member states and accession countries may prove inadequate to achieve a similar degree of understanding of the impact of EU conditionality on the post-Soviet states. On the other, the scholarly endeavour required to unearth the complex pattern of (non) compliance may be difficult to justify, given the overall limited impact of the EU on domestic change.

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