

This article was downloaded by: [University of Birmingham]

On: 3 March 2009

Access details: Access Details: [subscription number 789757575]

Publisher Routledge

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



## Europe-Asia Studies

Publication details, including instructions for authors and subscription information:

<http://www.informaworld.com/smpp/title-content=t713414944>

### Implementation without Coordination: The Impact of EU Conditionality on Ukraine under the European Neighbourhood Policy

Kataryna Wolczuk <sup>a</sup>

<sup>a</sup> The University of Birmingham,

Online Publication Date: 01 March 2009

**To cite this Article** Wolczuk, Kataryna(2009)'Implementation without Coordination: The Impact of EU Conditionality on Ukraine under the European Neighbourhood Policy',*Europe-Asia Studies*,61:2,187 — 211

**To link to this Article:** DOI: 10.1080/09668130802630839

**URL:** <http://dx.doi.org/10.1080/09668130802630839>

PLEASE SCROLL DOWN FOR ARTICLE

Full terms and conditions of use: <http://www.informaworld.com/terms-and-conditions-of-access.pdf>

This article may be used for research, teaching and private study purposes. Any substantial or systematic reproduction, re-distribution, re-selling, loan or sub-licensing, systematic supply or distribution in any form to anyone is expressly forbidden.

The publisher does not give any warranty express or implied or make any representation that the contents will be complete or accurate or up to date. The accuracy of any instructions, formulae and drug doses should be independently verified with primary sources. The publisher shall not be liable for any loss, actions, claims, proceedings, demand or costs or damages whatsoever or howsoever caused arising directly or indirectly in connection with or arising out of the use of this material.

# Implementation without Coordination: The Impact of EU Conditionality on Ukraine under the European Neighbourhood Policy

KATARYNA WOLCZUK

## *Abstract*

The article examines the impact of the European Neighbourhood Policy (ENP) on domestic change in Ukraine during the period 2005–2007. Due to the interplay of external and domestic factors, no political leadership on European matters emerged in Ukraine under the ENP. The implementation of the Action Plan (AP)—the key instrument of the policy—has been left to the discretion of middle-level state officials, resulting in selective empowerment of sections of the state apparatus. However, without strong political engagement or an effective coordinating mechanism, this delivered slow, uneven and localised results. Nevertheless, despite the limited impact of the ENP, it is through the AP that the European Union has for the very first time started to affect domestic developments in Ukraine.

UNTIL 2005, THE EUROPEAN UNION (EU) NEITHER played nor endeavoured to play a role in domestic change in the Soviet successor states. The EU pursued a Russia-first policy in the former Soviet Union, lacking the vision, commitment and effective instruments to affect the domestic political and economic trajectories of the Soviet successor states. With the eastern enlargement in 2004, the EU has sought to project its ‘transformative power’ (Grabbe 2006) further east—to the countries beyond its new eastern border. The European Neighbourhood Policy (ENP), launched in 2004, aims to ‘promote stability and prosperity’ through stimulating political and economic reforms in the Union’s neighbourhood.<sup>1</sup>

The author gratefully acknowledges support from the British Academy (Grant number SG-38537) for research on Ukraine–EU relations under the European Neighbourhood Policy. She would also like to thank Tim Haughton, Iryna Solonenko, Nathaniel Copsey and Olga Shumylo for providing useful comments on the first draft of the article. Different version or sections of the article were presented at the seminar at St Anthony’s College, Oxford University in January 2007, at the Wider Europe conference, European Research Institute, University of Birmingham in June 2007, the CREES Annual Conference, Cumberland Lodge, Windsor Great Park, June 2007 and the ICCEES European Congress ‘Transcending Europe’s Borders: The EU and Its Neighbours’ in Berlin in August 2007.

<sup>1</sup>The European Commission, ‘Communication from the Commission “European Neighbourhood Policy Strategy Paper”’, 2004, COM (2004) 373 final, p. 1, available at: [http://ec.europa.eu/world/enp/pdf/strategy/strategy\\_paper\\_en.pdf](http://ec.europa.eu/world/enp/pdf/strategy/strategy_paper_en.pdf), accessed 20 June 2004.

Ukraine is not only the most important state and the largest country to the east that is a focus of the ENP, but also the country that has been most dissatisfied with the framework for relations with the EU, having expressed membership aspirations since the 1990s. Besides the objective of streamlining and simplifying relations with EU neighbours, placating Ukraine in terms of providing an ambitious yet feasible framework for relations (that is, bypassing the vexed question of membership) was a key driver in the whole endeavour of developing the Wider Europe and Neighbourhood Policy in the period 2003–2004.

This article argues that the policy had an important but not a transformative effect in Ukraine. With the adoption of the EU–Ukraine Action Plan (AP) listing the required reform measures, EU conditionality helped change the opportunity structure by providing an external reference point for domestic actors to pursue domestic reforms. In that respect, the ENP accounts for some significant changes in contrast to the period up to 2005 when pro-European declarations remained largely inconsequential in terms of domestic reforms. However, in comparison to accession countries the transformative effect in Ukraine has been slower and more limited. Most significantly, the policy has failed to focus the political class in Ukraine on the need for sustained reforms, in contrast to the role of enlargement in the reform process in East Central Europe (ECE) (Jacoby 2006). In Ukraine, although the AP led to change in parts of the state administration, particularly those with responsibility, stakes and expertise in European integration, in general progress has largely been down to the efforts of individuals within key ministries. This has delivered uneven and limited results. The scale of changes resulting from the implementation of the AP between 2005 and 2007 has been insufficient to transform state structures and policies or to prepare Ukraine to derive benefits from closer integration with the EU.

However, it needs to be stressed that even if the actual adjustment in Ukraine has been limited, this is the first time that the EU has stepped in to promote domestic change, a move to which at least some domestic actors responded. The study indicates the potential of the EU, even without a strong and coherent policy framework and objective, to empower domestic actors and shape the policy-making agenda even in countries with no prospect of membership.

*The European Neighbourhood Policy: ‘accession conditionality without accession’*

The motivation behind, and origins of, the ENP are already well known (Delcour 2007). The ENP aims to ‘promote stability and prosperity’ through stimulating political and economic reforms in its neighbourhood. ‘Stability and prosperity’ is to be achieved by transposing the EU’s values, norms and standards in exchange for ‘access to the common market’.<sup>2</sup> At least initially, the policy relies mainly on ‘soft law’ instruments, which are added to the existing contractual basis for relations between

<sup>2</sup>Communication from the Commission “European Neighbourhood Policy Strategy Paper”, 2004, COM (2004) 373 final, available at: [http://ec.europa.eu/world/enp/pdf/strategy/strategy\\_paper\\_en.pdf](http://ec.europa.eu/world/enp/pdf/strategy/strategy_paper_en.pdf), accessed 20 June 2004.

the EU and 'ENP partners'.<sup>3</sup> The main instrument of the ENP is a jointly agreed Action Plan, which consists of an extensive list of measures that ENP states are required to fulfil in order to benefit from closer (but underspecified) integration with the EU.<sup>4</sup>

The Ukraine–EU AP (hereafter AP), which was adopted in February 2005 for three years, consists of two parts.<sup>5</sup> Following a short introduction in section one, the second section contains a list of priorities (73 in total), which tend to be divided into several tasks, that Ukraine is required to pursue. The priorities are organised into six chapters with the following headings: 'Political Dialogue and Reform'; 'Economic and Social Reform and Development'; 'Trade, Market and Regulatory Reforms'; 'Cooperation in Justice and Home Affairs'; 'Transport, Energy, Information Society and Environment'; and 'People-to-People Contacts'.

The AP priorities range from holding free and fair elections and reforming the judiciary to revising company law and adopting a nuclear waste strategy. Thus, the AP envisages projecting not only Community norms and values, such as democracy and human rights, but the standards of the Union as a whole (that is much of the *acquis*). Thus, the ENP follows the enlargement strategy of the simultaneous application of *polity conditionality*, or reforms of political and economic structures and processes, such as democracy, minority rights, and policy-oriented conditionality, that is the adoption and implementation of the *acquis* during the enlargement process (Sedelmeier 2006). That the AP envisages approximation to the standards of the Union as a whole (parts of the *acquis*) is not surprising given that much of the *acquis* pertains to the functioning of the internal market, access to which is a key reward for implementing the reforms. This emulation of the enlargement strategy through combining polity and policy conditionality in the ENP is driven by the belief that these two types of conditionality were mutually reinforcing during the enlargement process. As was the case during the accession process, under the ENP, the neighbours are to benefit from developing and modernising their public policies and economies by anchoring them in the EU model of governance (ENEPO 2007, p. 9). Yet, while clearly borrowing many elements from the enlargement strategy, the ENP was devised as an alternative to enlargement (Kelley 2006). In this context, as far as its eastern neighbours are concerned, the EU is aiming to build on the successful application of

<sup>3</sup>So far the only new legal tool is the European Neighbourhood and Partnership Instrument (ENPI), which was launched in 2007. The ENP also envisages the adoption of a new type of bilateral agreement. Ukraine was the first ENP state to open negotiations on the so-called New Enhanced Agreement in 2007.

<sup>4</sup>The fact that the EU refers to ENP 'partner countries' implies a more symmetrical relationship than that engendered by enlargement. However, some scholars refer to 'target countries', thereby implicitly emphasising the persistent and significant asymmetries of power between the EU and the countries covered by the ENP. Indeed, the non-negotiation strategy pursued by the European Commission during the 'negotiations' of the Action Plans with 'partner countries' already undermined the proclaimed ENP principles of 'joint ownership' and 'mutuality'. To avoid the normative ambiguity entailed by the use of 'partner countries' and 'target countries', the rest of this article will mainly use the term 'ENP states'.

<sup>5</sup>In 2007 Ukraine and the EU agreed to extend the AP for a maximum of one more year, until February 2008.

pre-accession conditionality, but without incurring the costs of further enlargement (Gould 2004).

From very early on, the effectiveness of the ENP has been questioned in academic literature, mainly on the grounds that the incentives offered by the EU are too weak to entice its neighbouring countries into domestic reforms (Batt *et al.* 2003; Haukkala 2003; Gould 2004; Milcher & Slay 2005; Kelley 2006; Smith 2005; Cremona & Hillion 2006). The leverage of the EU is weak not only because of a lack of membership perspective (even for European ‘partner countries’) but because it is ultimately unclear what the actual award for enacting EU conditionality is (Escribano 2006). The prospect of ‘access to the market’ at a future time and to an unspecified extent is overshadowed by two main concerns. First, there are concerns about the credibility and commitment of the EU to grant such access, considering the strength of protectionist forces within the Union, especially in sensitive areas such as agriculture or steel. The ENP’s agenda to extend the EU’s mode of governance without entailing institutional adjustments and bearing the economic costs of enlargement reflects a reluctance to bear the costs of transforming the neighbours. Second, there is the question of the capacity of the weak states to the south and the east of the EU’s border to implement the *acquis* to enable them to participate in the internal market.

The underspecified and open-ended nature of the award under the ENP poses the interesting question of whether the policy employs conditionality in the form of ‘the conferral of reward in exchange for compliance’ (Epstein & Sedelmeier 2008, p. 795).<sup>6</sup> Since the mid-1990s, the application of conditionality by the EU has become associated with preparations for accession. Therefore membership is regarded as the only award that justifies the EU’s demand for, and involvement in, reforms of state structures and policies of non-member states (Schimmelfenning & Sedelmeier 2005).<sup>7</sup> To avoid connotations of the enlargement process, the EU tends to eschew the term in ENP official documents, but this is not done consistently.<sup>8</sup> The logic of conditionality permeates relations between the ENP and its neighbours. In the APs the EU unambiguously stipulates numerous priorities for ‘partner countries’. Despite the use of additional principles, such as ‘joint ownership’, conditionality is evident in the EU’s unilateral approach to its neighbours in terms of: first, setting their domestic reform agenda; second, deciding on the type and timing of reward; and third, making the explicit linkage between the conditions and the prospective award. So even though the conditions and award themselves are lesser in scope than during the enlargement process, the EU endeavours to emulate but not replicate, the application of

<sup>6</sup>Conditionality here refers to the strategy of an international organisation—in this case the EU—as an external actor to promote change in non-member states and not as an analytical model explaining the causal dynamics, which is referred to as an ‘external incentives’ model. Conditionality (as a strategy) may affect domestic changes in ‘target states’ through a variety of mechanisms (Sissenich 2008).

<sup>7</sup>The large scale application of conditionality during enlargement does not imply, however, that conditionality was applied in a clear and consistent manner in the process (Grabbe 2002).

<sup>8</sup>See, for example, a note on ‘Principles for the Implementation of a Governance Facility Under the ENPI’ of 22 February 2008, which states ‘a number of partners have been reluctant to establish ENP Action Plans precisely because of the conditionality aspects that these entail’ (p. 4), available at: [http://ec.europa.eu/world/enp/pdf/governance\\_facility\\_en.pdf](http://ec.europa.eu/world/enp/pdf/governance_facility_en.pdf), accessed 16 May 2008.

conditionality during the enlargement process. And this is largely recognised in the ENP countries. In the case of Ukraine, the adoption of the AP made the concept of 'domestic homework' ubiquitous. Various political and social actors consider 'domestic homework' stipulated in the AP as preconditions for moving closer to the EU. This is in a marked change from the pre-ENP period when skilled diplomacy was seen as a key to success in relations with the EU.<sup>9</sup>

The impact of the external factors on domestic change is contingent on domestic factors. Even though the EU is regarded as more effective than any other international organisation in promoting domestic change in non-members (through a combination of 'asking a lot and offering a lot'), the Union still can be only effective if its influences 'operate in tandem with domestic influences' (Jacoby 2006, pp. 626, 635). In order for the EU-stipulated reform agenda (whether accession or the ENP) to engender domestic change, the prospect of moving closer to the EU needs to exercise a mobilising effect on a range of domestic actors, who act on the EU's conditionality, whether for intrinsic or extrinsic reasons.

A mobilisation of powerful domestic actors is required as European integration is a complex, long and drawn-out process involving virtually all parts of the state (Mayhew *et al.* 2005). Given that the ENP is modelled on enlargement and the key reward is 'access to the common market', the transposition of the *acquis*, besides meeting polity-related criteria, is an essential prerequisite for any ENP state to foster and benefit from closer relations with the EU. In order to succeed, the enactment of EU-defined polity and policy changes requires not only consistent, visible commitment and support from the highest state authorities, but it also needs to be institutionalised in an appropriate coordinating framework and accompanied by the development of considerable administrative capacity. This is necessary for the application of EU law and in practice has some bearing on almost every aspect of public policy making and implementation (Grabbe 2001, p. 1051). In particular, it hinges on the formation of a strong, committed executive capable of overriding 'veto players'. In the accession countries, all the governments created an effective coordinating mechanism in order to cope with the sheer volume of inter-sectoral matters to be dealt with, requiring in-depth expertise and operating within tight time constraints (Fink-Hafner 2005; Grabbe 2001; Lippert *et al.* 2001).

Can a process of domestic mobilisation in response to EU conditionality, similar to that observed in the accession countries, be discerned in the ENP countries? This article examines the impact of the EU on domestic change in Ukraine. Adopting an actor-centred approach, the article explores the extent to which two types of domestic actors—political elites and the state bureaucracy—have responded to the ENP.<sup>10</sup> Being focused on the elites and civil service, this article has not aimed at providing an

<sup>9</sup>See, for example, numerous references to the AP as 'homework' and 'precondition' in various contributions to Razumkov Centre (2005, 2007a, 2007b). On the pre-ENP period in Ukraine–EU relations see Wolczuk (2004).

<sup>10</sup>The ENP has also mobilised the non-governmental sector. The most notable examples are the Razumkov Centre, which has organised an independent monitoring of the implementation of the Action Plan by the Ukrainian government (Razumkov Centre 2007a, 2007b) and the International Centre for Policy Studies, which prepared an impact assessment of the creation of the Free Trade Area between Ukraine and the EU (Shumylo 2007).

examination of the progress in the implementation across different sectors.<sup>11</sup> Instead, the particular focus will be on whether the AP has stimulated Ukrainian governments to seek institutional change in order to enact EU conditionality. The article will also assess the impact of such institutional changes on the implementation of the AP. In order to gauge the overall effect of the ENP on domestic change in the first three years, its impact is compared with the pre-ENP period in Ukraine, and, as and when appropriate, with the enlargement process.

The first part of this article provides an overview of EU–Ukraine relations and examines the salience of the so-called ‘European choice’ amongst domestic actors, mainly political elites and the bureaucracy prior to the ENP. Against this background, the second part examines the impact of the ENP in three more detailed sections: first, on the political class; second, the institutional changes with regard to the coordinating framework; and, third, actors within the state apparatus.<sup>12</sup>

*Ukraine before the ENP (1998–2004)*

*European integration and Ukrainian elites under Kuchma: leadership without commitment*

In the 1990s, the EU tended to regard the post-Soviet space (excluding the three Baltic states) as rather homogenous; all countries in the region were offered fairly similar Partnership and Cooperation Agreements (PCAs). Ukraine was the first post-Soviet country to sign the PCA in June 1994, a fact of considerable symbolic importance for the Ukrainian elites at the time. Although the agreement provided a framework for political dialogue, based on common values, it primarily contains legally binding provisions governing the movement of goods, services, labour and capital. The overarching aim of the PCA was to bring Ukraine into line with the legal framework of the single European market and the World Trade Organisation (WTO) (Petrov 2002). The delay of nearly four years in ratifying the PCA by the member states (ratification was completed in 1998) caused frustration in Ukraine, which was exacerbated by the rapidity with which ECE states were moving towards EU accession. While in 1998 the ‘Luxembourg Six’, that is Poland, Hungary, the Czech Republic, Estonia, Cyprus and Slovenia, opened accession negotiations with the Union, in June of that year the Ukrainian President signed a decree which formally proclaimed membership of the EU as Ukraine’s long-term strategic goal and listed the key priority areas for integration.

<sup>11</sup>For the Commission’s assessment of the progress in Ukraine see ‘ENP Progress Report—Ukraine (Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament on Strengthening the European Neighbourhood Policy)’, 2006, COM (2006) 726 final, available at: [http://ec.europa.eu/world/enp/pdf/com06\\_726\\_en.pdf](http://ec.europa.eu/world/enp/pdf/com06_726_en.pdf), accessed 3 February 2007. For an independent overview of progress across different sectors see Razumkov Centre (2007a).

<sup>12</sup>In addition to document analysis, the research findings presented in this article are based on data (mainly interviews and documents) collected during research trips to Kyiv and Brussels in February and November 2006 and March and September 2006, respectively. The author would like to thank all the interviewees for their time and insights on the subject.

Throughout the rest of Kuchma's presidency (until 2004), his office was the main source of proclamations of the 'European choice'. This single-handed approach reflected the powerful position of the president not only in the foreign policy domain but on domestic matters too, stemming from the semi-presidential constitutional framework adopted in 1996 and Kuchma's growing authoritarian tendencies during his second term (1999–2004). On European integration, the presidency did not seek nor did it obtain endorsement from other representative institutions, such as parliament; neither did it seek the engagement of the non-governmental sector or society in pursuit of this goal. The key documents outlining the goals and strategy *vis-à-vis* the EU, namely the 'Strategy for Ukraine's Integration with the European Union' of 1998 and 'The Programme of Ukraine's Integration with the EU' of 2000, were adopted by presidential decrees without the consent or involvement of the parliament.<sup>13</sup> This was despite the fact that, according to article 85.5 of the 1996 Ukrainian Constitution, the parliament (*Verkhovna Rada*) 'determines the principles of domestic and foreign policy'.<sup>14</sup> The fact that the intention to join the EU was initially voiced solely by the presidency without much discussion or opposition reflected not only the latter's dominant position in Ukraine and the resulting institutional asymmetries, but also the relative impotence of other institutions, especially the parliament, in foreign policy issues in general and European integration in particular (Wolczuk 2004).

Over time, the political elites have uniformly become favourably disposed towards the 'European choice' proclaimed by the president. By 2002, none of the main political forces represented in the Ukrainian parliament overtly opposed Ukraine's integration with the EU [even though earlier some parties, the Communist Party of Ukraine (*Komunistychna Partiya Ukrainy*) in particular, had been opposed to a pro-Western foreign policy]. References to 'European integration' found their way into the programmes of most political parties and blocs, however 'virtual' some of these programmes may have been.<sup>15</sup> Similarly, during the 2004 presidential election campaign, none of the 26 candidates campaigned against seeking closer relations with the European Union. In each post-independence parliament, a number of parties and factions favoured a strong pro-European orientation. However, due to the inherent weaknesses of the policy-making capacity of Ukrainian parties, none of them managed, or even sought, to put together a coherent policy programme on European integration or build a lasting legislative majority around integration with the EU (Protsyk 2003, p. 438).

<sup>13</sup>'Decree by the President of Ukraine on the Approval of the Strategy of Ukraine's Integration to the European Union', No. 615/98, 11 June 1998, available at: <http://www.mfa.gov.ua/mfa/en/846.htm>, accessed 11 November 2008; and 'Decree of the President of Ukraine on the Programme of Ukraine's Integration with the EU', No. 1072/98, 14 September 2000.

<sup>14</sup>The English language translation of the Constitution is available at: <http://www.rada.gov.ua/const/conengl.htm#r4>, accessed 11 November 2008.

<sup>15</sup>This phenomenon has been common across Central and Eastern Europe where most opinion makers, including political parties, tended to be more positively inclined towards the EU than their national public notwithstanding the high level of popular support in most of these countries for joining the EU (Pridham 2005, p. 176).



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

*Institutional adjustments, coordination mechanism and state administration in Ukraine prior to the ENP*

The low priority assigned to the ‘European choice’ was reflected in the detachment of institutions other than the presidency and the weakness of the institutional framework devoted to European integration. As in Soviet times, the Cabinet of Ministers played a highly circumscribed role in foreign policy matters (Protsyk 2003). According to Kravchuk *et al.* (1999), Ukrainian ministers exercised ‘vast amounts of “micro-management”’, expending so much time and energy on administrative minutiae that ministers and senior officials were not able to properly scrutinise the large number of decisions that were routinely made in their names. As a result, key officials devoted precious little time to policy planning and development (Kravchuk *et al.* 1999, p. 105). Until 2004 the cabinet was a largely technocratic body, rather than a political one; it played primarily a subordinate role to that of the presidency, elaborating or implementing the policy goals defined by the presidential apparatus, meaning that prime ministers were in effect executive managers.

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

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

On the basis of the 2000 'Programme of Ukraine's Integration with the EU', first adjustments took place leading to the creation of the institutional framework dealing with European integration within the executive by 2002–2004.<sup>16</sup> First, EU units within most ministries were created (albeit without a standardised size, structure and function). Secondly, three ministries—Foreign Affairs, Economy, and Justice—were singled out as key bodies responsible for the implementation of the PCA. The newly established EU units in these key ministries acquired the expertise and competencies to align Ukraine with the provisions of the PCA, and subsequently became key agents for Europeanisation of Ukraine within the ENP.

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

The Ministry of Foreign Affairs (MFA) was vested with the task of pursuing Ukraine's 'European choice' on a political level and to this effect a dedicated Department for European Integration was created, which was closely involved in the running of the institutional mechanism envisaged under the PCA (namely, the Cooperation Council and Committee). The MFA was consistently the most pro-European institution within the executive branch. The ministry continuously endeavoured to foster closer ties with the EU, even when commitment from the political leadership and most other sections of bureaucracy was lacking, something the MFA was in no position to overcome.<sup>17</sup> This was because the MFA had a weak standing within the government, a corollary of the Soviet-era when foreign policy was the exclusive prerogative of the All-Soviet Ministry of Foreign Affairs in Moscow and Kyiv played a merely 'decorative role' in the USSR's external relations.

Also under Kuchma, the first steps were taken towards harmonising Ukrainian legislation with that of the EU by the Ministry of Justice (under article 51 of the PCA). Within the Ministry, the Centre for Comparative and European Law, established in 2003, reflected the growing realisation of the importance of legal approximation in relations with the EU. In March 2004, while Kuchma was still in power, following the adoption of the 'Law on the National Programme of Legal Adaptation of Ukraine's Legislation to the *Acquis Communautaire*', the Centre was transformed into the State Department for Legal Approximation (SDLA). The Programme contained an ambitious agenda as it envisaged the adoption of the *acquis* along the lines pursued by the accession states. Oversight of approximation was the responsibility of the Coordinating Council for Legal Approximation headed by the prime minister. From 2005, this provided the institutional framework for legal approximation of Ukraine to

<sup>16</sup>'Decree of the President of Ukraine on the Programme of Ukraine's Integration with the EU', No. 1072/98, 14 September 2000.

<sup>17</sup>The efforts of the MFA were particularly intensified under the then deputy minister in charge of European integration, Oleksandr Chalyi, who resigned in May 2004.

the EU under the ENP, when Ukraine took on more specific (but non-binding) obligations in the AP, requiring legislative changes.

However, despite all of these institutional initiatives, the lack of coordinating mechanisms and a clear strategy rendered the initiatives largely ineffective. In January 2003 the State Council for European and Euro-Atlantic Integration, created by presidential decree, was tasked with coordinating Ukraine's political, economic, security and legislative integration with the European Union and NATO but it never assumed the function.<sup>18</sup>

The lack of a coordinating mechanism resulted in competition between these ministries. For example, when the 'Wider Europe/New Neighbourhood' Initiative was launched by the EU in the spring of 2003, the MFA's response was lukewarm—the initiative failed to live up to expectations. For the MFA, at best, it was a mere stepping stone to acquiring membership. In contrast, the MEEI responded more enthusiastically to the EU's proposal, regardless of the fact that it failed to address Ukraine's officially proclaimed goal.<sup>19</sup> The latter's positive reaction stemmed from its pragmatic focus on sectoral priorities, namely securing access to the EU market. It was also driven by inter-institutional competition and the MEEI's desire to replace the MFA as the key institution responsible for European integration within the Ukrainian government and in interactions with EU institutions. This competition is something that has persisted under the ENP.

Despite these changes, the state apparatus was starved of skilled civil servants, competent in various aspects of European integration; the problem was exacerbated by the lack of a comprehensive and systematic programme of training.<sup>20</sup> At the same time, the bureaucracy lacked clear guidance of what was expected of it to advance Ukraine's relations with the EU. The normative framework consisted of Ukrainian programmes based on the provisions of the PCA, which, while aiming to align Ukraine with the internal market and WTO system, contained very general provisions. Crucially, the PCA framework was devoid of meaningful sanctions for non-compliance. The Programme adopted in 2000 by a presidential decree was formulaic and failed to specify priorities to guide specific policy-making for different sections of the state administration, lacking an essential assessment of budgetary implications as well as a realistic time framework. The only exception in terms of effectiveness was the Justice and Home Affairs Action Plan signed between Ukraine and the EU in 2001, which contained a number of priorities and specified what actions were required. As

<sup>18</sup>The Council was chaired by the President of Ukraine who also appointed its members. The council included the prime minister, the Head of the Presidential Administration, the Secretary of the National Security and Defence Council of Ukraine, the Minister of Foreign Affairs, the Minister of Economy and European Integration, the Minister of Defence, the Minister of Justice, the President of the National Academy of Sciences, the Director of the National Institute of Strategic Studies and the Head of the National Centre for European Integration.

<sup>19</sup>See 'Ukraine–EU on the Road to 4 Freedoms', 2003, Analytical Report ordered by the Ministry of Economy and European Integration of Ukraine, AHT Consulting Group, June.

<sup>20</sup>During regular interactions with the EU under the auspices of the PCA, the deficit of appropriate expertise within the Ukrainian bureaucracy was only too apparent and hampered cooperation with the EU on sectoral areas (author's interview with an official from the Department for European Integration, MFA, Kyiv, December 2002).

such it provided a set of more precise guidelines for the Ukrainian authorities and thus was subsequently effectively incorporated into the AP.<sup>21</sup>

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

### *Ukraine under the European Neighbourhood Policy*

#### *Ukrainian elites and European integration under the ENP*

The launch of the ENP coincided with the so-called Orange Revolution in Ukraine. The events and significance of this period have been covered elsewhere (Aslund & McFaul 2005; D'Anieri 2005; Wilson 2005) but it is worth noting some key points. During the presidential elections in October and November 2004, Viktor Yanukovich, backed by outgoing president Leonid Kuchma, was declared the winner but allegations of widespread vote rigging sent hundreds of thousands of Ukrainians into the streets to protest. Amidst mass demonstrations and the involvement of international negotiators (including EU representatives), a resolution was achieved in the form of a negotiated pact between the elites. An agreement was made to repeat the second round of the elections in exchange for constitutional reform shifting powers from the presidency to the prime minister and the parliament. It is also worth emphasising, despite the impression given by some coverage of the conflict in Ukraine, that it was a geopolitical issue (a choice between Russia and the West); foreign policy issues, including integration with the EU, played a marginal role during the disputed elections.

While Kuchma's regime had followed 'integration by declaration' (Sherr 1998, p. 12), the alternative political elites, which came to power in 2005, were emboldened by the Orange Revolution and keen to inject dynamism into Ukraine's relations with the EU. However, insofar as political elites were concerned, two domestic factors impeded the power of the EU as an external agent of change. First, the ENP failed to meet the prevailing expectations within the Ukrainian political class. This was primarily owing to the way that Kuchma's legacy shaped the attitude to, and perception of, the EU. According to Kuchma, the litmus test of the EU's credibility in Ukraine was nothing less than an offer of prospective membership, regardless of the domestic developments in Ukraine (Wolczuk 2004). In other words, the responsibility for fulfilling

<sup>21</sup>A revised EU-Ukraine Action Plan on Freedom, Security and Justice was endorsed by the Cooperation Council on 18 June 2007 and the revised scoreboard was prepared on the basis of the revised plan.

Ukraine's European destination was placed with the EU officials rather than the Ukrainians.

While propelling alternative elites to power, the Orange Revolution revived the salience of symbolism over 'substance' in Ukraine's relations with the EU, especially in the immediate aftermath of the presidential elections of 2004. Many in Ukraine believed that the EU could simply not decline Ukraine's membership aspirations after its demonstration of support for European values during the tumultuous days of mass protests against electoral fraud. The EU however, adamantly resisted opening the 'membership question' and insisted on conducting relations in the framework of the ENP. In particular, it advocated proceeding with the adoption and implementation of the Action Plan, which had been already finalised by September 2004 (that is still under Kuchma's presidency), on the grounds that it was a suitable 'homework' for any government. The improved democratic credentials of Ukraine as a result of the Orange Revolution, however, did not go unrecognised by the EU. The Union adopted the so-called 'List of Additional Measures', which accompanied the signing of the Action Plan in February 2005, which contained some considerable concessions to the Ukrainian side. The Orange Revolution, however, created such high expectations *vis-à-vis* the EU<sup>22</sup> that the new framework for relations—with its focus on pragmatic aspects of cooperation without spelling out the end goal of relations—could not satisfy them. Thus, having expressed reservations about the suitability of the AP negotiated under Kuchma to post-Orange Ukraine and hoping for the membership perspective, the new Ukrainian leadership only reluctantly agreed to sign the Plan in February 2005.<sup>23</sup> Despite the lingering disappointment with the policy, the new authorities accepted the ENP as a temporary, rather than final, framework for relations, suitable for a pre-candidate phase of Ukraine's relations with the EU.

The second reason why the salience of ENP remained low at the political level was political instability. Fierce competition between elite groupings took attention away from demands of European integration. Ukraine's politics have been anything but conducive to consensus building and 'Europe', despite being nominally supported by all mainstream political actors, has not imbued Ukrainian politics with these qualities. In particular, the cohabitation of two protagonists from the Orange Revolution, Viktor Yanukovich as prime minister and Viktor Yushchenko as president, during 2006–2007 following the parliamentary elections in March 2006, exacerbated political instability in Ukraine. The disagreements, however, were not concerned with 'Europe'. Despite a great number of differences with the president, the Yanukovich government did not reject the EU membership objective (in contrast to NATO membership), but merely announced a more pragmatic approach to the EU, implying that without a membership perspective, the degree of Ukraine's compliance with the EU-defined norms and standards would be based on a cost–benefit analysis. Most importantly,

<sup>22</sup>The fact that many politicians from individual EU member states, in addition to the resolution of the European parliament in April 2005, made encouraging statements on the European aspirations of Ukraine served only to strengthen expectations.

<sup>23</sup>'Yushchenko Goes to Brussels to Ask EU for Membership Talks', *RFE/RL Newswire*, 21 February 2005. See also *Ukrainian Monitor*, No. 2/2005, 10 January 2005; and Razumkov Centre (2007b, p. 34).

however, each successive government endorsed the AP, thereby extending the political mandate for its implementation.

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

The stand-off between the 'Orange' and pro-Yanukovich forces within the *Verkhovna Rada* during 2006–2007, resulting in pre-term elections in September 2007, further weakened the role of the parliament in the implementation of the AP. This was not only due to the ineffectiveness of the parliament whose work was paralysed for many weeks but also because even when it did function, no priority was given to drafting, considering and adopting EU-related legislation. In the accession countries the parliaments were largely marginalised in terms of managing EU-related affairs, because decision making was concentrated in the executive. Their compliance and cooperation, however, was vital in the process of transposing the *acquis* into national legislation, even if only as 'rubberstamps' (Lippert *et al.* 2001, p. 994). In contrast, the Ukrainian parliament did not assume such an enabling role in the first three years of the ENP. Law making remained a poorly structured process and Ukraine's obligations *vis-à-vis* the EU under the ENP hardly impacted on the legislative priorities (Razumkov 2005, pp. 15–16).

In these circumstances, even though European integration was regarded as desirable by the political elites, neither EU policy nor domestic developments resulted in a significantly increased salience of the ENP for the Ukrainian political class. Owing to the absence of the much vaunted positive signal from Brussels on membership—the only one the Ukrainian politicians can readily interpret without having to be intricately familiar with the complexity of the EU—integration has remained an abstract and distant prospect for many of them. In particular, it proved incapable of lengthening the time horizons of the political class and overriding short-term domestic considerations, as was the case in the enlargement states (Jacoby 2006). At the political level, external influences from the EU proved insufficient to overcome domestic political barriers to reforms.

#### *EU–Ukraine Action Plan: implementation without leadership*

Despite the greater importance assigned to European integration by the 'Orange' elites, the task of creating an institutional framework for dealing with European integration has fallen victim to political contingencies. Changes were instituted by each of the three governments between 2005 and 2007 without much improvement.

The institutional framework for coordinating issues pertaining to European integration was weak and ineffective to the extent that 'it could not be asserted where EU-related policy making was controlled' (Mayhew *et al.* 2005, p. 7).

As noted above, the Orange elites re-stated Ukraine's commitment to European integration. Soon after his inauguration, President Yushchenko reinstated the goal of securing EU membership for Ukraine and promised to close the gap between declarations and deeds by greater attention to 'domestic homework', that is to the AP. However, such declarations were not backed by the requisite political will and policy-making capacity necessary to override domestic opposition to change. Within the three-year time framework of the AP (2005–2007), no effective leadership on European issues was evident during the 'Orange' elites' control of the Cabinet of Ministers between January 2005 and September 2006. The new government did not replace the key documents adopted by Kuchma, namely the 1998 Strategy and the 2000 Programme on Ukraine's Integration with the European Union, despite the fact that they had been adopted by President Kuchma without involving other state institutions and their content was vague and outdated. For example, the Strategy, adopted for a 10-year period, listed the key priority areas for integration and envisaged that by 2007 'preconditions would be created for obtaining by Ukraine a fully-fledged membership status of the European Union'.<sup>24</sup> Instead, these outdated documents were simply superseded by the AP. For all purposes, European integration became equated with the implementation of the AP. This meant that lacking an overarching and comprehensive strategy, actions became uncoordinated and policy measures tended to be short-term, dictated by the priorities of the three-year AP (Mayhew *et al.* 2005, p. 14).

Furthermore, no radical overhaul of the institutional framework for European integration was conceived and a piecemeal approach prevailed. In the first 'Orange' government headed by Yulia Tymoshenko (January–September 2005), the post of deputy prime minister was created and made responsible for coordinating European integration. The first (and only) holder of the post was Oleh Rybachuk, a banker and a close associate of President Yushchenko. While enthusiastic, Rybachuk lacked the essential experience of working in the executive structures as well as any dedicated administrative resources, especially personnel, to be effective. His post was bolted onto the otherwise unreformed bureaucratic structures further limiting its effectiveness. Following Rybachuk's departure to head the Secretariat of the President in September 2005, the post was abolished.

However, during Rybachuk's tenure, the first annual so-called 'Road Map on the Implementation of the AP' was adopted—the most important instance of the 'domestication' of an EU-defined reform agenda. Adopted through a resolution of the Cabinet of Ministers, it became binding for the agencies within the executive branch and was renewed on an annual basis for the duration of the AP.<sup>25</sup> Mirroring the six-

<sup>24</sup>'Decree by the President of Ukraine on the Approval of the Strategy of Ukraine's Integration to the European Union', No. 615/98, 11 June 1998, available at: <http://www.mfa.gov.ua/mfa/en/846.htm>, accessed 11 November 2008.

<sup>25</sup>The road maps for 2005, 2006 and 2007 were adopted by the Regulation of the Cabinet of Ministers of 22 April 2005 (no. 117), available at: [http://www.kmu.gov.ua/kmu/control/en/publish/article?showHidden=1&art\\_id=63973624&cat\\_id=40990460&ctime=1170843193015](http://www.kmu.gov.ua/kmu/control/en/publish/article?showHidden=1&art_id=63973624&cat_id=40990460&ctime=1170843193015), accessed 14

chapter structure of the AP, the 2005 'road map' listed 177 measures (most of them divided into more detailed tasks) indicating how, when and by which institutions the priorities of the AP were to be enacted (Razumkov 2005, p. 3). Even though the AP priorities were phrased too generally to guide policy making, the fact that it has been 'translated' into the successive 'road maps' for 2005, 2006 and 2007 was decisive for the AP's mobilising impact on domestic policy making. The 'road maps' became the equivalent of a governmental programme, and as such the first, lasting and transparent blueprint for reforms of the state structures and policies in Ukraine.

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

In September 2006, the newly installed government led by Viktor Yanukovych allocated the European portfolio to the influential first Deputy Prime Minister, Mykola Azarov, who was also in charge of the financial portfolio. At the same time, a new governmental Committee on Defence, Legal Policy and European Integration was created, headed by the prime minister. This nominally raised the profile of the EU-related agenda within the cabinet, reflecting the cabinet's attempt to take over the initiative on foreign policy from the institutions controlled by the president. In practice, however, under Yanukovych progress with implementation slowed down in comparison to 2005 (Razumkov 2007b, p. 57). Despite his strong standing in the government, Azarov did not raise the salience of the AP within the government as he kept a low profile on EU-related matters, rarely speaking on the subject in public. Instead he was a vocal supporter of Ukraine's participation in (and even eventual integration within) the Common Economic Space with Russia, Belarus and Kazakhstan.

August 2005; the Regulation of the Cabinet of Ministers of 27 April 2006 (no. 243), available at: [http://www.kmu.gov.ua/kmu/control/en/publish/article?showHidden=1&art\\_id=63976281&cat\\_id=40990460&ctime=1169800097784](http://www.kmu.gov.ua/kmu/control/en/publish/article?showHidden=1&art_id=63976281&cat_id=40990460&ctime=1169800097784), accessed 3 October 2006; and Regulation of the Cabinet of Ministers of 26 April 2007 (no. 238), available at: [http://www.kmu.gov.ua/kmu/control/en/publish/article?showHidden=1&art\\_id=125133597&cat\\_id=40990460&ctime=1207729897031](http://www.kmu.gov.ua/kmu/control/en/publish/article?showHidden=1&art_id=125133597&cat_id=40990460&ctime=1207729897031), accessed 1 September 2007, respectively.



While the institutional framework for European matters changed frequently, there was no evidence of political accountability on EU-related matters at the ministerial level. As one European commission official who had worked on enlargement, put it: ‘In Poland, ministers had shivers on the eve of the publication of the Annual Progress Report [by the European Commission]. Nothing like this happens in Ukraine, there is no political accountability for not delivering on European matters . . .’.<sup>26</sup> Without clear political leadership on European issues and an effective coordinating mechanism within the government, the implementation of the AP was effectively conducted by, and left to the discretion of, middle-level civil servants.

*EU–Ukraine Action Plan and state administration: implementation without coordination  
Key actors within the state apparatus*

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

The importance of the MFA lies in its role in defining Ukraine’s strategy for Ukrainian political leaders to adopt in interactions with the EU. This role was developed during the coordination of the political dialogue under the PCA. (Nominally this was done by the Coordination Council headed by the prime minister.) Within the MFA there was a particularly strong synergy between the minister and ministerial officials. The Minister of Foreign Affairs, Borys Tarasiuk (2005–2006), who made the achievement of membership his *idée fixe*, was strongly backed by ministry officials, especially in the Department of European Integration. However, as noted above, the overall position of the MFA in governmental structures has been relatively weak, owing to its marginal position in domestic policy making.

Insofar as the implementation of the road map is concerned, the MFA is responsible for political dialogue and external relations, including areas related to regional cooperation and the Common Foreign and Security Policy (CFSP), with relatively few priorities (15 in total). MFA officials emphasise that within the ministry’s portfolio, almost all priorities have been met, including the highly sensitive question of the custom regime with Transdnistria. By July 2006 the MFA had aligned itself with 549 out of 589 CFSP declarations, or 93% compliance with the EU position.<sup>27</sup> This high level of compliance stems from two factors: first, being strongly pro-European, the

<sup>26</sup> Author’s interview, Kyiv, November 2006.

<sup>27</sup> While Ukraine has come close to aligning its foreign policy to the EU it has not abandoned an independent foreign policy altogether and took a different position for example, on Uzbekistan.

MFA has been eager to meet the priorities it had direct responsibility for; second, the MFA's responsibilities are mainly concerned with foreign policy where opposition from domestic actors has been weaker, with the major exception of the introduction of the custom regime with Transdnistria.<sup>28</sup> MFA officials are viewed as 'visionary Euroromantics', ready to advance political relations with the EU regardless of domestic, and especially economic, costs. In contrast, the Ministries of Economy and Justice regard themselves as at the front line of domestic reforms, the most important aspect of 'homework' required by the EU.

Since 2005, the Ministry for Economics<sup>29</sup> has served as the real 'engine' for meeting conditionality, especially as the largest share of priorities of the AP is concerned with areas such as the economy, labour regulations and competition. This contrasts with the relatively weak position of similar ministries concerning EU-related decision making in the accession countries, with the exception of Slovenia (Lippert *et al.* 2001, p. 994). In those countries, European integration was above all a political project with economic considerations taking a backstage role during the accession process. In Ukraine, the standing of the Ministry was further strengthened when it assumed the function of coordinating technical assistance from the EU and member states (even prior to the AP). This increased standing and commitment under the ENP contrasted with the stance of the Ministry until 2004, when it followed a multi-vector foreign policy which was characterised by a lack of clear priorities *vis-à-vis* both the EU-led and Russian-led economic integration projects. Having adopted a consistent pro-European position since 2005, the Ministry focused on accession to the WTO, which is the most important precondition for economic integration with the EU. The fulfilment of most domestic procedures required for Ukraine's accession to the WTO in late 2006 was the most significant achievement in the implementation of the AP.

However, the mandate of the Ministry for Economics requires it to focus on pragmatic, sectoral issues and WTO membership, without consideration of the political vision underlying the relations. This leads to inter-bureaucracy tensions. While the MFA is keen to advance the political dimension without paying too much attention to shorter-term economic costs and benefits, the interests of the Ministry for Economics lie in securing favourable access to the EU market in the short or medium term. It has been reluctant to give up any economic interests without securing reciprocal steps by the EU. As one interviewee in the MFA put it, 'the Ministry for Economics does not look at European integration through rose-tinted glasses'.<sup>30</sup> This difference in approaches reflects the lack of an overarching strategy on European integration shared by the key actors in Ukraine.

The Ministry of Justice has emerged as a third key actor in AP implementation. The key body within the Ministry is the State Department for Legal Approximation (SDLA) created in 2004, with funding specified in the state budget. The SDLA coordinates and leads the Programme of Legislative Adaptation. Although its key

<sup>28</sup>Compliance on this issue, on which the Kuchma administration had refused to comply, was one of the key political decisions of the first 'Orange' government led by Tymoshenko.

<sup>29</sup>Incidentally, after the Orange Revolution 'European Integration' was dropped from the Ministry's name as it reverted to its pre-2002 name of the Ministry for Economics.

<sup>30</sup>Author's interview with MFA official, Kyiv, November 2006.

competence—legal approximation—was already explicitly envisaged by the PCA, the AP enabled the SDLA to significantly widen its mandate, owing to the central role of legal approximation in the deepening of EU–Ukraine relations. According to one SDLA official, approximately 80% of AP priorities require legal approximation. In terms of its approach, the SDLA is closer to the Ministry for Economics in that it focuses on advancing specific areas of cooperation with the Union. As one official described: ‘the SDLA is pragmatic, not interested in grand political plans [in relations with the EU]’.<sup>31</sup>

The competencies of the SDLA fall into five main categories. First, the Department acts as a gate to the *acquis communautaire* as it offers access to the *acquis* in the original EU languages (97%) or in Ukrainian translation (to which 30% of the *acquis* was translated by November 2006).<sup>32</sup> Second, it coordinates the complex process of the planning of legal approximation with the line ministries, on the basis of which an Annual Programme is approved by the Coordination Council chaired by the first deputy prime minister. Third, within the cabinet the Department provides analysis of the compliance of draft laws with the *acquis*. Fourth, the SDLA is responsible for the implementation of the priorities of the AP relating to judicial reform and Justice and Home Affairs. Finally, on its own initiative, the SDLA also monitors the implementation of the AP on legal approximation. In fact, it pointed out a number of areas needing action and was thereby able to exert pressure on the political class in general and the parliament in particular. For example, in its Overview of Legal Approximation, in the section on the regulation of state aid, the Department openly called on the government to restructure rather than subsidise the mining industry:

The more than 50-year experience of EC regulation of the coal industry shows that without proper restructuring, provision of state aid is inefficient and does not solve the problems of the industry. Therefore Ukrainian legislation [in this area] has to be radically reformed.<sup>33</sup>

In contrast to the ‘mainstream’ Ukrainian bureaucracy, notorious for being highly hierarchical, inert and closed, the SDLA’s innovation and willingness to criticise the failures of the parliament and government and to place pressure on them to enact legal changes, is unprecedented. This atypical behaviour can be explained by the empowerment emanating from the government and parliament’s pledge to act on European integration. It is noteworthy that the age profile of SDLA staff is lower than average (at least partially because older state officials tend to lack linguistic skills and EU-related expertise). Out of 44 staff members of the department only three were older than 30 in November 2006.<sup>34</sup> The SDLA staff are also less fearful of being reprimanded as they have good prospects for alternative employment outside state

<sup>31</sup>Author’s interview with SDLA official, Kyiv, November 2006.

<sup>32</sup>In terms of the implementation of the AP it offers comparative analysis of legislation in EU member states in areas where Ukraine ought to decide on an appropriate model to emulate (for example, on the banking system).

<sup>33</sup>State Department for Legal Approximation, 2006, Overview of the Legal Adaptation of Ukraine with the *Acquis Communautaire* (in Ukrainian), Kyiv, p. 13.

<sup>34</sup>While all three ministries suffer from a shortage of trained personnel, the SDLA is particularly affected in this respect. The SDLA has to train staff in European law, suffers from a significant loss of staff to the commercial sector, and finds it difficult to replace them.

structures. While accumulating additional competencies, the SDLA does not regard itself as a mere EU department within a ministry but more like a separate governmental agency. With its wide mandate, it sees itself as the nucleus of a central coordinating body for European integration in Ukraine, modelling itself on the Polish State Committee for European Integration.<sup>35</sup>

*The Action Plan and bureaucracy: the limits of bottom-up implementation*

This bureaucracy-led implementation of the AP resulted in the juxtaposition of persistent deficiencies, such as poor monitoring, with more positive new elements, such as transparency and openness. While decision making is spread across several institutions, reporting on implementation is the responsibility of the Secretariat of the Cabinet of Ministers. With a small staff and few experts, the Secretariat does not perform a coordinating, let alone policy-analysis or evaluation function. In practice, it compiles information rather than monitors and enforces compliance. Thus, a Ukrainian think-tank has pointed out that:

The monitoring methodology worked out by the government aims, above all, to collect and systematise information provided by the relevant agencies and as such does not reflect the extent to which the implementation measures actually achieve the goals indicated in the AP. (Razumkov Centre 2007b, p. 13)

However, unlike most initiatives and policies, which are launched within the Ukrainian government in an uncoordinated manner, the road map has induced greater transparency. Thanks to quarterly and yearly reports prepared by the Secretariat (with yearly reports published on the governmental website), reporting on the implementation of the road map has been regular and public.<sup>36</sup> Moreover, in an unprecedented degree of cooperation with non-state actors, the Secretariat also publicised on the governmental website the independent comprehensive monitoring of the implementation of the AP by a consortium of seven Ukrainian non-governmental organisations, led by the Razumkov Centre (2007a, 2007b). Notably, the consortium's assessment has been much more critical than that of the Ukrainian government.

However, this atypical transparency, often revealing failures or delays in implementation, did not engender accountability. No political or administrative accountability for AP implementation shortcomings was announced in the first three years of the AP. This means that officials act on their own initiative without an effective political overview, monitoring and sanctioning, making it an essentially bottom-up process, dependent on the capacity and determination of individual officials rather than a targeted and sustained process of reform. A lack of an effective coordination mechanism also results in competition. Several agencies claimed to be responsible for the overall implementation of the AP. These included the Secretariat on European Integration of the Cabinet of Ministers, the Secretariat of the President of Ukraine, the Ministry of Foreign Affairs, the Ministry of Economy, and the

<sup>35</sup>Author's interview with an official from the Ministry of Justice, Kyiv, November 2006.

<sup>36</sup>See the website of the Cabinet of Ministers of Ukraine, available at: [http://www.kmu.gov.ua/control/uk/publish/article?art\\_id=741034&cat\\_id=31455](http://www.kmu.gov.ua/control/uk/publish/article?art_id=741034&cat_id=31455), accessed 12 September 2007.

Ministry of Justice. This diffusion breeds competition between ministries further limiting the flow of essential information and negatively affecting Ukraine's ability to work out its strategy and priorities *vis-à-vis* the EU.

The process of AP implementation exposes the persistent shortcomings of the Ukrainian post-Soviet bureaucracy, including its cumbersome decision-making processes, low administrative competence (especially in terms of modern techniques of policy planning, monitoring and evaluation), unclear division of competencies and lack of coordination.<sup>37</sup> The road map and its implementation reflect these weaknesses. Even though the road map is a more detailed document than the AP, it does not adequately specify the measures required to implement the AP. In many areas, what constitutes 'implementation' has been left to the discretion of bodies vested with the enactment of specific priorities. No doubt, this is a by-product of the general nature of the AP, as 'it contains large numbers of measures, formulated so generally, that any type of action can be classified as implementation' (Razumkov Centre 2005, p. 4). Many priorities were vaguely worded, using phrases such as 'to enhance', 'to improve' or 'to conduct consultations'. Especially in the 2005 road map, implementation measures were referred to using such phrases as 'to work out', 'to consider' or 'to hold consultations', so that implementation could amount to as little as organising a workshop to discuss a particular priority of the AP.

Even in cases where priorities were specified in more detail, the implementation often has been slow and inconsistent. For example, the AP listed the 'reform of the judiciary in order to ensure its independence, impartiality and effectiveness' as a second priority in the section on 'Political Dialogue and Reform'. In the 2005 road map, a number of implementation measures, including drafting changes to the 'Law on the Judicial System of Ukraine' by June 2005, were listed. The implementation activity for 2006, however, envisaged the drafting of the 'Concept of the Reform of the Judiciary System' and its implementation by March 2006. The implementation plan and the Concept were approved by presidential decrees in March and May 2006, respectively.<sup>38</sup> Amongst other things, the implementation envisaged passing changes to two pivotal legislative acts: the 'Law on the Judicial System of Ukraine' and the 'Law on the Status of Judges'. Having been submitted by the president in December 2006, the drafts underwent their first reading in April 2007 but as of May 2008, they had not been adopted and were still awaiting a second reading. While some steps in the reform of the judiciary were taken, progress was hampered not only by initial uncertainty as to what the reform entailed but also poor coordination between the Cabinet and the parliament due to institutional inefficiencies and re-occurring political stalemates.

<sup>37</sup>For example, in terms of policy planning, there is no effective prioritisation based on regulatory impact assessment analysis or cost-benefit analysis—a standard technique within the EU and adopted by the ECE countries during the accession process (Mayhew 1998, pp. 219–33). Ukrainian policy planning remains excessively general and weak on implementation methodology.

<sup>38</sup>Decrees of the President of Ukraine on the Plan of Activities Aimed at the Improvement of the Court System and Creating Just Judiciary in Ukraine in Accordance with European Standards', No. 242/2006, 20 March 2006; and the 'Decree of the President of Ukraine on the Concept of the Reform of the Court System', No. 361/2006, 10 May 2006, available at: <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi>, accessed 23 August 2008.

As noted above, in most instances, AP implementation in Ukraine requires legislative changes, whether passing new laws or revisions of the existing ones. For example, the road map lists preparing a draft concept or draft law as an implementation measure. While such tasks can be performed within the state administration, the subsequent adoption by the parliament and implementation is outside bureaucrats' competence. Thus, implementation often amounts to sending draft laws to parliament, without due consideration of the revisions to its content (which may significantly differ from the originally tabled draft), its subsequent adoption and enactment.<sup>39</sup> Given the ongoing political instability in Ukraine, the politicians' limited interest in the AP and weak institutional coordination between the executive branch and the parliament, draft laws rarely have a chance of being promptly adopted and then actually implemented, despite the efforts within relevant ministries.

However, the fact that despite the inherent shortcomings, sections of the state administration have sought to implement the AP, without strong and consistent support from the political class, indicates the reform potential within the state apparatus itself and the empowering impact of the EU's conditionality. In the course of AP implementation, the unreformed administrative structures have been challenged from within. In this way the AP has helped to overturn the hierarchy by departing from the exclusionary decision-making processes and imposing more openness.<sup>40</sup> The energetic response to EU conditionality on the part of sections of the Ukrainian state administration has, however, made the implementation of the AP, at least to some degree, immune from the political instability which has engulfed Ukraine since the Orange Revolution. The impact of the frequent changes of government, followed by the eruption of a constitutional crisis in spring 2007 on the implementation of the AP, has been mitigated by the devolution of initiative and responsibility to bureaucratic rather than political actors. As no government has distanced itself from the AP, the road map has remained a *de facto* governmental programme for the state administration. As one Ukrainian interviewee put it, the 'AP is an objective document, the machinery for its implementation exists so political controversies have no direct bearing on its implementation'.<sup>41</sup>

Nevertheless, despite this insulation of AP implementation from political upheavals, without strong political leadership on European matters and an effective coordination and monitoring mechanism, progress with implementation has been limited. According to the above-mentioned independent assessment of the implementation of the AP in Ukraine, out of 73 priorities of the AP over the three-year period (2005–2007) only 11 were fully implemented. The overwhelming majority of priorities—62 (85%)—were implemented partially and need completion, whereas one priority was not implemented at all. Also, the more generally defined the priorities, the more likely they were to be reported as implemented (Razumkov Centre 2008, p. 2). However, the

<sup>39</sup>For example, on changes to the public procurement regulations see Shumylo (2007, pp. 205–08).

<sup>40</sup>According to Kravchuk (2001) decisions tend to be made in a strictly exclusionary, closed manner. Rather than share authority, thereby diffusing responsibility for decisions and increasing their internal legitimacy, decisions tend to be limited to fairly tight groups of officials within the *nomenklatura* in each ministry. This accounts for multiple administrative bottlenecks capable of stifling policy initiatives.

<sup>41</sup>Author's interview with an MFA official, Kyiv, November 2006.

experts participating in the consortium acknowledged the limitations of the quantitative measures of implementation, given the imprecise wording of many of the AP priorities, making it difficult to define what constituted implementation and measure its progress. Notwithstanding these difficulties, this independent consortium offers a more accurate assessment of the implementation of the AP and a considerably more critical view than the one provided by the Ukrainian government in its annual Position Papers on the implementation of the AP and even the European Commission in the Country Progress Reports (Ukraine) of 2006 and 2007.

### *Conclusion*

Through the ENP the EU endeavours to extend EU governance beyond its borders without addressing the political question of the final borders of Europe. The ENP relies on a strategy of enlargement—mainly the progressive adoption of the whole *acquis* in addition to meeting other polity-related conditions, such as democratic standards, thereby envisaging wide-ranging and comprehensive change to domestic political, economic and social structures. Yet, unlike enlargement, not only is the membership perspective absent but the actual award and specific conditions required for achieving it have not been clearly defined by the EU.

Indeed, the lack of membership perspective along with the ill-defined goal of the ENP has limited its impact in Ukraine. The ENP has had an overall weak mobilising effect on the political class; it was membership aspirations rather than ‘access to the market’ that gave the EU the power to motivate even under the ENP. Ukraine’s participation in the ENP was seen as a stepping-stone—and not an alternative to—enlargement by the first ‘Orange’ government, which took key decisions resulting in the ‘domestication’ of EU conditionality. So the ‘unlocking’ impact of the ENP can be attributed to the opening up of Ukraine to EU influence owing to Ukraine’s aspirations to membership, even if these aspirations are not recognised by the EU itself under the ENP.

Having said that, the impact of EU conditionality depends not only on the type of conditionality alone but, more importantly, on how it resonates in the domestic context. In Ukraine the ENP has had a tangible empowering impact on actors other than the political class, most of all the state administration. This contrasts with the experience of the accession countries, where the political class became the most important ‘coalition partners’ of the EU (Jacoby 2006, p. 649).

Being externally validated, the AP acquired high salience for EU-oriented sections of the state apparatus (besides other domestic actors, such as non-governmental organisations). With the road map, the civil servants obtained a political mandate to implement the blueprint for reform. Thus, the AP empowered ‘enclaves’ within the state administration, which developed expertise on EU matters even before the ENP. The AP changed the nature of the commitment, by providing a more specific (even though still excessively vague) set of reform prescriptions, thereby enhancing the role of the sections of the administration with relevant expertise and competencies on European affairs. This bureaucratisation of the AP largely accounts for the progress in implementation, despite the frequent changes and disinterest of governments during the period 2005–2007. At the same time, the road map remains one of the few

yardsticks which allow an assessment of the performance of the governments and public administration in Ukraine. The implementation of the AP showed the organic reform potential of the Ukrainian bureaucracy, which has predominantly been regarded as a bottleneck of any reform process owing to a number of powerful ‘veto players’ capable of suffocating reform initiatives. These devolved domestic responses in Ukraine to EU conditionality highlight the ability of the EU to have an impact in non-member states when the EU—as an external actor—works in tandem with domestic actors.

However, the civil servants alone cannot deliver change on the scale envisaged under the ENP. The AP represents the first time that Ukraine has acted on EU conditionality. Despite having the strongest impact so far on domestic change, the progress made under the AP is insufficient to prepare Ukraine for closer economic integration with the EU (Jakubiak & Kolesnichenko 2006; Shumylo 2007), let alone bring tangible improvements to the political and economic situation in Ukraine (Razumkov 2007b). The diffusion of responsibility across a range of institutional actors means that there has been no horizontal capacity for coordination at the time when, under the ENP, Ukraine’s cooperation with the EU became much more complex than ever before. In terms of scope (but not intensity), cooperation resembles that with accession countries. Yet in the accession countries, the demands of and prospect for accession made effective horizontal coordination a pre-condition—the ‘coordinate or perish’ imperative demanded a ‘core executive’ despite a persistent diversity of models of governance in ECE (Grabbe 2001; Lippert *et al.* 2001; Goetz 2001). The effective framework for implementation of EU-specified domestic adjustments, whether a centralised or decentralised model was adopted, was of critical importance during the accession process. Enactment of EU-specified polity reforms and, especially, policy conditionality, amounting in essence to the adoption of the *acquis*, requires effective coordination across a number of institutions and policy domains in order to deliver extensive and rapid adjustments. The institutional framework in Ukraine developed during the first three years of the ENP has no capacity to deal with such demands.

Thus, the pace and scale of change resulting from the AP has been slow and piecemeal in Ukraine. As a result, even though, through the ENP and the AP, the EU has started to affect domestic developments in Ukraine, the ENP in its first three years of functioning had no profound transformative effect within the country.

*The University of Birmingham*

### References

- Aslund, A. & McFaul, M. (eds) (2005) *Revolution in Orange: The Origins of Ukraine’s Democratic Breakthrough* (Washington, DC, Carnegie Endowment for International Peace).
- Batt, J., Lynch, D., Missiroli, A., Ortega, M. & Triantaphyllou, D. (2003) *Partners and Neighbours: A CFSP for a Wider Europe*, Chaillot Paper, 64, September (Paris, EU Institute for Security Studies).
- Borzel, T. & Risse, T. (2000) ‘When Europe Hits Home: Europeanisation and Domestic Change’, *European Integration Online Papers*, 4, 15, available at: <http://eiop.or.at/eiop/texte/2000-015a.htm>, accessed 12 January 2003.
- Cremona, M. & Hillion, C. (2006) ‘*L’Union Fait la Force?* Potential and Limitations of the European Neighbourhood Policy as an Integrated EU Foreign and Security Policy’, *EUI Working Papers*, Law 2006/39 (Florence, European University Institute).



- D'Anieri, P. (2005) 'What Has Changed in Ukrainian Politics?: Assessing the Implications of the Orange Revolution', *Problems of Post-Communism*, 53, 5, July.
- Delcour, L. (2007) 'Does the European Neighbourhood Policy Make a Difference? Policy Patterns and Reception in Ukraine and Russia', *European Political Economy Review*, 7, Summer.
- Emerson, M., Edwards, T.H., Gazizullin, I., Lücke, M., Müller-Jentsch, D., Nanivska, V., Pyatnytskyi, V., Schneider, A., Schweickert, R., Shevtsov, O. & Shumylo, O. (2006) *The Prospect of Deep Free Trade Between the EU and Ukraine* (Brussels, CEPS).
- ENEPO (2007) 'Working Paper on Concepts and Definitions of Institutional Development (Harmonisation) and Methodology of Measuring Them' (EU Eastern Neighbourhood: Economic Potential and Future Development Project), June, available at: [www.case.com.pl/dyn/plik-15324592.pdf](http://www.case.com.pl/dyn/plik-15324592.pdf), accessed 5 August 2007.
- Epstein, R. & Sedelmeier, U. (2008) 'Beyond Conditionality: International Institutions in Postcommunist Europe after Enlargement', *Journal of European Public Policy*, 15, 6, September.
- Escribano, G. (2006) 'Europeanisation without Europe? The Mediterranean and the Neighbourhood Policy', *EUI RSCAS Working Papers*, 2006/19 (Florence, Robert Schuman Centre for Advanced Studies, European University Institute).
- Fink-Hafner, Danica (2005) 'Europeanisation of the Core Executive in the Transition From Circumstances of EU Accession to Full EU Membership', paper presented at the EUSA Ninth Biennial International Conference, Austin, Texas, 31 March–2 April 2005.
- Goetz, H.K. (ed.) (2001) 'Executive Governance in Central and Eastern Europe', *Journal of European Public Policy*, 8, 6 December.
- Goetz, H.K. & Wollmann, H. (2001) 'Governmentalizing Central Executives in Post-Communist Europe: A Four-Country Comparison', *Journal of European Public Policy*, 8, 6, December.
- Gould, T. (2004) 'The European Economic Area: A Model for the EU's Neighbourhood Policy? Ukraine's Place in the Wider Europe', *Perspectives on European Politics and Societies*, 5, 2.
- Grabbe, H. (2001) 'How does Europeanization Affect CEE Governance? Conditionality, Diffusion and Diversity', *Journal of European Public Policy*, 8, 6, December.
- Grabbe, H. (2002) 'EU Conditionality and the Acquis Communautaire', *International Political Science Review*, 23, 3, July.
- Grabbe, H. (2006) *The EU's Transformative Power: Europeanization Through Conditionality in Central and Eastern Europe* (New York, Palgrave Macmillan).
- Haukkala, H. (2003) 'A Hole in the Wall? Dimensionalism and the EU's "New Neighbourhood Policy"', *UPI Working Papers*, 41 (Helsinki, UPI).
- Jacoby, W. (2006) 'Inspiration, Coalition, and Substitution. External Influences on Postcommunist Transformations', *World Politics*, 58, 4, July.
- Jakubiak, M. & Kolesnichenko, A. (eds) (2006) 'Prospects for EU–Ukraine Economic Relations', *CASE Report*, 66/2006 (Warsaw, CASE).
- Kelley, J. (2006) 'New Wine in Old Wineskins: Promoting Political Reforms through the New European Neighbourhood Policy', *Journal of Common Market Studies*, 44, 1, March.
- Korbut, D., Honta, I., Pidluska, I., Volosova, T., Blazhevych, V. & Zamiatin, V. (2001) *Evropeiska Integratsia. Krok za Krokom* (Kyiv, Foundation Europe XXI).
- Kravchuk, R. (2001) 'Administrative Reform and Centre–Local Relations', *Journal of Ukrainian Studies*, 26, 1–2.
- Kravchuk, R., Kuzio, T. & D'Anieri, P. (1999) *Ukrainian Politics and Society* (Boulder, CO, Westview Press).
- Lippert, B., Umbach, G. & Wessels, W. (2001) 'Europeanization of CEE Executives: EU Membership Negotiations as a Shaping Power', *Journal of European Public Policy*, 8, 6.
- Mayhew, A. (1998) *Recreating Europe. The European Union's Policy towards Central and Eastern Europe* (Cambridge, Cambridge University Press).
- Mayhew, A., Cremona, M. & Serafin, P. (2005) 'Ukraine's European Choice: A Review of the Mechanism for the Implementation of Ukraine's Policy towards the European Union', Final Report of a scoping study for the Government of Ukraine (unpublished paper).
- Milcher, S. & Slay, B. (2005) 'The Economics of the "European Neighbourhood Policy": An Initial Assessment', *CASE Studies and Analyses*, 291 (Warsaw, CASE).
- Petrov, R. (2002) 'The Balkans and the NIS', in Ott, A. & Inglis, K. (eds) (2002) *Handbook on European Enlargement* (The Hague, TMC Asser Press).
- Pridham, G. (2005) *Designing Democracy: EU Enlargement and Regime Change in Post-Communist Europe* (Basingstoke, Palgrave Macmillan).
- Protsyk, O. (2003) 'Domestic Political Institutions and Their Responses to EU Enlargement in Ukraine and Russia', *Communist and Post-Communist Studies*, 36, 4.

- Radaelli, M.C. (2000) 'Whither Europeanization? Concept Stretching and Substantive Change', *European Integration Online Papers*, 4, 8, available at: <http://eiop.or.at/eiop/texte/2000-008.htm>, accessed 1 October 2003.
- Razumkov Centre (2005) *Natsionalna Bezpeka i Oborona*, 7.
- Razumkov Centre (2007a) *Natsionalna Bezpeka i Oborona*, 2.
- Razumkov Centre (2007b) *Ukraina-EC: Vid Planu Diy Do Posylenoi Uhody* (Kyiv, Razumkov Centre).
- Razumkov Centre (2008) *Natsionalna Bezpeka i Oborona*, 6.
- Schimmelfenning, F. & Sedelmeier, U. (eds) (2005) *The Europeanisation of Central and Eastern Europe* (Ithaca & London, Cornell University Press).
- Sedelmeier, U. (2006) 'Europeanisation in New Member and Candidate States', *Living Reviews in European Governance*, 1, 3, available at: <http://www.livingreviews.org/lreg-2006-3>, accessed 25 April 2007.
- Sherr, J. (1998) *Ukraine's New Time of Troubles* (Camberley, Conflict Studies Research Centre).
- Shumylo, O. (ed.) (2007) *Assessment of the Implications of the Free Trade Area Agreement for Ukraine* (Kyiv, ICPS).
- Sissenich, B. (2008) 'Postnational Rulemaking, Compliance and Justification: the New Europe', *Perspectives on Politics*, 6, 1, March.
- Smith, K. (2005) 'The Outsiders: The European Neighbourhood Policy', *International Affairs*, 81, 4.
- Stephen, C. (2004) 'Will Ukraine Finally be "The Hour of Europe"?' , *The Scotsman*, 3 December.
- Wilson, A. (2005) *Ukraine's Orange Revolution* (New Haven & London, Yale University Press).
- Wolczuk, K. (2004) 'Integration without Europeanisation: Ukraine and Its Policy Towards the European Union', *EUI RSCAS Working Papers*, No. 2004/15 (Florence, Robert Schuman Centre for Advanced Studies, European University Institute).