Ukraine: Europeanization from abroad or inside?
Chance and Challenge for the European Union¹


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Abstract

The paper combines the analysis of the external and internal dimensions of Ukraine’s Europeanization. It reveals Ukraine’s domestic trends concerning “European choice” and evaluates the EU external impulses within the European Neighbourhood Policy (including the Action plans and the ENPI) for democracy-oriented and sectoral Europeanization in Ukraine. A precise analysis of institutions and state and non-state actors driving or hampering EU-style institution building along several dimension of EU-Ukraine cooperation is essential to reconcile the EU strategies and mechanisms with domestic trends and needs. Applied in policies, such an analysis can in turn accelerate and increase the efficiency of the further Europeanization of Ukraine.

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1. Introduction

Ukraine belongs to the post-communist “borderline” countries (Pop-Eleches 2007) which had less favourable initial (political and economic) conditions than Eastern and Central European countries (CEECs) and where domestic reforms lagged during the first decade of transition. The “spirit of the Maidan” has radically changed Ukraine’s transitional path. The Orange Revolution of 2004 marked a new era of democratization in the political sphere as well as intensified Ukraine’s transformation to a full-fledged market economy and its further integration into the global markets.

The Orange Revolution, however, was primary carried out by the coalition of diversified domestic forces willing to end up the regressive Kuchma’s regime, but failing to build any consistent and unified vision of future. After the common goal of the regime overthrow was reached and no new uniting goal appeared the “orange” coalition felt apart. Driven by individual interests domestic forces plunged into political fights for seats in state bodies and for votes in the parliamentary elections. Without a new uniting goal — i.e. EU membership — that could motivate them for joint actions, domestic forces are still diversified and concentrated on new power distribution rather than on radical reforms.

The EU did not offer the membership incentive to consolidate the domestic forces under the new goal and speed up Europeanization, i.e. the reforms to built EU-style democratic and market-oriented institutions through ENP. Thus, at the first glance the EU seems to hardly encourage changes in Ukraine as the major incentive that could make building up EU-style democratic and market-oriented institutions easier and quicker is out off agenda (Gould 2004; Grabbe 2004; Shumylo 2007; Wolczuk 2008). The European Neighbourhood Policy (ENP), which the EU offered to Ukraine instead of its membership, is weak, because of ENP vaguely formulated incentives, long-term character of rewards against short-term costs of reform implementation, absence of sanction mechanism, assuming the developed administrative capacities in the country where such capacities are lacking (see overview of ENP critics in Parmentier 2006).

Remarkably, despite the political crises in the aftermath of the Orange Revolution and weak ENP potentials, Europeanization of Ukraine is well on the way. Ukraine made good progress in the implementation of the 3-years AP priorities. The post-revolutionary either “orange” or “blue-and-white”governments seem to switch from Kuchma’s strategy “declaration without actions” to the enforcement of the reform agenda. The joint report on implementation of the AP, issued in March 2008, proves the dynamics in the relations between Ukraine and the EU undoubtedly positive, as the progress has been achieved in practically every issue of the AP (Joint Evaluation 2008). Similarly, assessing AP

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2 Due to the high level of political diversification, Ukraine’s political regime was called “feckless pluralism” (Carothers 2002).
3 Although because of the political crises the pace of progress stalled somewhat in 2007 compared to the previous years.
4 Action Plan was negotiated by Kuchma’s administration before the Orange Revolution erupted in Ukraine. Initially, the AP was designed for 5 years, but under the pressure of the Ukrainian leadership after the Orange Revolution the validity period was shrunk to 3 years and 10 proposals were added. The AP for Ukraine was adopted on 21 February 2005 for a period of three years. It includes the part of the AP negotiated with the pre-revolution government of Yanukovych and the ten proposals of Javier Solana and Ferrero-Waldner, included after the Orange Revolution. The additional proposals promise to open negotiations on the new Enhanced Agreement to replace the Partnership and Cooperation Agreement (PCA), once the political criteria of free elections are fulfilled. Being of normative character, the AP is practically a blueprint for the Ukrainian authorities (Wolczuk 2008). The AP priorities are divided into six chapters: political dialogue and reform; economic and social reform and development; trade, market and regulatory reforms; cooperation in justice and
implementation in 2005-2007 the experts describe EU-Ukraine cooperation in the post-revolutionary years as more active and pragmatic (Razumkov Centre 2008). The absolute majority (224) of 227 measures complied with the content of the AP. Almost 80% of these measures was performed in full or partially; and the outcomes of 106 implemented measures were positive. However, around a half of these measures was limited to informational, analytical-consulting activities, drafting standard legal act while only one-fifth was directed on the introduction of new measures and monitoring of their implementation. Moreover, the implementation of the measures was not equal to the achievement of the AP goals: only 17% of governments’ measures exerted maximum impact on the achievement of designated in AP goals, 54% had considerable impact and 29% did not have any influence. In general, only 15% of AP priorities have been fulfilled and 84% have been implanted partially. In terms of sectoral assessment, most of implemented measurements are related to economic dimension of EU-Ukraine cooperation, i.e. trade, market and regulatory reforms, economic and social reforms, and new prospects for partnership, economic integration and cooperation. Ukraine has fulfilled a number of its action plan commitments, such as the holding of free and fair presidential election in 2004 (second run-off) and parliamentary elections in 2006 and in 2007; maintaining a free media; co-operating with the EU border assistance mission in Transdniestria; signing a memorandum of understanding on energy cooperation; and approximating some laws, standards and norms to the EU level.

The success of the reforms in line with the Ukrainian AP priorities is puzzling. The question is what drives the successful Europeanization of this country. Is the ENP underestimated? If yes, then what can the EU do to speed up Europeanization? In what sectors and why does the ENP succeed? And what are EU potentials that could be implemented in the new Enhanced Agreement? Or maybe Europeanization of Ukraine has been driven by domestic forces and therefore, Ukraine would probably have done many of these reforms without the existence of the AP? These issues are essential either for EU research that is trapped in its ENP critics or for practical EU policies.

EU research criticises the capacities the ENP to push for Europeanization. While it is true for comparison of the ENP conditionality with the enlargement conditionality, the ENP evaluation could be different, if contrasting EU relations with an ENP country and non-ENP country in the framework of the PCA cooperations or if contrasting pre- and after-ENP relations. The paper revises the evaluation of the ENP policies and applies the latter approach of the chronological comparison, thereby analyzing the changes for good or bad in the EU mechanisms and tools over time. Moreover, as the fulfilment of the AP priorities requests the effective involvement of government’s authorities at all governance levels, the paper demonstrates EU attitudes of domestic actors and existence of formal and informal institutions. Due to “joint ownership” principle, Ukraine can accommodate the policy to its own preferences, in particular through policy and conditionality interpretations (Delcour 2007). Thus, both domestic actors and institutions could play complementary or contrary role in Europeanization of Ukraine.

Nowadays, EU policies should be revised. Due to the expiration of the Partnership and Cooperation Agreement (PCA) as well after successful fulfilment of the AP priorities by the Ukrainian governments, a new legal basis for EU-Ukraine cooperation is to be agreed.
After the parliamentary elections of 2006\(^5\) was declared by the OSCE as largely free and fair, the EU started negotiation with Ukraine on the New Enhanced Agreement (NEA) to replace the expiring PCA.\(^6\) The paper also provides some insights that can be used for the future framework of EU-Ukraine cooperation.

The paper has the following structure. Section 2 reveals the domestic demand for Europeanization thereby analyzing the driving domestic actors and institutional obstacles. Sections 3 und 4 take a close look at democracy oriented and sectoral Europeanization and demonstrate the differences in the pre- and after ENP cooperation in each dimension. As for democracy oriented Europeanization the paper distinguishes between top-down (directed to the elite) and bottom-up (directed to civil society) approaches of democracy promotion (Section 3). In the case of the sectoral Europeanization, the paper concentrates on two dimensions: economic cooperation and home and justice affairs cooperation, thereby identifying content and clarity of Eu’s demands, promised rewards and incentives, forms of direct support by the EU, degree of sovereignty-sensitivity and form of linkage (Section 4). Finally, Section 5 summarises and draws conclusions for Europeanisation through ENP.

2. Domestic demand for Europeanization: from declaration of intentions to reform implementation

Europeanization through ENP requests the willingness of domestic actors to reform with the goal to fulfil the EU conditionality. Building of EU-style institutions in Ukraine presumes the support and active commitment of the state and non-state actors as well as absence of opposition actors and hindering institutions. The Table 1 shows how the Ukrainian domestic forces correspond with the EU strategies.

Table 1- Veto-players and their Attitudes towards Europeanization in Ukraine

<table>
<thead>
<tr>
<th>Veto-Players</th>
<th>Convergence Attitudes</th>
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<tbody>
<tr>
<td><strong>State actors</strong></td>
<td>reform oriented soft-liner</td>
</tr>
<tr>
<td>presidency</td>
<td>Parliament</td>
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<tr>
<td>bureaucratic enclaves on EU issues</td>
<td>Supreme Court</td>
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<tr>
<td>Political parties</td>
<td>Political parties</td>
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<tr>
<td><em>Our Ukraine</em></td>
<td>Communist Party</td>
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<td><em>Block Yulia Tymoshenko</em></td>
<td>local councils</td>
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<tr>
<td><em>The Party of Regions</em></td>
<td>local executive representatives</td>
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<tr>
<td><strong>Non-state</strong></td>
<td></td>
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<tr>
<td>export-oriented business</td>
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<td>society groups</td>
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\(^5\) The 2006 elections were the first to be held under the new constitutional arrangements, which have transferred many political prerogatives from President to parliament and transformed Ukraine into the parliamentary-presidential republic. These elections revealed a considerable improvement in the term of fairness and transparency and met ‘largely’ with the approval of the OSCE.

\(^6\) Up to date, the negotiations were carried out on foreign and security policy, justice and home affairs and economic and sectoral cooperation. In addition, after Ukraine recently completed the negotiations concerning its WTO membership, the EU opened negotiation on a deep and comprehensive Free Trade Area. Furthermore, the EU started the dialog on further liberalization of a travel regime of Ukraine’s citizens to the EU, the final aim of which should become introduction of a free visa regime, stirred up of cooperation in the areas of energy, completed talks on creation of a single air space, cooperation while gearing-up for Euro–2012 etc.
Ukraine’s presidents are the keen promoter of the “European Choice” within the executive. Kuchma was the main initiator of Ukraine’s convergence towards the EU standards. Before the Orange Revolution most key domestic documents on the EU-Ukraine relationship were adopted by the presidential decrees: the Strategy for Ukraine’s Integration with the EU of 1998 and the Programme of Ukraine’s Integration with the EU of 2000 declared the reforms agenda and even scheduled the membership for 2007. Hence, his strategy remained the declaration of intention, but not of actions, because the Ukrainian elite did not strive for quick and radical reforms at that time. The pro-Orange president Yushchenko keeps on the willingness to integrate with Europe. He tries to distance from Kuchma’s “integration by declaration” (Sherr, 1998:12) and declares intentions to intensify reforms and become the part of the European community. However, the constitutional changes of 2004 diminished his overwhelming power in favour of government and parliament. Moreover, involved in the inter-branch conflicts between the executive, legislative and judiciary he relocates his activities from reforms to power struggles.

The largest success of the first government of Yulia Tymoshenko (January-September 2005) was the adaptation of the reform agenda “Road Map on the Implementation of the AP”. It defined 350 measures to be implemented by the executive agencies to achieve the fulfilment of the AP priorities (Razumkov Centre 2007). To consolidate the agencies within executive, the government created overwhelming coordinating agency for European integration, namely a deputy prime minister responsible for coordinating European integration. However, this post was bound on the single personality of Oleh Rybachuk who was inspired by the idea of the EU integration, but has little experience with and standing at the Ukrainian bureaucracy. After Rybachuk moved to the Presidential Secretariat the post disappeared.

The second “orange” government, headed by Yurij Yekhanurov (October 2005-September 2006) renewed the leading role of the Ministry for Foreign Affairs (MFA) in the EU issues. The Minister of Foreign Affairs headed the Governmental Committee on European and Euroatlantic Integration. The MFA lacked the competencies and experience in domestic reforms, as its competence was primary in foreign affairs. In the absence of coordination and control from the Cabinet, the MFA could not overcome rivalry among ministries. Despite the fact that priorities of the AP was to be implemented through domestic policies, the MFA leadership gave the reason to percept the EU compliance as something external to domestic reforms.

The comeback of the Party of the Region after the parliamentary elections of 2006 led to the situation of cohabitation, when the president and the prime minister belonged to the rival parties. In line with the political theory, cohabitation leads to political instability. The following months of Yanukovych’s government (September 2006-December 2007) confirmed this theoretical approach. Due to the battle for power and competencies between the President, Parliament and Prime Minister, the state governance experienced the period of deep political crisis and reforms were slowed down to minimum. Remarkably, the Ukrainian elite disagreed on everything but EU integration. There was no disagreement between...
political forces on Ukraine’s European choice as well as necessity of reforms to meet the EU criteria and priorities. However, different to “Euroromantism” of the orange forces, Yanukovych’s government was free from “rose dreams” of EU membership and had the pragmatic concept of reforms towards Ukraine’s compliance with the EU norms and standards, thereby taking into account its costs and benefits. The government of Yanukovych put the European issues under auspices of the first deputy prime minister Mykola Azarov. As the Minister of Finance and the person with strong reputation in the Ukrainian bureaucratic machine, he was able to implement any reform towards EU compliance, but remained still passive due to his preference for the Russian vector of the foreign policy.

The second government of Tymoshenko (since December 2007), which come to power after parliamentary election of 2007, made European integration its strategic priority and assured once more that Ukraine would become a member of the EU. The negotiations on a Free Trade Area, simplification of visa regime, participation of Ukraine in the EU programs and agencies and development of energy cooperation were proclaimed as the main tasks of government agenda. Tymoshenko supports her political declaration with the wide-ranging reform programs. The government starts about 20 transparency initiatives in governmental activities, known as Tymoshenko Transparency Initiative, which is to serve as a guarantee for favourable investment climate in Ukraine. Launching the Government Program “Ukrainian breakthrough: not for politicians, but for the people” Tymoshenko stressed that her Transparency Initiative is based on understanding of the necessity of changes and reforms in Ukraine in accordance with the key European values and demands of the Ukrainian civil society. For the first time, “Eurointegration” is a priority of not foreign, but of domestic policy chiefly.

In a line with the reform programs, Tymoshenko’s government tries to improve the institutional framework, especially horizontal coordination and monitoring of the EU-relevant reforms. It arranges the measures aimed to strengthen coordination system of European integration at the political level. Establishment of the government Committee for European Integration and International Cooperation chaired by Vice Prime Minister of Ukraine Hryhoriy Nemyrya is a significant step on the way of strengthening institutional capacity of Eurointegration. The members of the Committee include ministers of foreign affairs, economics, justice, labour and social policy as well as first deputies and deputies of ministers of defense, finance, education and science, fuel and energy. This ensures the transfer of Europeanization from foreign to domestic policy domain. Moreover, the coordination of the EU relevant reforms under auspices of the Cabinet of Ministers helps to formulate a single position of the executive on Eurointegration and get rid of rivalry among ministries. The choice of the personalities, namely the appointment of the former chair of the parliamentary Subcommittee on European and Euro-Atlantic Integration, to position of vice prime minister for European integration, could also intensify cooperation between the executive and legislative on European issues. Moreover, the government Committee decided to create the permanent National Agency for European Integration to coordinate and monitor the activities of all ministries on the EU compliance.

Reforms in the EU relevant issues were proclaimed by each government coming to power after the Orange Revolution. However, engaged in the political fights, crisis and elections, leadership was largely passive in implementation of the EU relevant reforms. This is due to little relevance of European choice as an issue of the foreign policy for the Ukrainian population. Moreover, the EU refuses any membership for Ukraine and so the slogans of European integration became less attractive to the voters and political leadership consequently. In such a situation, where clear political leadership in respect to EU conditionality compliance was absent but the level of effectiveness and accountability of the governments in the area of AP priorities were sufficient (but low), the AP implementation
was in hands of ‘middle-level bureaucratic enclaves’ (Wolczuk 2007). The Orange leadership inherited the bureaucratic framework of Kuchma’s era, including authorities responsible for the Eurointegration. In line with Kuchma’s efforts to strengthen the executive, several institutions were in charge of the EU issues. Special EU units were created inside each ministry.

The Ministry of Foreign Affairs (MFA) reserved the competences in area of political dialog with the EU. The MFA was the most pro-EU institutions and pushed for the close relations with the EU. In the sphere of foreign policy and political dialog, where the MFA had no opponents to its EU aspiration, the MFA was successful. By contrast, it could hardly impact the domestic reforms without the commitment of the political leadership and rival positions of other ministries. The weak position of the MFA in domestic reform process is caused by two reasons. The activities and competencies of the MFA are concentrated on foreign policy rather than on the domestic one. Furthermore, the position of the MFA in the hierarchy of the executive has been weakened by the Soviet legacy. In the Soviet times, the foreign policy was directed from the centre and the MFA of the Ukrainian Socialist Republic had weak competencies and weak authority.

The Ministry of Economy was transformed into the Ministry of Economy and European Integration (MEEI) and put in charge of economic issues and coordination of technical assistance in the relationship with the EU. The MEEI was more pragmatic and interested primary in the access to European markets. Since 2005 the MEEI was engine of reforms in such AP priority areas as economy, labour regulation and competition. It was an evident contrast to the prior to 2004 ‘multi-vectoral’ strategy of the MEEI. The focus was mainly put on the WTO accession that was an economic precondition for further integration with the EU.

Finally, the Ministry of Justice (MJ) was responsible for harmonisation of the Ukrainian legislation with aquis. According to the MJ 80% of the AP priorities require legal approximation (cited in Wolczuk 2007). The Centre for Comparative and European Law was the central unit in charge. In 2004, in the result of National Programme of Legal Adaptation of Ukraine’s Legislation to the Aquis Communautaire, the Centre was transformed into the State Department for Legal Approximation. The Coordinating Council for Legal Approximation headed by the Prime Minister was responsible for oversight of legal approximation. This institutional framework on legal harmonisation is included into the AP. The SDLA coordinates the planning of legal harmonisation with other involved ministries, analyses the law drafts on their compliance with the EU norms, and is responsible for the implementation and monitoring of the reforms in the judicial and JHA spheres. The SDLA was effective and openly criticised the governments and parliaments. This kind of behavior is unusual for the bureaucracy but could be explained with the young age of staff and occupational security in the case of dismissal. The SDLA follows pro-EU, but pragmatic and field-oriented strategy. It is due to the fact that the future position of the SDLA in domestic hierarchy depends on Ukraine’s relations with the EU.

Despite important achievements in the area of institutional harmonization, several deficits are evident. Although bureaucracy responsible for the EU issues is skilled and competent (Götz 2001), it has little knowledge about what they are requested to do in a separate policy fields. The PCA twinning programmes as well as the presidential programmes were too general and did not supply clear policy- oriented guidance. In addition,

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7 In the framework of this paper, the attention is directed primary to the bureaucratic enclaves responsible for the reforms aimed at institutional convergence with the EU standards.
8 The Department for European Integration was the body within the MFA to deal with political issues in the PCA.
9 By July 2006 the MFA had aligned itself with 549 out of 589 CFSP declarations, or 93% compliance with the EU position (cited in Wolczuk 2007).
new units in charge of EU policies were founded inside the still unreformed and corrupt bureaucratic system. By the time, there is no sanctions mechanism for the failures in the AP implementation. The accountability of state authorities is absent. The reporting on the implementation of the EU-relevant reforms is the responsibility of the Secretariat of the Cabinet of Ministers. However, because of limited capacities, the Secretariat is gathering information from the ministries rather than coordinating and enforcing reforms.

In the course of the Europeanization through enlargement as well as the Europeanization outside enlargement framework, the EU devotes little importance to parliaments. Hence, in the process of the European integration, the EU delegated substantial legislative functions ‘upwards’ to executives and limited capacities of national parliaments to oversight executives in EU policy formation (Judge 1995). Such policy might be appropriate in the “semi-presidential” pre-2004 Ukraine.\(^\text{10}\)

Since the ENP launching and after the Orange revolution, the role of the parliament has changed radically. In the narrow sense, the implementation of the EU-Ukraine Action Plan requires adoption of a large package of legislation by the Rada. Therefore, Rada’s legislative capacity is likely to influence this process, as it was exemplified during WTO negotiations.\(^\text{11}\) Moreover, after the constitutional reform of 2004 and transformation of Ukraine into a parliamentary republic, Rada’s formal prerogatives increased, including European issues. In the broad sense, the parliament able to perform its constitutionally-designated functions is necessary for Ukraine to meet the political part of the Copenhagen criteria: ‘stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities’ (Sweeney 2005; Whitmore 2006). This goes beyond the law-making function. The Rada should become a stable democratic institution responsible for the oversight over the executive thereby ensuring the main democratic criteria such as check and balances of political power.

Referring to the increased role of the Ukrainian parliament in the compliance with the EU criteria, the functional law-making capacities of the Verkhovna Rada to reach legal harmonisation become more important. From the quantitative point of view, the number of laws adapted by the parliament increased continually.\(^\text{12}\) However, the Ukrainian laws are often contradictory and enable selective law application. Several negative features hamper the legislative capacities of the parliament even after some measures were included into the constitutional reform of 2006 to solve the legislative problems. The Verkhovna Rada was indicative for the political regime of ‘feckless pluralism’ (Carothers 2002) prevailing in Ukraine. It was characterized by extremely fluctuating fractions and deputy groups. The ‘migration of the representatives’ makes the building of the stable majority in the parliament almost impossible. The Orange Revolution and inclusion of the imperative mandate principle\(^\text{13}\) into the new Constitution (Art.81) changed little on it. In the absence of clear mechanism to remove mandates from deputy-migrants, the rapid turnover of membership still exists and post-revolutionary governments could not recon on the stable parliamentary majority. Moreover, the bribery and blackmailing that were so helpful in building of the

\(^{10}\) Due to the powerful presidency and weak party systems, the parliament (Verkhovna Rada) played a marginal role in the integration of the country into international structures (e.g. Ishiyama and Kennedy 2001). Under President Kuchma, the parliament was often willing to accept presidential leadership in European matters (Protsyk 2003: 437-9) and abandoned the constitutional right to determine the principles of domestic and foreign policy.

\(^{11}\) The adoption of legislation required for the WTO membership in summer 2005 that was the precondition for further European integration illustrated the difficult inter-branch relations in Ukraine. Due to ineffective cooperation between Tymoshenko’s government and the parliament committees, the remaining laws required for the WTO membership were not passed and the WTO entry was delayed until February 2008.

\(^{12}\) In 1990-1994, the Rada passed 471 laws; in 1994-1998 the number grew to 752, for 1998-2002 the figure was 1131 and during 2002-2006 it adapted 1250 laws (Apparat of the Verkhovna Rada, 2006: 96).

\(^{13}\) The deputy would lose the mandate if he/she leaves the party fraction on whose list he/she was elected.
artificial majorities in Kuchma’s regime were not appropriate for the new democratic leadership. In such a situation the success of law initiative depends on situational majorities and is unpredictable. The constitutional reform of 2004 transform Ukraine into parliamentary republic, but left overlapping and lack of clarity in the division of competencies between the executive and legislative.\footnote{The Constitution of 1996 was a compromise between the President and Parliament, provided competing political legitimacies to the presidency and legislature and created potential for the inter-branch conflict, especially on the oversight, forming and dismissal of governments.} Yushchenko offered the incentives to overcome political rivalries and create a stable pro-presidential majority, thereby giving various parliamentary factions a stake in the first government of Tymoshenko, but was unsuccessful. The ministries were not interested in the cooperation on law-drafting with the parliamentary committees. In return, the parliament was not ready to pass the laws of a ‘low quality’ without the committee scrutiny and reading procedures (Riabchenko 2005).

Since 2002, the \textbf{Committee on European integration} carries responsibilities for the EU issues within the Ukrainian parliament. Its competencies include law-drafting, scrutiny of law-drafts prepared by other initiators, and monitoring law implementation. In the framework of cooperation with the EU, the committee organized the political dialog between the Ukrainian and European deputies. Despite the wide range of formal competencies and responsibilities, the possibilities of one of the smallest Committee in the parliament, consisting only of 9 deputies, are marginal and declarative. The absence of interest from the side of the European Commission on the institutionalised dialog with the parliament reduces the importance of the Committee in the hierarchy of state bodies.

Since independence, European issues are present in every electoral campaign. Contrary to the popular in the western media portray of pro-European West and pro-Russian East \textbf{political parties}, the support for European integration has a broad consensus among all political forces. Already in the parliament elected in 2002 there were no party opposing Ukraine’s deeper cooperation and integration with the EU. Although to different extend, the EU became a foreign policy priority in all party programmes. However, due to the lack of capacities parties were weak in policy-making. None of the parties managed or tried 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 paper offers a brief outlook of the position on European integration of those parties, building fractions in the today’s Verkhovna Rada.

Three popular since the Orange Revolution political forces won the 2006 and 2007 parliamentary elections and so far remain key players. According to the election results the Party of Region (led by Viktor Yanukovych), the BYuT (headed by Yulia Tymoshenko, the current prime minister and formally an ally of the president), and the Bloc ‘Our Ukraine’ (an alliance of pro- Yushchenko forces) – have won around 90 percent of seats in the new parliament of 2007. The other two fractions – The Communist Party of Ukraine and The Lytvyn Bloc – are too small to be treated as an independent player, although they possess important seat shares to build situational majorities.

Over recent years the representatives of main fractions were in the post-revolution governments and even led them as prime ministers – those of Yulia Tymoshenko, Yurii Yekhanurov and Viktor Yanukovych, who represent the BYT, the Bloc ‘Our Ukraine’ and the Party of Regions respectively – and were able to implement their party’s programme as government policies. European choice as the priority of foreign policy was on the agenda of each government. Despite the slight differences in the parties’ positions (e.g. European integration with or without Russia), the foreign policy of each government were consistent. Only the current government of Tymoshenko goes further, introducing European choice into domain of domestic policies.
The irrelevance of the parties’ programmes for the real politics had its reasons. First, in the situation where the clear support for the Ukrainian aspiration from the EU was missing and the political forces were involved in the elections campaign, the parties primarily highlighted the issues promising them additional votes in population. Additionally, the pragmatic reply of the EU on European aspiration of Ukraine damaged the popular support of pro-European parties. Thus, especially during the election campaign of 2007 both pro-European blocs - the BYT and ‘Our Ukraine’ - made the priority for improving living standards by the means of domestic reforms. Second, the Ukrainian parties are weak and have a few sanctions to make their programmes implemented by the governments. They are not political constituencies with a severe discipline, but the framework for ‘getting into the parliament’ of several political forces heterogeneous in their interests and preferences. Moreover, they are not only political actors whose preferences are limited to the short-term purpose to win next elections. The practical actions of the parties besides their programmes are led by the business preferences, focusing on favourable conditions for their business without confining themselves to the parties’ programmes. The presence of business lobbies further weakens the party system of Ukraine that was already weak due to the post-Soviet legacies. The prevalence of business over ideological aspirations results in the great deputy migrations and situational majorities. However, business preferences, if of long-time horizons, are more favourable for the reforms in comparison with election cycle-oriented horizons of politicians.

In the “oligodemocratic” political system of Ukraine, economic actors play highly influential role, directly controlling all major political parties as well as the executive and legislative branches. Interested in the rent-seeking, business groups were treated as stumbling-stones on the way of building democracy and market economy (Hellman 1998; Pleines 2004; Zimmer 2006). However, the recent studies reveal the changes of the business preferences (Melnikovskaya 2008; Melnikovskaya and Schweickert 2008). The business groups in Ukraine reached the certain limits of capital accumulation and met the obstacles to further rent-seeking. In such a situation, they became the driving forces of institutional change by striving for wealth security and a consolidation of their position by means of international integration and good state governance. They needed a minimum of formal institutions in order to meet international standards of doing business which have not been delivered by Kuchma’s regime of feckless pluralism. Hence, most oligarchic clans directly or indirectly supported the Orange Revolution of 2004 and the following institutional changes in the political and economic system of Ukraine. Both value and quality of trade and investment flows increased in recent years giving the EU a big leverage for influencing further reforms in Ukraine.

The Ukrainian civil society similar to all countries of the CIS was treated as weak (Aslund 1999; O’Loughlin and Bell 1999). Common features of the weakness within post-Soviet civil societies were the lack of trust in politicians and both governmental and non-governmental political institutions, the absence of a strategy or program relating to social society actions, and a distinct apathy and pessimism concerning both individual, as well as their country’s future (Stepanenko 2002; Golosov 2002-2003; Hritsenko 2002). Although a few researcher (McFaul 2005; Beissinger 2005, D’alieri 2006, Karatnycky 2005, Way and Levitsky 2007, Wilson 2005, Tucker 2005) changed their assessment of civil society after the Orange revolution, its possibilities to influence the endogenous change and therefore promote or constrain the convergence with the EU are still limited. Some barriers to greater citizen participation in NGOs activities in Ukraine, for example, an insufficient public awareness of the importance of citizen participation in the governance process (World Bank, 2003) diminished after 2004, but other factors like poverty and focus on day-to-day survival are still in place. The absence of a strong civil society in Ukraine is also confirmed by statistical information. The national representative survey,
“Monitoring Ukrainian society” (Monitoryng Ukrainskogo Suspil’stva), reveals dramatically low levels of citizen participation in civic organizations and NGOs. Remarkably, civil society was weak a few months prior to the Orange Revolution and continues to remain weak well after 2004. After the revolution, the political disinterest and social apathy of most of the population can hardly confirm the institutionalisation of the norms and values of civil society in the country.

As for the foreign policy orientations, since Kuchma’s proclamation of “European choice” Ukrainian population has supported with some ups and downs European integration. The EU membership is associated with higher living standards and the rule of law and therefore is desirable. Several surveys revealed that between 87 to 97 percent of experts polled believed that EU membership was in Ukraine’s national interest, and, when comparing the entry into the EU and participation in the Single Economic Space with Russia, 77.4 percent found the former and only 13.2 percent the latter more beneficial for the country. Although Ukraine has had a clear majority of about 48-55 per cent in favour of European integration from a long time, with 16 per cent against (Ukrainian Monitor 2005, cited in Wolczuk 2008), other directions of external orientation are also supported in public opinion. Furthermore, the population maintains different orientations at the same time without seeing them as conflicting each other. The opinion survey show deep differences in electoral patterns and foreign policy orientations between four parts of the country (Table 2).

Table 2- Population Preferences on Foreign Policy Priorities by Regions, 2005

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<tr>
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<th>West</th>
<th>Center</th>
<th>South</th>
<th>East</th>
<th>Whole Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Union</td>
<td>60.7</td>
<td>43.5</td>
<td>21.9</td>
<td>16.8</td>
<td>34.6</td>
</tr>
<tr>
<td>Russia</td>
<td>7.9</td>
<td>29.5</td>
<td>28.7</td>
<td>56.7</td>
<td>37.1</td>
</tr>
<tr>
<td>Other CIS countries</td>
<td>6.6</td>
<td>12.5</td>
<td>10.9</td>
<td>16.2</td>
<td>12.4</td>
</tr>
<tr>
<td>United States</td>
<td>3.4</td>
<td>3.1</td>
<td>3.6</td>
<td>0.9</td>
<td>2.5</td>
</tr>
</tbody>
</table>


The ENP releases the antipathy among the Ukrainian population. Kuchma’s regime made the aspirations for membership widely popular. Thus, the ENP incentives are not appropriate to the expectation of the citizens. A strong disappointment vis-à-vis the ENP hampers the positive attitude to the EU in Ukraine (Table 3). Several survey highlight, however, the discourse on the ENP has changed over time. First criticized as reflecting a lack of EU strategy towards Ukraine, the ENP is seen now as the first step or a “temporary mechanism” for Ukraine on the road to EU membership.

Table 3 - Evolution of Popular Opinion

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2004</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>European self-identity</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>To a significant extent</td>
<td>8</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>To some extent</td>
<td>26</td>
<td>20</td>
<td>22</td>
</tr>
<tr>
<td>Seldom</td>
<td>57</td>
<td>13</td>
<td>16</td>
</tr>
<tr>
<td>Not at all</td>
<td>-</td>
<td>49</td>
<td>50</td>
</tr>
<tr>
<td><strong>Assessments of the EU</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Very positive</td>
<td>15</td>
<td>10</td>
<td>9</td>
</tr>
</tbody>
</table>

15 Since 1992, the Institute of Sociology and National Academy of Sciences has annually conducted the survey, Monitoring Ukrainian Society.
### Attitudes towards EU Membership

<table>
<thead>
<tr>
<th>Attitude</th>
<th>Favour</th>
<th>In favour</th>
<th>Against</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rather positive</td>
<td>35</td>
<td>38</td>
<td>38</td>
</tr>
<tr>
<td>Rather negative</td>
<td>5</td>
<td>8</td>
<td>14</td>
</tr>
<tr>
<td>Very negative</td>
<td>2</td>
<td>2</td>
<td>8</td>
</tr>
<tr>
<td>No view</td>
<td>35</td>
<td>40</td>
<td>31</td>
</tr>
</tbody>
</table>

Source: White et al. 2008

In Ukraine, the **NGOs** as well as **media** are pro-European. Although not all NGOs put European integration on agenda, there is no NGO refusing the European values such as democracy, respect for human rights etc. However, the NGOs seem to be weak political players in the institutional change. Though the main producers of participatory values, they still lack mass support and are virtually “rootless” (Golosov 2002-2003). The state authorities continued to exert immense influence on the development of civil society through institutional regulations, while foreign foundations carried weight through financial means. The low membership rates in NGOs after the Orange Revolution shows that the issue of roots is still valid challenge for the EU assistance. The EU can encourage NGOs to broaden their membership base and work more on public communication (Raik 2006). The media became free after the Orange Revolution and is the most powerful channel in building public opinion in Ukraine.

All-in-all, there is no practically veto-players in Ukraine standing against the institutional convergence towards EU standards. Either state or non-state actors support or are at least neutral to the EU integration. However, the most progressive oriented domestic forces lack the support for their European aspiration from the EU side. Hence, some of them are weak to drive institutional changes. Due to the prevalence of costs-benefits approach among diversified domestic forces the speed of the convergence is slow.

### 3. Democracy oriented Europeanization through ENP

Assessing the EU democracy promotion in Ukraine, the paper analyses the direct and direct types of influence that the EU can exert: “active leverage”, which included direct conditionality in the accession process or currently in the bilateral relationship with a third country, and “passive leverage” that is the mere power of attraction, i.e. with the idea “Return to Europe” (Vachudova, 2001: 7; 2005). Moreover, the analysis is carried out along top-down and bottom-up mechanisms of democracy promotion.

The relationships between the EU and Ukraine ascribed in the 1990s little importance to democracy and human rights.\(^{16}\) The only mechanism the PCA provides to maintain...
democracy in Ukraine was political dialogue that should “envisages that the Parties endeavour to cooperate on matters pertaining to 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” (Art.6). The indirect opportunities to promote democracy were still possible due to the PCA at the bilateral level of cooperation through education and professional training of civil servants and cooperation and mobility between various participants in the educational process (Art.59).

However, practical steps of democracy promotion were seldom. The mechanism to monitor Ukraine's progress in its commitments was absent. Different to the accession countries, for which the European Commission had produced annual progress reports, no attempt to assess the implementation and stage of democratic standards was done until 2003. Only 5 years after the PCA entered into force in March 2003, the EU prepared the Joint Report on Implementation of the Partnership and Cooperation Agreement between Ukraine and the EU. This report mentioned marginally the issues of democracy and the rule of law. Respectively, the institutional arrangements envisaged by the PCA directed little attention to democracy. None of seven subcommittees that dealt with specific issues established under the EU-Ukraine Cooperation Committee dealt with issues pertaining to democracy (Appendix 1).

Due to the evidence of authoritarian tendencies in the political system of Ukraine in the late 1990s and simultaneous deepening of integration in the area of CFSP, the EU became more and more interested in promotion of democratic norms in Ukraine. By the early 2000s, the EU representatives released a lot of statements and declarations on the negative political developments and threats for democracy in Ukraine. However, the EU still played a passive role, repeatedly emphasizing the self-responsibility of Ukraine’s government to respect democratic principles (European Council Common Strategy, 1999: 2). Although the Common Strategy and the negative statements demonstrated the EU efforts to maintain democratic values in Ukraine, they brought little for the promotion of democratic values and led to the re-orientation of Kuchma’s political course towards Russia. The conclusion of the evaluation of the European Commission’s Country Strategy for Ukraine (2003), which analyzed the EU’s programs during 1996-1999, confirmed low impact of “legal support projects, with the exception of the abolition of the death penalty” (2003a: ii). The 4-year ratification of the PCA in the parliaments of the EU members as well as the membership incentive for the CEC, but not for Ukraine might have intensified the anti-democratic tendencies of Kuchma’s regime.

“Wider Europe” declared a new stage in the EU’s strategy towards Ukraine that became a priority partner country within the ENP. The development of the ENP and the adoption of AP led the way for new prospects in democracy promotion in the states

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18 Especially, after alarming reports from the OCSE and the Council of Europe regarding the deteriorating political situation and after the 1999 presidential elections, democratization received greater attention than in the preceding years. As result, the EU launched a Common Strategy — a new foreign policy instrument — to intensify its cooperation with Ukraine. The first European Council Common Strategy of 1999 stressed the ‘support for the democratic and economic transition process’ particularly the importance of a ‘stable, open and pluralistic democracy’ as the principle objective (1999: 1-2).
surrounding the EU (Solonenko 2005). In the ENP, the EU strongly emphasized that “democracy, pluralism, respect for human rights, civil liberties, the rule of law and core labour standards are all essential prerequisites for political stability, as well as for peaceful and sustained social and economic development”. While the ENP applied similar language and policy approaches towards all ENP partner countries, APs reveal a set of differences. In comparison with the APs of other ENP countries, the Country Strategy and EU-Ukraine AP reveal a stronger weight of Ukraine in treating more priorities and offering further reaching perspectives, especially in the area of democracy, security, proliferation and crisis management (Beichelt 2007). Similar, the Commission Working Paper on the ENP (2004) reiterated the EU’s commitment to democratization in Ukraine by stressing that it supported reforms in “selected areas of particular interest for this [EU-Ukraine] partnership: the development of political institutions based on the values – democracy, the rule of law, human rights and provides guidance for the preparation of joint action plans’ based on the progress of the reforms” (European Commission, 2004: 3). Different to the PCA, the ENP and AP envisage a number of concrete actions and mechanisms to promote democracy in Ukraine.

In the terms of top-down mechanisms, the EU involves in democracy promotion by the means declarative democracy in the ENP institutional framework with the government bodies; technical assistance and training of bureaucratic staff; crisis mediation during the roundtable talks and in the after-Orange Revolution political debates.

The first EU-Ukraine Action Plan signed in February 2005 lays out 17 steps in cooperation with the Ukrainian governments aimed at enhancing democracy and the rule of law. In addition to the high level of clarity on demanding Ukraine’s compliance with democratic standards, the EU introduces, even through weak, incentives and rewards and uses “package effect”, linking the incentives and demands. Hence, the monitoring of the AP’s implementation will be done at the end of each year, and will enable intermediate discussions on progress and rewards for achievements. Such evaluation mechanism offers the incentives conditioned upon the implementation of the EU-Ukraine AP. Due to the relative short-term horizon of the AP and possibilities to its annual revision, the speed of rewards has the positive impact, encouraging the Ukrainian government to promote democratic norms. The determinacy of rewards and demands was recently exemplified when the Commission issued the positive evaluation concerning the fulfilment of the EU-Ukraine AP. As promised, in exchange for the free elections the EU assisted in the Ukraine’s accession to the WTO, granting market economy status and introduced some visa simplifications for the Ukrainians.

Despite the non-negotiation strategy the Commission followed during the AP drafting thereby neglecting the principle of “joint ownership”, the increase of the institutional leverage between the EU and Ukraine’s authorities has also its positive impact. The monitoring of AP takes place within bilateral institutions like the Summit, EU-Ukraine Cooperation Council, EU-Ukraine Cooperation Committee (Appendix 1). This is in the line with the Country Strategy Paper for Ukraine that aims to “develop an increasingly close relationship, going beyond past levels of cooperation” and to “deeper political cooperation”.

Contrary to Kuchma’s era, blaming and shaming diminished in the EU rhetoric. The strongest resonance was devoted to the corruption scandal of the first government of Tymoshenko, the doubtful in the terms of compliance with constitutional order Yuschenko’s premature dissolution of the parliament and new election as well as attempt to influence the Constitutional Court. The mildness of critics could be explained with unwillingness to discriminate the “orange” forces in Ukraine and in such a way promote the come back of the reactionist political forces to power.

The EU impact on the electoral regime in Ukraine increased shortly before the presidential elections of 2004. The EU Commission contracted consulting firms- the Bureau for Institutional Reform and Democracy GmbH (BiRD) and Icon Institute Public Sector GmbH to assist Ukraine’s Central Electoral Commission in the administration of the election,
focusing on voter education, effective communication with governmental bodies and NGOs in the election process, and on improving the legal regulations for electoral disputes (EU Commission 2004, cited in Gatev 2008). This cooperation was not limited to the Central Electoral Commission in the capital of Ukraine, but transmitted to territorial election commission officials. The EU granted €1 million to the Central Election Committee and funded technical assistance programmes to maintain civil society activities in the conducting a free and fair elections.

In the course of the popular protests in 2004 the EU supported the action of people demonstrating against oppression of the state, and was both quick and uniform in rejecting the official results of the second round of the election. Additionally, the individual participation of EU representatives such as Javier Solana and the presidents of Members States (Valdas Adamkus and Aleksander Kwasniewski) help to initiate the negotiation process without loosing face by the “orange” or “blue-and-white” forces. Moreover, the informal involvement of the EU representatives contributed to credibility of the the “Round Table” negotiations for the domestic political forces and eased conflict resolution on the election fraud. Remarkably, the Troika and Presidency that were formally in charge of EU relationships with Ukraine played a weak role here (Batory Foundation 2005; Beichelt 2005).

The EU kept its active participation in the regular parliamentary election of 2006 and pre-term parliamentary elections of 2007. The International Missions of the OSCE/ODIHR, which monitored parliamentary elections in Ukraine, included observers from the European Parliament. Moreover, the EU promoted the revision of the legislative framework on elections, i.e. the Law on the Elections of People’s Deputies. In the area of legal harmonization, the EU also cooperates with the Council of Europe bodies: the Venice Commission on the 2004 constitutional amendments recommended clear division of power between the president and the parliament. It also highlighted the importance of limiting and reforming the powers of the prosecution office. As result, the National Commission for strengthening democracy and the rule of law was founded to improve the judiciary in line with European standards. The EU also provided joint cooperation programmes with the Council of Europe concerning training for judges and human rights experts. Strengthening the judicial system, contributing to approximation of legislation and improving cooperation on these matters with EU Member States were among the priorities of the 2003 Indicative Programme (European Commission, 2003b: 12). ENP Progress Report of 2006 recognizes the considerable steps in consolidating respect for human rights and the rule of law, but notices endemic corruption and the lack of truly independent judiciary as the main challenges.

The EU also applies the bottom-up mechanism of democracy promotion in Ukraine thorough financial technical assistance and training to NGOs and independent media as well as supporting people-to-people contacts in the framework of education programmes.

In 1992, with the European Parliament initiative, the TACIS framework was established. Within this framework the EU declared its intention to focus on “building up inside a society democratic practices, including citizen participation and new thinking” (European Commission, 1997: 15) in order to “stimulate citizen participation”, establish “public monitoring of government policies”, and develop “democratic norms and values through existing institutions”. The EU concentrated particularly on programs which aimed to foster NGOs (European Commission, 1997: 31). However, TACIS was hardly successful. Recognizing the “lack of a comprehensive and unified strategy” which created a gap between intended policy and its implementation by 1998, the Commission stressed the “need to strengthen civil society and the rule of law, to clarify the division of power between the legislative, executive and judiciary branches and to implement further commitments towards

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20 The European Commission’s Delegation to Ukraine, Moldova and Belarus, in: http://www.delukr.cec.eu.int/site/page31321.html.
the Council of Europe” (European Commission, 1998: 23). The 1996-2003 EC Country Strategy for Ukraine stated specifically the need for a “systematisation of bottom-up development objectives” (European Commission, 2003: 23). In addition to emphasizing the importance of civil society, EU officials also differentiated the types of support that should be provided to this sector. The EU developed two types of assistance for NGOs: programs within the TACIS framework and projects funded by the European Initiative for Democracy and Human Rights (EIDHR). The main difference between these programmes was the way of granting. The funding within TACIS had to be agreed with the Ukrainian government, while the EIDHR projects were approved between the EU and NGO’s directly.

The EU contribution empowers civil society that in a democratic country ought to be “independent of state but capable of checking state power and influencing political authorities” (Kubicek, 2000: 1). Despite the relative success, the EU was criticised for supporting NGOs located mainly in the capital spreading funds “too thin” in “mixed” since then civil society of Ukraine (Kubicek, 2003: 160; Boratynsky et al., 2004: 50). Small NGOs, particularly those dealing with social transition, have difficulties in competing for international funding. Taking this critic into account, the EU has tried to reach out to rural areas by supporting decentralization projects and funding “an impressive number of microprojects in Ukraine (422)” (European Commission, 2003a: 422). In 2003, the Delegation of the European Commission announced a re-launching of the EIDHR Micro-projects Programme with €990,000 allocated for Ukrainian NGOs (Press-releases, 2003: 1). Between 2002 and 2004, Ukraine attracted the largest amount of funds within this Initiative. For example, about €5.3 million were allocated to Ukraine to improve access to justice. The advantage of the Initiative is possibility to directly fund non-governmental organisations by providing grants without host government consent.

The additional financial assistance to democracy in Ukraine has been offered since 1995 by the European Commission and the Council of Europe within the ADACS Programme. During 1995 - 2005, five Joined Programmes, with a budget of over €5 million, have been implemented in Ukraine covering a wide range of issues, such as assistance in strengthening an independent judiciary, reform of local governments, training of officials, judges and personnel of local and regional authorities, promotion of human rights via legislative assistance, and other significant measures. On the bilateral basis, EU member-countries (Denmark, Great Britain, France, and Sweden) granted Ukraine €157 million between 1996-1999 for promoting specific areas of democracy such as legislative, judicial, administrative and education reforms.

Bilateral relationships between Ukraine and Central and Eastern European countries enhanced the EU’s ability to influence Ukraine’s NGO sector indirectly. Ties with new EU members, Poland and Slovakia in particular, contributed to development of the “third sector” in Ukraine. For instance, Slovakia adopted the framework strategy for Ukraine to support actively Ukraine’s “European choice”. Slovak NGOs have been active in supporting the democratization and Europeanization of Ukraine. Through the Program of Official Assistance and six different projects, Slovakian NGOs work to strengthen civil society and institutions in Ukraine (Bilik, 2004: 43). Similar, the Eastern Policy adopted by the Foreign Ministry of Poland has also encouraged democratic reforms and the “development of civil societies and local self-governments” (“2004 European Union Accession”, 2004: 141). Cooperation between NGOs in Poland and Ukraine was strengthened by the creation of a European Democratic Endowment that encourages student exchanges and networking among professionals (ibid.). In addition, the Poland-America-Ukraine Cooperation Initiative (PAUCI) financed by the USAID “strengthen[s] the emerging cooperative relationship between Ukraine and Poland to take advantage of acquired expertise and lessons learned in Poland’s successful transition to free market democracy” (Trilateral Initiative, 1999:1). PAUCI provides assistance to NGOs primarily through grants up to of to $100,000 while
encouraging partnerships and exchange of “know-how” among Polish and Ukrainian civil society groups.

Civil society development is also highly prioritized under the ENP, to enhance the “socialization” process of Ukraine.\(^{21}\) According to Michael Emerson (2005), this process serves as an important tool in the "Europeanization" of the EU neighbouring countries. Using the ENP mechanisms and tools, the EU extends to Ukraine the programmes aimed at fostering people-to-people contacts and sharing the experience of transformation at all levels. Educational programmes such as Jean Monnet Action and Erasmus Mundus, and the extension of TAIEX and Twinning to Ukraine, allow Ukraine to strengthen its administrative capacity and implement integration policies, as well as to build sustainable contacts with civil servants from EU member states. Furthermore, the launching of the Neighbourhood programmes with additional funding of about €20 million that permit a single application process are expected to significantly boost co-operation across the EU’s borders with Ukraine. Visa facilitation regime is also of vital importance to socialization process.

The other way the EU influenced civil society in Ukraine is pushing for reforms in education. Thus, the EU launched programs intended to educate and empower citizens (i.e. TEMPUS and BISTRO programs) and in such a way strengthened civil society “from below”. The EU activities in this sphere meet general support from the Ukrainian authorities and are largely successful.

Since 1993 Ukraine has participated in the EC funded Tempus programme (Trans-European mobility scheme for university studies). Tempus has lead to the development of numerous new courses and curricula, in line with labour market needs. New teaching and assessment methods have been introduced in a number of Ukrainian Universities, which have lead to intensified student involvement. Tempus has also had an important input at participating universities, in the introduction of new degrees and the two level systems of bachelour and master studies in line with Bologna principles. A total budget of € 53,03 million has been allocated through Tempus projects to Ukraine since 1993. A new Tempus under ENPI was be launched at the end of 2007. The programme will help promote voluntary convergence with EU developments in the field of higher education deriving from the Lisbon agenda and the Bologna process.

In 2004, the EU has launched a new educational programme -Erasmus Mundus- for countries outside the EU (third countries). Graduate students and scholars from Ukraine, are able to receive scholarships from the European Union in order to study and do research in countries inside the EU. Erasmus Mundus should support about 90 Erasmus Mundus Masters Courses of outstanding academic quality. It should provide grants for some 5,000 graduate students from third-countries to follow these Masters Courses, and for more than 4,000 EU graduate students involved in these courses to study in third-countries. The programme will also offer teaching or research scholarships in Europe for over 1,000 incoming third-country academics and for a similar number of outgoing EU scholars. In addition, Erasmus Mundus will support about 100 partnerships between Erasmus Mundus Masters Courses and higher education institutions in third-countries. The duration of the programme is five years (2004–2008) with a planned financial envelope of 230 million Euro for the whole period.

The Jean Monnet Programme is designed to increase knowledge and awareness about European integration by promoting teaching, research and debate on European Union matters (including the EU’s relations with other regions in the world). Since 2007, the Jean Monnet Programme is integrated in the broader Lifelong Learning Programme (that also includes such education programmes as Erasmus and Leonardo).

Besides priorities of NGO’s assistance and education reforms, the EU promotes independent media as a very powerful instrument to shape public opinion, especially before

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\(^{21}\) Michael Emerson. Speech during the conference "Europe as a Democracy Promoter", Romanian Academic Society, Constanta, July 2005.
and during elections. In the AP, the EU defines two priorities on the way to ensure respect for the freedom of the media and expression: (1) improve and enforce the legal and administrative framework for freedom of media; (2) ensure effective respect of freedom of media, including journalists’ rights. Under the auspices of the EU, Ukraine made the important progress as for the second priority, abolishing the practice of “temniki” (instructions of the authorities to the media on what and how to report) and facilitating the prosecution process in Gongadze’s affair. Indeed, Ukraine upgraded its position in the ranking of “Reporters without Borders” from the 168th to 105th position.

The fulfilment of the first priority lagged behind. Although the Orange Revolution created opportunities and momentum for media transformations, the media remains caught between state and business influences (see more about the ownership structure of broadcasting and television companies in Lukyanova 2006). This is due to insufficient self-financing opportunities for media in Ukraine. The enforcement of the Law on television and radio broadcast, passed in 2006 and effectiveness of the National Commission for strengthening freedom of speech and development of the information sphere are marginal. In the situation of the power struggles, Ukraine’s political leadership as well as business incorporated in the diversified political groups are not interested in loosening the channel of influences on public opinions.

The EU also established the special event-related projects combining all three objects of bottom-up democracy promotion, namely NGO’s, education and media. In 2004, with the aim to enable free and fair presidential elections and parallel to the top-down mechanisms, like the describe above cooperation with Ukrame’s Central Electoral Commission, the EU Commission launched three projects concerning bottom-up assistance with the funding budget of 1 million Euro within the framework of the EU technical assistance programmes (EC Delegation in Kyiv 2004). These “elections” projects should enable the monitoring of the election coverage by the media in several oblast; the mobilization and education of youth groups in fifteen target regions; an “Each Vote Matters” mobilization campaign in four eastern and north-eastern oblasts targeting young people and journalists (Gatev 2008). Moreover, the EU tries to facilitate cooperation between governmental and non-governmental organizations. Thus, the Committee of Voters of Ukraine -the national NGO on electoral issues- was involved in the cooperation with Ukraine’s Central Electoral and territorial commissions. To facilitate effective cooperation between them, the EU provided for training of around 2000 polling station commissioners and observers (CVU 2004).

Despite the advantages of the ENP on democracy promotion in comparison with the PCA, some disadvantages hampering the EU impact on democratic transformation in Ukraine still exist. First, the EU escapes any commitment in respect to Ukraine’s EU membership. Some authors consider a symbolic gesture indicating that “the door is open” as serving as a strong incentive to consolidate Ukrainian society and to strengthen commitments to reforms inside the country (Solonenko 2005; Emerson 2006). Taking into account enlargement fatigue and the probability of negative gesture for Ukraine, the message “the door is neither open, nor closed” (the message sent by the EU External Relations Commissioner Benito Ferrea-Waldner in early 2007) could also be positive.

Second, the financial assistance to democracy promotion within the ENP increased, but is still limited (Appendix 2). Lack of direct granting to NGOs significantly limits the EU’s potential to support civil society development, which is essential for the promotion of democracy (Solonenko 2005, Raik 2006).

The distribution of the financial resources is the other negative factor. Out of €212 million over the period 2004 - 2006, only some €15 million were allocated for legal and administrative reform, €10 million for civil society and democracy, and €25 million for education and training. Out of the €60 million envisaged for the Action Plan on Justice and
Home Affairs, only a small share belonged to areas other than combating illegal migration and border management.

The Country Strategy Paper for Ukraine translates the three priority areas of the National Indicative Programme (NIP) over the period 2007-2013. Democratic development and good governance belongs to the first priority. Some elements of democracy promotion are also included into the second priority on regulatory reform and administrative capacity building.

Priority Area 1 in NIP for 2007-2010 with the budget of 148,2 million (30% of total) includes:

* Public administration reform and public finance management
* Rule of law and judicial reform
* Human rights, civil society development and local government
* Education, science and people-to-people contacts.

In the framework of the ENPI replacing TACIS, Ukraine received around €37 million in 2007 to promote democracy.

All-in-all, before the Orange Revolution the EU’s attempts to promote democracy in Ukraine have had little success. The democratic tendencies in Ukraine in 2004 were generated by the domestic forces rather than by the EU mechanisms and practical efforts to promote democracy in Ukraine within the PCA and at that time the newly released ENP. The Ukrainian case fits well into the assumption that ‘the EU power to influence its neighbours is clearly strongest for those European states that have membership aspirations (Emerson 2005; Noutcheva and Bechev 2008) and are democratizing (Raik 2006). After the Orange Revolution the EU begins to significantly contribut to the development of civil society and to solving the political crisis during the presidential election of 2004. Hence, it was still influential independent arbiter for the political leadership in the parliamentary elections of 2006 and of 2007.

The democracy promotion in Ukraine via the ENP, especially after the Orange Revolution, seems to be more substantial mainly in the terms of bottom-up mechanisms whilst comparing with the pre-ENP period. Ukraine's own openness and interest in cooperation with the EU, from the one side, and the strengthening of the EU democracy promoting strategy, from the other side, have created a favourable atmosphere for the improvement of democratic institutions in Ukraine. The power struggle between the state branches and usage of the constitution-conflicting tools in these struggles hamper the effectiveness of the EU top-down mechanisms of democracy promotion.

4. Sectoral Europeanization

Economic cooperation

The PCA aimed to bring Ukraine’s legislation in compliance with requirements of the Single European Market and the WTO. The PCA also provides for the establishment of a Free Trade Area (FTA), ‘when Ukraine has further advanced in the process of economic reform’. In its economic dimension, the PCA targeted the promotion of GATT (General Agreement on Tariffs and Trade) principles like most favoured nation clause, national treatment principle freedom of transit, and general prohibition of quantitative restrictions.22

22 The new EU GSP, in force since the 1st January 2006, implies positive news for beneficiary countries (including Ukraine) in terms of stability, predictability and simplicity. GSP effective imports from Ukraine have increased significantly from 2000 and the GSP utilisation rate reached a very satisfactory 72.5% of the eligible products in 2006. With €1.73 mio of GSP preferential imports to the EU, Ukraine is ranking among top 12 effective users of the system. Preferential imports are diversified and include i.a. the following sectors: chemicals, plant oils, minerals, base metals, machinery and mechanical appliances.
The exception was made for textile, some coal and steel products and nuclear materials. The trade with these items is regulated with the special agreements. The textile agreement eliminates the quantitative quotas since 2005. However, the Ukrainian metal products are the subject to the substantial restrictions. The steel agreement leaves annual quotas for Ukraine’s metal imports (1.32 mio tonnes in 2007) valid and imposed antidumping duties on different chemical and steel products from Ukraine.\textsuperscript{23} In the course of Ukraine’s accession to the WTO, the framework of economic cooperation was set in flux. The EU agreement in the context of the WTO accession grants the market economy status for Ukraine in exchange for the elimination of most controls on exports and tariffs. In March 2007, the EU and Ukraine launched bilateral negotiations of a new Enhanced Agreement that will replace the present PCA and will include a deep and comprehensive FTA as a core element thereof.\textsuperscript{24} The regulations of the FTA should reconsider the EU defence mechanisms for the Ukrainian steel, chemicals, fertilizers and grain has started.

The ENP was primarily conceived as an instrument to further \textit{prosperity} and \textit{stability} in the EU’s neighbourhood. Hence, the reforms priorities of the ENP are growth-enhancing (Dodini and Fantini 2006) and include:

- sound macroeconomic policies (fiscal and monetary) that should provide a better macroeconomic environment, and boost the positive effects of liberalization (Nsouli et al. 2002);
- structural reforms; although time-intensive and costly, they should upgrade the regulatory framework to make it more conducive to growth (EBRD Transition Report 2003; Kelley 2006);
- trade and factor movement that means a reduction of tariff and non-tariff barriers between the EU and among neighbours and should therefore induce growth through the customary beneficial effects of trade and liberalization (Manchin 2007);
- social and employment policy, including poverty reduction, should reduce social costs of reforms;
- regional development that should ensure reform benefits across regions and help to avoid regional discrepancies.

For Ukraine, the growth-enhancing measures come in good time. Since the end of the 1990s, Ukraine has achieved strong economic growth and the issue of how sustainable this growth has become is now crucial. The current growth is extensive with exports of intermediary, semi-finished and low-quality goods. The efficiency of the basic exporting industries is low, while the energy wastage is high. At the same time, Ukraine’s metallurgy industry, are becoming old and out of date. The use of new technologies and the modernisation of production capacities are important, in terms of competitiveness within the world markets. As the state should not provide financial aid to local corporations as it often did in the Soviet times and early years of transition, private investment, either local or foreign, is required. However, investment will not happen, until the possibility of reaping rewards from the investment is secured. Thus, the sound state governance became the urgent necessity to ensure sustainability of economic recovery.

It will also help make Ukraine more attractive for investment and will help encourage diversification and open export opportunities for smaller Ukrainian companies. The possible increase in FDI flows are highly valued for the Ukrainian industry suffering for out-dated technologies and over-stretched capacities. The EU is by far the largest foreign investor in Ukraine with its growing share every year (71.7% by the end of 2005) and so has a great

\textsuperscript{23} 10 Ukrainian chemical and steel products were subject to EU safeguard measures in 2005. http://www.ukraine-eu.mfa.gov.ua/en/publication/content/2276.htm

\textsuperscript{24} The feasibility study of 2006 on the establishment of an EU-Ukraine Free Trade Area argues that FTA between the EU and Ukraine as the most beneficial form of cooperation, notably in a long-run, for both Parties (Eremenko and Lisenkova 2004).
potential to modernise. According to the State Statistic Committee of Ukraine, the FDI flows from EU-27 amounted to almost USD16 billion in 2006, compared to just above USD 3 805 million in 2004. The main obstacles faced by EU investors so far has been frequent changes in regulations, lack of transparency, failings in implementation and enforcement of laws, discriminatory regulation and corruption. Ukraine proceeded in trade liberalization and fight against corruption and made the investment climate more predictable and safer, which is essential to attract higher levels of investment. However, further improvements are necessary, especially focusing on effective enforcement of legislation and transparent judiciary as well as completion of the reform process on security of property rights. This could be done in line with the EU requirements incorporated in the AP.

In addition to the incentive of being growth-enhancing, the ENP provides for incentives, specified for each ENP neighbour in the APs, to engine the fulfilment of the priorities. In the economic terms, the AP offers for Ukraine:

- enhanced preferential trade relations, leading in the medium-term to the establishment of Free Trade Area after Ukraine’s accession to the WTO;
- ‘a stake’ in the EU Internal Market, dependent on progress in implementing the EU *acquis* and other accompanying reforms;
- increased financial and technical assistance through the European Neighbourhood and Partnership Instrument;
- improved interconnection with the EU in areas such as energy, transport and the information society;
- the opportunity to participate in EU programmes (such as research and education).

The value of economic incentives depends on trade characteristics and tendencies in the economic system of a neighbour country. The current economic growth in Ukraine is export-oriented. Largely as a result of booming metal exports, Ukraine’s level of trade openness has increased considerably (imports and exports are equivalent to 90 percent of GDP). The EU is Ukraine’s the largest trading partner. EU-Ukraine trade reached over €27 billion in 2006, and has been growing steadily in recent years (Table 4). The trend is continuing. Ukrainian exports to the EU consist mainly of basic commodities, i.e. metal, energy, machinery, agricultural products as well as chemicals (Figure 1). Primary products constituted 35.2% of Ukraine exports to the EU in 2006 while manufactured products make up 47.7% accordingly. Major EU exports to the Ukraine are machinery, chemicals and transport equipment. The Ukrainian export goods belong to ‘sensitive’ sectors and are often the subject to the EU protection mechanism, i.e. antidumping sanctions.

Table 4- Ukraine, Trade with the EU (mio Euro)

<table>
<thead>
<tr>
<th>Year</th>
<th>Imports</th>
<th>Yearly % change</th>
<th>EU Share of total imports</th>
<th>Exports</th>
<th>Yearly % change</th>
<th>EU Share of total exports</th>
<th>Balance</th>
<th>Imports+ Exports</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>5.729</td>
<td></td>
<td>31.97</td>
<td>6.105</td>
<td>14.2</td>
<td>32.60</td>
<td>376</td>
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<tr>
<td>2003</td>
<td>6.859</td>
<td>19.7</td>
<td>32.27</td>
<td>6.972</td>
<td>13.0</td>
<td>32.70</td>
<td>112</td>
<td>13.831</td>
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<tr>
<td>2004</td>
<td>7.536</td>
<td>9.9</td>
<td>32.40</td>
<td>7.876</td>
<td>13.0</td>
<td>30.22</td>
<td>340</td>
<td>15.412</td>
</tr>
<tr>
<td>2005</td>
<td>9.543</td>
<td>26.6</td>
<td>32.93</td>
<td>7.400</td>
<td>-6.0</td>
<td>27.21</td>
<td>-2.143</td>
<td>16.943</td>
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<tr>
<td>2006</td>
<td>19.605</td>
<td>105.4</td>
<td>42.65</td>
<td>8.007</td>
<td>8.2</td>
<td>25.57</td>
<td>-11.597</td>
<td>27.612</td>
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<tr>
<td>Average annual growth</td>
<td></td>
<td>36.0</td>
<td></td>
<td></td>
<td>7.0</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: EU EUROSTAT, External Trade Statistics.

Figure 1. Ukraine, Trade with the EU by product (mio Euro)
With reference to the trade volumes and structure, the incentives of the FTA and a “stake” at the EU market seem to be the most attractive for Ukraine. Therefore, the EU requirements of policy adjustments and reforms to converge to common values in economic governance linked to these two incentives have the best chances to be successfully fulfilled. In addition, the incentives could be applied not exclusively to achieve the convergence in the economic standards, but in other spheres, i.e. convergence of political institutions, strengthening democratic standards, the rule of law, minority rights, women’s rights, labour rights, media freedom, and social justice are far promising strategy, too (Sasse 2004). Indeed, the EU has already experiences. How economic incentives may work for the bottom-up internal drivers of institutional change are exemplified by the process of achieving a market economy status for Ukraine. Suffering from anti-dumping sanctions, the Ukrainian business groups used their political influence to implement the institutional reforms concerning transparency of ownership structure and property rights and required for achieving full-fledged market economy status for Ukraine and to accelerate negotiations with the EU (Honcharuk 2006). The initiative to start early consultations on an enhanced agreement between EU and Ukraine, to replace the Partnership and Cooperation Agreement at the end of its initial ten-year period was linked to the political priorities of the ENP Action Plan, namely free and fair parliamentary elections in 2006 (GAERC Conclusions 2005).25

The exact conditions of the FTA are still to be negotiated. However, The FTA will look for ways boost trade and investment flows between the EU and Ukrainian economy through substantial trade liberalisation and regulatory harmonisation (Mandelson 2008). It will lower the costs of EU imports for Ukrainian businesses and consumers, and increase Ukraine's access to the EU single market, which is the largest in the world. The FTA will create new opportunities for Ukrainian businesses in the European market and will widen access to European imports for Ukrainian businesses and consumers (Emerson et al. 2006). It will also help attract new European investment to Ukraine. Both bring significant benefits for

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25 These GAERC conclusions also referred to an early start to negotiations on an FTA once Ukraine has joined the WTO.
Ukraine's economic development. In order to achieve this, the FTA will build on the liberalisation undertaken as part of WTO membership and work towards 'deep convergence' – not just cutting tariffs but addressing red tape for exporters by aiming for similar regulatory standards and norms in both economies.

Indeed, the FTA would be significant for the economy, but the extent will depend on the range of products covered by agreement. The Ukrainian major trade items like heavy industry products and agricultural products belong to ‘sensitive’ sector and will be hardly included in the agreement. Furthermore, the plenty of the Ukrainian products failed to fulfil European standards and therefore, are excluded of the EU markets with non-tariffs barriers. Whether the issue of non-tariff barriers will be included into negotiation and whether the EU will assist to improve standardization quality of the Ukrainian goods is to wait and see. A more promising idea could be a ‘deep free trade area’ between the EU and Ukraine, that will eliminate non-tariff barriers (Emerson at al.2006; Vinhas de Souza et al. 2006).

A stake in the common markets is the most potential and far-reaching incentives for institutional convergence. It involves participation in the area of free movement of goods, services and factors of production. The offer concerning a stake in the Common Market is remarkable incentive that had been never offered to non-European countries before and is currently present only in Ukraine’s and Moldova’s Action Plans.26 This incentive could have many positive effects. Service liberalisation would enhance the growth (Brenton and Manchin 2003). The liberalisation of long-term capital movements would attract FDI that promote technological transfer and efficiency improvements (Levine 1997; Francois and Schuknecht 1999). However, the long-term character of this incentive for the neighbours and the short-term social costs of convergence lows its value. It is difficult for politicians with short-time horizons to implement reforms that promise vague benefits in the far future, but could immediately hamper their source of power. In addition, a size and areas of a ‘stake’ are not officially defined. Thus, the most important ‘stakes’ for Ukraine in agricultural and steel markets could still be excluded from negotiations. The EU’s effective protection is especially high for agricultural goods, textiles, chemicals and steel (Milcher and Slay 2005) that are the main export commodities of Ukraine.

The author estimates the ENP capacities moderate and believe that the ENP could be successful only if consistent with domestic tendencies in politics and economy of Ukraine. From this point of view, the reforms will be implemented with reference to the rational costs-benefits calculations of the powerful domestic elite groups. So, the high internationalisation into the European markets and request for better state governance of the Ukrainian business groups, strongly influencing the domestic policies, maintain the implementation and enforcement of the launched in the AP reforms. Costs of exclusion from EU markets, taking into account the size of the trade with the EU will be high. The high diversion of trade, increasing investment and aid provide the additional incentives. To keep up domestic pressure, effective monitoring and credible incentives are necessary (Kelley 2004; Vachudova 2005). The challenge for the EU to convince the Ukrainian elite that compliance with the EU could bolster their popularity and when the EU’s conditions for moving forward are compatible with the ways that they win and hold power at home.

**Justice and Home Affairs**

Although legal approximation was mentioned in the PCA, the degree of approximation foreseen in the agreement was limited: “Ukraine shall endeavour to ensure that its legislation shall be gradually made compatible with that of the Community” (Article 51 of the PCA). The areas in which approximation was required were mainly those referred

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26 The same unique character has the FTA incentive.
to in the PCA, i.e. internal market-related legislation. Ukrainian authorities promoted a much broader understanding and included the second and third pillars of the EU (Wichmann 2007). For instance, the Ukrainian Parliament refers to European Union law (Verkhovna Rada 2002), thus encompassing the whole *acquis*.

In the course of the enlargement, the cooperation on legal harmonisation received a new impulse. The EU needed to secure its new borders from illegal migration, smuggling, criminality etc. The PCA did not dispose any appropriate tools to regulate the JHA issues. Thus, in December 2001, the EU-Ukraine Action Plan on Justice and Home Affairs was adopted, which provided the goals and concrete objectives for such cooperation. Comparing to the PCA, the AP revealed a shift on legal harmonisation, as far as it broadens the areas of approximation. The key priorities of JHA cooperation with the EU included the strengthening of rule of law, and of administrative and judiciary capacity, migration and border management, money laundering, trafficking in human beings, drugs and corruption. As the primary objective was to acquire the support of the EU’s neighbours in minimising risks related to different kinds of cross-border crime that threaten EU stability and security, the largest share of the EU financial assistance was directed to the border management than on governance-related matters.

The JHA Plan placed responsibility for implementing, monitoring, evaluating and identifying priorities for each year of cooperation on the Scoreboard. Common for the ENP, the tools used for legal approximation recall those used under EU previous processes. The Scoreboard set up on implementation of the AP, in order to track progress in the implementation of JHA measures in Ukraine, has widely been used either during the process of EU’s internal integration, and under the enlargement. Hence, it should be noted that Ukraine is the only neighbouring country to resort to such instrument, which also highlights its distinctive profile among the neighbours (Wichmann 2007). Progress on JHA issues is discussed at regular meetings, which take place between officials at all levels of seniority. There is even a Ministerial Troika on JHA issues, which is convened at regular intervals with Ukraine.

The implementation confirmed a focus on the security questions, provided that agreements on readmission and visa facilitation while the progress in terms of rule of law, political and administrative reforms has been slower. Migration and border management issues were addressed through cooperation with FRONTEX and the management mission at the Transnistrian borders (EUBAM). With TACIS Cross-Border-Cooperation (CBC) during 1996-2003, the Ukrainian border regions received €39 million, which constituted ca 20% of TACIS-CBC funding (see more Appendix 2). However, time-consuming procedures and excessive centralization on the part of the EU and lack of know-how – on the part of the Ukrainian partners as well as the problem with co-financing (on the level of 20%) have limited the availability of this facility (Gorzelak et al, 2005). In addition, the cooperation on CBC issue is highly sensitive sector for the Ukrainian authorities. Even though the political relations between the EU and Ukraine have been very warmer after the Orange Revolution, CBC is still a low priority on Ukraine’s national agenda (Wilchmann 2007). The local administrative levels relating to *oblsts* and *rayons* are CBC funding recipients and, therefore, are keen promoter for CBC. However, as a part of the central state administration, reporting to the President who also appoints and dismisses the heads of local administrations upon the request of the Ukrainian government (Gorzelak et al, 2005) has little power. In Ukraine, local self-government is practically absent and the legal framework regulating the responsibilities and competences between various levels government does not exist. Since local administrations are obliged to implement the State’s regional social and economic programmes, CBC may only develop if it does not contradict them.

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27 Compared to INTERREG or PHARE-CBC programmes these funds were rather insignificant The TACIS-CBC constitutes ca 3 percent of the total EU aid for Ukraine.
However, the focus of JHA AP has changed over time. In the framework of the ENP, the cooperation between the EU and Ukraine in the area of Justice and Home Affairs (JHA) has become a core approach towards democracy promotion. The EU emphasises the demands to adapt their domestic legislation to acquis provisions or international Conventions, i.e. Council of Europe conventions and standards. In line with this priority shift, the AP on Justice, Freedom and Security was revised in 2007. The revised EU-Ukraine Action Plan on “Freedom, Security and Justice: Challenges and Strategic Aims” contains 99 objectives and 224 joint actions. The core activities concentrate on building administrative capacities. The main tool used for promoting institutional models to the partner countries is TWINNING. The latter is a cooperation tool aimed at developing the capacity of the public administration in those countries. Ukraine becomes the TWINNING on customs; a TWINNING on the introduction and development of quality management within the Ukrainian Police (Ministry of Interior) is planned. At the moment, the demand for TWINNING on JHA issues is not that high because of the sensitivity of the issues dealt with. This contrasts strongly with the demand for TAIEX activities, which for its part has been high. TAIEX assistance covers a number of short-term activities, such as seminars, study visits and workshops. Thematically, the JHA budget is directed on migration and asylum supports activities fighting irregular migration and accompanying readmission agreement, promoting well-managed labour migration, fostering the links between migration and development and protecting migrants against exploitation and exclusion (European Commission, 2006). With the introduction of ENPI, CBC financing for Ukraine will be increased and procedures simplified (e.g. joint planning, joint calls for proposals, etc), which should have positive effects on CBC between Ukraine and the EU.

Ukraine has developed its own interpretation of EU requirements on legal approximation, positioning itself as a would-be EU candidate preparing for the accession process (Wichmann 2007). Ukraine has made huge efforts and progress in further approximation under the trade area, in the light of WTO accession (Petrov 2006: 62) and also in complying with political requirements and international standards concerning democracy and the rule of law (Petrov 2006). Hence, the legal approximation mechanism was successfully developed within the Ukrainian institutional system, involving both the executive and legislative branches of power. The Ministry of Justice monitors the implementation of the National Programme of Approximation in collaboration with the Committee of European Integration in the Verkhovna Rada.

Recently, Ukraine negotiated of a visa facilitation agreement linked by the EU to the negotiations on a readmission agreement28; signed the Working Arrangements on the establishment of operational co-operation between the Ukrainian Border Guard Service and FRONTEX and initiated the contacts between relevant Ukrainian authorities and the European Monitoring Centre for Drugs and Drug Addiction; a pilot Regional Protection Programmes (RPP) combining elements of capacity-building, support for infrastructures and training on human rights is being set up in Ukraine (Human Rights Watch, 2006). Beyond policy tools and current achievements, Ukraine has got the long-term perspective of establishing a mutual visa-free travel regime with the EU. Ukraine and the EU plan to finalise negotiations on the Ukraine-Europol Strategic Agreement. The activities of re-launched UEPLAC also bring positive effects on legal harmonisation (Whitmore 2006).

The far-reached legal harmonisation, despite of vague formulations of “common values”, reflects an anticipated behaviour of the Ukrainian government and expectations of further incentives from the EU (Petrov 2006). Additionally, the EU is challenged with the negative tendencies in the popular opinion in Ukraine. The “closure” of the EU borders after

28 The agreement also contains safeguards with regard to data protection and the protection of fundamental human rights.
enlargement for the Ukrainian citizens, who previously benefited from free-visa regime with 6 eastern European countries and Baltic States, has the negative impact on population attitudes to the EU. The wider Schengen zone strengthens this effect, especially for the pro-EU oriented western population of Ukraine.

5. Conclusions

Before 2004, the convergence of institutions towards EU standards in Ukraine was primary home-driven and minimal as well. This is due to disinterest of both the EU and Ukraine’s leadership. The ENP reveals the changes in the EU priorities in the CIS, but without reform catalyst –accession perspective– had little chances for success, unless a neighbouring country begins to converge towards EU standards on its own. The Orange Revolution largely driven by domestic forces marks the momentum for reforms, even through not so fast and comprehensive as expected by those who overestimate the “colourful” upheaval at the end of 2004.

Either “orange” or “blue-and-white” political groups are striving for close cooperation with the EU. However, under circumstances where the EU membership for Ukraine is out agenda, there are a few small incentives for the divergent political groups to unite around the institutional convergence. Engaged in the power struggles, the Ukrainian leadership has little room for implementation of the EU-related reforms. In addition, the missuccess of top-down democracy mechanisms could be explained with still unmodified institutional framework in EU-Ukraine relationships. The mechanisms and tools from the enlargement process, focusing on cooperation with the executive, have little chances in the parliamentary Ukraine. After the constitutional changes in 2004, the Verchovna Rada has gained importance. The strengthening of currently weak institutional linkages between the parliament and political parties becomes essential. Furthermore, the inclusion of the parliament in the institutional framework of the EU-Ukraine relationship could ease the inter-branch conflicts lasting since Ukraine’s independence, thereby eliminating the most harmful constrain for institution-building. Strengthening institutional leverages between the EU and the Verkhovna Rada will also increase the legislative power in European integration and intensify Europeanization of the elite. Hence, it will make the agreed strategy on Europeanization possible.

This was not the state authorities that drive the implementation of the AP priorities, but business groups and “EU-oriented” enclaves in the Ukrainian bureaucracy. The Ukrainian business groups, integrated into global markets, have used their influence on government politics to engine the institutional change. However, this change takes place according to the costs-benefits calculations of the business groups and is not equally far-reaching in all spheres. The institutions complied with the EU standards, so far these institutions support or do not hamper the preferences of the business groups. The convergence is also supported by the ‘bureaucratic enclaves’ who successfully enforce reforms implementation. Remarkably, there are no opponents to the EU integration among domestic actors, but no active actions from the side of the proponents, too. This passivity is the reaction of the “vague” incentives and moderate or non-appropriate assistance of the EU.

Democracy promotion as the relatively new priority of the ENP in comparison with the PCA priorities becomes fruitful only after Ukraine begins to democratize. However, the power struggle between the state branches and usage of the constitution-conflicting tools in this struggle hamper the effectiveness of the EU top-down mechanisms of democracy promotion. Thus, democracy promotion via the ENP seems to be more substantial in the terms of bottom-up mechanisms. The EU election-related projects contributed to the popular sensitization for electoral fraud. Ukraine’s own openness and interest in cooperation with the EU, from the one side, and improvements in the NGOs financing projects (TACIS, EDHIR,
ENPI etc.) help the local NGOs to take roots in the Ukrainian society. The positive effects also bring the EU projects on education and media independence. The EU keeps on making package-deals. The share of the EU budget on democracy promotion is relatively small. However, linking of the economic incentives to institutional convergence in political and legal spheres has proved to be efficient and is far promising. The ENP supplies the economic incentives of deeper economic integration with the EU that are especially valuable for the Ukrainian business groups, making their money on European markets and exercising wide impact on state authorities. Hence, these economic incentives (i.e. a FTA) are often linked with democratic demands (i.e. free and fair elections).

Due to the attractiveness of the EU markets for the Ukrainian exporters as well as the large share of the EU imports in the Ukrainian markets, the cooperation and, respectively, institutional convergence in the economic sphere are most successful. Taking into account the presence of business interests in the parliament and the executive, the capacities of EU economic incentives, like a FTA and a stake in the Common Market, to promote pro-EU reforms are high. Hence, the convergence in the economic sphere is in line with the challenges the Ukrainian economy meets at the moment. The economic convergence ensures sustainable economic recovery and attracts the FDI required to modernize out-dated Ukrainian industries. Only the long-term character of a stake in the Common Market and lack of the EU support, especially in the energy and transport sectors, might have slow up the convergence.

In the aftermath of the enlargement, the EU becomes keen on legal harmonization to secure its external borders. Comparing to the PCA, the AP reveals a shift on legal harmonisation, as far as it broadens the areas of approximation. Officially, the key priorities of JHA cooperation with the EU included the strengthening of rule of law, and of administrative and judiciary capacity, migration and border management, money laundering, trafficking in human beings, drugs and corruption. Practically, the primary objective was to acquire the support of the EU’s neighbours in minimising risks related to different kinds of cross-border crime that threaten EU stability and security. Thus, the largest share of the EU financial assistance in the JHA dimension was directed to the border management than on governance-related matters. Indeed, the reforms on rule of law and fight against corruption are highly sensitive issues in terms of existing informal primordial institutions, called Soviet legacies. The Soviet legacies of informal networking hamper any changes aimed to bring more transparency in the decision making of Ukraine’s state authorities as well as the juridical system. Nevertheless, the far-reached legal harmonization in cross-border cooperation and illegal migration policies, despite of vague formulations of “common values”, reflects an anticipated behaviour of the Ukrainian authorities and expectations of further incentives from the EU (similar to the facilitation of visa regime). As for the domestic actors, the convergence in the JHA dimension is carried out by some bureaucratic enclaves within the Ukrainian authorities whose central function and at the same time the eligibility of existence is legal harmonization. Indeed, the EU-Ukraine institutional framework in the JHA dimension, namely Scoreboard, is similar to those of the accession countries and is an effective mechanism to bring harmonization across all AP priorities.

Yet, the EU still has the potential to carry forward and speed up the institutional change in Ukraine. The clarity on the future level and deepness of EU-Ukraine relationship would (if positive) unified the Ukrainian political elite and end the political crises. Hence, it will promote the come-back of positive attitudes to the EU among the population, currently disappointed with unwillingness of the EU to recognize its European aspirations and suffering from the new ‘curtains’ of Schengen zone. Hence, the convergence towards European values could be supported by intensifying Ukraine’s cooperation or integration into other international organisation with requirements on institution-building. Due to the
growing importance of regional security in the aftermath of the conflict in Ossetia and South Abkhazia, the EU can offer previously neglected incentives of regional security.
Appendix 1 - Institutional Framework in the EU-Ukraine relationship

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</thead>
<tbody>
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<td>8</td>
<td>18</td>
<td>12</td>
<td>16</td>
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<td>17</td>
<td>16</td>
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<td>12</td>
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<td>9</td>
<td>8</td>
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<td>17</td>
<td>37.1</td>
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<tr>
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<td>TACIS - Ukraine Action Programme - Development of infrastructure networks (incl. energy, transport, telecom)</td>
<td>11</td>
<td>16</td>
<td>9</td>
<td>10</td>
<td>7</td>
<td>3</td>
<td>7</td>
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<td>5</td>
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1) In case of multi-country programmes, these values are estimated based on the hypothesis that 25% of funds allocated to the CIS concern Ukraine
2) incl. Cross-Border-Cooperation (from 1998 onwards) and Democracy (until 1999)
3) "GTAF" from 2005 on
4) incl. the Science and Technology Center of Ukraine and 25% of EBRD Bank/FAK
5) from 2007 on TACIS programmes are replaced by ENPI. Figures for 2004-2006 and 2007 are estimates based on the Indicative Budget.

Depending on its performance, a country's funding can be increased.

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