THE ROLE OF THE EU'S EUROPEAN NEIGHBOURHOOD POLICY IN PROMOTING AND PROTECTING DEMOCRACY, THE RULE OF LAW AND HUMAN RIGHTS IN UKRAINE

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Abstract

This thesis offers an analysis of the effects that the European Neighbourhood Policy (ENP) has had on the promotion and protection of democracy, the rule of law and human rights in Ukraine. It examines the application of four methods under the ENP: i) positive conditionality, ii) negative conditionality, iii) socialisation, and iv) reform assistance and support of civil society. Internal and external factors and actors that have negatively affected reforms in Ukraine are considered. The thesis explores the evolution of EU-Ukraine relations before and under the ENP. Specific instruments at the EU's disposal under the four methods are analysed. Against that background, the application and effects of the four methods are evaluated along different stages of EU-Ukraine relations. The positive effects and shortcomings of the ENP methods in relation to democracy, the rule of law and human rights in Ukraine are identified.

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Abbreviations

AA	Association Agreement
AAg	Association Agenda
AP	Action Plan
CEEC	Central and Eastern European Country
CFSP	Common Foreign and Security Policy
CIS	Commonwealth of Independent States
CS	Common Strategy
CSDP	Common Security and Defence Policy
CSF	Civil Society Forum
CSP	Civil Society Platform
DCFTA	Deep and Comprehensive Free Trade Area
'DNR'	'Donetsk People's Republic'
EA	Europe Agreement
EACU	Eurasian Customs Union
EAEU	Eurasian Economic Union
EaP	Eastern Partnership
EC	European Community
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EEA	European Economic Area
EEAS	European External Action Service
EED	European Endowment for Democracy
EIDHR	European Initiative for Democracy and Human Rights
EIDHR II	European Instrument for Democracy and Human Rights
EMAA	Euro-Mediterranean Association Agreement
ENI	European Neighbourhood Instrument
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood and Partnership Instrument
EU	European Union
EUAM	EU Advisory Mission for Civilian Security Sector Reform of Ukraine
EuroNest PA	EU-Neighbourhood East Parliamentary Assembly

FTA	Free Trade Area
GRECO	Council of Europe Group of States against Corruption
HACC	High Anti-Corruption Court of Ukraine
ICC	International Criminal Court
ICJ	International Court of Justice
IDP	Internally Displaced Person
IMF	International Monetary Fund
'LNR'	'Luhansk People's Republic'
MFA	Macro-Financial Assistance
MoU	Memorandum of Understanding
NABU	National Anti-Corruption Bureau of Ukraine
NATO	North Atlantic Treaty Organisation
NAPC	National Agency for the Prevention of Corruption of Ukraine
NCSF	Neighbourhood Civil Society Facility
NGO	Non-Governmental Organisation
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organisation for Security and Cooperation in Europe
PCA	Partnership and Cooperation Agreement
SAA	Stabilisation and Association Agreement
SAPO	Special Anti-Corruption Prosecutor's Office of Ukraine
SES	Single Economic Space
SGUA	European Commission's Support Group for Ukraine
SSR	Soviet Socialist Republic
TACIS	Technical Assistance to the CIS
TAIEX	Technical Assistance and Information Exchange
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UfM	Union for the Mediterranean
UN	United Nations
UNCAT-OP	Optional Protocol to the UN Convention Against Torture
USSR	Union of Soviet Socialist Republics
VLAP	Visa Liberalisation Action Plan
WTO	World Trade Organisation

1. Introduction

1.1 Research aim

The aim of this study is to analyse the effects the European Neighbourhood Policy (ENP) has had on the promotion and protection of democracy, the rule of law and human rights in Ukraine. The European Union (EU) launched the ENP in 2003/2004.[1] The ENP covers 16 EU neighbours to the east and south – Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Palestine, Syria, Tunisia and Ukraine.[2] The ENP was prompted by the 2004 enlargement and was presented as a regional implementation of the European Security Strategy.[3] Its main aim was to 'promote a ring of well-governed countries'[4] and a 'ring of friends'[5] to the east and south of the EU. The central idea of the ENP was that political, economic and institutional reforms in neighbouring countries would lead to security, stability and prosperity of the neighbourhood and of the EU. Democracy, the rule of law and human rights were seen as essential prerequisites for political stability and economic development.[6]

The ENP retained largely the same logic after the sub-division in 2008-2009 into the Union for the Mediterranean (UfM) and the Eastern Partnership (EaP), covering Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.[7] Moreover, Article 8 of the Treaty on European Union (TEU), introduced by the Lisbon Treaty, constitutionalised the ENP's aim of establishing 'an area of prosperity and good

[1] Commission, 'Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours', COM (2003) 104, 11.03.2003 (hereinafter 'Wider Europe Communication'); Commission, 'European Neighbourhood Policy Strategy Paper', COM (2004) 373, 12.05.2004 (hereinafter 'ENP Strategy Paper').

[2] Belarus, Libya and Syria remain outside most structures of the ENP.

[3] 'A Secure Europe in a Better World', European Security Strategy, 12.12.2003; ENP Strategy Paper, 2; Cremona and Hillion, '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 No 2006/39, 5-8.

[4] European Security Strategy, ibid, 8.

[5] Wider Europe Communication, 4.

[6] Ibid, 4, 7; ENP Strategy Paper, 3; Patten and Solana, Letter on Wider Europe, 07.08.2002, 1; Commission, 'On Strengthening the European Neighbourhood Policy', COM (2006) 726, 04.12.2006, 2.

[7] Commission, 'Barcelona Process: Union for the Mediterranean', COM (2008) 319, 20.05.2008; Commission, 'Eastern Partnership', COM (2008) 823, 03.12.2008.

neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation'.[8]

The significance of Ukraine being part of the ENP can hardly be overestimated. At the time of its launch, Ukraine was perceived as 'the most immediate challenge' for the ENP due to its size, location and declared EU membership aspirations.[9] More than fifteen years later, that perception is still valid. Ukraine's 2013-2014 Maidan protests emerged in the context of the EaP, namely due to President Viktor Yanukovych's refusal to sign the Association Agreement (AA) with the EU. Russian annexation of Crimea in 2014 and the on-going Russia-Ukraine conflict are directly connected to Ukraine's move towards closer ties with the EU. More broadly, the Russia-Ukraine conflict and the rise of extremism and terrorism in some Southern Mediterranean countries have demonstrated that instead of 'a ring of well-governed countries', the EU is surrounded by 'a ring of fire'.[10] Indeed, EU officials have acknowledged that the neighbourhood 'is in flames, both to the east and south'.[11] Similarly, observers have argued that 'there is hardly any other external policy of the EU with a larger gap between its stated objectives and the actual outcome'[12] and that 'the ENP approach has been a dismal failure'.[13] Moreover, some have claimed that '[t]he ENP has failed entirely: the neighbourhood is much worse off now than it was when the ENP was inaugurated'.[14]

It is an oversimplification to claim that the annexation and conflict mean that the ENP/EaP has failed in Ukraine and the country is 'in flames'. Compared to other ENP countries, Ukraine has one of the most advanced relationships with the EU. The AA, which includes the Deep and Comprehensive Free Trade Area (DCFTA), entered into force in September 2017.[15] Moreover, during the five post-Maidan years,

[8] Consolidated Version of the Treaty on European Union [2012] OJ C326/13.

[9] Patten and Solana (n 6), 1.

[10] 'Europe's ring of fire', *The Economist*, 20.09.2014.

[11] Mogherini and Hahn, Joint press conference of High Representative/Vice-President and Commissioner on the European Neighbourhood Policy Review, 04.03.2015.

[12] Lehne, 'Time to Reset the European Neighbourhood Policy', Carnegie Europe, 04.02.2014.

[13] Smith, 'Implementing the Global Strategy Where It Matters Most: the EU's Credibility Deficit and the European Neighbourhood' (2016) 37:3 *Contemporary Security Policy* 446, 451.

[14] Kochenov and Basheska, 'The European Neighbourhood Policy's Value Conditionality', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 148.

[15] Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part [2014] OJ L161/3.

Ukraine has managed to conduct more democratic reforms than during the previous twenty years. Within this context and considering Russia's growing authoritarianism and open hostility towards the West, Ukraine 'represents the absolute front line in the global struggle for freedom'.[16]

Many authors have examined, from different angles, the EU's and the ENP's impact on the democratic and human rights-related reforms in Ukraine at different stages.[17] The relation between democracy, the rule of law and human rights, as EU values, on the one hand, and the scope accorded to these values under the ENP, on the other, has been analysed.[18] This study draws extensively on the existing research and aims to contribute in two ways. First, it offers a comprehensive analysis of the EU's efforts in Ukraine, to date, 1 March 2019. Secondly, it places the ENP within the changing internal and external contexts in Ukraine. It endeavours to reveal to what extent the EU's rhetoric regarding promoting and protecting the values in Ukraine has been translated into action, how that action has been influenced by and has influenced the internal and external contexts in Ukraine, and what specific effects that action has had on the reforms in Ukraine. To date, no such comprehensive analysis of how the ENP and its values have affected Ukraine has been undertaken.

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[16] Freedom House, 'Breaking Down Democracy: Goals, Strategies and Methods of Modern Authoritarians', June 2017, 61.

[17] For example, Kubicek, 'The European Union and Democratization in Ukraine' (2005) 38 *Communist and Post-Communist Studies* 269; Solonenko, 'The EU's "Transformative Power" beyond Enlargement: the Case of Ukraine's Democratisation', European Research Institute, European Research Working Paper No 21, July 2007; Emerson, 'Policies towards Ukraine, 2005-20: Status Quo Unintended', in Tocci (ed), *The European Union as a Normative Foreign Policy Actor*, Centre for European Policy Studies, Working Document No 281, January 2008; Solonenko and Jarabik, 'Ukraine', in Youngs (ed), *Is the European Union Supporting Democracy in its Neighbourhood?*, FRIDE, September 2008; Youngs, 'Europe's Inconsistent Support for Democratic Reform in Ukraine', UCD Dublin European Institute, Working Paper 08-5, July 2008; Wolczuk, 'Implementation without Coordination: The Impact of EU Conditionality on Ukraine under the European Neighbourhood Policy' (2009) 61:2 *Europe-Asia Studies* 187; Solonenko, 'External Democracy Promotion in Ukraine: the Role of the European Union' (2009) 16:4 *Democratization* 709; Casier, 'The EU's Two-Track Approach to Democracy Promotion: the Case of Ukraine' (2011) 18:4 *Democratization* 956; Balfour, *Human Rights and Democracy in EU Foreign Policy: The Cases of Ukraine and Egypt* (London: Routledge, 2012); Burlyuk and Shapovalova, '"Veni, Vidi, … Vici?" EU Performance and Two Faces of Conditionality Towards Ukraine' (2017) 33:1 *East European Politics* 36.

[18] Ghazaryan, *The European Neighbourhood Policy and the Democratic Values of the EU* (Hart, 2014); Ghazaryan, 'The Fluid Concept of "EU Values" in the Neighbourhood: A Change of Paradigm from East to South?', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016).

1.2 Methodology

This study relies on a combination of the socio-legal/interdisciplinary method (including international relations theories) and comparative methodology.

1.2.1 Socio-legal/interdisciplinary method

The socio-legal/interdisciplinary method places the law within a wider context, linking it to 'observations of the varied, changing social and political contexts in which legal ideas have to find meaning and significance'.[19] It focuses on certain problems in society.[20] Some authors urge legal researchers to rely more robustly on the socio-legal method,[21] while others assert that it is already becoming 'the dominant mode of scholarship' for the discipline of law.[22] This study is about the ENP, which is a part of EU external relations law. At the same time, it is about a problem which exists in a social world: the need to improve the state of democracy, the rule of law and human rights in Ukraine, and the potential of specific ENP mechanisms for addressing this problem. Accordingly, this study will position the relevant law within a broader context, which will involve certain inter-connected aspects of history, politics and international relations.

It has been recognised that in assessing the role of the EU as a promoter of values, wider political contexts in the target countries have to be taken into account.[23] This study builds on a 'triangular perspective' which has been offered in the literature and takes into account the EU's efforts, the situation in Ukraine and the internal and external factors and actors that promote or undermine democracy, the rule of law and human rights.[24] As has been noted, two distinctive 'neighbourhood policies' have been at play in Ukraine: of the EU and of Russia.[25] Accordingly, this study

[19] Cotterrell, 'Socio-Legal Studies, Law Schools and Legal and Social Theory', Queen Mary University of London School of Law, Legal Studies Research Paper 126/2012, 3.

[20] McConville and Chui, 'Introduction and Overview', in McConville and Chui (eds), *Research Methods for Law* (Edinburgh University Press, 2007), 1.

[21] See generally Cotterrell (n 19).

[22] Cownie and Bradney, 'Socio-Legal Studies: A Challenge to the Doctrinal Approach', in Watkins and Burton (eds), *Research Methods in Law* (Routledge, 2013), 51.

[23] Crawford, 'Evaluating European Union Promotion of Human Rights, Democracy and Good Governance: Towards a Participatory Approach' (2002) 14 *Journal of International Development* 911, 921-922.

[24] Börzel, 'The Noble West and the Dirty Rest? Western Democracy Promoters and Illiberal Regional Powers' (2015) 22:3 *Democratization* 519, 520.

[25] Solonenko and Jarabik (n 17), 86.

contextualises the ENP effects in Ukraine by considering the internal situation in the country and the role of Russia. To achieve that, it relies on the relevant legal instruments, academic sources, and the reports of relevant international governmental and non-governmental organisations (NGOs).

1.2.2 ENP methods for promotion and protection of values

There are four main methods on which the ENP relies for promotion and protection of democracy, the rule of law and human rights: i) positive conditionality, ii) negative conditionality, iii) socialisation, and iv) reform assistance and support of civil society. Analysis of the application and effects of these methods is a part of the wider interdisciplinary method used in this study.

First, positive conditionality is the linking, by a state or international organisation, of perceived benefits for another state to the fulfilment of certain conditions, such as democracy, the rule of law and human rights.[26] Success of positive conditionality depends on the attractiveness and credibility of promises, determinacy of conditions and domestic costs of adoption.[27] It also depends on whether the target state has access to alternative promises made by other actors.[28] Secondly, negative conditionality means the reduction, suspension or termination of some benefits when a state to which these benefits were granted violates certain conditions, such as those related to values.[29] Success of negative conditionality depends on credibility of threats.[30] Thus, positive and negative conditionality are part of the wider rationalist theory of international relations, which follows the 'logic of consequentialism' and a cost-benefit approach. This study will assess the application and effects of values-related positive and negative conditionality in Ukraine through analysis of relevant EU and EU-Ukraine documents, and secondary sources.

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[26] Smith, 'Engagement and Conditionality: Incompatible or Mutually Reinforcing?', in Youngs (ed), *Global Europe Report 2: New Terms of Engagement* (Foreign Policy Centre, 2005), 23.

[27] March and Olsen, 'The Institutional Dynamics of International Political Orders' (1998) 52:4 *International Organization* 943, 949-951; Schimmelfennig and Sedelmeier, 'Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe' (2004) 11:4 *Journal of European Public Policy* 661, 663-667; Lavenex and Schimmelfennig, 'EU Democracy Promotion in the Neighbourhood: from Leverage to Governance?' (2011) 18:4 *Democratization* 885, 892-895.

[28] Levitsky and Way, 'International Linkage and Democratisation' (2005) 16:3 *Journal of Democracy* 20, 21-22.

[29] Smith (n 26), 23.

[30] Schimmelfennig and Sedelmeier (n 27), 663-667.

Thirdly, according to the constructivist theory of international relations, socialisation (or social learning) occurs when, following the logic of appropriateness, actors 'internalise' certain rules and norms, which are perceived to be right, and behave accordingly.[31] Socialisation in a sense of 'internalisation' of norms thus can be, of itself, an *end result*. Yet socialisation is also a *process* or *method* of external influence. The latter implies engagement, interaction and persuasion.[32] A popular approach is thus that the EU can 'socialise' other actors, including the ENP countries, through more regular and more intense contacts at three levels: i) governments and political elites, ii) civil societies and other intermediary actors, and iii) broader societies.[33] The second and third levels are especially important if a state leadership is undemocratic.[34] Third level contacts may contribute to fundamental value change and inspire more demand for reforms.[35] Actors are more open to socialisation when confronted with a novel or uncertain environment, generated, for example, by crisis or policy failure.[36] Generally, scholars agree that socialisation in a sense of 'internalisation' of norms is likely to have deeper democratising effects than coercion under conditionality.[37] At the same time, socialisation as a method works best in conjunction with strong positive conditionality.[38]

Overall, it might be argued that other methods, including conditionality, reform assistance and support of civil society, can have a socialising effect in a sense that via these methods the neighbours can, at least to a certain extent, 'internalise' certain values and norms. Moreover, unilateral EU declarations, demarches and statements can have a socialising effect on the neighbours. Socialisation can also occur through less deliberate influences, which are often overlooked and difficult to

[31] March and Olsen (n 27), 951-952; Checkel, 'International Institutions and Socialisation in Europe: Introduction and Framework' (2005) 59 *International Organization* 801, 804-813.

[32] Schimmelfennig and Sedelmeier (n 27), 667-668; Checkel, 'Why Comply? Social Learning and European Identity Change' (2001) 55:3 *International Organization* 553, 560-564.

[33] Smith (n 26), 23; Lavenex and Schimmelfennig (n 27), 897; Mungiu-Pippidi, 'EU Enlargement and Democracy Progress', in Emerson (ed), *Democratisation in the European Neighbourhood* (Centre for European Policy Studies, 2005), 17.

[34] Raik, 'Promoting Democracy in the Eastern Neighbourhood – the Limits and Potential of the ENP' (2006) 41:3 *International Spectator* 31, 38-39.

[35] Lavenex and Schimmelfennig (n 27), 892.

[36] Checkel (n 32), 562.

[37] Smith (n 26), 23-14; Levitsky and Way (n 28), 22-25, 33; Gstöhl, 'The Contestation of Values in the European Neighbourhood Policy: Challenges of Capacity, Consistency and Competition', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 62.

[38] Kelley, 'International Actors on the Domestic Scene: Membership Conditionality and Socialization by International Institutions' (2004) 58:3 *International Organization* 425, 430-453.

discern. In particular, scholars have recognised the importance of geographic proximity for diffusion of norms.[39] In other words, the EU can have 'unintentional' socialising effects on its neighbours, depending on their geographic proximity and the existence or not of alternative political, economic and security options.[40]

Therefore, it shall be clarified that socialisation as a method is interpreted narrowly in this study. It will analyse to what extent the ENP has facilitated contacts and dialogues between the EU and Ukraine at the three levels: i) elites, ii) civil society, and iii) broader society. It will examine the available EU-Ukraine documents and the relevant secondary sources. At the same time, however, it is important to take into account that the European Parliament and other observers have criticised the lack of transparency in the political dialogues with third states (the elites level), noting that public statements do not always accurately reflect the issues discussed and that human rights are often discussed informally.[41] This means that the analysis of such public statements alone would not allow definitive conclusions to be drawn as regards the attention paid by the EU to democracy, the rule of law and human rights.

Fourthly, through its assistance programmes the EU provides financial and technical aid to governments for conducting reforms. The importance of bottom-up support for democratic forces is recognised in the EU, so often these programmes also provide financial assistance to civil society.[42] This study will explore the attention paid to values and civil society under EU assistance in Ukraine by analysing the relevant programming documents and secondary sources.

1.2.3 Comparative method

While essentially being concerned with similarities and differences between legal systems, comparative research also aims to explore reasons for or significance of such similarities and differences.[43] Thus, it is informed by other fields,[44] which might

[39] Kopstein and Reilly, 'Geographic Diffusion and the Transformation of the Postcommunist World' (2000) 53:1 *World Politics* 1, 7-24.
[40] Casier, 'The Clash of Integration Processes? The Shadow Effect of the Enlarged EU on its Eastern Neighbours', in Malfliet, Verpoest and Vinokurov (eds), *The CIS, the EU and Russia: The Challenges of Integration* (Palgrave Macmillan, 2007), 74-75.
[41] Balfour (n 17), 89.
[42] Lavenex and Schimmelfennig (n 27), 890-891.
[43] Reitz, 'How to Do Comparative Law' (1998) 46 *American Journal of Comparative Law* 617, 627.
[44] Ibid.

include e.g. politics, international relations, and history. The comparative method permeates this study. The ENP and its effects in Ukraine are evaluated against the background of the application and effects of the pre-ENP mechanisms. Moreover, the differences between the ENP and pre-accession policy are considered. The internal and external contexts in Ukraine before and after the Maidan are differentiated and compared. Where relevant, the application of the ENP and its effects in other countries are considered.

1.3 Structure

This study comprises two main periods: before and after the 2013-2014 Maidan Revolution. This division is necessary because the Maidan was a watershed event, which changed the internal and external contexts in Ukraine. The study is further divided into four stages: stage I (1991-2004, presidencies of Leonid Kravchuk and Leonid Kuchma), stage II (2004-2009, presidency of Viktor Yushchenko), stage III (2010-2013, presidency of Viktor Yanukovych), and stage IV (post-2013, presidency of Petro Poroshenko). There are two rationales for this division. First, even though Ukraine was a presidential-parliamentary republic during stages I and III, and parliamentary-presidential republic during stages II and IV, in practice the Presidents have been the central state actors during all stages and the dynamic of reforms depended predominantly on their political will. Secondly, the analysis of the effects of the ENP needs an internal contextualisation because its methods and instruments can have different effects depending on whether there is initial internal commitment to reforms or not.

At the same time, the division into stages in this study does not strictly follow the chronology of presidency terms. Stage I combines Kravchuk and Kuchma's terms in office, which coincided with the pre-ENP period. Stage II starts with the 2004 Orange Revolution, which happened during Kuchma's presidency. Stage III ends before the start of the Maidan Revolution. Stages I-III are thus the pre-Maidan stages. The Maidan and the Russia-Ukraine conflict are subsumed under stage IV.

The study is structured as follows. Chapters 2-4 aim to establish an analytical framework. Chapter 2 analyses the long-standing problems with democracy, the rule

of law and human rights in Ukraine during stages I-IV. It explains the pre-Maidan root causes of insufficient internal bottom-up pressure for reforms (internal context) and Russia's negative influence on Ukraine's transformation (external context). It addresses how the Maidan and the Russia-Ukraine conflict have changed these contexts and (unintentionally) led to some positive effects on reforms.

Chapter 3 explains the rationales behind EU enlargement and the establishment of the ENP as an alternative to enlargement. The legal nature and offers under the ENP are unveiled. The frameworks of EU-Ukraine relations during stage I before the ENP and during stages II-IV under the ENP are examined taking into account the evolution of Ukraine's aspirations for membership and the reasons behind the EU's reluctance to acknowledge them. The Chapter considers the perceptions of the ENP/EaP in Ukraine. It also assesses to what extent these frameworks have served as a viable counterbalance to Ukraine's relations with Russia.

Chapter 4 unveils the legal, political and institutional framework for promotion and protection of democracy, the rule of law and human rights under the ENP. It analyses the legal foundation of this objective under the Treaties and identifies the main weaknesses inherent in this objective under the ENP. It examines the instruments at the EU's disposal for positive and negative conditionality, socialisation, reform assistance and support of civil society. The similarities and differences of these instruments as compared to the pre-accession policy and pre-ENP approaches are considered. Finally, the role of EU institutions and Member States in the ENP is briefly examined.

Chapters 5-8 examine the application of the EU's methods during stages I-IV. Chapter 5 sets the stage for Chapters 6-8 by recalling the application and effects of the pre-ENP methods during stage I (1991-2004).

Chapter 6 examines the role of the ENP during stage II (2004-2009). It first traces the role of the EU and the ENP in Ukraine's 2004 Orange Revolution. It then analyses the application of positive conditionality under the EU-Ukraine Action Plan (AP). Specific tasks regarding democracy, the rule of law and human rights under the AP are identified and assessed for their attention to Ukraine's long-standing problems. The connection between the tasks, on the one hand, and the ENP's

rewards, on the other, is investigated and the actual impact of the AP on the democratic reforms is explained. The Chapter also analyses the application of democracy-related positive conditionality in relation to EU financial assistance. It then analyses the negative conditionality instruments, and the attention paid to democracy, the rule of law and human rights under EU-Ukraine socialisation channels, and assistance programmes to the Government and to civil society.

Chapter 7 investigates the role of the ENP during stage III (2010-2013). During this stage, the 2009 and 2013 Association Agendas (AAgs) superseded the AP. The Chapter examines the AAgs' tasks regarding democracy, the rule of law and human rights. It shows how the EU gradually introduced a positive conditionality link between these tasks and the signature of the AA, and considers the actual effects achieved. The tasks regarding these values under other positive conditionality instruments, including the Visa Liberalisation Action Plan (VLAP), are examined. The Chapter also explores to what extent these values were given prominence under negative conditionality instruments, socialisation channels (including under the new EaP multilateral institutions) and assistance programmes, including support for civil society.

Chapter 8 analyses the role of the ENP during stage IV. It begins by critically examining the role of the EU and the ENP in the origins and settlement of the Maidan Revolution and the Russia-Ukraine conflict. The AA's provisions on democracy, the rule of law and human rights are examined, alongside the added value of the AA as regards the existing EU methods. The number of EU instruments for promotion of values in Ukraine increased significantly as compared to the previous stages. The Chapter analyses the application and effects of positive conditionality under the VLAP, macro-financial assistance and other instruments. The strengthened focus on negative conditionality instruments, most prominently under the visa liberalisation suspension mechanism, is explored. The Chapter then considers the attention paid to the values under socialisation channels and assistance programmes, including support for civil society.

Finally, Chapter 9 summarises the main findings of the study and offers some recommendations for the EU's policies towards Ukraine in future.

2. Democracy, the rule of law and human rights in Ukraine: internal and external impediments to reforms

2.1 Introduction

The aim of this Chapter is to lay a foundation for the analysis of the role of the ENP in promoting and protecting democracy, the rule of law and human rights in Ukraine. Accordingly, it discusses Ukraine's record and reveals the long-standing problems. It also explains the internal and external factors and actors that have negatively affected Ukraine's progress.

The Chapter is divided into two main time periods: before and after the 2013-2014 Maidan Revolution. It begins with a short overview of Ukraine's general characteristics (2.2). It then examines the situation of democracy, the rule of law and human rights during the period from 1991, when the country gained independence, until the Maidan Revolution. It explains how fragile national unity and weak commitment to democratic traditions (internal context) and assertive and increasingly undemocratic Russia (external context) negatively affected the country's progress (2.3). The Chapter then summarises the reasons behind the Maidan Revolution (2.4), and the origins and dynamics of the on-going Russia-Ukraine conflict (2.5). Ukraine's progress with democracy, the rule of law and human rights after 2013 is then assessed. The Chapter shows how the Maidan and the Russia-Ukraine conflict have strengthened national unity and civil society (internal context). At the same time, the conflict negatively affects Ukraine's reforms and leads to the widespread violations of human rights in Crimea and Donbas (external context) (2.6). The Chapter is concluded with a summary of findings (2.7).

2.2 Ukraine: general description

Ukraine is located in Eastern Europe (see Map 1). It has land borders with seven countries: Moldova, Romania, Hungary, Slovakia, Poland, Belarus and Russia. To the south and southeast it is bordered by the Black Sea and Sea of Azov. Since 2004,

Ukraine has an immediate land border with the EU. Ukraine is the third largest post-Soviet state (after Russia and Kazakhstan) and is larger than any EU Member State.[1] The country's population is 44 million.[2]



Map 1. Ukraine[3]

Ukraine declared independence from the Union of Soviet Socialist Republics (USSR) on 24 August 1991,[4] which was confirmed on 1 December 1991 at the national referendum, when with voter turnout of around 84%, more than 90% voted for independence.[5] Ukraine is a unitary republic divided into 24 oblasts and the Autonomous Republic of Crimea. Due to the Russia-Ukraine conflict (Section 2.5), Ukraine does not exercise control over Crimea and parts of the eastern oblasts of Donetsk and Luhansk (these oblasts are often referred to as 'Donbas',[6] see Map 2).

[1] Ukraine has an area of 603,500 square km: 'UN Statistics Division: Ukraine'. Available at: <http://data.un.org/en/iso/ua.html> [accessed 01.03.2019].

[2] Ibid.

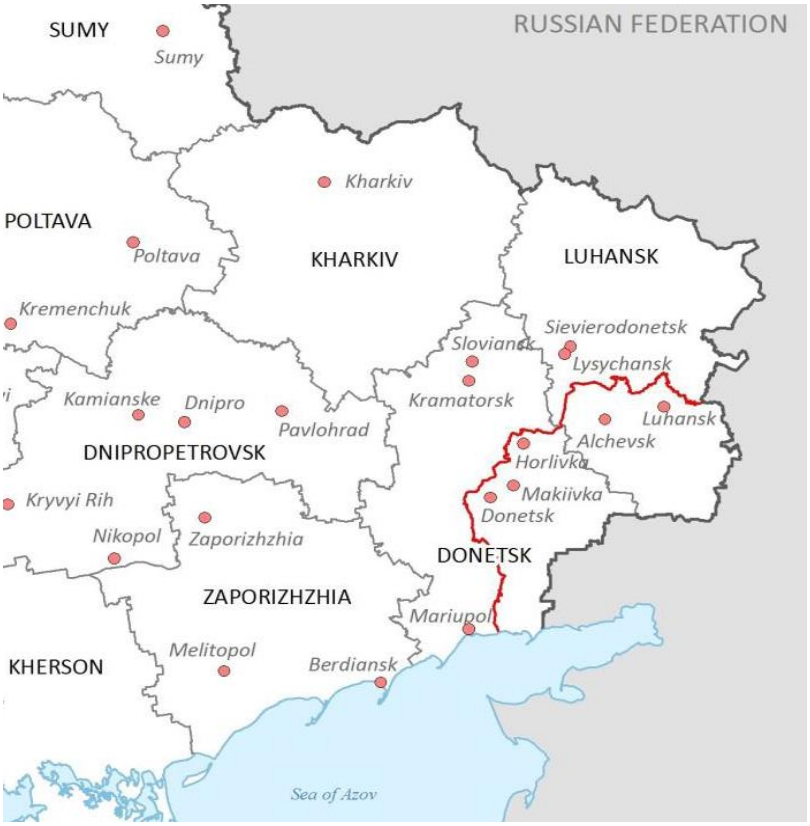
[3] The map is taken from the UN Cartographic Section. Available at: <http://www.un.org/Depts/Cartographic/map/profile/ukraine.pdf> [accessed 01.03.2019].

[4] Parliament of Ukraine, Act of Declaration of Independence of Ukraine, 24.08.1991.

[5] Åslund, *How Ukraine Became a Market Economy and Democracy* (Peterson Institute for International Economics, 2009), 32.

[6] The River Siverskyi Donets flows through these oblasts, so the word 'Donbas' is formed from the words Donets and Basin.

This means that Ukraine does not have necessary jurisdiction to ensure compliance with the standards of democracy, the rule of law and human rights on these territories (Section 2.6.3).



Map 2. Parts of the Donetsk and Luhansk oblasts outside Ukraine's control[7]

Ukrainian citizenship was granted regardless of ethnicity to all former USSR citizens who as of 24 August 1991 had their permanent residence in Ukraine.[8] Ukrainian language is the only state language.[9]

However, in practice there have been important – although somewhat blurred and fluid – ethnic and linguistic differences. According to the first and only Ukrainian census of 2001, Ukrainians comprised 77.8% of the country's population. Russians were the largest ethnic minority accounting for 17.3%.[10] Among the post-Soviet

[7] The map is taken from the UN OHCHR Report on the human rights situation in Ukraine from 16 November 2017 to 15 February 2018.

[8] This was in marked contrast to the position in the Baltic states, especially Latvia and Estonia, where citizenship depended on whether a person resided in these countries before their annexation by the USSR in 1940.

[9] Article 10, Constitution of Ukraine, 28.06.1996.

[10] All-Ukrainian population census 2001. Available at: <http://2001.ukrcensus.gov.ua/eng/> [accessed 01.03.2019].

countries, Ukraine inherited the fourth largest Russian minority in proportion to its total population, after Kazakhstan, Latvia and Estonia.[11] According to the census, Russians concentrated in the east and south, with particularly high representation in the Donetsk and Luhansk oblasts.[12] Crimea was the only region where Russians constituted a majority (58.3%), outnumbering Ukrainians (24.3%) and indigenous Crimean Tatars (12%).[13] The 2001 census also exposed important linguistic divisions in the country. Ukrainian was a mother tongue for 67.5% of population (mostly in the west and centre), whereas Russian was identified as a mother tongue by 29.6% (mostly in the east and south).[14] The fact that many ethnic Ukrainians identified Russian language as their mother tongue suggested that divisions between Ukrainian ethnicity/language and Russian ethnicity/language were blurred.

The recent sociological surveys suggest that the ethnic composition of population has changed. According to the 2017 survey, 92% of respondents identified themselves as ethnic Ukrainians and 6% as ethnic Russians.[15] The first factor behind these changes is that Crimea and the parts of Donbas outside Ukraine's control were excluded from the surveys. The second factor is that the large number of those who previously identified themselves as both ethnic Ukrainians and Russians now identify themselves only as Ukrainians.[16] This change of attitude is the result of the Maidan and the Russia-Ukraine conflict (Section 2.6.2). The survey also revealed a slight shift in the attitudes towards languages: 68% identified Ukrainian as their mother tongue, 17% – both Ukrainian and Russian, and 14% – only Russian.[17] This proportion suggests, similarly as the 2001 census, that language is not a divisive factor since many ethnic Ukrainians still identify Russian as their mother tongue.

Ukraine's regional differences significantly affected internal politics and were one of the factors behind insufficient reforms (Section 2.3.2). These differences

[11] Kuzio, *Ukraine: State and Nation Building* (Routledge, 1998), 95.

[12] As of 2001, in the Donetsk oblast Ukrainians and Russians constituted 56.9% and 38.2%, respectively; and in the Luhansk oblast 58% and 39%, respectively: 2001 census (n 10).

[13] Ibid.

[14] Ibid.

[15] Razumkov Centre, sociological survey 2017: see Komarova, 'The number of supporters of pro-Russian parties in Ukraine is steeply decreasing – the expert', *Radio Svoboda*, 13.04.2017 (in Ukrainian).

[16] Ibid.

[17] Ibid.

emerged due to the historical factors, which need to be briefly recalled.[18] Ukraine traces its history back to Kyivan Rus – the East Slav Orthodox state of the 9th-13th centuries that included territories of modern Ukraine with the centre in Kyiv.[19] After the disintegration of Kyivan Rus, these territories were divided and re-divided by many different powers. The duration of being under Russian rule is the main factor that contributed to Ukraine's regional differences.

The territories of Ukraine's north, centre, east and south (including Crimea) were incorporated into the Russian Empire at the end of the 18th century. In 1922 these territories (except Crimea) became parts of the Ukrainian Soviet Socialist Republic (SSR). During 1922-1945, Crimea constituted a separate republic within the USSR – the Crimean Autonomous SSR. In 1945 it became part of the Russian SSR and in 1954 of the Ukrainian SSR. The northwest oblasts of Volyn and Rivne were also incorporated into the Russian Empire at the end of the 18th century, but after World War I they were given back to Poland until 1944, when they were integrated into the Ukrainian SSR. The situation in the west differed significantly. The five western oblasts of Lviv, Ternopil, Ivano-Frankivsk, Zakarpattia and Chernivtsi were united under the single rule of the Austro-Hungarian Empire in the mid-19th century. Following World War I, they were disintegrated again and divided between Poland, Czechoslovakia and Hungary. In 1944 these territories were integrated into the Ukrainian SSR. Thus, the common characteristic of the five western oblasts – and their major difference from the rest of Ukraine – is that they had never been under Russian rule prior to 1944. This explains why they are predominantly Ukrainian-speaking, host small Russian minorities and, upon independence, had the strongest Ukrainian identity. Following the break-up of the USSR, all the territories of the Ukrainian SSR became territories of modern Ukraine.

[18] The following historical background is based on Subtelny, *Ukraine: A History* (University of Toronto Press, 1988).

[19] It included also, inter alia, some parts of modern Belarus and Russia.

2.3 Democracy, the rule of law and human rights in Ukraine before the 2013-2014 Maidan Revolution

2.3.1 Ukraine's record

2.3.1.1 Stage I (1991-2004)

Leonid Kravchuk (1991-1994)

By the autumn of 1990, the Communist Party of the Ukrainian SSR was experiencing a growing split between 'national communists' and conservatives.[20] The former synthesized the ideology of national liberation provided by the democratic opposition with their own agenda of preserving power.[21] Leonid Kravchuk, the former communist leader, 'switched from communism to Ukrainian nationalism without a hitch'[22] and won the first post-independence presidential election in December 1991.

Weak institutional capacity was one of the main Soviet legacies of Ukraine. State apparatus of the Ukrainian SSR had never been designed to perform the functions of a sovereign state and the usurpation of power by the Communist Party left state institutions undeveloped and inexperienced.[23] Post-independence ex-Communist elites were determined not to change this. They opposed clear delineation of powers and instead were interested in a chaotic state structure which provided plenty opportunities for economic gain, known as 'rent seeking' or 'rent extraction'.[24] Ukraine did not adopt its own Constitution until 1996 (see below). During 1991-1995, the state structure was based on the 1978 Constitution of the Ukrainian SSR which lacked effective checks and balances between the President and the Verkhovna Rada (Ukraine's unicameral Parliament).[25] Moreover, the political elites remained uninterested in reforming the local self-government, judiciary and public

[20] Whitmore, *State-Building in Ukraine: The Ukrainian Parliament, 1990-2003* (RoutledgeCurzon, 2004), 29.
[21] Kuzio (n 11), 29.
[22] Åslund (n 5), 34.
[23] Whitmore (n 20), 3, 32.
[24] Åslund (n 5), 55-56; Wolczuk, 'Ukraine: Tormented Constitution-Making', in Zielonka (ed), *Democratic Consolidation in Eastern Europe* (OUP, 2001), 248-249.
[25] Whitmore (n 20), 32-33; Shapoval, 'President of Ukraine and the Executive' (2012) 2 *Visnyk of the National Prosecution Academy of Ukraine* 44, 44-45 (in Ukrainian).

prosecution.[26] As regards human rights, the unwillingness to fully abolish the death penalty was the main concern of observers.[27]

The rapidly worsening economic situation[28] triggered the early parliamentary and presidential elections in 1994. In the parliamentary elections, which were the first since Ukraine gained independence, 450 members of the Parliament were elected in the single-member constituencies. This system led to the absence of the deputies who could represent the whole population and blocked the proper development of political parties.[29] Being overall assessed as free and fair,[30] the elections brought to power the deeply polarized left and right, and the 'amorphous' centre, making the Verkhovna Rada weak, reactive and dependent on 'situational majorities'.[31]

Leonid Kuchma (1994-2004)

The 1994 presidential election brought to power Leonid Kuchma who also managed to secure his second term in 1999,[32] when numerous electoral violations were reported.[33]

Adoption of the Constitution with strong presidential powers was one of Kuchma's top priorities.[34] After troubled and prolonged drafting, during which the left insisted on parliamentarism and strong regional powers,[35] the Constitution was adopted by the Verkhovna Rada on 28 June 1996. Under the 1996 Constitution, Ukraine became a semi-presidential, or presidential-parliamentarian republic. The

[26] Kubicek, 'Delegative Democracy in Russia and Ukraine' (1994) 27:4 *Communist and Post-Communist Studies* 423, 430-435.

[27] Amnesty International, 'Annual Report 1993', 296-297, 'Annual Report 1994', 301-302.

[28] Åslund (n 5), 48-54.

[29] International Republican Institute, 'Ukraine: Election Observation Report', 27.03.1994, 6; Wilson and Bilous, 'Political Parties in Ukraine' (1993) 45:4 *Europe-Asia Studies* 693, 693-697.

[30] Parliamentary Assembly of the Council of Europe, Opinion 190 (1995) 'Application by Ukraine for membership of the Council of Europe', 26.09.1995, para 4.

[31] Whitmore (n 20), 37.

[32] The Communist leader Petro Symonenko was Kuchma's opponent in the second round of elections, where in the face of the 'communist threat' the majority of population mobilised behind Kuchma: Åslund (n 5), 120-121.

[33] These included 'widespread, systemic and co-ordinated' interference in the election campaign by state officials, unbalanced and biased media coverage and harassment of the opposition media: OSCE/ODIHR, 'Ukraine: presidential elections of 31 October and 14 November 1999', Final Report, 07.03.2000, 16-23, 26-28.

[34] Åslund (n 5), 85.

[35] Wolczuk (n 24), 254-258.

form of government was more balanced than in other post-Soviet states (with the exception of the Baltic states).[36] However, the Constitution did not ensure a clear separation of powers and created the basis for conflicts between the President and the Parliament, in particular regarding their role in the appointment/dismissal of the Cabinet of Ministers.[37] As a result, a 'weak' Cabinet of Ministers was forced to resign every time a conflict between the President and the Verkhovna Rada emerged.[38] The President also received considerable prerogatives regarding the legislative process and appointment of judges, and control over local state administrations, the Prosecutor General's Office and many central state agencies.[39]

In the context of the alienation with the Parliament, Kuchma soon began to rely on powerful businessmen, known as 'oligarchs'. Kuchma and the oligarchs were in a 'symbiotic relationship', whereby oligarchs received privileged access to economic resources in exchange for supporting Kuchma's political campaigns.[40] The 1998 parliamentary elections further strengthened the 'oligarchisation' of Ukraine's political system because in the Parliament oligarchs lobbied their interests and benefited from personal immunity.[41] Under the new election law, 50% of seats were allocated to the parties that received more than 4% of the vote in a single nationwide constituency; the other 50% belonged to the candidates winning a simple majority in single-member constituencies.[42] International observers reported irregularities during the elections.[43] The special relationship between the politics and big business resulted in stymied democratic processes, rampant corruption, lack of transparency and

[36] Ibid, 256-258, 260.

[37] Ibid, 258-266; Shapoval (n 25), 46-47; Parliamentary Assembly of the Council of Europe, Resolution 1179 (1999) 'Honouring of obligations and commitments by Ukraine', 27.01.1999, para 3.

[38] Yakovliev, 'Constitutional Experience of Changing the System of Government in Ukraine (2004-2010)' (2012) 58 *State and Law* 117, 120 (in Ukrainian).

[39] Whitmore (n 20), 38; Wilson, 'The Political Process in Ukraine: Democratisation or Virtualisation?', in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002), 40-44.

[40] Puglisi, 'The Rise of the Ukrainian Oligarchs' (2003) 10:3 *Democratization* 99, 100, 102; Åslund, 'The Ancien Régime: Kuchma and the Oligarchs', in Åslund and McFaul (eds), *Revolution in Orange: The Origins of Ukraine's Democratic Breakthrough* (Carnegie Endowment for International Peace, 2006), 10-23.

[41] Åslund (n 5), 117-119; Whitmore (n 20), 41-42.

[42] Wilson and Birch, 'Voting Stability, Political Gridlock: Ukraine's 1998 Parliamentary Elections' (1999) 51:6 *Europe-Asia Studies* 1039, 1041.

[43] These included incidents of violence, arrests of some candidates and governmental control over state media: OSCE/ODIHR, 'Ukraine: parliamentary elections of 29 March 1998', Final Report, 30.04.1998, 13-15, 16, 17-19.

accountability, disregard for the rule of law, and lack of economic reforms.[44] The judiciary remained unreformed and was subject to corruption, and the prosecutor's offices were criticised for holding excessive Soviet-like powers of supervision.[45] As will be shown below, the obscure links between the politics and big business have remained a problem in Ukraine during all stages.

Regarding human rights, the positive development was that Ukraine joined the Council of Europe in November 1995 and ratified the European Convention on Human Rights (ECHR) in 1997. The Ukrainian Constitution incorporated an impressive list of civil, political, social and economic rights,[46] many of which were directly inspired by the ECHR.[47] The death penalty was fully banned in 2000. Ukraine was also commended for an overall positive record of ensuring the rights of ethnic, linguistic and religious minorities.[48]

However, there were more setbacks than achievements. Repressions of the media critical of the authorities increased during the 1998 and 1999 elections. Censorship in a form of government's instructions on the media coverage was widespread.[49] In November 2000 the so-called 'Kuchmagate' leaked tapes implicated Kuchma in, inter alia, the murder of opposition journalist Georgiy Gongadze.[50] This and other instances of violence against journalists were rarely prosecuted.[51] Torture and ill-treatment in detention were relatively widespread.[52] Moreover, corruption and inadequate economic reforms limited social and economic rights, such as rights to own property, to work and to engage in entrepreneurial activity.[53] These problems were highlighted in the early judgments of the European Court of Human Rights

[44] Puglisi (n 40), 104-110.

[45] Freedom House, 'Freedom in the World 2001: Ukraine', 'Nations in Transit 2004: Ukraine'.

[46] Chapter II, Constitution of Ukraine.

[47] Gnatovskyy and Ioffe, 'Twenty Years of the ECHR in Ukraine', *Blog of the European Journal of International Law (EJIL)*, 18.09.2017.

[48] Freedom House, 'Freedom in the World 1999: Ukraine'.

[49] Ibid; Freedom House, 'Freedom in the World 2003: Ukraine'; Prytula, 'The Ukrainian Media Rebellion', in Åslund and McFaul (eds), *Revolution in Orange: The Origins of Ukraine's Democratic Breakthrough* (Carnegie Endowment for International Peace, 2006), 106-107.

[50] Karatnycky, 'Meltdown in Ukraine', *Foreign Affairs*, May/June 2001.

[51] Freedom House, 'Freedom of the Press 2003: Ukraine'; Amnesty International, 'Annual Report 2003', 260; Human Rights Watch, 'World Report 2003: Ukraine'.

[52] Amnesty International, 'Annual Report 1996', 307-308, 'Annual Report 2000', 247-248.

[53] Freedom House, 'Freedom in the World 1999: Ukraine', 'Freedom in the World 2003: Ukraine'.

(ECtHR) against Ukraine, where right to a fair trial, freedom from torture and protection of property were found to be violated most often.[54]

By the end of Kuchma's second term, observers argued that Ukraine was 'on the brink of "Belarusification" – open authoritarian rule by a President shown to be willing to use violence to maintain his hold on power'.[55] Nevertheless, this turbulent period led to a 'metamorphosis' of Viktor Yushchenko – reformist Prime Minister during 2000-2001[56] – into an opposition leader with a strong public base.[57] In the 2002 parliamentary elections his party won about a quarter of seats, signalling the growing strength of democratic forces.[58] The elections were held on the basis of mixed majoritarian and proportional system, but under the new improved legal framework. Irregularities were again reported.[59]

2.3.1.2 Stage II (2004-2009)

The growing popularity of Viktor Yushchenko, and the support of big and small businessmen who opposed oligarchs,[60] subsequently let him stand as the opposition candidate in the 2004 presidential election against the regime-endorsed candidate and the then Prime Minister Viktor Yanukovych. Widespread electoral fraud in favour of Yanukovych[61] sparked mass protests in November-December 2004, which became known as the 'Orange Revolution'.[62] The protests were not just in favour of Yushchenko, but more broadly for democracy, the rule of law and an end to the corruption of the Kuchma era.[63] Subsequently, the Supreme Court invalidated the

[54] Registry of the European Court of Human Rights, Annual Report 2004, 126.

[55] Kubicek, 'The European Union and Ukraine: Real Partners or Relationship of Convenience?', in Kubicek (ed), *The European Union and Democratization* (Routledge, 2003), 154.

[56] Åslund (n 5), 133-143, 145-150.

[57] Karatnycky, 'Ukraine's Orange Revolution', *Foreign Affairs*, March/April 2005.

[58] Freedom House, 'Nations in Transit 2003: Ukraine'; Nemyria, 'The Orange Revolution: Explaining the Unexpected', in Emerson (ed), *Democratisation in the European Neighbourhood* (Centre for European Policy Studies, 2005), 56.

[59] These included the abuse of state resources, instances of harassment of opposition media and imbalanced coverage in state media: OSCE/ODIHR, 'Ukraine: parliamentary elections of 31 March 2002', Final Report, 27.05.2002, 6-7, 12, 16-18.

[60] Åslund (n 5), 179.

[61] See OSCE/ODIHR, 'Ukraine: presidential election of 31 October, 21 November and 26 December 2004', Final Report, 11.05.2005.

[62] Orange was the colour of Yushchenko's campaign.

[63] Copsey, 'Europe and the Ukrainian Presidential Election of 2004', European Parties Elections and Referendums Network, Election Briefing No 16, 8.

fabricated result, paving the way for a re-run of the second round.[64] The old regime agreed for the re-run in exchange for, inter alia, the 2004/2006 constitutional reform which decreased the powers of the President and increased the role of the Verkhovna Rada and Prime Minister (see below). In the re-run, which was 'substantially closer' to meeting international standards for democratic elections,[65] Yushchenko won 52% of the votes, and Yanukovych 44%.

Viktor Yushchenko (2005-2009)

Viktor Yushchenko's presidency started with high hopes following the Orange Revolution and some improvements in the country's democratic performance were notable immediately.[66] The media grew independent from state interference and there were no restraints on the activities of civil society.[67] The parliamentary elections of 2006 and 2007 were held under an entirely proportional system where 450 deputies were elected in a single nationwide constituency under closed party lists. The progress with the elections during stage II was positively assessed.[68]

Nevertheless, the progress in other areas was poor or lacking. With the exception of some improvements in the education area, corruption remained one of the country's most serious problems. A comprehensive reform of the judiciary was not undertaken and courts remained one of the most corrupt state bodies.[69] The prosecutor's offices were not deprived of the excessive Soviet-style powers of oversight.[70] Senior officials from the Kuchma regime who had organised the 2004 electoral fraud and who had been implicated in corruption were not prosecuted.[71] The public broadcaster promised by the Orange team was not established, and oligarchs still controlled most of the nationwide media.[72] Local state administrations continued

[64] For more details on the Orange Revolution see Karatnycky (n 57).

[65] OSCE/ODIHR (n 61), 1, 37.

[66] The period of 2005-2009 was the only period in Ukraine's history when the Freedom House ranked the country as 'free'.

[67] Freedom House, 'Freedom of the Press 2006: Ukraine', 'Freedom in the World 2009: Ukraine'.

[68] OSCE/ODIHR, 'Ukraine: parliamentary elections of 26 March 2006', Final Report, 23.06.2006, 1-2; OSCE/ODIHR, 'Ukraine: pre-term parliamentary elections of 30 September 2007', Final Report, 20.12.2007, 1-3.

[69] Freedom House, 'Nations in Transit 2006: Ukraine', 'Nations in Transit 2009: Ukraine'.

[70] Freedom House, 'Countries at the Crossroads 2006: Ukraine'.

[71] Freedom House, 'Nations in Transit 2006: Ukraine', 'Nations in Transit 2007: Ukraine'.

[72] Freedom House, 'Freedom in the World 2006: Ukraine'.

to occupy the powers and resources of local councils, since there was no reform of the local self-government.[73]

The constitutional framework for the protection of human rights was not affected by the 2004/2006 constitutional changes and remained the same as during stage I. In 2008, three police officers were convicted of the murder of Georgiy Gongadze, but the evidence that implicated former President Kuchma in ordering the murder was ignored.[74] Ill-treatment in detention continued to be relatively widespread despite some improvements of the legal framework.[75] Ukraine became one of the countries with the highest number of applications to the ECtHR; the most common violations concerned the right to a fair trial.[76]

The recurring domestic political crises, which started from the split between President Yushchenko and Prime Minister Yuliya Tymoshenko in September 2005,[77] were one of the main reasons behind the lack of substantial reforms. The aforementioned post-Orange Revolution constitutional changes introduced in 2006 a parliamentary-presidential system of government with increased powers of the parliamentary coalition and the Prime Minister. Hence, the entire political agenda in 2005 was determined by the forthcoming 2006 parliamentary elections.[78] Following the elections, Viktor Yanukovych, Yushchenko's rival during the Orange Revolution, formed a coalition and was appointed the Prime Minister. Despite receiving increased powers under the new constitutional system, Yanukovych had little interest in reforms and corrupt practices gained new momentum.[79]

A further problem was that the constitutional amendments introduced a risky 'dual executive' approach that lacked an effective system of checks and balances between the President and the Prime Minister.[80] Conflicts between Yushchenko and

[73] Freedom House, 'Nations in Transit 2006: Ukraine'.

[74] Freedom House, 'Freedom of the Press 2009: Ukraine'.

[75] Amnesty International, 'Annual Report 2006', 266-267, 'Annual Report 2009', 337-338; Human Rights Watch, 'World Report 2009: Ukraine'.

[76] Registry of the European Court of Human Rights, Annual Report 2009, 145, 156.

[77] Åslund (n 5), 208-209.

[78] Freedom House, 'Nations in Transit 2006: Ukraine'; Haran, 'From Viktor to Viktor: Democracy and Authoritarianism in Ukraine' (2011) 19:2 *Demokratizatsiya: The Journal of Post-Soviet Democratization* 93, 95.

[79] Åslund (n 5), 217-219.

[80] Freedom House, 'Nations in Transit 2007: Ukraine'.

Yanukovych culminated in the early parliamentary elections in September 2007, following which the Orange Revolution allies united and Tymoshenko was appointed the Prime Minister again.[81] Nevertheless, in-fighting continued until the end of Yushchenko's term.[82] Another reason for the poor reform record was that political parties generally continued to serve interests of their leaders and oligarchs, and lacked coherent ideologies.[83] Corrupt links between the business and the politics were not eliminated.[84]

2.3.1.3 Stage III (2010-2013)

A continuous split between the Orange elites was one of the factors that helped Yanukovych strengthen his position and eventually defeat Tymoshenko in the 2010 presidential election (49% to 45.5%).

Viktor Yanukovych (2010-2013)

During stage III, all the major achievements of stage II were negated and there was regression in other areas. Immediately after the election Yanukovych focused on the centralisation of power. Under his pressure, the Constitutional Court allowed the formation of a parliamentary coalition by defectors from other factions, letting him form a coalition and appoint loyalist Mykola Azarov as the Prime Minister. Furthermore, in September 2010 the Constitutional Court judges close to Yanukovych cancelled the 2004/2006 constitutional reform and reinstated the presidential-parliamentary system of the Kuchma era.[85] Thus, the President's dominance over the Verkhovna Rada and the Cabinet of Ministers was formalised. Yanukovych also gained control over the judiciary, prosecutor's offices, security services and oblast administrations.[86] Regional ties to Yanukovych's native Donetsk

[81] Wolowski, 'Ukrainian Politics After the Orange Revolution – How Far From Democratic Consolidation?', in Fischer (ed), *Ukraine: Quo Vadis*, Institute for Security Studies, Chaillot Paper No 108, February 2008, 26-34.

[82] Freedom House, 'Nations in Transit 2009: Ukraine'.

[83] Wolowski (n 81), 39-42; Freedom House, 'Freedom in the World 2009: Ukraine'.

[84] Puglisi, 'A Window to the World? Oligarchs and Foreign Policy in Ukraine', in Fischer (ed), *Ukraine: Quo Vadis*, Institute for Security Studies, Chaillot Paper No 108, February 2008, 59-65.

[85] Haran (n 78), 97-98.

[86] Freedom House, 'Nations in Transit 2011: Ukraine'; Motyl, 'The New Political Regime in Ukraine – toward Sultanism Yanukovych-style?', Cicero Foundation, Great Debate Paper No 10/06, July 2010, 2-3.

or personal ties to his family became the main criteria for major government appointments.[87]

Yanukovych also tried to marginalise the opposition. In October 2011 Tymoshenko was convicted of abuse of office and imprisoned, and some members of her Cabinet were also prosecuted and jailed.[88] The 2012 parliamentary elections, which were held under the mixed electoral system similar to the one used during the Kuchma era (stage I), were found to lack a 'level playing field' and were a step back from the democratic progress achieved during Yushchenko's presidency (stage II).[89] Although the opposition forces won the majority on proportional party lists, the use of administrative resources in single-member constituencies let the regime obtain the overall majority, further cementing Yanukovych's control over the Parliament and the Government.[90]

Corruption reached unprecedented levels. Yanukovych's family and close entourage – known as 'the Family' – not only benefited from corruption schemes, but also fully controlled them, at times even threatening the economic interests of oligarchs who initially supported Yanukovych.[91] The judiciary lacked independence and was used to marginalise the opposition.[92] Pressure on the media increased, leading to the politicisation of state media and self-censorship of private media.[93] Attacks against journalists and human rights defenders who sought to expose human rights violations and corruption were reported.[94] There were also continuing concerns over torture and ill-treatment in detention.[95] The poor situation with human rights was illustrated by the fact that in 2013 Ukraine became a leader in the number of

[87] Freedom House, 'Nations in Transit 2013: Ukraine'; Kudelia, 'Ukraine in Context: What Happens When Authoritarians Fall', *Foreign Affairs*, 27.02.2014.

[88] Freedom House, 'Nations in Transit 2012: Ukraine'; Amnesty International, 'Annual Report 2012', 350, 'Annual Report 2013', 282.

[89] OSCE/ODIHR, 'Ukraine: parliamentary elections of 28 October 2012', Final Report, 03.01.2013, 1.

[90] Freedom House, 'Nations in Transit 2013: Ukraine'.

[91] Wilson, *Ukraine Crisis: What It Means for the West* (Yale University Press, 2014), 51-60.

[92] Freedom House, 'Nations in Transit 2014: Ukraine'.

[93] Human Rights Watch, 'World Report 2011: Ukraine'.

[94] Amnesty International, 'Annual Report 2012', 350; Human Rights Watch, 'World Report 2013: Ukraine'.

[95] Amnesty International, 'Annual Report 2011', 335-336, 'Annual Report 2013', 280-282.

applications submitted to the ECtHR; the most common violations concerned the right to a fair trial.[96]

2.3.2 Internal weakness: divided and ambivalent population

Weak national unity

Despite the presence of a large Russian minority, Ukrainian nationalism never rose to dangerous levels and Ukraine has never experienced ethnic violence.[97] Notably, in the 1991 referendum all oblasts voted in favour of Ukraine's independence, including 54% in Crimea,[98] where ethnic Russians constituted a majority. Although different oblasts supposedly had different motives – the west supported independence per se, while the east hoped that independence would lead to economic improvement[99] – the overall referendum result testified that there was no real secessionist threat.

The pro-Russian movement emerged in Crimea later, during 1992-1995. However, the pro-Russian sentiment was weak overall and the movement collapsed due to internal quarrels, relatively weak support from Russia, and a worsening socio-economic situation in Crimea.[100] The 1996 Constitution described Ukraine as a unitary state within which Crimea was granted a special status of the Autonomous Republic. Being the 'inalienable part' of Ukraine, Crimea was given, inter alia, the right to have its own Constitution, Parliament and Council of Ministers, although Crimea's laws had to be in conformity with the Ukrainian Constitution and laws.[101] A peculiar feature of Crimea was that in 1997 Ukraine agreed to lease some of its naval facilities in the port of Sevastopol to the Russian Black Sea Fleet initially until 2017,[102] and later until 2042.[103] Nevertheless, after 1995 there was no separatist

[96] Registry of the European Court of Human Rights, Annual Report 2013, 199, 201.

[97] Dobriansky, 'Nationalism and Democracy in Ukraine' (1995) 3:2 *Demokratizatsiya: The Journal of Post-Soviet Democratization* 125, 126-129.

[98] Åslund (n 5), 32.

[99] Birch, 'Interpreting the Regional Effect in Ukrainian Politics' (2000) 52:6 *Europe-Asia Studies* 1017, 1027-1028.

[100] Åslund (n 5), 56-57; Harasymiw, 'Transition to Democracy in Ukraine' (1992) 3 *Demokratizatsiya: The Journal of Post-Soviet Democratization* 1, 5; Hedenskog, 'Crimea after the Georgian Crisis', Swedish Defence Research Agency, November 2008, 13.

[101] Chapter X, Constitution of Ukraine.

[102] The Soviet Black Sea Fleet, which was located in Sevastopol until 1991, was divided between Ukraine and Russia in 1997, establishing two independent national fleets: Ukraine-Russia Treaty on the Status and Conditions of the Black Sea Fleet of the Russian Federation on the Territory of Ukraine, 1997.

movement in Crimea. Similarly, there was no secessionist threat in the eastern oblasts. The dominance of Ukrainians, blurred lines between Russian-speaking Ukrainians and Russians, and the integration of local business and political elites at the central level structures deterred separatist moods in the eastern oblasts.[104]

While regional differences did not result in ethnic violence and did not pose a real risk of the country's break-up, they still had a profound effect on Ukraine's politics. Ukrainian national identity was traditionally stronger in the west and centre, while the east and south were more accepting of the idea of commonality of the Ukrainian and Russian people and close Ukraine-Russia ties. These differences resulted in a weak county-wide 'sense of togetherness and belonging'.[105]

This situation had two major implications. First, central authorities had to balance different regional interests. President Kravchuk, for example, justified the lack of reforms by the need to focus on state and nation building.[106] Secondly, politicians often exploited regional differences as a 'bargaining card' in domestic politics. In the 2004 election Yanukovych and his allies rendered the electorate in the east and south hostile towards Yushchenko by portraying him as a fierce Ukrainian nationalist.[107] In the 2006 parliamentary and 2010 presidential elections Yanukovych mobilised voters in the east and south by capitalising on their sense of exclusion after the Orange Revolution, claiming that there were 'irreconcilable differences' between different parts of Ukraine, and promising to upgrade the status of the Russian language.[108] By exploiting regional differences, political parties developed 'regional profiles' instead of advancing appealing nation-wide ideologies.[109] On the positive

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[103] Ukraine-Russia Treaty on the Black Sea Fleet of the Russian Federation on the Territory of Ukraine, 2010.

[104] Kuzio (n 11), 74-93, 95-98; Wolczuk, 'Whose Ukraine? Language and Regional Factors in the 2004 and 2006 Elections in Ukraine' (2005/2006) 5 *European Yearbook of Minority Issues* 521, 539.

[105] Kulyk, 'National Identity in Ukraine: Impact of Euromaidan and the War' (2016) 68:4 *Europe-Asia Studies* 588, 590-594.

[106] Åslund (n 5), 34-35; Kuzio (n 11), 38-41, 56.

[107] Kuzio, 'Everyday Ukrainians and the Orange Revolution', in Åslund and McFaul (eds), *Revolution in Orange: The Origins of Ukraine's Democratic Breakthrough* (Carnegie Endowment for International Peace, 2006), 53, 60.

[108] Wolczuk (n 104), 540, 542.

[109] Ibid, 541-542.

note, however, these differences '[gave] losers a political base that [couldn't] be taken away', thus serving as a 'crucial ingredient' of pluralism in the country.[110]

Weak democratic traditions

It has been argued that the regime change in the post-Soviet Republics directly depended on the outcome of the 1990 republican parliamentary elections. Where the democratic forces won the majority of votes (the Baltic states), democracy was imposed from below.[111] In contrast, where the majority belonged to the Communists (e.g. Belarus), authoritarianism was imposed from above.[112] Ukraine, however, belonged to neither of these groups and was categorised instead as a 'stalemated transition'.[113] Unlike the Baltic states, there was no nationwide pro-democratic movement in Ukraine before the 1990 elections because pro-democratic forces had their stronghold mainly in the west and to a lesser extent in the centre of the country.[114] Historical factors accounted for this. As noted above, before being united in the Ukrainian SSR, Ukraine's oblasts were subject to different political systems. Only the western oblasts had experience with some democratic traditions of the Austro-Hungarian Empire and post-World War I Poland, Czechoslovakia and Hungary.[115] Communism never established deep roots in the western oblasts, making them similar to the Baltic states.[116]

This context influenced subsequent developments. First, the existence of democratic forces – however weak – prevented Ukraine from sliding into full authoritarianism. Secondly, the nationalist reorientation of Communists defused the conflicts between the 'friends and foes' of the old regime and averted open confrontation similar to the one that happened in Russia in October 1993.[117] Thirdly, the domination of the ex-Communist leaders stymied the development of liberal

[110] Sestanovich, 'Ukraine's Democratic Strengths', *Washington Post*, 19.11.2004.
[111] McFaul, 'The Fourth Wave of Democracy and Dictatorship: Noncooperative Transitions in the Postcommunist World' (2002) 54:2 *World Politics* 212, 228-232.
[112] Ibid, 232-233.
[113] Ibid, 234-239.
[114] Kuzio, 'National Identity and Civil Society in Ukraine', *Radio Free Europe/Radio Liberty Newsline*, 30.01.2002.
[115] Wilson and Bilous (n 29), 696; Birch (n 99), 1021-1026.
[116] Kuzio, *Ukraine: Democratization, Corruption, and the New Russian Imperialism* (Praeger, 2015), 29.
[117] McFaul (n 111), 236.

democracy.[118] As discussed above, the ex-Communist ruling elites were preoccupied with preserving power and securing their economic privileges, so building nation-wide democracy and promoting liberal values was not their objective.

The uneven experience with democratic traditions and low level of national integration prevented the emergence of the all-Ukrainian pro-democratic movement and strong civil society also in the 2000s.[119] The 'Ukraine without Kuchma' protests, triggered by the 'Kuchmagate', failed to become a nationwide movement because while the west and centre of the country were mostly anti-Kuchma, the east and south remained relatively passive.[120] Similarly, the Orange Revolution mobilised protesters predominantly from the west and centre, further demonstrating that civil society was 'heavily regionalised and lacking a pan-national presence'.[121]

2.3.3 External threat: assertive Russia

The major external threats to democracy, the rule of law and human rights in Ukraine during stages I-III were coming from Russia. Before examining why and how Russia threatened democratic processes in Ukraine, it is necessary to understand why Ukraine is important for Russia and why it was particularly vulnerable to Russia's pressure before autumn 2013.

Since the early 1990s Russia has perceived Ukraine's independence as an abnormality and as a threat to its standing as a global power.[122] The first reason for this is that Russia regards its neighbours as the sphere of its 'special interests' and dominance over them is seen as a necessary condition for being 'a great power'.[123] Secondly, Russia claims descent from Kyivan Rus and thus considers Ukraine as a

[118] Ibid.

[119] Chudowsky and Kuzio, 'Does Public Opinion Matter in Ukraine? The Case of Foreign Policy' (2003) 36 *Communist and Post-Communist Studies* 273, 276-282.

[120] Kuzio (n 114).

[121] Kuzio, 'Political Culture and Democracy: Ukraine as an Immobile State' (2011) 25:1 *East European Politics and Societies* 88, 90. See further Kuzio (n 107), 62-66.

[122] Brzezinski, 'The Premature Partnership', *Foreign Affairs*, March/April 1994.

[123] Potemkina and Kaveshnikov, 'EU and Russia in Search of Strategic Partnership', in Maiani, Petrov and Mouliarova (eds), *European Integration Without EU Membership: Models, Experiences, Perspectives*, EUI Working Paper, Max Weber Programme, 2009/10, 52; Stoner, 'Putin's Search for Greatness: Will Ukraine Bring Russia the Superpower Status It Seeks?', *Foreign Affairs*, 02.03.2014.

part of its own identity.[124] Thirdly, Ukraine bears particular economic importance for Russia as the transit country of Russian gas to the EU.[125]

After the collapse of the USSR, Russia undertook several attempts at regional re-integration of the former Soviet states. In 1991 the Commonwealth of Independent States (CIS) was established.[126] However, internal transformation and the 1998 financial crisis limited Russia's assertive role during the 1990s,[127] rendering the CIS a 'soft' framework for relations.[128] After Vladimir Putin came to power, Russia's regional strategy became more robust and pragmatic. In the early 2000s Russia put forward the idea of the Single Economic Space (SES) between Russia, Belarus, Kazakhstan and Ukraine, which was to develop in three stages: the free trade area (FTA), the customs union, and the economic union.[129] In 2010-2011 Russia developed the idea of the Eurasian Customs Union (EACU) between the same 'big four', with supranational bodies and a much 'harder' legal framework, which was to lead to the eventual Eurasian Economic Union (EAEU).[130] The EACU/EAEU was largely Russia's reaction to the Eastern Partnership (EaP), under which in 2009 the EU offered to Ukraine, Belarus, Moldova, Georgia, Armenia and Azerbaijan Association Agreements (AAs) with Deep and Comprehensive Free Trade Areas (DCFTAs).[131]

Ukraine's reactions to Russia's integration proposals were highly cautious. For Ukraine the CIS served the purpose of peaceful completion of the USSR

[124] Torbakov, 'Apart from Russia or Part of Russia: A Sad Saga of Ukrainian-Russian Relations' (2001) 9:4 *Demokratizatsiya: The Journal of Post-Soviet Democratization* 588, 591-592; Sherr, 'Russia and Ukraine: A Geopolitical Turn?', in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002), 158-159.

[125] Sushko, 'The Impact of Russia on Governance Structures in Ukraine', German Development Institute, Discussion Paper, 24/2008, 9-10.

[126] The CIS was founded on 8 December 1991 by Russia, Belarus and Ukraine. Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Tajikistan and Uzbekistan joined subsequently, while the Baltic states (Latvia, Lithuania and Estonia) never joined.

[127] Kobrinskaya, 'The Post-Soviet Space: From the USSR to the Commonwealth of Independent States and Beyond', in Malfliet, Verpoest and Vinokurov (eds), *The CIS, the EU and Russia: The Challenges of Integration* (Palgrave Macmillan, 2007), 17-18.

[128] Dragneva, 'Is "Soft" Beautiful? Another Perspective on Law, Institutions, and Integration in the CIS' (2004) 29 *Review of Central and East European Law* 279, 285-311.

[129] Vinokurov, 'Russian Approaches to Integration in the Post-Soviet Space in the 2000s', in Malfliet, Verpoest and Vinokurov (eds), *The CIS, the EU and Russia: The Challenges of Integration* (Palgrave Macmillan, 2007), 29-32.

[130] Dragneva and Wolczuk, *Ukraine Between the EU and Russia: The Integration Challenge* (Palgrave, 2015), 66-67.

[131] Chapter 3, Sections 3.5.3, 3.6.3 and 3.7.4.

breakdown.[132] The country formally became a founder and associate, but not a member and refused to participate in security arrangements under the CIS.[133] Ukraine joined the SES in 2003 but was interested only in the FTA.[134] After Yushchenko came to power, negotiations on the SES stalled. Later, during Yanukovych's presidency, Ukraine became a member of the CIS-wide FTA and only an observer in the EACU.[135]

Yet it was not easy for Ukraine to oppose Russia's initiatives. First, Ukraine depended on trade with Russia and on Russian energy supplies, especially after the 2009 gas contract.[136] The uneven relationship allowed Russia to put pressure on Ukraine to advance its political aims. For example, Ukraine's gas debts were one of the reasons why in the early 1990s Kyiv agreed to sell some parts of the Ukrainian Black Sea Fleet to Russia and in 1997 agreed to lease some of its naval facilities in Crimea to the Russian Black Sea Fleet.[137] Moreover, in exchange for a gas price discount, in 2006 Prime Minister Yanukovych promised to give up the idea of Ukraine's integration with the North Atlantic Treaty Organisation (NATO),[138] and in 2010 (after becoming President) agreed to extend the lease of the Russian Black Sea Fleet in Sevastopol until 2042.[139] One of Ukraine's strongest assets has been its gas transit system, which, however, has not been enough to balance the relations.[140] Secondly, Ukraine did not have a strong international counterbalance to its relations with Russia. As will be discussed in Chapter 3, since the early 1990s Ukraine has been hopeful of the EU membership, although the EU never recognised Ukraine as a

[132] Fischer, 'Ukraine as a Regional Actor', in Fischer (ed), *Ukraine: Quo Vadis*, Institute for Security Studies, Chaillot Paper No 108, February 2008, 133.

[133] Willerton and Beznosov, 'Russia's Pursuit of its Eurasian Security Interests: Weighing the CIS and Alternative Bilateral-Multilateral Arrangements', in Malfliet, Verpoest and Vinokurov (eds), *The CIS, the EU and Russia: The Challenges of Integration* (Palgrave Macmillan, 2007), 59.

[134] Van der Loo and Van Elsuwege, 'Competing Paths of Regional Economic Integration in the Post-Soviet Space: Legal and Political Dilemmas for Ukraine' (2012) 37 *Review of Central and East European Law* 421, 435.

[135] Dragneva and Wolczuk (n 130), 79.

[136] Dragneva and Wolczuk, 'Between Dependence and Integration: Ukraine's Relations with Russia' (2016) 68:4 *Europe-Asia Studies* 678, 680-683.

[137] Romaniuk, 'From SCSE to ATO: the stages of Russian aggression', *Ukrayinska Pravda*, 23.08.2017 (in Ukrainian).

[138] Wolowski (n 81), 48.

[139] Lough, 'Russia's Energy Diplomacy', Chatham House, May 2011, 9.

[140] Ibid, 5.

candidate. Ukraine also pursued cooperation with NATO, albeit less consistently.[141] The NATO Membership Action Plan for Ukraine was supported by the US, but was blocked by Germany and France during the 2008 Bucharest NATO Summit due to the fears of aggravating Russia.[142] The NATO Members then made an ambiguous statement that Ukraine and Georgia 'will become members of NATO',[143] without adding any detail.

Within this broader geopolitical context, how were Russia's interests in Ukraine connected to democracy, the rule of law and human rights in Ukraine? To start with, throughout the 1990s the Yeltsin administration was quite cooperative towards the West and supported, at least in part, economic and political reforms in Russia and, by extension, in its neighbourhood.[144] The situation changed with Putin coming to power and the growth of 'managed democracy' in Russia.[145] Moscow supported Kuchma and his illiberal practices because they extended the political distance between Ukraine and the West. For the same reasons, Russia supported Yanukovych as Kuchma's successor.[146] There is ample evidence that Russian 'political technologists' were involved in the anti-Yushchenko campaign and voter fraud during Ukraine's 2004 presidential election.[147]

The Orange Revolution came as a 'humiliating defeat for Putin and a setback for his hegemonic inclinations'.[148] First, Russia perceived the Revolution as a Western-backed coup designed to weaken its standing in the region.[149] Secondly, the Orange Revolution demonstrated that Russia failed to export its 'managed

[141] Sherr, 'Ukraine and NATO: A Reviving Partnership?', in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002), 139-152.

[142] Traynor, 'NATO Allies Divided Over Ukraine and Georgia', *The Guardian*, 02.12.2008.

[143] NATO Bucharest Summit Declaration, Press Release (2008) 049, 03.04.2008, para 23.

[144] Petrov and Serdyuk, 'Ukraine: the Quest for Democratization between Europe and Russia', in Magen and Morlino (eds), *International Actors, Democratization and Rule of Law: Anchoring Democracy?* (Routledge, 2009), 194.

[145] On Russia's non-acceptance of Western-type democracy see Petrov, 'Quid Russian Democracy?', in Emerson (ed), *Democratisation in the European Neighbourhood* (Centre for European Policy Studies, 2005), 64-70; Krastev, 'Democracy's "Doubles"' (2006) 17:2 *Journal of Democracy* 52; Trenin, 'Russia Leaves the West', *Foreign Affairs*, July/August 2006.

[146] Sushko (n 125), 11, 22-23, 25.

[147] For example, Petrov and Ryabov, 'Russia's Role in the Orange Revolution', in Åslund and McFaul (eds), *Revolution in Orange: The Origins of Ukraine's Democratic Breakthrough* (Carnegie Endowment for International Peace, 2006), 148-160.

[148] Karatnycky (n 57).

[149] Ambrosio, 'Insulating Russia from a Colour Revolution: How the Kremlin Resists Regional Democratic Trends' (2007) 14:2 *Democratization* 232, 234.

democracy' model to Ukraine.[150] Therefore, democratisation in Ukraine was seen as dangerous not only for Russia's national security, but also for the regime security.[151] As a result, Russia started resisting democracy spreading in the CIS through three strategies: restricting the rights of foreign NGOs operating in Russia ('insulate'), supporting authoritarianism in Belarus ('bolster'), and undermining the Ukrainian Government in order to show Ukraine's transition as chaotic ('subvert').[152] The examples of such undermining tactics were the 2006 and 2009 Ukraine-Russia gas crises, when Russia cut off gas supplies and demanded increased prices.[153]

Russia also started projecting its 'soft power' in Ukraine by supporting pro-Russian NGOs, media, Orthodox Church of Moscow Patriarchate, and business networks.[154] The concept of the Russian World (*Russkiy Mir*) was strengthened as an ideological tool aimed at countering Western values of democracy and liberalism by portraying Russia as a defender of 'traditional' or 'conservative' Orthodox values at home and abroad.[155] Later, Yanukovych's semi-authoritarianism played well into Russia's interests, ensuring distance between Ukraine and the West and proving that Russia's model of governance worked well in the post-Soviet area.[156] It was within this wider context that the Russia-Ukraine conflict erupted in 2014.

2.4 The 2013-2014 Maidan Revolution

In November 2013 President Yanukovych was expected to sign the AA with the EU. The AA was not designed as a pre-accession agreement, yet it provided for Ukraine's

[150] Fischer (n 132), 135-137.

[151] Ambrosio (n 149), 234, 237, 247.

[152] Ibid, 238-247.

[153] Ibid, 246-247.

[154] Krastev, 'Russia's Post-Orange Empire', Open Democracy, 20.10.2005; Bogomolov and Lytvynenko, 'A Ghost in the Mirror: Russian Soft Power in Ukraine', Chatham House, Briefing Paper, January 2012, 4-16.

[155] Wilson (n 91), 30-35; Dundovich, '"New Values" for a New "Great Russia"', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 134-135.

[156] Samokhvalov, 'Relations in the Russia-Ukraine-EU Triangle: "Zero-Sum Game" or Not?', Institute for Security Studies, Occasional Paper No 68, September 2007, 27-29, 31.

economic integration with the EU through the DCFTA. The AA was therefore a powerful instrument for counterbalancing the relations with Russia.[157]

Russia tried to entice Ukraine away from the AA by, inter alia, threatening protective measures and actually starting a 'trade war' in summer 2013.[158] It put similar pressure on other EaP countries, most notably Armenia which, as a result, abandoned the AA/DCFTA framework and joined the EAEU.[159] Ukraine's economy was shrinking and Yanukovych needed financial resources in order to secure his re-election in 2015. He eventually succumbed to Russia's pressure and refused to sign the AA because a $15 billion loan and a reduced gas price offered by Russia did not require democratic reforms.[160]

The U-turn on the AA triggered peaceful pro-EU protests, which became known initially as 'Euromaidan'.[161] However, the use of force against protesters turned the pro-EU protests into revolution,[162] widely referred to as 'Maidan'[163] or the 'Revolution of Dignity'. Starting from that point, the protests became more about saving Ukraine's democracy and putting an end to the abuse of power rather than just about the AA.[164] The regime then resorted to lethal force, leaving more than 100 protesters dead. At the end of February 2014, under EU mediation, Yanukovych agreed for, inter alia, an early presidential election.[165] However, soon after that, Yanukovych and his allies voluntarily left Ukraine and fled to Russia.[166]

[157] Chapter 3, Sections 3.5.1, 3.6.1, 3.7.1 and 3.7.2.

[158] Dragneva and Wolczuk (n 130), 67-70, 80.

[159] Gromadzki, 'The Eastern Partnership After Five Years: Time for Deep Rethinking', European Parliament, Directorate-General for External Policies, Policy Department, 2015, 15-16, 18-19.

[160] Dragneva and Wolczuk (n 130), 84-87, 91-92.

[161] Onuch and Sasse, 'The Maidan in Movement: Diversity and the Cycles of Protest' (2016) 68:4 *Europe-Asia Studies* 556, 572.

[162] Kudelia (n 87).

[163] 'Maidan' in the Ukrainian language means 'square' and refers to the Independence Square in Kyiv – the main site of the protests.

[164] Onuch and Sasse (n 161), 568, 572.

[165] On the role of the EU see Chapter 8, Section 8.2.

[166] For a detailed overview of the Maidan protests see Wilson (n 91), 66-98.

2.5 The Russia-Ukraine conflict

Annexation of Crimea and the conflict in Donbas

At the end of February 2014, Russian troops without insignia invaded Crimea. After holding the so-called 'referendum' in Crimea, on 18 March 2014 Russia annexed the peninsula.[167] The 'referendum' is widely deemed invalid, and the annexation is considered to be illegal and in violation of international law.[168] The Office of the Prosecutor of the International Criminal Court (ICC) found, in its preliminary analysis, that the situation in Crimea amounts to an international armed conflict between Ukraine and Russia and to an on-going state of occupation.[169]

The conflict in Donbas started in April 2014, when, with the support of Russia, local armed groups seized administrative buildings in the Donetsk and Luhansk oblasts, and proclaimed the so-called 'Donetsk People's Republic' ('DNR') and 'Luhansk People's Republic' ('LNR'). Ukraine managed to retake much of the territory, triggering a reinforced Russian military support to the armed groups.[170] Russia portrays the conflict as Ukraine's 'internal conflict'.[171] However, there is ample evidence of direct Russian military involvement in Donbas.[172] Moreover, there is evidence that Russia supplied the *Buk* launcher that was used to down the MH17 flight.[173] In its preliminary analysis, the ICC's Office of the Prosecutor found that a non-international armed conflict and Russia-Ukraine international armed conflict run in parallel in Donbas; it is now assessing whether the two can be seen as a single

[167] For a detailed overview of the annexation of Crimea see ibid, 110-115.

[168] UN General Assembly, Resolution No 68/262 'Territorial Integrity of Ukraine', UN Doc. A/RES/68/262, 27.03.2014; Parliamentary Assembly of the Council of Europe, Resolution No 1990 (2014) 'Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation', 10.04.2014, para 3.

[169] ICC Office of the Prosecutor, Report on Preliminary Examination Activities 2016, 14.11.2016, para 158.

[170] For a detailed overview of the early stages of the conflict see Wilson (n 91), 126-131, 139-143.

[171] President of the Russian Federation, Decree 'On the adoption of the Concept of external policy', No 640, 30.11.2016, para 56.

[172] For example, 'New Satellite Imagery Exposes Russian Combat Troops Inside Ukraine', NATO SHAPE, 28.08.2014; Case and Anders, 'Putin's Undeclared War: Summer 2014 – Russian Artillery Strikes against Ukraine', Bellingcat, 21.12.2016; 'NATO Chief Calls on Russia to Remove "Thousands of Troops" From Ukraine', *Radio Free Europe/Radio Liberty*, 10.07.2017.

[173] MH17 was a passenger jet on route from Amsterdam to Kuala Lumpur that was shot down on 17 July 2014 while flying above the Donetsk oblast, killing all 298 people on board: see 'Update in criminal investigation of MH17 disaster', Joint Investigation Team, 28.05.2018. Available at: <https://www.om.nl/onderwerpen/mh17-crash/@103196/update-criminal-0/> [accessed 01.03.2019].

international armed conflict.[174] The conflict remains active and, as of January 2019, has claimed at least 12,800 lives, including civilians, the Ukrainian military and Russia-backed armed groups.[175]

Russia's actions in Crimea and Donbas were triggered by the same two fears that had emerged after the Orange Revolution. First, the Maidan Revolution was seen as the latest episode in the West's attempts to bring former Soviet Republics – primarily Ukraine, Georgia and Moldova – into the Western orbit.[176] It became obvious that Russia failed to pull Ukraine into the EAEU, which currently includes Russia, Belarus, Armenia, Kazakhstan and Kyrgyzstan. Secondly, the Maidan threatened to have a 'contagious' effect, challenging authoritarianism in Russia and in the CIS more broadly.[177] However, the Maidan was perceived by the Kremlin as a much greater threat than the Orange Revolution and 'the greater the perception of threat by Russia, the harsher its response has been'.[178]

The annexation of Crimea was underpinned by three main motives: to punish Ukraine for its pursuit of a pro-Western orientation, to send a signal to Ukraine and the EU about Russia's willingness to act when it believes that its interests are being ignored, and to 'restore justice' by returning Crimea to Russia.[179] The fear that Russia's Black Sea Fleet could get evicted from Crimea arguably also played the role.[180]

In contrast, Russia's strategy in Donbas has been much more nuanced. Initially Putin hoped to foment an uprising of Russian-speakers in the east and south of Ukraine in an attempt to dismember it.[181] This project, known as 'Novorossiya',[182]

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[174] ICC Office of the Prosecutor (n 169), paras 168-170.

[175] UN OHCHR Human Rights Monitoring Mission to Ukraine, as quoted in 'UN: the conflict in the east has claimed almost 13,000 lives', *Deutsche Welle*, 21.01.2019 (in Ukrainian).

[176] Lutsevych, 'Agents of the Russian World: Proxy Groups in the Contested Neighbourhood', Chatham House, April 2016, 6-7.

[177] Krastev, 'Russian Revisionism: Putin's Plan for Overturning the European Order', *Foreign Affairs*, 03.03.2014; Snyder, 'The Battle in Ukraine Means Everything', *New Republic*, 11.05.2014; 'A Hollow Superpower', *The Economist*, 19.03.2016.

[178] Delcour and Wolczuk, 'Spoiler or Facilitator of Democratization? Russia's Role in Georgia and Ukraine' (2015) 22:3 *Democratization* 459, 469.

[179] Dragneva and Wolczuk (n 130), 103.

[180] Treisman, 'Why Putin Took Crimea: The Gambler in the Kremlin', *Foreign Affairs*, May/June 2016.

[181] Dragneva and Wolczuk (n 130), 104-105.

failed to receive support.[183] Russia then started demanding Ukraine's federalisation in order to allow the self-proclaimed 'DNR' and 'LNR' to serve as Russian quasi-protectorates.[184] The idea of federalisation also did not find support among Ukraine's population.[185] Currently Russia aims to get a special status for Donbas that would enable it to block Ukraine's reforms and integration with the EU and NATO (see below). In addition, by its actions in Crimea and Donbas, Russia wants to show to its domestic audience and the wider CIS that rising up against authoritarian regimes leads to chaos.[186]

Settlement: diplomatic efforts

There have been no diplomatic frameworks aiming to return Crimea to Ukraine. Given that the annexation is highly popular in Russia (including among the opposition), the return is unimaginable in the foreseeable future.[187] In contrast, regarding Donbas, there have been three main diplomatic initiatives. The first was the April 2014 'Geneva format' dialogue between Ukraine, Russia, the EU and the US,[188] which failed to bring a solution. Under the second concerted effort, in September 2014, the Trilateral Contact Group, consisting of the representatives from Ukraine, Russia and the Organisation for Security and Cooperation in Europe (OSCE), agreed the so-called Minsk I memorandum.[189] However, the ceasefire under Minsk I never worked.

In February 2015, the third initiative was undertaken in the 'Normandy format', involving Ukraine, Russia, Germany and France. The resulting Minsk II

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[182] The term means 'new Russia' and was used during the times of the Russian Empire to refer to the eastern and southern oblasts of Ukraine.

[183] Toal and O'Loughlin, 'What people in southeast Ukraine really think of Novorossiya', *The Washington Post*, 25.05.2015.

[184] Dragneva and Wolczuk (n 130), 105-106.

[185] 'Research of the Kyiv International Institute of Sociology: Southeast of Ukraine opposes federalisation and sees no problem with the Russian language', Ukraine Crisis Media Centre, 28.04.2014 (in Ukrainian).

[186] 'Russia is negotiating with Germany and France over Ukraine', *The Economist*, 22.10.2016.

[187] Kuzio, 'Ukraine between a Constrained EU and Assertive Russia' (2017) 55:1 *Journal of Common Market Studies* 103, 111.

[188] Geneva Joint Statement on Ukraine, 17.04.2014. Available at: <https://geneva.usmission.gov/2014/04/18/text-of-the-geneva-statement-on-ukraine-released-by-the-us-eu-ukraine-and-russia/> [accessed 01.03.2019].

[189] Protocol on the results of consultations of the Trilateral Contact Group (Minsk I), 05.09.2014. Available at: <http://www.osce.org/home/123257> [accessed 01.03.2019].

memorandum includes 13 points to be implemented step-by-step.[190] These include, inter alia, complete ceasefire, withdrawal of heavy weaponry, elections and granting a special status to the parts of Donetsk and Luhansk oblasts, and the restoration of Ukraine's control over its border with Russia. Minsk II was supposed to be implemented by the end of 2015, yet the overall peace process soon entered a deadlock.[191]

During the last meeting in the 'Normandy format', in October 2016, the leaders agreed to elaborate by the end of November 2016 a roadmap on the implementation of Minsk II.[192] However, as of March 2019, the roadmap has not been agreed upon. The key obstacle is that Ukraine and Russia disagree on the sequencing.[193] Overall, it is unconceivable that Russia will hand over the border control to Ukraine, as this will deprive it of its leverage. Thus, full implementation of Minsk II seems highly unlikely, at least as long as Putin remains in power.[194] The EU's efforts at the settlement are not confined to the participation of Germany and France in the 'Normandy format', as will be analysed in Chapter 8.[195]

2.6 Democracy, the rule of law and human rights in Ukraine post-2013

2.6.1 Ukraine's record

2.6.1.1 Stage IV (post-2013)

At the end of February 2014, the Verkhovna Rada reinstated the 2004 constitutional reform, thus returning the parliamentary-presidential system that was in place during most of stage II. After Yanukovych fled to Russia, the Parliament also voted on 'self-removal' of the President from his constitutional authority and called on the early presidential election.

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[190] Package of Measures for the Implementation of the Minsk Agreements (Minsk II), 12.02.2015. Available at: <http://www.osce.org/cio/140156> [accessed 01.03.2019].

[191] Kostanyan and Meister, 'Ukraine, Russia and the EU: Breaking the Deadlock in the Minsk Process', Centre for European Policy Studies, Working Document No 423, June 2016, 2-3.

[192] 'Ukraine peace process: leaders agree roadmap to revive talks', *The Guardian*, 20.10.2016.

[193] Poroshenko, Speech at the Yalta European Strategy, 16.09.2016 (in Ukrainian). Available at: <https://www.eurointegration.com.ua/articles/2016/09/16/7054665/> [accessed 01.03.2019].

[194] Kuzio (n 187), 111, 114-117.

[195] Section 8.3.

Petro Poroshenko (2014-present)

In the May 2014 presidential election Petro Poroshenko won in the first round with 54.7% of vote. Poroshenko led in every oblast, demonstrating the unity across the country that was unknown before.[196] The election largely met international standards, although voting did not take place in Crimea and in the parts of Donbas outside Ukraine's control.[197] The October 2014 early parliamentary elections were deemed free and fair, although voting was again impossible in Crimea and in the parts of Donbas.[198] Unlike all previous parliamentary elections, when regional divisions across the country resulted in different political preferences, in 2014 regional divisions were blurred and the reformist pro-Western parties won an overwhelming majority.[199] Moreover, the AA with the EU was signed in 2014 and fully entered into force in 2017.[200]

During stage IV Ukraine has introduced democratic reforms unseen during stages I-III. However, the progress with their implementation has been mixed so far.

First, a long-awaited anti-corruption reform has been gradually introduced. New anti-corruption agencies were established: the National Anti-Corruption Bureau (NABU) is investigating high-level corruption and the Specialised Anti-Corruption Prosecutor's Office (SAP) is conducting oversight over such investigations. However, there has been little progress on the stage of court proceedings. In order to accelerate this process, the top priority since 2016 has been the establishment of a specialised High Anti-Corruption Court (HACC).[201] After long delays, the draft law on the HACC was submitted by the President in December 2017 and adopted by the Parliament in June 2018. The selection of judges for the HACC, in which the EU participates through the Public Council of International Experts,[202] is currently underway. In January 2019, the Public Council disqualified around 40% of

[196] Wilson (n 91), 153.
[197] OSCE/ODIHR, 'Ukraine: early presidential election of 25 May 2014', Final Report, 30.06.2014, 1.
[198] OSCE/ODIHR, 'Ukraine: early parliamentary elections of 25 October 2014', Final Report, 19.12.2014, 1.
[199] Shevel, 'The Parliamentary Elections in Ukraine, October 2014' (2015) 39 *Electoral Studies* 159, 160-162.
[200] Chapter 3, Section 3.7.2.
[201] Freedom House, 'Nations in Transit 2018: Ukraine'.
[202] Chapter 8, Section 8.10.

candidates due to concerns about their integrity and professionalism,[203] thus raising chances that the HACC will be independent.

Ukraine also launched a system of e-declarations whereby all state officials (including top officials, e.g. the President, Prime Minister and Members of Parliament) have to submit information regarding their assets, and the assets of their families, which is accessible to the public online. Failure to submit e-declarations on time and submission of false information are criminally punishable. The National Agency for the Prevention of Corruption (NAPC), another newly established body, is examining e-declarations and monitoring financial reports of political parties.[204] The examination of e-declarations by the NAPC has been slow and patchy due to the lack of the automated verification mechanism,[205] although some steps to establish the latter were undertaken towards the end of 2018. The pressure of the EU has been one of the key factors behind the anti-corruption reform.[206]

Secondly, in June 2016 the Verkhovna Rada introduced judicial reform. To ensure judges' independence, the reform raises judges' salaries and assigns the key role in their appointment/dismissal to the newly established Superior Council of Justice, thus reducing the influence of the Parliament and the President. The Supreme Court has been re-established from scratch, while existing judges of first instance and appeal courts need to undertake re-examination.[207] The reform also aims to reduce Soviet-style powers of the prosecutor's offices.[208] It is too soon to assess the reform, as its full implementation will take several years. Nevertheless, concerns have been raised over, inter alia, the professionalism and integrity of some of the new Supreme Court judges.[209]

[203] Anti-Corruption Action Centre, '71 candidates continue to participate in the competitions to the Anti-Corruption Court. International experts have completed their work', 28.01.2019.

[204] Freedom House, 'Nations in Transit 2017: Ukraine'.

[205] Drik, 'If the mechanism of verification of e-declarations is not changed, the NAPC will legalise the assets of those involved in corruption instead of punishing them', *Ukrayinska Pravda Blogs*, 03.08.2017 (in Ukrainian).

[206] Chapter 8, Sections 8.5 and 8.6.

[207] Kuybida, 'Reform of the judiciary: seven most expected events of 2017', Centre of Policy and Legal Reform, 13.01.2017 (in Ukrainian).

[208] 'Ukraine Reform Monitor: April 2017', Carnegie Endowment for International Peace, 19.04.2017.

[209] Kuybida, 'Reform of the judiciary: reality or imitation', Centre of Policy and Legal Reform, 13.06.2017 (in Ukrainian).

Thirdly, in November 2017 the Verkhovna Rada adopted in the first reading a draft Electoral Code which envisages parliamentary elections based on proportional system with open party lists. The second reading of the Code is still awaited. As discussed above, a mixed system of parliamentary elections was used during stages I, III and IV, and a proportional system with closed party lists was used during stage II. These systems, especially the mixed one, facilitated obscure links between politics and big business. Thus, the open party lists system, if approved, will be a very welcome step forward.[210]

Fourthly, the decentralisation reform, which started in 2014, allows the existing local communities to amalgamate into bigger local units with more decision-making powers and greater budgetary independence. Considering the high tendency to centralise power during stages I and III, the reform is a positive development.[211] However, the constitutional amendments necessary to fully implement the reform are currently blocked in the Verkhovna Rada because they include provisions on the special status for some parts of Donbas.[212]

The progress with human rights has been mixed overall. There has been almost no progress with the investigation into the human rights violations that happened during the Maidan.[213] A public service broadcaster was created and the media is generally pluralistic, yet the largest media outlets are still controlled by the oligarchs, and there are instances of violence and intimidation against journalists and civil activists, which are not thoroughly investigated.[214] The new State Investigation Bureau was created to investigate crimes committed by law-enforcement officials and the military. It is hoped that it will address a long-standing problem of ill-treatment in detention.[215] The number of applications against Ukraine before the ECtHR remains high. The most common violations concern the right to a fair trial and the right to

[210] Leshchenko, 'Sick Rada', *Novoye Vremia*, 08.07.2017 (in Ukrainian); Rohachuk, 'Does Ukraine need an electoral reform?', *Ukrayinska Pravda*, 06.11.2017 (in Ukrainian).

[211] Freedom House, 'Nations in Transit 2017: Ukraine'; Sasse, 'Local Change in the Making in Ukraine', Carnegie Europe, 03.10.2016.

[212] 'Ukraine Reform Monitor' (n 208).

[213] UN OHCHR, Report on the human rights situation in Ukraine from 16 August to 15 November 2018, paras 63-69.

[214] Ibid, paras 72-77; Freedom House, 'Nations in Transit 2018: Ukraine'; Human Rights Watch, 'World Report 2018: Ukraine'.

[215] Amnesty International, 'Annual Report 2017/2018', 377.

liberty and security.[216] The major concerns, however, relate to the human rights situation in Crimea and Donbas (Section 2.6.3).

The main reason for these mixed results has been a half-hearted commitment to reforms on the part of Ukraine's current leaders. In 2016, Poroshenko's close ally Volodymyr Groysman was appointed the Prime Minister. Subsequently, the President managed to ensure loyalty of the Cabinet of Ministers, the Prosecutor's General Office and other key institutions, and became the main political actor in Ukraine.[217] After three parties left the coalition in early 2016, each reform step has been a 'bargaining exercise'[218] and the Verkhovna Rada has limited ability to control the Cabinet of Ministers.[219] This situation is paradoxical given that the parliamentary-presidential system, as reinstated in February 2014, was precisely designed to decrease the powers of the President and increase the powers of the Parliament and Prime Minister.

Moreover, Poroshenko, who is an oligarch himself, is often accused of blocking anti-corruption efforts and of cooperating with other oligarchs and representatives of the old regime.[220] Oligarchs, despite being now much weaker economically than they used to be, continue to exert strong influence over politics through controlling much of the media and political parties.[221] Moreover, there seems to be a stepping back from cooperation with civil society, as illustrated by persecution of anti-corruption activists[222] and the extension of e-declaration requirements to anti-corruption activists.[223] The approaching presidential and parliamentary elections, set for March and October 2019, respectively, have further diverted attention from reforms.

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[216] Registry of the European Court of Human Rights, Annual Report 2017, 171, 173.

[217] 'Model of Poroshenko', *Liga.net*, 07.06.2016 (in Russian).

[218] Sasse (n 211).

[219] 'Ukraine Reform Monitor' (n 208).

[220] Lough, 'Testing Times for Ukraine's Anti-Corruption Reforms', Chatham House, 28.03.2017; 'A day late: America may offer Ukraine weapons to repel Russia', *The Economist*, 03.08.2017.

[221] Freedom House, 'Freedom in the World 2018: Ukraine'.

[222] 'Anti-anti-corruption measures: Ukraine's reform activists are under attack', *The Economist*, 24.08.2017.

[223] Schaaf, 'In Ukraine, Politicians Begin to Turn on the Activists Who Brought Them to Power', Freedom House, 07.06.2017.

2.6.2 Internal strength: united and active population

As discussed above, weak national unity and uneven commitment to democratic traditions used to have a negative impact on democratic processes in Ukraine during stages I-III. The Maidan and the conflict changed this domestic context.

First, unlike the Orange Revolution, which attracted protesters mainly from Ukraine's west and centre, the 2013-2014 Maidan was much more diverse in terms of regional, ethnic and linguistic composition of protesters, and spread into all parts of the country.[224] This country-wide dissatisfaction with Yanukovych's regime softened Ukraine's political east-west divide.[225] Secondly, Russia's actions in Crimea and Donbas further strengthened Ukrainian national identity in the east and south.[226] This is confirmed by the fact that, as mentioned above, the ideas of 'Novorossiya' and of federalisation did not find support there. Thirdly, the Maidan and the conflict consolidated a nation-wide consensus over a set of core reforms, such as the fight against corruption and upholding of the rule of law, and substantially strengthened civil society across the country.[227] Civil society has been playing a vital role in the reforms by, inter alia, drafting and advocating legal acts, and providing technical assistance.[228] These changes signify what was described as 'the birth of a new political nation'.[229]

However, Ukraine faces new challenges. The country's main dividing line has shifted eastwards and lies between the parts of Donbas outside the Government's control and the adjacent east and south oblasts.[230] In the parts outside the Government's control people's identification with Ukraine is weak and they do not share the same commitment to sovereignty, democracy and integration with the West

[224] Onuch and Sasse (n 161), 568-572, 577.

[225] Kuzio (n 116), 10, 46.

[226] Kulyk (n 105), 594-600.

[227] Delcour and Wolczuk (n 178), 470-473; Pishchikova and Ogryzko, 'Civic Awakening: The Impact of Euromaidan on Ukraine's Politics and Society', FRIDE, Working Paper No 124, July 2014, 6-10, 12.

[228] Lough and Solonenko, 'Can Ukraine Achieve a Reform Breakthrough?', Chatham House, April 2016, 12-16; Burlyuk and Shapovalova, 'Ukraine's Civic Progress and Partial Reform', Carnegie Endowment for International Peace, 08.01.2018.

[229] Wilson (n 91), 148.

[230] Kulyk (n 105), 607.

as the rest of the country.[231] This means that the re-integration of these territories – if and when it happens – will be difficult and might affect the dynamics of reforms.[232]

2.6.3 External threat: aggressive Russia

As has been argued above, Russia's aim under Minsk II is to get a special status for the parts of Donbas in order to disrupt Ukraine's reforms from within. Meantime, while Ukraine resists implementation of Minsk II on Russia's terms, Russia threatens democracy, the rule of law and human rights in Ukraine in other ways.

Threats to reforms

The major threat is the conflict. First, it diverts attention away from reforms to security issues.[233] Under Ukrainian law, Ukraine's military response is 'the operation of joint forces'. Declaring war would potentially entail suspension of democratic institutions.[234] Secondly, the conflict is destabilising because it remains highly unpredictable. The most recent example is the seizure by Russia of Ukrainian naval personnel and ships in the Sea of Azov in November 2018. Russia has been increasing its presence in the area after the construction of the Kerch bridge. From the Sea of Azov, Russia has an additional route to Donbas and there remains a risk that it may try to link Donbas and Crimea (see Maps 1 and 2 in Section 2.2). As a result, the Verkhovna Rada declared martial law in 10 oblasts adjacent to Russia and the Black Sea and the Sea of Azov.[235] The martial law did not affect democratic processes and human rights. It expired on 26 December 2018. However, had it been prolonged, it could have delayed the March 2019 presidential election.

Moreover, similarly as after the Orange Revolution, after the Maidan Russia used gas and trade to destabilise Ukraine, although its tactics had some unintended positive effects. First, Russia cut off gas supplies to Ukraine in November 2015. As a result, Ukraine started buying gas from EU Member States, Slovakia and Poland,

[231] Ibid, 597.

[232] 'Ukraine's divided East', *The Economist*, 11.02.2017.

[233] Delcour and Wolczuk (n 178), 470.

[234] Kuzio (n 187), 112.

[235] Law of Ukraine 'On the approval of the Decree of the President on the introduction of martial law', No 2630-VIII, 26.11.2018.

which are buying it from Russia through Ukraine's gas transit system.[236] This reverse scheme decreases Russia's leverage on Ukraine, yet it does not resolve the issue in the long-term, in particular because Russia is seeking alternative routes bypassing Ukraine (for example, Nord Stream II).[237] Secondly, Russia suspended the FTA with Ukraine on 1 January 2016, in response to the entry into force of the EU-Ukraine DCFTA,[238] thus reducing its ability to use trade as leverage on Ukraine. Additionally, Russia relies on 'non-conventional means' in Ukraine, such as disinformation, diversions, bombings, cyber attacks and provocations.[239]

Finally, a broader danger is that Russia openly tries to subvert democracy not only in the neighbouring countries,[240] but also in the West. Russia wants to discredit universal liberal values and to 'create a divided West that has lost faith in its ability to shape the world',[241] and to return to conducting international affairs based on Realpolitik.[242] These goals are pursued through, inter alia, disinformation, pro-Russian NGOs and think tanks, corrupt business and political connections, support of anti-EU, populist and far-right parties in Europe and meddling in the 2016 US presidential election.[243]

Violations of human rights: Donbas and Crimea

In November 2018, there were more than 1.5 million internally displaced persons (IDPs) from Crimea and Donbas, who face difficulties with, inter alia, access to

[236] Bershidsky, 'How Ukraine Weaned Itself Off Russian Gas', *Bloomberg*, 12.01.2016.

[237] Ibid.

[238] Chapter 3, Section 3.7.2.

[239] 'Russian Information Campaign Against the Ukrainian State and Defence Forces', Combined Analysis, NATO Strategic Communications Centre of Excellence, 2016; McKew, 'A killing in Kiev shows how the West continues to fail Ukraine', *The Washington Post*, 27.06.2017; Nakashima, 'Russian military was behind "NotPetya" cyber attack in Ukraine, CIA concludes', *The Washington Post*, 12.01.2018.

[240] On Russia's efforts to counteract democracy in other EaP countries, see Babayan, 'The Return of the Empire? Russia's Counteraction to Transatlantic Democracy Promotion in its Near Abroad' (2015) 22:3 *Democratization* 438, 445-448.

[241] 'The threat from Russia', *The Economist*, 22.10.2016.

[242] Liik, 'What Does Russia Want?', European Council on Foreign Relations, 26.05.2017.

[243] Conley et al, 'The Kremlin Playbook: Understanding Russian Influence in Central and Eastern Europe', Centre for Strategic and International Studies, Report, October 2016; Polyakova et al, 'The Kremlin's Trojan Horses', Atlantic Council, Report, November 2016; Freedom House, 'Breaking Down Democracy: Goals, Strategies and Methods of Modern Authoritarians', June 2017, 15-21, 41-42; US Senate Select Committee on Intelligence, 'The Intelligence Community Assessment: Assessing Russian Activities and Intentions in Recent US Elections', 03.07.2018.

housing, social benefits and employment.[244] The conflict results in a wide range of abuses, including shelling in residential areas, summary executions, arbitrary deprivations of liberty, enforced disappearances, torture and ill-treatment.[245] In the territories controlled by the 'DNR' and 'LNR' the right to a fair trial, freedoms of the media, association, assembly, religion and belief are severely curtailed or disregarded.[246] In Crimea freedoms of expression, association and assembly are restricted. The Russian Supreme Court banned in 2016 the representative body of Crimean Tatars, the Mejlis, as 'an extremist organisation'. Representatives of the Crimean Tatar community, pro-Ukrainian activists and independent journalists are being persecuted.[247] As of November 2018, over 4,000 individual applications were lodged at the ECtHR against Ukraine, Russia or both in relation to the events in Crimea and Donbas.[248]

Ukraine relies on international mechanisms in order to bring Russia to account. First, Ukraine derogated from certain provisions of the ECHR; it considers that Crimea and the parts of Donbas are no longer under its jurisdiction, as required by Article 1 of the ECHR, and considers Russia to be fully responsible for respect for and protection of human rights in these territories.[249] Ukraine has brought five inter-state applications against Russia before the ECtHR,[250] which are currently pending.[251] Secondly, Ukraine instituted proceedings in the International Court of Justice (ICJ). Ukraine claims violations by Russia of the International Convention for the

[244] UN OHCHR (n 213), paras 30-39.

[245] Ibid, paras 21-29, 48-52.

[246] Ibid, paras 61-62, 78-79, 89, 92-93.

[247] Ibid, paras 95-105; Amnesty International, 'Annual Report 2017/2018', 376-379; Human Rights Watch, 'World Report 2018: Ukraine'.

[248] Registry of the European Court of Human Rights, 'ECHR puts questions to Russian Government after receiving new inter-state case from Ukraine concerning events in the Sea of Azov', Press Release, ECHR 412 (2018), 30.11.2018. The ECtHR has so far adjudicated in two individual cases, where it acknowledged the loss by Ukraine of control over some parts of Donbas, but did not find violations by Ukraine: *Khlebik v Ukraine*, ECHR Application 2945/16, 25.07.2017; *Tsezar and Others v Ukraine*, ECHR Application 73590/14 et al, 13.02.2018.

[249] Parliament of Ukraine, Resolution 'On declaration of Ukraine's derogation from certain obligations under the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms', No 462-VIII, 21.05.2015.

[250] Two applications concern violations in Crimea and Donbas, the third application concerns the abduction of children in Donbas and their temporary transfer to Russia, the fourth application concerns Ukrainian nationals arrested and prosecuted in Russia ('political prisoners'), and the fifth application concerns Ukrainian naval personnel captured in the Sea of Azov: Registry of the ECtHR (n 248).

[251] On the legal analysis see Leach, 'Ukraine, Russia and Crimea in the European Court of Human Rights', *Blog of the European Journal of International Law (EJIL)*, 19.03.2014.

Suppression of the Financing of Terrorism in Donbas, including regarding the downing of MH17, and of the International Convention on the Elimination of All Forms of Racial Discrimination in relation to Crimean Tatars and Ukrainians in Crimea.[252] In 2017 the ICJ ruled on the provisional measures, ordering Russia to refrain from restrictions on the Mejlis and to ensure the availability of education in the Ukrainian language in Crimea.[253] Russia does not comply with this order; the case is pending.[254] Thirdly, pursuant to Article 12(3) of the Rome Statute of the ICC, Ukraine granted the ICC ad hoc jurisdiction over international crimes alleged to have been committed on its territory from 21 November 2013 onwards.[255] Proceedings have been under preliminary examination since 2014.[256]

2.7 Conclusion

This Chapter has discussed the long-standing problems related to democracy, the rule of law and human rights in Ukraine during stages I-IV, such as corruption, obscure links between the politics and big business, deficient constitutional checks and balances, electoral irregularities, lack of independent judiciary, limited powers of local self-government, and violations of media freedom. During stage IV (post-2013), there have been unprecedented attempts to address these problems. However, currently Ukrainian leaders lack political will to accelerate the reforms.

Internally, due to regional differences resulting from complex historical legacies, during stages I-III there was a lack of strong country-wide civil society and, as a result, the bottom-up pressure for reforms was insufficient. However, the 2013-2014 Maidan blurred Ukraine's west-east divisions, strengthened national unity and consolidated civil society, which has been a driving force behind all major reforms

[252] *Ukraine v Russian Federation*, Application Instituting Proceedings at the ICJ, 16.01.2017. On the legal analysis of responsibility for the MH17 crash under international law, see Gibney, 'The Downing of MH17: Russian Responsibility?' (2015) 15 *Human Rights Law Review* 169.

[253] *Ukraine v Russian Federation*, ICJ Order on Provisional Measures, 19.04.2017, para 106.

[254] On the legal analysis see Marchuk, 'Ukraine Takes Russia to the International Court of Justice: Will It Work?', *Blog of the European Journal of International Law (EJIL)*, 26.01.2017.

[255] Parliament of Ukraine, 'Declaration of recognition of the jurisdiction of the ICC', No 790-VII, 25.02.2014, 'Declaration of recognition of the jurisdiction of the ICC', No 145-VIII, 04.02.2015.

[256] On the legal analysis see Marchuk, 'Ukraine and the International Criminal Court: Implications of the Ad Hoc Jurisdiction Acceptance and Beyond' (2016) 49 *Vanderbilt Journal of Transnational Law* 323, 341-369.

during stage IV. Externally, the major threat to Ukraine's democratic reforms has been coming from Russia. During stages I-III, Russia aimed at destabilisation and subversion of democratic practices in Ukraine. During stage IV, these efforts have been reinforced by the annexation of Crimea and the on-going conflict in Donbas, which result in widespread and systematic human rights abuses. On the other hand, the conflict further strengthens national unity across Ukraine.

The next Chapters will examine the EU's methods and instruments for promotion and protection of democracy, the rule of law and human rights under the ENP. Their effects in the Ukrainian context in terms of pressuring the Government for key reforms, strengthening civil society, and counterbalancing Russia will be assessed.

3. The EU and Ukraine under the ENP: the framework of relations

3.1 Introduction

As will be examined in Chapter 4, in its objective to promote democracy, the rule of law and human rights under the ENP the EU draws extensively on the methods and instruments that it has been using in its pre-accession policy. The last completed rounds of EU enlargement took place in 2004/2007 with the accession of the Central and Eastern European Countries (CEECs) and Malta and Cyprus,[1] and in 2013 with the accession of Croatia. Currently the prospect of accession is formally open to six Western Balkan countries (Serbia, North Macedonia, Montenegro, Albania, Kosovo, and Bosnia and Herzegovina) and Turkey.[2]

Since the early 1990s, Ukraine has consistently declared its objective to become a member of the EU. The credibility of such aspirations and public support have increased over the time. In 2002, Andre Vanhaeverbeke, the former head of the Commission's Delegation in Ukraine, noted that the recognition of Ukraine's membership perspective would be a 'political signal' seen as a non-military element of security guaranteeing Ukraine's independence.[3] This statement is all the more relevant in the post-2013 context.

The aim of this Chapter is to highlight the reasons behind the EU's reluctance to consider Ukraine for membership and to examine the frameworks that were offered as an alternative. It begins by recalling the accession criteria and the motives for enlargement (3.2). It then examines the legal foundations of the ENP and its offers (3.3). Since the ENP was initially designed to build on the existing policies, the pre-ENP EU-Ukraine relations during stage I (1991-2004) are recalled (3.4). Against this background, the reluctant move towards association, the dynamic 'soft' bilateral

[1] Poland, Hungary, Slovakia, Slovenia, the Czech Republic, Latvia, Lithuania and Estonia, together with Malta and Cyprus, became members of the EU in 2004; Bulgaria and Romania joined in 2007.

[2] Serbia, North Macedonia, Montenegro, Albania and Turkey are considered as candidates for membership (accession negotiations are open with Serbia, Montenegro and Turkey, and are expected to be open soon with North Macedonia and Albania). Kosovo and Bosnia and Herzegovina are regarded as potential candidates. Information available at: <https://ec.europa.eu/neighbourhood-enlargement/countries/check-current-status_en> [accessed 01.03.2019].

[3] Vanhaeverbeke, 'EU Aid Policy: More Commitment Required', in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002), 254.

instruments and the framework of the Eastern Partnership (EaP) under the ENP during stages II (2004-2009) and III (2010-2013) are analysed (3.5 and 3.6). The current stage IV (post-2013), with the Association Agreement (AA), the 'soft' bilateral instruments and the EaP are examined (3.7). The potential shape that EU-Ukraine relations may take in future is then discussed (3.8). The final part summarises the peculiarities of EU-Ukraine relations (3.9).

3.2 Enlargement of the EU: accession criteria and EU motives

Initially, the Treaty of Rome, 1957, specified that any 'European' country was eligible to apply for the membership in the European Economic Community.[4] The term 'European' has never been defined in the Treaties. The Commission has argued that it 'combines geographical, historical and cultural elements which all contribute to the European identity'. [5] Thus, the meaning of 'European' is determined predominantly by geopolitical considerations.[6]

Admissibility of 'European' countries was later subject to specific conditions. The 1993 Copenhagen European Council laid down criteria for the CEECs' accession (the Copenhagen criteria). First, political criteria required stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. Secondly, economic criteria required the existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the EU. Thirdly, the CEECs were required to be able to take on the obligations of membership (*acquis communautaire*) and to adhere to the aims of political, economic and monetary union. Additionally, the condition was established for the EU – the capacity to absorb new members, while maintaining the momentum

[4] Article 237, Treaty Establishing the European Economic Community, 25.03.1957.

[5] Commission, 'Europe and the Challenge of Enlargement', Bull EU 3/1992, 11.

[6] Blockmans and Lazowski, 'The European Union and its Neighbours: Questioning Identity and Relationships', in Blockmans and Lazowski (eds), *The European Union and Its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration* (Asser Press, 2006), 6.

of European integration.[7] These criteria largely consolidated the practice of previous accessions.[8]

The practice of the CEECs' accession suggested that there was a hierarchy of the accession criteria. First, being 'European' made a country eligible for membership. Secondly, compliance with the political criteria was a necessary condition for opening the accession negotiations. Thirdly, the CEECs could eventually accede to the EU once they fully complied with the Copenhagen criteria.[9] The Treaty of Amsterdam, 1997, for the first time constitutionalised the political criteria for accession,[10] which remained supplemented by the Copenhagen criteria.[11] The Treaty of Lisbon, which entered into force in 2009, retained the hierarchy and extended the formula of the Treaty of Amsterdam. Pursuant to Articles 2 and 49 TEU,[12] any 'European' country, which respects and is committed to promoting the values of human dignity, freedom, democracy, equality, the rule of law and human rights, including the rights of persons belonging to minorities, can apply to become a member of the EU.

The EU has interpreted the political criteria flexibly.[13] For instance, the 1999 Helsinki European Council added that the acceding countries should resolve any outstanding border disputes.[14] This 'good neighbourliness' criterion, the underlying idea of which is that the acceding states should not import conflicts to the EU, has been enforced with varying degrees of strictness to Cyprus, Estonia and Latvia.[15] It has not been constitutionalised, yet it seems to remain an informal requirement and its

[7] Copenhagen European Council Conclusions, 21-22.06.1993, 13. See further Hoffmeister, 'Changing Requirements for Membership', in Ott and Inglis (eds), *Handbook on European Enlargement* (Asser Press, 2002), 90-98.

[8] Maresceau, 'On Association, Partnership, Pre-accession and Accession', in Maresceau (ed), *Enlarging the European Union: Relation between the EU and Central and Eastern Europe* (Longman, 1997), 14-15; Hillion, 'The Copenhagen Criteria and their Progeny', in Hillion (ed), *EU Enlargement: A Legal Approach* (Hart, 2004), 3-12.

[9] Hillion, ibid, 19-21.

[10] Ex Articles 6(1) and 49, Consolidated Version of the Treaty on European Union [2006] OJ C321E/5; Nowak, 'Human Rights "Conditionality" in Relation to Entry to, and Full Participation in, the EU', in Alston, Bustelo and Heenan (eds), *The EU and Human Rights* (OUP, 1999), 690-691.

[11] Hillion (n 8), 21.

[12] Consolidated Version of the Treaty on European Union [2012] OJ C326/13 (hereinafter 'TEU').

[13] Cremona, 'EU Enlargement: Solidarity and Conditionality' (2005) 30:1 *European Law Review* 3, 16.

[14] Helsinki European Council Conclusions, 10-11.12.1999, para 4.

[15] Hillion (n 8), 17-19.

inconsistent application in the past suggests that it can be applied selectively in the future. Another example is that the Western Balkans were required to cooperate with the International Criminal Tribunal for the former Yugoslavia and to commit to multiple peace agreements.[16] Moreover, the fact that the EU agreed to open two new accession chapters with Turkey in exchange for its help with the refugee crisis – despite the creeping authoritarianism in the country – seemed to signal that the pre-accession process is open to political bargaining.[17]

In order to become a member of the EU, the applicant state has to address its application to the Council, which acts unanimously after consulting the Commission and after receiving the consent of the European Parliament, which acts by a majority of its component members.[18] In practice, the final say on accepting new members rests with the Member States.[19] Some observers argued that the EU decided to enlarge to the CEECs because of 'rhetorical entrapment', whereby the proponents of enlargement, by referring to the EU's liberal constitutive values, shamed the opponents into acquiescing in enlargement.[20] However, rationalist explanations are more convincing. According to the latter, the long-term security, geopolitical and economic interests of the EU – the extended zone of security, stability and prosperity, greater geopolitical clout of the enlarged EU, and new markets – were key factors, while the objective of transferring EU norms to the CEECs played an instrumental or supporting role.[21] The decisions to grant Turkey and the Western Balkans a membership perspective further confirm rationalist, security-related motives for enlargement.[22]

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[16] Schimmelfennig, 'EU Political Accession Conditionality After the 2004 Enlargement: Consistency and Effectiveness' (2008) 15:6 *Journal of European Public Policy* 918, 927-930; Balfour and Stratulat, 'The Democratic Transformation of the Balkans', European Policy Centre, Issue Paper No 66, November 2011, 7-9.

[17] Vogel, 'Rule of Law: Double Standards Undermine EU's Role in the Neighbourhood', Centre for European Policy Studies, European Neighbourhood Watch, Issue No 139, July 2017, 2.

[18] Article 49 TEU. Further on the procedure see Maresceau (n 8), 15-21.

[19] Grabbe, 'European Union Conditionality and the *Acquis Communautaire*' (2002) 23:3 *International Political Science Review* 249, 265-266.

[20] Schimmelfennig, 'The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union' (2001) 55:1 *International Organization* 47, 62-76.

[21] Moravcsik and Vachudova, 'National Interests, State Power, and EU Enlargement' (2003) 17:1 *East European Politics and Societies* 42, 49-52.

[22] Missiroli, 'The EU and Its Changing Neighbourhoods: Stabilisation, Integration and Partnership', in Batt et al, *Partners and Neighbours: a CFSP for a Wider Europe*, Institute for Security Studies, Chaillot Paper 64, September 2003, 17; Vachudova, 'EU Leverage and National Interests in the

The future of EU enlargement is uncertain. While it is clear that the EU 'cannot go on enlarging forever',[23] there is no consensus among Member States about the EU's absorbing capacity and its ultimate borders. The 2004/2007 enlargement, the failure of the Constitutional Treaty in 2005, and the initial rejection of the Lisbon Treaty in the Irish referendum led to the unwillingness to consider further enlargement – known as the 'enlargement fatigue'.[24] It was further bolstered by the Euro crisis and the influx of refugees from the Middle East and Northern Africa,[25] as well as Brexit and the anti-EU sentiment in some Member States. As will be shown below, Ukraine has been recognised by the EU as 'European' on several occasions. The main reasons for not considering the country for membership have been the 'enlargement fatigue' and security-motivated unwillingness to irritate Russia.

3.3 The ENP as an alternative to enlargement: foundations, legal nature and offers

The ENP was designed to solve the 'inclusion-exclusion' problem posed by the 2004/2007 enlargement and, more specifically, to handle Ukraine's membership aspirations.[26]

Initially the ENP was not based on any specific Treaty provisions.[27] It was developed mainly through the Council Conclusions and Commission

Balkans: The Puzzles of Enlargement Ten Years On' (2014) 52:1 *Journal of Common Market Studies* 122, 125-126.

[23] Prodi, 'A Wider Europe – A Proximity Policy as the Key to Stability', SPEECH/02/619, 5-6.12.2002, 3.

[24] Szołucha, 'The EU and Enlargement Fatigue: Why Has the European Union Not Been Able to Counter Enlargement Fatigue?' (2010) 6:1 *Journal of Contemporary European Research* 1, 2-6.

[25] Fraenkel, 'The EU and the Western Balkans: Do They Share a Future?', Barcelona Centre for International Affairs, March 2016, 1-2.

[26] Emerson, 'European Neighbourhood Policy: Strategy or Placebo?', Centre for European Policy Studies, Working Document No 215, November 2004, 1; Smith, 'The Outsiders: the European Neighbourhood Policy' (2005) 81:4 *International Affairs* 757, 757-758, 768; Dannreuther, 'Developing the Alternative to Enlargement: The European Neighbourhood Policy' (2006) 11 *European Foreign Affairs Review* 183, 188-190.

[27] Cremona and Hillion, '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, No 2006/39, 14.

Communications, which were described as quasi-informal documents [28] or soft documents.[29] The first reason for this was that the ENP emerged at the time of a complex web of express and implied external competences of the European Community (EC, first pillar), which were supplemented by the external policies of the EU under the Common Foreign and Security Policy (CFSP, second pillar) and Justice and Home Affairs (third pillar). The pillar system was complicated by a 'dual' policy-making: supranational or Community method with qualified majority voting (first pillar) and intergovernmental method based on unanimity (second and third pillars).[30] Secondly, the ENP was designed to cover diverse areas, e.g. political dialogue, trade matters, migration and environment.[31] It was envisaged as a cross-pillar policy.[32] Reliance on soft documents in formulating the ENP thus allowed to avoid turf battles over the existence and nature of EC/EU competence.[33]

The Treaty of Lisbon marked a trend towards greater unity in the EU external action. It abolished the three-pillar structure, and the EU and the EC merged into one single organisation – the EU.[34] Nevertheless, a division between the CFSP and all other external competences of the EU has been preserved.[35] The absolute novelty of the Lisbon Treaty was the introduction of Article 8 TEU, according to which:

> 1. The Union shall develop a special relationship with the neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.

[28] Cremona, 'The European Neighbourhood Policy: More than a Partnership?', in Cremona (ed), *Developments in EU External Relations Law* (OUP, 2008), 263-264.

[29] Van Vooren, *EU External Relations Law and the European Neighbourhood Policy: A Paradigm for Coherence* (Routledge, 2012), 185-191.

[30] Eeckhout, *EU External Relations Law* (OUP, 2nd edn, 2011), 180.

[31] Commission, 'European Neighbourhood Policy Strategy Paper', COM (2004) 373, 12.05.2004 (hereinafter 'ENP Strategy Paper'), 6.

[32] Ibid; Cremona (n 28), 266-267; Ghazaryan, *The European Neighbourhood Policy and the Democratic Values of the EU: A Legal Analysis* (Hart, 2014), 55.

[33] Van Vooren (n 29), 185-191.

[34] Article 1(3) TEU. Article 47 TEU grants the EU legal personality.

[35] Eeckhout (n 30), 182; Cremona, 'Defining Competence in EU External Relations: Lessons from the Treaty Reform Process', in Dashwood and Maresceau (eds), *Law and Practice of EU External Relations: Salient Features of a Changing Landscape* (CUP, 2008), 45-46.

> 2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.

Article 8 TEU dos not mention the ENP specifically, yet its language resembles the rhetoric of ENP documents. Hence, it is seen as a constitutional basis or foundation of the ENP.[36] Article 8 TEU has consolidated the comprehensive, framework character of the ENP as developed pre-Lisbon.[37] At the same time, Article 8 TEU is not exclusive to the ENP and can also potentially apply to other EU neighbours, e.g. Russia.[38]

Article 8 TEU sends a signal that the ENP is a distinct and alternative policy to enlargement.[39] Observers have argued that it could potentially not only constitutionalise the ENP, but also 'prefigure the end of the enlargement process and policy'.[40] Nevertheless, Article 8 TEU does not affect Article 49 TEU.[41] EU membership has never been an option for the Southern Mediterranean neighbours, which are not considered 'European'.[42] This became especially evident after the rejection of Morocco's application.[43] In contrast, the ENP documents indirectly recognised Ukraine, Moldova and Belarus as belonging to 'Europe'.[44] The ENP is to be developed without prejudice to any future development of relations between the

[36] Van Elsuwege and Petrov, 'Article 8 TEU: Towards a New Generation of Agreements with the Neighbouring Countries of the European Union?' (2011) 36 *European Law Review* 688, 691-699, 701-702; Hillion, 'The EU Neighbourhood Competence under Article 8 TEU', Notre Europe – Jacques Delors Institute, Policy Paper No 69, 19.02.2013, 6.

[37] Hillion, ibid, 2-3.

[38] Blockmans, 'The Obsolescence of the European Neighbourhood Policy', Centre for European Policy Studies, 2017, 32.

[39] Van Elsuwege and Petrov (n 36), 693; Ghazaryan, 'The Evolution of the European Neighbourhood Policy and the Consistent Evolvement of its Inconsistencies' (2012) 7 *Review of European and Russian Affairs* 1, 7.

[40] De Baere, *Constitutional Principles of EU External Relations* (OUP, 2008), 16.

[41] Hanf, 'The ENP in the Light of the New "Neighbourhood Clause" (Article 8 TEU)', College of Europe, Research Paper in Law No 2/2011, 7.

[42] Patten and Solana, Letter on Wider Europe, 07.08.2002, 1; Commission, 'Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours', COM (2003) 104, 11.03.2003 (hereinafter 'Wider Europe Communication'), 5.

[43] Ghazaryan (n 32), 61.

[44] ENP Strategy Paper, 7.

EU and these countries, including under Article 49 TEU.[45] Additionally, initially Article 8 TEU seemed to emphasise that the new agreements with neighbours would not be association agreements under Article 217 of the Treaty on the Functioning of the EU (TFEU),[46] which are usually associated with pre-accession.[47]

The ENP was initially designed to supplement, reinforce and build on the existing EU policies and arrangements, namely the Partnership and Cooperation Agreements (PCAs) with the Eastern neighbours and the Euro-Mediterranean Association Agreements (EMAAs) with the Southern Mediterranean neighbours.[48] The EU supplemented these 'hard law' arrangements with 'soft law' documents – the bilateral Action Plans (APs).[49] The recourse to 'soft law' allowed to avoid EC/EU competence battles, did not require ratification and significant human and financial resources, and ensured flexibility in responding to bilateral relations in future.[50] The idea was that the APs would help with the implementation of the PCAs and the EMAAs, following which the EU would upgrade its relations with the neighbours.[51]

Initial ENP documents offered new bilateral agreements, 'a stake in the EU's Internal Market', establishment of free trade areas (FTAs) and the free movement of persons, goods, services and capital (four freedoms) – a relationship where each neighbour could be 'as close to the Union as it can be without being a member', resembling the ties between the EU and the European Economic Area (EEA).[52] However, the subsequent documents were less generous. For example, the free movement of persons was not offered anymore. Instead, the offers included new bilateral agreements with FTAs, possibility of establishing a Neighbourhood

[45] Prodi (n 23), 4-5; Wider Europe Communication, 5; ENP Strategy Paper, 3; Commission, 'On Strengthening the European Neighbourhood Policy', COM (2006) 726, 04.12.2006 (hereinafter 'ENP Strengthening Communication'), 2.

[46] Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47 (hereinafter 'TFEU').

[47] Van Elsuwege and Van der Loo, 'Continuity and Change in the Legal Relations Between the EU and Its Neighbours: A Result of Path Dependency and Spill-over Effects', in Bouris and Schumacher (eds), *The Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy* (Palgrave Macmillan, 2016), 100.

[48] Wider Europe Communication, 15; ENP Strategy Paper, 4.

[49] Soft law is defined as 'rules of conduct that are laid down in instruments which have not been attributed legally binding force as such, but nevertheless may have certain (indirect) legal effects, and that are aimed at and may produce practical effects': Senden, *Soft Law in EC Law* (Hart, 2005), 112.

[50] Van Vooren (n 29), 193-194, 212-215.

[51] Wider Europe Communication, 16-18; ENP Strategy Paper, 3, 7.

[52] Wider Europe Communication, 4, 10-11, 15, 17.

Economic Community based on the model of the EEA, and visa facilitation.[53] It was argued that the ENP offers were intentionally diluted in order to accommodate those Member States who wanted to see the ENP as a preparation of the Eastern neighbours for future accession and those for whom it was an alternative to enlargement.[54]

The EaP was launched in 2009 on the initiative of Poland and Sweden. It covers six Eastern neighbours – Ukraine, Moldova, Belarus, Georgia, Armenia and Azerbaijan. Factors such as the introduction of the Union for the Mediterranean (UfM)[55] and the 2008 Russia-Georgia war[56] necessitated a separate approach towards the Eastern neighbours.[57] The EaP offered bilateral AAs, with Deep and Comprehensive Free Trade Areas (DCFTAs), and visa liberalisation.[58] The possibility of a network of DCFTAs growing into a Neighbourhood Economic Community was also mentioned.[59] The EaP does not aim at the accession of Eastern neighbours to the EU. Instead, observers described it as 'the lowest common denominator'[60] and a 'political concept lying between pure cooperation and the accession process'.[61] Formally, the EaP, similarly as the ENP, does not exclude the possibility of membership.[62] A separate grouping of Eastern partners under the EaP could even amount to recognising their 'Europeanness' as opposed to the Southern Mediterranean neighbours.[63] Formally, however, the EaP remains a specific 'Eastern dimension' of the ENP.[64]

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[53] ENP Strategy Paper, 9; ENP Strengthening Communication, 4-6.

[54] Wallace, 'Looking After the Neighbourhood: Responsibilities for the EU-25', Notre Europe, Policy Paper No 4, July 2003, 7; Cadier, 'Is the European Neighbourhood Policy a Substitute for Enlargement?', in 'The Crisis of EU Enlargement', LSE IDEAS Special Report, November 2013, 53-54.

[55] Commission, 'Barcelona Process: Union for the Mediterranean', COM (2008) 319, 20.05.2008.

[56] The war took place on 7-12 August 2008 over the Georgian breakaway regions of South Ossetia and Abkhazia: Friedman, 'The Russo-Georgian War and the Balance of Power', Stratfor, 12.08.2008.

[57] Hillion and Mayhew, 'The Eastern Partnership – Something New or Window-Dressing?', SEI Working Paper 109, January 2009, 4-5.

[58] Commission, 'Eastern Partnership', COM (2008) 823, 03.12.2008 (hereinafter 'EaP Communication'), 3-8.

[59] Ibid, 3, 5, 11.

[60] Sadowski, 'Partnership in Times of Crisis: Challenges for the Eastern European Countries' Integration with Europe', Centre for Eastern Studies, Point of View No 36, July 2013, 35.

[61] Gromadzki, 'The Eastern Partnership After Five Years: Time for Deep Rethinking', European Parliament, Directorate-General for External Policies, Policy Department, 2015, 10.

[62] EaP Communication, 2; Joint Declaration of the Eastern Partnership Summit, Prague, 07.05.2009, 5.

[63] Ghazaryan (n 32), 85.

[64] Joint Declaration of the Eastern Partnership Summit, Riga, 22.05.2015, 1.

Notably, the DCFTAs and the possibility of visa liberalisation, in a long term, were offered to the Southern Mediterranean neighbours only in 2011, following the Arab Spring.[65] In contrast, the 2011 review did not present any new offers for the Eastern neighbours. The same holds true for the 2015 review which simply reconfirmed a vague aim of 'creation of an economic area with those who enter DCFTA'.[66]

3.4 The EU and Ukraine before the ENP during stage I (1991-2004)

3.4.1 Bilateral framework: partnership, not association

Ukraine first declared membership in the EU as its foreign policy objective in 1993, under the presidency of Leonid Kravchuk.[67] The pro-EU course was reemphasised during the presidency of Leonid Kuchma.[68] Yet these aspirations were purely declarative. Ukraine's leaders sought European integration due to geopolitical and security considerations as a counterbalance to relations with Russia, but they opposed structural reforms and instead believed that Ukraine's size and geopolitical significance would guarantee it the EU's attention even without reforms.[69] The population, on its part, was ambivalent and poorly aware of EU integration.[70] For Russia, Ukraine's EU integration aspirations were not problematic as long as they remained declarative.[71]

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[65] Joint Communication, 'A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean', COM (2011) 200, 08.03.2011, 7-9; Joint Communication, 'A New Response to a Changing Neighbourhood: A Review of the European Neighbourhood Policy', COM (2011) 303, 25.05.2011 (hereinafter '2011 ENP Review'), 8-10.

[66] Joint Communication, 'Review of the European Neighbourhood Policy', JOIN (2015) 50, 18.11.2015 (hereinafter '2015 ENP Review'), 7-8; Delcour, 'The 2015 ENP Review: Beyond Stocktaking, the Need for a Political Strategy', College of Europe, Policy Brief, December 2015, 3.

[67] Parliament of Ukraine, Resolution 'On the key directions of the foreign policy of Ukraine', No 3360-XII, 02.07.1993, part IIIA, point 2, para 11.

[68] President of Ukraine, Decree 'On the Strategy of Ukraine's Integration to the European Union', No 615/98, 11.06.1998, Preamble, paras 4-5.

[69] Kubicek, 'The European Union and Ukraine: Real Partners or Relationship of Convenience?', in Kubicek (ed), *The European Union and Democratization* (Routledge, 2003), 157; Wolczuk, 'Integration without Europeanisation: Ukraine and Its Policy towards the European Union', EUI Working Papers, RSCAS No 2004/15, 7, 11.

[70] Pidluska, 'Ukraine and the EU: What Prospects for Integration', in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002), 189-192.

[71] Samokhvalov, 'Relations in the Russia-Ukraine-EU Triangle: "Zero-Sum Game" or Not?', Institute for Security Studies, Occasional Paper No 68, September 2007, 10.

The EU elaborated in the early 1990s two separate policies towards its neighbours to the east. First, the Europe Agreements (EAs) were concluded with the CEECs, including the Baltic states.[72] Secondly, relations with the countries of the Commonwealth of Independent States (CIS) were shaped under the Partnership and Cooperation Agreements (PCAs).[73]

The EAs were association agreements based on Article 217 TFEU. The EU has been competent to conclude association agreements since the Treaty of Rome. Association presupposes 'reciprocal rights and obligations, common action and special procedure'[74] and 'special, privileged links with a non-member country which must, at least to a certain extent, take part in the Community system'.[75] The result of this vague formulation is that the level of integration provided by the association agreements has always been dependant on the EU's political will.[76] For example, the first association agreements with Greece (1961) and Turkey (1963) were wide in scope and envisaged potential EU membership. In contrast, the EMAAs with the Southern Mediterranean states intended less integration and were clearly disconnected from the membership question.[77] The EAs were yet another group. Preambles to the first EAs explicitly acknowledged that the objective of the CEECs was to become members of the EU and that the association would help to achieve that objective. Such statements implied neither legal nor political commitment for the EU, which initially saw the EAs as an alternative to the CEECs' membership.[78] It was only after the 1993 Copenhagen European Council that, without formal amendment

[72] The EAs with Poland and Hungary were signed in 1991, with the Czech Republic, Slovakia, Bulgaria and Romania in 1993, with Latvia, Lithuania and Estonia in 1995, and with Slovenia in 1996.

[73] During 1994-1998 the PCAs were signed with Ukraine, Russia, Kazakhstan, Kyrgyzstan, Moldova, Belarus, Armenia, Azerbaijan, Georgia, Uzbekistan and Turkmenistan. All the PCAs subsequently entered into force, except for the PCAs with Belarus and Turkmenistan, the ratification of which was put on hold by the EU due to the deteriorating political situations in these countries.

[74] Article 217 TFEU.

[75] Case 12/86 *Demirel v Stadt Schwäbisch Gmünd* [1987] ECR 3719, para 9.

[76] Peers, 'EC Frameworks of International Relations: Co-operation, Partnership and Association', in Dashwood and Hillion (eds) *The General Law of EC External Relations* (Sweet & Maxwell, 2000), 168-170, 175.

[77] Ibid, 161-162, 164, 168.

[78] Maresceau and Montaguti, 'The Relations between the European Union and Central and Eastern Europe: A Legal Appraisal' (1995) 32 *Common Market Law Review* 1327, 1332, 1328.

of the EAs, accession became a mutual political goal of the EU and the CEECs, albeit still without any legally binding commitment on the part of the EU.[79]

In contrast, the PCAs were ad hoc creations, which relied on multiple legal bases alongside the traditional combination of Articles 207 and 352 TFEU.[80] This combination underlined that they were transitional, 'entry level' agreements.[81] The pre-accession reorientation of the EAs further underlined the differentiation between the CEECs and the CIS.[82] Following the 2004/2007 enlargement, the dividing line drawn in the 1990s between the CEECs and the CIS became the dividing line which the ENP aims to overcome.

The CEECs and the CIS were differentiated for two key reasons. First, in the light of the CEECs' membership aspirations, the EU tried to package the EAs as a special type of association. Offering the EAs to the CIS countries posed the risk of diminishing their special character.[83] Secondly, the EU regarded the post-Soviet area (with the exception of the three Baltic states) as rather homogenous.[84] At that time there was no discussion regarding offering a membership perspective to Ukraine. According to Ukrainian diplomats and politicians, the general approach in the EU was that Ukraine lived under the Communist regime for too long, was too large and belonged to the sphere of Russian interests.[85] The EU saw Ukraine as 'semi-Russian' and supported the country's integration to the CIS,[86] which obviously ran counter to Ukraine's cautious approach towards the CIS, as discussed in Chapter 2.[87] The EU's main concerns regarding Ukraine in the early 1990s were the country's nuclear

[79] Maresceau (n 8), 9.

[80] Peers (n 76), 164-165, 175.

[81] Petrov, 'The Partnership and Co-operation Agreements with the Newly Independent States', in Ott and Inglis (eds), *Handbook on European Enlargement* (Asser Press, 2002), 177, 194.

[82] Maresceau (n 8), 11.

[83] Hillion, 'Mapping-Out the New Contractual Relations between the European Union and Its Neighbours: Learning from the EU-Ukraine "Enhanced Agreement"' (2007) 12 *European Foreign Affairs Review* 169, 176.

[84] Lynch, 'The New Eastern Dimension of the Enlarged EU', in Batt et al, *Partners and Neighbours: a CFSP for a Wider Europe*, Institute for Security Studies, Chaillot Paper 64, September 2003, 36.

[85] Zlenko, 'Ukraine and the EU: It Takes Two to Tango', in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002), 21-22; Nemyria, 'The Orange Revolution: Explaining the Unexpected', in Emerson (ed), *Democratisation in the European Neighbourhood* (Centre for European Policy Studies, 2005), 57.

[86] Kuzio, 'EU and Ukraine: a Turning Point in 2004?', EU Institute for Security Studies, Occasional Paper 47, November 2003, 6, 19.

[87] Section 2.3.3.

disarmament and the closure of the Chornobyl nuclear plant.[88] The EU continued to emphasize its intention to develop 'strong political relationship'[89] and 'partnership relations'[90] with Ukraine, without elaborating on the ultimate objective thereof.

3.4.2 1994 Partnership and Cooperation Agreement

Entry into force and duration

The EU-Ukraine PCA[91] was a mixed agreement due to the inclusion of the provisions on political dialogue.[92] It was signed on 14 June 1994 and entered into force on 1 March 1998. The delay in ratification of the PCA reflected the low priority assigned to Ukraine by the EU.[93] Trade provisions of the PCA became effective in 1996 under the Interim Agreement.[94] The PCA was concluded for an initial period of ten years with the possibility for subsequent automatic renewal,[95] which allowed some parts of it to remain in force until the EU-Ukraine AA fully entered into force in 2017 (Section 3.7.2).

Objectives and scope

The aims of the PCA were: to provide a framework for the political dialogue between the parties; to promote trade, investment and harmonious economic relations; to provide a basis for mutually advantageous economic, social, financial, civil, scientific, technological and cultural cooperation; and to support Ukrainian efforts to consolidate its democracy, develop its economy and complete the transition into a

[88] Pidluska (n 70), 188; Vahl, 'Background Paper on EU Policy Towards Ukraine', Centre for European Policy Studies, April 2003, 2, 4.

[89] Common Position 94/779/CFSP on the objectives and priorities of the European Union towards Ukraine [1994] OJ L313/1, point A.1.

[90] Commission, 'Action Plan for Ukraine', COM (96) 593, 20.11.1996, 4.

[91] Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Ukraine, of the other part [1998] OJ L49/3 (hereinafter 'EU-Ukraine PCA').

[92] Maresceau, 'A Typology of Mixed Bilateral Agreements', in Hillion and Koutrakos (eds), *Mixed Agreements Revisited: The EU and its Member States in the World* (Hart, 2010), 21.

[93] Piontek, 'Ukraine', in Blockmans and Lazowski (eds) *The European Union and Its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration* (Asser Press, 2006), 502.

[94] Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Ukraine, of the other part [1995] OJ L311/2.

[95] Article 101, EU-Ukraine PCA.

market economy.[96] The PCA established a most-favoured nation treatment for trade in goods and provided for economic cooperation between the parties.[97] Unlike the EAs, it stopped short of establishing an FTA. Instead, under the so-called 'evolutionary clause', the parties undertook to consider the possibility of establishing an FTA in case of Ukraine's sufficient advancement with economic reforms.[98] This clause was a declaration of intent without any legal consequences, and underlined the 'entry-level' nature of the PCA.[99] The PCA included the 'best endeavour clause' on approximation of Ukraine's legislation to *acquis communautaire*,[100] which further confirmed the 'minimalistic approach' of the PCA.[101]

The PCAs were not identical. For example, the 'evolutionary clauses' were contemplated only under the PCAs with Ukraine, Russia and Moldova, differentiating them from other PCAs.[102] At the same time, the Russian PCA was more beneficial regarding, for example, financial cooperation and the freedom of establishment.[103] The Ukrainian PCA was described as a 'paler version' of the Russian PCA.[104]

Institutional framework

The PCA established an institutional framework for political dialogue. The Cooperation Council, consisting of the ministerial level representatives of the EU Council, European Commission, and the Ukrainian Government, met once a year.[105] It was assisted by the Cooperation Committee, which consisted of the senior civil servant level officials from both sides.[106] Additionally, the Parliamentary Cooperation

[96] Ibid, Article 1.

[97] Ibid, Titles III and VII.

[98] Ibid, Article 4.

[99] Hillion, 'Institutional Aspects of the Partnership between the European Union and the Newly Independent States of the Former Soviet Union: Case Studies of Russia and Ukraine' (2000) 37 *Common Market Law Review* 1211, 1216.

[100] Article 51, EU-Ukraine PCA.

[101] Van der Loo, Van Elsuwege and Petrov, 'The EU-Ukraine Association Agreement: Assessment of an Innovative Legal Instrument', EUI Working Papers, LAW 2014/09, 4.

[102] Maresceau (n 8), 12; Cremona (n 28), 269.

[103] For a detailed analysis of the Russian PCA, see Hillion, 'Russian Federation', in Blockmans and Lazowski (eds), *The European Union and Its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration* (Asser Press, 2006), 470-484.

[104] Emerson et al, 'The Reluctant Debutante – The EU as Promoter of Democracy in its Neighbourhood', in Emerson (ed), *Democratisation in the European Neighbourhood* (Centre for European Policy Studies, 2005), 200.

[105] Articles 85 and 86(1), EU-Ukraine PCA.

[106] Ibid, Article 87(1).

Committee served as a forum for dialogue between the European Parliament and the Ukrainian Parliament.[107] Such institutional framework followed the EAs' model. However, while the Association Councils under the EAs were entitled to adopt legally binding decisions, the Cooperation Council could adopt only non-binding recommendations.[108] Thus, the Cooperation Council could not widen or deepen the scope of the PCA, which meant that the latter was a rigid document.[109] Finally, although not envisaged under the PCA, meetings between the President of the EU Council, the President of the Commission and the President of Ukraine, known as EU-Ukraine Summits, were held each year, following the practice of EU-Russia Summits.[110] The PCA institutions ensured greater EU engagement with Ukraine,[111] although they were criticised for the lack of opportunities for the contacts between middle-level officials.[112]

The post-PCA impasse

In 1999 the EU adopted the Common Strategy (CS) on Ukraine.[113] The CS was a unilateral instrument of the EU and was drafted without involvement of Ukraine.[114] Its initial period of application was four years,[115] subsequently extended for one additional year.[116] The CS was one of only three CSs ever adopted by the EU. The other two were on Russia and the Mediterranean.

While acknowledging that the PCA remained the main basis for EU-Ukraine relations, the CS established the EU's 'principal objectives' with regard to Ukraine: e.g. support for the democratic and economic transition.[117] It also presupposed

[107] Ibid, Article 90.

[108] Ibid, Article 85; Hillion (n 99), 1221-1222.

[109] Van der Loo, *The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area: A New Legal Instrument for EU Integration Without Membership* (Brill Nijhoff, 2016), 78.

[110] Hillion (n 99), 1221.

[111] Lynch (n 84), 45.

[112] Dragneva and Wolczuk, 'The EU-Ukraine Association Agreement and the Challenges of Inter-Regionalism' (2014) 39 *Review of Central and East European Law* 213, 215-216.

[113] Common Strategy 1999/877/CFSP on Ukraine [1999] OJ L331/1 (hereinafter 'CS on Ukraine').

[114] The expression 'common' referred to the positions of the Member States: Maresceau, 'EU Enlargement and EU Common Strategies on Russia and Ukraine: An Ambiguous Yet Unavoidable Connection', in Hillion (ed), *EU Enlargement: A Legal Approach* (Hart, 2004), 183.

[115] CS on Ukraine, point 67.

[116] Common Strategy 2003/897/CFSP amending Common Strategy 1999/877/CFSP on Ukraine in order to extend the period of its application [2003] OJ L333/96.

[117] CS on Ukraine, part II, para 1.

strengthened support for Ukraine's accession to the World Trade Organisation (WTO) and facilitation of investment climate.[118] As compared to the PCA, much greater emphasis was put on the Justice and Home Affairs issues, such as illegal immigration, trafficking in human beings and border security.[119] The CS stated that the EU 'acknowledge[d] Ukraine's European aspirations and welcome[d] Ukraine's pro-European choice'.[120] This wording was reminiscent of the Preambles to the EAs.[121] Nevertheless, the CS was silent on the ultimate objective and instead aimed to strengthen the 'strategic partnership' between the parties.[122] This concept was hollow and failed to take into account Ukraine's membership aspirations.[123] Indeed, 'strategic partnership' was also to be developed between the EU and Russia.[124] Overall, the CS hardly had any added value for EU-Ukraine relations.[125]

The EU's policy towards Ukraine at that time was influenced by two main factors. First, Ukraine's poor reforms and declarative membership aspirations discredited Ukraine and presented it as an unreliable international actor.[126] However, some observers accused the EU of double standards, claiming that the progress of Bulgaria and Romania, with whom accession negotiations started in 1999, was not greater than the progress of Ukraine.[127] The second and key factor was that the EU continued to follow a 'Russia-first' strategy. Big Member States, e.g. Germany, France and Italy, feared that an independent policy towards Ukraine might aggravate Russia and affect EU-Russia relations.[128] The need to maintain cooperative relations

[118] Ibid, points 32-33.

[119] Ibid, points 34-35.

[120] Ibid, point 6.

[121] Cremona (n 28), 262.

[122] CS on Ukraine, point 7.

[123] Maresceau (n 114), 199-202.

[124] Common Strategy 1999/414/CFSP on Russia [1999] OJ L157/1, part I, para 1.

[125] Sasse, 'The EU Common Strategy on Ukraine: A Response to Ukraine's "pro-European Choice"?', in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002), 215-219.

[126] Ferrero-Waldner, Commissioner for External Relations and ENP, 'The EU and Ukraine – what lies beyond the horizon?', SPEECH/05/257, 26.04.2005; Kuzio, 'Ukraine's Relations with the West: Disinterest, Partnership, Disillusionment' (2003) 12:2 *European Security* 21, 26-27.

[127] Tedstrom, 'The EU and Ukraine: A Transatlantic View', in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002), 34.

[128] Vahl, 'EU-Russia Relations in EU Neighbourhood Policies', in Malfliet, Verpoest and Vinokurov (eds), *The CIS, the EU and Russia: The Challenges of Integration* (Palgrave Macmillan, 2007), 126-127.

with Russia became especially urgent after the 9/11 attacks[129] and in the wake of the forthcoming enlargement (especially in relation to the Baltic states).[130] The EU's approach was welcomed in Russia, which tried to secure its role as the EU's gateway to the CIS.[131]

Subsequently, Ukraine's continuing attempts to gain the EU's attention led to 'Ukraine fatigue' in the EU, which was met by a sense of frustration on the Ukrainian side.[132] The 'Kuchmagate' intensified the international isolation of Ukraine and the overall EU-Ukraine relations in the early 2000s came to a standstill.[133]

3.5 The EU and Ukraine under the ENP during stage II (2004-2009)

3.5.1 Bilateral framework: a reluctant move towards association

Following the 2004 enlargement, Poland and the Baltic states, along with some old Member States, such as the UK and the Scandinavian countries, pressed to keep an EU membership perspective open to Ukraine.[134] After the 2004 Orange Revolution similar calls were coming from the new Member States[135] and the European Parliament.[136] The post-Orange Revolution leaders were united in their support of Ukraine's EU integration and realised that reforms – not diplomacy or declarations – were a precondition for closer relations with the EU and the eventual membership. However, the infighting and constitutional crises that ensued shortly after the Orange Revolution diverted attention from the necessary reforms and there was no clear leadership on EU issues.[137] Societal support for EU membership still remained

[129] Lynch, 'Russia Faces Europe', Institute for Security Studies, Chaillot Paper No 60, May 2003, 9.

[130] Maresceau (n 114), 189-198.

[131] Lynch (n 129), 59.

[132] Sasse (n 125), 219.

[133] Piontek (n 93), 503-504.

[134] Balfour, *Human Rights and Democracy in EU Foreign Policy: The Cases of Ukraine and Egypt* (Routledge, 2012), 56-57.

[135] Buras and Pomorska, 'Poland and the European Neighbourhood Policy' (2006) 7:19 *Foreign Policy in Dialogue* 34, 40-42.

[136] European Parliament Resolution on the results of the Ukraine elections (P6_TA(2005)0009), 13.01.2005, para 14.

[137] Wolczuk, 'Implementation without Coordination: The Impact of EU Conditionality on Ukraine under the European Neighbourhood Policy' (2009) 61:2 *Europe-Asia Studies* 187, 191, 198-202; Casier, 'The EU's Two-track Approach to Democracy Promotion: the Case of Ukraine' (2011) 18:4 *Democratization* 956, 967.

ambivalent.[138] Regardless of the internal situation in Ukraine, the old Member States, most notably France and Germany, continued to oppose the idea of Ukraine's membership because of Russia, thus confirming the EU's overall 'Russia-first' policy.[139] Additionally, at that time the EU was struggling to 'sell' the idea of Turkish accession to EU citizens.[140]

As a result, Ukraine was left in the 'grey zone' under the ENP.[141] At the very beginning, the Kuchma Government was disappointed by the absence of membership perspective under the ENP and objected to the term 'neighbourhood policy'.[142] Nevertheless, the ENP was seen as a transitional policy that helped overcome the stalemate in relations with the EU and the wider international isolation of Ukraine.[143] The Orange Revolution leaders were disappointed by the EU's unwillingness to change its approach towards Ukraine. Nevertheless, they agreed to participate in the ENP because it was perceived as a temporary policy, able to serve as a stepping-stone for Ukraine's eventual membership.[144] Another crucial factor was that under the ENP the EU for the first time differentiated Ukraine, Moldova, Belarus, Georgia, Armenia and Azerbaijan from the rest of the CIS. Even more importantly, the differentiation from Russia was for the first time undertaken. This happened, however, not because of the EU's intention, but due to Russia's self-exclusion from the ENP and the elaboration of EU-Russia Common Spaces.[145] Notably, initially Russia did not object to the ENP covering the Eastern neighbours.[146]

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[138] Wolczuk, 'Ukraine and Its Relations with the EU in the Context of the European Neighbourhood Policy', in Fischer (ed), *Ukraine: Quo Vadis*, EU Institute for Security Studies, Chaillot Paper No 108, February 2008, 96-97.

[139] Raik, 'Promoting Democracy in the Eastern Neighbourhood – the Limits and Potential of the ENP' (2006) 41:3 *International Spectator* 31, 40; Lefebvre, 'France and the European Neighbourhood Policy' (2006) 7:19 *Foreign Policy in Dialogue* 17, 17-18, 23-24.

[140] Wolczuk, 'Ukraine after the Orange Revolution', Centre for European Reform, Policy Brief, 04.02.2005, 3.

[141] Wallace (n 54), 8.

[142] Petrov, 'Legal and Political Expectations of Neighbouring Countries from the ENP', in Cremona and Meloni (eds), *The European Neighbourhood Policy: A Framework for Modernisation?*, EUI Working Papers LAW 2007/21, 12.

[143] Dragneva and Wolczuk, *Ukraine Between the EU and Russia: The Integration Challenge* (Palgrave, 2015), 40.

[144] Solonenko, 'European Neighbourhood Policy – the Perception of Ukraine' (2006) 7:19 *Foreign Policy in Dialogue* 44, 48-49.

[145] On the comparison between the ENP and the Common Spaces see Emerson, 'EU-Russia Four Common Spaces and the Proliferation of the Fuzzy', Centre for European Policy Studies, Policy Brief No 71, May 2005, 1-3; Delcour, 'Does the European Neighbourhood Policy Make a Difference?

Ukraine was the first ENP country to start negotiations on a new agreement with the EU in March 2007. Initially there was a lack of consensus among the Member States as to the legal basis of such agreement. One option was an association agreement based on Article 217 TFEU,[147] yet some Member States feared that this would be perceived as a signal of Ukraine's future accession.[148] Another option was a cooperation agreement under Article 212 TFEU,[149] although this would not have been a major advance compared to the PCA.[150] Alternatively, it was unclear whether Article 8 TEU could serve, individually or in conjunction with other articles, as a legal basis for new agreements.[151] Generally, Article 8 TEU does not oblige the EU to conclude a specific type of agreement and instead leaves a margin for flexibility.[152]

Ultimately, in September 2008, during an EU-Ukraine Summit, it was announced that a new agreement would take a form of the AA with a DCFTA.[153] Several interconnected factors accounted for the choice of Article 217 TFEU as a legal basis. First, Ukraine preferred the association formula and objected to the 'neighbourhood' label of the new agreement.[154] Secondly, the EU already had EMAAs with the Southern Mediterranean neighbours and the initial EA-related rationale for not granting association to Eastern neighbours vanished at that time.[155] Thirdly, against the background of the 2008 Russia-Georgia war, the EU felt a growing need to support Ukrainian democratic forces which were experiencing

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Policy Patterns and Reception in Ukraine and Russia' (2007) 7 *European Political Economy Review* 118, 138-143.

[146] Gretskiy, Treshchenkov and Golubev, 'Russia's Perceptions and Misperceptions of the EU Eastern Partnership' (2014) 47 *Communist and Post-Communist Studies* 375, 377-378.

[147] Hillion (n 83), 174-177.

[148] Van Elsuwege and Van der Loo (n 47), 100; Lippert, 'The Discussion on EU Neighbourhood Policy – Concepts, Reform Proposals and National Positions', Friedrich Ebert Stiftung, July 2007, 7.

[149] Petrov, 'Legal Basis and Scope of the New EU-Ukraine Enhanced Agreement. Is There Any Room for Further Speculation?', EUI Working Papers, MWP 2008/17, 8-18.

[150] Cremona (n 28), 290-291.

[151] Van Elsuwege and Petrov (n 36), 696-699.

[152] Ghazaryan (n 32), 63.

[153] EU-Ukraine Summit, Joint Declaration, 12812/08 (Presse 247), 09.09.2008, 3.

[154] Hillion, 'A New Framework for the Relations between the Union and Its East-European Neighbours', in Cremona and Meloni (eds), *The European Neighbourhood Policy: A Framework for Modernisation?*, EUI Working Papers LAW 2007/21, 149-151.

[155] Ibid.

political crises.[156] Additionally, the EU agreed to consider a visa-free regime for Ukraine as a long-term perspective, under strict conditions.[157]

It was clear since the outset that the AA would not be a pre-accession agreement as the old Member States, especially Germany and France, still opposed the idea of Ukraine's membership.[158] Besides, there was 'Ukraine fatigue' in the EU due to numerous constitutional crises and political infighting that followed shortly after the Orange Revolution.[159] Nevertheless, Ukrainian leaders welcomed the choice of the association formula and perceived it as de facto stepping outside the framework of 'neighbourhood' and entering the stage of preparation for the future membership.[160]

3.5.2 'Soft' bilateral documents

3.5.2.1 2005 Action Plan

In 2005 the PCA was supplemented with the EU-Ukraine AP. After consultations between the Commission and Ukrainian authorities, the AP was endorsed by the EU Council and approved in a form of a recommendation of the EU-Ukraine Cooperation Council.[161] The endorsement by the Council meant that the AP was soft law within EU legal order, while the subsequent approval by the Cooperation Council connected the AP to the PCA and provided it with the interpretative relevance with regard to the latter.[162]

The AP provided new impetus to EU-Ukraine relations. It was adopted for three years and contained nearly 300 political, economic and other tasks, designed to serve as a practical guidance for Ukraine to implement the PCA.[163] The AP integrated

[156] Van Elsuwege and Petrov (n 36), 697-698.

[157] EU-Ukraine Summit 2008 (n 153), 3, 6.

[158] Shapovalova, 'The New Enhanced Agreement Between the European Union and Ukraine: Will it Further Democratic Consolidation?', FRIDE, Working Paper No 62, June 2008, 7.

[159] Kuzio, 'Ukraine's Relations with the West since the Orange Revolution', European Security, April 2012, 6, 10.

[160] 'Interview with Andriy Veselovskyi, the Head of the Mission of Ukraine to the EU (2008-2010)', *Interfax-Ukraine*, 31.12.2008 (in Russian).

[161] EU-Ukraine Action Plan, 21.02.2005 (hereinafter 'EU-Ukraine AP').

[162] Van Vooren (n 29), 194-200.

[163] EU-Ukraine AP, part 1.

components from all three pillars: e.g. trade[164] (first pillar), fight against terrorism and proliferation of weapons of mass destruction[165] (second pillar), and migration and border issues[166] (third pillar). By setting out 'a comprehensive set of priorities in areas within and beyond' the scope of the PCA,[167] the AP considerably developed and built on the PCA.[168] For example, it listed 30 tasks regarding democracy, the rule of law and human rights, as will be discussed in Chapter 6.[169] The institutions established by the PCA remained valid and were tasked with monitoring the implementation of the AP.[170] Additional monitoring was to be undertaken also by the Commission. However, the weakness of the AP was that as a soft law instrument it did not embody legal obligations for which the parties could be held accountable.[171]

Similarly to the pre-ENP CS, the AP 'acknowledge[d] Ukraine's European aspirations and welcome[d] Ukraine's European choice'.[172] This statement was a compromise between Ukraine's aspirations and the EU's unwillingness to recognise them.[173] It entailed neither legal nor political commitment on behalf of the EU, and did not mean a pre-accession reorientation of the PCA. Instead, the AP triggered a 'political reorientation' of the PCA in the light of the wider objectives of the ENP.[174] It confirmed the ENP aim of moving beyond cooperation to a significant degree of integration, including through 'a stake in the EU's Internal Market', the possibility of an FTA, participation in key aspects of EU policies and programmes, and intensified political cooperation.[175] Moreover, it confirmed the objective of concluding a new 'enhanced' bilateral agreement, the scope of which was made conditional upon the fulfilment by Ukraine of the priorities of the AP and the overall evolution of EU-

[164] Ibid, part 2.3.
[165] Ibid, part 2.1.15.
[166] Ibid, part 2.4.
[167] Ibid, part 1.
[168] Hillion, '"Thou Shalt Love Thy Neighbour": the Draft European Neighbourhood Policy Action Plan Between the EU and Ukraine', in Mayhew and Copsey (eds), *Ukraine and European Neighbourhood Policy* (Sussex European Institute, 2005), 18-20.
[169] Section 6.3.1.
[170] EU-Ukraine AP, part 1.
[171] Ghazaryan (n 32), 69-70.
[172] EU-Ukraine AP, part 1.
[173] Van Vooren (n 29), 214.
[174] Hillion, 'The EU's Neighbourhood Policy towards Eastern Europe', in Dashwood and Maresceau (eds), *Law and Practice of EU External Relations: Salient Features of a Changing Landscape* (CUP, 2008), 318-321.
[175] EU-Ukraine AP, part 1.

Ukraine relations.[176] The AP thus enhanced a transitional character of the PCA and added dynamism to EU-Ukraine relations.[177] Such dynamism was a welcome novelty since EU-Ukraine relations were characterised as 'static' before the ENP.[178]

The EU reacted to the change of situation in Ukraine following the Orange Revolution with the introduction of the 10-point Additional Measures as a supplement to the AP.[179] The Additional Measures did not add any new tasks, but elucidated some of the offers, e.g. visa facilitation.[180] This was a lowest common denominator decision, aimed to accommodate the Member States which advocated the revision of the AP (e.g. Poland and the Baltic states) and those which opposed any special treatment of Ukraine (e.g. France).[181]

3.5.3 Multilateral framework: Eastern Partnership

In addition to extending the offer of AAs, DCFTAs and visa liberalisation to all six Eastern neighbours, the EaP introduced a multilateral framework for cooperation in the form of biannual EaP Summits, annual meetings of the Ministers of Foreign Affairs, thematic platforms and panels.[182] Additionally, the EU-Neighbourhood East Parliamentary Assembly (EuroNest PA) was introduced as a forum for discussion between parliamentarians from the EU and partner countries, whereas the Civil Society Forum (CSF) engaged representatives of civil society.[183] The EaP thus added a multilateral framework to the hitherto bilateral EU-Ukraine relations.[184]

However, the added value of the EaP for Ukraine was limited since the country had already been offered the AA/DCFTA and visa liberalisation.[185] The EaP was perceived as a 'retrograde step' because it failed to reflect Ukraine's

[176] Ibid.

[177] Hillion (n 168), 20-22.

[178] Solonenko, 'The EU's "Transformative Power" beyond Enlargement: the Case of Ukraine's Democratisation', European Research Institute, Working Paper No 21, July 2007, 14.

[179] Additional Measures to the 2005 EU-Ukraine Action Plan, Annex to the Eighth meeting of the EU-Ukraine Cooperation Council, 6428/05 (Presse 37), 21.02.2005.

[180] Chapter 6, Section 6.3.1.

[181] Solonenko and Jarabik, 'Ukraine', in Youngs (ed), *Is the European Union Supporting Democracy in its Neighbourhood?*, FRIDE, September 2008, 88.

[182] Joint Declaration of the Eastern Partnership Summit, Prague, 07.05.2009, 8-9.

[183] Ibid, 10. See Chapter 4, Section 4.4.3.

[184] Balfour (n 134), 59.

[185] Boonstra and Shapovalova, 'The EU's Eastern Partnership: One Year Backwards', FRIDE Working Paper No 99, May 2010, 9-10.

distinctiveness.[186] On the other hand, Ukraine welcomed the fact that the Eastern neighbours were singled out from the Southern Mediterranean neighbours.[187] The EaP also further underlined that the Eastern neighbours were in a different framework of relations with the EU than Russia. For the Eastern neighbours the EaP was a way to counterbalance, at least to some extent, the asymmetric relationship with Russia.[188] However, the EaP lacked a security component, which Ukraine and Georgia were hoping for after their NATO integration aspirations had been denied at the 2008 Bucharest Summit.[189] The lack of security component under the EaP became obvious during the next stages (Sections 3.6.3 and 3.7.4).

3.6 The EU and Ukraine under the ENP during stage III (2010-2013)

3.6.1 Bilateral framework: a move towards association continued

Negotiations on the AA were completed in October 2011, and it was initialled in March 2012. Notably, during stage III, accession to the EU remained Ukraine's declared objective.[190] However, there was less emphasis on this objective in official rhetoric[191] and the semi-authoritarian trends in the country suggested that these aspirations were declarative, similarly as during stage I. Subsequently, President Yanukovych refused to satisfy conditions necessary for the signature of the AA, some of which were related to democracy, the rule of law and human rights.[192] As a result, signature of the AA was put on hold until the 2013 EaP Summit, when, under pressure from Russia, Yanukovych refused to sign the AA, sparking off the Maidan

[186] Dragneva and Wolczuk (n 143), 45.

[187] Hillion and Mayhew (n 57), 21.

[188] Sadowski (n 60), 30-31.

[189] Boonstra and Shapovalova (n 185), 9; Dostál, Karasova and Lidl, 'Trends of Eastern Partnership', Association for International Affairs, 2015, 15.

[190] Article 11(2), Law of Ukraine 'On the foundations of internal and external policy', No 2411-VI, 01.07.2010.

[191] Solonenko, 'Added Value? Eastern Partnership and EU-Ukraine Bilateral Relations', Internationale Politik und Gesellschaft, IPG No 3/2011, 122, 124.

[192] Chapter 7, Sections 7.2 and 7.3.

Revolution and the subsequent Russia-Ukraine conflict.[193] The EU's role in these events is explored in Chapter 8.[194]

3.6.2 'Soft' bilateral documents

3.6.2.1 2009 and 2013 Association Agendas

In 2009 a bilateral EU-Ukraine Association Agenda (AAg) replaced the AP. The AAg was also a soft law instrument, adopted in a form of a recommendation of the Cooperation Council.[195] The AAg, similarly to the AP, 'acknowledge[d] Ukraine's European aspirations and welcome[d] Ukraine's European choice'.[196] The AP and the AAg had similar structure and content, suggesting that there was continuity between the two documents and that the AAg was 'a second generation [AP]'.[197] However, the difference was that the AAg was not connected to the PCA, but instead intended to prepare and facilitate the entry into force of the AA. Thus, it was not a purely transitional document.[198]

In 2013 the AAg was updated to reflect the changes in EU-Ukraine relations after negotiations on the AA were completed.[199] In 2015, after the entry into force of the AA, the AAg was updated again (Section 3.7.3.1).

3.6.2.2 2010 Visa Liberalisation Action Plan

Following the 2008 EU-Ukraine Summit, visa liberalisation dialogue was launched. In 2010 the EU presented Ukraine with the Visa Liberalisation Action Plan (VLAP).[200] The VLAP was adopted during the EU-Ukraine Summit, and thus differed from the AP and the AAgs, which were adopted by the EU-Ukraine Cooperation Council. The ultimate objective of the VLAP was to allow Ukrainian citizens-holders of biometric passports to travel to the EU without Schengen visas for short-term visits (without the right to work). The VLAP included a list of benchmarks

[193] Chapter 2, Sections 2.4 and 2.5.

[194] Sections 8.2 and 8.3.

[195] EU-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement, 23.11.2009.

[196] Ibid, part 1.

[197] Van Vooren (n 29), 194, 205-208.

[198] Ibid, 207-208.

[199] EU-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement, 24.06.2013.

[200] EU-Ukraine Visa Liberalisation Action Plan, 22.11.2010.

covering four blocks: i) document security, including biometrics; ii) illegal migration, including readmission; iii) public order and security; and iv) external relations and fundamental rights. The VLAP was implemented in two phases. During the first phase Ukraine adopted legislation required by the VLAP and during the second phase it implemented the adopted legislation. The Commission monitored the implementation of the VLAP and published regular progress reports.

Ukraine's progress was poor during stage III. The VLAP was implemented only during stage IV, leading to a visa-free regime in 2017 (Section 3.7.3.2).[201]

3.6.3 Multilateral framework: Eastern Partnership

During stage III it became increasingly obvious that the EaP was perceived in Russia as the EU's intrusion into Russia's 'sphere of influence'.[202] Russia's initiatives of the Eurasian Customs Union (EACU) and Eurasian Economic Union (EAEU) were largely a reaction to the EaP.[203] It also soon became obvious that simultaneous membership in the EaP DCFTA and in the EACU was impossible, signalling that the EU and Russia developed two clashing projects in the neighbourhood.[204] Russia subsequently put economic and other pressure on Ukraine, Moldova, Georgia and Armenia in order to entice them away from the AA/DCFTA. This tactic succeeded only with Armenia, which in September 2013 abandoned the AA.[205]

It was then that divisions inside the EaP became obvious. While Armenia chose the EACU/EAEU, Azerbaijan opted for a Strategic Modernisation Partnership with the EU, and EU-Belarus relations remained 'semi-frozen'.[206] Only Ukraine, Georgia and Moldova still remained on the AA/DCFTA track. In addition to Ukraine, VLAPs were offered to Moldova in 2010 and to Georgia in 2013.

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[201] See also Chapter 7, Section 7.4 and Chapter 8, Section 8.5.

[202] Gretskiy, Treshchenkov and Golubev (n 146), 379-380; Haukkala, 'From Zero-Sum to Win-Win? The Russian Challenge to the EU's Eastern Neighbourhood Policies', SIEPS European Policy Analysis, 12-2009, 6-7.

[203] Gromadzki (n 61), 19; Dundovich, '"New Values" for a New "Great Russia"', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 139.

[204] Dragneva and Wolczuk (n 112), 224-225; Van der Loo and Van Elsuwege, 'Competing Paths of Regional Economic Integration in the Post-Soviet Space: Legal and Political Dilemmas for Ukraine' (2012) 37 *Review of Central and East European Law* 421, 439-442.

[205] Emerson and Kostanyan, 'Putin's Grand Design to Destroy the EU's Eastern Partnership and Replace It with a Disastrous Neighbourhood Policy of His Own', Centre for European Policy Studies, Commentary, 17 September 2013, 1-4.

[206] Gromadzki (n 61), 16-18.

3.7 The EU and Ukraine under the ENP during stage IV (post-2013)

3.7.1 Bilateral framework: association, not membership

After Yanukovych's refusal to sign the AA and the tumultuous events of the 2013-2014 Maidan, the AA was signed in two rounds.[207] First, in the light of the Russian annexation of Crimea, the EU '[a]s a matter of priority' decided to sign the political chapters of the AA on 21 March 2014 with the then interim Ukrainian authorities.[208] The partial signature of the AA was a political gesture designed to support Ukraine.[209] Secondly, the economic parts of the AA were signed on 27 June 2014, after the presidential election in Ukraine, alongside the signature of the AAs with Moldova and Georgia.[210] Notably, the AA has not been updated to reflect the post-2013 realities. The EU feared that any re-negotiation of the AA in 2014 could have brought back Ukraine's claims for membership.[211]

The EU-Ukraine AA is based on Article 217 TFEU, along with Articles 31(1) and 37 TEU (for a CFSP action) and Article 79(2)(b) TFEU (for Article 17 AA on the treatment of third-country nationals legally employed as workers on the territory of the parties). However, from a procedural point of view, Article 217 TFEU was enough due to its 'catch-all' nature.[212] The Georgian and Moldovan AAs rely on the combination of Articles 31(1) and 37 TEU and Article 217 TFEU. They do not rely on Article 79(2)(b) TFEU because they do not contain the equivalent of Article 17 of the Ukrainian AA.[213] Article 8 TEU was not relied upon for the conclusion of the AAs, emphasising that it is primarily 'a programmatic provision' and not an autonomous substantive legal basis.[214]

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[207] Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part [2014] OJ L161/3 (hereinafter 'EU-Ukraine AA').

[208] European Council, Statement of the Heads of State or Government on Ukraine, 06.03.2014, 3.

[209] Van Rompuy, President of the European Council, Statement at the occasion of the signing ceremony of the political provisions of the Association Agreement between the European Union and Ukraine, Presse 176, 21.03.2014, 1; Van der Loo, Van Elsuwege and Petrov (n 101), 6.

[210] Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part [2014] OJ L260/4 (hereinafter 'EU-Moldova AA'); Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part [2014] OJ L261/4 (hereinafter 'EU-Georgia AA').

[211] Blockmans (n 38), 54-55.

[212] Van der Loo (n 109), 167-172.

[213] Ibid, 172.

[214] Ibid, 172-175.

The EU-Ukraine AA does not set the aim of Ukraine's accession to the EU and therefore is not a pre-accession agreement, such as e.g. the EU-Serbia Stabilisation and Association Agreement (SAA).[215] At the same time, the AA 'shall not prejudice and leaves open future developments in EU-Ukraine relations'.[216] Some provisions of the AA carry striking parallels with the wording of Article 49 TEU and the Copenhagen criteria.[217] In particular, the AA recognises that 'Ukraine as a European country shares a common history and common values with the Member States of the EU and is committed to promoting those values'.[218] Internal policies of the parties shall be based on the principles of stability of democratic institutions, the rule of law and respect for human rights.[219] The establishment of the DCFTA and approximation of Ukrainian legislation to EU *acquis* are regarded as preconditions for Ukraine's transition into a functioning market economy.[220]

Moreover, similarly to the AP and the AAgs, the Preamble to the AA confirms that the EU 'acknowledges the European aspirations of Ukraine and welcomes its European choice'. It is the first time that this statement is embodied in a bilateral hard law document, and its inclusion has been a contentious issue during negotiations.[221] Similar statements are included in the Preambles to the AAs with Moldova and Georgia. These statements differentiate the AAs from other neighbourhood agreements, such as the PCAs and EMAAs, and make them similar to the EAs whereby the EU acknowledged the CEECs' objective to join the EU.[222] However, similarly to the EAs, such acknowledgement does not entail any legal or political commitment on behalf of the EU.[223] It rather serves as the EU's reassurance, aimed at the Eastern neighbours' engagement in the ENP.[224]

[215] Blockmans (n 38), 52.
[216] Preamble, EU-Ukraine AA.
[217] Van der Loo, Van Elsuwege and Petrov (n 101), 10.
[218] Preamble, EU-Ukraine AA.
[219] Ibid, Article 6.
[220] Ibid, Article 1(2)(d).
[221] Van Vooren (n 29), 214.
[222] Van der Loo (n 109), 176-177.
[223] Van der Loo, Van Elsuwege and Petrov (n 101), 10.
[224] Ghazaryan, 'A New Generation of Human Rights Clauses? The Case of Association Agreements in the Eastern Neighbourhood' (2015) 40:3 *European Law Review* 391, 395-396.

Ukraine's vision of the AA differs. Similarly to the previous stages, the objective of becoming an EU member is confirmed in legislation.[225] Moreover, in February 2019 the Verkhovna Rada set out in the Constitution that Ukraine's objective is to become a member of the EU and NATO.[226] Ukrainian leaders consider that implementation of the AA will lead to Ukraine becoming a fully-fledged member of the EU.[227] Similar views are expressed in Moldova and Georgia.[228] Nevertheless, the mixed record of political reforms, as discussed in Chapter 2,[229] and the slow implementation of the AA, as mentioned below, suggest that the Government does not fully comprehend the significance of satisfying political parts of the Copenhagen criteria and is complacent about the existing state of Ukraine's reforms.

What have clearly changed since stages I-III, however, are societal attitudes. According to a recent sociological survey, as of August 2018, 51% of Ukrainians supported Ukraine's accession to the EU, 11% supported accession to the Russia-led EAEU, while 33% remained undecided.[230] Support for accession remains higher in the west and centre than in the east and south.[231] Clearly, the Maidan and the Russia-Ukraine conflict have acted as a 'pro-EU factor'.[232] However, this support seems to also have more ideological underpinnings. As rightly observed by one Ukrainian analyst, after the Maidan, 'Ukrainians feel that they stood up to bullets and even died in support of European values'.[233] Moreover, according to the same survey, 60% of respondents believed that Ukraine should continue with 'pro-EU' reforms even if the

[225] Article 11(2), Law of Ukraine 'On the foundations of internal and external policy', No 2411-VI, as amended on 08.07.2018; Article 3(3), Law of Ukraine 'On the national security of Ukraine', No 2469-VIII, 21.06.2018.

[226] Preamble, Articles 85(5), 102 and 116(1-1), Constitution of Ukraine.

[227] Poroshenko, Speech at the signing ceremony of the EU-Ukraine AA, 27.06.2014 (in Ukrainian). Available at: <https://www.president.gov.ua/news/vistup-prezidenta-na-ceremoniyi-pidpisannya-ugodi-pro-asocia-33096> [accessed 01.03.2019]; President of Ukraine, Decree 'On the adoption of Strategy of Development – Ukraine 2020', No 5/2015, 12.01.2015, part 1.

[228] Kochenov and Basheska, 'The European Neighbourhood Policy's Value Conditionality', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 158-159.

[229] Section 2.6.1.1.

[230] Ilko Kucheriv Democratic Initiatives Foundation and the Kyiv International Institute of Sociology, 'European integration and public opinion survey', September 2018 (in Ukrainian). Available at: <https://dif.org.ua/article/evropeyska-integratsiya-u-vimiri-gromadskoi-dumki> [accessed 01.03.2019].

[231] Ibid.

[232] Gromadzki and Wenerski, 'A Challenge for Liberal Democracy: How to Understand the Russian Intervention in Ukraine', Bertelsmann Stiftung, Policy Brief, October 2014, 6.

[233] Getmanchuk, 'Tracing the Origins of the Ukraine Crisis: Should the EU Share the Blame?', Friends of Europe, 15.06.2014. Similarly, 'Europe's ring of fire', *The Economist*, 20.09.2014.

EU does not recognise Ukraine's membership perspective. Civil society groups urge the Government to focus on the political parts of the Copenhagen criteria, namely democracy, the rule of law and human rights. It is rightly argued that after political criteria are satisfied, Ukraine will be able to make credible calls for membership even without being first formally granted a membership perspective.[234]

3.7.2 2014 Association Agreement

Entry into force and duration

According to Article 218(6)(a)(i) TFEU, the EU-Ukraine AA needed consent of the European Parliament. The latter was granted on 16 September 2014, shortly after the signature of the economic parts of the AA. The speed at which it was granted showed the European Parliament's solidarity with Ukraine and its support for Ukraine's 'European choice'.[235] Moreover, following a well-established practice,[236] the AA is a mixed agreement and therefore required ratification by all EU Member States. While ratification of the AA was awaited, many of its provisions became provisionally applicable on 1 November 2014,[237] while the provisional application of the DCFTA was delayed until 1 January 2016.[238] The delay occurred due to the so-called trilateral talks between the EU, Ukraine and Russia, which took place during 2014-2015. The talks were designed to find a solution to Russia's alleged concerns about the impact of the DCFTA on the Russian economy and to prevent Russia from suspending the FTA with Ukraine.[239] Overall, Russia's objections to the DCFTA were political tactics aimed to preclude the entry into force of the DCFTA.[240] At the end, the trilateral talks failed to bring any solution and Russia suspended the FTA.

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[234] Shulga, 'Almost EU membership: what did Poroshenko offer and what else can Ukraine do', *Yevropeyska Pravda*, 13.09.2017 (in Ukrainian).

[235] Van der Loo (n 109), 127-128.

[236] Maresceau (n 92), 17-20.

[237] Article 486, EU-Ukraine AA. Starting from 1 November 2014 provisional application was provided for: Title I (General Principles), Articles 4-6 of Title II (Political Dialogue and Reform, Political Association, Cooperation and Convergence in the Field of Foreign and Security Policy), Articles 14 and 19 of Title III (Justice, Freedom and Security), several provisions of Title V (Economic and Sector Cooperation), Title VI (Financial Cooperation, with Anti-fraud Provisions) and almost entire Title VII (Institutional, General and Final Provisions).

[238] Starting from 1 January 2016 Title IV (Trade and Trade-related Matters) applied with certain exceptions of Articles 158, 285 and 286.

[239] Van der Loo (n 109), 141-153.

[240] Ibid, 152.

The entry into force of the AA as a whole was put on hold in April 2016, when it was rejected in an advisory referendum in the Netherlands.[241] The major concern of the organisers of the referendum was that the AA would lead to Ukraine's accession to the EU – even though the AA is not a pre-accession agreement and does not acknowledge Ukraine's membership perspective. There were reports of Russia's involvement in the referendum.[242] After uncertainty as to the future of the AA, a solution was found in December 2016 when the Member States adopted a legally binding Decision on the EU-Ukraine AA.[243] The Decision contains four main clarifications. Most importantly, it lays down the Member States' 'common understanding' that the AA 'does not confer on Ukraine the status of a candidate country for accession to the Union, nor does it constitute a commitment to confer such status to Ukraine in the future'.[244] The other three clarifications are that the AA does not contain an obligation for the EU or its Member States to provide collective security guarantees or other military aid or assistance to Ukraine, does not grant to Ukrainian nationals the right to reside and work freely within the territory of the Member States, and does not require additional financial support from the Member States to Ukraine.[245] The Decision unblocked the ratification of the AA by the Netherlands, leading to its ultimate full entry into force on 1 September 2017. In contrast, the AAs with Georgia and Moldova were ratified without obstacles. All three AAs are concluded for an unlimited period.

Objectives and scope

The EU considers the Ukrainian AA to be 'the most advanced agreement of its kind' ever negotiated by the EU.[246] The AA aims at Ukraine's political association and economic integration with the EU and its convergence with the EU in political,

[241] The advisory referendum was held on 6 April 2016. With voter turnout of 32.28%, 61% of the votes cast were against the Approval Act of the EU-Ukraine AA.

[242] Higgins, 'Fake News, Fake Ukrainians: How a Group of Russians Tilted a Dutch Vote', *The New York Times*, 16.02.2017.

[243] Decision of the Heads of State or Government of the 28 Member States of the European Union, meeting within the European Council, on the EU-Ukraine Association Agreement, annexed to European Council Conclusions on Ukraine, 15.12.2016.

[244] Ibid, 3.

[245] Ibid, 4.

[246] Van Rompuy, President of the European Council, Press remarks following the EU-Ukraine Summit, Presse 74, 25.02.2013.

economic and legal areas.[247] The AA promotes 'close and privileged links' between the EU and Ukraine through, inter alia, Ukraine's association with EU policies and participation in programmes and agencies, enhanced political dialogue and gradual integration of Ukraine into the EU Internal Market by setting up a DCFTA.[248] Provisions on political dialogue and cooperation under the CFSP and the Area of Freedom, Security and Justice are in many aspects more advanced than under the pre-accession agreements, e.g. the EU-Serbia SAA.[249] At the same time, the envisaged cooperation is less ambitious than under the EEA, inter alia because the AA does not provide for the free movement of workers.[250]

The DCFTA is 'deep' because it aims to remove not only tariffs, but also non-tariff barriers to trade (e.g. technical standards for industrial goods, sanitary and phytosanitary measures for agricultural products). It is 'comprehensive' because it goes much further than traditional FTAs by covering not only trade in goods, but also other trade-related areas such as services, investment, intellectual property rights, public procurement and competition.[251] The removal of non-tariff barriers and cooperation in trade-related areas entail extensive approximation of Ukrainian legislation to the EU *acquis*, often in exchange for additional access to the EU Internal Market ('market access conditionality').[252] The DCFTA envisages the approximation of 80-90% of the EU *acquis*.[253] Many provisions on the DCFTA are more prescriptive and detailed than trade-related provisions under the EU-Serbia SAA.[254] At the same time, the AA is considerably less ambitious than the EEA. The AA offers full Internal Market treatment only in two areas: services/establishment and public procurement, while in other areas the integration dimension is much more restricted than under the EEA.[255] The AAs with Georgia and Moldova are largely similar to the Ukrainian AA, yet less ambitious in certain areas: for example, they do

[247] Preamble, EU-Ukraine AA.
[248] Ibid, Article 1(2).
[249] Blockmans (n 38), 51-61; Van Elsuwege and Van der Loo (n 47), 102.
[250] Van der Loo (n 109), 191-204.
[251] Ibid, 217-225.
[252] Ibid, 9, 210-213, 226-233, 247-291.
[253] Wolczuk, 'Ukraine and the EU: Turning the Association Agreement into a Success Story', European Policy Centre, Policy Brief, 23.04.2014, 1.
[254] Blockmans (n 38), 61-75.
[255] Van der Loo (n 109), 15, 28-48, 212-214, 247-291, 296-301, 304-313.

not envisage Internal Market treatment in the area of services/establishment.[256] Thus, the DCFTAs have only partly realised the ENP's initial offer of 'a stake in the EU's Internal Market'.[257]

Ukraine's progress with the implementation of the DCFTA has been patchy and slow due to such factors as insufficient political will and weak institutional capacity.[258] Observers have also noted the high costs of the implementation of the DCFTA, particularly considering that Ukraine does not have access to the EU structural and cohesions funds, unlike the pre-accession countries.[259]

Institutional framework

The AA strengthened the bilateral institutional framework. Annual Summit meetings are now explicitly envisaged. They provide overall guidance for the implementation of the AA and an opportunity to discuss issues of mutual interest.[260] At the ministerial level, the Association Council replaced the Cooperation Council. It meets at least once a year in order to monitor the application and implementation of the AA.[261] Most importantly, unlike the Cooperation Council, the Association Council is entitled to adopt binding decisions.[262] Thus, it can update and amend the AA annexes, namely those related to the DCFTA, taking into account the evolution of EU law.[263] Such competence of the Association Council makes the AA more durable and flexible than the PCA.[264] The Association Committee assists the Association Council at senior civil servant level and is assisted by sub-committees.[265] Similarly to the practice

[256] Ibid, 243-246, 254-255, 258-259, 269-270, 275-276, 279-280, 283-284, 289, 291, 301, 313-318.
[257] Van Elsuwege and Van der Loo (n 47), 106.
[258] Ukrainian Centre of European Policy, 'Ukraine and the Association Agreement: Monitoring the Implementation 2014-2018', Report, November 2018 (in Ukrainian).
[259] 'The state of implementation of associations and free trade agreements with Ukraine, Georgia and Moldova with particular focus on Ukraine and systemic analysis of key sectors', European Parliament, Directorate-General for External Policies, Policy Department, Study, November 2017, 34.
[260] Article 460(1), EU-Ukraine AA.
[261] Ibid, Articles 460(2), 461-462.
[262] Ibid, Article 463(1).
[263] Ibid, Article 463(3).
[264] Hillion (n 83), 179-181.
[265] Articles 464-466, EU-Ukraine AA.

under the PCA, the Parliamentary Association Committee serves as a forum for the exchange of views and can make recommendations for the Association Council.[266]

The AA also established the Civil Society Platform (CSP), which allows for cooperation between the representatives of the European Economic and Social Committee and of Ukrainian civil society.[267] The CSP can make recommendations for the Association Council.[268] Notably, the CSP is not envisaged under the pre-accession SAAs, such as the EU-Serbia SAA.[269] The Moldovan and Georgian AAs foresee the same institutional framework as the Ukrainian AA, with the exception of Summits (which in the Eastern neighbourhood are envisaged only with Ukraine and Russia).[270]

3.7.3 'Soft' bilateral documents

3.7.3.1 2015 Association Agenda

The 2015 EU-Ukraine AAg facilitates implementation of the AA. Similarly to the 2005 AP, 2009 and 2013 AAgs, it is a soft law instrument adopted in a form of a recommendation of the EU-Ukraine Association Council.[271] The AAg serves as a practical framework for implementation of the AA by providing a list of priorities and tasks for action.[272] As compared to the AP, the total number of tasks increased to over 300 and they are more detailed.

3.7.3.2 2010 Visa Liberalisation Action Plan

In December 2015, five years after the introduction of the VLAP, the Commission found that Ukraine had met all the benchmarks set in it.[273] The visa-free regime for Ukraine was approved on 17 May 2017,[274] and officially entered into force on 11

[266] Ibid, Articles 467-468.

[267] Ibid, Article 469.

[268] Ibid, Article 470(2).

[269] Blockmans (n 38), 59.

[270] Articles 433-443, EU-Moldova AA; Articles 403-413, EU-Georgia AA.

[271] EU-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement, 16.03.2015.

[272] Ibid, Part 1.

[273] Commission, Sixth Progress Report on the Implementation by Ukraine of the VLAP, COM (2015) 905, 18.12.2015.

[274] Regulation (EU) No 2017/850 amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (Ukraine) [2017] OJ L133/1.

June 2017. It grants Ukrainian citizens who hold biometric passports the right to enter the territory of 30 Schengen countries[275] without a visa. The visa-free regime does not provide the right to work in the Schengen area and applies only to short-term visits (up to 90 days in a 180 day period).

3.7.4 Multilateral framework: Eastern Partnership

There is a clear de facto division between the EaP countries, or what was called the 'multi-speed' character of the EaP.[276] Armenia and Belarus have joined the Russia-led EAEU, while Azerbaijan prefers to stay outside but does not seek closer political ties with the EU either. In November 2017, Armenia and the EU signed the Comprehensive and Enhanced Partnership Agreement, which is not an AA and does not establish the DCFTA.[277] The EU and Azerbaijan are currently negotiating a Strategic Partnership Agreement, while EU-Belarus relations remain frozen. In contrast, EU relations with Ukraine, Georgia and Moldova are governed by the AAs with the DCFTAs.[278]

The disparity between the EaP countries was exemplified by the 2015 EaP Summit declaration which mentioned the 'illegal annexation of Crimea and Sevastopol' and '[t]he acts against Ukraine',[279] yet did not explicitly mention Russia and did not condemn these acts.[280] This declaration was the lowest common denominator, reflecting the different attitudes towards Russia. Moreover, Ukraine, Georgia and Moldova also differ from the rest in terms of societal pressure for democratic reforms.[281]

Ukraine's position is that the EU should differentiate the three associated countries under the EaP.[282] Observers also urge the EU to differentiate the

[275] All EU countries (except for the United Kingdom and Ireland) plus Norway, Iceland, Switzerland and Liechtenstein.

[276] Havlicek, 'The Eastern Partnership at the Turn of Its Tenth Anniversary: Where Have We Come Since Prague, and Where to Go Next?' (2018) 3:13 *UA: Ukraine Analytica* 7, 8.

[277] See, for example, Kostanyan and Giragosian, 'EU-Armenian Relations: Charting a Fresh Course', Centre for European Policy Studies, Research Report No 2017/14, November 2017.

[278] However, Moldova was granted observer status in the EAEU in April 2017.

[279] Joint Declaration of the Eastern Partnership Summit, Riga, 22.05.2015, 2.

[280] Åslund, 'The Disastrous EU Summit on the European Partnership', *New Atlanticist*, 26.05.2015.

[281] Gromadzki (n 61), 11-12.

[282] Yeliseyev, the Head of the Mission of Ukraine to the EU (2010-2015), as quoted in 'Ukraine urged the EU to differentiate the Eastern Partnership', *Ukrayinska Pravda*, 29.05.2015 (in Ukrainian).

frontrunners, possibly by offering a long-term membership perspective.[283] Notably, the 2015 ENP review has underlined the importance of a differentiated, tailor-made approach towards each neighbour, which would 'reflect different ambitions, abilities and interests'.[284] According to it, the implementation of the AAs will lead to the 'gradual economic integration of partners in the EU Internal Market and therefore to the creation of an economic area'.[285] The 2016 Global Strategy for the EU's Foreign and Security Policy confirmed the EU's plans to 'enhance the resilience of [the EU's] eastern neighbours, and uphold their right to determine freely their approach towards the EU'.[286] The vague rhetoric of the reviewed ENP and the Global Strategy betrays the fact that the EU does not have a clear strategy towards the Eastern neighbourhood, and Ukraine, Georgia and Moldova in particular.[287] The ENP review also did not clarify what strategic approach the EU is to adopt in its relations with neighbours' neighbours, particularly Russia.[288] The EaP also still lacks a security component.[289] The last two EaP Summits, of 2015 and 2017, did not add any clarifications.[290]

3.8 The EU and Ukraine: where next?

The EU has three options with regard to Ukraine: grant Ukraine a membership perspective, envisage new benefits under the ENP, or avoid making any promises until the AA is fully implemented.

The first scenario appears unlikely in the coming years due to the 'enlargement fatigue' in the EU, the unstable political and economic climate in Ukraine, the Russia-Ukraine conflict, and the potential impact on EU-Russia

[283] Tocci, 'The Neighbourhood Policy is Dead. What's Next for European Foreign Policy Along its Arc of Instability?', Instituto Affari Internazionali, Working Paper 14, November 2014, 6.
[284] 2015 ENP Review, 4.
[285] Ibid, 8.
[286] 'Shared Vision, Common Action: A Stronger Europe', A Global Strategy for the European Union's Foreign and Security Policy, June 2016, 33.
[287] Delcour (n 66), 3.
[288] Ibid, 3-4; Blockmans, 'The 2015 ENP Review: A Policy in Suspended Animation', Centre for European Policy Studies, Commentary, 01.12.2015, 4.
[289] Dostál, Karasova and Lidl (n 189), 11, 15.
[290] 'Disappointed suitors: The EU's Eastern Partnership', *The Economist*, 05.10.2017.

relations.[291] Considering the conflict, the 'good neighbourliness' criterion can be easily invoked against Ukraine. Moreover, the first scenario has become more unlikely after the abovementioned 2016 Decision of the Heads of State or Government which emphasised that the AA is not a pre-accession agreement (Section 3.7.2). Formally this clarification does not affect the possibility of becoming a member of the EU under Article 49 TEU because it only emphasises that the AA does not aim at Ukraine's accession.[292] However, given that the Decision's primary aim was to placate concerns of the Dutch voters following the referendum, it is clear that the Dutch Government will block debates about granting Ukraine a membership perspective in the coming years.[293] Indeed, according to the Ukrainian media, in 2017 the Netherlands (later joined by France and Germany) blocked the inclusion of the statement that the EU 'acknowledges the European aspirations of Ukraine and welcomes its European choice' in the joint declaration of the EU-Ukraine Summit. As a result, the Summit ended without the joint declaration.[294]

Nevertheless, the views on Ukraine's membership aspirations can change depending on how the EU changes. The Commission's March 2017 White Paper on the Future of the EU identified the idea of a 'multi-speed EU' as one of the five scenarios for the future of the EU.[295] The 'multi-speed EU' presupposes different levels of integration between different groups of Member States, depending on their interests and preferences. The other four scenarios are: retaining the status quo, deepening only the Single Market, deepening only selected policy areas, and deepening all policy areas.[296] Some observers argue that if 'multi-speed EU' becomes a reality, the Member States might be more willing to consider Ukraine as a candidate for membership.[297] Overall, the preferred scenario will heavily depend on the agreed

[291] Van der Loo (n 109), 180.

[292] Van Elsuwege, 'Towards a solution for the ratification conundrum of the EU-Ukraine Association Agreement?', *Verfassungsblog on Matters Constitutional*, 16.12.2016.

[293] Sydorenko, 'What was offered to the Netherlands in exchange for association? Analysis of the risks and substance of the agreement', *Yevropeyska Pravda*, 16.12.2016 (in Ukrainian).

[294] Sydorenko, 'Summit without perspectives: how the EU blocked the European dream of Ukraine', *Yevropeyska Pravda*, 13.07.2017 (in Ukrainian).

[295] Commission, 'White Paper on the Future of Europe: Reflections and Scenarios for the EU27 by 2025', COM (2017) 2025, 01.03.2017, 20-21.

[296] Ibid, 16-19, 22-25.

[297] Sadowski (n 60), 44; Lytvynenko, 'Multi-speed Europe: what changes await the EU and how will they impact Ukraine', *Yevropeyska Pravda*, 15.08.2017 (in Ukrainian).

position of France and Germany,[298] and if there is no consensus, chances are high that the status quo will remain.[299]

The second option that the EU has with regard to Ukraine, that is granting new benefits under the ENP, is more realistic. In his 2018 address to the Ukrainian Parliament, President Poroshenko claimed that Ukraine's aim is to join the EU Customs Union, the Energy Union and the Digital Single Market.[300] According to a recent study, hypothetically, Ukraine will be in a position to join the Customs Union only after the implementation of the DCFTA, which can take more than 10 years.[301] Nevertheless, as mentioned above, so far the EU has not made new offers under the ENP/EaP.

Therefore, for the time being the EU prefers the third option. It is emphasised that Ukraine should focus on the implementation of the AA, and that the latter is 'not the final stage of [EU-Ukraine] cooperation'.[302] This option, however, is not sustainable in the long term. First, the abovementioned growing divisions within the EaP warrant a differentiation between the Eastern neighbours. Secondly, once implemented, the AA can render Ukraine a 'shadow member state', ready to embark on accession negotiations.[303] This is especially likely considering the fact that, as mentioned above, the AA is in many aspects more beneficial than the pre-accession SAAs. Nevertheless, whether this scenario will become a reality will depend on the political will of leaders that will come to power following Ukraine's 2019 presidential and parliamentary elections, and on the EU's assistance with implementation of the AA.

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[298] 'How Macron and Merkel will shape the European Union', *The Economist*, 30.09.2017.

[299] Morillas, 'Juncker's State of the Union: where now for multispeed Europe?', *LSE European Politics and Policy Blog*, 14.09.2017.

[300] Poroshenko, Address to the Verkhovna Rada 'On internal and external situation in Ukraine in 2018', 20.09.2018 (in Ukrainian).

[301] Emerson and Movchan, 'Should Ukraine Aim to Join the EU's Customs Union?', Centre for European Policy Studies, 08.09.2017, 3-4, 7-9.

[302] Van Rompuy, President of the European Council, Statement at the signing ceremony of the Association Agreements with Georgia, Republic of Moldova and Ukraine, Presse 375, 27.06.2014, 1.

[303] Gromadzki (n 61), 29; Wolczuk (n 253), 1.

3.9 Conclusion

This Chapter examined the legal and political framework of EU-Ukraine relations before and during the ENP at different stages. This framework evolved from the modest PCA in 1994 into the ambitious AA in 2014.

All frameworks of EU-Ukraine relations can be described as alternatives to membership, designed to respond to Ukraine's membership aspirations. In other words, the EU and Ukraine have never had a common long-term vision of their relationship. Ukraine's aspirations to join the EU stem from security considerations and the difficulties with counterbalancing its relations with Russia. This Chapter has shown that for the EU, in contrast, security considerations warranted a deferential attitude towards Russia, which entailed the reluctance to consider Ukraine for membership. This reveals not only the lack of strategy in the relationship, but also the lack of a common vision as to security threats. At the same time, the frameworks that the EU offered to Ukraine instead of membership have been devoid of any security component. By choosing the AA and the EaP, Ukraine now has to deal with Russia's aggression, while still remaining uncertain as to whether the EU would ever consider it for membership.

This Chapter has also shown that Ukraine's aspirations for EU membership have evolved significantly over time. Especially notable is the increase in societal support during stage IV, which corresponds to the greater support for democratic reforms and stronger civil society, as shown in Chapter 2. At the same time, the current mixed record of reforms suggests that some political reforms still present high costs for the Government. This means that the growing internal support for liberal values and for Ukraine's accession to the EU is not (as yet) by itself sufficient for triggering comprehensive and irreversible reforms in the country. On the other hand, the growing internal support for the EU has increased the EU's leverage over Ukraine, creating a potentially fertile ground for the EU's efforts with promoting and protecting democracy, the rule of law and human rights under the ENP.

Specific methods and instruments for promotion and protection of democracy, the rule of law and human rights under the ENP will be examined in Chapter 4.

4. The ENP and promotion and protection of democracy, the rule of law and human rights: legal, political and institutional framework

4.1 Introduction

The aim of this Chapter is to unveil and analyse legal, political and institutional aspects of the ENP framework for promotion and protection of democracy, the rule of law and human rights.

It begins with the examination of the objective of promotion and protection of democracy, the rule of law and human rights under the ENP and under the Treaties (4.2). It then identifies and critically analyses the four main weaknesses and contradictions inherent in this objective under the ENP (4.3). The Chapter then examines the methods and instruments that the EU has at its disposal under the ENP: positive and negative conditionality, socialisation, reform assistance and support of civil society. Pre-ENP methods and instruments, and the ENP's differences and similarities with pre-accession policy are taken into account (4.4). It then explores the degree of involvement and the roles played by EU institutions and Member States in the ENP (4.5). The Chapter concludes with reflections on the ENP framework (4.6).

4.2 Promotion and protection of democracy, the rule of law and human rights as the EU's objective in external relations and the ENP

The principle of conferred powers, according to which the EU shall act only within the limits of competences conferred upon it by the Member States in the Treaties,[1] is one of the cornerstones of the EU legal order. This means that an appropriate legal basis in the Treaties must be found for every EU action,[2] both internal and external.[3]

[1] Articles 4(1), 5(1) and (2), Consolidated Version of the Treaty on European Union [2012] OJ C326/13 (hereinafter 'TEU').

[2] De Baere, *Constitutional Principles of EU External Relations* (OUP, 2008), 9.

[3] Opinion 2/94 *Accession by the Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms* [1996] ECR I-1759, paras 23-24.

The European Economic Community and the European Community (EC) originally lacked an express legal basis for the conduct of external human rights policy.[4] Instead, up until the late 1980s, human rights were promoted through the diplomacy of the European Political Cooperation – the predecessor of the Common Foreign and Security Policy (CFSP).[5] The EC, in turn, tried to keep its trade and development policies non-political due to economic, historical and geopolitical considerations.[6] In the late 1980s the situation changed due to two major factors. First, public opinion became sensitive to human rights issues, and the European Parliament, especially after being granted the power of assent under the Single European Act in 1987, started pressing for a more active EC role in promotion of human rights, democracy and the rule of law worldwide.[7] The Preamble to the Single European Act for the first time specifically provided for human rights and democracy to be taken into account in the EC's relations with third states.[8] Secondly, the end of the Cold War 'reduced the importance of the alliance factor which had long determined relations between industrialised and developing countries and had made reactions to a given situation a function of geopolitical considerations'.[9] The end of the Cold War also signalled a shift in Eastern Europe from modern to post-modern states, more willing to accept international supervision over human rights and democracy.[10]

At the time of the establishment of the ENP, several provisions in the Treaties enshrined the foreign policy objectives related to promotion of democracy, the rule of law and human rights. The Treaty of Maastricht, 1992, provided that the EC policy on development cooperation 'shall contribute to the general objective of developing

[4] Fouwels, 'The European Union's Common Foreign and Security Policy and Human Rights' (1997) 15:3 *Netherlands Quarterly of Human Rights* 291, 291-292.

[5] Clapham, 'Where is the EU's Human Rights Common Foreign Policy, and How is it Manifested in Multilateral Fora?', in Alston, Bustelo and Heenan (eds), *The EU and Human Rights* (OUP, 1999), 632-634; King, 'Human Rights in European Foreign Policy: Success or Failure for Post-modern Diplomacy?' (1999) 10:2 *European Journal of International Law* 313, 316-321.

[6] Smith, 'The Use of Political Conditionality in the EU's Relations with Third Countries: How Effective?' (1998) 3 *European Foreign Affairs Review* 253, 258-259.

[7] Smith, 'The EU, Human Rights and Relations with Third Countries: "Foreign Policy" with an Ethical Dimension?', in Smith and Light (eds), *Ethics and Foreign Policy* (CUP, 2001), 186; Fierro, *The EU's Approach to Human Rights Conditionality in Practice* (Martinus Nijhoff, 2003), 59-63.

[8] Single European Act [1987] OJ L169/1.

[9] Commission, 'Human Rights, Democracy and Development Cooperation Policy', SEC (91) 61, 25.03.1991, 4.

[10] King (n 5), 324.

and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms'.[11] Moreover, under the Treaty of Maastricht, one of the objectives of the EU under the Common Foreign and Security Policy (CFSP) became 'to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms'.[12] The Treaty of Nice, 2001, later provided that the EC's economic, financial and technical cooperation with third countries should contribute to the objective of democracy, the rule of law and human rights.[13] Accordingly, promotion of democracy, the rule of law and human rights gradually became a cross-pillar external objective of the EU.[14] The ENP documents further built on this objective. The ENP was designed to extend to the neighbours a 'set of principles, values and standards which define the very essence of the European Union'.[15] The emphasis was put on fostering political and economic reforms in neighbouring countries and promoting commitment to 'shared values', including democracy, the rule of law and human rights.[16]

The Treaty of Lisbon, which entered into force in 2009, introduced a number of important changes. The Charter of Fundamental Rights of the EU became legally binding and serves as an important check on the actions of EU institutions.[17] According to Article 2 TEU, the values of the EU include respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Pursuant to Article 3(5) TEU, in relations with the wider world the EU shall 'uphold and promote its values and interests'. Moreover, according to Article 21(1) TEU, the EU's action on the international scene shall be 'guided' by the principles 'which have inspired its own

[11] Ex Article 177, Consolidated Version of the Treaty Establishing the European Community [2006] OJ C321E/37 (hereinafter 'EC Treaty').

[12] Ex Article 11, Consolidated Version of the Treaty on European Union [2006] OJ C321E/5. See Brandtner and Rosas, 'Human Rights and the External Relations of the European Community: An Analysis of Doctrine and Practice' (1998) 9 *European Journal of International Law* 468, 470-472.

[13] Ex Article 181a(1) EC Treaty.

[14] Smith, *European Union Foreign Policy in a Changing World* (Polity, 1st edn, 2003), 106.

[15] Prodi, 'A Wider Europe – A Proximity Policy as the Key to Stability', SPEECH/02/619, 5-6.12.2002, 5.

[16] Patten and Solana, 'Letter on Wider Europe', 07.08.2002, 3; Commission, 'Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours', COM (2003) 104, 11.03.2003 (hereinafter 'Wider Europe Communication'), 16; Commission, 'European Neighbourhood Policy Strategy Paper', COM (2004) 373, 12.05.2004 (hereinafter 'ENP Strategy Paper'), 13; Commission, 'On Strengthening the European Neighbourhood Policy', COM (2006) 726, 04.12.2006 (hereinafter 'ENP Strengthening Communication'), 3.

[17] Article 6(1) TEU; Charter of Fundamental Rights of the European Union [2000] OJ C326/02.

creation', including democracy, the rule of law and human rights. Furthermore, pursuant to Article 21(2)(a) and (b) TEU, objectives of the EU's external action include to 'safeguard its values, fundamental interests, security, independence and integrity' and to 'consolidate and support democracy, the rule of law, human rights and the principles of international law'. The obligations to 'safeguard' and to 'consolidate and support' suggest a stronger obligation and a more proactive attitude of the EU.[18]

Moreover, the Lisbon Treaty introduced a new Article 8 TEU, which serves as a constitutional foundation of the ENP, as mentioned in Chapter 3.[19] It provides that a 'special relationship' with neighbouring countries has to be 'founded on the values of the Union'. Thus, under the ENP, and in EU external relations post-Lisbon, export of values shall permeate various aspects of relations.[20] At the same time, it is confusing that the Treaty of Lisbon regards democracy, the rule of law and human rights simultaneously as values, principles and objectives.[21]

The documents on the Eastern Partnership (EaP) also confirm the objective of promoting democratic reforms in the neighbouring countries.[22] The 2011 ENP review emphasised the objective to 'build and consolidate healthy democracies'.[23] Following the 2015 review, the ENP remains committed to promoting democracy, the rule of law and human rights, yet more emphasis is put on stabilisation through, inter alia, economic development and working on common interests[24] (Section 4.3.2).

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[18] Ghazaryan, *The European Neighbourhood Policy and the Democratic Values of the EU* (Hart, 2014), 17.

[19] Section 3.3.

[20] Van Elsuwege and Burlyuk, 'Exporting the Rule of Law to the EU's Eastern Neighbours: Reconciling Coherence and Differentiation', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 173.

[21] Ghazaryan (n 18), 16-17.

[22] Commission, 'Eastern Partnership', COM (2008) 823, 03.12.2008 (hereinafter 'EaP Communication'), 2-3; Joint Declaration of the Eastern Partnership Summit, Prague, 07.05.2009, 6; Joint Declaration of the Eastern Partnership Summit, Vilnius, 29.11.2013, 1; Joint Declaration of the Eastern Partnership Summit, Riga, 22.05.2015, 1, 4; Joint Communication, 'Eastern Partnership – 20 Deliverables for 2020', SWD (2017) 300, 09.06.2017, 3, 24-33.

[23] Joint Communication, 'A New Response to a Changing Neighbourhood: A Review of the European Neighbourhood Policy', COM (2011) 303, 25.05.2011 (hereinafter '2011 ENP Review'), 1.

[24] Joint Communication, 'Review of the European Neighbourhood Policy', JOIN (2015) 50, 18.11.2015 (hereinafter '2015 ENP Review'), 2-4, 7-12.

4.3 Promotion and protection of democracy, the rule of law and human rights under the ENP: internal weaknesses

4.3.1 The scope of democracy, the rule of law and human rights

The Treaties do not clarify the absolute level required in consolidating and supporting democracy, the rule of law and human rights.[25] Similarly, the ENP has been vague as to the substance of these values. According to the very early ENP documents, the 'key benchmarks' under the Action Plans (APs) were to include the ratification and implementation of international commitments which demonstrate respect for shared values, 'in particular the values codified in the UN Human Rights Declaration, the OSCE [Organisation for Security and Cooperation in Europe] and Council of Europe standards'. [26] It was later clarified that the APs would include priorities on strengthening democracy and the rule of law, the reform of the judiciary and the fight against corruption; respect for human rights and fundamental freedoms, including freedom of media and expression, rights of minorities and children, gender equality, trade union rights and other core labour standards, and fight against the practice of torture and ill-treatment; support for the development of civil society; and cooperation with the International Criminal Court.[27]

The 2011 ENP review introduced the concept of 'deep and sustainable democracy', with such 'elements' as free and fair elections; freedoms of association, expression and assembly and a free press and media; the rule of law administered by an independent judiciary and right to a fair trial; fighting against corruption; security and law enforcement sector reform (including the police) and the establishment of democratic control over armed and security forces.[28] The 2011 review thus suggested a stronger attention to substantive rather than formal concept of democracy.[29] At the same time, most of the elements of 'deep and sustainable democracy' were part of the ENP's earlier approach and did not add much specification on the content of values,

[25] Ghazaryan (n 18), 20.

[26] Wider Europe Communication, 16.

[27] ENP Strategy Paper, 13.

[28] 2011 ENP Review, 3.

[29] Comelli, 'Potential and Limits of EU Policies in the Neighbourhood', Notre Europe – Jacques Delors Institute, Policy Paper No 68, 19.02.2013, 2; Haukkala, 'The EU's Regional Normative Hegemony Encounters Hard Realities: The Revised European Neighbourhood Policy and the Ring of Fire', in Bouris and Schumacher (eds), *The Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy* (Palgrave Macmillan, 2016), 86.

except for the establishment of democratic control over armed and security forces and the right to a fair trial.[30] Generally, under the ENP the EU focuses more on civil and political rights than on social and economic rights.[31]

In sum, there is no explicit definition provided for what democracy, the rule of law and human rights mean in the context of the ENP and EU external relations more broadly.[32] The ENP emphasises 'shared values' or, as provided under Article 8 TEU, 'values of the Union'.[33] In practice, in promoting the values the EU greatly relies on the standards elaborated by other relevant actors, such as the Council of Europe and the OSCE.[34] The fact that the scope and meaning of democracy, the rule of law and human rights are not explicitly defined in the ENP documents suggests that they can be interpreted differently, possibly leading to 'double standards'. On the other hand, such ambiguity is not necessarily a weakness because it provides the EU with considerable flexibility, which is necessary for responding to the internal situation in each given neighbour.

4.3.2 The ENP as a security-motivated policy

Since the outset, the main aim under the ENP has been security and stability of the EU itself.[35] The 2003 European Security Strategy provided that the 'best protection' for security of the EU was 'a world of well-governed democratic states'.[36] Thus, the central idea was that reforms in neighbouring countries would lead to security,

[30] Ghazaryan, 'The Fluid Concept of "EU Values" in the Neighbourhood: A Change of Paradigm from East to South?', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 21.

[31] Ibid, 16-20.

[32] Wetzel, Orbie and Bossuyt, 'One of What Kind? Comparative Perspectives on the Substance of EU Democracy Promotion' (2015) 28:1 *Cambridge Review of International Affairs* 21, 24-26.

[33] For a comprehensive analysis of the democratic values of the EU and their relation to the ENP see Ghazaryan (n 18), 95-124.

[34] Smith (n 14), 107-110, 131-134; Van Elsuwege and Burlyuk (n 20), 169-173.

[35] Wallace, 'Looking After the Neighbourhood: Responsibilities for the EU-25', Notre Europe, Policy Paper No 4, July 2003, 18-20; Cremona and Hillion, '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, No 2006/39, 3-8; Zaiotti, 'Of Friends and Fences: Europe's Neighbourhood Policy and the "Gated Community Syndrome"' (2007) 29:2 *European Integration* 143, 147-151; Ghazaryan, 'The Evolution of the European Neighbourhood Policy and the Consistent Evolvement of its Inconsistencies' (2012) 7 *Review of European and Russian Affairs* 1, 4-5.

[36] 'A Secure Europe in a Better World', European Security Strategy, 12.12.2003, 10.

stability and prosperity of the neighbours and, hence, of the EU.[37] The EaP confirmed this idea.[38]

The early ENP documents also introduced the principle of 'joint ownership', according to which the reforms were not to be imposed by the EU, but decided together with the neighbours.[39] These early stages revealed the EU's rather idealistic belief that all ENP countries, except for Belarus and Libya, were committed to 'shared values', namely democracy, the rule of law and human rights.[40] Yet this was an aspiration rather than reality. It soon became obvious that some neighbours might resist reformation, while the EU might still need to cooperate with them (e.g. for securing energy supplies, trade or other geostrategic considerations).[41]

There is therefore a contradiction between the EU's milieu goals (reformation of the neighbours) and possession goals (trade, energy, etc.),[42] both of which are, to different degrees, necessary for security of the EU. Clearly, if a neighbour is willing to reform – in other words, when the values are truly 'shared' and there is a real 'joint ownership' – there is nothing wrong with the EU pursuing both milieu and possession goals. Yet when a neighbour is unwilling, the risk is that the need to cooperate and other security-related EU interests would be prioritised over the promotion of democracy, the rule of law and human rights.[43] Cooperation with undemocratic regimes is dangerous because it might legitimise or consolidate them, yet, on the

[37] Patten and Solana (n 16), 1, 3; Wider Europe Communication, 4, 7; ENP Strategy Paper, 3; ENP Strengthening Communication, 2; Landaburu, 'From Neighbourhood to Integration Policy: Are There Concrete Alternatives to Enlargement?', Centre for European Policy Studies, Policy Brief No 95, March 2006, 3; Cremona, 'The European Neighbourhood Policy: More than a Partnership?', in Cremona (ed), *Developments in EU External Relations Law* (OUP, 2008), 257-260.

[38] EaP Communication, 2-3.

[39] ENP Strategy Paper, 8.

[40] Ibid, 11-12; Wider Europe Communication, 15.

[41] Ghazaryan (n 18), 31; Johansson-Nogués, 'The (Non-)Normative Power EU and the European Neighbourhood Policy: An Exceptional Policy for an Exceptional Actor?' (2007) 7 *European Political Economy Review* 181, 185-187, 192.

[42] Tocci, 'Can the EU Promote Democracy and Human Rights Through the ENP? The Case for Refocusing on the Rule of Law', in Cremona and Meloni (eds), *The European Neighbourhood Policy: A Framework for Modernisation?*, EUI Working Papers LAW 2007/21, 29-32.

[43] Dannreuther, 'Developing the Alternative to Enlargement: The European Neighbourhood Policy' (2006) 11 *European Foreign Affairs Review* 183, 193-198.

other hand, it can sometimes create 'democratic enclaves' within state administration.[44]

A second contradiction is that democratisation can potentially be destabilising, thus running against the overall security rationale of the ENP. The EU's prioritisation of short-term stability (through cooperation with authoritarian regimes) over long-term democratisation has been especially obvious in relation to the Southern Mediterranean neighbours, both before and after the Arab Spring.[45] Thus, a neighbour must 'share' the values and also be stable for the EU's objective of transformation not to conflict with other security-related considerations.[46]

Notably, Article 8 TEU preserves the status quo of no hierarchy between the normative and other objectives of the ENP.[47] Moreover, by emphasising 'peaceful relations based on cooperation', Article 8 TEU further underlines the importance of security on the EU's agenda, and signals that promotion and protection of democracy, the rule of law and human rights remain subordinated to the primary goals of stability and security of the EU.[48] Yet the contradiction between the promotion of democracy, the rule of law and human rights, on the one hand, and other EU interests, on the other, is not exclusive to the ENP. Article 3(5) TEU emphasises values and interests in equal measure and there is no prioritisation of objectives under Article 21(2) TEU, which means that in EU external relations, overall, promotion and protection of values can be overtaken by other objectives and interests.[49] Other international actors also face this 'democratisation v other interests' dilemma, which is therefore not exclusive to the EU.[50] The exception is the EU's pre-accession policy, when

[44] Freyburg, 'The Two Sides of Functional Cooperation with Authoritarian Regimes: a Multi-Level Perspective on the Conflict of Objectives between Political Stability and Democratic Change' (2012) 19:3 *Democratization* 575, 584-590.

[45] Dandashly, 'The EU Response to Regime Change in the Wake of the Arab Revolt: Differential Implementation' (2015) 37:1 *Journal of European Integration* 37, 39-53.

[46] Börzel and van Hüllen, 'One Voice, One Message, but Conflicting Goals: Cohesiveness and Consistency in the European Neighbourhood Policy' (2014) 21:7 *Journal of European Public Policy* 1033, 1042-1044.

[47] Ghazaryan (n 35), 8-9.

[48] Ghazaryan (n 18), 29.

[49] Ibid, 16-20.

[50] See Grimm and Leininger, 'Not All Good Things Go Together: Conflicting Objectives in Democracy Promotion' (2012) 19:3 *Democratization* 391.

promotion of democracy, the rule of law and human rights in future Member States is not sacrificed to other considerations.[51]

The 2011 ENP review, inspired by the Arab Spring, confirmed the ENP's focus on stability and security and, at the same time, reinforced the importance of democratisation, thus presenting a dose of 'continuity and change'.[52] The 2015 review, in contrast, marked a clearer emphasis on realist considerations. The EU acknowledged that 'not all partners aspire to EU rules and standards'.[53] It provided that where partners wish to pursue deeper relations based on shared values, work will continue on the existing basis, but in other cases more focus will be put on shared interests.[54] This suggests a less ideological and more 'transactional' approach.[55]

The ambiguity of EU objectives was further revealed in the 2016 EU Global Strategy, which superseded the 2003 European Security Strategy. The Global Strategy puts emphasis on promoting the neighbours' 'resilience', which is defined as 'the ability of states and societies to reform, thus withstanding and recovering from internal and external crises'.[56] It then adds that '[a] resilient society featuring democracy, trust in institutions, and sustainable development lies at the heart of a resilient state'.[57] The concept of 'resilience' is so ambiguous that some argue that the Global Strategy does not differ much from the European Security Strategy in terms of emphasising democracy and reforms.[58] Indeed, the 2015 EaP Summit had already stressed the importance of strengthening the resilience of Eastern neighbours through,

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[51] Emerson et al, 'The Reluctant Debutante – The EU as Promoter of Democracy in its Neighbourhood', in Emerson (ed), *Democratisation in the European Neighbourhood* (Centre for European Policy Studies, 2005), 225.

[52] Schumacher and Bouris, 'The 2011 Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy', in Bouris and Schumacher (eds), *The Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy* (Palgrave Macmillan, 2016), 13-17.

[53] 2015 ENP Review, 2.

[54] Ibid, 4.

[55] Blockmans, 'The 2015 ENP Review: A Policy in Suspended Animation', Centre for European Policy Studies, Commentary, 01.12.2015, 1-3; Kostanyan, 'The European Neighbourhood Policy Reviewed: Shifting from Value-Driven to Classical Foreign Policy', in Hug (ed), *Institutionally Blind? International Organisations and Human Rights Abuses in the Former Soviet Union* (Foreign Policy Centre, 2016), 21-24.

[56] 'Shared Vision, Common Action: A Stronger Europe', A Global Strategy for the European Union's Foreign and Security Policy, June 2016 (hereinafter 'EU Global Strategy'), 23.

[57] Ibid, 24.

[58] Wagner and Anholt, 'Resilience as the EU Global Strategy's New Leitmotif: Pragmatic, Problematic or Promising?' (2016) 37:3 *Contemporary Security Policy* 414, 415-416.

inter alia, 'strengthening of democratic structures'.[59] On the other hand, the Global Strategy explicitly provides that in the years to come EU external action will be guided by 'principled pragmatism', which will combine 'a realistic assessment of the current strategic environment' and 'an idealistic aspiration to advance a better world'. [60] Thus, the EU will still have to choose between cooperating with authoritarian regimes and supporting the liberal values that might undermine such regimes.[61] This overall ambiguity suggests that the exact meaning of 'resilience' and its connection to democratisation are bound to be interpreted differently depending on the internal situation in each particular neighbour.

4.3.3 The ENP as an alternative to enlargement

The ENP was designed to serve as an alternative to enlargement, even though formally it does not rule out the possibility of membership, at least for 'European' neighbours, as discussed in Chapter 3.[62]

The problem is that there is an inherent contradiction between the ENP as a policy for promotion of values and as an alternative to EU membership. Namely, if the ENP succeeds in promoting political reforms, it will become a victim of its own success by helping the neighbours to satisfy the political parts of the Copenhagen criteria and thus strengthening their chances of making credible claims for EU membership.[63] This inherent contradiction of objectives is not found in pre-accession policy or in the EU's relations with third states, and is therefore typical only to the ENP, and only regarding the 'European' neighbours. This contradiction is limiting the potential of the ENP because it suggests that the EU might be satisfied with partial political reforms – reforms which are sufficient for stability and security but insufficient for making a credible bid for EU membership. This contradiction is

[59] Joint Declaration of the Eastern Partnership Summit, Riga, 22.05.2015, para 20.

[60] EU Global Strategy, 8.

[61] Biscop, 'The EU Global Strategy: Realpolitik with European Characteristics', in Woischnik (ed), *Might and Right in World Politics* (Konrad Adenauer Stiftung, 2016), 93.

[62] Section 3.3.

[63] Cremona and Hillion (n 35), 17; Casier, 'The Clash of Integration Processes? The Shadow Effect of the Enlarged EU on its Eastern Neighbours', in Malfliet, Verpoest and Vinokurov (eds), *The CIS, the EU and Russia: The Challenges of Integration* (Palgrave Macmillan, 2007), 89.

especially dangerous in the case of Ukraine due to the latter's membership aspirations and the EU's reluctance to acknowledge them.[64]

4.3.4 The ENP and non-promotion of democracy, the rule of law and human rights in Russia

It might be argued that the abovementioned Treaty provisions, according to which promotion of democracy, the rule of law and human rights is the EU's objective in external relations, apply also to Russia. One might even argue that Article 8 TEU applies to Russia as a neighbour of the EU. In practice, however, the EU has not been trying to promote political values in Russia.[65] Russia refused to participate in the ENP due to the latter's unequal and conditionality-based nature.[66] Accordingly, EU policies towards Russia have been devoid of positive conditionality in relation to values.[67] The lack of the EU's strategy for promotion of democratic values in Russia is largely the result of divergent positions of Member States, some of which (e.g. UK and Poland) argue for the emphasis on values in relations with Russia, while others (e.g. France) focus on geostrategic interests.[68]

The fact that the EU does not aim to promote democratic reforms in Russia has three main implications. First, it undermines the legitimacy of the EU and the ENP.[69] Secondly, an even more important – although somewhat overlooked – implication is that an increasingly undemocratic Russia strives to promote its 'managed democracy' model in the neighbourhood, thus undermining ENP potential there, while the EU does not try to prevent this insofar as it lacks a democratisation strategy towards Russia. Accordingly, the weakness of the ENP is that it disregards

[64] See Chapter 3 generally.

[65] Fernandes, 'EU Policies towards Russia, 1999-2007: Realpolitik Intended', in Tocci (ed), *The European Union as a Normative Foreign Policy Actor*, Centre for European Policy Studies, Working Document No 281, January 2008, 9-10.

[66] Vinokurov, 'The EU-Russia Common Economic Space and the Policy-Taker Problem', in Malfliet, Verpoest and Vinokurov (eds), *The CIS, the EU and Russia: The Challenges of Integration* (Palgrave Macmillan, 2007), 228-233.

[67] Haukkala, 'The Russian Challenge to EU Normative Power: the Case of European Neighbourhood Policy' (2008) 43:2 *International Spectator* 35, 39-40; Stewart, 'EU Democracy Promotion in the Eastern Neighbourhood' (2011) 16:5 *European Foreign Affairs Review* 607, 609-610, 615-620.

[68] Emerson et al (n 51), 194-199.

[69] Haukkala (n 67), 39-40; Van Elsuwege and Burlyuk (n 20), 179-180.

actors that might work to undermine democracy, the rule of law and human rights in the neighbourhood, such as Russia.[70]

The fact that the EU does not aim at the promotion of liberal values in Russia will be further discussed in the context of the EU's role in the Russia-Ukraine conflict.[71] Clearly, at this stage it is nearly impossible for the EU to elaborate a workable strategy for democratisation of Russian elites. One option is to reinforce support for Russian civil society.[72] For example, supporting the independent Russian-language media is a good example.[73] However, the EU should have a broader vision, too. It is not trivial that Russian leaders are so worried that democratisation in the neighbourhood, especially in Ukraine, might have a contagious effect on Russian society. This context thus makes the cause for promotion of values in Ukraine even more compelling.

The third (and related) implication is that there is a risk that the EU's strategic interests regarding Russia might be prioritised over support for democratic reforms in the Eastern neighbours.[74] The EU has been trying to avoid direct competition with Russia over Ukraine by not responding to the latter's membership aspirations. However, it is becoming increasingly clear that the EU's and Russia's normative agendas in the neighbourhood are mutually exclusive and, thus, in competition.[75] The objective to democratise Ukraine thus involves the EU in competition with Russia anyway. This poses the risk that the EU might become more cautious in its approaches.

Notably, the 2016 EU Global Strategy, after noting 'Russia's violation of international law and the destabilisation of Ukraine', stipulates that '[t]he EU will stand united in upholding international law, democracy, human rights, cooperation

[70] Aliboni, 'The Geopolitical Implications of the European Neighbourhood Policy' (2005) 10 *European Foreign Affairs Review* 1, 13-14; Gstöhl, 'The Contestation of Values in the European Neighbourhood Policy: Challenges of Capacity, Consistency and Competition', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 65-66, 75.

[71] Chapter 8, Section 8.3.

[72] Bond, 'The EU and Russia: Uncommon Spaces', Centre for European Reform, April 2014, 8.

[73] Youngs, 'The European Endowment for Democracy, Two Years On', Carnegie Europe, 04.09.2015.

[74] Dannreuther (n 43), 200.

[75] Haukkala (n 29), 89.

and each country's right to choose its future freely'.[76] This statement might be seen as an indication of the EU's awareness that it is involved in normative competition with Russia and its readiness to stand up for its values. On the other hand, the Global Strategy then posits that the EU will 'engage Russia to discuss disagreements and cooperate if and when [the EU's and Russia's] interests overlap', and that 'selective engagement' over 'matters of European interest' can take place.[77] The Global Strategy is thus intentionally ambiguous as to the EU's approach towards Russia.

4.4 Methods and instruments of promotion and protection of democracy, the rule of law and human rights under the ENP

4.4.1 Positive conditionality

The prime example of the application of positive conditionality has been EU pre-accession policy, from which the ENP conditionality is borrowed.[78] It is thus necessary to briefly recall the pre-accession conditionality and its effects.

In order for the EU to open accession negotiations, the candidate states have to satisfy political parts of the Copenhagen criteria, namely those related to democracy, the rule of law and human rights.[79] As a rich body of empirical studies on EU enlargement attests, positive conditionality has had different effects in different groups of the acceding states. First, for the frontrunners among the Central and Eastern European Countries (CEECs), such as Poland, Hungary and the Czech Republic, positive conditionality was a supportive but not key factor because these countries initially embarked on political reforms due to the logic of appropriateness.[80]

[76] EU Global Strategy, 33.

[77] Ibid.

[78] Emerson et al (n 51), 176.

[79] Chapter 3, Section 3.2.

[80] Schimmelfennig and Sedelmeier, 'Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe' (2004) 11:4 *Journal of European Public Policy* 661, 669-671; Mungiu-Pippidi, 'EU Enlargement and Democracy Progress', in Emerson (ed), *Democratisation in the European Neighbourhood* (Centre for European Policy Studies, 2005), 19-22.

Considering the recent developments in Poland and Hungary, however, there are questions regarding the irreversibility of their transformation.[81]

Secondly, conditionality was largely ineffective on the 'illiberal' governments in Slovakia, Romania and Bulgaria because for them the costs of compliance were prohibitively high. Yet the positive effect of conditionality in these countries was that it helped strengthen opposition and civil society, and therefore contributed to the defeat of illiberal governments by pro-reform forces in the next elections.[82]

Thirdly, in Turkey, during the period since the EU recognised the country's prospect for membership in 1999 and up until the opening of accession negotiations in 2005, the EU successfully promoted political reforms through positive conditionality and the empowerment of civil society.[83] However, political reforms later stalled due to, inter alia, the 'enlargement fatigue', inconsistent demands and internal developments.[84]

Fourthly, in the Western Balkans, whose prospect for membership was recognised in 2003, the political transformation has been slow. One of the reasons is that these countries have to undergo a 'triple transition': from war to peace, from a single-party rule to a pluralist democracy, and from a communist command economy to market economy.[85] Another factor is that in the Western Balkans the EU has often been inconsistent in specifying and enforcing the requirements.[86] Additionally, the EU's influence has been limited in ethnically divided states, such as Bosnia and Herzegovina, where it is often difficult to achieve domestic consensus on reforms.[87]

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[81] Vogel, 'Rule of Law: Double Standards Undermine EU's Role in the Neighbourhood', Centre for European Policy Studies, European Neighbourhood Watch, Issue No 139, July 2017, 2.

[82] Vachudova, *Europe Undivided: Democracy, Leverage, and Integration After Communism* (OUP, 2005), 139-179.

[83] Schimmelfennig, Engert and Knobel, 'Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey' (2003) 41:3 *Journal of Common Market Studies* 495, 506-509; Kubicek, 'Political Conditionality and European Union's Cultivation of Democracy in Turkey' (2011) 18:4 *Democratization* 910, 914-918.

[84] Kubicek, ibid, 921-923.

[85] Balfour and Stratulat, 'The Democratic Transformation of the Balkans', European Policy Centre, Issue Paper No 66, November 2011, 1.

[86] Tzifakis, 'Bosnia's Slow Europeanisation' (2012) 13:2 *Perspectives on European Politics and Society* 131, 139-141; Vachudova, 'EU Leverage and National Interests in the Balkans: The Puzzles of Enlargement Ten Years On' (2014) 52:1 *Journal of Common Market Studies* 122, 133-134.

[87] Tzifakis, ibid, 137-139.

Thus, the success of positive conditionality in the context of pre-accession policy has depended on the credibility of EU reward (membership), strict entry requirements (the Copenhagen criteria), consistent, asymmetric, meritocratic pre-accession policy enforced by the EU, and low costs of compliance for the acceding states.[88]

Pre-ENP positive conditionality instruments

Prior to the ENP, the EU attached positive conditionality to its assistance programmes. Regarding Ukraine, Technical Assistance to the Commonwealth of Independent States (TACIS), following the 1993 and 1996 updates, stipulated that the level and intensity of assistance should take into account the extent of the reform efforts.[89] After the 2000 update, the programme had to take into account the partners' progress towards democratic and market-oriented reforms.[90] Yet it did not establish a clear link between deeper reforms and assistance, so the element of positive conditionality remained largely undeveloped.[91]

Secondly, positive conditionality was attached to macro-financial assistance (MFA), which the EU has been providing to third states since 1990s. The EU applied the so-called Genval criteria, which were agreed informally by the Council in 1993 and subsequently revised in 1995 and 2002.[92] According to the 2002 version, a 'political pre-precondition' was that the beneficiary countries 'fully respect effective democratic mechanisms, including multi-party parliamentary systems, the rule of law and guarantees of human rights'.[93] The EU was not explicitly required to attach additional democracy-related conditions to specific MFA instalments.

[88] Schimmelfennig and Sedelmeier (n 80), 663-667; Vachudova (n 82), 105-132.

[89] Article 1, Council Regulation No 2053/93 concerning the provision of technical assistance to economic reform and recovery in the independent states of the former Soviet Union and Mongolia [1993] OJ L187/1; Article 3(1), Council Regulation No 1279/96 concerning the provision of assistance to economic reform and recovery in the New Independent States and Mongolia [1996] OJ L165/1.

[90] Article 2(6), Council Regulation No 99/2000 concerning the provision of assistance to the partner states in Eastern Europe and Central Asia [2000] OJ L12/1.

[91] Holden, *In Search of Structural Power: EU Aid Policy as a Global Political Instrument* (Ashgate, 2009), 102.

[92] Poli, 'Promoting EU Values in the Neighbourhood through EU Financial Instruments and Restrictive Measures', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 45.

[93] Council Conclusions, 08.10.2002, 11.

ENP positive conditionality instruments

Before examining specific ENP instruments, the policy's rhetoric on positive conditionality needs to be discussed.

Overall, positive conditionality assumed a central role under the ENP.[94] Early documents stressed that the progress in relations with the neighbours would depend on progress with reforms, including those on democracy, the rule of law and human rights.[95] At the very early stages it was even proposed that strict benchmarks should be established, possibly some kind of 'Copenhagen proximity criteria'.[96] Eventually, no such criteria were established, but the EU proposed to draft bilateral Action Plans (APs) with each neighbour to 'set out clearly the overarching strategic policy targets and benchmarks by which progress can be judged over several years', including regarding reforms on democracy, the rule of law and human rights.[97] The APs were to include objectives, benchmarks and timetable, and their implementation was to be monitored by the Commission and reflected in its annual reports.[98]

In the later documents the overall language on conditionality was toned down.[99] The ENP Strategy Paper emphasised the principle of 'joint ownership' and provided that '[t]he EU does not seek to impose priorities or conditions on its partners' and '[t]here can be no question of asking partners to accept a pre-determined set of priorities'.[100] At the same time, it still confirmed that the APs were to include a set of priorities and their implementation was to be monitored by the Commission.[101] The EaP later reemphasised conditionality.[102] The declared idea was

[94] Cremona (n 37), 284.
[95] Patten and Solana (n 16), 2; Wider Europe Communication, 4, 9-10, 16.
[96] Prodi (n 15), 5.
[97] Wider Europe Communication, 16.
[98] Ibid, 17-18.
[99] Magen, 'The Shadow of Enlargement: Can the European Neighbourhood Policy Achieve Compliance?' (2006) 12 *The Columbia Journal of European Law* 384, 416-417.
[100] ENP Strategy Paper, 8.
[101] Ibid, 9-10.
[102] EaP Communication, 3; Joint Declaration of the Eastern Partnership Summit, Prague, 07.05.2009, 5.

that 'the EU will ensure that partners most advanced and committed to the democratic reforms that underpin the [EaP] benefit most from it'.[103]

Article 8 TEU is seen as an incorporation of positive conditionality.[104] At the same time, it is not clear whether Article 8 TEU means that a relationship can be established only if there is adherence to EU values, or that a relationship cannot progress unless certain level of adherence is secured.[105] One of the possible readings of Article 8 TEU is that it impedes the EU from entering into a special relationship with neighbouring states which refuse to commit themselves to the values of the EU.[106] An alternative interpretation is that by using the word 'shall', Article 8 TEU makes engagement with neighbours compulsory, but at the same time points towards the EU's active policy of transformation.[107] Yet another interpretation is that the word 'shall' means that where engagement with governments is not possible, the EU should engage with civil societies.[108]

The 2011 ENP review emphasised the importance of positive conditionality, or the 'more for more' principle.[109] In contrast, in 2015 the EU recognised that positive conditionality was successful in supporting reforms in the field of democracy, the rule of law and human rights where neighbours were committed to such reforms; yet where there was no political will, positive conditionality did not work.[110] The review thus signals that positive conditionality should still apply to those neighbours which are committed to reforms, such as Ukraine, Moldova, Georgia, Tunisia and Morocco,[111] but its application will be eased in relation to those neighbours where such commitment is lacking.[112] There is now no single set of

[103] 2011 ENP Review, 14.

[104] Cremona (n 37), 255-256; Van Elsuwege and Petrov, 'Article 8 TEU: towards a New Generation of Agreements with the Neighbouring Countries of the European Union?' (2011) 36 *European Law Review* 688, 693-695.

[105] Ghazaryan (n 18), 66-67.

[106] Hanf, 'The ENP in the Light of the New "Neighbourhood Clause" (Article 8 TEU)', College of Europe, Research Paper in Law N0 2/2011, 6-7, 11-12.

[107] Hillion, 'The EU Neighbourhood Competence under Article 8 TEU', Notre Europe – Jacques Delors Institute, Policy Paper No 69, 19.02.2013, 3-5.

[108] Blockmans, 'The Obsolescence of the European Neighbourhood Policy', Centre for European Policy Studies, 2017, 34.

[109] 2011 ENP Review, 3.

[110] 2015 ENP Review, 5.

[111] Ibid, 4.

[112] Kostanyan (n 55), 24.

Commission progress reports. Instead, reports are prepared before relevant meetings of Cooperation/Association Councils, and they focus more specifically on the goals agreed with the neighbours.[113]

Three main groups of positive conditionality instruments can be distinguished in offers made to the neighbours under the ENP: i) conditionality in relation to new bilateral agreements and DCFTAs, ii) conditionality in relation to visa facilitation and liberalisation, and iii) conditionality in relation to other incentives, such as increased financial assistance and MFA. Each group has to be explored now.[114]

First, the ENP Strategy Paper provided that the scope of new bilateral agreements 'would be defined in the light of progress in meeting the priorities set out in the [APs]', which was to be evaluated by the Commission.[115] The APs were to list priorities on, inter alia, democracy, the rule of law and human rights, with specific timeframes.[116] The EaP was later introduced without any prior conditionality.[117] However, the EaP documents further reinforced positive conditionality in relation to Association Agreements (AAs). It was stipulated that:

> A sufficient level of progress in terms of democracy, the rule of law and human rights, and in particular evidence that the electoral legislative framework and practice are in compliance with international standards, and full cooperation with the Council of Europe, OSCE/ODIHR and UN human rights bodies will be a precondition for starting negotiations [of the AAs] and for deepening relations thereafter.[118]

However, it was not clarified what 'sufficient level of progress' meant. It appeared that the EU's focus before the start of negotiations would be predominantly on democratic elections in the neighbours. Moreover, positive conditionality in relation to signature or ratification of the AAs was not mentioned.

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[113] 2015 ENP Review, 5.
[114] On the ENP offers see Chapter 3, Section 3.3.
[115] ENP Strategy Paper, 3, 9-10.
[116] Ibid, 9-10.
[117] Ghazaryan (n 18), 85.
[118] EaP Communication, 4.

The 2011 review, which extended the offer of the Deep and Comprehensive Free Trade Areas (DCFTAs) to the Southern Mediterranean neighbours, was also vague. It provided that in order to embark on DCFTA negotiations, 'partner countries must be WTO members … and must also have made sufficient progress towards common values and principles'.[119] Moreover, the ENP documents did not explicitly stipulate that the successor documents to the APs would also include positive conditionality in relation to the values. Instead, such documents were to facilitate the implementation of the AAs, 'incorporating where appropriate milestones and benchmarks and underpinning domestic reform agendas'.[120] Therefore, the ENP documents suggested that values-related positive conditionality would be embodied in the APs and would be linked to the start of negotiations on the new agreements, whereas thereafter its role would decrease.

Secondly, strong conditionality was attached to relaxing the Schengen visa regime. Visa facilitation in a form of simpler procedures for certain categories of travellers (e.g. journalists and students) was linked to a conclusion of readmission agreements rather than to conditions related to the values.[121] In contrast, visa liberalisation in a form of complete abolition of the Schengen visa requirements for short-term travel was made conditional on implementation of specific documents – the Visa Liberalisation Action Plans (VLAPs). The VLAPs were to establish tasks related to, inter alia, human rights of migrants and other vulnerable groups.[122] Similarly to the APs, the implementation of the VLAPs was to be monitored by the Commission.[123]

Thirdly, the more progress neighbours made with reforms, the more financial assistance they were to receive from the EU.[124] However, initially the ENP retained the weak pre-ENP positive conditionality under TACIS. The European Neighbourhood and Partnership Instrument (ENPI), which superseded TACIS in 2007, also did not render positive conditionality significantly stronger. The ENPI

[119] 2011 ENP Review, 9.

[120] EaP Communication, 4.

[121] ENP Strengthening Communication, 5-6; Hillion and Mayhew, 'The Eastern Partnership – Something New or Window-Dressing?, SEI Working Paper 109, January 2009, 10.

[122] EaP Communication, 6-7.

[123] Ibid.

[124] ENP Strengthening Communication, 4.

Regulation provided that in determining the allocations, the Commission was to consider, inter alia, 'progress towards implementing agreed objectives, including on governance and on reform'.[125] Thus, democracy, the rule of law and human rights were not explicitly mentioned as conditions.

However, under the ENPI the EU also launched the Governance Facility – a programme intended to provide additional support, on top of the normal country allocations, 'to acknowledge and support the work of those partner countries who have made most progress in implementing the agreed reform agenda set out in their [APs]'.[126] Assessment was to be made of the implementation of 'the (broadly defined) governance aspects of the [APs]',[127] with an emphasis on the 'core' governance issues: democracy, respect for human rights and fundamental freedoms and the rule of law.[128] The allocations were to be distributed in a form of budgetary support to a limited number of ENP countries (in principle one or two) each year.[129] However, the funds under the Governance Facility were very limited. For a period of 2007-2013 only €300 million (on average, €43 million per year) was envisaged.[130]

The EaP documents later also stipulated that increased financial support was to be provided taking into account progress with reforms,[131] although the ENPI remained unchanged. Strengthening of positive conditionality was further announced under the 2011 ENP review, which emphasised 'deep and sustainable democracy'.[132] Subsequently, the European Neighbourhood Instrument (ENI) superseded the ENPI in 2014. The impact of the review is evidenced by the fact that one of the criteria for the allocation of funds under the ENI is 'commitment to and progress in building deep and sustainable democracy'.[133] Indicators to measure the achievement of specific objectives under the ENI include, inter alia, adequately monitored

[125] Article 7(2), Regulation (EC) No 1638/2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument [2006] OJ L310/1 (hereinafter 'ENPI Regulation').

[126] ENP Strengthening Communication, 12.

[127] Ibid.

[128] Commission, 'Principles for the implementation of a Governance Facility under ENPI', 2008, 3.

[129] Ibid, 6.

[130] ENP Strengthening Communication, 12.

[131] EaP Communication, 14-15; Joint Declaration of the Eastern Partnership Summit, Prague, 07.05.2009, 10; Joint Declaration of the Eastern Partnership Summit, Warsaw, 30.09.2011, 2.

[132] 2011 ENP Review, 3-4, 19.

[133] Articles 4(1)(c) and 4(2), Regulation No 232/2014 establishing a European Neighbourhood Instrument [2014] OJ L77/27 (hereinafter 'ENI Regulation').

democratic elections, respect for human rights, independent judiciary, the levels of corruption, and gender equality.[134] Such indicators were absent in the ENPI.[135] However, the ENI Regulation is not sufficiently clear as to the connection between these indicators, 'deep and sustainable democracy' and the amount of allocations. According to the 2015 review, bilateral allocations should reflect, inter alia, neighbours' commitment to and implementation of reforms,[136] although it is not specified which reforms. Similar vague language is used in the latest EaP documents.[137]

The ENP documents from the beginning stipulated that MFA should serve as an additional incentive for neighbours' reforms, and that the criteria for MFA should be clarified.[138] In 2011 the Commission made a proposal for a framework regulation on the MFA, which was designed to, inter alia, codify the Genval criteria.[139] However, the proposal was withdrawn in 2013 due to institutional disagreements.[140] Accordingly, the informal Genval criteria, as elaborated before the ENP, still apply.

Whether ENP positive conditionality can have effects depends, first of all, on whether neighbours are willing to conduct reforms. If there is political will for reforms, ENP offers can potentially be sufficient to incentivise further reforms.[141] However, the offers and the attached conditions need to be clearly defined.[142] In other words, EU political will is necessary to enforce and follow-up on positive conditionality in such cases. The EU might lack (sufficient) political will when neighbours' transformation runs counter to the idea of the ENP as an alternative to enlargement, revealing the paradox discussed above (Section 4.3.3).

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[134] Ibid, Article 2(3).

[135] Poli (n 92), 42.

[136] 2015 ENP Review, 19-20.

[137] Joint Declaration of the Eastern Partnership Summit, Riga, 22.05.2015, 5; Joint Declaration of the Eastern Partnership Summit, Brussels, 24.11.2017, 5.

[138] Wider Europe Communication, 14; ENP Strategy Paper, 25; 2011 ENP Review, 8; Joint Declaration of the Eastern Partnership Summit, Warsaw, 30.09.2011, 4.

[139] Proposal for a Regulation laying down general provisions for Macro-Financial Assistance to third countries, COM (2011) 396, 04.07.2011, 12.

[140] Poli (n 92), 44-45.

[141] Tocci (n 42), 26-32; Emerson and Noutcheva, 'Europeanisation as a Gravity Model of Democratisation', Centre for European Policy Studies, Working Document No 214, November 2004, 17-19.

[142] Kelley, 'New Wine in Old Wineskins: Promoting Political Reforms through the New European Neighbourhood Policy' (2006) 44:1 *Journal of Common Market Studies* 29, 41-45.

In contrast, observers generally agree that, without a membership perspective, the ENP offers are too weak to incentivise reforms in undemocratic regimes.[143] Early on, the EU's position was that although accession was 'certainly the most powerful stimulus for reform', 'a less ambitious goal' under the ENP could still have 'some effect'.[144] There was a risk that neighbours would choose only 'comfortable' reforms[145] and that 'joint ownership' would allow them to downgrade the values in the APs.[146] Later, the 2011 review and the emphasis on the 'more for more' principle confirmed that the ENP was not offering enough for its conditionality to work.[147] In contrast, the 2015 review, as mentioned above, ultimately recognised that positive conditionality largely failed in relation to undemocratic regimes.

Another problem is that too strong conditionality in relation to undemocratic neighbours can lead to their isolation or can push them to actors who pursue less liberal agenda. Moreover, due to the colonial legacy of some Member States, too strong conditionality might also be perceived in the Southern Mediterranean neighbours as the EU's neo-colonialist tactic.[148] Last but not least, application of positive conditionality in relation to undemocratic regimes highly depends on the EU's interests. For example, the EU followed a strict conditionality approach in relation to Belarus,[149] yet it has cooperated with Azerbaijan, which has rich oil reserves.[150] It is therefore evident that positive conditionality is often inconsistent with the idea of genuine 'joint ownership', partnership and cooperation, and can be counter-productive for security objectives of the EU.[151] All this makes ENP positive conditionality highly susceptible to inconsistent application in relation to undemocratic regimes.

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[143] Ibid, 36-39; Magen (n 99), 411-414, 417-420; Meloni, 'Is the Same Toolkit Used During Enlargement Still Applicable to the Countries of the New Neighbourhood? A Problem of Mismatching Between Objectives and Instruments', in Cremona and Meloni (eds), *The European Neighbourhood Policy: A Framework for Modernisation?*, EUI Working Papers LAW 2007/21, 105-107.

[144] Prodi (n 15), 4.

[145] Wiśniewski, 'The Eastern Partnership – It Is High Time to Start a Real "Partnership"', Carnegie Moscow Centre, November 2013, 13.

[146] Gstöhl (n 70), 75.

[147] Emerson, 'Review of the Review – of the European Neighbourhood Policy', Centre for European Policy Studies, Commentary, 08.06.2011, 4.

[148] Johansson-Nogués (n 41), 184-185.

[149] Wider Europe Communication, 15.

[150] Ghazaryan (n 35), 12.

[151] Cremona and Hillion (n 35), 20-23; Korosteleva, 'Change or Continuity: Is the Eastern Partnership an Adequate Tool for the European Neighbourhood?' (2011) 25:2 *International Relations* 243, 245-252.

4.4.2 Negative conditionality

Pre-ENP negative conditionality instruments

Before the ENP, the EU had several instruments of negative conditionality. First, it included 'human rights clauses' in its international agreements. The 'essential elements clause', mentioning human rights and democracy, in conjunction with the 'non-compliance clause' meant that violations of the former could trigger suspension or termination of such agreements.[152] Nevertheless, in practice the EU has never relied on human rights clauses in order to suspend or terminate a bilateral agreement.[153] Instead, it prefers to use human rights clauses in order to raise attention to democracy, the rule of law and human rights, and to make the latter a legitimate subject of bilateral dialogue.[154]

Secondly, negative conditionality regarding democracy, the rule of law and human rights was also included in EU assistance programmes.[155] The example was TACIS, after the 1996 update. The Council was entitled to 'decide upon appropriate measures concerning assistance to a partner state' in cases of violations of democratic principles and human rights.[156] Overall, the EU was more willing to use negative conditionality in relation to assistance programmes than under human rights clauses in agreements.[157] Additionally, the EU could withdraw unilateral trade preferences if a beneficiary country violated human rights.[158]

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[152] On the evolution of human rights clauses see Cremona, 'Human Rights and Democracy Clauses in the EC's Trade Agreements', in Emiliou and O'Keeffe (eds), *The European Union and World Trade Law: After the GATT Uruguay Round* (Wiley, 1996), 62-67; Riedel and Will, 'Human Rights Clauses in External Agreements of the EC', in Alston, Bustelo and Heenan (eds), *The EU and Human Rights* (OUP, 1999), 726-730.

[153] Smith (n 14), 111-112.

[154] Commission, 'Furthering Human Rights and Democracy Across the Globe', 2007, 13; Fierro, 'Legal Basis and Scope of the Human Rights Clauses in EC Bilateral Agreements: Any Room for Positive Interpretation?' (2001) 7:1 *European Law Journal* 41, 63-68.

[155] Simma, Aschenbrenner and Schulte, 'Human Rights Considerations in the Development Co-operation Activities of the EC', in Alston, Bustelo and Heenan (eds), *The EU and Human Rights* (OUP, 1999), 584-585.

[156] Article 3(11) and Annex II, Council Regulation No 1279/96 (n 89); Article 16, Council Regulation No 99/2000 (n 90).

[157] Fierro, *The EU's Approach to Human Rights Conditionality in Practice* (Martinus Nijhoff, 2003), 43-47.

[158] Brandtner and Rosas (n 12), 477-480.

Thirdly, the EU was entitled to adopt restrictive measures (sanctions) against third states for violations of human rights, democracy and the rule of law.[159] Overall, the drawback of negative conditionality is that it does not address the causes of illiberal practices and can potentially worsen the situation for local population.[160] Moreover, given the different strategic importance of other states for the EU, negative conditionality, similarly to positive conditionality, is susceptible to inconsistent application.[161]

ENP negative conditionality instruments

Early ENP documents did not mention negative conditionality.[162] The 2011 review was more specific and explicitly provided that in case the neighbouring governments engaged in violations of human rights and democracy, the EU would consider reducing funding and curtailing relations, including by making use of targeted sanctions (the 'less for less' principle).[163] The 2015 review, in contrast, is silent on the 'less for less' principle.[164] Accordingly, the ENP generally retained the existing pre-ENP negative conditionality instruments, except for the new suspension mechanism for a visa-free regime.

First, the ENP did not affect the practice of human rights clauses. Secondly, the ENP initially did not affect negative conditionality under TACIS. The ENPI Regulation later set out that the EU was founded on the values of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, and sought to promote these values in the ENP countries through dialogue and cooperation.[165] It further provided that where a partner country failed to observe these principles, the Council, acting by a qualified majority on a proposal from the Commission, could take 'appropriate steps' in respect of assistance granted under the ENPI.[166] The

[159] Ex Article 301 EC Treaty (current Article 215 TFEU).
[160] Simma, Aschenbrenner and Schulte (n 155), 579-582.
[161] Smith (n 14), 116-120, 141-143.
[162] Emerson, 'European Neighbourhood Policy: Strategy or Placebo?', Centre for European Policy Studies, Working Document No 215, November 2004, 15.
[163] 2011 ENP Review, 3.
[164] Kostanyan (n 55), 24.
[165] Article 1(3), ENPI Regulation.
[166] Ibid, Article 28(1).

suspension of financial assistance was one of the possible 'appropriate steps'.[167] In such cases, ENPI assistance was to be used to support non-state actors for measures aimed at promoting human rights and supporting democratisation processes.[168] Similarly, the ENI Regulation stipulates that the EU has the right to 'reconsider' its support 'in the event of serious or persistent regression' in building 'deep and sustainable democracy' and in implementing agreed reforms.[169] One of the ways of such 'reconsidering' is the suspension of the ENI funding.[170] Thirdly, the EU retains the option of imposing sanctions, which is currently provided under Article 215 TFEU. Overall, where important EU strategic or trade interests are involved, the application of sanctions remains inconsistent.[171]

Fourthly, the absolute novelty has been the reinforced mechanism for suspension of the visa-free regime, elaborated by the EU in March 2017. Before 2017, suspension mechanism was concerned with migration, while now it also pays attention to reforms. The Commission is tasked with monitoring the 'continuous fulfilment' by third countries of specific requirements which were used to assess the appropriateness of granting them visa liberalisation. The Commission reports to the European Parliament and the Council, at least once a year, for a period of seven years after the date of entry into force of visa liberalisation for those countries.[172] The EU can temporarily suspend the visa-free regime for a third country which fails to ensure such continuous fulfilment.[173] The reinforced visa-free suspension mechanism applies only to three EaP countries (Ukraine, Georgia and Moldova) and the Western Balkans (Serbia, Albania, North Macedonia, Montenegro, Bosnia and Herzegovina) because only these eight countries – out of more than 60 countries granted visa liberalisation – were required by the EU to fulfil certain pre-conditions under the relevant VLAPs and roadmaps.

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[167] Poli (n 92), 42.

[168] Article 28(2), ENPI Regulation.

[169] Article 4(2), ENI Regulation.

[170] Poli (n 92), 42-43.

[171] Blockmans (n 108), 82-83.

[172] Article 1a, para 2b, Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement [2001] OJ L81/1, as amended by Regulation (EU) 2017/371 (revision of the suspension mechanism) [2017] OJ L61/1.

[173] Ibid, Article 1a, para 4.

4.4.3 Socialisation

Pre-ENP socialisation channels

Before the ENP, the main channels of communication between the EU and its neighbours were institutions established under the existing PCAs and Euro-Mediterranean Association Agreements (EMAAs), such as the EU-Ukraine Cooperation Council, Cooperation Committee and Parliamentary Committee. Annual EU-Ukraine Summits at the highest political level were also held.[174] Regarding the second and third levels, there were no institutionalised ties between civil society of the EU and Ukraine, and the ties between broader societies were not facilitated.

ENP socialisation channels

As regards the elites' level, the ENP initially did not change the existing institutional frameworks under the PCAs and EMAAs. The APs offered to create a network of sub-committees, thus suggesting 'institutional thickening',[175] although the overall level of institutionalisation remained low.[176] A positive innovation was that greater contacts between civil servants were to be facilitated through the Twinning and Technical Assistance and Information Exchange (TAIEX) programmes,[177] which were borrowed from pre-accession policy.[178] Through these programmes, the EU shares expertise, good practices and provides training to civil servants of the beneficiary countries, including on the approximation to EU *acquis*.[179]

Regarding the second level, the ENP initially failed to institutionalise the dialogue between civil societies. At the third level, in contrast, the ENP recognised the need to improve people-to-people contacts through youth, education and research

[174] Chapter 3, Section 3.4.2.
[175] Magen (n 99), 424.
[176] Casier (n 63), 80.
[177] Wider Europe Communication, 12-13; ENP Strategy Paper, 25; Magen (n 99), 425-426.
[178] Cremona (n 37), 265.
[179] Information available at: <https://ec.europa.eu/neighbourhood-enlargement/tenders/taiex_en> <https://ec.europa.eu/neighbourhood-enlargement/tenders/twinning_en> [accessed 01.03.2019].

programmes, and visa facilitation.[180] Nevertheless, the overall strict visa policy contradicted these initiatives.[181]

The EaP later considerably strengthened the contacts at all three levels.[182] At the elites' level, it introduced biannual EaP Summits, annual ministerial meetings, four thematic platforms, panels and flagship initiatives.[183] Thematic platforms meet at least twice a year at the level of senior officials engaged in the reform work in the relevant area.[184] The first of the thematic platforms was on 'Democracy, Good Governance and Stability', later renamed to 'Strengthening Institutions and Good Governance'.[185] Moreover, the EU-Eastern Neighbourhood Parliamentary Assembly (EuroNest PA) was established in 2011 to serve as a forum for communication between the European Parliament and the national parliaments of the Eastern neighbours. The EuroNest PA consists of 60 Members of the European Parliament and 10 members from each EaP neighbour. It convenes annually and adopts resolutions and recommendations. It has an elected bureau, working groups and standing committees, one of which is on 'Political Affairs, Human Rights and Democracy'.[186] The EuroNest PA does not involve the national parliaments of Member States, and thus differs from the Euro-Mediterranean Parliamentary Assembly.[187]

At the second level, the major novelty of the EaP was that it institutionalised a dialogue between the EU's and Eastern neighbours' civil societies through the establishment of the Civil Society Forum (CSF). Starting from 2009, the CSF meets every year. It has a steering committee, secretariat, national platforms and working

[180] Wider Europe Communication, 12-13, 17; ENP Strategy Paper, 19-20; ENP Strengthening Communication, 6-8.

[181] Tulmets, 'Is a Soft Method of Coordination Best Adapted to the Context of the EU's Neighbourhood?', in Cremona and Meloni (eds), *The European Neighbourhood Policy: A Framework for Modernisation?*, EUI Working Papers LAW 2007/21, 120.

[182] See Chapter 3, Section 3.5.3.

[183] EaP Communication, 9-14; Hillion and Mayhew (n 121), 11-15.

[184] Joint Declaration of the Eastern Partnership Summit, Prague, 07.05.2009, 8-9.

[185] Information available at the EaP Civil Society Forum web-site: <https://eap-csf.eu/eap-platforms-and-panels/> [accessed 01.03.2019].

[186] Kostanyan and Vandecasteele, 'The EuroNest Parliamentary Assembly: The European Parliament as a Socialiser of Its Counterparts in the EU's Eastern Neighbourhood?', College of Europe, EU Diplomacy Paper 05/2013, 10.

[187] Ibid, 8-12.

groups, one of which is on 'Democracy, Human Rights, Governance and Stability'.[188] Representatives of the CSF can participate in EaP ministerial meetings, thematic platforms and the EuroNest PA.[189] Enhanced cooperation between civil societies was an added value of the EaP, especially considering that the equivalent forum with the Southern Mediterranean neighbours was established only in 2014.[190]

Finally, at the broader society level, the EaP introduced the offer of a visa-free regime, although such an offer had already been made to Ukraine before the EaP.[191] Visa liberalisation is an especially powerful tool because it incentivises reforms (positive conditionality) and blurs the dividing lines between societies (socialisation). Currently, citizens of Ukraine, Georgia and Moldova benefit from the visa-free regime with the EU.[192] Such facilitation of society-to-society contacts has a great potential for stimulating the 'internalisation' of values and bottom-up transformation.[193]

4.4.4 Reform assistance and support of civil society

Pre-ENP assistance instruments

Before the ENP, there were two main instruments of EU assistance that covered Ukraine. First, TACIS initially aimed at economic reforms in the Soviet Union and contained no mention of democracy.[194] After being amended in 1993, it focused on technical assistance to the former Soviet Republics for economic reforms aimed at 'bringing about the transition to a market economy and thereby reinforcing democracy'.[195] Hence, democracy became an indirect objective of the programme.[196] After the 1996 update, it specifically mentioned that assistance should give priority

[188] Kostanyan and Vandecasteele, 'The Socialisation Potential of the Eastern Partnership Civil Society Forum' (2013) 4:2 *Eastern Journal of European Studies* 95, 6-21.

[189] Shapovalova, 'How Can the Eastern Partnership Civil Society Forum Strengthen Its Advocacy Function?', Paper commissioned by the Eastern Partnership Civil Society Forum, January 2015, 4-5.

[190] Ghazaryan (n 30), 18-20.

[191] Chapter 3, Section 3.5.1.

[192] In the Southern Mediterranean, only Israel benefits from it.

[193] Whitman, 'Winning Hearts and Minds for Europe', in Youngs (ed), *Global Europe Report 2: New Terms of Engagement*, (Foreign Policy Centre, 2005), 33-37.

[194] Council Regulation No 2157/91 concerning the provision of technical assistance to economic reform and recovery in the Union of Soviet Socialist Republics [1991] OJ L201/2.

[195] Article 4(1), Council Regulation No 2053/93 (n 89).

[196] Simma, Aschenbrenner and Schulte (n 155), 595.

to, inter alia, the strengthening of civil society.[197] In 2000 the reinforcement of democracy and the rule of law became a direct objective of TACIS. It was explicitly set out that one of the areas of cooperation was support for institutional, legal and administrative reform, which was to include, inter alia, development of the rule of law, reform of public administration, support for executive and legislative bodies, support for implementation of international commitments, and support for civil society.[198] TACIS was devoted predominantly to technical assistance, such as provision of advice, knowledge and training.[199]

Secondly, in addition to TACIS, the European Initiative for Democracy and Human Rights (EIDHR), created in 1994 on the initiative of the European Parliament, focused specifically on the promotion of democracy and human rights, and the development of civil society. The main difference between TACIS and the EIDHR was that the latter could be implemented directly with NGOs, without the consent of governments.[200]

ENP assistance instruments

The early ENP documents confirmed that the EU should assist its neighbours' reform efforts, including the fight against corruption and strengthening the rule of law.[201] It was announced that a new EU assistance instrument would be introduced and that the APs would provide a point of reference for programming of assistance.[202] The need to contribute to development of a 'flourishing civil society' in order to promote freedoms of expression and association was also emphasised.[203] Moreover, it was explicitly noted that the EU was to focus on strengthening civil society and independent media in undemocratic neighbours.[204] Additionally, it was stressed that the EIDHR programming should be consistent with the ENP goals and that the EU should encourage neighbours to allow greater participation of civil society in the

[197] Article 3(6) and Annex II, Council Regulation No 1279/96 (n 89).
[198] Article 1 and Annex II, Council Regulation No 99/2000 (n 90).
[199] Holden (n 91), 94.
[200] Balfour, *Human Rights and Democracy in EU Foreign Policy: The Cases of Ukraine and Egypt* (Routledge, 2012), 41-42.
[201] Wider Europe Communication, 13-14.
[202] ENP Strategy Paper, 4.
[203] Wider Europe Communication, 12.
[204] ENP Strategy Paper, 4, 12.

preparation of legislation, monitoring of its implementation and in developing initiatives related to the ENP.[205] These statements initially suggested a strengthened attention to civil society and to bottom-up change. However, there was no overall strategy on supporting civil society under the ENP.[206] There has also been a contradiction between the concept of 'joint ownership' and support for civil society/opposition groups under the ENP.[207]

In practice, the unchanged TACIS and MEDA for the Southern Mediterranean[208] remained in force. Only in 2007 the ENPI superseded TACIS and MEDA. The overall financial envelope of the ENPI during 2007-2013 for all ENP countries was €12 billion, which represented a 32% increase as compared to the financial assistance made available to these countries under TACIS and MEDA during 2000-2006.[209] Under the strong insistence of France, around 2/3 of these funds were allocated to the Southern Mediterranean neighbours and only 1/3 to the Eastern neighbours.[210]

Under the ENPI, the assistance was to support measures within such areas as, inter alia: political dialogue and reform; promoting the rule of law and good governance, including through strengthening the effectiveness of public administration and the judiciary and supporting the fight against corruption; supporting policies to promote gender equality, non-discrimination, children's rights; supporting democratisation by enhancing the role of civil society organisations and promoting media pluralism.[211] It was again emphasised that the APs were to provide

[205] Ibid, 25; ENP Strengthening Communication, 7.

[206] Raik, 'Promoting Democracy through Civil Society: How to Step up the EU's Policy towards the Eastern Neighbourhood', Centre for European Policy Studies, Working Document No 237, February 2006, 18-21.

[207] Börzel and Lebanidze, 'European Neighbourhood Policy at the Crossroads: Evaluating the Past to Shape the Future', MAXCAP Working Paper 12, July 2015, 19.

[208] Council Regulation No 1488/96 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean Partnership [1996] OJ L189/1.

[209] EC Delegation to Ukraine, 'EU Aid Programmes and EU-Ukraine Cooperation', 2009, 7 (in Ukrainian). Available at: <http://eeas.europa.eu/archives/delegations/ukraine/documents/virtual_library/59_eu_asst_eu_ua_coop_uk.pdf> [accessed 01.03.2019].

[210] Lefebvre, 'France and the European Neighbourhood Policy' (2006) 7:19 *Foreign Policy in Dialogue* 17, 22.

[211] Article 2(2)(a), (d), (i), (k)-(m), ENPI Regulation.

a 'key point of reference' for setting assistance priorities.[212] The ENPI was more flexible than TACIS because it allowed not only technical assistance but also, inter alia, sectoral and general budgetary support.[213] Also in 2007, the EIDHR was upgraded to the European Instrument for Democracy and Human Rights (EIDHR II).[214]

The EaP envisaged increased funding, and the establishment of the Comprehensive Institution Building programme, as part of the ENPI, for improving administrative capacity 'in all relevant sectors of cooperation'.[215] Later, the 2011 ENP review also mentioned an increased financial assistance.[216] Moreover, civil society ranked high in the rhetoric of the 2011 review. It was more explicitly emphasised that where a neighbour's government is not committed to reforms, the EU would strengthen its support for civil society.[217] Moreover, as a result of the review, the Neighbourhood Civil Society Facility (NCSF) was established in 2011 to help facilitate the dialogue between governments and civil societies and to improve access to free media, and the European Endowment for Democracy (EED) was established in 2013 to support political parties, trade unions and non-registered NGOs.[218] The NCSF and the EED made support for civil society more flexible.[219]

In 2014 the ENI superseded the ENPI. Under the ENI, EU support should 'target', inter alia: promoting human rights and fundamental freedoms, the rule of law, principles of equality and the fight against discrimination, establishing 'deep and sustainable democracy', promoting good governance, fighting corruption, and developing a thriving civil society.[220] The 'key points of reference' for setting

[212] Ibid, Article 3(1).

[213] Ibid, Article 15(2); Holden (n 91), 174.

[214] Regulation No 1889/2006 on establishing a financial instrument for the promotion of democracy and human rights worldwide [2006] OJ L386/1.

[215] EaP Communication, 4-5, 14-15; Joint Declaration of the Eastern Partnership Summit, Prague, 07.05.2009, 7, 10.

[216] 2011 ENP Review, 19.

[217] Ibid, 3.

[218] Ibid, 4-5; Pace, 'The EU's Interpretation of the "Arab Uprisings": Understanding the Different Visions about Democratic Change in EU-MENA Relations' (2014) 52:5 *Journal of Common Market Studies* 969, 978-980.

[219] Balfour, 'EU Conditionality after the Arab Spring', European Institute of the Mediterranean, IEMed Euromesco Series, No 16, June 2012, 11-12; Shapovalova and Youngs, 'EU Democracy Promotion in the Eastern Neighbourhood: A Turn to Civil Society?', FRIDE, Working Paper No 115, December 2012, 7-10.

[220] Article 2(2)(a), ENI Regulation.

priorities of EU assistance are the relevant APs and Association Agendas.[221] As compared to the 2007-2013 ENPI, the ENI does not finance actions related to market economy and pays more attention to promotion of respect for human rights.[222] The total ENI budget for 2014-2020 is €15.4 billion.[223] According to the ENI Regulation, the EU should increase support to civil society in case of 'serious or persistent regression' on building 'deep and sustainable democracy'.[224] Finally, the 2015 ENP review has not promised increased financial assistance to the governments, but stressed the importance of a greater support of civil society and independent media.[225]

4.5 EU institutions, Member States and promotion and protection of democracy, the rule of law and human rights under the ENP

Many actors have been involved in formulating and executing the ENP. The Commission initially played a central role in its elaboration. The Directorate-General on Enlargement and the Directorate-General on External Relations drafted the early ENP documents, which explains why the ENP holds so many similarities with the pre-accession policy.[226] At the same time, the Member States through the Council retained their control over the process.[227] For example, it was under the influence of the Council that the language of the early ENP documents as regards conditionality and benchmarks was toned down. Moreover, the Member States are far from united in their approach to the ENP. Sweden, UK and Poland, for example, had put forward the idea of greater engagement with the Eastern neighbours, before the ENP was launched.[228] Eastern and Southern Mediterranean neighbours were subsequently included under a single framework of the ENP in order to avoid tugs of war between Member States and to ensure more consistency in treating neighbours.[229] Later, the

[221] Ibid, Articles 3(2) and 7(2).
[222] Poli (n 92), 40-41.
[223] Article 17(1), ENI Regulation.
[224] Ibid, Article 4(3).
[225] 2015 ENP Review, 6-7; Lehne, 'Toward a European Neighbourhood Realpolitik?', Carnegie Europe, 19.11.2015.
[226] Cremona and Hillion (n 35), 8-14; Kelley (n 142), 30-39.
[227] Ghazaryan (n 18), 36-39.
[228] Lynch, 'The New Eastern Dimension of the Enlarged EU', in Batt et al, *Partners and Neighbours: a CFSP for a Wider Europe*, Institute for Security Studies, Chaillot Paper 64, September 2003, 47-48.
[229] Wallace (n 35), 10.

Union for the Mediterranean (UfM) was established due to concerns of the Southern Member States, while the Eastern Member States have been more focused on the EaP.[230]

As regards the execution of the ENP, the situation is similar. The Commission has played an important role in drafting the bilateral documents, monitoring their implementation and producing regular reports. However, Member States are also involved in drafting these documents and their endorsement at the Council.[231] Moreover, Member States are the ultimate decision-makers on enforcing conditionality and granting the rewards, such as the AAs and visa liberalisation.[232] The application of conditionality (both positive and negative) thus depends heavily on Member States' interests and rationalist considerations, which explains why it has been inconsistent.[233] Again, there is lack of unity, with Northern Member States being more supportive of a strict application of the 'more for more' principle than the Southern Member States.[234] Member States also decide on the allocations of EU assistance to the neighbours. The Southern Member States traditionally lobby for larger allocations for the Southern Mediterranean, while the Eastern Member States are more concerned with the Eastern neighbours.[235]

The Treaty of Lisbon introduced important changes to the institutional framework of EU external relations. First, the post of the High Representative of the Union for Foreign Affairs and Security Policy was established. The High Representative chairs Foreign Affairs Councils and is a Vice-President of the Commission.[236] Secondly, the European External Action Service (EEAS) was established in 2011 to assists the High Representative. The EEAS is composed of staff seconded from the Commission, Council Secretariat and Member States' national diplomacies.[237] The EEAS officials have been involved in, inter alia,

[230] Ghazaryan (n 18), 40, 45.

[231] Van Vooren, *EU External Relations Law and the European Neighbourhood Policy: A Paradigm for Coherence* (Routledge, 2012), 233-235.

[232] Balfour (n 219), 17, 25-26; Shapovalova, 'Visa-Free Travel for the EU's Eastern Partners: Time to Act', FRIDE, Policy Brief No 165, November 2013, 2.

[233] Gstöhl (n 70), 71.

[234] Emerson et al (n 51), 203-205.

[235] Ibid, 205-206.

[236] Article 27(1) and (2) TEU.

[237] Article 27(3) TEU.

negotiations of the AAs.[238] They also preside over the EaP thematic platform on 'Democracy, Good Governance and Stability'.[239]

Relations between Member States and the EEAS are hierarchical and vertical, which means that the Member States' interests and preferences often limit the discretion of the EEAS.[240] In contrast, the EEAS is in a horizontal relationship with the Commission.[241] Shortly before the EEAS was created, the ENP portfolio was moved to the Commissioner for Enlargement, leading subsequently to the creation in 2015 of the Directorate-General on the ENP and Enlargement Negotiations.[242] Accordingly, currently the High Representative and the Commissioner for the ENP and Enlargement Negotiations share responsibility for the ENP, although cooperation between the EEAS and the Commission has not been always smooth.[243] The EEAS and the Commission have been involved in, inter alia, the preparation of country and regional indicative programmes under the ENPI and ENI.[244] Overall, although the establishment of the EEAS was a novelty in institutional terms, it did not constitute a change in the EU's institutional balance.[245]

The role of the European Parliament in the ENP was initially limited because the ENP was developed through soft law instruments.[246] However, when hard law instruments are involved, the European Parliament has more powers. For example, after the Treaty of Lisbon, the European Parliament's power to give consent on international agreements has been strengthened.[247] Moreover, economic, financial and technical assistance to third states became a subject of ordinary legislative procedure.[248] This change has several implications. First, the European Parliament was actively involved in the adoption of the ENI, during which it insisted on stronger

[238] Kostanyan, 'The EEAS and the Revised European Neighbourhood Policy: What Institutional Balance?', in Bouris and Schumacher (eds), *The Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy* (Palgrave Macmillan, 2016), 123.

[239] Kostanyan and Orbie, 'The EEAS' Discretionary Power within the Eastern Partnership: in Search of the Highest Possible Denominator' (2013) 13:1 *Southeast European and Black Sea Studies* 47, 53.

[240] Kostanyan (n 238), 122, 125-126.

[241] Ibid, 122.

[242] Ibid, 127, 129.

[243] Ibid, 128-130.

[244] Kostanyan and Orbie (n 239), 57.

[245] Kostanyan (n 238), 126, 131.

[246] Van Vooren (n 231), 220-221.

[247] Article 218(6) TFEU; Ghazaryan (n 18), 42-43, 51.

[248] Article 212 TFEU.

conditionality and support for civil society.[249] Secondly, due to the reinforcement of the European Parliament's powers, suspension of assistance under the ENI would need its approval.[250] Given the Parliament's vocation as a human rights defender, this change might make the prospect of suspension more likely than in the past.[251] Thirdly, the European Parliament is now involved in the approval of MFA. This might lead to stricter application of the Genval criteria and to the imposition of more specific conditions on democracy, the rule of law and human rights regarding MFA instalments.

4.6 Conclusion

Promotion and protection of democracy, the rule of law and human rights is the EU's objective under the ENP. It builds on the existing EU objective in external relations under the Treaties.

This objective under the ENP has four main weaknesses. First, the scope of the values is not explicitly defined. This makes the whole exercise prone to double standards and makes it hard to assess the effects of the ENP. Secondly, the ENP's primary aim is stability and security of the EU. In an ideal case scenario, political transformation of the neighbours would be instrumental in achieving this objective. However, when neighbours resist democratic reforms, security considerations and the need to cooperate might trump the transformation agenda under the ENP. Thirdly, it is impossible to reconcile the ENP as an alternative to enlargement, on the one hand, as a policy for promotion of reforms, on the other. This contradiction is especially dangerous for Ukraine. Since Ukraine's EU membership aspirations were relatively credible during stages II and IV, the implications of this contradiction will be explored in Chapters 6 and 8. Finally, the fourth weakness of the ENP is that the EU does not have a strategy on democratisation of Russia, which acts as a spoiler of democracy reforms in the Eastern neighbourhood.

[249] Kaminska, 'The European Parliament and the Revised European Neighbourhood Policy', in Bouris and Schumacher (eds), *The Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy* (Palgrave Macmillan, 2016), 146.

[250] Statement of the European Parliament on the suspension of assistance granted under the financial instruments, added to the ENI Regulation.

[251] Poli (n 92), 43.

The Chapter discussed the methods and instruments that the EU has at its disposal for promotion and protection of democracy, the rule of law and human rights under the ENP. Before the ENP, the EU relied mainly on negative conditionality, socialisation channels at the elites' level, reform assistance and support of civil society. The main added value of the ENP was the introduction of positive conditionality in relation to new bilateral agreements, visa facilitation and liberalisation, and financial assistance. At the same time, with a membership perspective lacking under the ENP, positive conditionality has weak potential in relation to undemocratic neighbours. Positive conditionality also seems to be most affected by the second and third internal weaknesses under the ENP. Namely, other strategic interests can result in the EU relaxing or ignoring conditions related to values in relations with undemocratic neighbours. The EU's wish to keep neighbours' membership aspirations under control can also lead the EU to relax or ignore these conditions in relations with democratic neighbours, thus (intentionally) underutilising the full potential of the ENP. Again, this danger is especially acute in the case of Ukraine. As regards negative conditionality, its overall design has remained largely the same as during the pre-ENP period, except for the visa-free suspension mechanism. Socialisation channels were initially only marginally improved under the ENP. The major changes came with the EaP, which introduced much-needed channels of communication between civil societies and larger populations. Reform assistance and support of civil society were also strengthened under the ENP as compared to the pre-ENP period, yet the main changes came after the 2011 review.

Finally, the Chapter has shown that the Member States retain important powers in relation to the ENP, especially regarding the application of positive and negative conditionality. The Commission's role is most prominent in relation to drafting of bilateral documents, monitoring their implementation and preparing regular reports. The European Parliament has assumed greater powers after the Lisbon Treaty in relation to the approval of EU assistance programmes and the MFA, which can potentially strengthen the normative agenda under the ENP. The post-Lisbon EEAS generally did not affect the existing institutional framework.

The implementation of the EU's methods in Ukraine will be the focus of Chapter 5 (stage I, pre-ENP period) and Chapters 6-8 (stages II-IV, under the ENP).

5. Promotion and protection of democracy, the rule of law and human rights in Ukraine before the ENP during stage I (1991-2004)

5.1 Introduction

As discussed in Chapter 2, during stage I of this study (1991-2004), Ukraine suffered from the growing authoritarian practices of President Kuchma, restrictions on media freedom and the growing 'oligarchisation' of national politics. Reforms of the judiciary, anti-corruption and decentralisation were especially pressing during stage I, and were not undertaken. The society remained divided and there was insufficient internal pressure for reforms. Further, as discussed in Chapter 3, the EU's approach towards Ukraine in the pre-ENP period was largely the same as its approach towards the Commonwealth of Independent States (CIS), where the EU pursued a 'Russia-first' policy. This was also the time when the EU embarked on the pre-accession policy with the Central and Eastern European Countries (CEECs). During the pre-ENP period, the main methods of promotion and protection of democracy, the rule of law and human rights in Ukraine included negative conditionality, socialisation at the elites' level, reform assistance and support of civil society, while positive conditionality was minimal, as discussed in Chapter 4.

The aim of this Chapter is to set a stage for the analysis of the ENP and its effects in Ukraine, by exploring the implementation and effects of the pre-ENP methods and instruments during stage I. It begins by recalling the provisions on democracy, the rule of law and human rights under the EU-Ukraine Partnership and Cooperation Agreement (PCA) (5.2). The application and effects of the pre-ENP positive conditionality (5.3), negative conditionality (5.4), socialisation (5.5), reform assistance and support of civil society (5.6) are examined, taking into account the internal situation in the country. The final section summarises the main findings (5.7).

5.2 Democracy, the rule of law and human rights under the 1994 Partnership and Cooperation Agreement

The Preamble to the EU-Ukraine PCA stressed that the parties were 'convinced of the paramount importance of the rule of law and respect for human rights, particularly those of minorities, [and] the establishment of a multiparty system with free and democratic elections'.[1] Moreover, the PCA stated that political dialogue between the parties should support political changes in Ukraine and 'shall foresee that the parties endeavour to co-operate on matters pertaining to … the observance of the principles of democracy, the respect and promotion of human rights'.[2] The PCA also laid down that one of the objectives of the EU-Ukraine partnership was 'to support Ukrainian efforts to consolidate its democracy'.[3] This provision seemed to establish a positive obligation for the EU with regard to Ukraine.

Similarly, according to the 1994 EU Common Position on Ukraine, one of the EU's objectives in Ukraine was:

> [t]o support democratic development in Ukraine, through offering advice on legislation and practical assistance in establishing democratic institutions, and through contacts between Ukrainian and European officials, parliamentarians and non-governmental organisations at different levels.[4]

Although this objective appeared ambitious, its implementation was limited. First, the Technical Assistance to the Commonwealth of Independent States (TACIS) – through which the Common Position was implemented – focused on democracy indirectly during 1993-1999, and directly only after 2000.[5] Secondly, systemic contacts between the EU and Ukraine in the form of Cooperation Council meetings and Summits started only in 1997-1998 and democracy was not a consistent issue on their

[1] Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Ukraine, of the other part [1998] OJ L49/3 (hereinafter 'EU-Ukraine PCA').

[2] Ibid, Article 6.

[3] Ibid, Article 1.

[4] Article A(2), Common Position 94/779/CFSP on the objectives and priorities of the European Union towards Ukraine [1994] OJ L313/1.

[5] Chapter 4, Section 4.4.4.

agendas (Section 5.5). Thirdly, the PCA did not institutionalise a dialogue between Ukrainian and EU civil societies. Overall, common positions as Common Foreign and Security Policy (CFSP) instruments had more repercussions for the internal cooperation within the EU than for the third countries at which they were aimed.[6]

The 1999 Common Strategy (CS) on Ukraine did not strengthen EU approaches to the promotion of democracy, the rule of law and human rights despite its attention to these issues. In particular, it emphasised that support for Ukraine's democratic transition was one of the three 'strategic goals' and 'principal objectives' of the EU with regard to Ukraine.[7] Moreover, it stressed the importance for Ukraine of an independent judiciary, professional police, meritocratic public administration, free media and modern civil society.[8] Furthermore, the CS stated that 'the EU will undertake efforts to foster democracy, good governance, human rights and the rule of law in Ukraine' by, inter alia, supporting Ukraine's efforts to observe its international democratic and human rights obligations, encouraging Ukraine to sign, ratify and implement relevant international human rights instruments, and contributing to the development of free media.[9] Nevertheless, the CS envisaged support for Ukraine's democratic transition 'only rhetorically'.[10] This was so because it did not prioritise objectives related to democracy, the rule of law and human rights over other objectives.[11] Moreover, the CS was a unilateral instrument of the EU and lacked any obligations or priorities for action for Ukraine. Finally, it did not provide for any new mechanisms for its implementation.

[6] Fouwels, 'The European Union's Common Foreign and Security Policy and Human Rights' (1997) 15:3 *Netherlands Quarterly of Human Rights* 291, 300.

[7] Common Strategy 1999/877/CFSP on Ukraine [1999] OJ L331/1 (hereinafter 'CS on Ukraine'), part I, para 5 and part II, objective 1, paras 9-12.

[8] Ibid, part II, para 10.

[9] Ibid, part III, para 50.

[10] Solonenko, 'The EU's "Transformative Power" beyond Enlargement: the Case of Ukraine's Democratisation', European Research Institute, Working Paper No 21, July 2007, 13.

[11] Smith, 'The EU, Human Rights and Relations with Third Countries: "Foreign Policy" with an Ethical Dimension?', in Smith and Light (eds), *Ethics and Foreign Policy* (CUP, 2001), 199.

5.3 Positive conditionality

The Community (EC) demonstrated interest in human rights, democracy and the rule of law in Ukraine before it officially recognised Ukraine as an independent state. In particular, the EC Foreign Ministers agreed that the recognition of the former Soviet states required, inter alia, respect for the provisions of the UN Charter, Helsinki Final Act and the Charter of Paris for a New Europe, 'especially with regard to the rule of law, democracy and human rights', and guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the Organisation for Security and Cooperation in Europe (OSCE).[12] The EC and Member States recognised Ukraine's independence on 31 December 1991 after receiving 'assurances' from Ukraine that it was 'prepared to fulfil' these requirements.[13]

During the pre-ENP period the EU did not apply positive conditionality as Ukraine was not granted a membership perspective and the EU did not have a developed procedure for systematically encouraging or monitoring reforms in the country.[14] For instance, conclusion of the PCAs was not conditional on prior political or economic reforms.[15] Instead, the PCA was conditional on Ukraine's ratification of Start 1 and accession to the Non-Proliferation Treaty,[16] reflecting the primacy of security concerns in the EU approach towards Ukraine at that time.[17] The PCA contained an evolutionary clause on the possibility of establishing a free trade area,[18] yet it was not directly linked to any conditions or approximation to the *acquis*,[19] let alone democratic reforms.

[12] Joint Statement of the Community and Member States concerning guidelines on the recognition of new States in Eastern Europe and in the Soviet Union, 16.12.1991, Bull EC 12/1991, point 1.4.5.

[13] Joint Statement of the Community and Member States concerning recognition of former Soviet Republics, 31.12.1991, Bull EC 12/1991, point 1.4.13.

[14] Chapter 4, Section 4.4.1.

[15] However, in 1996-1997 the EU froze the conclusion of the PCA with Belarus due to serious setbacks regarding democracy and human rights.

[16] Copenhagen European Council Conclusions, 21-22.06.1993, 19.

[17] Balfour, *Human Rights and Democracy in EU Foreign Policy: The Cases of Ukraine and Egypt* (Routledge, 2012), 51.

[18] Chapter 3, Section 3.4.2.

[19] Langbein and Wolczuk, 'Convergence without Membership? The Impact of the European Union in the Neighbourhood: Evidence from Ukraine' (2012) 19:6 *Journal of European Public Policy* 863, 868.

The rudimentary positive conditionality mechanism under TACIS was not used.[20] In relations with other countries, there was also scant evidence of additional EU allocations under assistance programmes as a reward for reforms.[21] The 1996 EU Action Plan for Ukraine[22] and the 1999 CS were unilateral EU documents, which lacked concrete priorities for action or rewards for Ukraine.[23] The 2001 Justice and Home Affairs Action Plan on Ukraine[24] contained a scoreboard and benchmarks but similarly lacked concrete conditions and rewards.

Moreover, the EU noted that Ukraine '[was] undertaking fundamental political and economic reforms' and provided macro-financial assistance (MFA) to the country without attaching any democracy-related conditions.[25] It is hard to discern what 'fundamental' political reforms the EU was referring to, as Ukraine's record during stage I was poor. The approach with MFA thus underlined that the EU was more interested in supporting a transition to a market economy than a transition to democracy in Ukraine at the time.[26]

5.4 Negative conditionality

The Interim Agreement on trade and trade-related matters, which operated during 1996-1998, contained an 'essential elements clause' and a 'non-execution clause'[27] in

[20] Kubicek, 'The European Union and Democratization in Ukraine' (2005) 38 *Communist and Post-Communist Studies* 269, 278; Holden, *In Search of Structural Power: EU Aid Policy as a Global Political Instrument* (Ashgate, 2009), 95, 111-112.

[21] Smith, 'The Use of Political Conditionality in the EU's Relations with Third Countries: How Effective?' (1998) 3 *European Foreign Affairs Review* 253, 466.

[22] Commission, 'Action Plan for Ukraine', COM (96) 593, 20.11.1996.

[23] Balfour (n 17), 52-54.

[24] Action Plan on Justice and Home Affairs in Ukraine [2003] OJ C77/1.

[25] Preamble and Article 2(1), Council Decision 95/442/EC providing further macro-financial assistance for Ukraine [1995] OJ L258/63; Preamble and Article 2(1), Council Decision 98/592/EC providing supplementary macro-financial assistance for Ukraine [1998] OJ L284/45; Preamble and Article 2(1), Council Decision 2002/639/EC providing supplementary macro-financial assistance to Ukraine [2002] OJ L209/22.

[26] Poli, 'Promoting EU Values in the Neighbourhood through EU Financial Instruments and Restrictive Measures', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 45.

[27] Articles 1 and 31(2), and Joint Declaration concerning Article 31, Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Ukraine, of the other part [1995] OJ L311/2.

line with the EU practice at that time.[28] The PCA, which entered into force in 1998, contained exactly the same provisions. The essential elements clause stated that:

> [r]espect for the democratic principles and human rights as defined in particular in the Helsinki Final Act and the Charter of Paris for a New Europe … underpin the internal and external policies of the Parties and constitute an essential element of partnership and of [the PCA].[29]

Violation of such an 'essential element' by one of the parties constituted a 'material breach' and a 'case of special urgency' and allowed the other party to take 'appropriate measures' immediately.[30] The Commission clarified that 'appropriate measures' could include the unilateral suspension of the PCA.[31] The PCAs with other post-Soviet states contained similar clauses. The difference was that the PCAs with Armenia, Azerbaijan and Georgia additionally referred to the principles of international law and the UN Charter, likely due to the outstanding conflicts in the region.[32] Notably, the rule of law was not mentioned in the essential elements clauses of the PCAs.

Additionally, starting from 1996, violations of democratic principles and human rights could result in 'appropriate measures' being taken regarding TACIS assistance.[33] Although TACIS Regulations did not refer to specific international instruments, it might be assumed that, following the logic of the PCA, attention was to be given to the Helsinki Final Act (1975) and the Charter of Paris for a New Europe (1990). These two international instruments form the foundations of the OSCE, of which Ukraine is a participating state. The Helsinki Final Act established, inter alia, the ten 'principles guiding relations between participating states', one of which is 'respect for human rights and fundamental freedoms, including the freedom

[28] Chapter 4, Section 4.4.2.

[29] Article 2, EU-Ukraine PCA.

[30] Ibid, Article 102(2) and Joint Declaration concerning Article 102.

[31] Commission explanatory memorandum to its proposal to conclude the Partnership and Cooperation Agreement with Ukraine, COM (94) 226, as quoted in Cremona, 'Human Rights and Democracy Clauses in the EC's Trade Agreements', in Emiliou and O'Keeffe (eds), *The European Union and World Trade Law: After the GATT Uruguay Round* (Wiley, 1996), 72.

[32] Ghazaryan, 'The Fluid Concept of "EU Values" in the Neighbourhood: A Change of Paradigm from East to South?', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 25.

[33] Chapter 4, Section 4.4.2.

of thought, conscience, religion or belief'. This principle is understood broadly to include effective exercise of civil, political, economic, social, cultural and other rights.[34] The Helsinki Final Act does not mention democratic principles. In contrast, the Charter of Paris is more detailed on human rights and also stipulates that the parties 'undertake to build, consolidate and strengthen democracy', which includes holding regular, free and fair elections and 'has as its foundation respect for the human person and the rule of law'.[35] The Charter of Paris thus additionally mentions the rule of law, although it does not clarify its meaning.

It might be argued that violations of media freedom and electoral irregularities during stage I could qualify as violations by Ukraine of the Helsinki Final Act and of the Charter of Paris. Nevertheless, the EU never considered resorting to sanctions against Ukraine or to negative conditionality under the Interim Agreement, PCA or TACIS.[36] Notably, in 2002, Javier Solana, the then High Representative for the CFSP, argued in a piece of academic writing that, 'Ukraine has made the transition over the last ten years to an independent democratic nation state'.[37] This statement was completely disconnected from the real situation in the country. It is thus possible to argue that negative conditionality was not applied because the EU did not consider Ukraine's democratic and human rights setbacks serious enough or simply because the EU did not accord high importance to Ukraine. Another possible explanation was that the EU feared that, in light of a growing international isolation of Ukraine during Kuchma's second term, triggering the human rights clause would antagonise Ukraine and push it towards Russia.[38] This explanation is plausible considering the experience with Belarus, where the EU suspended the entry into force of the PCA on human rights grounds, imposed sanctions and suspended TACIS assistance.[39] As a result, the EU lost its influence over Belarus to Russia.[40] An additional explanation was that

[34] Helsinki Final Act, Conference on Security and Cooperation in Europe, 1975, 6.

[35] Charter of Paris for a New Europe, November 1990, 3-4.

[36] Van der Loo, *The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area: A New Legal Instrument for EU Integration Without Membership* (Brill Nijhoff, 2016), 69-70.

[37] Solana, 'The EU and Ukraine: Ten Years After Independence', in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002), 28.

[38] Kubicek, 'The European Union and Ukraine: Real Partners or Relationship of Convenience?', in Kubicek (ed), *The European Union and Democratization* (Routledge, 2003), 168.

[39] Portela, 'Sanctions against Belarus: Normative Unintended', in Tocci (ed), *The European Union as a Normative Foreign Policy Actor*, Centre for European Policy Studies, Working Document No 281, January 2008, 5-6.

[40] Balfour (n 17), 74-75.

Kuchma was seen as 'the least worst option' available in Ukraine[41] and the EU was waiting until the regime changed.[42]

It is worth considering, however, that the EU has been generally reluctant to apply negative conditionality in relation to third states.[43] Hence, the approach towards Ukraine was not unique. The Council of Europe and the OSCE also refrained from applying negative measures in relation to Ukraine.[44] However, the Parliamentary Assembly of the Council of Europe threatened to 'suspend Ukraine form its right of representation' if it did not abolish the death penalty[45] and if it did not stop the practice of attacks against journalists.[46]

5.5 Socialisation

During the pre-ENP period EU socialisation was targeted predominantly at the Ukrainian elites through political dialogue.[47] Only a few small-scale projects focused on societal links, such as the Tempus programme on cooperation between universities.[48] Similarly, although some small-scale projects aimed at supporting partnerships between the Ukrainian and EU NGOs, they focused on issues such as social welfare and the environment,[49] rather than human rights or democracy. Wider channels of communication between civil societies and the broader population were absent, in contrast to the EU approach towards the CEECs.[50]

The institutional framework for political dialogue at the elites' level was envisaged under the PCA and included the annual EU-Ukraine Summits, and meetings of Cooperation Council, Cooperation Committee and Parliamentary

[41] Ibid, 72, 75.

[42] Kubicek (n 20), 284.

[43] Chapter 4, Section 4.4.2.

[44] Balfour (n 17), 67.

[45] Parliamentary Assembly of the Council of Europe, Resolution No 1179 (1999) 'Honouring of obligations and commitments by Ukraine', 27.01.1999, paras 14, 15.2.

[46] Parliamentary Assembly of the Council of Europe, Resolution No 1244 (2001) 'Honouring of obligations and commitments of Ukraine', 26.04.2001, paras 4-5, 10.

[47] Chapter 4, Section 4.4.3.

[48] Solonenko and Jarabik, 'Ukraine', in Youngs (ed), *Is the European Union Supporting Democracy in its Neighbourhood?*, FRIDE, September 2008, 90.

[49] Holden (n 20), 114-115.

[50] Solonenko (n 10), 27-29.

Cooperation Committee.[51] Overall, EU-Ukraine political dialogue remained limited in the field of democracy, the rule of law and human rights.[52] Public statements on the early EU-Ukraine Summits and Cooperation Councils suggest that the latter focused predominantly on Ukraine's economy, accession to the WTO, and the closure of the Chornobyl nuclear power plant. At the 1998 Summit – the first since the PCA had entered into force – the EU and Ukraine simply 'reaffirmed [their] common attachment to Ukraine's … democratic development',[53] without voicing any concerns or specific calls for action. Ukraine's 1998 and 1999 elections were not mentioned in the joint documents.[54]

It was only when the Kuchma regime grew increasingly undemocratic that the EU mentioned specific actions for the first time, albeit in rather soft language. The EU '*encouraged* Ukraine to ensure a democratic and transparent preparation for [the 2002 parliamentary elections] and to intensify efforts on judicial and administrative reforms'.[55] The need to strengthen media freedom and safety of journalists was emphasised,[56] although overall Western criticism over restrictions on media freedom was muted to avoid antagonising the Ukrainian Government.[57]

The EU welcomed Ukraine's progress towards meeting OSCE and Council of Europe standards and considered that the 2002 elections 'demonstrated Ukraine's commitment to achieving further democratisation of Ukrainian society',[58] despite the fact that numerous irregularities were recorded by the OSCE.[59] High-level political corruption and obscure links between big business and politics were not condemned in public statements on the EU-Ukraine Summits and Cooperation Council meetings during 1997-2004. During the 2004 Summit and Cooperation Council meeting, the

[51] Chapter 3, Section 3.4.2.

[52] Balfour (n 17), 52.

[53] EU-Ukraine Summit, Joint Press Release, 12113/98 (Presse 343), 16.10.1998, para 4. Similarly, EU-Ukraine Summit, Joint Press Communiqué, 10391/99 (Presse 244), 23.07.1999, para 3; First Meeting of the EU-Ukraine Cooperation Council, 959498 (Presse 217), 09.06.1998, 1.

[54] However, elsewhere the EU took note of the findings that the conduct of the 1999 presidential election failed to meet a number of OSCE commitments: CS on Ukraine, part II, para 12.

[55] EU-Ukraine Summit, Joint Statement, 11772/01 (Presse 315), 11.09.2001, para 6 (emphasis added).

[56] Ibid; Fifth Meeting of the EU-Ukraine Cooperation Council, 7026/02 (Presse 64), 11.03.2002, 1; EU-Ukraine Summit, Joint Statement, 13091/03 (Presse 286), 07.10.2003, 2.

[57] Solohubenko, 'Unleashed, but Still Muzzled: The Media in Ukraine', in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002), 73.

[58] EU-Ukraine Summit, Joint Statement, 10607/02 (Presse 195), 04.07.2002, 1.

[59] Chapter 2 (n 59).

EU stressed the importance of ensuring the democratic conduct of the 2004 presidential election in line with international standards, and the need for a free media covering the electoral process.[60]

5.6 Reform assistance and support of civil society

During 1993-1997, several ad-hoc projects related to democracy, the rule of law and human rights were implemented in Ukraine under TACIS: for example, training sessions for Members of Parliament and judges, media training and election observation training.[61] Unlike EU assistance in the CEECs, during 1993-1997, TACIS did not support any ad-hoc anti-corruption projects.[62] During 1998-1999, TACIS helped with professional training for Ukrainian civil servants.[63] Overall, however, throughout the 1990s, TACIS focused predominantly on market reforms rather than on political transformation in Ukraine.[64]

TACIS allocated around €200 million for all economic and political initiatives in Ukraine during 2000-2003.[65] During this period the projects included, inter alia: training of key personnel of the judiciary; improvement of citizens' access to legal advice and information regarding their rights; support for strengthening of the legal and institutional framework for NGOs; and support for the development of the capacity of civil society to participate in policy dialogue at national, regional and local levels.[66] However, up until 2003, only limited attention was paid to such key tasks as supporting the independent media, training of journalists, and supporting the establishment of democratic electoral standards or empowering civil society to

[60] EU-Ukraine Summit, Joint Press Release, 10765/04 (Presse 210), 08.07.2004, 2; Seventh meeting of the EU-Ukraine Cooperation Council, 9259/04 (Presse 151), 18.05.2004, 1.

[61] Braithwaite, Eberhardt and Johnson, 'The European Union's PHARE and TACIS Democracy Programme: Compendium of Ad-hoc Projects 1993-1997', Working Document of the European Commission, January 1998, 7, 10-11, 15, 18.

[62] Ibid, 27.

[63] President of Ukraine, Decree 'On the Programme of Ukraine's Integration to the EU', No 1072/2000, 14.09.2000, Title 18.2.

[64] Solonenko, 'External Democracy Promotion in Ukraine: the Role of the European Union' (2009) 16:4 *Democratization* 709, 713.

[65] Ukraine Draft TACIS Indicative Programme 2000-2003, 10.

[66] Ibid, 5-6; Ukraine TACIS Action Programme 2000, 4-5, 10.

monitor elections.[67] In contrast to the US, in the run-up to the 2004 presidential election, the EU largely refrained from funding initiatives which could be interpreted as training or funding partisan politics, limiting its assistance to raising voter awareness and training of election observation professionals.[68] Moreover, after 2000, in the light of the upcoming EU enlargement, border management became increasingly important issue, taking up nearly half the TACIS budget for institutional, administrative and legal reform in Ukraine (€82 million).[69]

Ukraine was the second largest recipient of funds under TACIS after Russia.[70] Comparatively, the overall funding to the CIS was significantly lower than the overall funding available to the CEECs, as exemplified by the fact that during 1991-2003 Poland alone received more funds from the EU than all CIS countries combined.[71] The EU was the second largest donor of assistance to democracy and civil society in Ukraine after the US. The EU focused more on the institutional dimension of democratisation (with the main focus remaining on economic/market reforms), while the US concentrated more on bottom-up processes and supporting civil society.[72]

Ukrainian and EU observers were sceptical about any systemic effect of TACIS on democracy and the rule of law in Ukraine, pointing out the insufficient financial resources allocated for this area (as most of the money was directed at economic and nuclear safety issues),[73] lack of coordination and continuity between the projects, and Ukraine's inadequate legal and institutional frameworks for using international assistance.[74] The EU admitted that TACIS projects had limited impact at sector and national policy level due to the lack of continuity and coherent long-term

[67] Balfour (n 17), 66, 80.

[68] Ibid, 86-87.

[69] Ibid, 41.

[70] 'Problems with coordination of international technical assistance in Ukraine as compared with Poland's experience', International Centre for Policy Studies et al, Report for the Presidential Administration of Ukraine, May 2001, 9 (in Ukrainian).

[71] Raik, 'Promoting Democracy through Civil Society: How to Step up the EU's Policy towards the Eastern Neighbourhood', Centre for European Policy Studies, Working Document No 237, February 2006, 15.

[72] Ibid, 16-17; Shapovalova and Shumylo, 'Ukraine: Supporting Elusive Consolidation', in Kucharczyk and Lovitt (eds), *Democracy's New Champions: European Democracy Assistance after EU Enlargement* (Policy Association for an Open Society, 2008), 271-273.

[73] Solonenko and Jarabik (n 48), 93.

[74] 'Problems with coordination of international technical assistance in Ukraine' (n 70), 9, 26-28.

sector planning.[75] Regarding civil society, empirical studies identified that TACIS had some positive effects on the NGOs which benefited from its grants, in particular by strengthening their organisational capabilities and professionalism.[76] Nevertheless, this impact was marginal and TACIS did not have any systemic and visible effect on civil society in Ukraine, especially when compared to the effects of EU efforts in the CEECs.[77]

In addition to TACIS, the European Initiative for Democracy and Human Rights (EIDHR) started operating in Ukraine in 1993. During 1993-2004, nearly 70 macro-projects (e.g. strengthening local self-government), 55 micro-projects (e.g. supporting women's organisations) and several targeted projects (e.g. increasing the focus of law-enforcement bodies on defending human rights) were carried out in Ukraine under the EIDHR.[78] Yet the overall funding under the EIDHR was scarce: during 1999-2006 Ukrainian NGOs received only €5.95 million.[79] Given the limited funding, complicated application procedure and stringent requirements, mainly only well-established NGOs benefitted from the EIDHR.[80] Moreover, support under the EIDHR was predominantly non-political – unlike, for example, the US aid – with projects focusing more on social rights protection and to a lesser extent on voter education and mobilisation.[81] Furthermore, the EIDHR paid insufficient attention to media freedom ahead of the 2004 presidential election.[82]

[75] Ukraine ENPI Country Strategy Paper 2007-2013, 11.

[76] Bailer, 'The European Union's NGO Support Program in Ukraine: Its Impact on Civil Society and the Third Sector', Paper presented for the Fourth International Conference of the International Society for Third-Sector Research "The Third Sector: For What and For Whom?", Trinity College, July 2000, 6-11.

[77] Nanivska, 'NGO Development in Ukraine: The Beginnings of Civil Society', in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002), 84, 89.

[78] EC Delegation to Ukraine, 'On the way to a civil society in Ukraine', 2004, 5. Available at: <http://www.eeas.europa.eu/archives/delegations/ukraine/documents/virtual_library/12_tacis_civil_int_en.pdf> [accessed 01.03.2019].

[79] Gawrich, Melnykovska and Schweickert, 'Neighbourhood Europeanization through ENP: The Case of Ukraine' (2010) 48:5 *Journal of Common Market Studies* 1209, 1220.

[80] Solonenko and Jarabik (n 48), 93; Shapovalova and Youngs, 'EU Democracy Promotion in the Eastern Neighbourhood: A Turn to Civil Society?', FRIDE, Working Paper No 115, December 2012, 2.

[81] Shapovalova, 'Assessing Democracy Assistance: Ukraine', FRIDE, May 2010, 3.

[82] Balfour (n 17), 70.

5.7 Conclusion

The pre-ENP EU methods for promotion of democracy, the rule of law and human rights did not have visible effects in Ukraine. The methods and instruments that were at the EU's disposal were not used consistently and to the full extent. For example, the EU was reluctant to apply negative conditionality because it did not want to engender too much geopolitical tension with the Kuchma regime and preferred instead to rely on dialogue and engagement. However, the political dialogue frameworks accorded inconsistent attention to democracy, the rule of law and human rights and their potential for 'socialising' Ukraine proved limited. Moreover, EU aid to Ukraine was focused primarily on economic reforms, while the projects related to the values did not have any systemic effect. Overall, EU efforts did not change the Ukrainian Governments' unwillingness to conduct democratic reforms. The EU also did not accord high priority to supporting Ukrainian civil society during this period, and its assistance was of limited scope and reach.

Overall, the piecemeal approach to promotion of the values in Ukraine before the ENP stemmed from the lack of an EU strategy towards the country in general at that time, as discussed in Chapter 3. This contrasted with the EU approach to the CEECs, where the recognition of their membership perspective guaranteed active EU involvement in the reform processes. As discussed in Chapter 3, the ENP did not clarify the EU's long-term strategy towards Ukraine. The extent to which the ENP, while being devoid of long-term strategy and vision, promoted and protected democracy, the rule of law and human rights in Ukraine during stages II-IV of this study will be analysed in the next Chapters.

6. Promotion and protection of democracy, the rule of law and human rights in Ukraine under the ENP during stage II (2004-2009)

6.1 Introduction

The fact that the EU developed the ENP as a policy for promoting reforms in the neighbourhood meant that previous EU approaches largely failed.[1] The launch of the ENP was seen as the first time that the EU stepped up to promote domestic change in Ukraine.[2] Indeed, the emphasis on positive conditionality under the ENP documents, as discussed in Chapter 4, promised a reinforced and more focused approach towards promoting democracy, the rule of law and human rights, as compared to the pre-ENP period. As analysed in Chapter 2, during stage II of this study (2004-2009), Ukraine significantly improved its democratic performance, especially regarding elections and media freedom. However, similarly to stage I, major reforms, such as on the judiciary, anti-corruption and decentralisation, were not undertaken. During stage II, Ukraine's aspirations for EU membership became more credible, but the ENP was designed as an alternative to enlargement, as discussed in Chapter 3.

The aim of this Chapter is to analyse how the EU applied ENP methods in Ukraine and what impact they had during stage II. It begins by recalling the EU's role in the Orange Revolution, which coincided with the launch of the ENP but was not influenced by it (6.2). It then analyses the application and the impact of positive conditionality introduced under the 2005 Action Plan (AP) (6.3) and under other instruments (6.4). Next, it examines the application and impact of negative conditionality (6.5), socialisation (6.6), reform assistance and support of civil society (6.7). The final section summarises the added value of the ENP and its impact during stage II (6.8).

[1] Kelley, 'New Wine in Old Wineskins: Promoting Political Reforms through the New European Neighbourhood Policy' (2006) 44:1 *Journal of Common Market Studies* 29, 31.

[2] Wolczuk, 'Implementation without Coordination: The Impact of EU Conditionality on Ukraine under the European Neighbourhood Policy' (2009) 61:2 *Europe-Asia Studies* 187, 188.

6.2 The EU and the 2004 Orange Revolution

The Orange Revolution was a series of peaceful mass protests that took place during November-December 2004 as a reaction to the fraudulent presidential election.[3] Some EU officials claimed that the ENP 'played a significant role in the outcome of the Orange Revolution'.[4] However, the facts suggest that the ENP did not play any visible role in its origins or settlement.

The EU and the origins of the Orange Revolution

The EU and the ENP were not among the factors that triggered the Orange Revolution. It is true that Western actors, including the EU, provided assistance to Ukrainian NGOs for independent election monitoring during the 2004 election.[5] However, observers agree that the Orange Revolution happened due to a mix of internal factors, such as disunity of the ruling elites, unpopularity of President Kuchma, and growing strength of the opposition and civil society, while the assistance and funding of the West, and in particular the EU, were not a decisive factor.[6] In the years preceding the Orange Revolution, the EU's support for civil society was limited and mainly non-political, as shown in Chapter 5.[7] Moreover, as is discussed below, the ENP was launched in Ukraine only after the Orange Revolution and it was not very popular with the authorities or society. It is therefore clear that the EU and ENP did not play any role in the origins of the Orange Revolution or in mobilising or inspiring the protests. In contrast, the EU and the ENP played a central role in inspiring (albeit unintentionally) the 2013-2014 Maidan protests.[8]

[3] Chapter 2, Section 2.3.1.2.

[4] Ferrero-Waldner, Commissioner for External Relations and ENP, 'The EU and Ukraine – what lies beyond the horizon?', SPEECH/05/257, Brussels, 26.04.2005.

[5] Sushko and Prystayko, 'Western Influence', in Åslund and McFaul (eds), *Revolution in Orange: The Origins of Ukraine's Democratic Breakthrough* (Carnegie Endowment for International Peace, 2006), 134-135.

[6] McFaul, 'Transitions from Postcommunism' (2005) 16:3 *Journal of Democracy* 5, 7-16; Diuk, 'The Triumph of Civil Society', in Åslund and McFaul (eds), *Revolution in Orange: The Origins of Ukraine's Democratic Breakthrough* (Carnegie Endowment for International Peace, 2006), 71-82.

[7] Section 5.6.

[8] Chapter 8, Section 8.2.

The EU and the settlement of the Orange Revolution

The EU initially reacted to electoral fraud with condemnation, albeit after some hesitation.[9] Together with other international actors, it deployed to Ukraine the international election observation mission, which was 'the largest in election-monitoring history'.[10] Javier Solana, the then High Representative for the Common Foreign and Security Policy, together with Polish and Lithuanian Presidents, mediated the negotiations between Viktor Yushchenko and representatives of the old regime.[11] The EU decided to participate in mediation not because of the desire to support a democratic change in the country, but due to the fears of violent breakdown on its doorstep, active position of new Member States (most notably Poland and Lithuania) and pressure from the US.[12] Due to different positions of the Member States, the EU tried hard not to be seen as interfering in Ukraine's politics, and so decided to negotiate with all the parties involved.[13] The cautious involvement was a result of deference to Russia and reluctance to contemplate continuing enlargement.[14] This approach, which contrasted with the EU's more open support of opposition during the 2000 revolution in Serbia,[15] was criticised for not fully supporting the momentum generated by the Orange Revolution.[16]

Overall, the EU's involvement in mediation was instrumental in the peaceful resolution of the crisis.[17] Yet the EU did not use the ENP as an argument or incentive

[9] Copsey, 'Europe and the Ukrainian Presidential Election of 2004', European Parties Elections and Referendums Network, Election Briefing No 16, 9-12.

[10] Sushko and Prystayko (n 5), 134-139.

[11] Gromadzki et al, 'Will the Orange Revolution Bear Fruit? EU-Ukraine Relations in 2005 and the Beginning of 2006', Stefan Batory Foundation, May 2005, 15-16.

[12] Sushko and Prystayko (n 5), 131-132; Buras and Pomorska, 'Poland and the European Neighbourhood Policy' (2006) 7:19 *Foreign Policy in Dialogue* 34, 41-42; Youngs, 'Europe's Inconsistent Support for Democratic Reform in Ukraine', UCD Dublin European Institute, Working Paper 08-5, July 2008, 12-15; Raik, 'The EU and the Mass Protests in the Neighbourhood: Models of Normative (In)action' (2012) 17:4 *European Foreign Affairs Review* 553, 565-566.

[13] Balfour, *Human Rights and Democracy in EU Foreign Policy: The Cases of Ukraine and Egypt* (Routledge, 2012), 79-81.

[14] Raik (n 12), 559-560.

[15] Ibid, 561-562.

[16] Solonenko, 'External Democracy Promotion in Ukraine: the Role of the European Union' (2009) 16:4 *Democratization* 709, 714, 719.

[17] Sushko and Prystayko (n 5), 139-140.

to persuade the parties to re-run the election.[18] It also did not resort to sanctions or negative conditionality, unlike the US, which used the threat of sanctions.[19]

6.3 Positive conditionality (i): 2005 Action Plan

6.3.1 Internal logic: priorities, rewards and conditions

The EU-Ukraine AP[20] was negotiated with the Kuchma administration during 2004.[21] The negotiation did not involve civil society.[22] The EU did not demand that Ukraine satisfied any conditions before drafting the AP. The latter was endorsed in February 2005 – after Yushchenko came to power. Despite calls from the European Parliament,[23] the AP was not updated or revised,[24] as exemplified by the fact that it still contained an apparently out-dated requirement for Ukraine to ensure democratic conduct of the 2004 presidential election. Instead, in February 2005 the EU and Ukraine agreed the 10-point Additional Measures.[25] The latter did not contain new priorities for action but elucidated some of the rewards, as examined below.

Priorities for action

The category 'Political dialogue and reform' under the AP[26] included a sub-category 'Democracy, rule of law, human rights and fundamental freedoms'.[27] The latter set out 12 priorities for action for Ukraine, discussed below. These priorities were

[18] Tocci, 'Can the EU Promote Democracy and Human Rights Through the ENP? The Case for Refocusing on the Rule of Law', in Cremona and Meloni (eds), *The European Neighbourhood Policy: A Framework for Modernisation?*, EUI Working Papers LAW 2007/21, 27-28.

[19] Sushko and Prystayko (n 5), 133.

[20] EU-Ukraine Action Plan, 21.02.2005 (hereinafter 'EU-Ukraine AP').

[21] Tocci (n 18), 25-26.

[22] Barbé and Johansson-Nogués, 'The EU as a Modest "Force for Good": the European Neighbourhood Policy' (2008) 84:1 *International Affairs* 81, 91-92.

[23] European Parliament Resolution on the results of the Ukraine elections (P6_TA(2005)0009), 13.01.2005, para 12.

[24] Balfour (n 13), 59.

[25] Additional Measures to the 2005 EU-Ukraine AP, Annex to the Eighth meeting of the EU-Ukraine Cooperation Council, 6428/05 (Presse 37), 21.02.2005 (hereinafter 'Additional Measures to the EU-Ukraine AP').

[26] Other categories of priorities were: 'Economic and social reform and development', 'Trade, market and regulatory reform', 'Cooperation in Justice and Home Affairs', 'Transport, energy, information society and environment', and 'People-to-people contacts'.

[27] A second sub-category was 'Regional and international issues, cooperation on foreign and security policy, weapons of mass destruction non-proliferation, conflict prevention and crisis-management'.

subdivided into 30 tasks in total. The EU did not set out its own standards of democracy, the rule of law and human rights, but often referred to the relevant international obligations of Ukraine or to recommendations of relevant international bodies, in what was called the EU's 'reinforcement strategy'.[28] Many tasks, however, were vague, lacked any 'reinforcement' reference and were 'replete with indeterminate requirements', which undermined the 'compliance-pull' of the AP.[29] The specific tasks need to be examined now.

Four of the 12 priorities concerned democracy and the rule of law (priorities 1, 2, 3 and 5). Under priority 1, Ukraine was required to 'strengthen the stability and effectiveness of the institutions guaranteeing democracy and the rule of law' by: ensuring democratic conduct of the 2004 presidential and 2006 parliamentary elections in accordance with OSCE/ODIHR standards and recommendations; ensuring that any further legislative reforms were conducted 'in line with international standards'; and continuing administrative reform and strengthening of local self-government in line with the standards contained in the European Charter of Local Self-Government.[30] The first task was sufficiently clear, while the second one was too vague and unspecific as to what reforms were meant. As regards the third task, ratification of the abovementioned Charter was one of the obligations that Ukraine had assumed upon acceding to the Council of Europe in 1995.[31] Ukraine ratified the Charter in 1997 and it entered into force in 1998. The Charter provides, inter alia, that public responsibilities shall be exercised by those authorities which are closest to the citizen (principle of subsidiarity) and that local authorities shall have adequate financial resources of their own.[32] These provisions were not implemented in Ukraine as power remained highly centralised and local self-government authorities lacked sufficient resources. The situation started to change only during stage IV, with decentralisation reform.[33] Nevertheless, it was commendable that the

[28] Casier, 'The EU's Two-track Approach to Democracy Promotion: the Case of Ukraine' (2011) 18:4 *Democratization* 956, 960.

[29] Magen, 'The Shadow of Enlargement: Can the European Neighbourhood Policy Achieve Compliance?' (2006) 12 *The Columbia Journal of European Law* 384, 415, 421.

[30] EU-Ukraine AP, part 2.1(1).

[31] Parliamentary Assembly of the Council of Europe, Opinion No 190 (1995) 'Application by Ukraine for membership of the Council of Europe', 26.09.1995, para 12.7.

[32] Articles 4 and 9, European Charter of Local Self-Government, Council of Europe, European Treaty Series No 122, 15.10.1985.

[33] Chapter 2, Section 2.6.1.1.

AP paid attention to local self-government, especially because this area was overlooked before the ENP.

A major drawback was that the AP did not mention the Ukrainian Parliament (the Verkhovna Rada) as 'the institution guaranteeing democracy', which needed strengthening. It did not establish the need to ensure effective checks and balances between the President, the Verkhovna Rada and the Cabinet of Ministers, even though the broad powers of the President undermined the role of the Parliament and were conducive to the 'oligarchisation' of Ukraine's politics, as discussed in Chapter 2.[34] In contrast, the AP with Moldova, for example, set the task (albeit vague) of ensuring 'correct functioning of the Parliament, including the reform of parliamentary immunity'.[35] Subsequently, after the 2004/2006 constitutional reform, the powers of the Parliament were strengthened, yet this does not deny the fact that the AP failed to address one of the most pressing democracy-related issues in Ukraine at that time. Overall, the title of priority 1 resonated with the formulation of the political part of the Copenhagen criteria, yet the vagueness of the tasks subsumed therein underlined that the AP was essentially a 'watered-down version of the criteria for EU accession'.[36]

The AP did not provide a clear distinction between democracy and the rule of law.[37] Notably, priority 1 did not mention the judiciary among 'the institutions guaranteeing … the rule of law'. Instead, reform of the judiciary was addressed under priority 2, together with reform of the public prosecution system. Ukraine was required to: ensure implementation of the reforms of civil, criminal and administrative codes and codes of procedure 'based on European standards'; continue the reform of the public prosecution system in accordance with the relevant Council of Europe Action Plan; address reported shortcomings in the work of the law-enforcement organs and public prosecution; complete and implement reform of the court system to ensure independence, impartiality and efficiency of the judiciary;

[34] Section 2.3.1.1.

[35] EU-Moldova Action Plan, 22.02.2005 (hereinafter 'EU-Moldova AP'), part 2.1(1).

[36] Emerson, 'Policies towards Ukraine, 2005-20: Status Quo Unintended', in Tocci (ed), *The European Union as a Normative Foreign Policy Actor*, Centre for European Policy Studies, Working Document No 281, January 2008, 26.

[37] Van Vooren, *EU External Relations Law and the European Neighbourhood Policy: A Paradigm for Coherence* (Routledge, 2012), 241.

implement judgments of the European Court of Human Rights (ECtHR); and enhance training of judges, prosecutors, police and prison staff, e.g. on human rights issues.[38] Although some of these tasks were vague, the positive trend was that the EU emphasised the implementation, rather than the mere adoption of relevant reforms. The reforms of the judiciary and the public prosecution system, especially the need to remove Soviet-style powers of general control, and the adoption of the relevant codes were among the obligations which Ukraine agreed to meet within one year from accession to the Council of Europe,[39] that is, by 1996. It is commendable that under the AP the EU reinforced these unfulfilled commitments.

Under priority 3, on the fight against corruption, Ukraine was required to: join the Council of Europe Group of States Against Corruption (GRECO) and implement its recommendations, including a revision of the Ukrainian national strategy for the fight against corruption; and promote transparency and accountability of the administration, in particular concerning the reform of the civil service 'based on European standards'.[40] The key drawback was that all these tasks were very basic, formal requirements, which did not include the need for a comprehensive legal and institutional framework for prevention and investigation of high-level corruption. It was only under the 2010 Visa Liberalisation Action Plan (VLAP) that the EU introduced clear requirements on the establishment of anti-corruption institutions.[41]

Under priority 5, Ukraine was required to foster the development of civil society by ensuring respect for freedom of association and involvement of citizens in the decision-making process, including through civil society organisations. [42] However, the AP was conspicuously silent on the need to ensure freedom of assembly, which was of key importance for peaceful resistance to the Kuchma regime. Again, the AP with Moldova was more specific and required amending law on assemblies to bring it in line with the requirements of the European Convention on

[38] EU-Ukraine AP, part 2.1(2).
[39] Parliamentary Assembly of the Council of Europe (n 31), paras 11.5-11.6.
[40] EU-Ukraine AP, part 2.1(3).
[41] Chapter 7, Section 7.4 and Chapter 8, Section 8.5.
[42] EU-Ukraine AP, part 2.1(5).

Human Rights (ECHR).[43] Subsequently, this omission under the AP became less of a liability because the Orange authorities respected freedom of assembly.

Overall, these priorities under the AP elucidated and developed a fairly general objective 'to support Ukrainian efforts to consolidate its democracy' under the EU-Ukraine Partnership and Cooperation Agreement (PCA).[44] However, the weakness was that they put greater emphasis on formal democracy by establishing benchmarks for it (e.g. democratic conduct of elections), while there were no benchmarks for substantive democracy (e.g. accountability, participation, transparency, fight against corruption and civil society).[45] At the same time, the Ukrainian AP emphasised democracy more than, for example, the APs with Azerbaijan and with most of the Southern Mediterranean neighbours, which focused more on good governance and state building.[46]

The AP also listed seven priorities related to human rights (priorities 4, 6-11). Under priority 4, Ukraine was required to ensure respect for human rights and fundamental freedoms by promoting adherence to and ensuring implementation of core UN and Council of Europe Conventions and related protocols, such as, inter alia, the Optional Protocol to the UN Convention Against Torture (UNCAT-OP).[47] The latter requires the establishment at the national level of one or several bodies entitled to access all places of detention, examine conditions of detention and make relevant recommendations ('national preventive mechanism').[48] Establishment of the national preventive mechanism was necessary considering the relatively common practice of ill-treatment in detention. Although the AP did not specifically mention the national preventive mechanism, the reference to the UNCAT-OP added a necessary precision.

Under priority 6, Ukraine was required to ensure respect for freedoms of the media and expression by improving and enforcing the legal and administrative

[43] EU-Moldova AP, part 2.1(10).

[44] Article 1, Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Ukraine, of the other part [1998] OJ L49/3.

[45] Casier (n 28), 961-962.

[46] Börzel and van Hüllen, 'One Voice, One Message, but Conflicting Goals: Cohesiveness and Consistency in the European Neighbourhood Policy' (2014) 21:7 *Journal of European Public Policy* 1033, 1037-1044.

[47] EU-Ukraine AP, part 2.1(4).

[48] Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/57/199, 18.12.2002, part 4.

framework for media freedom and journalists' rights, taking into account relevant Council of Europe recommendations.[49] The weakness was that the AP did not include a reference to specific recommendations. Moreover, it did not mention the need to establish a public service broadcaster, which was of key importance considering that the pressure on independent media was widespread during Kuchma's presidency. This omission remained a weakness after the Orange Revolution because even though the authorities refrained from pressure on the media, many media outlets remained in oligarchs' ownership and were often used for political purposes.

Under priority 7, Ukraine was to ensure respect for rights of persons belonging to national minorities by: designing relevant legislation and effectively protecting those rights 'based on European standards'; and continuing close cooperation between government authorities and representatives of national minorities.[50] Again, it was unclear which 'European standards' this meant. Moreover, Ukraine was not explicitly required to improve the anti-discrimination legislation. More explicit tasks on anti-discrimination were later listed under the VLAP.[51]

Under priority 8, Ukraine had to prevent ill-treatment and torture by: improving legal basis and practice in the sphere of detention; enhancing human rights training of the police; and implementing recommendations of the European Committee for the Prevention of Torture.[52] At that time, based on its visits to detention facilities in Ukraine, the Committee made a detailed list of recommendations, such as to amend the Criminal Procedure Code and to issue instructions to the police.[53] Considering additionally the reference to the UNCAT-OP under priority 4, prevention of torture acquired great attention under the AP.

Under priority 9, Ukraine was required to ensure equal treatment of men and women 'in society and economic life',[54] although it was not specified what exactly

[49] EU-Ukraine AP, part 2.1(6).

[50] Ibid, part 2.1(7).

[51] Chapter 7, Section 7.4 and Chapter 8, Section 8.5.

[52] EU-Ukraine AP, part 2.1(8).

[53] Council of Europe, Committee for the Prevention of Torture, 'Report to the Ukrainian Government on the Visit to Ukraine Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 14 November to 6 December 2002', CPT/Inf (2004) 32, 01.12.2004, 81-97.

[54] EU-Ukraine AP, part 2.1(9).

Ukraine had to do to achieve that. The need to address the gender pay gap and to ensure greater participation of women in politics (e.g. by introducing relevant quotas) could have added much needed substance to this priority.

Under priority 10, Ukraine had to ensure respect for children's rights by implementing the 2002 recommendations of the UN Committee on the Rights of the Child, and fully implementing juvenile justice standards 'in line with relevant international standards'.[55] The recommendations were a comprehensive analysis of Ukraine's progress with protecting the rights of the child.[56] It is regrettable that not all 12 priorities contained a reference to similar detailed documents.

Under priority 11, Ukraine had to ensure respect for trade unions' rights and core labour standards, 'based on European standards' and in accordance with relevant ILO conventions,[57] although there was no reference to specific ILO conventions.

Overall, such attention to human rights was unmatched by any pre-ENP EU document on Ukraine. The AP paid attention to key human rights issues (e.g. freedom of the media and prevention of torture), as well as less pressing, although important, issues (e.g. trade unions' rights). The positive trend was that many priorities required not only adoption of relevant laws, but also their implementation. However, the drawback was that, like in the case with democracy-related priorities, many tasks were too unspecific. Moreover, the adoption of legislation and ratification of international conventions were clear benchmarks, while there were no benchmarks against which to evaluate the effectiveness of their implementation. Also, in addition to the failure to mention freedom of assembly and the need to establish a public service broadcaster, the AP failed to mention the right to a fair trial, although it might be argued that it was, at least in part, addressed under priority 2.

Finally, priority 12 concerned international justice. The AP mentioned, inter alia, the need to elaborate draft laws necessary for ratification of the Rome Statute of the International Criminal Court (ICC).[58] Ukraine signed the Rome Statute in January

[55] Ibid, part 2.1(10).

[56] Committee of the Rights of the Child, 'Second periodic reports of States parties due in 1998: Ukraine', CRC/C/70/Add.11, 18.05.2001.

[57] EU-Ukraine AP, part 2.1(11).

[58] Ibid, part 2.1(12).

2000, yet its ratification was blocked in 2001, when the Constitutional Court found that the provision that the ICC 'shall be complementary to national criminal jurisdictions'[59] did not comply with the Ukrainian Constitution.[60] This issue has not been resolved to this day and ratification of the Rome Statute is pending. However, Ukraine acknowledged ad hoc jurisdiction of the ICC in relation to all crimes committed on its territory from the start of the Maidan in 2013, as discussed in Chapter 2.[61]

Importantly, the AP established a hierarchy of priorities by setting out that 'particular attention' was to be given to: strengthening the stability and effectiveness of institutions guaranteeing democracy and the rule of law; ensuring democratic conduct of the 2004 presidential and 2006 parliamentary elections in accordance with OSCE standards; ensuring respect for freedom of the media and freedom of expression; the fight against corruption (which was linked to the improvement of the investment climate); and reinforcement of administrative and judicial capacity.[62] This hierarchy reflected some of the most important democracy and human rights-related issues in Ukraine before and, to a lesser extent, after the Orange Revolution. However, in practice the hierarchy hardly had any added value since the AP did not clearly link priorities to the promised rewards, as will be discussed below.

The scope of the tasks related to democracy, the rule of law and human rights under the EU-Ukraine AP was generally comparable to the APs with Moldova and the Southern Mediterranean neighbours, although the latter paid more attention to women's rights and anti-discrimination.[63] The EU-Israel AP stood out as it was less of a list of things for Israel to do, and more of a list of things for the EU and Israel to do together.[64] The APs with Ukraine and other Eastern neighbours were more demanding regarding the fight against corruption than other APs.[65] At the same time,

[59] Preamble and Article 1, Rome Statute of the International Criminal Court, 2187 UNTS 38544.

[60] Constitutional Court of Ukraine, Conclusion No 3-в/2001, 11.07.2001.

[61] Section 2.6.3.

[62] EU-Ukraine AP, part 1.

[63] Ghazaryan, 'The Fluid Concept of "EU Values" in the Neighbourhood: A Change of Paradigm from East to South?', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 15-16.

[64] Smith, 'The Outsiders: the European Neighbourhood Policy' (2005) 81:4 *International Affairs* 757, 765-766.

[65] Van Vooren (n 37), 244-249.

the EU-Ukraine AP was somewhat more ambitious than the APs with the Southern Caucasian countries regarding, inter alia, human rights and the fight against corruption.[66] Overall, the APs 'seemed to indicate a qualitatively different degree of EU attention to democracy and human rights' as compared to the pre-ENP period.[67] Moreover, the values mentioned in the APs were broader than the values identified in Article 2 TEU.[68]

Rewards and conditions

The AP specified that the ENP offered to Ukraine such rewards as, inter alia: 'the perspective of moving beyond cooperation to a significant degree of integration, including through a stake in the EU's Internal Market'; increased financial support and support for legislative approximation; deepening of trade and economic relations, possibly through the establishment of a bilateral free trade area (FTA); and 'the possibility of a new enhanced [bilateral] agreement'.[69] This list generally reflected the offers listed in the ENP documents.[70] The Additional Measures expanded the existing rewards and added new ones, such as: the possibility of an early start of consultations on the new bilateral agreement and of the FTA negotiations; the possibility of closer cooperation in the area of foreign and security policy; EU support for Ukraine's WTO accession; granting Ukraine 'Market Economy Status'; visa facilitation; and increased financial assistance.[71] A clear added value of the AP was that no such incentives were offered to Ukraine before the ENP[72] and hence the latter initially appeared to strengthen the EU's conditionality towards Ukraine.[73]

[66] Ghazaryan (n 63), 15-16. For a detailed analysis of the APs with Armenia, Azerbaijan and Georgia, see Ghazaryan, *The European Neighbourhood Policy and the Democratic Values of the EU* (Hart, 2014), 130-149.

[67] Tocci (n 18), 25.

[68] Van Elsuwege and Petrov, 'Article 8 TEU: towards a New Generation of Agreements with the Neighbouring Countries of the European Union?' (2011) 36 *European Law Review* 688, 694.

[69] EU-Ukraine AP, part 1.

[70] Chapter 3, Section 3.3.

[71] Additional Measures to the EU-Ukraine AP.

[72] Buşcaneanu, 'EU Democracy Promotion in Eastern ENP Countries' (2015) 29:1 *East European Politics and Societies* 248, 254.

[73] Hillion, '"Thou Shalt Love Thy Neighbour": the Draft European Neighbourhood Policy Action Plan Between the EU and Ukraine', in Mayhew and Copsey (eds), *Ukraine and European Neighbourhood Policy* (Sussex European Institute, 2005), 22-23.

Many observers contended that the promised rewards were too weak to incentivise deep democratic reforms in Ukraine.[74] However, with the benefit of hindsight, the main weakness of the AP was not that it fell short of offering EU membership or that the offered incentives were not sufficiently attractive. Rather, the main weakness was that the AP was vague as to which priorities were to be fulfilled by Ukraine before receiving the promised rewards. For example, the scope of the new bilateral agreement was to be defined 'in the light of the fulfilment of the objectives of [the AP] and of the overall evolution of EU-Ukraine relations'.[75] It was not specified which exact 'objectives' of the AP were to be fulfilled. Early consultations on the new bilateral agreement were to start 'as soon as the political priorities of the ENP [AP] have been addressed'.[76] Again, no clarification was provided as to which 'political priorities' needed to be addressed.

In a much clearer fashion, the start of the FTA negotiations was linked to Ukraine's accession to the WTO.[77] Other rewards were not explicitly linked to the fulfilment of specific priorities for action. Thus, although democracy, the rule of law and human rights received much greater attention under the AP than under any pre-ENP document, the AP failed to introduce clear positive conditionality with links between priorities and rewards, benchmarks and timeframes. Not surprisingly, the AP was described as a 'shopping list'[78] or a 'list of good intents'.[79]

Other APs were subject to the same criticism because they often phrased priorities and tasks in general terms, and were vague as to how the tasks should be prioritised, the timeframe, steps of implementation, and connection between priorities and rewards.[80] Possible explanations for weak conditionality were that the APs were

[74] Gromadzki et al (n 11), 18-19; Solonenko and Jarabik, 'Ukraine', in Youngs (ed), *Is the European Union Supporting Democracy in its Neighbourhood?*, FRIDE, September 2008, 89-90.

[75] EU-Ukraine AP, part 1.

[76] Additional Measures to the EU-Ukraine AP.

[77] Ibid.

[78] Balfour (n 13), 36; Barbé and Johansson-Nogués (n 22), 92.

[79] Milczarek and Nowak, 'Eastern Dimension of the ENP – a New Challenge for the European Union. The Case of Ukraine', in Cremona and Meloni (eds), *The European Neighbourhood Policy: A Framework for Modernisation?*, EUI Working Papers LAW 2007/21, 75.

[80] Smith (n 64), 764-765; Emerson, 'Is There to Be a Real European Neighbourhood Policy?', in Youngs (ed), *Global Europe Report 2: New Terms of Engagement* (Foreign Policy Centre, 2005), 19-20; Del Sarto and Schumacher, 'From Brussels with Love: Leverage, Benchmarking and the Action Plans with Jordan and Tunisia in the EU's Democratization Policy' (2011) 18:4 *Democratization* 932, 939-946.

negotiated with the national Governments (principle of 'joint ownership'), or that the EU did not want to be accused of neo-colonialism in the Southern Mediterranean and feared empowering extremist Islamist forces there.[81]

However, these explanations are not convincing in relation to Ukraine's AP. Some observers argued that during negotiations with the Kuchma Government the inclusion of priorities related to human rights and media freedom proved to be a sticking point.[82] However, there is evidence that 'joint ownership' with regard to the AP was weak and its drafting was dominated by the EU.[83] Moreover, Ukrainian negotiators reportedly asked the EU for clearer priorities, conditions and rewards, which would mirror the Copenhagen criteria.[84] This suggests that weak conditionality under the AP reflected the preference not so much of Ukraine, as of the EU. This preference stemmed from the different positions of the Member States towards Ukraine. The Member States supportive of Ukraine's membership perspective (e.g. Poland) advocated harder conditionality in the AP, while the Member States hostile towards the idea (e.g. Germany and France) resisted clearer conditionality.[85] As a result, the AP reflected the lowest common denominator position of the EU as a whole.[86] After the Orange Revolution there was arguably a perception in the EU that Ukraine might make credible claims for membership and that 'the ENP's days were numbered'.[87] It is therefore not surprising that when pro-reform elites came to power following the Orange Revolution, the EU refused to renegotiate the AP and only marginally enhanced conditionality under the Additional Measures.

The EU's reluctance to introduce clear conditionality under the AP exposed the inherent contradiction between the ENP as an alternative to membership and as a

[81] Kelley (n 1), 46; Balfour, 'EU Conditionality after the Arab Spring', European Institute of the Mediterranean, IEMed Euromesco Series, No 16, June 2012, 16-17.

[82] Sasse, 'The European Neighbourhood Policy: Conditionality Revisited for the EU's Eastern Neighbours' (2008) 60:2 *Europe-Asia Studies* 295, 307.

[83] Van Vooren (n 37), 265; Cremona, 'The European Neighbourhood Policy: More than a Partnership?', in Cremona (ed), *Developments in EU External Relations Law* (OUP, 2008), 276-277.

[84] Langbein and Wolczuk, 'Convergence without Membership? The Impact of the European Union in the Neighbourhood: Evidence from Ukraine' (2012) 19:6 *Journal of European Public Policy* 863, 869.

[85] Youngs (n 12), 7-8.

[86] Ibid.

[87] Sherr, 'Ukraine and Europe: Surmounting an Impasse', in Flikke (ed), *Ukraine in Europe – Europe in Ukraine* (Norwegian Institute of International Affairs, 2013), 23.

policy for promotion of reforms, as discussed in Chapter 4.[88] Harder conditionality could have resulted in 'procedural entrapment' under the ENP, whereby deeper democratic reforms could have made Ukraine's bid for EU membership more credible.[89] Deliberately weak conditionality under the AP thus suggested that the EU saw the ENP first of all as an alternative to Ukraine's membership.

6.3.2 Implementation: reforms in Ukraine

The Government took the implementation of the AP seriously and it became 'an important framework and reference point for the domestic reform agenda'.[90] Each successive Government endorsed the AP[91] and adopted annual national roadmaps on its implementation.[92] The roadmaps listed detailed 'homework' objectives and their implementation was regularly monitored by one of the Government's agencies.[93]

Under the roadmaps, the AP's 12 priorities on democracy, the rule of law and human rights were divided into several tasks, which were not identical to the AP tasks. For example, in 2005 it was envisaged that the Ministry of Justice had to prepare a draft bill on the prevention and fight against corruption.[94] This was a welcome elaboration on the AP, which was quite unspecific on the anti-corruption tasks and did not explicitly mention the need to adopt such a law. The roadmaps specified the timeframe and agencies responsible for carrying out the tasks. However, the drawback was that the tasks were often vaguely worded, there was weak continuity and follow-up on the roadmaps, and they focused predominantly on the tasks of the Cabinet of Ministers (drafting of bills and their submission), rather than the Verkhovna Rada (adoption of laws).[95] Such lack of coordination was one of the manifestations of the overall inadequate institutional framework for the implementation of the AP. The post of the Vice Prime Minister on European

[88] Section 4.3.3.

[89] Sasse (n 82), 306-310, 314.

[90] Solonenko, 'The EU's "Transformative Power" beyond Enlargement: the Case of Ukraine's Democratisation', European Research Institute, Working Paper No 21, July 2007, 15.

[91] Wolczuk (n 2), 199.

[92] The roadmaps were adopted for 2005, 2006, 2007 and 2008.

[93] Solonenko (n 90), 15.

[94] Cabinet of Ministers of Ukraine, Order 'On the adoption of roadmaps implementing the EU-Ukraine Action Plan in 2005', No 117-p, 22.04.2005, para 2.1(7).

[95] Razumkov Centre, 'Assessment of the Implementation of the EU-Ukraine Action Plan in 2005-2006' (2007) 5 *National Security and Defence* 1, 8 (in Ukrainian)

Integration was established in 2005 and shortly abolished, while several key ministries were concerned with the implementation of the AP. There was rivalry between them and between the executive and the legislature more generally.[96]

Overall, Ukraine's progress with the implementation of the AP and the roadmaps was patchy. According to an assessment undertaken by the consortium of Ukrainian NGOs and think tanks, by the end of 2008, none of the AP's priorities on democracy, the rule of law and human rights was fully implemented. The most notable completed tasks included the overall free and fair 2006 and 2007 elections, freedom of the media, adoption of the Concept on fighting corruption, joining of GRECO in 2006, and ratification of the UNCAT-OP in 2006. However, the reforms of the judiciary and public prosecution were not undertaken, corruption remained endemic, ownership of the media was not made transparent, ill-treatment in detention remained widespread and the national preventive mechanism against torture was not established.[97]

Ukraine's mixed progress must be understood within a wider political context in the country during stage II. First, implementation of the AP was carried out by a new democratic Government, which came to power after the Orange Revolution. The relative democratic progress was first of all attributed to this initial change of power rather than the EU's efforts at democracy promotion under the AP.[98] Secondly, the Orange leaders considered 'domestic homework' stipulated in the AP as a precondition for moving closer to the EU, in contrast to the pre-ENP period, when the emphasis was put mistakenly on skilled diplomacy rather than on reforms.[99] According to the Ukrainian Ministry of Foreign Affairs, progress that Ukraine made with implementation of the AP was made not because of the ENP, but because of the Ukrainian authorities' objective to implement reforms necessary to satisfy the EU membership criteria.[100] Such 'passive EU leverage' (attractiveness of membership) was also noted in the Central and Eastern European Countries (CEECs) during pre-

[96] Wolczuk (n 2), 199-208.

[97] Razumkov Centre, 'Assessment of the Implementation of the EU-Ukraine Action Plan in 2005-2007' (2008) 6 *National Security and Defence* 6, 6-8 (in Ukrainian).

[98] Buşcaneanu (n 72), 263, 274.

[99] Wolczuk (n 2), 191.

[100] 'The European Neighbourhood Policy does not satisfy a strategic objective of Ukraine', *Unian*, 25.04.2009 (in Ukrainian).

accession policy.[101] Moreover, Russia's assertive policy towards Ukraine helped strengthen the EU's 'unintended normative impact' in Ukraine at that time.[102]

Ukraine's 'self-imposed conditionality'[103] did not result in more sustainable reforms due to two main factors. First, the internal power struggles that ensued after the Orange Revolution diverted attention from reforms and overshadowed the implementation of the AP.[104] The 2006 and 2007 election campaigns and several changes of Government were particularly disruptive. Secondly, Ukrainian elites were willing to adopt formal democratic reforms (e.g. conduct free and fair elections) in order to gain legitimacy with the EU and enhance chances of membership, yet they abstained from reforms in the field of substantive democracy because they feared the loss of power.[105] The fact that the implementation of deep democratic reforms presented high costs for the Orange leaders suggested that the ENP rewards failed to mobilise them, while the aim of EU membership (without the EU acknowledging such a prospect) motivated the reforms only to a limited degree.[106] The ENP rewards also did not resonate with the Ukrainian public and thus fell short of creating bottom-up pressure on the elites.[107]

6.3.3 Implementation: EU monitoring, evaluation and rewards

The key role in monitoring Ukraine's progress with implementation of the AP belonged to the Commission.[108] In its reports the Commission referred to the relevant findings of international actors directly concerned with democracy, the rule of law and human rights, such as the OSCE/ODIHR and the Council of Europe. Observers called this referencing 'cross-checking' by the EU.[109] Overall, the ENP progress

[101] Vachudova, *Europe Undivided: Democracy, Leverage, and Integration After Communism* (OUP, 2005), 63-79.
[102] Emerson (n 36), 27-28.
[103] Casier (n 28), 971.
[104] Wolczuk (n 2), 198-199.
[105] Casier (n 28), 966-969, 971.
[106] Wolczuk (n 2), 208; Gawrich, Melnykovska and Schweickert, 'Neighbourhood Europeanization through ENP: The Case of Ukraine' (2010) 48:5 *Journal of Common Market Studies* 1209, 1220.
[107] Shapovalova, 'The New Enhanced Agreement Between the European Union and Ukraine: Will it Further Democratic Consolidation?', FRIDE, Working Paper No 62, June 2008, 10.
[108] EU-Ukraine AP, part 3.
[109] Gawrich, Melnykovska and Schweickert (n 106), 1219.

reports were less detailed and critical than the progress reports in the context of pre-accession policy.[110]

EU monitoring and evaluation

During 2005-2009, the Commission commended Ukraine for, inter alia, the democratic conduct of the 2006 and 2007 parliamentary elections, respect for freedoms of expression and media, joining of GRECO and revision of the national anti-corruption strategy, ratification of the UNCAT-OP and the entry into force of the European Charter for Regional and Minority Languages. On the other hand, the Commission criticised, inter alia, endemic corruption, failure to reform the judiciary and public prosecution service, widespread ill-treatment in detention and the failure to establish the national preventive mechanism against torture, despite the September 2007 deadline set upon ratification of the UNCAT-OP, and failure to ratify the Rome Statute.[111]

Four positive observations can be made regarding the Commission's reports. First, its assessment echoed the assessment made by the Ukrainian NGOs, as discussed above, and thus objectively highlighted the achievements and shortcomings during stage II. Secondly, it is commendable that the Commission looked beyond the adoption of laws and assessed, and often criticised, the lack of improvements in practice, such as in the area of the fight against corruption or ill-treatment in detention. Thirdly, the Commission often referred to the opinions of the Council of Europe's European Commission for Democracy through Law (Venice Commission). The latter issues non-binding opinions on draft legislation and existing legislation in the area of democracy, the rule of law and human rights submitted for its examination by, inter alia, Council of Europe Member States.[112] References to the Venice

[110] Solonenko (n 16), 716.

[111] Progress Report Ukraine 2005-2006, SEC (2006) 1505, 04.12.2006, 2-5, 13; Progress Report Ukraine 2007, SEC (2008) 402, 03.04.2008, 2-6, 13-14; Progress Report Ukraine 2008, SEC (2009) 515, 23.04.2009, 2-5, 12-13; Progress Report Ukraine 2009, SEC (2010) 524, 12.05.2010, 2-7, 13-14.

[112] On the discussion of the work of the Venice Commission see Hoffmann-Riem, 'The Venice Commission of the Council of Europe – Standards and Impact' (2014) 25:2 *European Journal of International Law* 579.

Commission's opinions in the ENP reports[113] added substance and precision to the AP regarding, inter alia, the reform of the judiciary and public prosecution.[114]

Fourthly, the Commission paid attention to the issues which were not explicitly mentioned in the AP. For example, it consistently mentioned the need to establish a public service broadcaster and to address a gender pay gap.[115] The most notable example was the emphasis on the need for a balanced constitutional reform in line with recommendations of the Venice Commission.[116] The latter commended the 2004/2006 reform for 'increasing the parliamentary features of the political system', yet stressed that certain powers of the President, e.g. the power to initiate the procedure of no-confidence in the Government, undermined that aim and needed to be changed.[117] The emphasis on amending the constitutional reform was notable in the light of the fact that the reform was initially designed to pacify the old regime during the settlement of the Orange Revolution. Since the EU was directly involved in that settlement, it seemed tacitly to endorse the reform back then. The fact that the EU did not criticise the reform at the time of its adoption further demonstrated that during the settlement it was concerned mainly about security rather than a meaningful democratic change in Ukraine. The criticism of the reform in the ENP reports similarly seemed to stem from security considerations as imperfect checks and balances led to crises and political instability in Ukraine.

Nevertheless, despite these positive aspects, the Commission's reports did not reinforce positive conditionality. In other words, since the AP did not establish a clear link between Ukraine's reforms and ENP rewards, the reports looked like a general overview of Ukraine's reforms rather than an instrument designed to stimulate compliance.[118] Besides, since the popularity of the ENP was low in Ukraine, regular

[113] Progress Report Ukraine 2005-2006 (n 111), 4; Progress Report Ukraine 2007 (n 111), 3; Progress Report Ukraine 2009 (n 111), 4-6.

[114] Venice Commission, Opinion No 339/2005 'On the Amendments to the Constitution of Ukraine Adopted on 8.12.2004', 10-11.06.2005, 6-8.

[115] Progress Report Ukraine 2005-2006 (n 111), 5; Progress Report Ukraine 2007 (n 111), 5-6; Progress Report Ukraine 2008 (n 111), 4-5; Progress Report Ukraine 2009 (n 111), 5-6.

[116] Progress Report Ukraine 2005-2006 (n 111), 4; Progress Report Ukraine 2007 (n 111), 3.

[117] Venice Commission (n 114), 3-6.

[118] Shapovalova (n 107), 10.

reports did not create bottom-up pressure for reforms.[119] Instead, the Commission's monitoring and reports could be seen as an element of socialisation.

Rewards granted to Ukraine

Rewards granted by the EU were even more loosely connected to Ukraine's fulfilment of the priorities than was initially envisaged under the vague language of the AP. Early consultations on the new agreement started in spring 2006[120] – that is, after Ukraine ensured the democratic conduct of parliamentary elections but before other political priorities had been addressed.[121] A year later, in March 2007, Ukraine was the first ENP country to start negotiations on the new agreement. This was regarded as a concession following the Orange Revolution[122] or as an additional reward for democratic elections.[123] This supported the claim that under the AP the EU put greater emphasis on formal rather than substantive democracy. Moreover, despite calls from the European Parliament,[124] the EU did not link the progression of negotiations and conclusion of the new agreement to democratic reforms. The launch of FTA negotiations in February 2008 was connected to finalisation of Ukraine's WTO accession talks. Positive conditionality regarding the FTA encouraged the adoption of WTO-related laws in 2007,[125] but was not connected to democratic reforms.

When at the 2008 EU-Ukraine Summit the EU announced that the new bilateral agreement would be an Association Agreement (AA), it only noted the democratic conduct of the 2007 parliamentary elections and Ukraine's accession to the WTO.[126] The choice of the association framework was not conditional on Ukraine's reforms in the areas of democracy, the rule of law and human rights.

[119] Ibid.

[120] Tenth meeting of the EU-Ukraine Cooperation Council, 12778/06 (Presse 254), 14.09.2006, 1.

[121] Dragneva and Wolczuk, 'The EU-Ukraine Association Agreement and the Challenges of Inter-Regionalism' (2014) 39 *Review of Central and East European Law* 213, 220.

[122] Van der Loo, Van Elsuwege and Petrov, 'The EU-Ukraine Association Agreement: Assessment of an Innovative Legal Instrument', EUI Working Paper, LAW 2014/09, 5.

[123] Boonstra and Shapovalova, 'The EU's Eastern Partnership: One Year Backwards', FRIDE Working Paper No 99, May 2010, 5.

[124] European Parliament Recommendation to the Council on a negotiation mandate for a new enhanced agreement between the European Community and its Member States, of the one part, and Ukraine, of the other part (P6_TA(2007)0355), 12.07.2007, para 3.

[125] Solonenko (n 90), 25.

[126] EU-Ukraine Summit, Joint Declaration, 12812/08 (Presse 247), 09.09.2008, 2.

Instead, the AA was offered due to a host of other factors, such as the 2008 Russia-Georgia war and the need to support Ukrainian democratic forces.[127] The EU and Ukraine expressed hope that the AA 'will be finalised rapidly and can be signed as soon as possible'.[128] The EU introduced democracy-related conditions for the signing of the AA only during stage III, after democratic setbacks of the Yanukovych regime became too obvious to ignore.[129] Similarly, despite shortcomings with democratic reforms, negotiations on new bilateral agreements started with other Eastern Partnership (EaP) neighbours (with the exception of Belarus), demonstrating that conditionality in relation to new agreements under the ENP/EaP was mostly rhetorical.[130]

As regards other ENP rewards mentioned in the AP and in the Additional Measures thereto, the EU granted Ukraine 'Market Economy Status' in December 2005 as an ex post reward for re-running the second round of the 2004 presidential election.[131] The EU-Ukraine visa facilitation agreement was signed in 2007 after the signature of the bilateral readmission agreement.[132] Similarly, a visa facilitation agreement was negotiated with Georgia swiftly after the 2008 Russia-Georgia war to support Georgia, without any democracy-related conditionality.[133]

In sum, although the ENP documents put emphasis on values and conditionality, in practice conditionality was weak and the AP did not introduce a strong merit-based approach towards Ukraine.[134]

6.4 Positive conditionality (ii): other instruments

Technical Assistance to the Commonwealth of Independent States (TACIS), which initially remained in force under the ENP, did not establish a clear link between

[127] Chapter 3, Section 3.5.1.
[128] EU-Ukraine Summit 2008 (n 126), 3.
[129] Chapter 7, Sections 7.2 and 7.3.
[130] Ghazaryan (n 63), 17.
[131] Gawrich, Melnykovska and Schweickert (n 106), 1222.
[132] Eleventh meeting of the EU-Ukraine Cooperation Council, 11003/07 (Presse 142), 18.06.2007, 2.
[133] Ghazaryan, 'The Evolution of the European Neighbourhood Policy and the Consistent Evolvement of its Inconsistencies' (2012) 7 *Review of European and Russian Affairs* 1, 8.
[134] Solonenko (n 90), 16-20.

reforms and increased assistance. The European Neighbourhood and Partnership Instrument (ENPI), which superseded TACIS in 2007, introduced clearer positive conditionality under the Governance Facility.[135] The Additional Measures to the AP also listed increased financial assistance as one of the rewards (Section 6.3.1).

In 2007, Ukraine received €22 million under the Governance Facility for its 'good performance' in governance.[136] It was not clear what specific achievements warranted this reward. The other rewarded country was Morocco, which received €28 million.[137] The fact that Morocco received more, despite being less advanced in terms of the quality of democracy, suggested that the allocation was not based on objective and consistent criteria, but was instead negotiated between the Member States as an old-style east-south division of resources, and reflected the traditional focus of the Southern Member States (most notably, France, Italy and Spain) on the Southern Mediterranean.[138] In 2008, Ukraine received €16.6 million under the Governance Facility.[139] There were no allocations to Ukraine in 2009.[140] Overall, due to the limited resources and obscure criteria for their allocation, it is unlikely that the Governance Facility was taken seriously by Ukraine as an incentive for reforms.[141]

Additionally, the EU introduced several programmes of sector budget support for Ukraine under the ENPI, yet no conditions related to democracy, the rule of law and human rights were attached.[142] Overall, the fact that Ukraine's improved record during stage II did not lead to substantial increase of EU assistance made Ukraine the most 'mistreated' partner as compared to other Eastern neighbours.[143]

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[135] Chapter 4, Section 4.4.1.

[136] Progress Report Ukraine 2007 (n 111), 19.

[137] Khakee, 'Assessing Democracy Assistance: Morocco', FRIDE, May 2010, 3.

[138] Youngs, 'Democracy Promotion as External Governance?' (2009) 16:6 *Journal of European Public Policy* 895, 909.

[139] Progress Report Ukraine 2008 (n 111), 20.

[140] 'Evaluation of the European Commission's Cooperation with Ukraine', ADE/Analysis for Economic Decisions, Volume 1: Main Report, December 2010, 9.

[141] Emerson, Noutcheva and Popescu, 'European Neighbourhood Policy Two Years on: Time indeed for an "ENP plus"', Centre for European Policy Studies, Policy Brief No 126, March 2007, 23.

[142] However, there were conditions on public procurement, which can be seen as an element of accountability: 'Evaluation of the European Commission's Cooperation with Ukraine' (n 140), 81-88.

[143] Buşcaneanu (n 72), 256-257.

6.5 Negative conditionality

The pre-ENP negative conditionality under the PCA and TACIS was not changed under the ENP. Starting from 2007, negative conditionality in the form of possible suspension of assistance was also envisaged under the ENPI.[144] The EU-Ukraine visa facilitation agreement did not contain a human rights clause and therefore did not strengthen the existing negative conditionality instruments.[145]

Nevertheless, insofar as during stage II Ukraine generally improved its democratic record, the EU (and other international actors) did not resort to negative conditionality.[146]

6.6 Socialisation

The ENP and, subsequently, the EaP increased the number of communication channels between the EU and neighbouring countries at the three levels.[147]

Elites' level

First, the number of sub-committees under the EU-Ukraine Cooperation Committee increased from three to seven.[148] However, most of them focused on economic issues and none dealt specifically with democracy, the rule of law and human rights.[149] Instead, these issues were addressed within the sub-committee on 'Justice, Freedom and Security'.[150]

Secondly, the difference of political dialogue as compared to the pre-ENP period was that under the ENP, the PCA joint bodies had to 'advance and monitor' the implementation of the AP.[151] However, the publicly available joint statements on

[144] Chapter 4, Section 4.4.2.

[145] Agreement between the European Community and Ukraine on the facilitation of the issuance of visas [2007] OJ L332/68.

[146] Gawrich, Melnykovska and Schweickert (n 106), 1219-1220; Shapovalova, 'Assessing Democracy Assistance: Ukraine', FRIDE, May 2010, 11-12.

[147] Chapter 3, Section 3.5.3 and Chapter 4, Section 4.4.3.

[148] Solonenko (n 90), 29.

[149] Gawrich, Melnykovska and Schweickert (n 106), 1218, 1224.

[150] 'Evaluation of the European Commission's Cooperation with Ukraine' (n 140), 27.

[151] EU-Ukraine AP, part 3.

the EU-Ukraine Summits and Cooperation Councils suggest that these bodies usually simply commended the overall progress achieved with the implementation of the AP, without voicing any criticism or concerns.[152] A more critical approach was later undertaken in the joint EU-Ukraine evaluation report, which was published in 2008 and designed to be a 'short overview' of the implementation of the AP from its entry into force. On the one hand, the report noted Ukraine's progress in a number of areas – in particular, the overall democratic conduct of parliamentary elections and media pluralism.[153] On the other hand, it stressed that the constitutional reform according to the recommendations of the Venice Commission, reform of the judiciary and fighting corruption remained 'top' priorities for Ukraine.[154] The need to transform state television and radio companies into public broadcasters, address ill-treatment in detention and ratify the Rome Statute was also highlighted.[155] Overall, the report was very similar to the reports prepared by the Commission and its added value was questionable.

Thirdly, based on the information that was included in the public statements on the EU-Ukraine Summits and Cooperation Council meetings, it is possible to conclude that democracy, the rule of law and human rights were not discussed in more detail than during the pre-ENP period. Moreover, at the first post-Orange Revolution Cooperation Council and Summit the EU only noted the importance of consolidating the democratic achievements,[156] and 'expressed confidence' that the March 2006 parliamentary elections would be conducted in accordance with international standards,[157] without mentioning the need for deeper political reforms. Similar passive language was used at the 2006 Summit, when the EU simply noted that the parliamentary elections showed that the consolidation of democracy and freedom of expression had been 'key achievements'.[158] The focus on elections underlined that the EU was concerned primarily with formal democracy in Ukraine. Moreover, the lack of calls on Ukraine to adopt comprehensive democratic reforms

[152] EU-Ukraine Summit, Joint Press Statement, 14604/06 (Presse 297), 27.10.2006, 2; Ninth meeting of the EU-Ukraine Cooperation Council, 10047/05 (Presse 146), 13.06.2005, 1.

[153] First Joint Evaluation Report on the implementation of the EU-Ukraine AP, March 2008, 2.

[154] Ibid.

[155] Ibid.

[156] Ninth meeting of the EU-Ukraine Cooperation Council (n 152), 2.

[157] EU-Ukraine Summit, Joint Statement, 15222/05 (Presse 337), 01.12.2005, 2.

[158] EU-Ukraine Summit 2006 (n 152), 1. Similarly, Tenth meeting of the EU-Ukraine Cooperation Council (n 120), 1.

after the Orange Revolution echoed the EU's reluctance to embody strict conditionality under the AP and seemed to further emphasise that the EU saw the ENP primarily as an alternative to Ukraine's membership.

The rhetoric became more critical only amid the 2007 constitutional crisis. The EU expressed 'deep concern' over the political standoff between the President and the Prime Minister and stressed the importance of the comprehensive constitutional reform in line with the guidance of the Venice Commission.[159] It also stressed the importance of holding free and fair parliamentary elections in 2007 and of forming effective and stable government.[160] The need for progress on the rule of law, the reform of the judiciary and the fight against corruption was mentioned in the context of the need for improving the investment climate.[161] The EU subsequently commended the conduct of the parliamentary elections, but, at the beginning of 2008, again called on Ukrainian leaders to stabilise the country's political situation and reiterated the importance of constitutional reform.[162] The greater emphasis on reforms in the context of the 2007 crisis seemed to be motivated by security considerations insofar as political instability in Ukraine could potentially threaten security of the EU. Before the 2010 presidential election, the EU again emphasised the importance of constitutional reform, consolidation of the rule of law, renewed efforts to combat corruption and of the presidential election being conducted in accordance with European and international standards.[163]

Fourthly, during stage II Ukraine started benefitting from Twinning and Technical Assistance and Information Exchange (TAIEX), which aimed to promote good governance through the provision of training and expertise to civil servants.[164] As of 2008, Ukraine was the ENP country that benefitted from TAIEX the most.[165] However, TAIEX and Twinning focused mainly on approximation to the EU

[159] Eleventh meeting of the EU-Ukraine Cooperation Council, 11003/07 (Presse 142), 18.06.2007, 1.

[160] EU-Ukraine Summit, Joint Statement, 12927/07 (Presse 199), 14.09.2007, 2.

[161] Ibid, 3.

[162] Twelfth meeting of the EU-Ukraine Cooperation Council, 7516/08 (Presse 71), 11.03.2008, 1.

[163] EU-Ukraine Summit, Joint Statement, 17145/09 (Presse 366), 04.12.2009, 2; Thirteenth meeting of the EU-Ukraine Cooperation Council, 11051/09 (Presse 180), 16.06.2009, 2.

[164] EC Delegation to Ukraine, 'EU Aid Programmes and EU-Ukraine Cooperation', 2009, 17-19 (in Ukrainian). Available at: <http://eeas.europa.eu/archives/delegations/ukraine/documents/virtual_library/59_eu_asst_eu_ua_coop_uk.pdf> [accessed 01.03.2019].

[165] Solonenko and Jarabik (n 74), 91.

acquis.[166] Only four out of 160 projects in Ukraine during 2005-2010 were devoted to such issues as human rights, judicial reform and anti-corruption.[167]

Fifthly, the EaP frameworks were introduced towards the end of 2009, so their effects will be more visible during stage III.[168]

Civil society level

The category on 'People-to-people contacts' under the AP envisaged the promotion of cooperation between the EU and Ukrainian civil society,[169] yet it did not provide for formal channels of dialogue. The involvement of Ukrainian civil society in planning within the ENP was not strengthened. For example, civil society was not involved in the drafting of the AP (Section 6.3.1). Instead, it was initially involved indirectly, through monitoring its implementation. Some Ukrainian NGOs participated in the mid-term review of the Ukraine Country Strategy Paper 2007-2013 under the ENPI at the preliminary stage, yet they had no say at the finalisation stage.[170]

The situation improved only under the EaP, which established the Civil Society Forum (CSF) as a platform for dialogue between civil societies of the EU and six Eastern neighbours. The first CSF took place in November 2009 and gathered more than 200 NGOs from the EU and Eastern neighbours.[171] The scope and role of the CSF further increased during stage III, to be discussed in Chapter 7.[172]

Broader society level

In 2004, the new Member States introduced Schengen visa requirements for Ukrainian citizens, thus significantly disrupting people-to-people contacts. The ENP initially only marginally improved the channels of communication at the broader society level. The Additional Measures provided for the possibility of such rewards

[166] Ibid.

[167] Bușcaneanu (n 72), 261.

[168] Chapter 7, Section 7.7.

[169] EU-Ukraine AP, part 2.6(69).

[170] 'Evaluation of the European Commission's Cooperation with Ukraine' (n 140), 23.

[171] 'Eastern Partnership: Civil Society Forum', Brochure, 10 (in Ukrainian). Available at: <https://www.slideshare.net/YuriMarchenko/ss-33933235> [accessed 01.03.2019].

[172] Section 7.7.

as visa facilitation and the increase of people-to-people contacts, mainly in the areas of youth and education (e.g. through access to the Erasmus Mundus and Tempus programmes).[173] However, the visa facilitation agreement simplified the issuance of Schengen visas only for a small category of Ukrainian citizens (e.g. students and journalists).[174] Thus, the Schengen visa regime remained the major obstacle to EU-Ukraine people-to-people contacts.[175] In contrast, Ukraine-Russia people-to-people contacts were greatly facilitated, as the Ukrainian citizens could (and still can) travel to Russia without visas.

6.7 Reform assistance and support of civil society

The Additional Measures to the Ukrainian AP set out that 'efforts in the field of democracy and rule of law will be an immediate imperative and further targeted assistance including support for the strengthening of civil society is already envisaged'.[176] However, this was a rhetorical commitment because the unchanged TACIS programme continued to operate until the ENPI was introduced in 2007, and there was no substantial increase of funding.[177] Overall, out of €212 million allocated to Ukraine under TACIS during 2004-2006, only €15 million went for legal and administrative reform and €10 million for the development of civil society, independent media and democracy.[178] During 2004-2006, TACIS supported projects related to, inter alia, the training of judges, fostering of civil society and the independent media.[179]

During 2007-2013, assistance provided under the national ENPI envelope for Ukraine focused on three priority areas: i) support for democratic development and good governance; ii) support for regulatory reform and administrative capacity

[173] Additional Measures to the EU-Ukraine AP.

[174] See n 145.

[175] Popescu and Wilson, 'The Limits of Enlargement-Lite: European and Russian Power in the Troubled Neighbourhood', European Council on Foreign Relations, June 2009, 33; Sagan, 'Post-Socialist Transformation, European Neighbourhood and Civil Society Networks between Poland, Russia and Ukraine: a Case of Multi-level Contingency' (2010) 32:5 *European Integration* 439, 445, 451.

[176] Additional Measures to the EU-Ukraine AP.

[177] Chapter 4, Section 4.4.4.

[178] Ukraine TACIS National Indicative Programme 2004-2006, Annex 1.

[179] Ibid, 8-9, 14-16.

building; and iii) support for infrastructure development.[180] Under the first priority area, the ENPI supported, inter alia: public administration reform, including the fight against corruption; rule of law and judicial reform; and human rights, civil society development and local government.[181] Some projects focused on the development of pluralistic media.[182] It was therefore argued that under the ENPI, issues related to substantive democracy featured more prominently than under the AP.[183] During 2007-2010, Ukraine received €494 million under the ENPI, out of which 30% (€148.2 million) was allocated to the first priority area.[184] This amounted to approximately €37.05 million per year and constituted an increase as compared to the previous allocations to Ukraine under TACIS,[185] although this assistance was still inadequate considering the size of Ukraine and the challenges it faced.[186] These funds were primarily channelled to the Government, as over 70% of aid was granted in the form of sector budgetary support.[187] The problem with budgetary support is that it is very difficult to monitor how it is used.[188]

Overall, the effects of EU assistance for reforms were not systemic due to internal and external factors. Internally, political instability that ensued shortly after the Orange Revolution and the Government's insufficient political will for reforms weakened the effects of the assistance of the EU and other donors.[189] For example, EU assistance strengthened administrative capacity of the judiciary, yet true independence of the judiciary was not achieved because there was no comprehensive reform of the sector.[190] External weakening factors included shortcomings of the EU (and other donors) regarding needs assessment, planning, implementation and monitoring of assistance.[191] Furthermore, a connection between the ENPI and the AP

[180] Ukraine ENPI Country Strategy Paper 2007-2013, 6-17.

[181] Ukraine ENPI National Indicative Programme 2007-2010, 5-8.

[182] 'Evaluation of the European Commission's Cooperation with Ukraine' (n 140), 32-33.

[183] Casier (n 28), 962.

[184] Ukraine ENPI National Indicative Programme 2007-2010, 4; Shapovalova and Youngs, 'EU Democracy Promotion in the Eastern Neighbourhood: A Turn to Civil Society?', FRIDE, Working Paper No 115, December 2012, 3.

[185] Gawrich, Melnykovska and Schweickert (n 106), 1221.

[186] Shulga, 'The Eastern Partnership: the View from Ukraine', European Council on Foreign Relations, Commentary, 19.05.2015.

[187] Shapovalova and Youngs (n 184), 3.

[188] Shapovalova (n 146), 9-10.

[189] Ibid, 10-11.

[190] 'Evaluation of the European Commission's Cooperation with Ukraine' (n 140), 28-30.

[191] Shapovalova (n 146), 11-13.

priorities was weak,[192] suggesting that they had little potential for synergic effects. According to Ukrainian stakeholders, the impact of EU assistance on democracy, the rule of law and human rights in Ukraine was bound to be weak, unsystematic and incomprehensive as long as the EU did not acknowledge the country's membership perspective.[193]

Furthermore, the EU was criticised for focusing too much on the Government under the ENPI, while failing to sufficiently support civil society in Ukraine and in the Eastern neighbourhood more generally.[194] Similar imbalance was also noted regarding international donors' assistance to Serbia and Georgia following their 'colour revolutions'.[195] This approach suggested that the EU (and other international actors) took for granted that the post-revolution elites would embark on democratic reforms, and linked democratisation to particular persons or parties rather than to civil society or a functioning multi-party system.[196] The fact that the ENPI neglected the role of civil society as a politically relevant force was noted also with regard to Russia.[197] This approach was unsatisfactory because after the Orange Revolution Russia increasingly tried to prevent the growth of independent civil society at home and in the neighbourhood, as discussed in Chapter 2.[198]

Insufficient attention to civil society was noted also regarding the new 2007 European Instrument for Democracy and Human Rights (EIDHR II). During 2007-2010, Ukraine received €2.4 million, somewhat less than the allocations to smaller neighbours, such as Georgia and Azerbaijan,[199] and less than the allocations that Ukraine had received during 2003-2006 under the old EIDHR.[200] The EIDHR II supported such projects as, inter alia, monitoring of human rights violations and facilitation of access to justice.[201] Overall, the EU still did not engage with civil

[192] Solonenko (n 90), 24-25.
[193] The opinion of an anonymous Ukrainian stakeholder, as referred to in Shapovalova (n 146), 11.
[194] Ibid, 2-7, 13.
[195] Stewart, 'The Interplay of Domestic Contexts and External Democracy Promotion: Lessons from Eastern Europe and the South Caucasus' (2009) 16:4 *Democratization* 804, 810.
[196] Ibid, 816.
[197] Sagan (n 175), 448.
[198] Section 2.3.3.
[199] Shapovalova and Youngs (n 184), 4.
[200] Commission, 'Furthering Human Rights and Democracy Across the Globe', 2007, 17.
[201] 'EU Aid Programmes and EU-Ukraine Cooperation' (n 164), 12.

society on the same level as the US did.[202] Moreover, the same problems as under the EIDHR persisted, namely the complicated and time-consuming process of application for grants and their accessibility mainly to well-established NGOs, while trade unions, business associations and informal civic initiatives and social movements remained outside the scope of EIDHR II.[203]

6.8 Conclusion

Several conclusions can be made about the EU's approaches to promoting and protecting democracy, the rule of law and human rights in Ukraine and their impact during stage II.

First, the pre-ENP EU methods were improved by the ENP only in part. Most importantly, the attention that was accorded to democracy, the rule of law and human rights under the AP was unmatched by any pre-ENP EU document on Ukraine. The AP and the Commission's monitoring of its implementation highlighted important areas of concern, often referring to the findings of relevant international organisations. However, the problem was that positive conditionality under the AP was weak as there were no clear links between priorities and rewards. Negative conditionality remained largely unchanged and was not applied. Socialisation channels were strengthened under the ENP and especially under the EaP at three levels, although these changes will become more visible during stages III and IV. Aid support to the Ukrainian Government increased under the ENPI only in 2007, while support to civil society was inadequate.

Secondly, the EU underutilised the methods at its disposal, trying to 'balance' the ENP as an alternative to Ukraine's membership and as a policy for promotion of reforms. This manifested itself most prominently in the EU's preference for weak conditionality under the AP. Moreover, in this 'balancing' exercise the EU was satisfied with formal democracy in Ukraine. For example, the consultations on the new bilateral agreement started after the democratic conduct of the 2006 elections, but before Ukraine addressed other political priorities of the AP. Moreover, this

[202] Shapovalova and Youngs (n 184), 4-5.
[203] Ibid, 6.

'balancing' was also evident at the EU-Ukraine Summits and Cooperation Councils in the first years following the Orange Revolution, when the EU refrained from calls on Ukrainian leaders to implement deep democratic reforms. Accordingly, it might be argued that the lack of a long-term strategy towards Ukraine under the ENP restrained its potential to promote democracy, the rule of law and human rights during stage II, similarly as during pre-ENP stage I.

The EU activated its efforts only when the situation in Ukraine deteriorated. For example, amid the 2007 constitutional crises the Commission in its reports emphasised the need for constitutional reform, even though there was no such task under the AP. During the constitutional crises the EU also voiced more specific concerns and calls for action under socialisation channels. This suggested that the EU mainly supported the status quo in Ukraine when the country was stable and relatively democratic, while in times of instability and crises security concerns motivated the EU to pay greater attention to reforms.

Thirdly, when drawing conclusions as regards the actual impact of the ENP on democracy, the rule of law and human rights during stage II, the broader situation in Ukraine must be taken into account. The ENP did not influence, but merely coincided with the Orange Revolution, which brought to power, for the first time, pro-reform leaders. The latter were dissatisfied with the ENP and embarked on reforms not because of the ENP incentives, but rather because they supported the idea of EU membership. Continuous infighting and the fear of losing power, however, led to only partial reforms. One might assume, therefore, that the behaviour of Ukrainian leaders and the country's democratic progress during stage II would have been largely the same even if the EU had not introduced the ENP. In contrast, as the next Chapters will show, the ENP had more visible impact during stages III and IV.

7. Promotion and protection of democracy, the rule of law and human rights in Ukraine under the ENP during stage III (2010-2013)

7.1 Introduction

As shown in the previous Chapter, during stage II (2004-2009) the EU was generally satisfied with the overall state of democracy, the rule of law and human rights in Ukraine following the Orange Revolution and did not fully utilise the potential of the ENP to push the country for further reforms. During stage III (2010-2013) the situation in Ukraine changed dramatically. As discussed in Chapter 2, stage III had many similarities with stage I, with problems such as strong powers of the President to the detriment of the Parliament, electoral violations, endemic corruption and violations of media freedom.

The aim of this Chapter is to analyse the application and effects of the ENP methods within the new domestic context in Ukraine during stage III. Overall, the methods and instruments at the EU's disposal remained the same as during stage II, although some changes were introduced as a result of the Eastern Partnership (EaP), as discussed in Chapter 4. The Chapter begins by examining the attention that the EU accorded to democracy, the rule of law and human rights in Ukraine under positive conditionality and its impact. It separately analyses positive conditionality under the 2009 and 2013 Association Agendas (AAg) (7.2 and 7.3), 2010 Visa Liberalisation Action Plan (VLAP) (7.4) and other instruments (7.5). It then examines the application and impact of negative conditionality (7.6), socialisation (7.7), reform assistance and support of civil society (7.8). The final section summarises the changes in the EU approach and their impact during stage III (7.9).

7.2 Positive conditionality (i): 2009 Association Agenda

7.2.1 Internal logic: priorities, rewards and conditions

The AAg superseded the 2005 Action Plan (AP).[1] The adoption of the AAg in November 2009 (that is, at the end of stage II) was to mark the improvement in relations with Ukraine, which at that time was seen as a frontrunner in the region.[2] Notably, the AAgs were not negotiated with Moldova and Georgia at that time. The APs applied in these countries until 2014, when AAgs were negotiated and later undated in 2017, as will be discussed in comparison to the 2015 EU-Ukraine AAg in Chapter 8.[3]

Priorities for action

Similarly to the AP, the category 'Political dialogue'[4] under the AAg included the sub-category 'Democracy, rule of law, human rights and fundamental freedoms'.[5] All of the AP's 12 priorities on democracy, the rule of law and human rights[6] were listed under the AAg, albeit slightly paraphrased and in a different order. In this way the EU seemed to acknowledge that Ukraine had failed to fully meet any of the priorities during stage II.

There were also important differences from the AP. First, the fight against corruption was not subsumed under the sub-category 'Democracy, rule of law, human rights and fundamental freedoms', but instead stood as a separate sub-category under the category 'Political dialogue'. This change could suggest the reinforced EU focus on this area, but also its strange disconnection from democracy and the rule of law. Similarly, cooperation with the International Criminal Court (ICC) was differentiated into a separate sub-category. Secondly, there was no separate priority on civil society, but instead freedoms of expression, assembly and association were subsumed

[1] EU-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement, 23.11.2009 (hereinafter '2009 EU-Ukraine AAg').

[2] Ghazaryan, *The European Neighbourhood Policy and the Democratic Values of the EU* (Hart, 2014), 70.

[3] Section 8.4.2.

[4] Other categories of priorities were: 'Cooperation on Justice, Freedom and Security issues', 'Economic cooperation', Trade and trade-related matters', 'Energy cooperation including nuclear issues', and 'Other cooperation issues'.

[5] Other sub-categories were 'Combatting corruption', 'Foreign and security policy' and 'International Criminal Court'.

[6] Chapter 6, Section 6.3.1.

together as a singe priority. This is why as compared to the AP, the number of priorities shrank from 12 to 11,[7] subdivided into 30 tasks in total. Some of the tasks were the same as under the AP, while others were wider, more specific or altogether new. As in Chapter 6 concerning the AP, the AAg priorities are now evaluated in turn.

Priority 1, similarly as under the AP, was on strengthening the stability, independence and effectiveness of institutions guaranteeing democracy and the rule of law. Specific tasks included: the conduct of elections in accordance with the OSCE/ODIHR standards; strengthening of the local self-government according to the standards of the European Charter of Local Self-Government; and enhancing the capacity of the public administration.[8] Additionally, the AAg required that Ukraine promote an inclusive constitutional reform process designed to develop effective checks and balances, according to the relevant recommendations of the Venice Commission.[9] The latter commended greater powers of the Parliament but criticised some inconsistent powers of the President.[10] This task was new and was included apparently in the light of the numerous constitutional crises that ensued after the 2004/2006 constitutional reform. It became especially relevant after in September 2010 the Constitutional Court cancelled the reform and reinstated the 1996 Constitution with stronger presidential powers.

Another new task under priority 1 was to ensure the independence and effectiveness of the Ombudsperson according to the Paris Principles.[11] The latter provide, inter alia, that the Ombudsperson has to be an independent, non-judicial institution, entitled to monitor any situation of human rights violations, possibly with a quasi-judicial competence.[12] The Paris Principles 'constitute a set of internationally recognised standards to assess the credibility, independence and effectiveness' of

[7] 2009 EU-Ukraine AAg, parts 3.2.1, 3.2.2 and 3.2.4.

[8] Ibid, part 3.2.1(i).

[9] Ibid.

[10] Venice Commission, Opinion No 339/2005 'On the Amendments to the Constitution of Ukraine Adopted on 08.12.2004', 10-11.06.2005, 3-6.

[11] 2009 EU-Ukraine AAg, part 3.2.1(i).

[12] Principles relating to the Status of National Human Rights Institutions (Paris Principles), adopted by the UN General Assembly Resolution 48/134, 20.12.1993.

national human rights institutions.[13] In Ukraine the institute of Ombudsperson, which is officially called the Parliament's Commissioner for Human Rights, was established in 1998. During the previous stage, there were growing concerns about the independence of the Ombudsperson, who openly supported Yanukovych and was even elected to the Parliament in 2006.[14] It was very positive that the AAg was a dynamic document that paid attention to the emerging problems.

The list of tasks under priority 2, on ensuring the independence of the judiciary and the prosecution system, was shorter than under the AP, although it is not clear why. Some key tasks, e.g. the need to reform the prosecution system, were not explicitly set out under the AAg.[15]

In contrast, there were moderate improvements regarding priority 10 (ex priority 3 under the AP), on combatting corruption. Ukraine was required to: promote cooperation within the Council of Europe's Group of States Against Corruption (GRECO) and implement its relevant recommendations; complete the process of ratification of the UN Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption; and implement the national anti-corruption action plan in cooperation with relevant EU bodies.[16] These tasks were more advanced and specific than under the AP, although the AAg did not mention the need to establish any anti-corruption agencies. The latter were subsequently required under the VLAP (Section 7.4).

The tasks regarding civil society were, as mentioned, subsumed under priority 4 on the freedom of expression, assembly and association (ex priorities 5 and 6). As under the AP, Ukraine was required to promote the involvement of citizens in decision-making processes.[17] A welcome novelty was that the AAg explicitly mentioned the need to establish a public service broadcaster.[18] Another new task required Ukraine and the EU to 'step up cooperation' to strengthen the awareness of

[13] Mijatović, Council of Europe Commissioner for Human Rights, 'Paris Principles at 25: Strong National Human Rights Institutions Needed More Than Ever', Human Rights Comment, 18.12.2018.
[14] Zakharov, 'The Activities of the Parliament's Commissioner for Human Rights', The Kharkiv Human Rights Protection Group, *Human Rights Bulletin*, 22.06.2006 (in Ukrainian).
[15] 2009 EU-Ukraine AAg, part 3.2.1(ii).
[16] Ibid, part 3.2.2.
[17] Ibid, part 3.2.1(iii)(b).
[18] Ibid.

law-enforcement agencies and courts regarding freedom of assembly, e.g. by the exchange of best practices and training.[19] Overall, like the AP, the AAg put greater emphasis on formal democracy while substantive democracy was secondary.[20]

Regarding human rights, virtually all tasks listed under the AP found their way to the AAg. However, there were many welcome novelties. Under priority 3, on promoting the implementation of international and regional human rights standards (ex priority 4), a new task was to implement the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol.[21] Under priority 5, on ensuring respect for the rights of persons belonging to minorities (ex priority 7), the AAg mentioned the need to combat the growth in intolerance and the incidence of hate crimes.[22] Under priority 6 (ex priority 8), on combatting torture and inhuman and degrading treatment, a new task required, albeit in soft language, that Ukraine 'consider' establishing an independent police complaints mechanism.[23]

Tasks on priority 7, on ensuring equal treatment (ex priority 9), were considerably broadened by requiring Ukraine to: promote greater participation of women in public life and in decision-making; and to combat domestic violence by strengthening the legislative framework and practices of the law-enforcement agencies and through awareness raising and training.[24] Under priority 8, on ensuring respect for childrens' rights (ex priority 10), a new task was to strengthen cooperation on preventing the sale, trafficking and exploitation of children, in the context of the commitments under the Optional Protocol to the Convention on the Rights of the Child.[25] Under priority 9, on ensuring respect for trade union rights and core labour standards (ex priority 11), Ukraine was to promote the effective use of collective

[19] Ibid.

[20] Casier, 'The EU's Two-track Approach to Democracy Promotion: the Case of Ukraine' (2011) 18:4 *Democratization* 956, 961-962.

[21] 2009 EU-Ukraine AAg, part 3.2.1(iii)(a).

[22] Ibid, part 3.2.1(iii)(c).

[23] Ibid, part 3.2.1(iii)(d).

[24] Ibid, part 3.2.1(iii)(e).

[25] Ibid, part 3.2.1(iii)(f).

bargaining.[26] The tasks under priority 11, regarding the ICC (ex priority 12), remained the same.[27]

Overall, similarly to the AP, the AAg was criticised for the vagueness of its priorities and tasks.[28] Moreover, it did not formally set out any hierarchy between priorities related to democracy, the rule of law and human rights. However, this was subsequently rectified because the EU and Ukraine agreed a shortened list of specific priorities and tasks for the following years. For example, in 2010 Ukraine was required to meet the tasks related to, inter alia: constitutional reform; democratic elections; reform of the judiciary; implementation of the national anti-corruption action plan; following up on the implementation of the judgments of the European Court of Human Rights (ECtHR); ensuring respect for the rights of persons belonging to minorities; and combatting torture and inhuman and degrading treatment.[29] This list was agreed amid the 2010 presidential election, before Yanukovych came to power, and therefore was more reflective of the political situation in Ukraine during stage II.

In contrast, the list for 2011-2012 replicated all tasks previously listed, but also contained AAg tasks related to, inter alia: reform of local and regional self-government; cooperation with the GRECO and the implementation of its recommendations; promotion of human rights awareness among judges, prosecutors and other law-enforcement officers; and ensuring respect for freedoms of expression, assembly and association.[30] Thus, the list laid down word for word almost all tasks related to democracy, the rule of law and human rights as listed in the AAg. Such level of detail suggested that the EU was increasingly concerned about the deteriorating democratic situation during Yanukovych's presidency.

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[26] Ibid, part 3.2.1(iii)(g).

[27] Ibid, part 3.2.4.

[28] Ukrainian Centre for Independent Political Research et al, 'EU-Ukraine Association Agenda as a part of the preparation of the Association Agreement: results of civil monitoring in 2010-2011', 2012, 8 (in Ukrainian).

[29] List of the EU-Ukraine Association Agenda priorities for 2010, 26.01.2010, 1-2. Available at: <http://www.fp6-nip.kiev.ua/assets/Ukraine_EU/2010associationagendaprioritiesen.pdf> [accessed 01.03.2019].

[30] List of the EU-Ukraine Association Agenda priorities for 2011-2012, 20.05.2011, 1-4. Available at: <http://www.eeas.europa.eu/archives/docs/ukraine/docs/2011_12_eu_ukraine_priorities_en.pdf> [accessed 01.03.2019].

Rewards and conditions

Unlike the AP, the AAg did not mention any rewards for fulfilling the priorities listed therein. As discussed in Chapter 4,[31] the AAg was designed to facilitate the entry into force of the Association Agreement (AA) and the ENP documents were vague regarding the link between the AAg's priorities and conclusion of the AA. Thus, negotiation, initialling and signature of the EU-Ukraine AA initially were not made conditional on Ukraine fulfilling any of the AAg's priorities related to democracy, the rule of law and human rights. Instead, the EU and Ukraine expressed their intention to complete negotiations of the AA 'as soon as possible'.[32] By not embodying positive conditionality, the AAg, even more so than the AP, looked like a 'shopping list' or a 'list of good intents'.

However, in April 2010, shortly after Yanukovych became President, Štefan Füle, the then Commissioner for Enlargement and the ENP, presented Ukraine with a list of 'key' reforms, also known as the 'Füle matrix' or 'reform matrix'. It covered such areas as political reforms, macro-financial stability, trade and business environment, mobility and energy. The difference from the AAg was that the 'reform matrix' established deadlines for Ukraine and specified possible responses and incentives from the EU.[33] It was an unofficial document, not accessible to the public. According to the Ukrainian media, which claimed possession of the leaked document, Ukraine was required, inter alia, to undertake constitutional reform and amend electoral laws (within 6-18 months) and adopt anti-corruption laws (within 18 months).[34] Like the AAg, the 'Füle matrix' put greater emphasis on formal requirements of democracy.[35] Nevertheless, there is not enough information as to what specific rewards were promised and how they were linked to these conditions. Thus, it is hard to evaluate to what extent, if any, the 'Füle matrix' strengthened positive conditionality.

[31] Section 4.4.1.

[32] EU-Ukraine Summit, Joint Statement, 17145/09 (Presse 366), 04.12.2009, 4. Similarly, EU-Ukraine Summit, Joint Press Statement, 16691/10 (Presse 312), 22.11.2010, 1; Füle, Commissioner for Enlargement and the ENP, 'Exchange of views on South Caucasus and Ukraine', SPEECH/10/189, 28.04.2010, 4.

[33] Füle, ibid.

[34] Sydorenko, 'Matrix: resolution', *Kommersant Ukraine*, 30.04.2010 (in Russian).

[35] Casier (n 20), 968.

Subsequently, the EU introduced conditionality regarding the AA in December 2012, in the light of the deteriorating democratic situation in Ukraine, as discussed below (Sections 7.2.3 and 7.3)

7.2.2 Implementation: reforms in Ukraine

Similarly to the Orange elites, Yanukovych and his allies declared support for Ukraine's membership of the EU.[36] Yet the difference was that while the former showed at least some democratic progress in pursuit of that aim, the latter were much less committed. The difference stemmed from the fact that democratic reforms were much more threatening to the Yanukovych regime. The attitudes of the Ukrainian leaders during stage III were thus reminiscent of the 'integration by declaration' during stage I (1991-2004).

Trying to balance the aim of closer integration with the EU and the desire to preserve power, the Ukrainian Government focused on the economic and *acquis* priorities of the AAg at the expense of the priorities related to democracy, the rule of law and human rights.[37] For example, during 2010-2011, the Cabinet of Ministers adopted the annual plans of 'priority measures' on the integration of Ukraine to the EU. Unlike the roadmaps adopted during stage II, the annual plans did not even mention the AAg's priorities on democracy, the rule of law and human rights. Instead, they listed measures related to, inter alia, trade, regulatory approximation and energy.[38] At the institutional level, several ministries dealt with EU-related matters. Cooperation between them and between other state bodies was weak.[39] It was therefore not surprising that in their evaluation of the implementation of the AAg, Ukrainian NGOs and think tanks noted the lack of progress with virtually all priorities on democracy, the rule of law and human rights.[40]

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[36] Chapter 3, Section 3.6.1.

[37] Tyshchenko, 'A few points on the implementation of the priorities of the EU-Ukraine Association Agenda', *Ukrayinska Pravda*, 02.05.2011 (in Ukrainian).

[38] Cabinet of Ministers of Ukraine, Resolution 'On the adoption of the plan of priority measures on Ukraine's integration to the EU in 2010', No 1073-p, 19.05.2010; Cabinet of Ministers of Ukraine, Resolution 'On the adoption of the plan of priority measures on Ukraine's integration to the EU in 2011', No 612-p, 29.06.2011.

[39] Tyshchenko, 'Ukraine', in Duleba and Bilčík (eds), *Taking Stock of the Eastern Partnership* (Slovak Foreign Policy Association, 2011), 14-16.

[40] Ukrainian Centre for Independent Political Research et al (n 28), 29-33, 55-60, 80-87.

In sum, during stage III, unlike stage II, Ukrainian leaders did not follow 'self-imposed conditionality' in relation to democratic reforms with the aim of satisfying the Copenhagen criteria. The 2009 AAg, on its part, fell short of mobilising them for democratic reforms, at least until clear conditionality was introduced in December 2012 (Sections 7.2.3 and 7.3). Moreover, the public was not familiar with the AAg and thus there was no bottom-up pressure.[41]

7.2.3 Implementation: EU monitoring, evaluation and rewards

EU monitoring and evaluation

Like the AP, implementation of the AAg was monitored by the Commission, which prepared annual progress reports. There were only a few improvements for which Ukraine was commended during stage III, such as: the entry into force of the new Criminal Procedure Code; the adoption of a law on civic organisations; the establishment of the national preventive mechanism against torture; and progress with protection of children's rights.[42] However, Ukraine was increasingly criticised for inadequate progress in other areas. For example, the Commission was critical of the lack of sufficient checks and balances under the 1996 Constitution, which had been criticised by the Venice Commission.[43] Moreover, numerous shortcomings during the 2010 local and 2012 parliamentary elections and the failure to adopt a single election code as recommended by the OSCE/ODIHR[44] was criticised. The Commission was also critical of the 2010 reform of the judiciary, which had been criticised by the Venice Commission, in particular regarding the weakening powers of the Supreme Court,[45] and of the application of selective justice in relation to former Prime Minister Tymoshenko. The Commission also noted the lack of progress with the reform of the public prosecution system and with the fight against corruption, the deteriorating situation with media freedom and the lack of a public service broadcaster, restrictions

[41] Ibid, 44-45.

[42] Progress Report Ukraine 2010, SEC (2011) 646, 25.05.2011, 4-8, 15; Progress Report Ukraine 2011, SWD (2012) 124, 15.05.2012, 2-8, 14-15; Progress Report Ukraine 2012, SWD (2013) 84, 20.03.2013, 2-8, 14.

[43] Venice Commission, Opinion No 599/2010 'On the Constitutional Situation in Ukraine', 17-18.12.2010.

[44] OSCE/ODIHR, 'Ukraine: parliamentary elections of 28 October 2012', Final Report, 03.01.2013, 1, 5, 33-34.

[45] Venice Commission, Joint Opinion No 588/2010 'On On the law amending certain legislative acts of Ukraine in relation to the prevention of abuse of the right to appeal', 15-16.10.2010.

on freedom of assembly and the lack of modern legislation in this area, and, finally, widespread incidents of ill-treatment in detention.[46]

As with the AP, several positive observations can be made about the Commission's monitoring. First, its criticism generally echoed concerns voiced by the Ukrainian NGOs, and thus objectively highlighted the most important setbacks of the Yanukovych's regime. Secondly, many references were made to the opinions of the Venice Commission, which added more substance and precision to the Commission's monitoring. Thirdly, as during stage II, the Commission took into account the broader situation and referred to issues which were not explicitly mentioned in the AAg, such as the adoption of a single election code and the need for new legislation on freedom of assembly. The latter was very important because the ECtHR had identified the existence of a 'legislative lacuna concerning freedom of assembly which remains in the Ukrainian legal system for more than two decades'.[47] More generally, the Commission rightly noted that the high number of applications against Ukraine at the ECtHR reflected the structural problem within the judiciary in dealing with human rights.[48]

Fourthly, in the reports covering 2011 and 2012, freedoms of media, expression, assembly and association were assessed under the heading 'towards deep and sustainable democracy', together with constitutional reform, elections, reform of the judiciary and the fight against corruption. This contrasted with previous reports, where these freedoms were analysed alongside other human rights. Such emphasis on the connection between democracy and freedoms of media, expression, assembly and association was the result of the 2011 ENP review, which emphasised 'deep and sustainable democracy',[49] as discussed in Chapter 4.[50] This was a welcome (even if minor) shift because it suggested that the Commission increased its attention to civil society and the substantive elements of democracy (e.g. participation and transparency).

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[46] Progress Report Ukraine 2010 (n 42), 4-8, 15; Progress Report Ukraine 2011 (n 42), 14-15; Progress Report Ukraine 2012 (n 42), 2-8, 14.

[47] *Vyerentsov v Ukraine*, ECHR Application 20372/11, 11.04.2013, para 95.

[48] Progress Report Ukraine 2010 (n 42), 6; Progress Report Ukraine 2011 (n 42), 7.

[49] Ghazaryan, 'The Fluid Concept of "EU Values" in the Neighbourhood: A Change of Paradigm from East to South?', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 22.

[50] Section 4.3.1.

Nevertheless, as during stage II, the Commission's detailed assessment was not enforcing positive conditionality because the AAg's priorities were not explicitly linked to any rewards. Moreover, although the Commission acknowledged that the 'Füle matrix' had been provided to Ukraine 'in addition and complementary to' the AAg,[51] it never evaluated its implementation in the reports.

Rewards granted to Ukraine

Despite the fact that the Commission reported on the deteriorating political situation after Yanukovych came to power, negotiations of the AA and Deep and Comprehensive Free Trade Area (DCFTA) progressed and the EU and Ukraine aimed to initial the AA 'as soon as possible'.[52] Similarly, violations of democratic principles and human rights in other ENP countries, e.g. Egypt and Azerbaijan, did not substantially change the EU's approach to these countries at that time.[53]

The EU's approach started to change in late 2011 after the imprisonment of former Prime Minister Tymoshenko, which was seen in the EU as the case of politically motivated selective justice.[54] The AA and the DCFTA were initialled in March and July 2012, respectively, due to 'political' reasons, such as the EU's desire to incentivise Ukraine to proceed with the AA and not to choose the Russia-led Eurasian Customs Union (EACU).[55] However, the EU subsequently postponed the signature of the AA until after the 2012 parliamentary elections.[56] After numerous irregularities were reported during the elections,[57] in December 2012 the EU introduced clear conditionality with regard to the AA. It reaffirmed its commitment to sign the AA/DCFTA, 'as soon as the Ukrainian authorities demonstrate determined action and tangible progress' in three areas: i) actions to remedy the shortcomings of

[51] ENP Progress Report Ukraine 2010 (n 42), 2.

[52] EU-Ukraine Summit, Joint Statement, 18835/11 (Presse 513), 19.12.2011, 1.

[53] Poli, 'Promoting EU Values in the Neighbourhood through EU Financial Instruments and Restrictive Measures', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 38-40.

[54] European Parliament Resolution on the current developments in Ukraine (P7_TA(2011)0472), 27.10.2011, para 2; Osica, 'Ukraine and Europe: Why Ukraine Is More than Yanukovych', in Flikke (ed), *Ukraine in Europe – Europe in Ukraine* (Norwegian Institute of International Affairs, 2013), 43-44.

[55] Van der Loo, *The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area: A New Legal Instrument for EU Integration Without Membership* (Brill Nijhoff, 2016), 110-111.

[56] Bezpiatchuk and Pastukhova, 'European Hide-and-Seek', *The Ukrainian Week*, 30.12.2011.

[57] Chapter 2 (n 89).

the 2012 parliamentary elections; ii) progress in addressing the issue of selective justice and preventing its recurrence; and iii) actions to implement the reforms set out in the AAg.[58]

The postponement of the signature of the AA could be interpreted as a result of Ukraine's non-adherence to the EU's values as required by Article 8 TEU.[59] However, observers had long before urged the EU to strengthen positive conditionality in order to increase pressure on the Ukrainian authorities.[60] The introduction of conditionality in relation to the signature of the AA was therefore a welcome but largely belated response to the growing authoritarian trends in the country.[61] The EU insisted on the three aforementioned conditions up until the November 2013 EaP Summit, as analysed next.

7.3 Positive conditionality (ii): 2013 Association Agenda

7.3.1 Internal logic: priorities, rewards and conditions

Priorities for action

The 2013 AAg was an updated version of the 2009 AAg and had the same structure.[62] It contained the same 11 priorities on democracy, the rule of law and human rights. All tasks from 2009 were retained, although there were important novelties, so that the total number of tasks increased from 30 to 40.

For example, under priority 1, on strengthening the stability, independence and effectiveness of institutions guaranteeing democracy and the rule of law, a new task was to improve Ukrainian legislation on referendums, with the aim of proper

[58] Council Conclusions on Ukraine, Foreign Affairs Council, 10.12.2012, paras 1 and 6. Also, European Parliament Resolution on the situation in Ukraine (P7_TA(2012)0507), 13.12.2012, para 10.

[59] Ghazaryan, 'The Evolution of the European Neighbourhood Policy and the Consistent Evolvement of its Inconsistencies' (2012) 7 *Review of European and Russian Affairs* 1, 8.

[60] Solonenko, 'Added Value? Eastern Partnership and EU-Ukraine Bilateral Relations', Internationale Politik und Gesellschaft, IPG No 3/2011, 130.

[61] Delcour and Kostanyan, 'Towards a Fragmented Neighbourhood: Policies of the EU and Russia and Their Consequences for the Area that Lies in between', Centre for European Policy Studies, Essay No 17, 17.10.2014, 9.

[62] EU-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement, 24.06.2013 (hereinafter '2013 EU-Ukraine AAg').

implementation of the constitutional provisions and in compliance with the European standards and the relevant recommendations of the Venice Commission.[63] The latter criticised the November 2012 law for allowing national referendums on the public initiative to amend or adopt a new Constitution, in circumvention of the Verkhovna Rada.[64] It was thus commendable that the EU reacted with adding this new task, demonstrating that the AAg was a flexible and dynamic document.

Under priority 2, on ensuring the independence of the judiciary, public prosecution and law enforcement agencies, Ukraine had to: undertake a review and submit legal proposals, in 'close consultation' with the Venice Commission, on the laws on the functioning of the Prosecutor's Office, on the High Council of Justice and on the judicial system and the status of judges; reform the Criminal Code and the police; provide the necessary resources to implement the Criminal Procedure Code and legislation on the Bar; and continue the high level dialogue on the reform of the judiciary.[65] It was a positive trend that many references to the Venice Commission were made directly in the text of the AAg, rather than in the Commission's progress reports.

Under priority 10, on the fight against corruption, a new task was to follow-up on the recommendations on combatting corruption as outlined in the second progress report on the implementation of the VLAP[66] (Section 7.4). Notably, even though the AAg was adopted three years after the VLAP, it was much less ambitious than the latter in the area of anti-corruption and, unlike the VLAP, still did not mention the need to establish an anti-corruption agency.

Under priority 4, on ensuring freedoms of expression, assembly and association, a new task required establishment of clear rules for balanced media access for electoral competitors.[67] This task was apparently a reaction to the shortcomings of the 2012 parliamentary elections. Moreover, under priority 4,

[63] Ibid, part 3.2.1(i).
[64] Venice Commission, Opinion No 705/2012 'On the Law on National Referendum of Ukraine', 14-15.06.2013, 6-8.
[65] 2013 EU-Ukraine AAg, part 3.2.1(ii).
[66] Ibid, part 3.2.2.
[67] Ibid, part 3.2.1(iii)(b).

Ukraine had to adopt legislation on freedom of peaceful assembly.[68] This new task was especially commendable because insufficient attention to freedom of assembly was a weakness of the AP and 2009 AAg.

The AAg also introduced several new tasks regarding human rights. Under priority 3, on promoting the implementation of international and regional human rights standards, Ukraine had to implement the Council of Europe recommendations related to detention conditions and medical assistance to persons in detention.[69] This requirement was motivated by the imprisonment of Tymoshenko. Under priority 6, on combatting torture and inhuman and degrading treatment, Ukraine had to provide the necessary resources to implement the national preventive mechanism against torture.[70] Tasks related to the ICC remained unchanged.[71]

Overall, the fact that the 2013 AAg reiterated the 2009 AAg's tasks on democracy, the rule of law and human rights and added new tasks underlined the fact that Ukraine's progress was poor. The higher number of tasks also suggested the EU's increased attention towards Ukraine.

Rewards and conditions

Like the 2009 AAg, the 2013 version did not specify any rewards or conditions. However, throughout 2013, the EU insisted that the signature of the AA was conditional on Ukraine's 'determined action and tangible progress' in the three aforementioned areas identified by the Council.[72] The EU specified early May 2013 as a deadline for achieving 'concrete progress' in order to allow the signature of the AA at the November 2013 EaP Summit,[73] although the deadline was later extended by six months.[74] In addition, in February 2013, Commissioner Füle elaborated a 'non-paper' which contained requirements in 11 specific sectors agreed by the EU and

[68] Ibid.

[69] Ibid, part 3.2.1(iii)(a).

[70] Ibid, part 3.2.1(iii)(d).

[71] Ibid, part 3.2.4.

[72] For example, Füle, Commissioner for Enlargement and the ENP, Remarks to the press after the meeting with members of the Ukrainian Government, 07.02.2013. Available at: <http://europa.eu/rapid/press-release_MEMO-13-80_en.htm> [accessed 01.03.2019]. See also EU-Ukraine Summit, Joint Statement, 6811/13 (Presse 72), 25.02.2013, 1.

[73] EU-Ukraine Summit 2013, ibid, 1.

[74] 'Lithuania gives Ukraine extra time to meet EU demands', *Euractiv*, 14.05.2013.

Ukraine. Seven of them related to democracy, the rule of law and human rights, namely: electoral legislation; selective justice; judicial and prosecution reforms; constitutional reform; fight against corruption; reform of the police; and prevention of torture.[75] However, the EU's main focus remained on the three core conditions, most notably on the release of Tymoshenko, which became a 'cardinal point' for the EU.[76]

There were different views among the Member States as to the importance of the Tymoshenko case, with Germany insisting that the AA hinged on her release.[77] In 2012, after Tymoshenko was already imprisoned and the second criminal case was brought against her, the European Parliament dispatched a mission to monitor her trial. It became known as the Cox-Kwasniewski mission[78] and paid 27 visits to Ukraine during 2012-2013.[79] Fixation on Tymoshenko's medical condition and on her release attracted justifiable criticism of Ukrainian and international observers.[80] However, considering that Tymoshenko was the strongest opposition leader able to challenge Yanukovych at that time,[81] the insistence on her release was not without merit. In contrast, some Ukrainian officials were arguably frustrated with the EU's approach, claiming that the EU should have prioritised Ukrainian national interests (signature of the AA) over any democracy-related demands.[82]

[75] Razumkov Centre, 'Ukraine's European Integration: Internal Factors and External Influences' (2013) 4/5 *National Security and Defence* 2, 3 (in Ukrainian).

[76] Nielsen and Vilson, 'The Eastern Partnership: Soft Power Strategy or Policy Failure?' (2014) 19:2 *European Foreign Affairs Review* 243, 250.

[77] Gotev, 'EU leaders divided over Tymoshenko case', *Euractiv*, 30.04.2013.

[78] Pat Cox, former President of the European Parliament, and Alexander Kwasniewski, former President of Poland, were appointed special envoys, although they were not members of the European Parliament.

[79] Kaminska, 'The European Parliament and the Revised European Neighbourhood Policy', in Bouris and Schumacher (eds), *The Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy* (Palgrave Macmillan, 2016), 147-149.

[80] Youngs and Pishchikova, 'Smart Geostrategy for the Eastern Partnership', Carnegie Europe, November 2013, 15; Getmanchuk, 'Tracing the Origins of the Ukraine Crisis: Should the EU Share the Blame?', Friends of Europe, 15.06.2014; Dragneva and Wolczuk, *Ukraine Between the EU and Russia: The Integration Challenge* (Palgrave, 2015), 60.

[81] Kuzio, *Ukraine: Democratization, Corruption, and the New Russian Imperialism* (Praeger, 2015), 206.

[82] Smith, 'The Underpinning *Realpolitik* of the EU's Policies towards Ukraine: An Analysis of Interests and Norms in the EU-Ukraine Association Agreement' (2014) 19:4 *European Foreign Affairs Review* 581, 594.

7.3.2 Implementation: reforms in Ukraine

Ukraine's progress with satisfying the EU's conditions was mixed. Yanukovych refused to pardon Tymoshenko and the Verkhovna Rada failed to address the issue of medical treatment of prisoners abroad. According to independent monitoring of the Ukrainian NGOs, Ukraine also failed to show 'substantial progress' in any of the sectors presented by Commissioner Füle.[83]

Instead, the approach of the Ukrainian authorities was to 'pick and choose' from the list of EU conditions.[84] More specifically, in April 2013, Yuriy Lutsenko, the former Minister of Internal Affairs, was pardoned and released from prison. The Cox-Kwasniewski mission was arguably instrumental in this.[85] The releases were 'an image-improving measure',[86] rather than a sign of meaningful commitment to change. Moreover, the Verkhovna Rada adopted some last-minute amendments to the electoral legislation. The amendments received a mixed evaluation from the Venice Commission, which saw them as 'in general a positive step' but criticised, inter alia, the lack of a unified election code and the retention of the mixed (half majoritarian, half proportional) system of parliamentary elections.[87] There was also moderate progress in other areas, e.g. the adoption in the first reading of the draft law on the functioning of the Prosecutor's General Office. The Venice Commission had assessed the draft largely positively, but criticised, inter alia, insufficient precision of the provisions on the removal of the powers of general supervision.[88] The Verkhovna Rada also adopted in the first reading the constitutional amendments aimed at strengthening the independence of judges, which had received a largely positive assessment from the Venice Commission.[89] The adoption of these laws was

[83] Razumkov Centre (n 75), 4.

[84] Burlyuk and Shapovalova, '"Veni, Vidi, … Vici?" EU Performance and Two Faces of Conditionality towards Ukraine' (2017) 33:1 *East European Politics* 36, 44.

[85] Kaminska (n 79), 148.

[86] Sadowski, 'Partnership in Times of Crisis: Challenges for the Eastern European Countries' Integration with Europe', Centre for Eastern Studies, Point of View No 36, July 2013, 37.

[87] Venice Commission and OSCE/ODIHR, Joint Opinion No 734/2013 'On Draft Amendments to Legislation on the Election of People's Deputies of Ukraine', 11-12.10.2013, 5.

[88] Venice Commission, Directorate for Human Rights, Directorate General for Human Rights and the Rule of Law, Joint Opinion No 735/2013 'On the Draft Law on the Public Prosecutor's Office of Ukraine', 11-12.10.2013.

[89] Venice Commission, Opinion No 722/2013 'On the Draft Law on the Amendments to the Constitution, Strengthening the Independence of Judges and on the Changes to the Constitution Proposed by the Constitutional Assembly of Ukraine', 14-15.06.2013.

influenced by the work of the Cox-Kwasniewski mission, which evolved beyond its original remit of monitoring Tymoshenko's trial.[90]

Clearly, these changes were influenced not by the AAg, but by the December 2012 Council Conclusions. At the same time, the unwillingness to fully satisfy the EU's conditions demonstrated that the AA/DCFTA package was not attractive enough for the Yanukovych regime.[91] This exposed the inherent weakness of positive conditionality in relation to undemocratic regimes, as discussed in Chapter 4.[92]

7.3.3 Implementation: EU monitoring, evaluation and rewards

EU monitoring and evaluation

In its report covering 2013, the Commission welcomed, inter alia, the release of Lutsenko, amendments to the electoral legislation, and the adoption in the first reading of the law on the functioning of the Prosecutor's General Office and of the constitutional amendments aimed to strengthen the independence of judges. Yet it was critical of, inter alia: the lack of progress with constitutional reform and with the adoption of the election code, the law on national referendums, worsening media freedom, lack of transparency of media ownership, pressure on civil society, failure to adopt the long-awaited law on freedom of assembly, the lack of a police complaint mechanism against torture, and deficiencies in the law on anti-discrimination.[93]

This assessment was more detailed than during the previous years, most likely because it was published in March 2014, after the Maidan Revolution and annexation of Crimea. The Commission continued with its practice of referring to the problems not explicitly addressed under the AAg. Moreover, similarly as during 2011-2012, the Commission assessed the situation with freedoms of the media, expression, assembly and association in the same section with constitutional reform, the electoral framework, reform of the judiciary and the fight against corruption, underlining their key importance for 'deep and sustainable democracy'.[94] Most importantly, the reports

[90] Redei and Romanyshyn, 'Non-Parliamentary Diplomacy: The European Parliament's Diplomatic Mission to Ukraine' (2019) 24:1 *European Foreign Affairs Review* 61, 72-75.
[91] Burlyuk and Shapovalova (n 84), 44-45.
[92] Section 4.4.1.
[93] Progress Report Ukraine 2013, SWD (2014) 96, 27.03.2014, 2-10, 17-18.
[94] Ibid, 6.

for 2012 and 2013 explicitly mentioned the three conditions for signing the AA.[95] Even though the 2013 report was published after Yanukovych was no longer President, it was commendable that the Commission's evaluation was tied to specific conditions and rewards. This added more value to the monitoring as compared to the previous years, when it looked like a general overview of the situation in Ukraine, incapable of enforcing compliance.

Rewards granted to Ukraine

Despite Ukraine's mixed progress with meeting the three conditions, the EU was ready to sign the AA at the November 2013 EaP Summit.[96] The EU's readiness could be explained by the fear that refusal to sign the AA could lead to the isolation of Ukraine which, as rightly noted by the European Parliament, could create further favourable conditions for undemocratic regimes.[97] Moreover, a 'now or never' approach in relation to the signature of the AA/DCFTA could (unintentionally) punish the Ukrainian population for the transgressions of the Government.[98] For example, it could potentially negatively affect EU-Ukraine talks under the VLAP.[99] Another explanation was that the EU knew that Yanukovych could yield to Russia's pressure,[100] and therefore wanted to sign the AA in order to retain its leverage over the country.[101] The pragmatic importance of Ukraine for the overall success of the EaP arguably also played a role.[102] Additionally, EU officials claimed that the EU wanted to sign the AA because of the time that had been invested in negotiating it.[103] This situation exposed the tension between pursuing a transformation agenda in the

[95] Ibid, 2; Progress Report Ukraine 2012 (n 42), 3.

[96] Van der Loo (n 55), 112-115.

[97] European Parliament Resolution (n 58), para H.

[98] Sherr, 'Ukraine and Europe: Surmounting an Impasse', in Flikke (ed), *Ukraine in Europe – Europe in Ukraine* (Norwegian Institute of International Affairs, 2013), 26-28.

[99] Osica (n 54), 46.

[100] Börzel, 'The Noble West and the Dirty Rest? Western Democracy Promoters and Illiberal Regional Powers' (2015) 22:3 *Democratization* 519, 524, 527.

[101] Sherr, 'Ukraine and Europe: Final Decision?' (2013) 4-5 *National Security and Defence* 75, 76.

[102] Kuzio, 'Ukraine between a Constrained EU and Assertive Russia' (2017) 55:1 *Journal of Common Market Studies* 103, 107.

[103] Smith (n 82), 594.

neighbourhood through strong conditionality and the broader EU geostrategic interests[104] – tension which is inherent in the ENP, as discussed in Chapter 4.[105]

Nevertheless, despite the EU's readiness to sign the AA, Yanukovych subsequently succumbed to Russia's pressure and refused to sign it, sparking the Maidan protests, which were then followed by the annexation of Crimea and the start of the Russia-Ukraine conflict, as discussed in Chapter 2.[106] The EU's role and reaction to these events are analysed in Chapter 8.[107]

7.4 Positive conditionality (iii): 2010 Visa Liberalisation Action Plan

7.4.1 Internal logic: priorities, rewards and conditions

Priorities for action

A visa dialogue with the long-term perspective of establishing a visa-free regime for Ukraine was launched after the 2008 EU-Ukraine Summit.[108] The Visa Liberalisation Action Plan (VLAP) was subsequently adopted at the EU-Ukraine Summit in November 2010.[109] The VLAP was divided into four 'blocks', each sub-divided into two phases (also referred to as 'tiers' or 'sets') of benchmarks: legislative, policy and institutional framework (first phase); and its effective implementation (second phase).[110] Several tasks related to democracy, the rule of law and human rights were included under blocks 2-4.

Under block 2, on illegal migration, Ukraine had to, inter alia, adopt legislation in the area of asylum in line with international and European standards (first phase) and effectively implement it (second phase).[111] Under block 3, on public order and security, Ukraine was tasked with, inter alia, taking measures to combat

[104] Pridham, 'EU/Ukraine Relations and the Crisis with Russia, 2013-14: A Turning Point' (2014) 49:4 *The International Spectator* 53, 58.
[105] Section 4.3.2.
[106] Sections 2.4 and 2.5.
[107] Sections 8.2 and 8.3.
[108] EU-Ukraine Summit, Joint Declaration, 12812/08 (Presse 247), 09.09.2008, 3.
[109] EU-Ukraine Visa Liberalisation Action Plan, 22.11.2010 (hereinafter 'EU-Ukraine VLAP').
[110] Chapter 3, Section 3.6.2.2.
[111] EU-Ukraine VLAP, part 2.2.3.

trafficking in human beings by adopting a law and a national action plan in this area (first phase); and implementing the state programme for combatting trafficking in human beings (second phase).[112] The AP and AAgs had already mentioned similar tasks under the category 'Cooperation on Justice, Freedom and Security Issues',[113] yet they did not lead to tangible improvements in practice.

Under block 3, Ukraine also had to combat corruption. During the first phase it had to: adopt legislation on preventing and fighting corruption; and establish a single and independent anti-corruption agency. During the second phase it had to: implement the adopted legislation; ensure effective functioning of the anti-corruption agency; develop ethical codes and training on anti-corruption, especially targeting public officials involved in law-enforcement and the judiciary; and implement relevant UN and Council of Europe conventions and GRECO recommendations.[114] The anti-corruption tasks of the VLAP were an aspect of the rule of law.[115] Overall, they were more detailed than anti-corruption tasks under the AP and AAgs. An especially important requirement under the VLAP was the establishment of an anti-corruption agency. Indeed, the GRECO had for a long time recommended the establishment of an independent agency 'with the responsibility of overseeing the implementation of the national anti-corruption strategies and related action plans' in Ukraine.[116]

Moreover, the Commission in its evaluation reports interpreted VLAP's anti-corruption tasks broadly. For example, referring to the conclusions of the GRECO, it observed that: Ukraine's legal and institutional framework on the financing of political parties and electoral campaigns fell short of the Council of Europe standards and had to be made transparent; public officials' asset declarations had to be made electronically accessible (e-declarations) and a mechanism for their verification had to be set up; the independence of the public prosecution from political interference was still to be ensured; and the immunities of Members of Parliament from criminal

[112] Ibid, part 2.3.1.

[113] 2009 EU-Ukraine AAg, part 3.3.

[114] EU-Ukraine VLAP, part 2.3.1.

[115] Van Elsuwege and Burlyuk, 'Exporting the Rule of Law to the EU's Eastern Neighbours: Reconciling Coherence and Differentiation', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 178.

[116] GRECO, Joint First and Second Evaluation Rounds, Evaluation Report on Ukraine, Eval I-II Rep (2006) 2E, 19-23.03.2007, 47.

proceedings and arrest were to be narrowed.[117] As will be shown in Chapter 8,[118] the anti-corruption requirements under the VLAP led to the establishment of several anti-corruption agencies during stage IV and proved to be the major achievement of the ENP democracy-related conditionality in Ukraine.

Finally, under block 4, on external relations and fundamental rights, Ukraine was required to, inter alia, improve the anti-discrimination framework. During the first phase it had to: adopt comprehensive anti-discrimination legislation; and ratify relevant UN and Council of Europe instruments. During the second phase it had to: implement the relevant national and international instruments and the national action plan on the fight against discrimination; strengthen the bodies responsible for anti-discrimination policies; conduct general awareness raising campaigns against racism, xenophobia, anti-Semitism and other forms of discrimination; and conduct specific training to law-enforcement officials, prosecutors and judges involved in prosecution of hate crimes.[119] The Commission in its reports clarified these tasks by requiring Ukraine to, inter alia: explicitly prohibit discrimination on the ground of sexual orientation; reverse a burden of proof in discrimination cases; and ensure inclusion of the Roma minority.[120] The anti-discrimination requirements under the VLAP were connected to the EU's fears that a visa-free regime might lead to an increase of asylum-seekers from Ukraine, similarly as happened with asylum-seekers after the visa-free regime was granted to the Western Balkans.[121]

Rewards and conditions

The VLAP unequivocally provided that a visa-free regime for Ukrainian citizens 'can only be established once the relevant conditions [of the four blocks] are put in place'.[122] Only the complete fulfilment by Ukraine of the first phase, examined and verified by the Commission and the Council, was to allow the progression to the

[117] Second progress report on the implementation by Ukraine of the VLAP, SWD (2012) 10, 09.02.2012, 15-16; Third progress report on the implementation by Ukraine of the VLAP, COM (2013) 809, 15.11.2013, 13-16.

[118] Section 8.5.

[119] EU-Ukraine VLAP, part 2.4.3.

[120] Third progress report Ukraine VLAP (n 117), 24-25.

[121] Shapovalova, 'Visa-Free Travel for the EU's Eastern Partners: Time to Act', FRIDE, Policy Brief No 165, November 2013, 2.

[122] EU-Ukraine VLAP, part 1.2.

second phase. Then, the fulfilment of the second phase was to pave the way to the EU's decision on the visa-free regime for Ukraine.[123] Thus, unlike the AP and AAgs, the VLAP embodied strong positive conditionality, with clear tasks, rewards and conditions.

The VLAPs with Moldova and Georgia followed the same logic. The three VLAPs were based on the EU's experience of roadmaps on visa liberalisation with the Western Balkans, although the latter were not divided into 'phases' and were overall less strict than the VLAPs.[124]

7.4.2 Implementation: reforms in Ukraine

The VLAP was implemented in Ukraine under the dedicated national plan.[125] The national plan listed priorities in the four blocks, the timeframe and state agencies responsible for their implementation. The Coordinating Centre for the implementation of the VLAP, headed by the First Vice Prime Minister, was established to coordinate the activities of different state bodies involved.[126]

According to the monitoring performed by Ukrainian NGOs, as of June 2013, the progress was made mainly on border and migration management and asylum policy (block 2), and fighting organised crime and trafficking in human beings, money laundering and data protection (block 3). Yet there was no progress with the fight against corruption (block 3) and the anti-discrimination framework (block 4).[127] Regarding the latter, the conservative wing of the Parliament resisted the adoption of laws that prohibited discrimination on the basis of sexual orientation.[128] Thus, in implementing the national plan, the Government focused predominantly on the issues which did not entail high political costs. This suggested that the reward of visa liberalisation was not 'sizeable enough' during stage III to pay off the costs of

[123] Ibid, part 1.3.

[124] Van Elsuwege and Burlyuk (n 115), 179; Dumas and Goldner Lang, 'EU Mobility Regimes and Visa Policy towards ENP Countries', European University Institute, Working Paper RSCAS 2015/79, 5.

[125] President of Ukraine, Edict 'On the national plan on the implementation of the EU-Ukraine VLAP', No 494/2011, 22.04.2011.

[126] Tyshchenko (n 39), 35.

[127] Razumkov Centre (n 75), 7-16.

[128] Gorbach, 'Labor reforms and the progressive agenda in Ukraine', Open Democracy, 17.11.2015.

political reforms that undermined the very power base of the Government.[129] Similar resistance to anti-corruption and anti-discrimination tasks under the VLAP was observed in Moldova and Georgia.[130]

The societal bottom-up pressure on the Government to implement the VLAP was not sufficiently strong during stage III despite the fact that the visa-free regime with the EU, as the ENP incentive, resonated with the public in the Eastern neighbours the most.[131] Weak societal pressure was explained by the fact that society was generally sceptical about the genuineness of this offer and about the EU's willingness to deliver on it. Another explanation was that the abolition of the visa regime was more important for western and central oblasts of Ukraine because they were more pro-EU, and also because western oblasts border Poland, Slovakia, Hungary and Romania and have strong historical ties with these countries.[132] In contrast, the eastern and southern oblasts, which were the support base of Yanukovych, did not have strong ties to these countries and hence were less interested and exerted less pressure on the regime.

7.4.3 Implementation: EU monitoring, evaluation and rewards

EU monitoring and evaluation

The Commission reported in detail on Ukraine's progress with implementation of the VLAP every year. Overall, in 2013, after three years of the implementation of the VLAP, Ukraine's achievements included, inter alia: the improvement of asylum legislation; and the introduction of a legal and institutional framework on the fight against trafficking in human beings. On the other hand, the Commission was critical of, inter alia: the loopholes in the anti-corruption legislation, the failure to establish the anti-corruption agency and to introduce e-declarations with a mechanism for their verification; and the failure of the 2012 anti-discrimination law to comply with international standards, e.g. regarding the non-inclusion of gender identity and sexual

[129] Börzel and Lebanidze, 'European Neighbourhood Policy at the Crossroads: Evaluating the Past to Shape the Future', MAXCAP Working Paper No 12, July 2015, 12.
[130] Benedyczak, Litra and Mrozek, 'Moldova's Success Story: The Visa-Free Regime with the EU One Year On', Stefan Batory Foundation, May 2015, 9.
[131] Kirova and Freizer, 'Civil Society Voices: How the EU Should Engage Its Eastern Neighbours', Open Society European Policy Institute, Briefing Paper, May 2015, 12.
[132] Chapter 2, Section 2.2.

orientation as prohibited grounds for discrimination.[133] This assessment generally corresponded to the abovementioned assessment of Ukrainian NGOs.

Rewards granted to Ukraine

The Commission's detailed assessment was coupled with the EU's overall rigorous approach to rewards. The Commission found that during 2011-2013 Ukraine made 'substantial progress', yet this was insufficient to allow it to progress to the second phase under the VLAP.[134] In this respect the latter differed from the AP and AAgs, which did not embody strict positive conditionality neither in letter nor in practice. It was ultimately during stage IV that Ukraine progressed to the second phase and, subsequently, fully satisfied the VLAP conditions, as will be analysed in Chapter 8.[135]

7.5 Positive conditionality (iv): other instruments

As discussed in Chapter 6,[136] during stage II Ukraine received additional financial allocations under the Governance Facility, which was a part of the European Neighbourhood and Partnership Instrument (ENPI). In contrast, the Commission's reports covering 2010-2013 did not mention the Governance Facility, suggesting that Ukraine was not rewarded under this instrument during stage III. It has been noted that overall, only around 10% of funds allocated under the ENPI at that time had certain pre-conditions attached[137] and positive conditionality in relation to budget support was overall 'not successful'.[138]

During stage III Ukraine also received macro-financial assistance (MFA) from the EU. In July 2010, the EU agreed to provide Ukraine with MFA of €610 million,

[133] First progress report on the implementation by Ukraine of the VLAP, SEC (2011) 1076, 16.09.2011, 7-10, 15; Second progress report Ukraine VLAP (n 117), 9-10, 13-18, 27-29; Third progress report Ukraine VLAP (n 117), 9-10, 12-16, 24-26.

[134] Third progress report Ukraine VLAP (n 117), 27.

[135] Section 8.5.

[136] Section 6.4.

[137] Wiśniewski, 'The Eastern Partnership – It Is High Time to Start a Real "Partnership"', Carnegie Moscow Centre, November 2013, 6.

[138] Wolczuk and Žeruolis, 'Rebuilding Ukraine: An Assessment of EU Assistance', Chatham House, Research Paper, August 2018, 16-17.

divided into four loan instalments.[139] The decision to grant MFA suggested that the EU considered that Ukraine satisfied the political pre-condition for MFA under the Genval criteria, namely to 'fully respect effective democratic mechanisms, including multi-party parliamentary systems, the rule of law and guarantees of human rights'.[140] Specific conditions attached to MFA were laid down in a Memorandum of Understanding (MoU).[141] Two important observations can be made about the MoU. First, the MoU was signed in March 2013, after Tymoshenko's imprisonment and after the 2012 parliamentary elections. This suggested that the EU adopted an extremely lenient approach to interpreting the political pre-condition under the Genval criteria and considered that Ukraine still complied with it. Indeed, according to the MoU, MFA was 'implemented on the understanding that the authorities of Ukraine will *continue* to respect the rule of law, democracy, and human rights'.[142] Such soft interpretation was inconsistent with the EU's growing emphasis on positive conditionality in relation to the signature of the AA.

Secondly, the MoU introduced democracy-related conditions to the disbursement of loan instalments. Under the heading 'Public Finance Management', it incorporated conditions regarding the fight against corruption. Namely, the disbursement of the second and third instalments was conditional on, inter alia, the adoption of a national anti-corruption strategy 'in line with international best practice' and a state programme with time-bound deliverables.[143] The disbursement of the fourth instalment was conditional on, inter alia, the implementation of 'comprehensive anti-corruption legislation' in line with the recommendations of GRECO and 'other international standards'.[144] Thus, the anti-corruption conditions for MFA were stricter than the anti-corruption tasks under the AAgs, which, as discussed, were not linked to any rewards. The approach to MFA instalments followed the logic of phases under the VLAP. However, the difference was that MFA conditions did not include, for example, the establishment of an anti-corruption agency and thus were less strict than the VLAP.

[139] Decision 388/2010/EU providing macro-financial assistance to Ukraine [2010] OJ L179/1.
[140] On the Genval Criteria see Chapter 4, Section 4.4.1.
[141] Memorandum of Understanding between the EU and Ukraine on the macro-financial assistance to Ukraine, March 2013.
[142] Ibid, 3 (emphasis added).
[143] Ibid, 6.
[144] Ibid, 8.

Nevertheless, the EU did not disburse the promised MFA until 2014-2015, as will be discussed in Chapter 8.[145] The main reason for the delay was that the International Monetary Fund (IMF) put its assistance to Ukraine on hold in 2011.

7.6 Negative conditionality

As during stage II, negative conditionality during stage III was envisaged under the Partnership and Cooperation Agreement (PCA) and the ENPI. However, despite serious democratic shortcomings in Ukraine, the EU did not consider resorting to negative conditionality instruments.[146] Some observers argued that suspension of the PCA would have had little impact on the Yanukovych regime anyway.[147] Notably, the EU imposed sanctions against Yanukovych and his entourage for misappropriation of state funds only during stage IV after the Maidan,[148] even though the EU was aware of high-level corruption in Ukraine during stage III.[149]

Instead of negative conditionality, the EU preferred to engage Ukrainian leaders in dialogue.[150] This approach was reminiscent of the attempts to engage President Kuchma before the ENP.[151] Yet a difference from the pre-ENP period was that in addition to dialogue the EU introduced positive conditionality regarding the AA and MFA, as discussed above.

[145] Section 8.6.

[146] Van der Loo (n 55), 69-70.

[147] Emerson and Movchan (eds), *Deepening EU-Ukrainian Relations: What, Why and How?* (Rowman & Littlefield International, 2016), 234.

[148] Chapter 8, Section 8.2.

[149] Kirova and Freizer (n 131), 14.

[150] Balfour, *Human Rights and Democracy in EU Foreign Policy: The Cases of Ukraine and Egypt* (Routledge, 2012), 61.

[151] Chapter 5, Section 5.4.

7.7 Socialisation

Elites' level

During stage III, the EU became gradually more specific in raising concerns about democracy, the rule of law and human rights at the EU-Ukraine Summits and Cooperation Councils. The EU raised such issues as: the need for constitutional reform, reform of the judiciary and the problem of selective justice; the importance of a free media and freedom of assembly; and the need for electoral reform and the adoption of the election code.[152] Because of the Tymoshenko case, the EU-Ukraine relations hit a rock bottom in 2012 and there was no bilateral Summit that year.[153] During 2013, special attention was accorded to the three areas identified by the Council in December 2012.[154] Additionally, the EU and Ukraine launched in February 2013 the Informal Judiciary Dialogue on the reform of the judiciary.[155] The Commission positively assessed its work,[156] although there is no information available about the specific issues discussed under the Dialogue or its achievements.

Moreover, the multilateral frameworks as introduced under the Eastern Partnership (EaP) became operational during stage III. These included the biannual EaP Summits, annual ministerial meetings, thematic platforms, panels and the EU-Eastern Neighbourhood Parliamentary Assembly (EuroNest PA).[157] The increased engagement under these multilateral institutions was positive, yet overall they had weaker socialising effects than bilateral EU-Ukraine institutions.[158] Moreover, the EU was criticised for not according relevant attention to human rights under these new channels of communication, especially under the four thematic platforms.[159] The Ministry of Justice coordinated thematic platform on 'Democracy, Good Governance

[152] EU-Ukraine Summit 2010 (n 32), 1; EU-Ukraine Summit 2011 (n 52), 2; EU-Ukraine Summit 2013 (n 72), 2-3; Fourteenth meeting of the EU-Ukraine Cooperation Council, 11102/10 (Presse 181), 14.06.2010, 2; Fifteenth meeting of the EU-Ukraine Cooperation Council, 9993/12 (Presse 206), 15.05.2012, 1.

[153] Van der Loo (n 55), 111.

[154] Sixteenth meeting of the EU-Ukraine Cooperation Council, 11471/13 (Presse 289), 24.06.2013, 1-2.

[155] EU-Ukraine Summit 2013 (n 72), 2.

[156] Progress Report Ukraine 2013 (n 93), 7.

[157] Chapter 3, Section 3.5.3 and Chapter 4, Section 4.4.3.

[158] Solonenko (n 60), 126-127.

[159] Balfour (n 150), 60.

and Stability', yet information about the work of the Ukrainian authorities within the platform was lacking.[160]

The EuroNest PA first convened in 2011 and henceforth convened annually. In 2012 it deplored the sentencing of Tymoshenko and, inter alia, urged the Ukrainian Government to ensure a fair appeal process.[161] Overall, the EuroNest PA had a limited socialising effect because the EaP parliamentarians participated mostly in order to give their countries status and legitimacy, and to express their opinions and justify their actions.[162] For example, according to Borys Tarasiuk, the member of Ukrainian delegation and co-president of the EuroNest PA, Ukraine's priority in it was 'to speed up Ukraine's accession to the EU and the visa-free regime'.[163] The text of the EuroNest PA's resolutions was usually watered-down in order to get many participants on board.[164] At the same time, the exposure to 'best practices' was positive and could have some (even if limited) learning effect.[165]

Civil society level

The Civil Society Forums (CSFs) under the EaP had yearly assemblies during 2010-2013. Participation in the CSFs steadily grew, with more than 300 NGOs from the EU and EaP neighbours participating during 2011-2012.[166] The CSFs consisted of five working groups which largely corresponded to the thematic platforms under the EaP. Working group on 'Democracy, Human Rights, Good Governance and Stability', was the largest, with division into seven sub-committees: public

[160] Tyshchenko (n 39), 52.

[161] EuroNest Parliamentary Assembly, 'Resolution on the situation of Yuliya Tymoshenko', 03.04.2012.

[162] Kaminska (n 79), 144; Kostanyan and Vandecasteele, 'The EuroNest Parliamentary Assembly: The European Parliament as a Socialiser of Its Counterparts in the EU's Eastern Neighbourhood?', College of Europe, EU Diplomacy Paper 05/2013, 12-16.

[163] 'Tarasiuk: visa-free regime will be a priority under the EuroNest PA', *Unian*, 05.05.2011 (in Ukrainian).

[164] Kostanyan and Orbie, 'The EEAS' Discretionary Power within the Eastern Partnership: in Search of the Highest Possible Denominator' (2013) 13:1 *Southeast European and Black Sea Studies* 47, 58.

[165] Kaminska (n 79), 144-145.

[166] 'Eastern Partnership: Civil Society Forum', Brochure, 10 (in Ukrainian). Available at: <https://www.slideshare.net/YuriMarchenko/ss-33933235> [accessed 01.03.2019].

administration reforms; fight against corruption; judiciary reform; visa facilitation; media; human rights; and election monitoring.[167]

Overall, the CSFs were positively assessed for facilitating 'high-level of socialisation and the smooth transfer of norms and values' between NGOs.[168] The European External Action Service (EEAS) reportedly took into account views expressed at the CSFs.[169] Representatives of the CSF were invited to take part in the thematic platforms.[170] However, the CSFs were criticised for their limited role in shaping the Governments' decision-making and connecting with wider societies.[171] The fact that the CSF convened only once a year further weakened its advocacy potential.[172] Ukraine's National Platform of the CSF, established in 2011, similarly had limited effect influencing the Government.[173]

Broader society level

As during stage II, the links between the EU and Ukrainian society were available mainly through visa facilitation, and youth and education exchange programmes.[174] In 2013 the updated visa facilitation agreement entered into force, broadening the categories of Ukrainian citizens entitled to multiple and free of charge Schengen visas.[175] The visa-free regime was especially desirable during stage III as it was capable of encouraging bottom-up demand for reforms.[176] As mentioned above, it was granted to Ukraine during stage IV.[177]

[167] Kostanyan, 'The Civil Society Forum of the Eastern Partnership Four Years On: Progress, Challenges and Prospects', Centre for European Policy Studies, Special Report No 81, January 2014, 10-12.

[168] Ibid, 3-4. Also, Lada, 'Towards a Stronger Role of Civil Society in the Eastern Partnership', European Policy Centre, Policy Brief, July 2011, 4.

[169] Kostanyan and Orbie (n 164), 59-61.

[170] Solonenko (n 60), 128.

[171] Kostanyan (n 167), 4-6.

[172] Tyshchenko (n 39), 54.

[173] Ibid, 54-55.

[174] Ibid, 30, 50-51.

[175] Agreement between the European Union and Ukraine amending the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas [2013] OJ L168/11.

[176] Solonenko (n 60), 130.

[177] Chapter 8, Sections 8.5.3 and 8.9.

7.8 Reform assistance and support of civil society

During 2007-2013, assistance provided under the national ENPI envelope for Ukraine was initially supposed to focus on three priority areas: i) support for democratic development and good governance; ii) support for regulatory reform and administrative capacity building; and iii) support for infrastructure development.[178] However, in 2011 the EU changed the priority areas to: i) good governance and the rule of law; ii) facilitation of the entry into force of the AA and the DCFTA; and iii) sustainable development.[179] The first priority area focused on four sub-areas: justice, freedom and security; integrated border management; public administration reform and public financial management; and disarmament.[180] More specifically, support was provided for: improvement of the 'administration of justice', the public administration and civil service reform.[181] There was limited support for reforms of the judiciary and public prosecution.[182]

As compared to stage II, less attention was paid under the first priority to such issues as the development of civil society, the fight against corruption and human rights. This situation was surprising considering that the 2011 ENP review announced greater emphasis on 'deep and sustainable democracy' and civil society. As a result, ENPI assistance had a weak connection to the priorities on democracy, the rule of law and human rights as set out in the AAgs. Overall, the ENPI allocation for Ukraine for 2011-2013 was €470.05 million, out of which 20-30% (€94-141 million) was allocated to the first priority.[183] This amounted to approximately €31-47 million per year, around the same as the allocations during 2007-2010.

Additionally, the Comprehensive Institution Building programme was launched under the EaP in 2011. The programme was initially seen as an important step forward since Twinning and Technical Assistance and Information Exchange (TAIEX) targeted civil servants, while institutions remained unreformed.[184] Out of the ENPI allocation to Ukraine for 2011-2013, €43.37 million was earmarked for this

[178] Ukraine ENPI Country Strategy Paper 2007-2013, 16-17.
[179] Ukraine ENPI National Indicative Programme 2011-2013, 8.
[180] Ibid.
[181] Ibid, 10-13.
[182] Börzel and Lebanidze (n 129), 23.
[183] Ukraine ENPI National Indicative Programme 2011-2013, 9.
[184] Solonenko (n 60), 126.

programme.[185] However, it ultimately focused on a limited number of 'core institutions' tasked with the preparation and implementation of the DCFTA.[186] This suggests that the impact of the programme on democracy-related issues was limited.

During 2011-2012, Ukraine received €2.4 million under the European Instrument for Democracy and Human Rights (EIDHR II).[187] These funds were inadequate considering that the allocations for much smaller Georgia and Moldova were nearly the same.[188] The situation slightly improved following the 2011 ENP review, which strengthened support of civil society.[189] The Neighbourhood Civil Society Facility (NCSF) was established in 2011 with the aim of increasing civil society's involvement in policy-making. The NCSF allocated to all ENP countries €26.4 million in 2011, and €45.3 million in 2012-2013.[190] During 2011-2013, Ukraine received €6 million under the NCSF, which was the highest allocation among the Eastern neighbours.[191] The European Endowment for Democracy (EED) started its work in 2013, with an initial budget of €16 million.[192] The advantage of the EED was that, unlike EIDHR II and the NCSF, it supported 'more fluid forms of activism', e.g. political movements and non-registered NGOs.[193] However, similarly as during the previous stages, the EU grants' system was criticised for being too burdensome and complicated.[194]

7.9 Conclusion

Several conclusions can be drawn about promotion and protection of democracy, the rule of law and human rights in Ukraine under the ENP during stage III.

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[185] Ukraine ENPI National Indicative Programme 2011-2013, 8.

[186] Ibid, 27-28; Stewart, 'EU Democracy Promotion in the Eastern Neighbourhood' (2011) 16:5 *European Foreign Affairs Review* 607, 614.

[187] Shapovalova and Youngs, 'EU Democracy Promotion in the Eastern Neighbourhood: A Turn to Civil Society?', FRIDE, Working Paper No 115, December 2012, 4.

[188] Ibid.

[189] Chapter 4, Section 4.4.4.

[190] Joint Communication, 'European Neighbourhood Policy: Working towards a Stronger Partnership', JOIN (2013) 4, 20.03.2013, 11.

[191] Shapovalova and Youngs (n 187), 9.

[192] Shapovalova and Youngs, 'The EU's efforts to promote democracy in its post-Soviet Eastern neighbours would benefit from greater engagement with civil society', *LSE Blogs*, 29.01.2013.

[193] Ibid.

[194] Ibid.

First, EU methods generally remained the same as during stage II. The AAgs listed even more tasks on democracy, the rule of law and human rights than the AP. Some key tasks were included directly because of the deteriorating situation in Ukraine, reflecting the dynamic nature of these documents. Yet the AAgs did not embody positive conditionality. In contrast, the VLAP listed specific priorities for action, rewards and conditions. As regards other methods, the EU refrained from applying negative conditionality, preferring instead to engage Ukrainian leaders, similarly as during the pre-ENP stage. Socialisation channels were strengthened at the level of elites and, most importantly, at the level of civil society, which had some positive socialising effects. The EU's assistance for reforms was less focused on democracy-related issues, while attention to support for civil society slightly increased.

Secondly, the EU became more active as the situation in Ukraine deteriorated. In December 2012 it introduced democracy-related positive conditionality in relation to the signature of the AA. The number of tasks related to democracy, the rule of law and human rights increased under the 2013 AAg. Moreover, the Commission became more critical in its evaluation of Ukraine's progress. It underlined the importance of freedoms of the media, expression, association and assembly for 'deep and sustainable democracy', and explicitly referred to the December 2012 conditions, thus linking its monitoring to rewards. Furthermore, specific concerns were more often raised at the socialisation forums.

These examples of the EU's shift of attitude further underlined the link between the EU security concerns regarding Ukraine and the intensity of its democratisation efforts in the country. Yet another example of such a link was the VLAP. The EU's scrupulous monitoring and rigorous approach to rewards stemmed from the fact that the abolition of the visa regime for Ukraine presented a security challenge for the EU. In other words, by the VLAP and strict conditionality thereunder the EU tried to mitigate the risks for itself, and therefore paid close attention to reforms in Ukraine.

Thirdly, as regards the impact of the ENP, a distinction can be drawn with stage II. As shown in the previous Chapter, during stage II the EU had some normative impact on Ukraine not so much because of the ENP, but rather because the

post-Orange Revolution leaders supported Ukraine's membership of the EU. In contrast, during stage III, only when the EU put forward specific conditions for the signature of the AA, did the Ukrainian Government start enacting some limited reforms. Hence, it was during stage III that positive conditionality under the ENP first had an impact on democracy, the rule of law and human rights in Ukraine. This impact, however, was limited because the required reforms presented too high a cost for Ukrainian leaders, exposing the weakness of ENP positive conditionality in relation to undemocratic regimes.

We now turn to examine the promotion and protection of democracy, the rule of law and human rights in Ukraine under the ENP during stage IV (post-2013).

8. Promotion and protection of democracy, the rule of law and human rights in Ukraine under the ENP during stage IV (post-2013)

8.1 Introduction

As discussed in Chapter 2, stage IV started with the 2013-2014 Maidan Revolution, which was followed by the annexation of Crimea and the Russia-Ukraine conflict in Donbas. Both in Crimea and in Donbas violations of human rights have been widespread. Another difference from the previous stages is that the Ukrainian Government has enacted several key reforms, e.g. anti-corruption, reform of the judiciary and decentralisation. However, political will to fully implement them has been inconsistent. Civil society is much stronger and there is country-wide support for democratic reforms. Moreover, as discussed in Chapter 3, during stage IV the EU-Ukraine Association Agreement (AA) was signed and entered into force. There is stronger societal support for integration with the EU, while closer relations with Russia are no longer an option. These factors mean that during stage IV the EU's leverage over the country has increased.

The aim of this Chapter is to analyse the application and effects of the ENP methods during stage IV. It begins by analysing the role of the EU in the origins and aftermath of the Maidan Revolution (8.2) and the Russia-Ukraine conflict (8.3). Provisions on democracy, the rule of law and human rights under the AA and the 2015 Association Agenda (AAg) are then examined (8.4). The application and effects of positive conditionality under the Visa Liberalisation Action Plan (VLAP) (8.5), macro-financial assistance (MFA) (8.6) and other instruments (8.7) are analysed. The examination of the application and impact of negative conditionality (8.8), socialisation (8.9), reform assistance and support of civil society (8.10) follows. The effects of the ENP during stage IV are then summarised (8.11).

8.2 The EU and the 2013-2014 Maidan Revolution

The EU and the origins of the Maidan Revolution

The Maidan Revolution was initially called 'Euromaidan' because it started in November 2013 when President Yanukovych refused to sign the AA.[1] As rightly noted by one Ukrainian analyst, for a large part of the Ukrainian population the AA had a symbolic meaning and 'signalled the inevitability of change'.[2] At the early stages of Euromaidan the EU acknowledged that protesters 'in a strong and unprecedented manner [had] expressed their support for Ukraine's political association and economic integration with the EU'.[3] Clearly, the EU was not directly involved in instigating the protests. However, Euromaidan showed that the EU is able to attract and ignite people's aspirations for a better future[4] and that 'the EU's soft power should not be underestimated'.[5] Moreover, Euromaidan revealed that while positive conditionality in relation to the Yanukovych regime largely failed,[6] it ultimately mobilised the pro-reform parts of society.[7] This effect of the ENP was reminiscent of the effects of membership conditionality on the undemocratic regime in Slovakia in the 1990s.[8]

Nevertheless, Euromaidan was only the initial stage of the Maidan Revolution. After the Government resorted to the use of force, the protests intensified. Thus, while the initial stages were about supporting the AA, the subsequent developments and the sustainability of the protests were the result of the transgressions and brutality of the Yanukovych regime. It is unclear how long the Euromaidan protests would have lasted had the authorities not resorted to the use of force. This does not mean, however, that the EU had zero impact during the later

[1] On the origins and stages of the Maidan see Chapter 2, Section 2.4.

[2] Getmanchuk, 'Tracing the Origins of the Ukraine Crisis: Should the EU Share the Blame?', Friends of Europe, 15.06.2014.

[3] Statement by High Representative Ashton and Commissioner Füle on last night's events in Ukraine, MEMO/13/1077, 30.11.2013.

[4] Haukkala, 'The EU's Regional Normative Hegemony Encounters Hard Realities: The Revised European Neighbourhood Policy and the Ring of Fire', in Bouris and Schumacher (eds), *The Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy* (Palgrave Macmillan, 2016), 84.

[5] Lehne, 'Time to Reset the European Neighbourhood Policy', Carnegie Europe, 04.02.2014.

[6] Chapter 7, Sections 7.2-7.5.

[7] Burlyuk and Shapovalova, '"Veni, Vidi, … Vici?" EU Performance and Two Faces of Conditionality towards Ukraine' (2017) 33:1 *East European Politics* 36, 45-49.

[8] Chapter 4, Section 4.4.1.

stages. For example, some Ukrainian media outlets during the Maidan were supported through the European Endowment for Democracy (EED).[9]

The EU and the settlement of the Maidan Revolution

The EU immediately condemned the use of force against protesters.[10] Obviously, the Ukrainian Government did not take these condemnations seriously.[11] The EU's approach became more robust only at the very late stages, after the killings of protesters. First, under the mediation of the Foreign Ministers of Germany, France and Poland, a compromise solution was agreed between Yanukovych and the opposition leaders on 21 February 2014. Similarly as during the 2004 Orange Revolution, the EU refrained from giving preference to any side.[12] The key points of the compromise were that the 2004/2006 constitutional reform was to be reinstated; a balanced separation of power was to be ensured through constitutional amendments which were to be adopted by September 2014; and the presidential election was to take place immediately after the constitutional amendments, but not later than December 2014.[13] The EU thus emphasised reforms as a way to overcome the confrontation.[14]

Some observers later argued that the mediation by EU leaders played 'a significant role in ending the violence'.[15] However, this statement may not be accurate. True, immediately after the agreed compromise, the Verkhovna Rada readopted the 2004/2006 constitutional reform. However, it is well known that when the opposition leaders announced the compromise to protesters, the latter strongly disapproved of it because it allowed Yanukovych to stay in power. The factor that ended the violence was Yanukovych's unexpected decision to flee the country on 21-

[9] Youngs, 'The European Endowment for Democracy, Two Years On', Carnegie Europe, 04.09.2015.

[10] Ashton and Füle (n 3).

[11] Kuzio, 'Ukraine between a Constrained EU and Assertive Russia' (2017) 55:1 *Journal of Common Market Studies* 103, 107-108.

[12] Chapter 6, Section 6.2; Parkes and Sobják, 'Understanding EU Action during "Euromaidan": Lessons for the Next Phase', Polish Institute of International Affairs, Strategic File No 5(41), February 2014, 5.

[13] 'Agreement on the settlement of the crisis in Ukraine', 21.02.2014 (in Ukrainian). Available at: <https://www.pravda.com.ua/articles/2014/02/21/7015533/> [accessed 01.03.2019].

[14] Natorski, 'The EU and Crisis in Ukraine: Policy Continuity in Times of Disorder?', in Bouris and Schumacher (eds), *The Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy* (Palgrave Macmillan, 2016), 187.

[15] Bond, 'The EU and Russia: Uncommon Spaces', Centre for European Reform, April 2014, 15.

22 February 2014. Had Yanukovych decided to stay in power until December 2014 and to enforce the compromise solution, it appeared inevitable that there would have been even more violence and bloodshed. Thus, even though involvement in the mediation was commendable, the EU miscalculated the mood of protesters and demonstrated a lack of strategic thinking by showing a preference for short-term stability.[16] In other ENP countries, and especially during the Arab Spring, the EU often similarly favoured a wait-and-see approach and stability rather than calling on undemocratic leaders to step down.[17]

Secondly, the EU considered individual sanctions, as provided under Article 215 TFEU, on 20 February 2014.[18] Asset freezes were ultimately imposed against Yanukovych and his allies for human rights violations and for misappropriation of state funds on 5 March 2014.[19] Since Yanukovych had already left the country at that time, the sanctions were adopted too late to stop the violence or to change the Government's behaviour.[20] The sanctions for misappropriation of state funds were also criticised for belatedness because the EU knew about high-level corruption in Ukraine previously, during stage III.[21] Sanctions were not imposed during the earlier stages of the Maidan due to different positions of Member States, and because the EU feared losing communication with the Ukrainian Government and pushing the country into isolation.[22] Additionally, 'the EU's rather ponderous procedures did not match the fast-moving situation in Kyiv' [23] and there was a lack of effective coordination between Member States, the High Representative for Foreign Affairs and Security Policy and the Commission.[24] On the other hand, the fact that Member

[16] Dragneva and Wolczuk, *Ukraine Between the EU and Russia: The Integration Challenge* (Palgrave, 2015), 97.

[17] Raik, 'The EU and the Mass Protests in the Neighbourhood: Models of Normative (In)action' (2012) 17:4 *European Foreign Affairs Review* 553, 567-571.

[18] Council Conclusions on Ukraine, Foreign Affairs Council, 20.02.2014, para 4.

[19] Council Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine [2014] OJ L66/30; Council Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine [2014] OJ L66/1.

[20] Getmanchuk (n 2).

[21] Kirova and Freizer, 'Civil Society Voices: How the EU Should Engage Its Eastern Neighbours', Open Society European Policy Institute, Briefing Paper, May 2015, 14.

[22] Parkes and Sobják (n 12), 5-6.

[23] Pridham, 'EU/Ukraine Relations and the Crisis with Russia, 2013-14: A Turning Point' (2014) 49:4 *The International Spectator* 53, 55.

[24] Howorth, '"Stability on the Borders": The Ukraine Crisis and the EU's Constrained Policy Towards the Eastern Neighbourhood' (2017) 55:1 *Journal of Common Market Studies* 121, 128.

States ultimately agreed on the sanctions is remarkable considering that sanctions had been applied inconsistently in the Eastern neighbourhood, for example, regarding Belarus and Azerbaijan.[25]

Sanctions for misappropriation of state funds were also imposed in relation to Tunisia and Egypt, and are seen to be specific to the ENP.[26] Their aim is not only to target those involved, but also to assist ENP countries in anti-corruption investigations.[27] As regards other instruments of negative conditionality, the EU did not consider suspending the EU-Ukraine Partnership and Cooperation Agreement (PCA).[28] It seems that such suspension would have been inappropriate in that context anyway.[29] Also, the EU remained committed to signing the AA and did not consider postponing it.[30]

8.3 The EU and the Russia-Ukraine conflict

The EU and the origins of the conflict

Many analysts have tried to decipher the role of the EU in the Russia-Ukraine conflict.[31] For example, some blame the EU for the conflict, arguing that it was wrong to offer the AA as the 'penultimate step' for Ukraine's membership.[32] This view is clearly unsubstantiated by the facts, since the AA does not aim at Ukraine's accession to the EU.[33] Others claim, similarly, that the EU was wrong to approach the Eastern neighbourhood as uncontested and that the Eastern Partnership (EaP) should

[25] Blockmans, 'The Obsolescence of the European Neighbourhood Policy', Centre for European Policy Studies, 2017, 82-83.

[26] Poli, 'Promoting EU Values in the Neighbourhood through EU Financial Instruments and Restrictive Measures', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 51-54.

[27] Cremona, 'The ENP and Multilateralism', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 92-94.

[28] Van der Loo, *The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area: A New Legal Instrument for EU Integration Without Membership* (Brill Nijhoff, 2016), 70.

[29] Emerson and Movchan (eds), *Deepening EU-Ukrainian Relations: What, Why and How?* (Rowman & Littlefield International, 2016), 235.

[30] Van der Loo (n 28), 116.

[31] On the stages, motives and settlement of the conflict see Chapter 2, Section 2.5.

[32] Booker, 'The EU's to Blame for the Crisis in Ukraine', *The Telegraph*, 24.05.2014.

[33] Chapter 3, Section 3.7.1.

have paid more attention to Russia's interests.[34] It is not surprising that Russian analysts similarly claim that by concluding the AAs the EU 'entered into a sort of unwelcome competition with the Eurasian projects'.[35] The problem with these arguments is that they disregard Ukraine and its preferences and instead suggest that the EU should have avoided competition with Russia by not offering the AA. Clearly, Russia would prefer the EU, and the West more generally, to subscribe to such realist/Realpolitik considerations.

Instead, a better view is that the offer of the AA demonstrated the EU's respect for Ukraine's self-determination.[36] Since gaining independence Ukraine has sought deeper relations with the EU, not least because it needed to counterbalance the relationship with Russia.[37] Thus, the EU's offer of the AA was and still is in Ukraine's interests and cannot be seen as a reason to blame the EU for the conflict. The AA is also in the EU's interests because it can make Ukraine better governed and more prosperous.

However, what the EU can be blamed for, at least in part, is that it failed to apprehend the scale of authoritarianism in Russia.[38] Moreover, the EU has not developed any democratisation strategy towards Russia, as discussed in Chapter 4.[39] Clearly, other actors also share responsibility and it might be argued that Russia is an extremely difficult case for any workable democratisation strategy. However, there seems to be a direct link between the growing authoritarianism in Russia and its proclivity to start conflicts – in Georgia in 2008 and in Ukraine in 2014. Thus, by turning a blind eye on the authoritarian trends in Russia, the EU and other actors have contributed, at least indirectly, to the Russia-Ukraine conflict.

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[34] Macfarlane and Menon, 'The EU and Ukraine' (2014) 56:3 *Survival* 95, 96-97; Mearsheimer, 'Why the Ukraine Crisis is the West's Fault', *Foreign Affairs*, September/October 2014; Haukkala, 'A Perfect Storm; Or What Went Wrong and What Went Right for the EU in Ukraine' (2016) 68 *Europe-Asia Studies* 653, 656-661.

[35] Kalinichenko, 'Shared Values and Interests in the Conflictual Relationship between the EU and Russia', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 116-117.

[36] Grant, 'Is the EU to Blame for the Crisis in Ukraine?', Centre for European Reform, 01.06.2016; Adebahr, 'Europe's Decisive Role to Play in Ukraine', Carnegie Europe, 07.05.2014.

[37] Chapter 2, Section 2.3.3 and Chapter 3, Sections 3.4-3.8.

[38] Kuzio (n 11), 108-110.

[39] Section 4.3.4.

The EU and the settlement of the conflict

The EU considers the March 2014 'referendum' and annexation of Crimea to be illegal and does not recognise them.[40] This position coincides with the position of the UN and the Council of Europe.[41] The EU also condemns Russia's actions in Donbas[42] and considers Russian 'aggression' in Ukraine to have started in February 2014.[43] The EU called on Russia to accept its responsibility for the MH17 crash[44] and to fully cooperate to establish justice.[45] It also urged Russia to respect international humanitarian law, release all illegally detained and imprisoned Ukrainian citizens in Crimea and in Russia, stop militarisation of Crimea, and allow access of international organisations to Crimea.[46]

Overall, the EU follows a 'two-track policy'[47] on the settlement of the conflict, which relies on diplomatic measures and different types of sanctions, while the potential of the AA for the settlement remains limited.

Diplomatic measures

The EU is committed to a 'political and peaceful solution to the conflict in eastern Ukraine based on the respect for Ukraine's independence, sovereignty and territorial integrity'.[48] On 12 February 2015, under the 'Normandy format', which includes Ukraine, Russia, Germany and France, the 13-point Minsk II agreement was adopted.[49] Germany assumed the leading role in mediation due to its strong position inside the EU, the proximity of the conflict, relatively good working relations with

[40] Council Conclusions on Ukraine, Foreign Affairs Council, 17.03.2014, para 1; European Council Conclusions on Ukraine, 20.03.2014, para 5.

[41] Chapter 2 (n 168).

[42] European Council Conclusions, 30.08.2014, para 8; EU-Ukraine Summit, Joint Statement, 27.04.2015, para 9.

[43] EU-Ukraine Summit, Joint Statement, Press release 439/18, 09.07.2018, para 8.

[44] On the incident see Chapter 2, Section 2.5.

[45] European Council Conclusions, 28.06.2018, para 25; Declaration by the High Representative on behalf of the EU on the occasion of the 4th anniversary of the downing of Malaysian Airlines Flight MH17, Press release 473/18, 17.07.2018.

[46] EU-Ukraine Summit 2018 (n 43), para 8; EEAS, Statement by the Spokesperson on the continuous detention of the Ukrainian film director Oleg Sentsov, 10.08.2018.

[47] Natorski and Pomorska, 'Trust and Decision-making in Times of Crisis: The EU's Response to the Events in Ukraine' (2017) 55:1 *Journal of Common Market Studies* 54, 58.

[48] EU-Ukraine Association Council, Joint Press Release 897/15, 07.12.2015.

[49] Package of Measures for the Implementation of the Minsk Agreements (Minsk II), 12.02.2015. Available at: <http://www.osce.org/cio/140156> [accessed 01.03.2019].

Russia, and the fact that EU institutions, even after the Lisbon Treaty, demonstrated a lack of capability to lead the EU on foreign policy.[50] Indeed, Federica Mogherini, the High Representative of the EU, has been criticised for not assuming a more active role in the settlement of the conflict.[51] Germany and France, in turn, have been criticised for being too willing to accommodate Russia's demands and for putting onerous obligations upon Ukraine under Minsk II.[52] The implementation of the latter remains stalled and has not led to a ceasefire.

The EU's diplomatic efforts in Ukraine differ from its engagement in the settlement in Moldova (regarding Transnistria), in Georgia (regarding South Ossetia and Abkhazia) and in Armenia and Azerbaijan (regarding Nagorno-Karabakh). The EU has been involved, to varying degrees and under different formats, in mediation of these conflicts and appointed several special representatives. After the Russia-Georgia war, the EU deployed the Common Security and Defence Policy (CSDP) civilian peacekeeping mission to Georgia.[53] In contrast, the EU has not appointed a special representative in Ukraine, although the European Parliament has recently made such a proposal.[54] Moreover, the EU's diplomatic efforts in Ukraine are not complemented by peacekeeping efforts under the CSDP. Instead, the CSDP mission focuses on the reform of the civilian security sector (Section 8.10), while the prospects of the UN peacekeeping mission remain uncertain.[55]

Sanctions

However, the EU's response has been much stronger in Ukraine, as compared to other conflicts in the Eastern neighbourhood, through the adoption of 'an

[50] Speck, 'German Power and the Ukraine Conflict', Carnegie Europe, 26.03.2015.

[51] Wesslau, 'Mogherini Goes to Moscow but is Missing in Action in Ukraine', European Council on Foreign Relations, Commentary, 27.04.2017.

[52] Dragneva and Wolczuk (n 16), 110.

[53] For a detailed analysis of the EU's role in the settlement of these conflicts see Popescu, 'EU and the Eastern Neighbourhood: Reluctant Involvement in Conflict Resolution' (2009) 14 *European Foreign Affairs Review* 457, 461-476; Delcour and Wolczuk, 'Well-Meaning but Ineffective? Perceptions of the EU's Role as a Security Actor in the South Caucasus' (2018) 23:1 *European Foreign Affairs Review* 41, 52-57.

[54] European Parliament, Resolution on the situation in the Sea of Azov (2018/2870(RSP)), 25.10.2018, para 7.

[55] For a detailed discussion see Razumkov Centre, 'Russian-Ukrainian Conflict: Prospects and Parameters of UN Peacekeeping Mission in Donbas', Materials of the Trilateral Expert Meeting, August 2018.

unprecedented number and range of sanctions'[56] under Article 215 TFEU. The severity of sanctions increased as the conflict escalated.

First, in early March 2014 Russia was excluded from G8 meetings.[57] The EU also suspended negotiations on a new bilateral agreement and visa talks with Russia.[58] In contrast, after the Russia-Georgia war the EU had suspended but then shortly resumed negotiations on the bilateral agreement.

Secondly, after the illegal 'referendum' in Crimea the EU introduced travel bans and asset freezes (individual sanctions) against natural and legal persons 'responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine',[59] including leaders of Crimea and some Russian nationals. The EU later reacted to the illegal annexation of Crimea with, inter alia, additional individual sanctions and cancellation of the EU-Russia Summits.[60] The EU also imposed restrictions on the import of goods originating from Crimea (unless they have Ukrainian certificates).[61] Individual sanctions were later extended to leaders of the self-proclaimed 'Donetsk People's Republic' ('DNR') and 'Luhansk People's Republic' ('LNR').[62]

Thirdly, after the downing of MH17, individual sanctions were expanded to, inter alia, key officials in the Russian Security Council, President Putin's 'long-time acquaintances', and the 'DNR' and 'LNR'.[63] Most importantly, the EU limited access to the EU capital market for state-owned Russian financial institutions, imposed a ban

[56] Poli (n 26), 49.

[57] Council Conclusions on Ukraine, Foreign Affairs Council, 03.03.2014, para 4.

[58] European Council, Statement of the Heads of State or Government on Ukraine, 06.03.2014, para 4.

[59] Council Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L078/16; Council Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L078/6.

[60] European Council Conclusions on Ukraine (n 40), para 6.

[61] Council Decision 2014/386/CFSP concerning restrictions on goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/70; Council Regulation (EU) No 692/2014 concerning restrictions on the import into the Union of goods originating in Crimea and Sevastopol, in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/9.

[62] For a detailed chronology of sanctions, see 'Timeline – EU restrictive measures in response to the crisis in Ukraine'. Available at: <https://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/history-ukraine-crisis/> [accessed 01.03.2019].

[63] Ibid.

on trade in arms and in dual-use items for military use, and curtailed Russia's access to sensitive goods and technologies related to oil exploration.[64] This package is known as 'economic sanctions'. They were strengthened after the escalation in August 2014.[65] The EU also restricted investment and the provision of services in Crimea.[66] Additional individual sanctions were introduced several times, most recently after the so-called 'elections' in 'DNR' and 'LNR' in November in 2018.[67]

All these sanctions remain in force and are periodically renewed. After the February 2015 Minsk II agreement, the EU linked economic sanctions to the 'complete implementation' of the Minsk agreements, which was initially foreseen for 31 December 2015.[68] After updates from the French President and German Chancellor on the state of implementation of the Minsk agreements, the Member States unanimously renewed economic sanctions every six months. Such unanimity has not been easy to achieve because Member States have different interests vis-à-vis Russia.[69] Most recently, calls for lifting economic sanctions have been coming from Italy.[70] Nevertheless, economic sanctions remain linked to 'complete implementation' of the Minsk agreements.[71]

There are different views regarding the usefulness of sanctions. While there is some evidence that sanctions hurt the Russian economy,[72] it is unclear to what extent they influence political decisions of the Russian leadership.[73] Sanctions can also decrease interdependence between the EU and Russia,[74] thus reducing the EU's leverage. They are also likely to strengthen the Putin regime through the 'rally round

[64] Council Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2014] OJ L229/13; Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2014] OJ L229/1.

[65] 'Timeline – EU restrictive measures' (n 62).

[66] Ibid.

[67] Ibid.

[68] European Council Conclusions, 19-20.03.2015, para 10.

[69] Natorski and Pomorska (n 47), 58-66.

[70] Rettman, 'Italy dangles veto threat on EU's Russia sanctions', *EUobserver*, 25.10.2018.

[71] EU-Ukraine Summit 2018 (n 43), para 9.

[72] Connolly, 'The Empire Strikes Back: Economic Statecraft and the Securitisation of Political Economy in Russia' (2016) 68:4 *Europe-Asia Studies* 750, 751-766.

[73] Howorth (n 24), 132.

[74] Romanova, 'Sanctions and the Future of EU-Russia Economic Relations' (2016) 68:4 *Europe-Asia Studies* 774, 778-783.

the flag' effect.[75] On the other hand, proponents of sanctions argue that without them Russia would have been tempted to take more Ukrainian territory.[76] According to President Poroshenko, sanctions prove the EU's solidarity with Ukraine and are 'the only mechanism to keep Putin at the negotiation table'.[77] Another view is that sanctions can undermine Putin's regime in the long term.[78]

Moreover, from the normative perspective, the unanimous adoption of sanctions against Russia 'provides a promising picture of the EU's solidarity against violations of international law'.[79] This is especially so considering that no sanctions were adopted against Russia after the Russia-Georgia war.[80] Sanctions against Russia, i.e. sanctions for interference with stability of a country by a third country, are specific to the ENP.[81] Sanctions against non-state entities, e.g. Crimea, for their breach of the principle of territorial integrity, are similarly a 'specificity of the ENP'.[82] Notably, no such sanctions were adopted against South Ossetia and Abkhazia after the Russia-Georgia war, arguably because these regions have not formally seceded from Georgia.[83] Sanctions related to the Russia-Ukraine conflict are therefore an example of the EU's commitment to values in line with Articles 2, 8 and 21 TEU.

Additionally, the EU has the option of suspending the EU-Russia PCA under the human rights clause,[84] which is the same as under the expired EU-Ukraine PCA.[85] Indeed, the EU recognised that the annexation of Crimea was 'in clear breach of the Helsinki Process'.[86] Nevertheless, the EU never considered the suspension of the

[75] Connolly (n 72), 766-769.

[76] Grant (n 36).

[77] Poroshenko, Speech at the Yalta European Strategy, 16.09.2016 (in Ukrainian). Available at: <https://www.eurointegration.com.ua/articles/2016/09/16/7054665/> [accessed 01.03.2019].

[78] 'The punishment continues: America's new economic sanctions may hurt Russia's recovery', *The Economist*, 05.08.2017.

[79] Petrov, 'EU Values in Integration-Oriented Agreements with Ukraine, Moldova and Georgia', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 110.

[80] Kirova and Freizer (n 21), 23.

[81] Poli (n 26), 55.

[82] Ibid, 53.

[83] Ibid, 54.

[84] Articles 2 and 102, Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part [1997] OJ L397/3.

[85] Chapter 5, Section 5.4.

[86] European Council Conclusions on Ukraine (n 40), para 7; Ghazaryan, 'A New Generation of Human Rights Clauses? The Case of Association Agreements in the Eastern Neighbourhood' (2015) 40:3 *European Law Review* 391, 400.

Russian PCA.[87] This scenario remains unlikely due to the EU's overall reluctance to suspend international agreements under human rights clauses and the importance of Russian gas imports.

Measures connected to the AA

First, insofar as the EU-Ukraine AA was initialled before the annexation of Crimea and the conflict in Donbas, it does not directly mention these issues.[88] It stipulates in general terms that one of the aims of the association is 'to promote, preserve and strengthen peace and stability'.[89] It also contains provisions on cooperation in areas of the Common Foreign and Security Policy (CFSP), including the CSDP, peaceful settlement of regional conflicts, conflict prevention and crisis management.[90] These provisions, which were characterised as 'quite far-reaching',[91] became applicable on 1 September 2017, after the full ratification of the AA. Notably, the December 2016 Decision of the Heads of State or Government on the AA clarified – although it was already clear – that the AA does not contain an obligation for the EU or its Member States to provide collective security guarantees or other military aid or assistance to Ukraine.[92] The aim of this clarification, and the Decision overall, was to placate the Dutch voters following the 2016 referendum on the Ukrainian AA.[93]

In contrast, the AAs with Moldova and Georgia contain provisions on the 'frozen conflicts' in these countries. The Moldovan AA stresses the importance of a viable settlement of the Transnistrian conflict and recognises 'the EU's commitment to post-conflict rehabilitation'.[94] The Georgian AA emphasises the importance of reconciliation and restoration of Georgia's territorial integrity over Abkhazia and South Ossetia and recognises 'the EU's commitment to support a peaceful and lasting

[87] Van der Loo (n 28), 70.

[88] Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part [2014] OJ L161/3 (hereinafter 'EU-Ukraine AA').

[89] Ibid, Article 1(2)(c).

[90] Ibid, Articles 7, 9-10.

[91] Van der Loo (n 28), 193.

[92] Decision of the Heads of State or Government of the 28 Member States of the European Union, meeting within the European Council, on the EU-Ukraine Association Agreement, annexed to European Council Conclusions on Ukraine, 15.12.2016, 4.

[93] Chapter 3, Section 3.7.2.

[94] Preamble and Article 8, Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part [2014] OJ L260/4 (hereinafter 'EU-Moldova AA').

resolution of the conflict'.[95] Nevertheless, these provisions do not contain any firm commitments on the part of the EU to provide any sort of military, financial or technical assistance in case of escalating security threats to Moldova or Georgia.[96]

Secondly, in connection to the AA, the so-called trilateral dialogue between the EU, Ukraine and Russia took place during 2014-2015. It was agreed to postpone the provisional application of the deep and comprehensive free trade area (DCFTA) until January 2016 to prevent Russia from suspending the free trade area (FTA) with Ukraine.[97] However, its potential to lead to any sustainable solution to the conflict was doubted from the beginning.[98] Indeed, when the DCFTA entered into force, Russia suspended the FTA.

Thirdly, at the beginning the ENP lacked creativity as to how unrecognised secessionist entities can be drawn to benefit from 'ENP light'.[99] Subsequently, such creativity was rediscovered. In Moldova, Transnistria can benefit, at least to some extent, from the EU-Moldova DCFTA.[100] Moreover, many people in Transnistria obtained Moldovan passports to benefit from the visa-free regime.[101] In Georgia, in contrast, Abkhazia and South Ossetia refuse to join the DCFTA and to take Georgian passports.[102] Clearly, such measures might facilitate reconciliation and reintegration. However, considering that the conflict in Donbas is active and Crimea is under Russia's control, the equivalent measures do not seem to be possible or appropriate in Ukraine's context, at least now.

Finally, it shall be noted that in the Western Balkans the offer of EU membership and the countries' ambition to integrate with the EU have been important

[95] Preamble, Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part [2014] OJ L261/4 (hereinafter 'EU-Georgia AA').

[96] Petrov and Van Elsuwege, 'What Does the Association Agreement Mean for Ukraine, the EU and its Member States? A Legal Appraisal', in Heringa (ed), *Het eerste raadgevend referendum. Het EU-Oekraïne Associatieakkoord* (Montesquieu Institute, 2016), 11.

[97] Chapter 3, Section 3.7.2.

[98] Van Elsuwege, 'EU-Russia relations and the crisis in Ukraine: how to proceed?', *JTIBlog*, 15.06.2015.

[99] Emerson, Noutcheva and Popescu, 'European Neighbourhood Policy Two Years on: Time indeed for an "ENP plus"', Centre for European Policy Studies, Policy Brief No 126, March 2007, 20-21.

[100] Montesano, Van der Togt and Zweers, 'The Europeanisation of Moldova: Is the EU on the Right Track?', Netherlands Institute of International Relations, Clingendael Report, July 2016, 18-20.

[101] Kirova and Freizer (n 21), 24.

[102] Delcour and Wolczuk (n 53), 56-57.

instruments for resolving the conflicts.[103] The same recipe is impossible for Ukraine because the AA is not a pre-accession agreement and Ukraine's membership prospects remain unclear.

8.4 Democracy, the rule of law and human rights under the 2014 Association Agreement and 2015 Association Agenda

8.4.1 2014 Association Agreement

The AA was signed in two rounds in March and June 2014.[104] Given that the situation in Ukraine changed dramatically, conditions regarding the signature of the AA, which had been put forward during stage III,[105] became irrelevant.[106] The AAs with Georgia and Moldova were also signed in June 2014, despite these countries' shortcomings with political reforms, due to the political antagonism in the region at that time.[107]

The Ukrainian AA mentions democracy, the rule of law and human rights in several provisions. The Preamble stipulates that a 'close and lasting relationship' between the EU and Ukraine is to be based on 'common values, namely respect for democratic principles, the rule of law, good governance, human rights and fundamental freedoms'. Similar references can be found in the Preambles to the AAs with Georgia and Moldova, whereas the Preambles to the Euro-Mediterranean Association Agreements (EMAAs) are more 'toned down'.[108] One of the specific aims of the AA is 'to promote gradual rapprochement between the parties based on common values'.[109] The references to 'common values' were inspired by Article 8 TEU and by the normative objectives of the ENP/EaP.[110] Respect for democratic

[103] Blockmans, 'The EU as a Global Peacemaker', Inaugural Lecture No 487, University of Amsterdam, 2014, 12-15, 17.
[104] Chapter 3, Section 3.7.2.
[105] Chapter 7, Sections 7.2 and 7.3.
[106] Pridham (n 23), 58.
[107] Ghazaryan (n 86), 395.
[108] Ghazaryan, 'The Fluid Concept of "EU Values" in the Neighbourhood: A Change of Paradigm from East to South?', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 24.
[109] Article 1(2)(a), EU-Ukraine AA. Similarly, Article 1(2)(a), EU-Moldova AA; Article 1(2)(a), EU-Georgia AA.
[110] Van der Loo (n 28), 184.

principles, human rights and fundamental freedoms and the principle of the rule of law is also the essential element of the AAs (Section 8.8), and shall form the basis of the domestic and external policies of the parties.[111]

There are some notable differences between the three AAs. First, the Moldovan and Georgian AAs explicitly set out that one of the aims of the association is to 'contribute to the strengthening of democracy' in these countries,[112] while this aim is omitted in the Ukrainian AA. Secondly, one of the aims of the association between the EU and the three countries is to enhance cooperation in the area of justice, freedom and security with the aim of reinforcing the rule of law and respect for human rights and fundamental freedoms.[113] Under a separate 'rule of law clause',[114] the Ukrainian AA stipulates that reinforcement of the rule of law shall aim at, inter alia, strengthening the judiciary and combatting corruption.[115] The Moldovan and Georgian AAs additionally mention the need to promote a right to a fair trial.[116] All three AAs emphasise political dialogue and cooperation to foster domestic political reforms, yet the Moldovan and Georgian AAs are more elaborate regarding specific domestic reforms.[117]

Positive conditionality is evident in the DCFTA sections of the AAs, which contain strict legislative approximation commitments with timeframes, often in exchange for additional access to the EU Internal Market ('market access conditionality').[118] Under the AAs, the DCFTA-related conditionality thus has a hard-law, legally binding dimension.[119] In contrast, the AAs do not embody positive

[111] Article 2, EU-Ukraine AA; Article 2(1) EU-Moldova AA; Article 2(1) EU-Georgia AA.

[112] Article 1(2)(c), EU-Moldova AA; Article 1(2)(c), EU-Georgia AA.

[113] Article 1(2)(e), EU-Ukraine AA; Article 1(2)(e), EU-Moldova AA; Article 1(2)(f), EU-Georgia AA.

[114] Van Elsuwege and Burlyuk, 'Exporting the Rule of Law to the EU's Eastern Neighbours: Reconciling Coherence and Differentiation', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 174-175.

[115] Article 14, EU-Ukraine AA.

[116] Article 12(1), EU-Moldova AA; Article 13(2), EU-Georgia AA.

[117] Preamble, Articles 4(2)(e) and 6, EU-Ukraine AA; Articles 3(2)(e) and 4, EU-Moldova AA; Articles 3(2)(h) and 4, EU-Georgia AA.

[118] Petrov (n 79), 103-107.

[119] Van Elsuwege and Van der Loo, 'Continuity and Change in the Legal Relations Between the EU and Its Neighbours: A Result of Path Dependency and Spill-over Effects', in Bouris and Schumacher (eds), *The Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy* (Palgrave Macmillan, 2016), 104.

conditionality for reforms regarding democracy, the rule of law and human rights.[120] A notable exception to this are the AA provisions in the area of employment which contain the timeframes and the list of EU Directives to be implemented by Ukraine, e.g. regarding anti-discrimination and gender equality.[121]

A very general hint at positive conditionality in relation to values can be found in the Preamble to the Ukrainian AA, which sets out that:

> the political association and economic integration of Ukraine with the [EU] will depend on progress in the implementation of [the AA] as well as Ukraine's track record in ensuring respect for common values, and progress in achieving convergence with the EU in political, economic and legal areas.

The Preambles to the Moldovan and Georgian AAs do not contain such a provision. Another hint at positive conditionality can be found in the 2016 Decision of the Heads of State or Government on the EU-Ukraine AA, which provides that '[t]he fight against corruption is central to enhancing the relationship between the Parties to the [AA]'.[122] However, the potential of this statement for strengthening positive conditionality seems to be limited. First, the Decision does not create legal obligations for Ukraine because the latter was not a signatory to it.[123] Secondly, it is not clear what 'enhancing the relationship' means since there are no new clear offers for Ukraine under the ENP. The DCFTA, through which enhancement of the relationship is happening, has not been made contingent on the fight against corruption. Instead, positive conditionality in relation to some of the AA values is introduced under separate instruments (Sections 8.5-8.7).

[120] 'The state of implementation of associations and free trade agreements with Ukraine, Georgia and Moldova with particular focus on Ukraine and systemic analysis of key sectors', European Parliament, Directorate-General for External Policies, Policy Department, Study, November 2017, 9.

[121] Annex XL to Chapter 21 (Cooperation on employment, social policy and equal opportunities) of Title V (Economic and Sector Cooperation), EU-Ukraine AA.

[122] Decision of the Heads of State or Government (n 92), 4.

[123] Van Elsuwege, 'Towards a solution for the ratification conundrum of the EU-Ukraine Association Agreement?', *Verfassungsblog on Matters Constitutional*, 16.12.2016.

8.4.2 2015 Association Agenda

The 2015 AAg[124] follows the structure of the 2009 and 2013 AAgs.[125] Under the category 'Political dialogue', it lists the same 11 broad priorities in the area of democracy, the rule of law and human rights:

1. strengthening the stability, independence and effectiveness of institutions guaranteeing democracy and the rule of law;
2. ensuring the independence, impartiality and professionalism of the judiciary, prosecution and law-enforcement agencies;
3. promoting the implementation of international and regional human rights standards;
4. ensuring freedom of expression, assembly and association;
5. ensuring respect for the rights of persons belonging to minorities;
6. combating torture and inhuman and degrading treatment;
7. ensuring equal treatment of men and women;
8. ensuring respect for children's rights;
9. ensuring respect for trade unions' rights and core labour standards;
10. preventing and combatting corruption;
11. enhancing cooperation with the International Criminal Court (ICC).[126]

The total number of tasks under these 11 priorities increased from 40 to 48, as compared to the 2013 AAg. Most tasks were included without changes or with slight modifications. For example, under priorities 1 and 2, a stronger emphasis is put on: the need for constitutional reform; the improvement and harmonisation of electoral legislation; judicial reform; and reform of the police.[127] Notably, it is not explicitly specified that the current mixed system of parliamentary elections (half majoritarian, half proportional) has to be changed, even though it is one of the most needed reforms. Some tasks are worded in a way that suggests Ukraine's progress. For

[124] EU-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement, 16.03.2015 (hereinafter '2015 EU-Ukraine AAg').
[125] Chapter 7, Sections 7.2 and 7.3.
[126] 2015 EU-Ukraine AAg, part 3.2.
[127] Ibid, part 3.2.1(i)-(ii).

example, under priority 4, Ukraine is required to 'preserve' the conditions necessary for journalists to work freely.[128]

The AAg also introduced important novelties. Under priorities 1 and 2, the new tasks include decentralisation reform and civilian security sector reform.[129] Regarding the latter task, the EU supports Ukraine through its CSDP mission (Section 8.10). Under other priorities, new tasks include the adoption and implementation of a national human rights strategy and action plan; strengthening of the preventive and supervisory functions of the Government Agent for the European Court of Human Rights; full application of the legislative framework on anti-discrimination; and establishment of an effective complaints mechanism on the actions of law-enforcement officials and their investigation by a new agency – the State Bureau of Investigation.[130]

The majority of new tasks concern priority 10, 'preventing and combatting corruption'. The AAg explicitly requires, inter alia: 'swift and efficient' setting up of the National Anti-Corruption Bureau (NABU) and the National Agency for the Prevention of Corruption (NAPC); ensuring the 'efficient functioning' of these institutions; ensuring transparency regarding declaration of assets by public officials (e-declarations) and implementation of a system for their verification; reforming the rules on political party financing; envisaging the protection of whistle blowers; and creating the conditions for civil society actors and independent media to monitor corruption.[131] It is commendable that more substance was added to this priority, even though most of these tasks duplicate the requirements under the VLAP (Section 8.5).

Importantly, the category on 'Cooperation on Justice, Freedom and Security' contains a sub-category on the 'Situation in Eastern Ukraine and Crimea'. The latter addresses, inter alia, the situation with internally displaced persons (IDPs). It requires Ukraine to: enhance coordination for the delivery of assistance to IDPs; adapt the relevant legal and regulatory framework; and ensure the prevention and protection of

[128] Ibid, part 3.2.1(iii)(b).
[129] Ibid, part 3.2.1(i)-(ii).
[130] Ibid, part 3.2.1(i)-(iii).
[131] Ibid, part 3.2.2.

vulnerable trafficked human beings.[132] The weakness of the AAg is that it is silent on the need to investigate human rights violations resulting from the Maidan Revolution and the Russia-Ukraine conflict.

The AAg lists 10 'short-term reform actions' that should be 'addressed as a matter of priority'. Five of them are related to democracy and the rule of law: constitutional reform, election reform, preventing and combatting corruption, judicial reform, and public administration reform.[133] Such hierarchy is a positive step, yet its added value is limited because the AAg does not embody positive conditionality and looks like a 'shopping list'.

Comparatively, the 2014 Moldovan and Georgian AAgs were similar to the Ukrainian AAg, but differed slightly in structure, and the Georgian AAg was much less ambitious regarding combatting corruption and freedoms of expression, assembly and association.[134] After being updated in 2017, they list significantly more detailed tasks, divided into 'short-term' and 'medium-term' groups,[135] which makes them more precise than the Ukrainian AAg. The update of the latter was announced in 2018 but has not happened yet.

8.4.3 Implementation: reforms in Ukraine

The AA is implemented according to the action plans prepared by the Cabinet of Ministers.[136] The action plans list specific measures and state bodies responsible for their implementation. The post of the Vice Prime Minister for European and Euro-Atlantic Integration and the Governmental Office for Coordination of European and Euro-Atlantic Integration were established to coordinate and monitor the implementation of the AA/DCFTA and to provide expertise on legal approximation. Additionally, deputy ministers on European integration deal with the implementation

[132] Ibid, part 3.3.7.

[133] Ibid, part 3.1.

[134] EU-Moldova Association Agenda to prepare and facilitate the implementation of the Association Agreement, 26.06.2014, part 2.1; EU-Georgia Association Agenda to prepare and facilitate the implementation of the Association Agreement, 26.06.2014, part 2.1.

[135] EU-Moldova Association Agenda to prepare and facilitate the implementation of the Association Agreement, 04.08.2017, part 2.2; EU-Georgia Association Agenda to prepare and facilitate the implementation of the Association Agreement, 20.11.2017, part 2.2.

[136] Cabinet of Ministers of Ukraine, Resolution 'On the implementation of the EU-Ukraine Association Agreement', No 847-p, 17.09.2014, Resolution 'On the implementation of the EU-Ukraine Association Agreement', No 1106, 25.10.2017.

of the AA/DCFTA, but their functions vis-à-vis each other are not completely clear.[137] On the issues related to democracy, the rule of law and human rights, the Verkhovna Rada and the President remain key actors because the adoption of reforms depends on their political will.

The Vice Prime Minister and the Governmental Office prepare annual reports on the implementation of the AA. During 2014-2015, the reports focused on the AA and AAg, but starting from 2016 the AAg is not mentioned. This is likely because the DCFTA provisionally entered into force in 2016, making the AA the core of the relationship. However, the reports suggest that issues regarding democracy, the rule of law and human rights are understood broadly. Namely, the reports refer to reforms which are not explicitly required under the AA, but rather reflect the tasks under the AAg. For example, the 2017 report listed the decentralisation reform, the adoption of the Electoral Code in the first reading and the public administration reform as Ukraine's achievements in implementing the 'Political dialogue and reform' part of the AA,[138] even though the latter does not explicitly require these reforms. Similarly, improvements regarding the rights of IDPs were listed as achievements regarding cooperation in the area of justice, freedom and security.[139]

The comprehensive understanding of the democracy-related provisions under the AA is a promising sign. However, political will for the key democratic reforms has not been consistent. Moreover, President Poroshenko has stressed the economic and *acquis* aspects for deeper integration with the EU.[140] In other words, there is no common understanding between different branches of power that democracy-related reforms are a part of the implementation of the AA. Instead, other EU instruments have inspired such reforms (Sections 8.5-8.7).

[137] 'The state of implementation of associations and free trade agreements with Ukraine, Georgia and Moldova' (n 120), 11, 36.

[138] Governmental Office for Coordination of European and Euro-Atlantic Integration/Office of Vice Prime Minister of Ukraine for European and Euro-Atlantic Integration, 'Report on Implementation of the Association Agreement between Ukraine and the European Union', 2018, 10.

[139] Ibid, 12-13.

[140] Chapter 3, Section 3.8.

8.4.4 Implementation: EU monitoring and evaluation

During 2014-2018, the Commission commended Ukraine for progress with, inter alia, the democratic elections, the establishment of anti-corruption institutions and of a public service broadcaster, judicial reform and decentralisation reform. However, the Commission criticised, inter alia, the lack of harmonised electoral legislation, of a fully functioning automated verification mechanism for e-declarations, of transparency regarding media ownership, and of legislation on freedom of assembly.[141] Similarly to the previous stages, several observations can be made about the Commission's monitoring.

First, the Commission's approach to reports is similar to that of the Ukrainian institutions. Namely, during 2014, the Commission referred to the AAg, but starting from 2015, in view of the entry into force of the AA and the 2015 ENP review, it has been reporting on implementation of the AA. However, it pays attention to the issues listed under the AAg, which are not specifically mentioned in the AA, such as anti-corruption institutions and electoral legislation. Moreover, the Commission mentions issues outside the AAg, such as the need to investigate human rights violations related to the Maidan and the Russia-Ukraine conflict.[142] Other notable requirements include the establishment of the High Anti-Corruption Court (HACC) and the introduction of democratic control over the armed and security forces.[143] Such a dynamic and evolutionary approach to monitoring is a continuation of the practice of the previous stages. Secondly, another positive trend that continues from the previous stages is that the Commission often refers to the opinions of the Venice Commission. For example, in 2017, when Ukrainian leaders strongly opposed the idea of the HACC, the Commission explicitly referred to the Venice Commisison's recommendations to establish the HACC as a separate court.[144]

[141] Progress Report Ukraine 2014, SWD (2015) 74, 25.03.2015, 5-10; Association Implementation Report Ukraine 2015-2016, SWD (2016) 446, 09.12.2016, 4-6; Association Implementation Report Ukraine 2017, SWD (2017) 376, 14.11.2017, 2-5; Association Implementation Report Ukraine 2018, SWD (2018) 462, 07.11.2018, 2-5, 7-9.

[142] Progress Report Ukraine 2014, ibid, 4; Association Implementation Report Ukraine 2015-2016, ibid, 5.

[143] Association Implementation Report Ukraine 2015-2016 (n 141), 4; Association Implementation Report Ukraine 2017 (n 141), 7.

[144] Association Implementation Report Ukraine 2017 (n 141), 7.

Thirdly, the level of detail deserves attention. Before the 2015 ENP review, reports on Ukraine, Georgia and Moldova were only slightly more detailed than reports on other ENP countries.[145] In contrast, the post-review reports were criticised for being shorter and more neutral in tone than the previous reports, revealing a less prescriptive approach by the Commission and the EEAS.[146] However, the recent reports on Ukraine are replete with specific figures, dates and other details, which suggest a more nuanced approach. The drawback, however, is that considering that the AA and AAg do not embody positive conditionality in relation to values, the reports have limited potential to ensure compliance, similarly as during the previous stages. On the other hand, the difference is that the Commission's monitoring now gets more attention in the Ukrainian media and thus has stronger socialising effects.

8.5 Positive conditionality (i): 2010 Visa Liberalisation Action Plan

8.5.1 Internal logic: priorities, rewards and conditions

As discussed in Chapter 7,[147] the VLAP listed benchmarks in four 'blocks', which were clarified and broadened by the Commission in its reports.[148] This practice continued during stage IV.

Most notably, in the area of anti-corruption (block 3), the Commission required: establishment of the NABU, NAPC and a Specialised Anti-Corruption Prosecutor's Office (SAP); publication of e-declarations and introduction of an automated mechanism for their verification; and reduction of the immunity of Members of Parliament.[149] These requirements considerably expanded the initial requirements of the VLAP.

Regarding anti-discrimination (block 4), the Commission continued to insist on an explicit prohibition of discrimination on the ground of sexual orientation in the

[145] Kirova and Freizer (n 21), 26.

[146] Blockmans (n 25), 89.

[147] Section 7.4.

[148] The 'blocks' included: 1. Document security, including biometrics; 2. Illegal migration, including readmission; 3. Public order and security; 4. External relations and fundamental rights.

[149] Fourth progress report on the implementation by Ukraine of the VLAP, COM (2014) 336, 27.05.2014, 4; Fifth progress report on the implementation by Ukraine of the VLAP, COM (2015) 200, 08.05.2015, 6.

Labour Code.[150] The Commission also demonstrated a dynamic interpretation of the VLAP in the context of the Russia-Ukraine conflict by requiring that Ukraine simplify the rules on the crossing of the contact line for civilians (block 4, freedom of movement).[151] Similarly as during stage III, the abolition of the visa regime continued to be strictly linked to implementation of the VLAP.

8.5.2 Implementation: reforms in Ukraine

As discussed in Chapter 2,[152] during stage IV Ukraine established a system of anti-corruption institutions – the NABU, SAP and NAPC – and public officials were obliged to disclose their assets in e-declarations. President Poroshenko directly linked these achievements to the VLAP.[153] Ukrainian and international observers also agree that the anti-corruption reforms were undertaken due to the EU's pressure under the VLAP.[154] The important supportive role in moving these reforms forward was played by the Ukrainian civil society, as recognised by the EU.[155] Moreover, the societal pressure for implementation of the VLAP increased significantly during stage IV due to, inter alia, the introduction of the visa-free regime for Moldova in 2014, which increased credibility of the EU in the EaP counties.[156]

Improvements of the anti-discrimination framework are also attributed to the VLAP.[157] The Verkhovna Rada reversed the burden of proof in discrimination cases, established an equality body under the Ombudsperson, and explicitly included sexual orientation as a prohibited ground for discrimination under the Labour Code, although no such amendment was made to the general anti-discrimination law.

[150] Fifth progress report Ukraine VLAP, ibid, 9-10.

[151] Ibid, 9.

[152] Section 2.6.1.1.

[153] Poroshenko, Speech at the press-conference, 14.01.2016. Available at: <https://ua.112.ua/mnenie/promova-poroshenka-na-pres-konferentsii-povnyi-tekst-285052.html> [accessed 01.03.2019].

[154] Gressel, 'Keeping Up Appearances: How Europe is Supporting Ukraine's Transformation', European Council on Foreign Relations, Report, October 2016, 64; Sydorenko, 'Visa-free safeguard of the EU: Brussels increases the costs of reform reversal in Ukraine', *Yevropeyska Pravda*, 14.12.2016 (in Ukrainian).

[155] Sixth progress report on the implementation by Ukraine of the VLAP, COM (2015) 905, 18.12.2015, 6.

[156] Dumas and Goldner Lang, 'EU Mobility Regimes and Visa Policy towards ENP Countries', European University Institute, Working Paper RSCAS 2015/79, 6.

[157] Gorbach, 'Labor reforms and the progressive agenda in Ukraine', Open Democracy, 17.11.2015.

Similarly, the VLAPs triggered the anti-corruption and anti-discrimination reforms in Moldova and Georgia.[158]

8.5.3 Implementation: EU monitoring, evaluation and rewards

In May 2014, the Commission found that Ukraine's progress was sufficient to move to the second phase, 'notably when considering the circumstances in the country and the internal and external challenges it currently faces'.[159] Not all benchmarks under the first phase were fulfilled, e.g. the anti-corruption agency was still not set up. Yet the Commission decided to pay 'special attention' to institution setting during the second phase.[160] The move to the second phase was therefore at least in part a political decision designed to support Ukraine.

Subsequently, in December 2015, the Commission found that Ukraine had met all the benchmarks under the VLAP.[161] However, it listed some outstanding requirements, such as: to ensure that the NABU, SAP and NAPC become fully operational in the first quarter of 2016; to ensure that verification of e-declarations will be launched immediately after; and to ensure that the state budget allocates sufficient resources for anti-corruption institutions.[162] Notably, the Commission in its final report did not mention the need to lift immunities of Members of Parliament, and this requirement was left unmet. Moreover, the Commission subsequently overlooked Ukraine's failure to prohibit discrimination on the ground of sexual orientation in the general anti-discrimination law and was satisfied with only the relevant amendments to the Labour Code.[163] It was also flexible in other areas, e.g. regarding the fact that Ukraine does not control the part of its border in Donbas.[164]

In early 2016, Ukraine addressed the outstanding requirements, except for the introduction of the automated verification mechanism for e-declarations. Notwithstanding this fact, in April 2016 the Commission proposed the visa-free

[158] Benedyczak, Litra and Mrozek, 'Moldova's Success Story: The Visa-Free Regime with the EU One Year On', Stefan Batory Foundation, May 2015, 9.
[159] Fourth progress report Ukraine VLAP (n 149), 6.
[160] Ibid, 4.
[161] Sixth progress report Ukraine VLAP (n 155), 12.
[162] Ibid, 7-8.
[163] Ibid, 10-11.
[164] Blockmans (n 25), 97.

regime for Ukraine, which was subsequently approved in May 2017 and entered into force on 11 June 2017.[165] As of March 2019, the automated verification mechanism of e-declarations has not been made fully operational and remains one of the most pressing issues. The EU reiterated this requirement under MFA and the failure to introduce it might also be a ground for suspension of the visa-free regime (Sections 8.6 and 8.8).

8.6 Positive conditionality (ii): macro-financial assistance

MFA I

The EU disbursed €610 million of MFA promised to Ukraine in 2010[166] (MFA I) only in 2014-2015, after a new arrangement was negotiated between Ukraine and the International Monetary Fund (IMF). MFA I was conditional on, inter alia, the adoption and implementation of a national anti-corruption strategy and anti-corruption legislation. During 2014-2015, the EU found these conditions to be largely met, noting, however, that there was no sufficient progress with implementation.[167] It might be argued that the EU was not very strict with conditionality under MFA I due to the difficult economic situation in Ukraine at that time.

MFA II

The EU agreed the second package of MFA for Ukraine (MFA II) in April 2014. MFA II was adopted under Article 213 TFEU. Unlike Article 212 TFEU, which provides for the ordinary legislative procedure, Article 213 TFEU allows the Council to act without involvement of the European Parliament. Reliance on Article 213 TFEU reflected the urgency of the assistance.[168] The package consisted of €1 billion, divided into two equal instalments.

[165] Chapter 3, Section 3.7.3.2.

[166] Chapter 7, Section 7.5.

[167] Commission, Background analysis per beneficiary country, accompanying report on the implementation of macro-financial assistance to third countries in 2014, SWD (2015) 115 final, 11.06.2015, 26.

[168] Recitals (4)-(6), Council Decision 2014/215/EU providing macro-financial assistance to Ukraine [2014] OJ L111/85.

In line with the Genval criteria,[169] the EU stressed that as a pre-condition for receiving MFA, Ukraine had to '[respect] effective democratic mechanisms, including a multi-party parliamentary system and the rule of law, and [guarantee] respect for human rights'.[170] The Commission monitored Ukraine's compliance with this political pre-condition throughout the life-cycle of MFA.[171]

The first instalment was condition-free and was disbursed in June 2014. Regarding the second instalment, out of 11 conditions listed under the Memorandum of Understanding (MoU), only one related to democracy and the rule of law. Under the category 'Public Finance, Management and Anti-corruption', Ukraine was required to implement legislation requiring an annual declaration of assets by state officials, and the Government was required to prepare a draft law setting up an anti-corruption agency.[172] These requirements were similar to the VLAP benchmarks. However, the VLAP required making asset declarations available electronically, while MFA II did not mention this explicitly. In October 2014, Ukraine adopted anti-corruption legislation envisaging establishment of the NABU and NAPC. The EU found this progress sufficient[173] and disbursed the second instalment in December 2014. Overall, the conditions for MFA II were stricter and paid more attention to anti-corruption measures than the IMF conditions at that time.[174]

MFA III

In April 2015, the EU approved the third MFA programme for Ukraine (MFA III), consisting of €1.8 billion, divided into three equal instalments. Again, the EU stressed the importance of Ukraine satisfying the political pre-condition for MFA, which was monitored by the Commission and the EEAS.[175] The Commission found Ukraine to satisfy the political pre-condition by referring to the reinstatement of the 2004

[169] Chapter 4, Section 4.4.1.

[170] Recital (18) and Article 2, Council Decision 2014/215/EU (n 168).

[171] Ibid, Article 2.

[172] Memorandum of Understanding between the EU and Ukraine on the macro-financial assistance for Ukraine, May 2014, 6.

[173] Commission (n 167), 26.

[174] Dabrowski, 'Ukraine: Can Meaningful Reform Come Out of Conflict?', Bruegel Policy Contribution, Issue 2014/08, August 2014, 6.

[175] Recital (17), Articles 2(1) and (2), 4(3)(a), Decision (EU) 2015/601 providing macro-financial assistance to Ukraine [2015] OJ L100/1.

constitutional reform, democratic conduct of the presidential and parliamentary elections, and respect for freedoms of association, media and expression.[176]

The first instalment, which was condition-free, was disbursed in July 2015. In contrast, four out of 15 conditions for the second instalment related to democracy, the rule of law and human rights. Under the category 'Governance and Transparency', Ukraine was required to establish independent and operational anti-corruption agencies: the NABU, SAP and NAPC. In addition, the country had to adopt new legislation on the civil service.[177] Moreover, under the category 'Social Safety Nets', Ukraine was required to address economic and social rights: provide compensation mechanisms to protect vulnerable households from increasing energy tariffs; and ensure the effective provision of social benefits to IDPs.[178] MFA III thus strengthened the VLAP conditionality as regards anti-corruption institutions. The other three requirements were new and underlined the dynamic approach of the EU to its demands, based on developments in Ukraine.

As required, in 2016 three anti-corruption agencies became operational and a new law on the civil service entered into force. Yet the second instalment was not disbursed because the Commission deemed Ukraine's progress insufficient in other areas, e.g. regarding the IDPs and the wood export ban.[179] One of the reasons for slow reforms in 2016 was that Ukraine managed to stabilise its macro-economic situation, thus reducing dependence on MFA.[180] The EU subsequently disbursed the second instalment in April 2017, but stressed the importance of further steps regarding the IDPs and the fight against corruption.[181]

Conditions for the third instalment were even more detailed. Out of 21 conditions under the MoU, eight related to democracy, the rule of law and human

[176] Commission, Ex-ante evaluation statement on EU macro-financial assistance to Ukraine, accompanying Proposal for a Decision providing macro-financial assistance to Ukraine, SWD (2015) 1, 08.01.2015, 19-21.

[177] Memorandum of Understanding between the EU and Ukraine on the macro-financial assistance for Ukraine, May 2015 (hereinafter 'MoU MFA III'), 6.

[178] Ibid, 7.

[179] Commission, Report on the implementation of macro-financial assistance to third countries in 2016, COM (2017) 321, 16.06.2017, 11.

[180] 'The state of implementation of associations and free trade agreements with Ukraine, Georgia and Moldova' (n 120), 29-30.

[181] 'EU Commission approves disbursement of €600 million in assistance to Ukraine', Press release, 16.03.2017.

rights. Under the category 'Governance and Transparency', Ukraine had to: set up an e-declarations system with a verification mechanism; establish an e-database on beneficial ownership of companies with a verification mechanism; designate an institution to act as the Asset Recovery Office; adopt a comprehensive strategy and an implementation plan for public administration reform; adopt by-laws for the legislative package on the civil service; and start running open competitions for the recruitment of civil servants.[182] Under the category 'Social Safety Nets', Ukraine was required to: consolidate and better target existing social assistance programmes in order to cushion the effects of energy tariff increases; and prepare a first evaluation of social service delivery to IDPs and ensure effective follow-up.[183] Again, these conditions added an additional layer to the VLAP conditionality and expanded the EU overall conditionality in other areas.

Nevertheless, in January 2018 the availability period of MFA III expired and the EU refused to disburse the third instalment because Ukraine failed to fulfil four out of the 21 conditions.[184] Two of these concerned anti-corruption, namely the failure to establish an automated mechanism for verification of e-declarations and a mechanism for verification of beneficial ownership of companies. Notably, the former was also one of the unfulfilled requirements under the VLAP, as discussed above. It is therefore commendable that the EU ensured the continuity of this requirement under MFA III.[185] By withholding the third instalment the EU demonstrated a principled approach to positive conditionality, thus adding more credibility to it. This was a positive step considering that the Ukrainian Government complacently believed that the price for the EU of withholding support would be intolerably high.[186]

[182] MoU MFA III, 8.

[183] Ibid, 9.

[184] Commission, Report on the implementation of macro-financial assistance to third countries in 2017, COM (2018) 511 final, 29.06.2018, 8.

[185] The other two unfulfilled conditions under MFA III concerned Ukraine's wood export ban and the failure to establish a central credit registry (the latter was met in February-March 2018).

[186] Lough and Solonenko, 'Can Ukraine Achieve a Reform Breakthrough?', Chatham House, April 2016, 17.

MFA IV

In July 2018 the EU approved the fourth MFA package for Ukraine (MFA IV), consisting of €1 billion divided into two equal instalments.[187] The MoU on MFA IV lists 18 conditions for two instalments, nine of which concern democracy, the rule of law and human rights: six under the category 'Good governance and fight against corruption' and three under the category 'Social policies'. Ukraine received the first instalment in December 2018, while the second instalment has not been disbursed yet. Four important observations can be made about conditionality under MFA IV.

First, the Commission found that Ukraine satisfied the political pre-condition for MFA. In its assessment it referred to a wider range of issues, including Ukraine's constitutional system, electoral legislation and procedure, decentralisation reform, reform of the judiciary, anti-corruption measures, media freedom and vibrant civil society.[188] The Commission also noted the need for further steps, e.g. the adoption of a single Election Code and investigation of instances of physical attacks on journalists.[189] This assessment suggested a broader and more detailed interpretation of the Genval criteria, as compared to MFA I-III.

Secondly, the MoU requires the introduction of the automated verification mechanism for e-declarations, which was resisted by Ukraine under the VLAP and MFA III. It also requires ensuring effective verification of information on companies' beneficial ownership, another unfulfilled condition under MFA III.[190] The inclusion of the unfulfilled conditions from MFA III was a requirement of the Commission,[191] thus ensuring the follow-up and continuity of MFA conditionality. However, according to the MoU, Ukraine needs to make the verification mechanism for e-declarations fully functional and verify at least 1,000 e-declarations of high-level officials for the second instalment, whereas the first instalment requires only some

[187] Decision (EU) 2018/947 providing further macro-financial assistance to Ukraine [2018] OJ L171/11.

[188] Commission, Ex-ante evaluation statement on EU macro-financial assistance to Ukraine, accompanying Proposal for a Decision providing further macro-financial assistance to Ukraine, SWD (2018) 66, 09.03.2018, 18-22.

[189] Ibid.

[190] Memorandum of Understanding between the EU and Ukraine on the macro-financial assistance for Ukraine, 14.09.2018, Annex I (hereinafter 'MoU MFA IV').

[191] Commission, Explanatory Memorandum to the Proposal for a Decision providing further macro-financial assistance to Ukraine, COM (2018) 127, 09.03.2018, 2.

technical steps on the establishment of the mechanism.[192] Even before the MoU was signed, Ukrainian observers had predicted such concessions by the EU, linking them to the expiration of cooperation with the IMF (subsequently extended) and the forthcoming 2019 presidential election, which limit the timeframe for reforms.[193] It seems that by linking the verification mechanism to the second instalment the EU wanted to ensure that if Ukraine continued to resist its establishment, at least it would receive the first instalment. This approach suggested a prioritisation of economic stabilisation of Ukraine over its compliance with the unfulfilled anti-corruption commitments. Some technical steps on the establishment of the verification mechanism have been undertaken by Ukraine starting from October 2018, yet it remains to be seen whether there will be sufficient political will after the 2019 elections to make it fully functional.

Thirdly, the MoU lists specific conditions regarding the HACC and their evolution merits separate attention. Initially, the Commission in its proposal for MFA IV did not mention the need to include in the MoU any obligation related to the HACC. A likely explanation for this was that the adoption of the law on the HACC was at that time one of the key requirements of the IMF.[194] Soon after President Poroshenko submitted a draft law on the HACC, the IMF made it clear that it did not comply with the recommendations of the Venice Commission.[195] The problem was that the draft provided international experts with only an advisory role in the appointment of the HACC judges, set out unrealistic criteria for the candidates, and did not provide the HACC with the same jurisdiction as that of the NABU.[196] The failure to adopt the law in line with the Venice Commission's opinion could result in termination of cooperation with the IMF, which, in turn, would make the approval of

[192] MoU MFA IV.

[193] Sydorenko and Bondarieva, 'Assistance above all: the EU is preparing for new concessions in its dialogue with Kyiv', *Yevropeyska Pravda*, 11.07.2018 (in Ukrainian).

[194] Commission (n 188), 9.

[195] Letter from Ron van Rooden, the IMF Mission Chief to Ukraine, to Ihor Rainin, the Head of the Presidential Administration of Ukraine, 11.01.2018. Available at: <https://www.eurointegration.com.ua/files/9/1/91f3737-letter-imf-anticorruption.pdf> [accessed 01.03.2019].

[196] Venice Commission, Opinion No 896/2017 'On Ukraine's draft law on anti-corruption courts and the draft law on amendments to the law on the judicial system and the status of judges', 06-07.10.2017.

MFA IV impossible.[197] Therefore, it seems that the Commission's proposal was based on the assumption that the law on the HACC would be adopted under IMF conditionality, before the approval of MFA IV. This indeed happened and the draft's deficiencies were rectified before its final adoption. However, it is surprising that the Commission did not aim at reinforcing IMF conditionality through MFA IV.

The need to include the HACC-related obligations under MFA IV was set out in May 2018, during the endorsement of the Commission's proposal by the European Parliament[198] and the Council.[199] Subsequently, in its final Decision on MFA IV, the EU explicitly set out that the future MoU should include obligations regarding a 'well-functioning specialised [HACC] in line with the recommendations of the Venice Commission'.[200] It stipulates that in addition to regularly informing the European Parliament and the Council of developments relating to MFA IV, the Commission shall, upon each disbursement, report publicly on the fulfilment of all conditions linked to such disbursement, 'in particular those concerning the fight against corruption'.[201] Such reinforced attention to the fight against corruption, and especially to the HACC, complemented conditionality of the IMF when the fate of the law on the HACC was unclear. The prominent role of the European Parliament was possible due to its ordinary legislative procedure powers, as strengthened by the Treaty of Lisbon.

The MoU then clarified specific conditions on the HACC. To receive the first instalment, Ukraine needed to include in the 2019 budget the appropriate funding for the HACC and launch the process of selection of the members of the Public Council of International Experts and of the HACC judges.[202] These conditions were satisfied during autumn 2018. The second instalment is conditional on, inter alia, making 'significant progress' with the selection of 'qualified and independent' judges of the

[197] Interview with Christian Danielsson, Director-General on the ENP and Enlargement Negotiations: Sydorenko, 'Christian Danielsson: None of the EU partners allowed for such grave violations as proposed in Ukraine', *Yevropeyska Pravda*, 22.02.2018 (in Ukrainian).

[198] 'Trade MEPs approve EU financial help for Ukraine', Press release, 17.05.2018.

[199] 'Ukraine: Council endorses agreement on a further €1bn in loans', Press release 304/18, 29.05.2018.

[200] Joint Statement by the European Parliament, the Council, and the Commission, accompanying Decision (EU) 2018/947 (n 187).

[201] Ibid.

[202] MoU MFA IV.

HACC.[203] The selection is currently underway, and it remains to be seen whether Ukraine will satisfy this condition. In sum, IMF conditionality was instrumental in the adoption of the law on the HACC, while the establishment of the HACC is now required by the IMF and under MFA IV.

Fourthly, in the area of social policies, the MoU builds on the requirements of MFA III. For the second instalment, it requires better targeting of household utility subsidies and adoption of the action plan on integration of IDPs. A welcome requirement in this area is implementation of the reform of healthcare financing.[204] Again, it is commendable that the EU ensures the continuity between MFA conditions and updates them considering the actual situation in Ukraine.

8.7 Positive conditionality (iii): other instruments

Ukraine is entitled to additional allocations under the European Neighbourhood Instrument (ENI) under the umbrella programme ('more for more') in exchange for 'proven progress in deepening democracy and respect for human rights'.[205] For 2015-2020, a yearly bilateral envelope of €130 million is foreseen for Ukraine with an additional €40-50 million per year under the 'more for more' principle.[206] For example, in 2017, Ukraine received €200 million under the ENI,[207] which suggests that the EU provided additional allocations. Although the ENI Regulation lists indicators to measure the achievement of specific objectives, e.g. building 'deep and sustainable democracy',[208] there is no clear information as to which specific reforms warranted these additional allocations or what reforms Ukraine needs to undertake to benefit from them in future.

Additionally, in 2017, Lithuania proposed to provide comprehensive EU financial assistance for Ukraine of approximately €5 billion per year in exchange for

[203] Ibid.
[204] Ibid.
[205] Commission, 'Support Package for Ukraine', 05.03.2014, 2.
[206] Ibid.
[207] Association Implementation Report Ukraine 2018 (n 141), 17.
[208] Chapter 4, Section 4.4.1.

reforms (the so-called 'Marshall Plan for Ukraine').[209] However, in April 2018, Johannes Hahn, the Commissioner for the ENP and Enlargement Negotiations, presented a much less ambitious 'Reforms for Investment' contract, as a part of the EU External Investment Plan. Accordingly, €50 million was offered in exchange for Ukraine satisfying certain conditions, one of which is repealing e-declaration requirements for anti-corruption activists.[210] As of March 2019, the conditions remain unfulfilled. However, it is commendable that they are clearly spelled out, unlike under the ENI.

8.8 Negative conditionality

Human rights clause under the AA

The AA enshrines the human rights clause, which differes from the relevant clause under the PCA.[211] First, Article 2 AA lists respect not only for democratic principles and human rights, but also for 'fundamental freedoms' as essential elements of the AA. Secondly, it refers to a longer list of international instruments. While the PCA referred to the Helsinki Final Act and the Charter of Paris for a New Europe, Article 2 AA refers also to 'other relevant human rights instruments', e.g. the Universal Declaration of Human Rights and the European Convention on Human Rights. The reference to 'other relevant human rights instruments' makes the list open-ended and allows the normative basis in the essential elements clause to be updated in line with emerging practice.[212]

Thirdly, unlike the PCA, Article 2 AA lists respect for 'the principle of the rule of law' as an essential element, although it does not refer to any international instruments in this area. The fourth novelty is the inclusion of '[p]romotion of respect for the principles of sovereignty and territorial integrity, inviolability of borders and independence, as well as countering the proliferation of weapons of mass destruction,

[209] Sydorenko and Panchenko, 'Andrius Kubilius: there is support for the Marshall Plan for Ukraine: EUR 5 billion per year', *Yevropeyska Pravda*, 10.04.2017 (in Ukrainian).

[210] Hahn, Commissioner for the ENP and Enlargement Negotiations, 'Reforms for investment', *Yevropeyska Pravda*, 25.04.2018 (in Ukrainian).

[211] Chapter 5, Section 5.4.

[212] Ghazaryan (n 86), 399.

related materials and their means of delivery' as essential elements of the AA.[213] The addition of sovereignty-related principles as essential elements was seen as an expression of the EU's support of Ukraine in view of the political situation in the country.[214] Finally, the principles of, inter alia, good governance and the fight against corruption 'underpin' or 'are central to enhancing' the EU-Ukraine relationship,[215] yet they are not the essential elements. In other words, the distinction is made between 'hard-core common values' in the essential elements clause, and other principles that are important for developing closer relations but which cannot trigger the suspension of the AA.[216]

The essential elements clause under the EU-Ukraine AA is more advanced than the corresponding clauses under the AAs with Georgia and Moldova. The latter do not refer to 'other relevant human rights instruments', and do not list the rule of law and sovereignty-related principles as essential elements.[217] The latter omission can relate to a less pressing political situation around the conflicts in Georgia and Moldova.[218] Instead, in a somewhat arbitrary distinction, many principles are referred to as 'general principles' under the Moldovan and Georgian AAs.[219] Overall, the essential elements clauses under the EaP AAs are more onerous than the corresponding clauses under other EU agreements in the neighbourhood.[220]

The non-execution clause under the AA provides that a violation by either party of any of the essential elements constitutes an 'exceptional case' which allows the other party to take 'appropriate measures' immediately.[221] The 'appropriate measures' can include suspension of rights and obligations under the AA, including under the DCFTA.[222] This is the only case under the AA when 'values conditionality' overlaps with 'market access conditionality'.[223] The formula of 'exceptional cases'

[213] Article 2, EU-Ukraine AA.
[214] Ghazaryan (n 86), 400.
[215] Article 3, EU-Ukraine AA.
[216] Petrov (n 79), 103.
[217] Article 2, EU-Georgia AA; Article 2, EU-Moldova AA.
[218] Ghazaryan (n 108), 26.
[219] For a detailed comparison see Ghazaryan (n 86), 399-401.
[220] Ibid, 398-400.
[221] Article 478, EU-Ukraine AA.
[222] Ibid.
[223] Van der Loo (n 28), 209.

under the AA differs from 'cases of special urgency' under the PCA. It emphasises that suspension of the AA is possible only as a last resort.[224] The non-execution clauses under the AAs with Georgia and Moldova follow the same logic.[225] Overall, however, it is unlikely that the EU would resort to negative conditionality under the AA given the overall positive conditionality logic of the ENP and the EU's hitherto reluctance to apply non-execution clauses. Instead, the AA human rights clauses serve a more 'positive' function by making values a legitimate topic under political dialogues.[226]

Visa liberalisation suspension mechanism

The strengthened visa liberalisation suspension mechanism,[227] is a very strong safeguard against a reversal of anti-corruption reforms in Ukraine. Its potential is strengthened by the high popularity of the visa-free regime in Ukraine. According to one survey, the introduction of the visa-free regime was voted as the main political event in Ukraine in 2017.[228] This means that Ukrainian leaders cannot disregard the Commission's monitoring. Indeed, in early December 2017, before the Commission's first report, the fears of having the visa-free regime suspended were arguably the key reason why the Verkhovna Rada backed down on the adoption of the law that undermined the independence of the NABU.[229]

In December 2017, in its first report under the suspension mechanism, the Commission found that the VLAP conditions continued to be fulfilled. However, it called on Ukraine to set up 'an independent and specialised [HACC] in accordance with the Venice Commission opinion and Ukrainian legislation', to introduce a verification mechanism for e-declarations, and to revoke the e-declaration obligations of civil activists.[230] In December 2018, in its second report, the Commission similarly found that the VLAP conditions continue to be met. Yet it called on the Government

[224] Ghazaryan (n 86), 403-404.
[225] Ibid, 402-403.
[226] Ibid, 404-410.
[227] Chapter 4, Section 4.4.2.
[228] Ilko Kucheriv Democratic Initiatives Foundation, Survey 'Conclusions-2017: public opinion', 27.12.2017 (in Ukrainian). Available at: <https://dif.org.ua/article/pidsumki-2017-gromadska-dumk4685> [accessed 01.03.2019].
[229] Sydorenko, 'On the edge of an abyss: the night when Ukraine almost lost the EU visa-free regime', *Yevropeyska Pravda*, 07.12.2017 (in Ukrainian).
[230] First Report under the Visa Suspension Mechanism, COM (2017) 815, 20.12.2017, 13-14.

to: ensure that the HACC 'swiftly becomes fully operational'; ensure automated access to all remaining registers and databases for verification of e-declarations; repeal e-declaration obligations of civil activists; and ensure the independence of the SAP.[231] All major concerns from the 2017 report were thus listed in 2018.

However, it should be noted that the establishment of the HACC was not a requirement under the VLAP or under the Commission's monitoring reports. Therefore, there is scepticism about the EU's readiness to suspend the visa-free regime if the HACC is not established.[232] In contrast, the establishment of a verification mechanism for e-declarations, although not explicitly mentioned under the VLAP, was required in the Commission's monitoring reports.[233] Therefore, the failure to introduce it and to start verification by the NAPC can potentially be a ground for suspension. It is key that the EU ensures that this condition is taken seriously by the new Ukrainian leaders following the 2019 elections.

MFA suspension

Under MFA II-IV, Ukraine's failure to fulfil the political pre-condition under the Genval criteria could lead to temporary suspension or cancellation of MFA.[234] Notably, the fact that the EU provided MFA assistance to Kyrgyzstan in 2013 suggested that the overall threshold of commitment to the political pre-condition expected from the requesting country is not very high.[235] However, in July 2018 the EU suspended the disbursement of MFA to Moldova. The decision was triggered by the invalidation of the democratic mayoral election in Chisinau, which the EU deemed to be contrary to the political pre-condition.[236] This decision demonstrated that the EU is stricter regarding the Genval criteria in relation to the EaP countries.

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[231] Second Report under the Visa Suspension Mechanism, COM (2018) 856, 19.12.2018, 12-13.

[232] Sydorenko, 'Will Ukraine's visa-free regime be suspended: what is wrong with Brussels's fight for the anti-corruption court', *Yevropeyska Pravda*, 22.01.2018 (in Ukrainian).

[233] It was first mentioned as a requirement in 2013: Third progress report on the implementation by Ukraine of the VLAP, COM (2013) 809, 15.11.2013, 15.

[234] Article 4(4), Council Decision 2014/215/EU (n 168); Article 4(5), Decision (EU) 2015/601 (n 175); Article 4(4), Decision (EU) 2018/947 (n 187).

[235] Poli (n 26), 47-48.

[236] 'Remarks by High Representative/Vice President Mogherini on breaches of human rights, democracy and the rule of law in Moldova at the European Parliament plenary session', Presse 180705_3, 05.07.2018.

Autonomous trade measures

In April 2014 the EU introduced autonomous trade measures to Ukraine, based on Article 207(2) TFEU. The possibility of suspending such measures, if Ukraine failed to respect the principles of democracy, the rule of law and human rights, initially was not envisaged.[237] The omission was rectified in October 2014, when the EU stipulated that the trade preferences could be temporarily suspended if Ukraine failed to respect the essential elements of Article 2 AA – namely, the principles of democracy, the rule of law and human rights.[238] This was an interesting example of how the AA human rights clause could have some external effects on other EU-Ukraine documents.

In September 2017, the EU introduced new autonomous trade measures for Ukraine, in addition to the measures under the DCFTA, for a period of three years.[239] Ukraine's entitlement to these measures is subject to, inter alia:

> respect for democratic principles, human rights and fundamental freedoms and respect for the principle of the rule of law as well as continued and sustained efforts with regard to the fight against corruption and illegal activities provided for in Articles 2, 3 and 22 of the [AA].[240]

If the Commission finds that there is 'sufficient evidence' of failure to comply with these conditions, it can suspend in whole or in part the preferential measures.[241] This suspension mechanism is stricter than the suspension clause under the AA. Under the latter, as discussed above, the fight against corruption is considered as a 'general principle', while the Regulation on the trade measures explicitly provides that the fight against corruption is one of the essential elements of the EU-Ukraine relations as governed by the AA.[242] Interestingly, the initial Commission proposal for autonomous trade measures did not contain such a link with the fight against

[237] Regulation (EU) No 374/2014 on the reduction or elimination of customs duties on goods originating in Ukraine [2014] OJ L118/1.

[238] Regulation (EU) No 1150/2014 amending Regulation (EU) No 374/2014 on the reduction or elimination of customs duties on goods originating in Ukraine [2014] OJ L313/1.

[239] Article 7, Regulation (EU) 2017/1566 on the introduction of temporary autonomous trade measures for Ukraine supplementing the trade concessions available under the Association Agreement [2017] OJ L254/1.

[240] Ibid, Article 2(c).

[241] Ibid, Article 3(1).

[242] Ibid, Recital (9).

corruption.[243] It was the European Parliament that later advocated this link.[244] Taking into account the European Parliament's role in putting forward anti-corruption conditions in relation to MFA IV, it is obvious that it is has assumed a prominent role in pushing Ukraine for anti-corruption reforms.

8.9 Socialisation

Elites' level

During stage IV, the joint documents adopted after the EU-Ukraine Summits and Association Council meetings have become more detailed regarding political reforms. In 2015, at the first Summit after the Maidan, the EU not only 'welcomed' the reform steps undertaken but also stressed the need to 'further accelerate the reform process on key systemic issues', e.g. the constitutional, anti-corruption, judiciary and public administration reforms.[245] The 2016 and 2017 Summits ended without joint statements. However, according to the Ukrainian media, at the 2017 Summit, Jean Claude Juncker, the President of the Commission, unexpectedly claimed that the EU supported the establishment of an anti-corruption chamber in the Supreme Court, instead of a separate HACC.[246] This concession to President Poroshenko was a regrettable step backwards. In contrast, the 2018 Summit was much stricter and the EU emphasised the need to amend the law on the HACC regarding its jurisdiction on appeal, 'urgently' establish a verification mechanism for e-declarations and revoke the e-declaration requirements for civil activists.[247] It also stressed the need for continued efforts on the reform of the judiciary and prosecution, and for 'reaffirmed' commitment to media freedom.[248]

[243] Proposal for a Regulation on the introduction of temporary autonomous trade measures for Ukraine supplementing the trade concession available under the Association Agreement, COM (2016) 631, 29.09.2016.

[244] 'MEPs back further trade concessions to Ukraine, with exceptions', Press release, 01.06.2017.

[245] EU-Ukraine Summit 2015 (n 42), paras 5-6.

[246] 'The EU has changed its stance on the HACC', *Yevropeyska Pravda*, 13.07.2017 (in Ukrainian).

[247] EU-Ukraine Summit 2018 (n 43), para 5.

[248] Ibid, paras 5-6.

The joint statement on the first Association Council, held in 2014, was surprisingly neutral in tone.[249] In contrast, subsequent meetings emphasised, inter alia, the importance of 'swift and thorough' implementation of key reforms, the need to establish a verification mechanism for e-declarations and to ensure independence of anti-corruption institutions, the need to respect media freedom and to provide adequate resources for a public service broadcaster, and the need to bring electoral legislation in line with OSCE/ODIHR standards.[250] Notably, the 2017 Association Council rectified Juncker's claims by clarifying that the EU supported the establishment of the HACC.[251] Similar reforms were stressed at the meetings of the EU-Ukraine Parliamentary Association Committee.[252] Additionally, there have been four meetings under the EU-Ukraine human rights dialogue. The issues discussed were more specific and included e.g. the need to investigate human rights violations related to the Maidan and to the Russia-Ukraine conflict, media freedom, anti-discrimination and women's rights.[253]

The EaP Summits emphasised the importance of the reforms of the judiciary and public administration, fight against corruption, and of media freedom.[254] However, these statements were much less specific than under the bilateral EU-Ukraine frameworks. Other EaP institutions, most notably thematic platforms, have been criticised by Ukrainian observers for the lack of effective coordination and for formalised discussions lacking substance.[255] As during stage III, the EaP delegations tend to use the EuroNest PA for diplomacy and it is often paralysed by regional tensions (e.g. Armenia/Azerbaijan).[256] On the other hand, the fact that the delegations

[249] First meeting of the EU-Ukraine Association Council, Joint Press Release (Presse 653), 15.12.2014.

[250] Second meeting of the EU-Ukraine Association Council, Joint Press Release 897/15, 07.12.2015, 1; Third meeting of the EU-Ukraine Association Council, Joint Press Release 797/16, 19.12.2016, 1-2; Fourth meeting of the EU-Ukraine Association Council, Joint Communiqué 760/17, 08.12.2017, 1; Fifth meeting of the EU-Ukraine Association Council, Joint Press Statement 809/18, 17.12.2018, 2-3.

[251] Fourth meeting of the EU-Ukraine Association Council, ibid, 1.

[252] For example, Eighth meeting of the EU-Ukraine Parliamentary Association Committee, Final statement and recommendations, 17-18.09.2018.

[253] 'The annual meeting under the EU-Ukraine human rights dialogue took place in Brussels', *Yevrointehratsiynyy Portal*, 01.06.2018 (in Ukrainian).

[254] Eastern Partnership Summit, Joint Declaration, Riga, 22.05.2015, paras 16, 19; Eastern Partnership Summit, Joint Declaration, Brussels, 24.11.2017, paras 9, 19.

[255] Maksak, 'Following the outsiders: how the EU sees the future of the Eastern Partnership', *Yevropeyska Pravda*, 19.10.2017 (in Ukrainian).

[256] Delcour and Wolczuk (n 53), 50-51; Petrova and Raube, 'Euronest: What Drives Inter-Parliamentary Cooperation in the Eastern Partnership?' (2016) 21:1 *European Foreign Affairs Review* 35, 45-47.

have to cooperate, discuss opinions and compromise is positive and can have socialising effects in a long term.[257]

Civil society level

Similarly to stage III, the EaP Civil Society Forum (CSF) has been effective in fostering links between civil societies and a common democratic culture.[258] However, its advocacy function is still limited.[259] A novelty has been the introduction of the bilateral Civil Society Platforms (CSPs) under the AAs with Ukraine, Moldova and Georgia.[260] The CSPs are tasked with, inter alia, monitoring the implementation of the AAs.[261] They complement the multilateral CSF established under the EaP and reflect the increased focus on civil society involvement under the ENP and EaP.[262] However, the CSPs are criticised for not giving sufficient voice to NGOs dealing with democracy, the rule of law and human rights.[263]

Broader society level

The major difference from the previous stages is that, starting from 2017, Ukrainian citizens can travel to the Schengen area for short-term visits without visas. This is further facilitated by better connection between the Ukrainian cities (including in the east and south) with EU destinations through affordable European airlines, which have recently entered the Ukrainian market. The visa-free regime thus creates a conducive environment for values to spread freely across the EU-Ukraine border. In the long term, the exposure to European values and best practices can further increase the bottom-up demand for reforms in Ukraine.

[257] Petrova and Raube, ibid.

[258] Kirova and Freizer (n 21), 13.

[259] Shapovalova, 'How Can the Eastern Partnership Civil Society Forum Strengthen Its Advocacy Function?', Paper commissioned by the Eastern Partnership Civil Society Forum, January 2015, 4-11.

[260] Article 469, EU-Ukraine AA; Article 442, EU-Moldova AA; Article 412, EU-Georgia AA.

[261] Shapovalova and Youngs, 'EU Democracy Promotion in the Eastern Neighbourhood: A Turn to Civil Society?', FRIDE, Working Paper No 115, December 2012, 11.

[262] Van der Loo (n 28), 205-206.

[263] Shapovalova (n 259), 10.

8.10 Reform assistance and support of civil society

In March 2014, the Commission pledged around €11.2 billion for Ukraine for 2014-2020 including the ENI, MFA, and the funding provided by the European Bank for Reconstruction and Development and the European Investment Bank.[264] Also in 2014, grants worth €355 million were provided under the State Building Contract.[265] Unlike the previous stages, a multiannual strategy and indicative/annual programmes on Ukraine have not been adopted due to the difficult situation in the country.[266]

While most funds have been used to stabilise the economy, some supported key democratic reforms. For example, €104 million was allocated for the public administration reform, and €52.5 million for the reform of the judiciary and law-enforcement.[267] The EU also provided financial and technical assistance for anti-corruption reforms under the VLAP.[268] Moreover, the EU played an important role in supporting the decentralisation reform.[269] However, it was criticised for approaching the reform mainly through the lens of the Minsk agreements.[270] The EU also allocated €50 million for strengthening local governance in the Ukraine-controlled parts of Donbas.[271] Also, the EU together with Member States is the biggest donor of humanitarian aid in Donbas (more than €677 million).[272] The drawback is that much of EU support to Ukraine continues to rely on unreformed technical assistance.[273]

Additionally, there are new support formats. First, in December 2014, the EU deployed the Advisory Mission for Civilian Security Sector Reform (EUAM) under

[264] Commission (n 205), 1.

[265] Commission Implementing Decision on a special measure 2014 in favour of Ukraine to be financed from the general budget of the European Union, C (2014) 2907, 29.04.2014.

[266] European Court of Auditors, 'EU Assistance to Ukraine', Special Report No 32, December 2016, para 8.

[267] Third meeting of the EU-Ukraine Association Council (n 250), 2; Wolczuk and Žeruolis, 'Rebuilding Ukraine: An Assessment of EU Assistance', Chatham House, Research Paper, August 2018, 15-16.

[268] Sixth progress report Ukraine VLAP (n 155), 11.

[269] 'The state of implementation of associations and free trade agreements with Ukraine, Georgia and Moldova' (n 120), 21.

[270] Youngs, 'Fine-Tuning EU Support for Ukrainian Democratization', Carnegie Europe, 06.04.2016.

[271] Fourth meeting of the EU-Ukraine Association Council (n 250), 3.

[272] 'EU announces €24 million to address the humanitarian situation in eastern Ukraine', Press release, 28.02.2018.

[273] Wolczuk and Žeruolis (n 267), 20-24.

the CSDP.[274] The EUAM 'represents a compromise solution between the Ukrainian request for the EU to provide an armed police mission in the conflict zone in the east of the country and the EU's initial soft power (advisory) response'.[275] The activities of the EUAM include the provision of advice and training regarding the reform of the police, border and security services and, to a lesser degree, the judiciary and the NABU.[276] Due to its limited mandate the EUAM has had mixed impact.[277] It was also criticised for having few staff and limited funding as compared to other CSDP missions.[278]

Secondly, in April 2014, the Commission established a Support Group for Ukraine (SGUA). The SGUA ensures coordination between the Commission, the EEAS and other actors, and builds 'local knowledge' about Ukraine.[279] The SGUA is an 'unprecedented' initiative for a non-EU country.[280] It is divided into seven sector teams, one of which is on anti-corruption while others focus predominantly on the DCFTA.[281] Some Ukrainian observers have criticised the SGUA for focusing largely on gathering information for the Commission, rather than providing advisory support with reforms.[282]

Thirdly, in September 2018, the EU, together with four other international organisations, prepared a list of 12 candidates for the Public Council of International Experts.[283] The High Qualification Commission of Judges then chose six experts for

[274] Council Decision 2014/486/CFSP on the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine) [2014] OJ L217/42.

[275] Wolczuk and Žeruolis (n 267), 18.

[276] Interview with the Head of the EUAM: Sydorenko, 'The Head of the EUAM: you do not have time to wait until the establishment of the anti-corruption court', *Yevropeyska Pravda*, 06.02.2017 (in Ukrainian).

[277] 'The state of implementation of associations and free trade agreements with Ukraine, Georgia and Moldova' (n 120), 27.

[278] Chromiec and Koenig, 'Supporting Ukraine's Difficult Path Towards Reforms', Jacques Delors Institut, Policy Paper No 143, October 2015, 13.

[279] Wolczuk and Žeruolis (n 267), 11-15.

[280] Hallgren and Solonenko, 'Can the European Union Help Ukraine to Succeed? Reforms, the Russian Factor and Implications for the Eastern Neighbourhood', Heinrich Böll Stiftung, 26.12.2015.

[281] Information available at: <https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/ukraine/sgua_en> [accessed 01.03.2019].

[282] Solodkyy and Sharlay, 'How Could the EU Accelerate Reform in Ukraine?', Institute of World Policy, 2015, 7.

[283] 'List of candidates for the Public Council of International Experts', 14.09.2018. Available at: <https://www.vkksu.gov.ua/userfiles/doc/lystvidMO.pdf> [accessed 01.03.2019].

the Public Council. As discussed in Chapter 2,[284] in January 2019 the Public Council assisted the Qualification Commission in the selection of the HACC judges and disqualified around 40% of questionable candidates, thus raising the chances that the HACC will be professional and independent.

Regarding civil society, EU support increased during stage IV. Accompanying the State Building Contract, €10 million was dedicated for civil society.[285] Additionally, civil society received around €15 million under the ENI for 2014-2016, and €4.39 million under the European Instrument for Democracy and Human Rights (EIDHR II) for 2014-2017.[286] The funding supported, inter alia, anti-corruption initiatives, gender equality, and psychological assistance to children affected by the conflict.[287] Moreover, from 2013, Ukraine has been the biggest recipient of funds under the EED, with a focus on grassroots political movements, independent media and IDPs.[288] However, only very limited support under the EED is aimed at building stronger and ideologically coherent political parties.[289] Overall, the US is still ahead of the EU in terms of civil society support.[290] The weakness is that the EU still often prioritises urban and more professional NGOs.[291] Considering the pivotal role that civil society has been playing with key reforms during stage IV, it is important that the EU increases its support.[292]

8.11 Conclusion

Several conclusions can be drawn about promotion and protection of democracy, the rule of law and human rights in Ukraine under the ENP during stage IV.

[284] Section 2.6.1.1.

[285] Commission Implementing Decision (n 265).

[286] Youngs, 'EU Support to Civil Society in Turkey, Ukraine and Egypt: Mapping Reforms to External Financial Instruments', annex to 'EU External Financing Instruments and the post-2020 Architecture', European Implementation Assessment, February 2018, 81-82.

[287] Ibid.

[288] Ibid, 83.

[289] Youngs (n 270).

[290] Ibid.

[291] Balfour and Bouchet, 'Supporting Civil Society in Eastern Europe and the Western Balkans: Old and New Challenges', The German Marshall Fund of the United States, Policy Brief, 27.02.2018.

[292] Chromiec and Koenig (n 278), 18-19.

First, even though the ENP conditionality regarding the AA largely failed in relation to the Yanukovych regime during stage III, it (unintentionally) triggered the Euromaidan protests, revealing the soft power of the EU. The Maidan Revolution, however, was subsequently influenced more by internal developments rather than by the EU/ENP. Moreover, the EU's efforts at the settlement of the Revolution were belated and prioritised stability over democratisation. Regarding the Russia-Ukraine conflict, the EU's settlement efforts have not been effective so far, but the multiple sanctions against Russia strengthen the normative image of the ENP in Ukraine and in the Eastern neighbourhood.

Secondly, the AA upgraded the EU-Ukraine relationship, but it did not add new methods or instruments for promotion and protection of democracy, the rule of law and human rights. However, the EU has been more willing to utilise the instruments at its disposal. It has strengthened positive conditionality, namely under the VLAP, MFA and financial assistance. Moreover, a difference from the previous stages is that the EU has considerably strengthened its negative conditionality instruments, i.e. under the AA, visa-free regime, MFA and trade preferences. A stronger emphasis on negative conditionality stems from the fact that the main 'carrots' under the ENP have already been given to Ukraine, so the EU has fewer positive conditionality options. Additionally, negative conditionality instruments ensure the irreversibility of reforms achieved through positive conditionality. Another difference from the previous stages is that because the conditionality instruments have been reinforced, socialisation forums have a stronger supportive role. The EU's reform assistance and support of civil society were also strengthened.

This change of attitude results from security concerns prompted by the conflict rather than from the fact that the AA provides for a more advanced relationship. Notably, this security-motivated reinforced attention to reforms, which continues the practice of the previous stages, has happened even though it risks making Ukraine's membership claims more credible (at least in a long term). Stage IV thus differs fundamentally from stage II.

Thirdly, the actual effects of the ENP on democracy, the rule of law and human rights have been much more visible during stage IV. Most importantly, the VLAP and MFA conditionality led to unprecedented anti-corruption reforms which,

however, are still to be fully implemented. The EU also provided assistance for judicial, decentralisation and public administration reforms. Moreover, the EU paid attention to the situation with IDPs and provided humanitarian assistance to conflict-affected areas. However, the ENP lacks capacity for influencing the situation with democracy, the rule of law and human rights in the parts of Donbas outside Ukraine's control and in Crimea. This weakness of the ENP is exacerbated by the lack of the EU's overall democratisation strategy towards Russia, which controls these regions and promotes its undemocratic practices there.

9. Conclusion

The statement that Ukraine presents 'the most immediate challenge' for the ENP, cited in the Introduction to this thesis, still holds true in 2019. At the same time, the country is gradually becoming a promising example of the ENP's transformative power.

This thesis has analysed the application and effects of four ENP methods for promotion and protection of democracy, the rule of law and human rights in Ukraine: i) positive conditionality, ii) negative conditionality, iii) socialisation, and iv) reform assistance and support of civil society. It has contextualised Ukraine's record and the EU's efforts during four stages of EU-Ukraine relations, before and after the ENP, within the wider internal and external contexts.

From the time Ukraine gained independence in 1991, the main problems regarding democracy, the rule of law and human rights in the country have been the deficient constitutional checks and balances, high-level corruption, the lack of an independent judiciary, electoral violations, centralisation of power and restrictions on media freedom (Section 2.3.1). The main causes behind insufficient reforms during stages I-III (1991-2013) were rooted in Ukraine's complex historical legacies. The regional differences, weak sense of unity across the country and weak experience with democratic traditions created the perfect environment for the emergence of self-serving political elites, uninterested in reforms. In terms of the external context, Russia had a destabilising influence during stages I-III through subversion of democratic processes and exploitation of Ukraine's trade and energy vulnerabilities. These influences were exacerbated by the elites' lack of commitment to reforms.

The 2013-2014 Maidan Revolution, the annexation of Crimea and the on-going Russia-Ukraine conflict unexpectedly broke this vicious circle (Sections 2.4-2.6). The population is more united, which means that it is much harder to exploit regional differences. Moreover, reinforced bottom-up pressure and a stronger civil society have played a crucial role in the adoption of key anti-corruption, judiciary and decentralisation reforms during stage IV (post-2013, Section 2.6.1.1). The conflict also galvanised Ukraine into diversifying its trade and energy options, thus reducing

Russia's leverage. At the same time, the conflict is a major security threat to the country and there are widespread violations of human rights in Crimea and the parts of Donbas outside Ukraine's control (Section 2.6.3)

Obviously, the EU's efforts at the promotion and protection of values in Ukraine have to be contextualised considering the dynamics of EU-Ukraine relations (Chapter 3). Since the 1990s, Ukraine has consistently declared its interest in EU membership. Such declarations varied in credibility during the different stages, yet the underlying idea was that EU membership would make Ukraine less dependent on Russia, thus filling its security void, in non-military terms. However, the EU has been reluctant to acknowledge Ukraine's prospects largely, although not exclusively, due to fears of aggravating Russia. This means that EU-Ukraine relations have lacked not only a long-term strategy, but also a common vision regarding security threats.

The ENP has served as an alternative to Ukraine's membership. Initially it was built on the pre-ENP Partnership and Cooperation Agreement (PCA). Starting from 2014, EU-Ukraine relations have been governed by the Association Agreement (AA) with the Deep and Comprehensive Free Trade Area (DCFTA). This thesis has shown that these new frameworks have helped Ukraine to counterbalance the relationship with Russia, thus filling, at least to certain extent, the country's security and economic void. At the same time, because it chose the AA, Ukraine faces Russia's aggression, while still being uncertain as to whether the EU would ever consider it for membership.

Within these wider contexts, the ENP has served as a policy for promotion of values in Ukraine. The objective of promotion of democracy, the rule of law and human rights under the ENP was not new, as it had been already enshrined in the Treaties (Section 4.2). This objective suffers from four main internal weaknesses, which affect the ENP methods and instruments. First, the scope of democracy, the rule of law and human rights that the EU is promoting is not explicitly clarified. Secondly, since the ENP is a security-motivated policy, other interests can trump the objective of promotion of values in the neighbourhood. This is especially true in relation to undemocratic neighbours. The likelihood that other interests would be prioritised correlates with the strategic importance of neighbours and the need to cooperate. Thirdly, there is a fundamental contradiction between the ENP as the

alternative to membership, on the one hand, and as a transformative policy, on the other. The more successful the ENP is with promoting reforms, the less successful it is as a substitute for membership. This paradox of the ENP is especially dangerous for Ukraine. Fourthly, the EU does not have any strategy for promotion and protection of values in Russia, which has acted as the major external threat to democratic reforms in the Eastern neighbourhood (Section 4.3).

The main added value of the ENP has been the introduction of positive conditionality. Before the ENP, the EU relied mainly on negative conditionality, socialisation, reform assistance and support of civil society. Under the ENP, positive conditionality regarding democracy, the rule of law and human rights was introduced in relation to new bilateral agreements, visa liberalisation and financial assistance. Negative conditionality remained largely the same as before the ENP. The exception is the recently introduced visa liberalisation suspension mechanism. Regarding socialisation, major improvements were introduced under the Eastern Partnership (EaP). At the elites' level, it introduced several multilateral forums of cooperation. Most importantly, it formalised a dialogue between EU and Eastern neighbours' civil societies and offered visa liberalisation, thus significantly strengthening the second and third levels of socialisation. The ENP also strengthened the existing assistance programmes, especially after the 2011 review (Section 4.4).

Before the ENP, during stage I (1991-2004), the EU did not fully utilise the instruments at its disposal (Chapter 5). Negative conditionality under the PCA and Technical Assistance to the Commonwealth of Independent States (TACIS) was never considered in relation to the Kuchma regime, despite the latter's democratic transgressions. The EU preferred dialogue and engagement, yet socialisation frameworks at the elites' level paid insufficient attention to such key issues as media freedom and the fight against corruption. Support of civil society was weak and lacked systemic effects. The piecemeal approach to promotion of values in Ukraine at that time stemmed from the overall weak priority accorded to the country.

During stage II (2004-2009), the EU reinforced its engagement with Ukraine (Section 3.5). Under the ENP, the EU offered Ukraine a possibility of signing a new bilateral agreement, the AA. Moreover, a long-term prospect of visa liberalisation was offered. The EU-Ukraine Action Plan (AP) contained a group of tasks on

democracy, the rule of law and human rights. Despite some shortcomings and omissions, these tasks considerably elaborated on the fairly general objectives under the PCA.

Nevertheless, stage II was largely a period of missed opportunities (Chapter 6). Internally, the unexpected Orange Revolution demonstrated the growing strength of civil society in Ukraine. However, Ukraine implemented only those reforms which required passive non-interference – namely, elections became free and fair and there was no state pressure on the media. These reforms were designed to make Ukraine's EU membership aspirations more credible. However, such 'self-imposed' conditionality had limited effects and there was no political will for reforms which needed more proactive measures. Regrettably, the ENP was underutilised. The EU failed to introduce strong positive conditionality under the AP, contrary to the original declarations under the ENP documents. The start of negotiations on the AA was linked to democratic elections, while more substantive tasks under the AP were overlooked. Insufficient attention was paid to democratic reforms under socialisation frameworks and support of civil society was not strengthened. This approach revealed that the EU saw the ENP primarily as an alternative to Ukraine's membership. The EU became more active only amid the numerous constitutional crises. This suggested that the EU's normative agenda towards Ukraine under the ENP was not an autonomous objective but part of the overarching security/stability objective.

During stage III (2010-2013), the framework of the EU-Ukraine relations remained largely the same (Section 3.6). However, internal context differed substantially. The imprisonment of former Prime Minister Tymoshenko and unfair parliamentary elections, among other violations of President Yanukovych's regime, triggered a more active EU role (Chapter 7). In 2012 the EU introduced positive conditionality in relation to the signature of the AA, although this was a rather belated move. The EU's approach was notable considering that the ENP documents initially foresaw positive conditionality in relation to the start of negotiations, but not the signature of the AA. There was also a strengthened focus on democracy, the rule of law and human rights under socialisation frameworks. Thus, the EU's tendency to scale up its normative approach to Ukraine in times of instability and crises became especially evident during stage III. Nevertheless, positive conditionality largely failed

because reforms required by the EU were threatening the regime's hold on power, while the incentives offered, namely the AA and visa liberalisation, were not 'sizeable' enough. The positive effects of the ENP during stage III were noted in relation to socialisation channels at the level of civil society.

The effects of the ENP on democracy, the rule of law and human rights became more visible during stage IV (post-2013, Chapter 8). Euromaidan, which was a reaction to Yanukovych's refusal to sign the AA, showcased the EU's soft power. The EU's belated response and prioritisation of short-term stability amid the Maidan Revolution, however, was regrettable. Nevertheless, the principled approach to sanctions against Russia showed the EU's solidarity with Ukraine and has increased its credibility. Considering the growing popularity of the EU among Ukrainian population, the EU's leverage over Ukraine has increased considerably. Positive conditionality under the Visa Liberalisation Action Plan (VLAP) and other instruments has been applied much more consistently than during the previous stages. ENP instruments have been a key factor behind establishment of the anti-corruption institutions and the launch of e-declarations. Moreover, attention has been paid to the situation of internally displaced persons (IDPs). This meant that the 2015 ENP review, which downgraded the centrality of positive conditionality under the ENP as a whole, has not affected the EU's approach to Ukraine. Moreover, the EU has strengthened negative conditionality, which serves as a guarantee against the reversal of democratic reforms. Attention to reforms has also increased under socialisation channels. At the level of broader society, the major change has been the introduction of the visa-free regime in 2017, which has considerable potential for stimulating bottom-up pressure for reforms. Assistance to the Government and civil society is also increasing.

The EU's strengthened efforts during stage IV were initially prompted by the Russia-Ukraine conflict. The level of the EU's engagement with democratic reforms in Ukraine has continued to correlate with the level of instability in the country, similarly as during the previous stages. This approach is paradoxical. It suggests that in order to gain the EU's attention, Ukraine must experience crises, while in times of relative peace and stability (as during early stage II), the EU supports the status quo. Thus, the major factor weakening the potential of the ENP in relation to Ukraine is

the policy's contradictory nature: it cannot be a successful transformation policy and a successful alternative to enlargement at the same time.

The dynamic of reforms in Ukraine now depends on the political will of leaders that will come to power following the 2019 elections. Three main recommendations can be made regarding the EU's approach to the promotion of democracy, the rule of law and human rights in Ukraine during a future stage V. First, the EU should continue enforcing a strict positive conditionality approach. If necessary, negative conditionality should be used in order to ensure the irreversibility of reforms. Secondly, the EU should take into account the long-standing problems regarding democracy, the rule of law and human rights. During stages II-III the EU focused predominantly on elections. In contrast, during stage IV it paid attention to structural problems by emphasising the need for the fight against corruption, reform of the judiciary and decentralisation. This was a welcome shift in approach and it should continue. Thirdly, more attention should be paid to socialisation. In the post-Maidan society, the values of democracy, the rule of law and human rights are associated mainly with the EU. Thus, the EU should increase support for civil society in promoting these values and ensure that its overall approach towards Ukraine is principled and consistent.

Bibliography

Primary sources

EC/EU Treaties

Consolidated Version of the Treaty on European Union [2012] OJ C326/13.

Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47.

Consolidated Version of the Treaty on European Union [2006] OJ C321E/5.

Consolidated Version of the Treaty Establishing the European Community [2006] OJ C321E/37.

Single European Act [1987] OJ L169/1.

Treaty Establishing the European Economic Community, 25.03.1957.

EU-Ukraine agreements

Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part [2014] OJ L161/3.

Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Ukraine, of the other part [1998] OJ L49/3.

Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Ukraine, of the other part [1995] OJ L311/2.

Agreement between the European Union and Ukraine amending the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas [2013] OJ L168/11.

Agreement between the European Community and Ukraine on the facilitation of the issuance of visas [2007] OJ L332/68.

Cases and Opinions

Case 12/86 *Demirel v Stadt Schwäbisch Gmünd* [1987] ECR 3719, para 9.

Opinion 2/94 *Accession by the Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms* [1996] ECR I-1759.

Ukraine v Russian Federation, Application Instituting Proceedings at the ICJ, 16.01.2017.

Ukraine v Russian Federation, ICJ Order on Provisional Measures, 19.04.2017.

Tsezar and Others v Ukraine, ECHR Application 73590/14 et al, 13.02.2018.

Khlebik v Ukraine, ECHR Application 2945/16, 25.07.2017.

Vyerentsov v Ukraine, ECHR Application 20372/11, 11.04.2013.

EU official documents

Regulation (EU) 2017/1566 on the introduction of temporary autonomous trade measures for Ukraine supplementing the trade concessions available under the Association Agreement [2017] OJ L254/1.

Regulation (EU) No 2017/850 amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (Ukraine) [2017] OJ L133/1.

Regulation (EU) No 1150/2014 amending Regulation (EU) No 374/2014 on the reduction or elimination of customs duties on goods originating in Ukraine [2014] OJ L313/1.

Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2014] OJ L229/1.

Council Regulation (EU) No 692/2014 concerning restrictions on the import into the Union of goods originating in Crimea and Sevastopol, in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/9.

Regulation (EU) No 374/2014 on the reduction or elimination of customs duties on goods originating in Ukraine [2014] OJ L118/1.

Council Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L078/6.

Regulation No 232/2014 establishing a European Neighbourhood Instrument [2014] OJ L77/27.

Council Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine [2014] OJ L66/1.

Regulation No 1889/2006 on establishing a financial instrument for the promotion of democracy and human rights worldwide [2006] OJ L386/1.

Regulation (EC) No 1638/2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument [2006] OJ L310/1.

Council Regulation No 99/2000 concerning the provision of assistance to the partner states in Eastern Europe and Central Asia [2000] OJ L12/1.

Council Regulation No 1488/96 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean Partnership [1996] OJ L189/1.

Council Regulation No 1279/96 concerning the provision of assistance to economic reform and recovery in the New Independent States and Mongolia [1996] OJ L165/1.

Council Regulation No 2053/93 concerning the provision of technical assistance to economic reform and recovery in the independent states of the former Soviet Union and Mongolia [1993] OJ L187/1.

Council Regulation No 2157/91 concerning the provision of technical assistance to economic reform and recovery in the Union of Soviet Socialist Republics [1991] OJ L201/2.

Decision (EU) 2018/947 providing further macro-financial assistance to Ukraine [2018] OJ L171/11.

Decision (EU) 2015/601 providing macro-financial assistance to Ukraine [2015] OJ L100/1.

Council Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2014] OJ L229/13.

Council Decision 2014/486/CFSP on the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine) [2014] OJ L217/42.

Council Decision 2014/386/CFSP concerning restrictions on goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L183/70.

Council Decision 2014/215/EU providing macro-financial assistance to Ukraine [2014] OJ L111/85.

Council Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L078/16.

Council Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine [2014] OJ L66/30.

Decision 388/2010/EU providing macro-financial assistance to Ukraine [2010] OJ L179/1.

Council Decision 2002/639/EC providing supplementary macro-financial assistance to Ukraine [2002] OJ L209/22.

Council Decision 98/592/EC providing supplementary macro-financial assistance for Ukraine [1998] OJ L284/45.

Council Decision 95/442/EC providing further macro-financial assistance for Ukraine [1995] OJ L258/63.

Decision of the Heads of State or Government of the 28 Member States of the European Union, meeting within the European Council, on the EU-Ukraine Association Agreement, annexed to European Council Conclusions on Ukraine, 15.12.2016.

European Council Conclusions, 28.06.2018.

European Council Conclusions, 19-20.03.2015.

European Council Conclusions, 30.08.2014.

European Council Conclusions on Ukraine, 20.03.2014.

European Council, Statement of the Heads of State or Government on Ukraine, 06.03.2014.

Helsinki European Council Conclusions, 10-11.12.1999.

Copenhagen European Council Conclusions, 21-22.06.1993.

Council Conclusions on Ukraine, Foreign Affairs Council, 17.03.2014.

Council Conclusions on Ukraine, Foreign Affairs Council, 03.03.2014.

Council Conclusions on Ukraine, Foreign Affairs Council, 20.02.2014.

Council Conclusions on Ukraine, Foreign Affairs Council, 10.12.2012.

Council Conclusions, 08.10.2002.

Joint Communication, ‘Eastern Partnership – 20 Deliverables for 2020’, SWD (2017) 300, 09.06.2017.

Joint Communication, ‘Review of the European Neighbourhood Policy’, JOIN (2015) 50, 18.11.2015.

Joint Communication, ‘European Neighbourhood Policy: Working towards a Stronger Partnership’, JOIN (2013) 4, 20.03.2013.

Joint Communication, ‘A New Response to a Changing Neighbourhood: A Review of the European Neighbourhood Policy’, COM (2011) 303, 25.05.2011.

Joint Communication, ‘A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean’, COM (2011) 200, 08.03.2011.

Commission, ‘Eastern Partnership’, COM (2008) 823, 03.12.2008.

Commission, ‘Barcelona Process: Union for the Mediterranean’, COM (2008) 319, 20.05.2008.

Commission, ‘On Strengthening the European Neighbourhood Policy’, COM (2006) 726, 04.12.2006.

Commission, ‘European Neighbourhood Policy Strategy Paper’, COM (2004) 373, 12.05.2004.

Commission, ‘Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours’, COM (2003) 104, 11.03.2003.

Prodi, ‘A Wider Europe – A Proximity Policy as the Key to Stability’, SPEECH/02/619, 5-6.12.2002.

Patten and Solana, Letter on Wider Europe, 07.08.2002.

Commission, ‘Principles for the implementation of a Governance Facility under ENPI’, 2008.

‘Shared Vision, Common Action: A Stronger Europe’, A Global Strategy for the European Union’s Foreign and Security Policy, June 2016 (hereinafter ‘EU Global Strategy’).

‘A Secure Europe in a Better World’, European Security Strategy, 12.12.2003.

Commission, ‘White Paper on the Future of Europe: Reflections and Scenarios for the EU27 by 2025’, COM (2017) 2025, 01.03.2017.

Proposal for a Regulation on the introduction of temporary autonomous trade measures for Ukraine supplementing the trade concession available under the Association Agreement, COM (2016) 631, 29.09.2016.

Proposal for a Regulation laying down general provisions for Macro-Financial Assistance to third countries, COM (2011) 396, 04.07.2011.

Commission, Report on the implementation of macro-financial assistance to third countries in 2017, COM (2018) 511, 29.06.2018.

Commission, Report on the implementation of macro-financial assistance to third countries in 2016, COM (2017) 321, 16.06.2017.

Commission, Ex-ante evaluation statement on EU macro-financial assistance to Ukraine, accompanying Proposal for a Decision providing further macro-financial assistance to Ukraine, SWD (2018) 66, 09.03.2018.

Commission, Ex-ante evaluation statement on EU macro-financial assistance to Ukraine, accompanying Proposal for a Decision providing macro-financial assistance to Ukraine, SWD (2015) 1, 08.01.2015.

Commission, Explanatory Memorandum to the Proposal for a Decision providing further macro-financial assistance to Ukraine, COM (2018) 127, 09.03.2018.

Commission, Background analysis per beneficiary country, accompanying report on the implementation of macro-financial assistance to third countries in 2014, SWD (2015) 115 final, 11.06.2015.

Commission, 'Support Package for Ukraine', 05.03.2014, 2.

Commission Implementing Decision on a special measure 2014 in favour of Ukraine to be financed from the general budget of the European Union, C (2014) 2907, 29.04.2014.

Commission, 'Furthering Human Rights and Democracy Across the Globe', 2007.

Commission, 'Europe and the Challenge of Enlargement', Bull EU 3/1992, 11.

Commission, 'Human Rights, Democracy and Development Cooperation Policy', SEC (91) 61, 25.03.1991.

Commission, 'Action Plan for Ukraine', COM (96) 593, 20.11.1996.

Common Position 94/779/CFSP on the objectives and priorities of the European Union towards Ukraine [1994] OJ L313/1.

Common Strategy 1999/877/CFSP on Ukraine [1999] OJ L331/1.

Common Strategy 2003/897/CFSP amending Common Strategy 1999/877/CFSP on Ukraine in order to extend the period of its application [2003] OJ L333/96.

Common Strategy 1999/414/CFSP on Russia [1999] OJ L157/1.

Joint Statement of the Community and Member States concerning guidelines on the recognition of new States in Eastern Europe and in the Soviet Union, 16.12.1991, Bull EC 12/1991.

Joint Statement of the Community and Member States concerning recognition of former Soviet Republics, 31.12.1991, Bull EC 12/1991.

EEAS, Statement by the Spokesperson on the continuous detention of the Ukrainian film director Oleg Sentsov, 10.08.2018.

Declaration by the High Representative on behalf of the EU on the occasion of the 4th anniversary of the downing of Malaysian Airlines Flight MH17, Press release 473/18, 17.07.2018.

Statement by High Representative Ashton and Commissioner Füle on last night's events in Ukraine, MEMO/13/1077, 30.11.2013.

'Remarks by High Representative/Vice President Mogherini on breaches of human rights, democracy and the rule of law in Moldova at the European Parliament plenary session', Presse 180705_3, 05.07.2018.

European Parliament, Resolution on the situation in the Sea of Azov (2018/2870(RSP)), 25.10.2018.

European Parliament Resolution on the situation in Ukraine (P7_TA(2012)0507), 13.12.2012.

European Parliament Resolution on the current developments in Ukraine (P7_TA(2011)0472), 27.10.2011.

European Parliament Recommendation to the Council on a negotiation mandate for a new enhanced agreement between the European Community and its Member States, of the one part, and Ukraine, of the other part (P6_TA(2007)0355), 12.07.2007.

European Parliament Resolution on the results of the Ukraine elections (P6_TA(2005)0009), 13.01.2005.

European Court of Auditors, 'EU Assistance to Ukraine', Special Report No 32, December 2016.

Ukrainian legislation and official documents

Constitution of Ukraine, 28.06.1996.

Parliament of Ukraine, Act of Declaration of Independence of Ukraine, 24.08.1991.

Law of Ukraine 'On the approval of the Decree of the President on the introduction of martial law', No 2630-VIII, 26.11.2018.

Law of Ukraine 'On the foundations of internal and external policy', No 2411-VI, as amended on 08.07.2018.

Law of Ukraine ‘On the national security of Ukraine’, No 2469-VIII, 21.06.2018.

Law of Ukraine ‘On the foundations of internal and external policy’, No 2411-VI, 01.07.2010.

Parliament of Ukraine, ‘Declaration of recognition of the jurisdiction of the ICC’, No 145-VIII, 04.02.2015.

Parliament of Ukraine, ‘Declaration of recognition of the jurisdiction of the ICC’, No 790-VII, 25.02.2014.

Parliament of Ukraine, Resolution ‘On declaration of Ukraine’s derogation from certain obligations under the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms’, No 462-VIII, 21.05.2015.

Parliament of Ukraine, Resolution ‘On the key directions of the foreign policy of Ukraine’, No 3360-XII, 02.07.1993.

President of Ukraine, Decree ‘On the adoption of Strategy of Development – Ukraine 2020’, No 5/2015, 12.01.2015.

President of Ukraine, Edict ‘On the national plan on the implementation of the EU-Ukraine VLAP’, No 494/2011, 22.04.2011.

President of Ukraine, Decree ‘On the Programme of Ukraine’s Integration to the EU’, No 1072/2000, 14.09.2000.

President of Ukraine, Decree ‘On the Strategy of Ukraine’s Integration to the European Union’, No 615/98, 11.06.1998.

Cabinet of Ministers of Ukraine, Resolution ‘On the implementation of the EU-Ukraine Association Agreement’, No 1106, 25.10.2017.

Cabinet of Ministers of Ukraine, Resolution ‘On the implementation of the EU-Ukraine Association Agreement’, No 847-p, 17.09.2014.

Cabinet of Ministers of Ukraine, Resolution ‘On the adoption of the plan of priority measures on Ukraine’s integration to the EU in 2011’, No 612-p, 29.06.2011.

Cabinet of Ministers of Ukraine, Resolution ‘On the adoption of the plan of priority measures on Ukraine’s integration to the EU in 2010’, No 1073-p, 19.05.2010.

Cabinet of Ministers of Ukraine, Order ‘On the adoption of roadmaps implementing the EU-Ukraine Action Plan in 2005’, No 117-p, 22.04.2005.

Constitutional Court of Ukraine, Conclusion No 3-в/2001, 11.07.2001.

Governmental Office for Coordination of European and Euro-Atlantic Integration/Office of Vice Prime Minister of Ukraine for European and Euro-Atlantic

Integration, ‘Report on Implementation of the Association Agreement between Ukraine and the European Union’, 2018.

Joint documents and ENP reports

EU-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement, 16.03.2015.

EU-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement, 24.06.2013.

EU-Ukraine Visa Liberalisation Action Plan, 22.11.2010.

EU-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement, 23.11.2009.

List of the EU-Ukraine Association Agenda priorities for 2010, 26.01.2010, 1-2. Available at: <http://www.fp6-nip.kiev.ua/assets/Ukraine_EU/2010associationagendaprioritiesen.pdf> [accessed 01.03.2019].

List of the EU-Ukraine Association Agenda priorities for 2011-2012, 20.05.2011, 1-4. Available at: <http://www.eeas.europa.eu/archives/docs/ukraine/docs/2011_12_eu_ukraine_priorities_en.pdf> [accessed 01.03.2019].

EU-Ukraine Action Plan, 21.02.2005.

Additional Measures to the 2005 EU-Ukraine Action Plan, Annex to the Eighth meeting of the EU-Ukraine Cooperation Council, 6428/05 (Presse 37), 21.02.2005.

Progress Report Ukraine 2005-2006, SEC (2006) 1505, 04.12.2006.

Progress Report Ukraine 2007, SEC (2008) 402, 03.04.2008.

Progress Report Ukraine 2008, SEC (2009) 515, 23.04.2009.

Progress Report Ukraine 2009, SEC (2010) 524, 12.05.2010.

Progress Report Ukraine 2010, SEC (2011) 646, 25.05.2011.

Progress Report Ukraine 2011, SWD (2012) 124, 15.05.2012.

Progress Report Ukraine 2012, SWD (2013) 84, 20.03.2013.

Progress Report Ukraine 2013, SWD (2014) 96, 27.03.2014.

Progress Report Ukraine 2014, SWD (2015) 74, 25.03.2015.

Association Implementation Report Ukraine 2015-2016, SWD (2016) 446, 09.12.2016.

Association Implementation Report Ukraine 2017, SWD (2017) 376, 14.11.2017.

Association Implementation Report Ukraine 2018, SWD (2018) 462, 07.11.2018.

First Joint Evaluation Report on the implementation of the EU-Ukraine AP, March 2008.

First progress report on the implementation by Ukraine of the VLAP, SEC (2011) 1076, 16.09.2011.

Second progress report on the implementation by Ukraine of the VLAP, SWD (2012) 10, 09.02.2012.

Third progress report on the implementation by Ukraine of the VLAP, COM (2013) 809, 15.11.2013.

Fourth progress report on the implementation by Ukraine of the VLAP, COM (2014) 336, 27.05.2014.

Fifth progress report on the implementation by Ukraine of the VLAP, COM (2015) 200, 08.05.2015.

Sixth progress report on the implementation by Ukraine of the VLAP, COM (2015) 905, 18.12.2015.

First Report under the Visa Suspension Mechanism, COM (2017) 815, 20.12.2017.

Second Report under the Visa Suspension Mechanism, COM (2018) 856, 19.12.2018.

EU-Ukraine Summit, Joint Press Release, 12113/98 (Presse 343), 16.10.1998.

EU-Ukraine Summit, Joint Press Communiqué, 10391/99 (Presse 244), 23.07.1999.

EU-Ukraine Summit, Joint Statement, 11772/01 (Presse 315), 11.09.2001.

EU-Ukraine Summit, Joint Statement, 10607/02 (Presse 195), 04.07.2002.

EU-Ukraine Summit, Joint Statement, 13091/03 (Presse 286), 07.10.2003.

EU-Ukraine Summit, Joint Press Release, 10765/04 (Presse 210), 08.07.2004.

EU-Ukraine Summit, Joint Statement, 15222/05 (Presse 337), 01.12.2005.

EU-Ukraine Summit, Joint Press Statement, 14604/06 (Presse 297), 27.10.2006.

EU-Ukraine Summit, Joint Statement, 12927/07 (Presse 199), 14.09.2007.

EU-Ukraine Summit, Joint Declaration, 12812/08 (Presse 247), 09.09.2008.

EU-Ukraine Summit, Joint Statement, 17145/09 (Presse 366), 04.12.2009.

EU-Ukraine Summit, Joint Press Statement, 16691/10 (Presse 312), 22.11.2010.

EU-Ukraine Summit, Joint Statement, 18835/11 (Presse 513), 19.12.2011.

EU-Ukraine Summit, Joint Statement, 6811/13 (Presse 72), 25.02.2013.

EU-Ukraine Summit, Joint Statement, 27.04.2015.

EU-Ukraine Summit, Joint Statement, Press release 439/18, 09.07.2018.

First Meeting of the EU-Ukraine Cooperation Council, 959498 (Presse 217), 09.06.1998.

Fifth Meeting of the EU-Ukraine Cooperation Council, 7026/02 (Presse 64), 11.03.2002.

Seventh meeting of the EU-Ukraine Cooperation Council, 9259/04 (Presse 151), 18.05.2004.

Ninth meeting of the EU-Ukraine Cooperation Council, 10047/05 (Presse 146), 13.06.2005.

Tenth meeting of the EU-Ukraine Cooperation Council, 12778/06 (Presse 254), 14.09.2006.

Eleventh meeting of the EU-Ukraine Cooperation Council, 11003/07 (Presse 142), 18.06.2007.

Twelfth meeting of the EU-Ukraine Cooperation Council, 7516/08 (Presse 71), 11.03.2008.

Thirteenth meeting of the EU-Ukraine Cooperation Council, 11051/09 (Presse 180), 16.06.2009.

Fourteenth meeting of the EU-Ukraine Cooperation Council, 11102/10 (Presse 181), 14.06.2010.

Fifteenth meeting of the EU-Ukraine Cooperation Council, 9993/12 (Presse 206), 15.05.2012.

Sixteenth meeting of the EU-Ukraine Cooperation Council, 11471/13 (Presse 289), 24.06.2013.

First meeting of the EU-Ukraine Association Council, Joint Press Release (Presse 653), 15.12.2014.

Second meeting of the EU-Ukraine Association Council, Joint Press Release 897/15, 07.12.2015.

Third meeting of the EU-Ukraine Association Council, Joint Press Release 797/16, 19.12.2016.

Fourth meeting of the EU-Ukraine Association Council, Joint Communiqué 760/17, 08.12.2017.

Fifth meeting of the EU-Ukraine Association Council, Joint Press Statement 809/18, 17.12.2018.

Eighth meeting of the EU-Ukraine Parliamentary Association Committee, Final statement and recommendations, 17-18.09.2018.

Joint Declaration of the Eastern Partnership Summit, Prague, 07.05.2009.

Joint Declaration of the Eastern Partnership Summit, Warsaw, 30.09.2011.

Joint Declaration of the Eastern Partnership Summit, Vilnius, 29.11.2013.

Joint Declaration of the Eastern Partnership Summit, Riga, 22.05.2015.

Joint Declaration of the Eastern Partnership Summit, Brussels, 24.11.2017.

Ukraine Draft TACIS Indicative Programme 2000-2003.

Ukraine TACIS Action Programme 2000.

Ukraine TACIS National Indicative Programme 2004-2006.

Ukraine ENPI Country Strategy Paper 2007-2013.

Ukraine ENPI National Indicative Programme 2007-2010.

Ukraine ENPI National Indicative Programme 2011-2013.

EuroNest Parliamentary Assembly, 'Resolution on the situation of Yuliya Tymoshenko', 03.04.2012.

Memorandum of Understanding between the EU and Ukraine on the macro-financial assistance to Ukraine, March 2013.

Memorandum of Understanding between the EU and Ukraine on the macro-financial assistance for Ukraine, May 2014.

Memorandum of Understanding between the EU and Ukraine on the macro-financial assistance for Ukraine, May 2015.

Memorandum of Understanding between the EU and Ukraine on the macro-financial assistance for Ukraine, 14.09.2018.

EU-Moldova Action Plan, 22.02.2005.

EU-Moldova Association Agenda to prepare and facilitate the implementation of the Association Agreement, 26.06.2014.

EU-Moldova Association Agenda to prepare and facilitate the implementation of the Association Agreement, 04.08.2017.

EU-Georgia Association Agenda to prepare and facilitate the implementation of the Association Agreement, 26.06.2014.

EU-Georgia Association Agenda to prepare and facilitate the implementation of the Association Agreement, 20.11.2017.

Action Plan on Justice and Home Affairs in Ukraine [2003] OJ C77/1.

Other international / official documents

Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part [2014] OJ L260/4.

Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part [2014] OJ L261/4.

Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part [1997] OJ L397/3.

Ukraine-Russia Treaty on the Status and Conditions of the Black Sea Fleet of the Russian Federation on the Territory of Ukraine, 1997.

Ukraine-Russia Treaty on the Black Sea Fleet of the Russian Federation on the Territory of Ukraine, 2010.

UN General Assembly, Resolution No 68/262 ‘Territorial Integrity of Ukraine’, UN Doc. A/RES/68/262, 27.03.2014.

Geneva Joint Statement on Ukraine, 17.04.2014. Available at: <https://geneva.usmission.gov/2014/04/18/text-of-the-geneva-statement-on-ukraine-released-by-the-us-eu-ukraine-and-russia/> [accessed 01.03.2019].

Protocol on the results of consultations of the Trilateral Contact Group (Minsk I), 05.09.2014. Available at: <http://www.osce.org/home/123257> [accessed 01.03.2019].

Package of Measures for the Implementation of the Minsk Agreements (Minsk II), 12.02.2015. Available at: <http://www.osce.org/cio/140156> [accessed 01.03.2019].

'Agreement on the settlement of the crisis in Ukraine', 21.02.2014 (in Ukrainian). Available at: <https://www.pravda.com.ua/articles/2014/02/21/7015533/> [accessed 01.03.2019].

Parliamentary Assembly of the Council of Europe, Resolution No 1990 (2014) 'Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation', 10.04.2014.

Parliamentary Assembly of the Council of Europe, Resolution No 1244 (2001) 'Honouring of obligations and commitments of Ukraine', 26.04.2001.

Parliamentary Assembly of the Council of Europe, Resolution No 1179 (1999) 'Honouring of obligations and commitments by Ukraine', 27.01.1999.

Parliamentary Assembly of the Council of Europe, Opinion No 190 (1995) 'Application by Ukraine for membership of the Council of Europe', 26.09.1995.

NATO Bucharest Summit Declaration, Press Release (2008) 049, 03.04.2008.

Helsinki Final Act, Conference on Security and Cooperation in Europe, 1975.

Charter of Paris for a New Europe, November 1990.

European Charter of Local Self-Government, Council of Europe, European Treaty Series No 122, 15.10.1985.

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/57/199, 18.12.2002.

Rome Statute of the International Criminal Court, 2187 UNTS 38544.

Principles relating to the Status of National Human Rights Institutions (Paris Principles), adopted by the UN General Assembly Resolution 48/134, 20.12.1993.

Letter from Ron van Rooden, the IMF Mission Chief to Ukraine, to Ihor Rainin, the Head of the Presidential Administration of Ukraine, 11.01.2018. Available at: <https://www.eurointegration.com.ua/files/9/1/91f3737-letter-imf-anticorruption.pdf> [accessed 01.03.2019].

'List of candidates for the Public Council of International Experts', 14.09.2018. Available at: <https://www.vkksu.gov.ua/userfiles/doc/lystvidMO.pdf> [accessed 01.03.2019].

President of the Russian Federation, Decree ‘On the adoption of the Concept of external policy’, No 640, 30.11.2016.

Reports / opinions of international organisations

Committee of the Rights of the Child, ‘Second periodic reports of States parties due in 1998: Ukraine’, CRC/C/70/Add.11, 18.05.2001.

Council of Europe, Committee for the Prevention of Torture, ‘Report to the Ukrainian Government on the Visit to Ukraine Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 14 November to 6 December 2002’, CPT/Inf (2004) 32, 01.12.2004.

Registry of the European Court of Human Rights, Annual Report 2004.

Registry of the European Court of Human Rights, Annual Report 2009.

Registry of the European Court of Human Rights, Annual Report 2013.

Registry of the European Court of Human Rights, Annual Report 2017.

Venice Commission, Opinion No 339/2005 ‘On the Amendments to the Constitution of Ukraine Adopted on 8.12.2004’, 10-11.06.2005.

Venice Commission, Opinion No 599/2010 ‘On the Constitutional Situation in Ukraine’, 17-18.12.2010.

Venice Commission, Opinion No 896/2017 ‘On Ukraine’s draft law on anti-corruption courts and the draft law on amendments to the law on the judicial system and the status of judges’, 06-07.10.2017.

Venice Commission, Joint Opinion No 588/2010 ‘On On the law amending certain legislative acts of Ukraine in relation to the prevention of abuse of the right to appeal’, 15-16.10.2010.

Venice Commission, Opinion No 705/2012 ‘On the Law on National Referendum of Ukraine’, 14-15.06.2013.

Venice Commission and OSCE/ODIHR, Joint Opinion No 734/2013 ‘On Draft Amendments to Legislation on the Election of People’s Deputies of Ukraine’, 11-12.10.2013.

Venice Commission, Directorate for Human Rights, Directorate General for Human Rights and the Rule of Law, Joint Opinion No 735/2013 ‘On the Draft Law on the Public Prosecutor’s Office of Ukraine’, 11-12.10.2013.

Venice Commission, Opinion No 722/2013 ‘On the Draft Law on the Amendments to the Constitution, Strengthening the Independence of Judges and on the Changes to

the Constitution Proposed by the Constitutional Assembly of Ukraine', 14-15.06.2013.

OSCE/ODIHR, 'Ukraine: parliamentary elections of 28 October 2012', Final Report, 03.01.2013.

OSCE/ODIHR, 'Ukraine: presidential elections of 31 October and 14 November 1999', Final Report, 07.03.2000.

OSCE/ODIHR, 'Ukraine: parliamentary elections of 29 March 1998', Final Report, 30.04.1998.

OSCE/ODIHR, 'Ukraine: parliamentary elections of 31 March 2002', Final Report, 27.05.2002.

OSCE/ODIHR, 'Ukraine: presidential election of 31 October, 21 November and 26 December 2004', Final Report, 11.05.2005.

OSCE/ODIHR, 'Ukraine: early parliamentary elections of 25 October 2014', Final Report, 19.12.2014.

OSCE/ODIHR, 'Ukraine: early presidential election of 25 May 2014', Final Report, 30.06.2014.

OSCE/ODIHR, 'Ukraine: parliamentary elections of 26 March 2006', Final Report, 23.06.2006.

OSCE/ODIHR, 'Ukraine: parliamentary elections of 28 October 2012', Final Report, 03.01.2013.

OSCE/ODIHR, 'Ukraine: pre-term parliamentary elections of 30 September 2007', Final Report, 20.12.2007.

GRECO, Joint First and Second Evaluation Rounds, Evaluation Report on Ukraine, Eval I-II Rep (2006) 2E, 19-23.03.2007.

UN OHCHR Report on the human rights situation in Ukraine from 16 November 2017 to 15 February 2018.

UN OHCHR, Report on the human rights situation in Ukraine from 16 August to 15 November 2018.

Amnesty International, 'Annual Report 1993'.

Amnesty International, 'Annual Report 1994'.

Amnesty International, 'Annual Report 1996'.

Amnesty International, 'Annual Report 2000'.

Amnesty International, ‘Annual Report 2003’.

Amnesty International, ‘Annual Report 2006’.

Amnesty International, ‘Annual Report 2009’.

Amnesty International, ‘Annual Report 2011’.

Amnesty International, ‘Annual Report 2012’.

Amnesty International, ‘Annual Report 2013’.

Amnesty International, ‘Annual Report 2017/2018’.

Freedom House, ‘Countries at the Crossroads 2006: Ukraine’.

Freedom House, ‘Freedom in the World 1999: Ukraine’.

Freedom House, ‘Freedom in the World 2001: Ukraine’.

Freedom House, ‘Freedom in the World 2003: Ukraine’.

Freedom House, ‘Freedom in the World 2006: Ukraine’.

Freedom House, ‘Freedom in the World 2009: Ukraine’.

Freedom House, ‘Freedom in the World 2018: Ukraine’.

Freedom House, ‘Freedom of the Press 2003: Ukraine’.

Freedom House, ‘Freedom of the Press 2006: Ukraine’.

Freedom House, ‘Freedom of the Press 2009: Ukraine’.

Freedom House, ‘Nations in Transit 2003: Ukraine’.

Freedom House, ‘Nations in Transit 2004: Ukraine’.

Freedom House, ‘Nations in Transit 2006: Ukraine’.

Freedom House, ‘Nations in Transit 2007: Ukraine’.

Freedom House, ‘Nations in Transit 2009: Ukraine’.

Freedom House, ‘Nations in Transit 2011: Ukraine’.

Freedom House, ‘Nations in Transit 2012: Ukraine’.

Freedom House, ‘Nations in Transit 2013: Ukraine’.

Freedom House, ‘Nations in Transit 2014: Ukraine’.

Freedom House, ‘Nations in Transit 2017: Ukraine’.

Freedom House, ‘Nations in Transit 2018: Ukraine’.

Freedom House, ‘Breaking Down Democracy: Goals, Strategies and Methods of Modern Authoritarians’, June 2017.

Human Rights Watch, ‘World Report 2003: Ukraine’.

Human Rights Watch, ‘World Report 2009: Ukraine’.

Human Rights Watch, ‘World Report 2011: Ukraine’.

Human Rights Watch, ‘World Report 2013: Ukraine’.

Human Rights Watch, ‘World Report 2018: Ukraine’.

ICC Office of the Prosecutor, Report on Preliminary Examination Activities 2016, 14.11.2016.

International Republican Institute, ‘Ukraine: Election Observation Report’, 27.03.1994.

Speeches / press releases

‘EU Commission approves disbursement of €600 million in assistance to Ukraine’, Press release, 16.03.2017.

Ferrero-Waldner, Commissioner for External Relations and ENP, ‘The EU and Ukraine – what lies beyond the horizon?’, SPEECH/05/257, 26.04.2005.

Füle, Commissioner for Enlargement and the ENP, Remarks to the press after the meeting with members of the Ukrainian Government, 07.02.2013. Available at: <http://europa.eu/rapid/press-release_MEMO-13-80_en.htm> [accessed 01.03.2019].

Füle, Commissioner for Enlargement and the ENP, ‘Exchange of views on South Caucasus and Ukraine’, SPEECH/10/189, 28.04.2010.

Hahn, Commissioner for the ENP and Enlargement Negotiations, ‘Reforms for investment’, *Yevropeyska Pravda*, 25.04.2018 (in Ukrainian).

Mogherini and Hahn, Joint press conference of High Representative/Vice-President and Commissioner on the European Neighbourhood Policy Review, 04.03.2015.

Poroshenko, Address to the Verkhovna Rada ‘On internal and external situation in Ukraine in 2018’, 20.09.2018.

Poroshenko, Speech at the press-conference, 14.01.2016. Available at: <https://ua.112.ua/mnenie/promova-poroshenka-na-pres-konferentsii-povnyi-tekst-285052.html> [accessed 01.03.2019].

Poroshenko, Speech at the signing ceremony of the EU-Ukraine AA, 27.06.2014 (in Ukrainian). Available at: <https://www.president.gov.ua/news/vistup-prezidenta-na-ceremoniyi-pidpisannya-ugodi-pro-asocia-33096> [accessed 01.03.2019].

Poroshenko, Speech at the Yalta European Strategy, 16.09.2016 (in Ukrainian). Available at: <https://www.eurointegration.com.ua/articles/2016/09/16/7054665/> [accessed 01.03.2019].

Registry of the European Court of Human Rights, 'ECHR puts questions to Russian Government after receiving new inter-state case from Ukraine concerning events in the Sea of Azov', Press Release, ECHR 412 (2018), 30.11.2018.

'Trade MEPs approve EU financial help for Ukraine', Press release, 17.05.2018.

Van Rompuy, President of the European Council, Press remarks following the EU-Ukraine Summit, Presse 74, 25.02.2013.

Van Rompuy, President of the European Council, Statement at the occasion of the signing ceremony of the political provisions of the Association Agreement between the European Union and Ukraine, Presse 176, 21.03.2014.

Van Rompuy, President of the European Council, Statement at the signing ceremony of the Association Agreements with Georgia, Republic of Moldova and Ukraine, Presse 375, 27.06.2014.

Secondary sources

'A day late: America may offer Ukraine weapons to repel Russia', *The Economist*, 03.08.2017.

'A Hollow Superpower', *The Economist*, 19.03.2016.

'Anti-anti-corruption measures: Ukraine's reform activists are under attack', *The Economist*, 24.08.2017.

'Disappointed suitors: The EU's Eastern Partnership', *The Economist*, 05.10.2017.

'Eastern Partnership: Civil Society Forum', Brochure (in Ukrainian). Available at: <https://www.slideshare.net/YuriMarchenko/ss-33933235> [accessed 01.03.2019].

'Europe's ring of fire', *The Economist*, 20.09.2014.

'Evaluation of the European Commission's Cooperation with Ukraine', ADE/Analysis for Economic Decisions, Volume 1: Main Report, December 2010.

'How Macron and Merkel will shape the European Union', *The Economist*, 30.09.2017.

'Interview with Andriy Veselovskyi, the Head of the Mission of Ukraine to the EU (2008-2010)', *Interfax-Ukraine*, 31.12.2008 (in Russian).

'Lithuania gives Ukraine extra time to meet EU demands', *Euractiv*, 14.05.2013.

'Model of Poroshenko', *Liga.net*, 07.06.2016 (in Russian).

'NATO Chief Calls on Russia to Remove "Thousands of Troops" From Ukraine', *Radio Free Europe/Radio Liberty*, 10.07.2017.

'New Satellite Imagery Exposes Russian Combat Troops Inside Ukraine', NATO SHAPE, 28.08.2014.

'Problems with coordination of international technical assistance in Ukraine as compared with Poland's experience', International Centre for Policy Studies et al, Report for the Presidential Administration of Ukraine, May 2001, 9 (in Ukrainian).

'Research of the Kyiv International Institute of Sociology: Southeast of Ukraine opposes federalisation and sees no problem with the Russian language', Ukraine Crisis Media Centre, 28.04.2014 (in Ukrainian).

'Russia is negotiating with Germany and France over Ukraine', *The Economist*, 22.10.2016.

'Russian Information Campaign Against the Ukrainian State and Defence Forces', Combined Analysis, NATO Strategic Communications Centre of Excellence, 2016.

‘Tarasiuk: visa-free regime will be a priority under the EuroNest PA’, *Unian,* 05.05.2011 (in Ukrainian).

‘The annual meeting under the EU-Ukraine human rights dialogue took place in Brussels’, *Yevrointehratsiynyy Portal,* 01.06.2018 (in Ukrainian).

‘The EU has changed its stance on the HACC’, *Yevropeyska Pravda,* 13.07.2017 (in Ukrainian).

‘The European Neighbourhood Policy does not satisfy a strategic objective of Ukraine’, *Unian,* 25.04.2009 (in Ukrainian).

‘The punishment continues: America’s new economic sanctions may hurt Russia’s recovery’, *The Economist,* 05.08.2017.

‘The state of implementation of associations and free trade agreements with Ukraine, Georgia and Moldova with particular focus on Ukraine and systemic analysis of key sectors’, European Parliament, Directorate-General for External Policies, Policy Department, Study, November 2017.

‘The threat from Russia’, *The Economist,* 22.10.2016.

‘Timeline – EU restrictive measures in response to the crisis in Ukraine’. Available at: <https://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/history-ukraine-crisis/> [accessed 01.03.2019].

‘Ukraine peace process: leaders agree roadmap to revive talks’, *The Guardian,* 20.10.2016.

‘Ukraine Reform Monitor: April 2017’, Carnegie Endowment for International Peace, 19.04.2017.

‘Ukraine urged the EU to differentiate the Eastern Partnership’, *Ukrayinska Pravda,* 29.05.2015 (in Ukrainian).

‘Ukraine’s divided East’, *The Economist,* 11.02.2017.

‘UN Statistics Division: Ukraine’. Available at: <http://data.un.org/en/iso/ua.html> [accessed 01.03.2019].

‘UN: the conflict in the east has claimed almost 13,000 lives’, *Deutsche Welle,* 21.01.2019 (in Ukrainian).

‘Update in criminal investigation of MH17 disaster’, Joint Investigation Team, 28.05.2018. Available at: <https://www.om.nl/onderwerpen/mh17-crash/@103196/update-criminal-0/> [accessed 01.03.2019].

Adebahr, ‘Europe’s Decisive Role to Play in Ukraine’, Carnegie Europe, 07.05.2014.

Aliboni, ‘The Geopolitical Implications of the European Neighbourhood Policy’ (2005) 10 *European Foreign Affairs Review* 1.

All-Ukrainian population census 2001. Available at: <http://2001.ukrcensus.gov.ua/eng/> [accessed 01.03.2019].

Ambrosio, ‘Insulating Russia from a Colour Revolution: How the Kremlin Resists Regional Democratic Trends’ (2007) 14:2 *Democratization* 232.

Anti-Corruption Action Centre, ‘71 candidates continue to participate in the competitions to the Anti-Corruption Court. International experts have completed their work’, 28.01.2019.

Åslund, ‘The Ancien Régime: Kuchma and the Oligarchs’, in Åslund and McFaul (eds), *Revolution in Orange: The Origins of Ukraine’s Democratic Breakthrough* (Carnegie Endowment for International Peace, 2006).

Åslund, ‘The Disastrous EU Summit on the European Partnership’, *New Atlanticist*, 26.05.2015.

Åslund, *How Ukraine Became a Market Economy and Democracy* (Peterson Institute for International Economics, 2009).

Babayan, ‘The Return of the Empire? Russia’s Counteraction to Transatlantic Democracy Promotion in its Near Abroad’ (2015) 22:3 *Democratization* 438.

Bailer, ‘The European Union’s NGO Support Program in Ukraine: Its Impact on Civil Society and the Third Sector’, Paper presented for the Fourth International Conference of the International Society for Third-Sector Research “The Third Sector: For What and For Whom?”, Trinity College, July 2000.

Balfour and Bouchet, ‘Supporting Civil Society in Eastern Europe and the Western Balkans: Old and New Challenges’, The German Marshall Fund of the United States, Policy Brief, 27.02.2018.

Balfour and Stratulat, ‘The Democratic Transformation of the Balkans’, European Policy Centre, Issue Paper No 66, November 2011.

Balfour, ‘EU Conditionality after the Arab Spring’, European Institute of the Mediterranean, IEMed Euromesco Series, No 16, June 2012.

Balfour, *Human Rights and Democracy in EU Foreign Policy: The Cases of Ukraine and Egypt* (London: Routledge, 2012).

Barbé and Johansson-Nogués, ‘The EU as a Modest “Force for Good”: the European Neighbourhood Policy’ (2008) 84:1 *International Affairs* 81.

Benedyczak, Litra and Mrozek, ‘Moldova’s Success Story: The Visa-Free Regime with the EU One Year On’, Stefan Batory Foundation, May 2015.

Bershidsky, ‘How Ukraine Weaned Itself Off Russian Gas’, *Bloomberg*, 12.01.2016.

Bezpiatchuk and Pastukhova, ‘European Hide-and-Seek’, *The Ukrainian Week*, 30.12.2011.

Birch, ‘Interpreting the Regional Effect in Ukrainian Politics’ (2000) 52:6 *Europe-Asia Studies* 1017.

Biscop, ‘The EU Global Strategy: Realpolitik with European Characteristics’, in Woischnik (ed), *Might and Right in World Politics* (Konrad Adenauer Stiftung, 2016).

Blockmans and Lazowski, ‘The European Union and its Neighbours: Questioning Identity and Relationships’, in Blockmans and Lazowski (eds), *The European Union and Its Neighbours: A Legal Appraisal of the EU’s Policies of Stabilisation, Partnership and Integration* (Asser Press, 2006).

Blockmans, ‘The 2015 ENP Review: A Policy in Suspended Animation’, Centre for European Policy Studies, Commentary, 01.12.2015.

Blockmans, ‘The EU as a Global Peacemaker’, Inaugural Lecture No 487, University of Amsterdam, 2014.

Blockmans, ‘The Obsolescence of the European Neighbourhood Policy’, Centre for European Policy Studies, 2017.

Bogomolov and Lytvynenko, ‘A Ghost in the Mirror: Russian Soft Power in Ukraine’, Chatham House, Briefing Paper, January 2012.

Bond, ‘The EU and Russia: Uncommon Spaces’, Centre for European Reform, April 2014.

Booker, ‘The EU’s to Blame for the Crisis in Ukraine’, *The Telegraph*, 24.05.2014.

Boonstra and Shapovalova, ‘The EU's Eastern Partnership: One Year Backwards’, FRIDE Working Paper No 99, May 2010.

Börzel and Lebanidze, ‘European Neighbourhood Policy at the Crossroads: Evaluating the Past to Shape the Future’, MAXCAP Working Paper 12, July 2015.

Börzel and van Hüllen, ‘One Voice, One Message, but Conflicting Goals: Cohesiveness and Consistency in the European Neighbourhood Policy’ (2014) 21:7 *Journal of European Public Policy* 1033.

Börzel, ‘The Noble West and the Dirty Rest? Western Democracy Promoters and Illiberal Regional Powers’ (2015) 22:3 *Democratization* 519.

Braithwaite, Eberhardt and Johnson, ‘The European Union’s PHARE and TACIS Democracy Programme: Compendium of Ad-hoc Projects 1993-1997’, Working Document of the European Commission, January 1998.

Brandtner and Rosas, ‘Human Rights and the External Relations of the European Community: An Analysis of Doctrine and Practice’ (1998) 9 *European Journal of International Law* 468.

Brzezinski, ‘The Premature Partnership’, *Foreign Affairs*, March/April 1994.

Buras and Pomorska, ‘Poland and the European Neighbourhood Policy’ (2006) 7:19 *Foreign Policy in Dialogue* 34.

Burlyuk and Shapovalova, ‘“Veni, Vidi, … Vici?” EU Performance and Two Faces of Conditionality Towards Ukraine’ (2017) 33:1 *East European Politics* 36.

Burlyuk and Shapovalova, ‘Ukraine’s Civic Progress and Partial Reform’, Carnegie Endowment for International Peace, 08.01.2018.

Buşcaneanu, ‘EU Democracy Promotion in Eastern ENP Countries’ (2015) 29:1 *East European Politics and Societies* 248.

Cadier, ‘Is the European Neighbourhood Policy a Substitute for Enlargement?’, in ‘The Crisis of EU Enlargement’, LSE IDEAS Special Report, November 2013.

Case and Anders, ‘Putin’s Undeclared War: Summer 2014 – Russian Artillery Strikes against Ukraine’, Bellingcat, 21.12.2016.

Casier, ‘The Clash of Integration Processes? The Shadow Effect of the Enlarged EU on its Eastern Neighbours’, in Malfliet, Verpoest and Vinokurov (eds), *The CIS, the EU and Russia: The Challenges of Integration* (Palgrave Macmillan, 2007).

Casier, ‘The EU’s Two-Track Approach to Democracy Promotion: the Case of Ukraine’ (2011) 18:4 *Democratization* 956.

Checkel, ‘International Institutions and Socialisation in Europe: Introduction and Framework’ (2005) 59 *International Organization* 801.

Checkel, ‘Why Comply? Social Learning and European Identity Change’ (2001) 55:3 *International Organization* 553.

Chromiec and Koenig, ‘Supporting Ukraine’s Difficult Path Towards Reforms’, Jacques Delors Institut, Policy Paper No 143, October 2015.

Chudowsky and Kuzio, ‘Does Public Opinion Matter in Ukraine? The Case of Foreign Policy’ (2003) 36 *Communist and Post-Communist Studies* 273.

Clapham, ‘Where is the EU’s Human Rights Common Foreign Policy, and How is it Manifested in Multilateral Fora?’, in Alston, Bustelo and Heenan (eds), *The EU and Human Rights* (OUP, 1999).

Comelli, ‘Potential and Limits of EU Policies in the Neighbourhood’, Notre Europe – Jacques Delors Institute, Policy Paper No 68, 19.02.2013.

Conley et al, ‘The Kremlin Playbook: Understanding Russian Influence in Central and Eastern Europe’, Centre for Strategic and International Studies, Report, October 2016.

Connolly, ‘The Empire Strikes Back: Economic Statecraft and the Securitisation of Political Economy in Russia’ (2016) 68:4 *Europe-Asia Studies* 750.

Copsey, ‘Europe and the Ukrainian Presidential Election of 2004’, European Parties Elections and Referendums Network, Election Briefing No 16.

Cotterrell, ‘Socio-Legal Studies, Law Schools and Legal and Social Theory’, Queen Mary University of London School of Law, Legal Studies Research Paper 126/2012.

Cownie and Bradney, ‘Socio-Legal Studies: A Challenge to the Doctrinal Approach’, in Watkins and Burton (eds), *Research Methods in Law* (Routledge, 2013).

Crawford, ‘Evaluating European Union Promotion of Human Rights, Democracy and Good Governance: Towards a Participatory Approach’ (2002) 14 *Journal of International Development* 911.

Cremona and Hillion, ‘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 No 2006/39.

Cremona, ‘Defining Competence in EU External Relations: Lessons from the Treaty Reform Process’, in Dashwood and Maresceau (eds), *Law and Practice of EU External Relations: Salient Features of a Changing Landscape* (CUP, 2008).

Cremona, ‘EU Enlargement: Solidarity and Conditionality’ (2005) 30:1 *European Law Review* 3.

Cremona, ‘Human Rights and Democracy Clauses in the EC’s Trade Agreements’, in Emiliou and O’Keeffe (eds), *The European Union and World Trade Law: After the GATT Uruguay Round* (Wiley, 1996).

Cremona, ‘The ENP and Multilateralism’, in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016).

Cremona, ‘The European Neighbourhood Policy: More than a Partnership?’, in Cremona (ed), *Developments in EU External Relations Law* (OUP, 2008).

Dabrowski, ‘Ukraine: Can Meaningful Reform Come Out of Conflict?’, Bruegel Policy Contribution, Issue 2014/08, August 2014.

Dandashly, ‘The EU Response to Regime Change in the Wake of the Arab Revolt: Differential Implementation’ (2015) 37:1 *Journal of European Integration* 37.

Dannreuther, ‘Developing the Alternative to Enlargement: The European Neighbourhood Policy’ (2006) 11 *European Foreign Affairs Review* 183.

De Baere, *Constitutional Principles of EU External Relations* (OUP, 2008), 16.

Del Sarto and Schumacher, 'From Brussels with Love: Leverage, Benchmarking and the Action Plans with Jordan and Tunisia in the EU's Democratization Policy' (2011) 18:4 *Democratization* 932.

Delcour and Kostanyan, 'Towards a Fragmented Neighbourhood: Policies of the EU and Russia and Their Consequences for the Area that Lies in between', Centre for European Policy Studies, Essay No 17, 17.10.2014.

Delcour and Wolczuk, 'Spoiler or Facilitator of Democratization? Russia's Role in Georgia and Ukraine' (2015) 22:3 *Democratization* 459.

Delcour and Wolczuk, 'Well-Meaning but Ineffective? Perceptions of the EU's Role as a Security Actor in the South Caucasus' (2018) 23:1 *European Foreign Affairs Review* 41.

Delcour, 'Does the European Neighbourhood Policy Make a Difference? Policy Patterns and Reception in Ukraine and Russia' (2007) 7 *European Political Economy Review* 118.

Delcour, 'The 2015 ENP Review: Beyond Stocktaking, the Need for a Political Strategy', College of Europe, Policy Brief, December 2015.

Diuk, 'The Triumph of Civil Society', in Åslund and McFaul (eds), *Revolution in Orange: The Origins of Ukraine's Democratic Breakthrough* (Carnegie Endowment for International Peace, 2006).

Dobriansky, 'Nationalism and Democracy in Ukraine' (1995) 3:2 *Demokratizatsiya: The Journal of Post-Soviet Democratization* 125.

Dostál, Karasova and Lidl, 'Trends of Eastern Partnership', Association for International Affairs, 2015.

Dragneva and Wolczuk, 'Between Dependence and Integration: Ukraine's Relations with Russia' (2016) 68:4 *Europe-Asia Studies* 678.

Dragneva and Wolczuk, 'The EU-Ukraine Association Agreement and the Challenges of Inter-Regionalism' (2014) 39 *Review of Central and East European Law* 213.

Dragneva and Wolczuk, *Ukraine Between the EU and Russia: The Integration Challenge* (Palgrave, 2015).

Dragneva, 'Is "Soft" Beautiful? Another Perspective on Law, Institutions, and Integration in the CIS' (2004) 29 *Review of Central and East European Law* 279.

Drik, 'If the mechanism of verification of e-declarations is not changed, the NAPC will legalise the assets of those involved in corruption instead of punishing them', *Ukrayinska Pravda Blogs*, 03.08.2017 (in Ukrainian).

Dumas and Goldner Lang, 'EU Mobility Regimes and Visa Policy towards ENP Countries', European University Institute, Working Paper RSCAS 2015/79.

Dundovich, '"New Values" for a New "Great Russia"', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016).

EC Delegation to Ukraine, 'EU Aid Programmes and EU-Ukraine Cooperation', 2009 (in Ukrainian). Available at: <http://eeas.europa.eu/archives/delegations/ukraine/documents/virtual_library/59_eu_asst_eu_ua_coop_uk.pdf> [accessed 01.03.2019].

EC Delegation to Ukraine, 'On the way to a civil society in Ukraine', 2004. Available at: <http://www.eeas.europa.eu/archives/delegations/ukraine/documents/virtual_library/12_tacis_civil_int_en.pdf> [accessed 01.03.2019].

Eeckhout, *EU External Relations Law* (OUP, 2nd edn, 2011).

Emerson and Kostanyan, 'Putin's Grand Design to Destroy the EU's Eastern Partnership and Replace It with a Disastrous Neighbourhood Policy of His Own', Centre for European Policy Studies, Commentary, 17 September 2013.

Emerson and Movchan (eds), *Deepening EU-Ukrainian Relations: What, Why and How?* (Rowman & Littlefield International, 2016).

Emerson and Movchan, 'Should Ukraine Aim to Join the EU's Customs Union?', Centre for European Policy Studies, 08.09.2017.

Emerson and Noutcheva, 'Europeanisation as a Gravity Model of Democratisation', Centre for European Policy Studies, Working Document No 214, November 2004.

Emerson et al, 'The Reluctant Debutante – The EU as Promoter of Democracy in its Neighbourhood', in Emerson (ed), *Democratisation in the European Neighbourhood* (Centre for European Policy Studies, 2005).

Emerson, 'EU-Russia Four Common Spaces and the Proliferation of the Fuzzy', Centre for European Policy Studies, Policy Brief No 71, May 2005.

Emerson, 'European Neighbourhood Policy: Strategy or Placebo?', Centre for European Policy Studies, Working Document No 215, November 2004.

Emerson, 'Is There to Be a Real European Neighbourhood Policy?', in Youngs (ed), *Global Europe Report 2: New Terms of Engagement* (Foreign Policy Centre, 2005).

Emerson, 'Policies towards Ukraine, 2005-20: Status Quo Unintended', in Tocci (ed), *The European Union as a Normative Foreign Policy Actor*, Centre for European Policy Studies, Working Document No 281, January 2008.

Emerson, 'Review of the Review – of the European Neighbourhood Policy', Centre for European Policy Studies, Commentary, 08.06.2011.

Emerson, Noutcheva and Popescu, 'European Neighbourhood Policy Two Years on: Time indeed for an "ENP plus"', Centre for European Policy Studies, Policy Brief No 126, March 2007.

Fernandes, 'EU Policies towards Russia, 1999-2007: Realpolitik Intended', in Tocci (ed), *The European Union as a Normative Foreign Policy Actor*, Centre for European Policy Studies, Working Document No 281, January 2008.

Fierro, 'Legal Basis and Scope of the Human Rights Clauses in EC Bilateral Agreements: Any Room for Positive Interpretation?' (2001) 7:1 *European Law Journal* 41, 63-68.

Fierro, *The EU's Approach to Human Rights Conditionality in Practice* (Martinus Nijhoff, 2003).

Fischer, 'Ukraine as a Regional Actor', in Fischer (ed), *Ukraine: Quo Vadis*, Institute for Security Studies, Chaillot Paper No 108, February 2008.

Fouwels, 'The European Union's Common Foreign and Security Policy and Human Rights' (1997) 15:3 *Netherlands Quarterly of Human Rights* 291.

Fraenkel, 'The EU and the Western Balkans: Do They Share a Future?', Barcelona Centre for International Affairs, March 2016.

Freyburg, 'The Two Sides of Functional Cooperation with Authoritarian Regimes: a Multi-Level Perspective on the Conflict of Objectives between Political Stability and Democratic Change' (2012) 19:3 *Democratization* 575.

Friedman, 'The Russo-Georgian War and the Balance of Power', Stratfor, 12.08.2008.

Gawrich, Melnykovska and Schweickert, 'Neighbourhood Europeanization through ENP: The Case of Ukraine' (2010) 48:5 *Journal of Common Market Studies* 1209.

Getmanchuk, 'Tracing the Origins of the Ukraine Crisis: Should the EU Share the Blame?', Friends of Europe, 15.06.2014.

Ghazaryan, 'A New Generation of Human Rights Clauses? The Case of Association Agreements in the Eastern Neighbourhood' (2015) 40:3 *European Law Review* 391.

Ghazaryan, 'The Evolution of the European Neighbourhood Policy and the Consistent Evolvement of its Inconsistencies' (2012) 7 *Review of European and Russian Affairs* 1.

Ghazaryan, 'The Fluid Concept of "EU Values" in the Neighbourhood: A Change of Paradigm from East to South?', in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016).

Ghazaryan, *The European Neighbourhood Policy and the Democratic Values of the EU* (Hart, 2014).

Gibney, ‘The Downing of MH17: Russian Responsibility?’ (2015) 15 *Human Rights Law Review* 169.

Gnatovskyy and Ioffe, ‘Twenty Years of the ECHR in Ukraine’, *Blog of the European Journal of International Law (EJIL),* 18.09.2017.

Gorbach, ‘Labor reforms and the progressive agenda in Ukraine’, Open Democracy, 17.11.2015.

Gotev, ‘EU leaders divided over Tymoshenko case’, *Euractiv,* 30.04.2013.

Grabbe, ‘European Union Conditionality and the *Acquis Communautaire*’ (2002) 23:3 *International Political Science Review* 249.

Grant, ‘Is the EU to Blame for the Crisis in Ukraine?’, Centre for European Reform, 01.06.2016.

Gressel, ‘Keeping Up Appearances: How Europe is Supporting Ukraine’s Transformation’, European Council on Foreign Relations, Report, October 2016.

Gretskiy, Treshchenkov and Golubev, ‘Russia’s Perceptions and Misperceptions of the EU Eastern Partnership’ (2014) 47 *Communist and Post-Communist Studies* 375.

Grimm and Leininger, ‘Not All Good Things Go Together: Conflicting Objectives in Democracy Promotion’ (2012) 19:3 *Democratization* 391.

Gromadzki and Wenerski, ‘A Challenge for Liberal Democracy: How to Understand the Russian Intervention in Ukraine’, Bertelsmann Stiftung, Policy Brief, October 2014.

Gromadzki et al, ‘Will the Orange Revolution Bear Fruit? EU-Ukraine Relations in 2005 and the Beginning of 2006’, Stefan Batory Foundation, May 2005.

Gromadzki, ‘The Eastern Partnership After Five Years: Time for Deep Rethinking’, European Parliament, Directorate-General for External Policies, Policy Department, 2015.

Gstöhl, ‘The Contestation of Values in the European Neighbourhood Policy: Challenges of Capacity, Consistency and Competition’, in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016).

Hallgren and Solonenko, ‘Can the European Union Help Ukraine to Succeed? Reforms, the Russian Factor and Implications for the Eastern Neighbourhood’, Heinrich Böll Stiftung, 26.12.2015.

Hanf, ‘The ENP in the Light of the New “Neighbourhood Clause” (Article 8 TEU)’, College of Europe, Research Paper in Law N0 2/2011.

Haran, ‘From Viktor to Viktor: Democracy and Authoritarianism in Ukraine’ (2011) 19:2 *Demokratizatsiya: The Journal of Post-Soviet Democratization* 93.

Harasymiw, ‘Transition to Democracy in Ukraine’ (1992) 3 *Demokratizatsiya: The Journal of Post-Soviet Democratization* 1.

Haukkala, ‘A Perfect Storm; Or What Went Wrong and What Went Right for the EU in Ukraine’ (2016) 68 *Europe-Asia Studies* 653.

Haukkala, ‘From Zero-Sum to Win-Win? The Russian Challenge to the EU’s Eastern Neighbourhood Policies’, SIEPS European Policy Analysis, 12-2009.

Haukkala, ‘The EU’s Regional Normative Hegemony Encounters Hard Realities: The Revised European Neighbourhood Policy and the Ring of Fire’, in Bouris and Schumacher (eds), *The Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy* (Palgrave Macmillan, 2016).

Haukkala, ‘The Russian Challenge to EU Normative Power: the Case of European Neighbourhood Policy’ (2008) 43:2 *International Spectator* 35.

Havlicek, ‘The Eastern Partnership at the Turn of Its Tenth Anniversary: Where Have We Come Since Prague, and Where to Go Next?’ (2018) 3:13 *UA: Ukraine Analytica* 7.

Hedenskog, ‘Crimea after the Georgian Crisis’, Swedish Defence Research Agency, November 2008.

Higgins, ‘Fake News, Fake Ukrainians: How a Group of Russians Tilted a Dutch Vote’, *The New York Times*, 16.02.2017.

Hillion and Mayhew, ‘The Eastern Partnership – Something New or Window-Dressing?’, SEI Working Paper 109, January 2009.

Hillion, ‘“Thou Shalt Love Thy Neighbour”: the Draft European Neighbourhood Policy Action Plan Between the EU and Ukraine’, in Mayhew and Copsey (eds), *Ukraine and European Neighbourhood Policy* (Sussex European Institute, 2005).

Hillion, ‘A New Framework for the Relations between the Union and Its East-European Neighbours’, in Cremona and Meloni (eds), *The European Neighbourhood Policy: A Framework for Modernisation?*, EUI Working Papers LAW 2007/21.

Hillion, ‘Institutional Aspects of the Partnership between the European Union and the Newly Independent States of the Former Soviet Union: Case Studies of Russia and Ukraine’ (2000) 37 *Common Market Law Review* 1211

Hillion, ‘Mapping-Out the New Contractual Relations between the European Union and Its Neighbours: Learning from the EU-Ukraine “Enhanced Agreement”’ (2007) 12 *European Foreign Affairs Review* 169.

Hillion, ‘Russian Federation’, in Blockmans and Lazowski (eds), *The European Union and Its Neighbours: A Legal Appraisal of the EU’s Policies of Stabilisation, Partnership and Integration* (Asser Press, 2006).

Hillion, ‘The Copenhagen Criteria and their Progeny’, in Hillion (ed), *EU Enlargement: A Legal Approach* (Hart, 2004).

Hillion, ‘The EU Neighbourhood Competence under Article 8 TEU’, Notre Europe – Jacques Delors Institute, Policy Paper No 69, 19.02.2013.

Hillion, ‘The EU’s Neighbourhood Policy towards Eastern Europe’, in Dashwood and Maresceau (eds), *Law and Practice of EU External Relations: Salient Features of a Changing Landscape* (CUP, 2008).

Hoffmann-Riem, ‘The Venice Commission of the Council of Europe – Standards and Impact’ (2014) 25:2 *European Journal of International Law* 579.

Hoffmeister, ‘Changing Requirements for Membership’, in Ott and Inglis (eds), *Handbook on European Enlargement* (Asser Press, 2002).

Holden, *In Search of Structural Power: EU Aid Policy as a Global Political Instrument* (Ashgate, 2009).

Howorth, ‘“Stability on the Borders”: The Ukraine Crisis and the EU’s Constrained Policy Towards the Eastern Neighbourhood’ (2017) 55:1 *Journal of Common Market Studies* 121.

Ilko Kucheriv Democratic Initiatives Foundation and the Kyiv International Institute of Sociology, ‘European integration and public opinion survey’, September 2018 (in Ukrainian). Available at: <https://dif.org.ua/article/evropeyska-integratsiya-u-vimiri-gromadskoi-dumki> [accessed 01.03.2019].

Ilko Kucheriv Democratic Initiatives Foundation, Survey ‘Conclusions-2017: public opinion’, 27.12.2017 (in Ukrainian). Available at: <https://dif.org.ua/article/pidsumki-2017-gromadska-dumk4685> [accessed 01.03.2019].

Johansson-Nogués, ‘The (Non-)Normative Power EU and the European Neighbourhood Policy: An Exceptional Policy for an Exceptional Actor?’ (2007) 7 *European Political Economy Review* 181.

Kalinichenko, ‘Shared Values and Interests in the Conflictual Relationship between the EU and Russia’, in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016).

Kaminska, ‘The European Parliament and the Revised European Neighbourhood Policy’, in Bouris and Schumacher (eds), *The Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy* (Palgrave Macmillan, 2016), 146.

Karatnycky, ‘Meltdown in Ukraine’, *Foreign Affairs*, May/June 2001.

Karatnycky, ‘Ukraine’s Orange Revolution’, *Foreign Affairs*, March/April 2005.

Kelley, ‘International Actors on the Domestic Scene: Membership Conditionality and Socialization by International Institutions’ (2004) 58:3 *International Organization* 425.

Kelley, ‘New Wine in Old Wineskins: Promoting Political Reforms through the New European Neighbourhood Policy’ (2006) 44:1 *Journal of Common Market Studies* 29.

Khakee, ‘Assessing Democracy Assistance: Morocco’, FRIDE, May 2010.

King, ‘Human Rights in European Foreign Policy: Success or Failure for Post-modern Diplomacy?’ (1999) 10:2 *European Journal of International Law* 313.

Kirova and Freizer, ‘Civil Society Voices: How the EU Should Engage Its Eastern Neighbours’, Open Society European Policy Institute, Briefing Paper, May 2015.

Kobrinskaya, ‘The Post-Soviet Space: From the USSR to the Commonwealth of Independent States and Beyond’, in Malfliet, Verpoest and Vinokurov (eds), *The CIS, the EU and Russia: The Challenges of Integration* (Palgrave Macmillan, 2007).

Kochenov and Basheska, ‘The European Neighbourhood Policy’s Value Conditionality’, in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016).

Komarova, ‘The number of supporters of pro-Russian parties in Ukraine is steeply decreasing – the expert’, *Radio Svoboda*, 13.04.2017 (in Ukrainian).

Kopstein and Reilly, ‘Geographic Diffusion and the Transformation of the Postcommunist World’ (2000) 53:1 *World Politics* 1.

Korosteleva, ‘Change or Continuity: Is the Eastern Partnership an Adequate Tool for the European Neighbourhood?’ (2011) 25:2 *International Relations* 243.

Kostanyan and Giragosian, ‘EU-Armenian Relations: Charting a Fresh Course’, Centre for European Policy Studies, Research Report No 2017/14, November 2017.

Kostanyan and Meister, ‘Ukraine, Russia and the EU: Breaking the Deadlock in the Minsk Process’, Centre for European Policy Studies, Working Document No 423, June 2016.

Kostanyan and Orbie, ‘The EEAS’ Discretionary Power within the Eastern Partnership: in Search of the Highest Possible Denominator’ (2013) 13:1 *Southeast European and Black Sea Studies* 47.

Kostanyan and Vandecasteele, ‘The EuroNest Parliamentary Assembly: The European Parliament as a Socialiser of Its Counterparts in the EU’s Eastern Neighbourhood?’, College of Europe, EU Diplomacy Paper 05/2013.

Kostanyan and Vandecasteele, ‘The Socialisation Potential of the Eastern Partnership Civil Society Forum’ (2013) 4:2 *Eastern Journal of European Studies* 95.

Kostanyan, ‘The Civil Society Forum of the Eastern Partnership Four Years On: Progress, Challenges and Prospects’, Centre for European Policy Studies, Special Report No 81, January 2014.

Kostanyan, ‘The EEAS and the Revised European Neighbourhood Policy: What Institutional Balance?’, in Bouris and Schumacher (eds), *The Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy* (Palgrave Macmillan, 2016).

Kostanyan, ‘The European Neighbourhood Policy Reviewed: Shifting from Value-Driven to Classical Foreign Policy’, in Hug (ed), *Institutionally Blind? International Organisations and Human Rights Abuses in the Former Soviet Union* (Foreign Policy Centre, 2016).

Krastev, ‘Democracy’s “Doubles”’ (2006) 17:2 *Journal of Democracy* 52.

Krastev, ‘Russia’s Post-Orange Empire’, Open Democracy, 20.10.2005.

Krastev, ‘Russian Revisionism: Putin’s Plan for Overturning the European Order’, *Foreign Affairs*, 03.03.2014.

Kubicek, ‘Delegative Democracy in Russia and Ukraine’ (1994) 27:4 *Communist and Post-Communist Studies* 423.

Kubicek, ‘Political Conditionality and European Union’s Cultivation of Democracy in Turkey’ (2011) 18:4 *Democratization* 910.

Kubicek, ‘The European Union and Democratization in Ukraine’ (2005) 38 *Communist and Post-Communist Studies* 269.

Kubicek, ‘The European Union and Ukraine: Real Partners or Relationship of Convenience?’, in Kubicek (ed), *The European Union and Democratization* (Routledge, 2003).

Kudelia, ‘Ukraine in Context: What Happens When Authoritarians Fall’, *Foreign Affairs,* 27.02.2014.

Kulyk, ‘National Identity in Ukraine: Impact of Euromaidan and the War’ (2016) 68:4 *Europe-Asia Studies* 588.

Kuybida, ‘Reform of the judiciary: reality or imitation’, Centre of Policy and Legal Reform, 13.06.2017 (in Ukrainian).

Kuybida, ‘Reform of the judiciary: seven most expected events of 2017’, Centre of Policy and Legal Reform, 13.01.2017 (in Ukrainian).

Kuzio, ‘EU and Ukraine: a Turning Point in 2004?’, EU Institute for Security Studies, Occasional Paper 47, November 2003.

Kuzio, ‘Everyday Ukrainians and the Orange Revolution’, in Åslund and McFaul (eds), *Revolution in Orange: The Origins of Ukraine’s Democratic Breakthrough* (Carnegie Endowment for International Peace, 2006).

Kuzio, ‘National Identity and Civil Society in Ukraine’, *Radio Free Europe/Radio Liberty Newsline*, 30.01.2002.

Kuzio, ‘Political Culture and Democracy: Ukraine as an Immobile State’ (2011) 25:1 *East European Politics and Societies* 88.

Kuzio, ‘Ukraine between a Constrained EU and Assertive Russia’ (2017) 55:1 *Journal of Common Market Studies* 103.

Kuzio, ‘Ukraine’s Relations with the West since the Orange Revolution’, European Security, April 2012.

Kuzio, ‘Ukraine’s Relations with the West: Disinterest, Partnership, Disillusionment’ (2003) 12:2 *European Security* 21.

Kuzio, *Ukraine: Democratization, Corruption, and the New Russian Imperialism* (Praeger, 2015).

Kuzio, *Ukraine: State and Nation Building* (Routledge, 1998).

Lada, ‘Towards a Stronger Role of Civil Society in the Eastern Partnership’, European Policy Centre, Policy Brief, July 2011.

Landaburu, ‘From Neighbourhood to Integration Policy: Are There Concrete Alternatives to Enlargement?’, Centre for European Policy Studies, Policy Brief No 95, March 2006.

Langbein and Wolczuk, ‘Convergence without Membership? The Impact of the European Union in the Neighbourhood: Evidence from Ukraine’ (2012) 19:6 *Journal of European Public Policy* 863.

Lavenex and Schimmelfennig, ‘EU Democracy Promotion in the Neighbourhood: from Leverage to Governance?’ (2011) 18:4 *Democratization* 885.

Leach, ‘Ukraine, Russia and Crimea in the European Court of Human Rights’, *Blog of the European Journal of International Law (EJIL)*, 19.03.2014.

Lefebvre, ‘France and the European Neighbourhood Policy’ (2006) 7:19 *Foreign Policy in Dialogue* 17.

Lehne, ‘Time to Reset the European Neighbourhood Policy’, Carnegie Europe, 04.02.2014.

Lehne, ‘Toward a European Neighbourhood Realpolitik?’, Carnegie Europe, 19.11.2015.

Leshchenko, ‘Sick Rada’, *Novoye Vremia,* 08.07.2017 (in Ukrainian).

Levitsky and Way, ‘International Linkage and Democratisation’ (2005) 16:3 *Journal of Democracy* 20.

Liik, ‘What Does Russia Want?’, European Council on Foreign Relations, 26.05.2017.

Lippert, ‘The Discussion on EU Neighbourhood Policy – Concepts, Reform Proposals and National Positions’, Friedrich Ebert Stiftung, July 2007.

Lough and Solonenko, ‘Can Ukraine Achieve a Reform Breakthrough?’, Chatham House, April 2016.

Lough, ‘Russia’s Energy Diplomacy’, Chatham House, May 2011.

Lough, ‘Testing Times for Ukraine’s Anti-Corruption Reforms’, Chatham House, 28.03.2017.

Lutsevych, ‘Agents of the Russian World: Proxy Groups in the Contested Neighbourhood’, Chatham House, April 2016.

Lynch, ‘Russia Faces Europe’, Institute for Security Studies, Chaillot Paper 60, May 2003.

Lynch, ‘The New Eastern Dimension of the Enlarged EU’, in Batt et al, *Partners and Neighbours: a CFSP for a Wider Europe,* Institute for Security Studies, Chaillot Paper 64, September 2003.

Lytvynenko, ‘Multi-speed Europe: what changes await the EU and how will they impact Ukraine’, *Yevropeyska Pravda,* 15.08.2017 (in Ukrainian).

Macfarlane and Menon, ‘The EU and Ukraine’ (2014) 56:3 *Survival* 95.

Magen, ‘The Shadow of Enlargement: Can the European Neighbourhood Policy Achieve Compliance?’ (2006) 12 *The Columbia Journal of European Law* 384.

Maksak, ‘Following the outsiders: how the EU sees the future of the Eastern Partnership’, *Yevropeyska Pravda,* 19.10.2017 (in Ukrainian).

March and Olsen, ‘The Institutional Dynamics of International Political Orders’ (1998) 52:4 *International Organization* 943.

Marchuk, ‘Ukraine and the International Criminal Court: Implications of the Ad Hoc Jurisdiction Acceptance and Beyond’ (2016) 49 *Vanderbilt Journal of Transnational Law* 323.

Marchuk, ‘Ukraine Takes Russia to the International Court of Justice: Will It Work?’, *Blog of the European Journal of International Law (EJIL),* 26.01.2017.

Maresceau and Montaguti, ‘The Relations between the European Union and Central and Eastern Europe: A Legal Appraisal’ (1995) 32 *Common Market Law Review* 1327.

Maresceau, ‘A Typology of Mixed Bilateral Agreements’, in Hillion and Koutrakos (eds), *Mixed Agreements Revisited: The EU and its Member States in the World* (Hart, 2010).

Maresceau, ‘EU Enlargement and EU Common Strategies on Russia and Ukraine: An Ambiguous Yet Unavoidable Connection’, in Hillion (ed), *EU Enlargement: A Legal Approach* (Hart, 2004).

Maresceau, ‘On Association, Partnership, Pre-accession and Accession’, in Maresceau (ed), *Enlarging the European Union: Relation between the EU and Central and Eastern Europe* (Longman, 1997).

McConville and Chui, ‘Introduction and Overview’, in McConville and Chui (eds), *Research Methods for Law* (Edinburgh University Press, 2007).

McFaul, ‘The Fourth Wave of Democracy and Dictatorship: Noncooperative Transitions in the Postcommunist World’ (2002) 54:2 *World Politics* 212.

McFaul, ‘Transitions from Postcommunism’ (2005) 16:3 *Journal of Democracy* 5.

McKew, ‘A killing in Kiev shows how the West continues to fail Ukraine’, *The Washington Post*, 27.06.2017.

Mearsheimer, ‘Why the Ukraine Crisis is the West’s Fault’, *Foreign Affairs*, September/October 2014.

Meloni, ‘Is the Same Toolkit Used During Enlargement Still Applicable to the Countries of the New Neighbourhood? A Problem of Mismatching Between Objectives and Instruments’, in Cremona and Meloni (eds), *The European Neighbourhood Policy: A Framework for Modernisation?*, EUI Working Papers LAW 2007/21.

Mijatović, Council of Europe Commissioner for Human Rights, ‘Paris Principles at 25: Strong National Human Rights Institutions Needed More Than Ever’, Human Rights Comment, 18.12.2018.

Milczarek and Nowak, ‘Eastern Dimension of the ENP – a New Challenge for the European Union. The Case of Ukraine’, in Cremona and Meloni (eds), *The European Neighbourhood Policy: A Framework for Modernisation?*, EUI Working Papers LAW 2007/21.

Missiroli, ‘The EU and Its Changing Neighbourhoods: Stabilisation, Integration and Partnership’, in Batt et al, *Partners and Neighbours: a CFSP for a Wider Europe*, Institute for Security Studies, Chaillot Paper 64, September 2003.

Montesano, Van der Togt and Zweers, 'The Europeanisation of Moldova: Is the EU on the Right Track?', Netherlands Institute of International Relations, Clingendael Report, July 2016.

Moravcsik and Vachudova, 'National Interests, State Power, and EU Enlargement' (2003) 17:1 *East European Politics and Societies* 42.

Morillas, 'Juncker's State of the Union: where now for multispeed Europe?', *LSE European Politics and Policy Blog*, 14.09.2017.

Motyl, 'The New Political Regime in Ukraine – toward Sultanism Yanukovych-style?', Cicero Foundation, Great Debate Paper No 10/06, July 2010.

Mungiu-Pippidi, 'EU Enlargement and Democracy Progress', in Emerson (ed), *Democratisation in the European Neighbourhood* (Centre for European Policy Studies, 2005).

Nakashima, 'Russian military was behind "NotPetya" cyber attack in Ukraine, CIA concludes', *The Washington Post*, 12.01.2018.

Nanivska, 'NGO Development in Ukraine: The Beginnings of Civil Society', in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002).

Natorski and Pomorska, 'Trust and Decision-making in Times of Crisis: The EU's Response to the Events in Ukraine' (2017) 55:1 *Journal of Common Market Studies* 54.

Natorski, 'The EU and Crisis in Ukraine: Policy Continuity in Times of Disorder?', in Bouris and Schumacher (eds), *The Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy* (Palgrave Macmillan, 2016).

Nemyria, 'The Orange Revolution: Explaining the Unexpected', in Emerson (ed), *Democratisation in the European Neighbourhood* (Centre for European Policy Studies, 2005), 56.

Nielsen and Vilson, 'The Eastern Partnership: Soft Power Strategy or Policy Failure?' (2014) 19:2 *European Foreign Affairs Review* 243.

Nowak, 'Human Rights "Conditionality" in Relation to Entry to, and Full Participation in, the EU', in Alston, Bustelo and Heenan (eds), *The EU and Human Rights* (OUP, 1999).

Onuch and Sasse, 'The Maidan in Movement: Diversity and the Cycles of Protest' (2016) 68:4 *Europe-Asia Studies* 556.

Osica, 'Ukraine and Europe: Why Ukraine Is More than Yanukovych', in Flikke (ed), *Ukraine in Europe – Europe in Ukraine* (Norwegian Institute of International Affairs, 2013).

Pace, ‘The EU’s Interpretation of the “Arab Uprisings”: Understanding the Different Visions about Democratic Change in EU-MENA Relations’ (2014) 52:5 *Journal of Common Market Studies* 969.

Parkes and Sobják, ‘Understanding EU Action during “Euromaidan”: Lessons for the Next Phase’, Polish Institute of International Affairs, Strategic File No 5(41), February 2014.

Peers, ‘EC Frameworks of International Relations: Co-operation, Partnership and Association’, in Dashwood and Hillion (eds) *The General Law of EC External Relations* (Sweet & Maxwell, 2000).

Petrov and Ryabov, ‘Russia’s Role in the Orange Revolution’, in Åslund and McFaul (eds), *Revolution in Orange: The Origins of Ukraine’s Democratic Breakthrough* (Carnegie Endowment for International Peace, 2006).

Petrov and Serdyuk, ‘Ukraine: the Quest for Democratization between Europe and Russia’, in Magen and Morlino (eds), *International Actors, Democratization and Rule of Law: Anchoring Democracy?* (Routledge, 2009).

Petrov and Van Elsuwege, ‘What Does the Association Agreement Mean for Ukraine, the EU and its Member States? A Legal Appraisal’, in Heringa (ed), *Het eerste raadgevend referendum. Het EU-Oekraïne Associatieakkoord* (Montesquieu Institute, 2016).

Petrov, ‘EU Values in Integration-Oriented Agreements with Ukraine, Moldova and Georgia’, in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016), 110.

Petrov, ‘Legal and Political Expectations of Neighbouring Countries from the ENP’, in Cremona and Meloni (eds), *The European Neighbourhood Policy: A Framework for Modernisation?*, EUI Working Papers LAW 2007/21.

Petrov, ‘Legal Basis and Scope of the New EU-Ukraine Enhanced Agreement. Is There Any Room for Further Speculation?’, EUI Working Papers, MWP 2008/17.

Petrov, ‘Quid Russian Democracy?’, in Emerson (ed), *Democratisation in the European Neighbourhood* (Centre for European Policy Studies, 2005).

Petrov, ‘The Partnership and Co-operation Agreements with the Newly Independent States’, in Ott and Inglis (eds), *Handbook on European Enlargement* (Asser Press, 2002).

Petrova and Raube, ‘Euronest: What Drives Inter-Parliamentary Cooperation in the Eastern Partnership?’ (2016) 21:1 *European Foreign Affairs Review* 35.

Pidluska, ‘Ukraine and the EU: What Prospects for Integration’, in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002).

Piontek, ‘Ukraine’, in Blockmans and Lazowski (eds) *The European Union and Its Neighbours: A Legal Appraisal of the EU’s Policies of Stabilisation, Partnership and Integration* (Asser Press, 2006).

Pishchikova and Ogryzko, ‘Civic Awakening: The Impact of Euromaidan on Ukraine’s Politics and Society’, FRIDE, Working Paper No 124, July 2014.

Poli, ‘Promoting EU Values in the Neighbourhood through EU Financial Instruments and Restrictive Measures’, in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016).

Polyakova et al, ‘The Kremlin’s Trojan Horses’, Atlantic Council, Report, November 2016.

Popescu and Wilson, ‘The Limits of Enlargement-Lite: European and Russian Power in the Troubled Neighbourhood’, European Council on Foreign Relations, June 2009.

Popescu, ‘EU and the Eastern Neighbourhood: Reluctant Involvement in Conflict Resolution’ (2009) 14 *European Foreign Affairs Review* 457.

Portela, ‘Sanctions against Belarus: Normative Unintended’, in Tocci (ed), *The European Union as a Normative Foreign Policy Actor*, Centre for European Policy Studies, Working Document No 281, January 2008.

Potemkina and Kaveshnikov, ‘EU and Russia in Search of Strategic Partnership’, in Maiani, Petrov and Mouliarova (eds), *European Integration Without EU Membership: Models, Experiences, Perspectives*, EUI Working Paper, Max Weber Programme, 2009/10.

Pridham, ‘EU/Ukraine Relations and the Crisis with Russia, 2013-14: A Turning Point’ (2014) 49:4 *The International Spectator* 53.

Prytula, ‘The Ukrainian Media Rebellion’, in Åslund and McFaul (eds), *Revolution in Orange: The Origins of Ukraine’s Democratic Breakthrough* (Carnegie Endowment for International Peace, 2006).

Puglisi, ‘A Window to the World? Oligarchs and Foreign Policy in Ukraine’, in Fischer (ed), *Ukraine: Quo Vadis*, Institute for Security Studies, Chaillot Paper No 108, February 2008.

Puglisi, ‘The Rise of the Ukrainian Oligarchs’ (2003) 10:3 *Democratization* 99.

Raik, ‘Promoting Democracy in the Eastern Neighbourhood – the Limits and Potential of the ENP’ (2006) 41:3 *International Spectator* 31.

Raik, ‘Promoting Democracy through Civil Society: How to Step up the EU’s Policy towards the Eastern Neighbourhood’, Centre for European Policy Studies, Working Document No 237, February 2006.

Raik, ‘The EU and the Mass Protests in the Neighbourhood: Models of Normative (In)action’ (2012) 17:4 *European Foreign Affairs Review* 553.

Razumkov Centre, ‘Assessment of the Implementation of the EU-Ukraine Action Plan in 2005-2006’ (2007) 5 *National Security and Defence* 1, 8 (in Ukrainian).

Razumkov Centre, ‘Assessment of the Implementation of the EU-Ukraine Action Plan in 2005-2007’ (2008) 6 *National Security and Defence* 6, 6-8 (in Ukrainian).

Razumkov Centre, ‘Russian-Ukrainian Conflict: Prospects and Parameters of UN Peacekeeping Mission in Donbas’, Materials of the Trilateral Expert Meeting, August 2018.

Razumkov Centre, ‘Ukraine’s European Integration: Internal Factors and External Influences’ (2013) 4/5 *National Security and Defence* 2 (in Ukrainian).

Redei and Romanyshyn, ‘Non-Parliamentary Diplomacy: The European Parliament’s Diplomatic Mission to Ukraine’ (2019) 24:1 *European Foreign Affairs Review* 61.

Reitz, ‘How to Do Comparative Law’ (1998) 46 *American Journal of Comparative Law* 617.

Rettman, ‘Italy dangles veto threat on EU’s Russia sanctions’, *EUobserver,* 25.10.2018.

Riedel and Will, ‘Human Rights Clauses in External Agreements of the EC’, in Alston, Bustelo and Heenan (eds), *The EU and Human Rights* (OUP, 1999).

Rohachuk, ‘Does Ukraine need an electoral reform?’, *Ukrayinska Pravda,* 06.11.2017 (in Ukrainian).

Romaniuk, ‘From SCSE to ATO: the stages of Russian aggression’, *Ukrayinska Pravda,* 23.08.2017 (in Ukrainian).

Romanova, ‘Sanctions and the Future of EU-Russia Economic Relations’ (2016) 68:4 *Europe-Asia Studies* 774.

Sadowski, ‘Partnership in Times of Crisis: Challenges for the Eastern European Countries’ Integration with Europe’, Centre for Eastern Studies, Point of View No 36, July 2013.

Sagan, ‘Post-Socialist Transformation, European Neighbourhood and Civil Society Networks between Poland, Russia and Ukraine: a Case of Multi-level Contingency’ (2010) 32:5 *European Integration* 439.

Samokhvalov, ‘Relations in the Russia-Ukraine-EU Triangle: “Zero-Sum Game” or Not?’, Institute for Security Studies, Occasional Paper No 68, September 2007.

Sasse, ‘Local Change in the Making in Ukraine’, Carnegie Europe, 03.10.2016.

Sasse, ‘The EU Common Strategy on Ukraine: A Response to Ukraine’s “pro-European Choice”?’, in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002).

Sasse, ‘The European Neighbourhood Policy: Conditionality Revisited for the EU’s Eastern Neighbours’ (2008) 60:2 *Europe-Asia Studies* 295.

Schaaf, ‘In Ukraine, Politicians Begin to Turn on the Activists Who Brought Them to Power’, Freedom House, 07.06.2017.

Schimmelfennig and Sedelmeier, ‘Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe’ (2004) 11:4 *Journal of European Public Policy* 661.

Schimmelfennig, ‘EU Political Accession Conditionality After the 2004 Enlargement: Consistency and Effectiveness’ (2008) 15:6 *Journal of European Public Policy* 918.

Schimmelfennig, ‘The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union’ (2001) 55:1 *International Organization* 47.

Schimmelfennig, Engert and Knobel, ‘Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey’ (2003) 41:3 *Journal of Common Market Studies* 495.

Schumacher and Bouris, ‘The 2011 Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy’, in Bouris and Schumacher (eds), *The Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy* (Palgrave Macmillan, 2016).

Senden, *Soft Law in EC Law* (Hart, 2005).

Sestanovich, ‘Ukraine’s Democratic Strengths’, *Washington Post*, 19.11.2004.

Shapoval, ‘President of Ukraine and the Executive’ (2012) 2 *Visnyk of the National Prosecution Academy of Ukraine* 44 (in Ukrainian).

Shapovalova and Shumylo, ‘Ukraine: Supporting Elusive Consolidation’, in Kucharczyk and Lovitt (eds), *Democracy’s New Champions: European Democracy Assistance after EU Enlargement* (Policy Association for an Open Society, 2008).

Shapovalova and Youngs, ‘EU Democracy Promotion in the Eastern Neighbourhood: A Turn to Civil Society?’, FRIDE, Working Paper No 115, December 2012.

Shapovalova and Youngs, ‘The EU’s efforts to promote democracy in its post-Soviet Eastern neighbours would benefit from greater engagement with civil society’, *LSE Blogs*, 29.01.2013.

Shapovalova, ‘Assessing Democracy Assistance: Ukraine’, FRIDE, May 2010.

Shapovalova, ‘How Can the Eastern Partnership Civil Society Forum Strengthen Its Advocacy Function?’, Paper commissioned by the Eastern Partnership Civil Society Forum, January 2015.

Shapovalova, ‘The New Enhanced Agreement Between the European Union and Ukraine: Will it Further Democratic Consolidation?, FRIDE, Working Paper No 62, June 2008.

Shapovalova, ‘Visa-Free Travel for the EU’s Eastern Partners: Time to Act’, FRIDE, Policy Brief No 165, November 2013.

Sherr, ‘Russia and Ukraine: A Geopolitical Turn?’, in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002).

Sherr, ‘Ukraine and Europe: Final Decision?’ (2013) 4-5 *National Security and Defence* 75.

Sherr, ‘Ukraine and Europe: Surmounting an Impasse’, in Flikke (ed), *Ukraine in Europe – Europe in Ukraine* (Norwegian Institute of International Affairs, 2013).

Sherr, ‘Ukraine and NATO: A Reviving Partnership?’, in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002).

Shevel, ‘The Parliamentary Elections in Ukraine, October 2014’ (2015) 39 *Electoral Studies* 159.

Shulga, ‘Almost EU membership: what did Poroshenko offer and what else can Ukraine do’, *Yevropeyska Pravda,* 13.09.2017 (in Ukrainian).

Shulga, ‘The Eastern Partnership: the View from Ukraine’, European Council on Foreign Relations, Commentary, 19.05.2015.

Simma, Aschenbrenner and Schulte, ‘Human Rights Considerations in the Development Co-operation Activities of the EC’, in Alston, Bustelo and Heenan (eds), *The EU and Human Rights* (OUP, 1999).

Smith, ‘Engagement and Conditionality: Incompatible or Mutually Reinforcing?’, in Youngs (ed), *Global Europe Report 2: New Terms of Engagement* (Foreign Policy Centre, 2005).

Smith, ‘Implementing the Global Strategy Where It Matters Most: the EU’s Credibility Deficit and the European Neighbourhood’ (2016) 37:3 *Contemporary Security Policy* 446.

Smith, ‘The EU, Human Rights and Relations with Third Countries: “Foreign Policy” with an Ethical Dimension?’, in Smith and Light (eds), *Ethics and Foreign Policy* (CUP, 2001).

Smith, ‘The Outsiders: the European Neighbourhood Policy’ (2005) 81:4 *International Affairs* 757.

Smith, ‘The Underpinning *Realpolitik* of the EU’s Policies towards Ukraine: An Analysis of Interests and Norms in the EU-Ukraine Association Agreement’ (2014) 19:4 *European Foreign Affairs Review* 581.

Smith, ‘The Use of Political Conditionality in the EU’s Relations with Third Countries: How Effective?’ (1998) 3 *European Foreign Affairs Review* 253.

Smith, *European Union Foreign Policy in a Changing World* (Polity, 1st edn, 2003).

Snyder, ‘The Battle in Ukraine Means Everything’, *New Republic*, 11.05.2014.

Solana, ‘The EU and Ukraine: Ten Years After Independence’, in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002).

Solodkyy and Sharlay, ‘How Could the EU Accelerate Reform in Ukraine?’, Institute of World Policy, 2015.

Solohubenko, ‘Unleashed, but Still Muzzled: The Media in Ukraine’, in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002).

Solonenko and Jarabik, ‘Ukraine’, in Youngs (ed), *Is the European Union Supporting Democracy in its Neighbourhood?*, FRIDE, September 2008.

Solonenko, ‘Added Value? Eastern Partnership and EU-Ukraine Bilateral Relations’, Internationale Politik und Gesellschaft, IPG No 3/2011.

Solonenko, ‘European Neighbourhood Policy – the Perception of Ukraine’ (2006) 7:19 *Foreign Policy in Dialogue* 44.

Solonenko, ‘External Democracy Promotion in Ukraine: the Role of the European Union’ (2009) 16:4 *Democratization* 709.

Solonenko, ‘The EU’s “Transformative Power” beyond Enlargement: the Case of Ukraine’s Democratisation’, European Research Institute, European Research Working Paper No 21, July 2007.

Speck, ‘German Power and the Ukraine Conflict’, Carnegie Europe, 26.03.2015.

Stewart, ‘EU Democracy Promotion in the Eastern Neighbourhood’ (2011) 16:5 *European Foreign Affairs Review* 607.

Stewart, ‘The Interplay of Domestic Contexts and External Democracy Promotion: Lessons from Eastern Europe and the South Caucasus’ (2009) 16:4 *Democratization* 804.

Stoner, ‘Putin’s Search for Greatness: Will Ukraine Bring Russia the Superpower Status It Seeks?’, *Foreign Affairs*, 02.03.2014.

Subtelny, *Ukraine: A History* (University of Toronto Press, 1988).

Sushko and Prystayko, ‘Western Influence’, in Åslund and McFaul (eds), *Revolution in Orange: The Origins of Ukraine’s Democratic Breakthrough* (Carnegie Endowment for International Peace, 2006).

Sushko, ‘The Impact of Russia on Governance Structures in Ukraine’, German Development Institute, Discussion Paper, 24/2008.

Sydorenko and Bondarieva, ‘Assistance above all: the EU is preparing for new concessions in its dialogue with Kyiv’, *Yevropeyska Pravda,* 11.07.2018 (in Ukrainian).

Sydorenko and Panchenko, ‘Andrius Kubilius: there is support for the Marshall Plan for Ukraine: EUR 5 billion per year’, *Yevropeyska Pravda,* 10.04.2017 (in Ukrainian).

Sydorenko, ‘Christian Danielsson: None of the EU partners allowed for such grave violations as proposed in Ukraine’, *Yevropeyska Pravda,* 22.02.2018 (in Ukrainian).

Sydorenko, ‘Matrix: resolution’, *Kommersant Ukraine,* 30.04.2010 (in Russian).

Sydorenko, ‘On the edge of an abyss: the night when Ukraine almost lost the EU visa-free regime’, *Yevropeyska Pravda,* 07.12.2017 (in Ukrainian).

Sydorenko, ‘Summit without perspectives: how the EU blocked the European dream of Ukraine’, *Yevropeyska Pravda,* 13.07.2017 (in Ukrainian).

Sydorenko, ‘The Head of the EUAM: you do not have time to wait until the establishment of the anti-corruption court’, *Yevropeyska Pravda,* 06.02.2017 (in Ukrainian).

Sydorenko, ‘Visa-free safeguard of the EU: Brussels increases the costs of reform reversal in Ukraine’, *Yevropeyska Pravda,* 14.12.2016 (in Ukrainian).

Sydorenko, ‘What was offered to the Netherlands in exchange for association? Analysis of the risks and substance of the agreement’, *Yevropeyska Pravda,* 16.12.2016 (in Ukrainian).

Sydorenko, ‘Will Ukraine’s visa-free regime be suspended: what is wrong with Brussels’s fight for the anti-corruption court’, *Yevropeyska Pravda,* 22.01.2018 (in Ukrainian).

Szołucha, ‘The EU and Enlargement Fatigue: Why Has the European Union Not Been Able to Counter Enlargement Fatigue?’ (2010) 6:1 *Journal of Contemporary European Research* 1.

Tedstrom, ‘The EU and Ukraine: A Transatlantic View’, in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002).

Toal and O’Loughlin, ‘What people in southeast Ukraine really think of Novorossiya’, *The Washington Post,* 25.05.2015.

Tocci, ‘Can the EU Promote Democracy and Human Rights Through the ENP? The Case for Refocusing on the Rule of Law’, in Cremona and Meloni (eds), *The European Neighbourhood Policy: A Framework for Modernisation?*, EUI Working Papers LAW 2007/21.

Tocci, ‘The Neighbourhood Policy is Dead. What’s Next for European Foreign Policy Along its Arc of Instability?’, Instituto Affari Internazionali, Working Paper 14, November 2014.

Torbakov, ‘Apart from Russia or Part of Russia: A Sad Saga of Ukrainian-Russian Relations’ (2001) 9:4 *Demokratizatsiya: The Journal of Post-Soviet Democratization* 588.

Traynor, ‘NATO Allies Divided Over Ukraine and Georgia’, *The Guardian*, 02.12.2008.

Treisman, ‘Why Putin Took Crimea: The Gambler in the Kremlin’, *Foreign Affairs*, May/June 2016.

Trenin, ‘Russia Leaves the West’, *Foreign Affairs*, July/August 2006.

Tulmets, ‘Is a Soft Method of Coordination Best Adapted to the Context of the EU’s Neighbourhood?’, in Cremona and Meloni (eds), *The European Neighbourhood Policy: A Framework for Modernisation?*, EUI Working Papers LAW 2007/21.

Tyshchenko, ‘A few points on the implementation of the priorities of the EU-Ukraine Association Agenda’, *Ukrayinska Pravda*, 02.05.2011 (in Ukrainian).

Tyshchenko, ‘Ukraine’, in Duleba and Bilčík (eds), *Taking Stock of the Eastern Partnership* (Slovak Foreign Policy Association, 2011).

Tzifakis, ‘Bosnia’s Slow Europeanisation’ (2012) 13:2 *Perspectives on European Politics and Society* 131.

Ukrainian Centre for Independent Political Research et al, ‘EU-Ukraine Association Agenda as a part of the preparation of the Association Agreement: results of civil monitoring in 2010-2011’, 2012 (in Ukrainian).

Ukrainian Centre of European Policy, ‘Ukraine and the Association Agreement: Monitoring the Implementation 2014-2018’, Report, November 2018 (in Ukrainian).

UN Cartographic Section. Available at: <http://www.un.org/Depts/Cartographic/map/profile/ukraine.pdf> [accessed 01.03.2019].

US Senate Select Committee on Intelligence, ‘The Intelligence Community Assessment: Assessing Russian Activities and Intentions in Recent US Elections’, 03.07.2018.

Vachudova, ‘EU Leverage and National Interests in the Balkans: The Puzzles of Enlargement Ten Years On’ (2014) 52:1 *Journal of Common Market Studies* 122.

Vachudova, *Europe Undivided: Democracy, Leverage, and Integration After Communism* (OUP, 2005).

Vahl, ‘Background Paper on EU Policy Towards Ukraine’, Centre for European Policy Studies, April 2003.

Vahl, ‘EU-Russia Relations in EU Neighbourhood Policies’, in Malfliet, Verpoest and Vinokurov (eds), *The CIS, the EU and Russia: The Challenges of Integration* (Palgrave Macmillan, 2007).

Van der Loo and Van Elsuwege, ‘Competing Paths of Regional Economic Integration in the Post-Soviet Space: Legal and Political Dilemmas for Ukraine’ (2012) 37 *Review of Central and East European Law* 421.

Van der Loo, *The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area: A New Legal Instrument for EU Integration Without Membership* (Brill Nijhoff, 2016).

Van der Loo, Van Elsuwege and Petrov, ‘The EU-Ukraine Association Agreement: Assessment of an Innovative Legal Instrument’, EUI Working Papers, LAW 2014/09.

Van Elsuwege and Burlyuk, ‘Exporting the Rule of Law to the EU’s Eastern Neighbours: Reconciling Coherence and Differentiation’, in Poli (ed), *The European Neighbourhood Policy – Values and Principles* (Routledge, 2016).

Van Elsuwege and Petrov, ‘Article 8 TEU: Towards a New Generation of Agreements with the Neighbouring Countries of the European Union?’ (2011) 36 *European Law Review* 688.

Van Elsuwege and Van der Loo, ‘Continuity and Change in the Legal Relations Between the EU and Its Neighbours: A Result of Path Dependency and Spill-over Effects’, in Bouris and Schumacher (eds), *The Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy* (Palgrave Macmillan, 2016).

Van Elsuwege, ‘EU-Russia relations and the crisis in Ukraine: how to proceed?’, *JTIBlog*, 15.06.2015.

Van Elsuwege, ‘Towards a solution for the ratification conundrum of the EU-Ukraine Association Agreement?’, *Verfassungsblog on Matters Constitutional*, 16.12.2016.

Van Vooren, *EU External Relations Law and the European Neighbourhood Policy: A Paradigm for Coherence* (Routledge, 2012).

Vanhaeverbeke, ‘EU Aid Policy: More Commitment Required’, in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002).

Vinokurov, ‘Russian Approaches to Integration in the Post-Soviet Space in the 2000s’, in Malfliet, Verpoest and Vinokurov (eds), *The CIS, the EU and Russia: The Challenges of Integration* (Palgrave Macmillan, 2007).

Vinokurov, ‘The EU-Russia Common Economic Space and the Policy-Taker Problem’, in Malfliet, Verpoest and Vinokurov (eds), *The CIS, the EU and Russia: The Challenges of Integration* (Palgrave Macmillan, 2007).

Vogel, ‘Rule of Law: Double Standards Undermine EU’s Role in the Neighbourhood’, Centre for European Policy Studies, European Neighbourhood Watch, Issue No 139, July 2017.

Wagner and Anholt, ‘Resilience as the EU Global Strategy’s New Leitmotif: Pragmatic, Problematic or Promising?’ (2016) 37:3 *Contemporary Security Policy* 414.

Wallace, ‘Looking After the Neighbourhood: Responsibilities for the EU-25’, Notre Europe, Policy Paper No 4, July 2003.

Wesslau, ‘Mogherini Goes to Moscow but is Missing in Action in Ukraine’, European Council on Foreign Relations, Commentary, 27.04.2017.

Wetzel, Orbie and Bossuyt, ‘One of What Kind? Comparative Perspectives on the Substance of EU Democracy Promotion’ (2015) 28:1 *Cambridge Review of International Affairs* 21.

Whitman, ‘Winning Hearts and Minds for Europe’, in Youngs (ed), *Global Europe Report 2: New Terms of Engagement*, (Foreign Policy Centre, 2005).

Whitmore, *State-Building in Ukraine: The Ukrainian Parliament, 1990-2003* (RoutledgeCurzon, 2004).

Willerton and Beznosov, ‘Russia’s Pursuit of its Eurasian Security Interests: Weighing the CIS and Alternative Bilateral-Multilateral Arrangements’, in Malfliet, Verpoest and Vinokurov (eds), *The CIS, the EU and Russia: The Challenges of Integration* (Palgrave Macmillan, 2007).

Wilson and Bilous, ‘Political Parties in Ukraine’ (1993) 45:4 *Europe-Asia Studies* 693.

Wilson and Birch, ‘Voting Stability, Political Gridlock: Ukraine’s 1998 Parliamentary Elections’ (1999) 51:6 *Europe-Asia Studies* 1039.

Wilson, ‘The Political Process in Ukraine: Democratisation or Virtualisation?’, in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002).

Wilson, *Ukraine Crisis: What It Means for the West* (Yale University Press, 2014).

Wiśniewski, ‘The Eastern Partnership – It Is High Time to Start a Real “Partnership”’, Carnegie Moscow Centre, November 2013.

Wolczuk and Žeruolis, ‘Rebuilding Ukraine: An Assessment of EU Assistance’, Chatham House, Research Paper, August 2018.

Wolczuk, ‘Implementation without Coordination: The Impact of EU Conditionality on Ukraine under the European Neighbourhood Policy’ (2009) 61:2 *Europe-Asia Studies* 187.

Wolczuk, ‘Integration without Europeanisation: Ukraine and Its Policy towards the European Union’, EUI Working Papers, RSCAS No 2004/15.

Wolczuk, ‘Ukraine after the Orange Revolution’, Centre for European Reform, Policy Brief, 04.02.2005.

Wolczuk, ‘Ukraine and Its Relations with the EU in the Context of the European Neighbourhood Policy’, in Fischer (ed), *Ukraine: Quo Vadis*, EU Institute for Security Studies, Chaillot Paper No 108, February 2008.

Wolczuk, ‘Ukraine and the EU: Turning the Association Agreement into a Success Story’, European Policy Centre, Policy Brief, 23.04.2014.

Wolczuk, ‘Ukraine: Tormented Constitution-Making’, in Zielonka (ed), *Democratic Consolidation in Eastern Europe* (OUP, 2001).

Wolczuk, ‘Whose Ukraine? Language and Regional Factors in the 2004 and 2006 Elections in Ukraine’ (2005/2006) 5 *European Yearbook of Minority Issues* 521.

Wolowski, ‘Ukrainian Politics After the Orange Revolution – How Far From Democratic Consolidation?’, in Fischer (ed), *Ukraine: Quo Vadis*, Institute for Security Studies, Chaillot Paper No 108, February 2008.

Yakovliev, ‘Constitutional Experience of Changing the System of Government in Ukraine (2004-2010)’ (2012) 58 *State and Law* 117. (in Ukrainian).

Youngs and Pishchikova, ‘Smart Geostrategy for the Eastern Partnership’, Carnegie Europe, November 2013.

Youngs, ‘Democracy Promotion as External Governance?’ (2009) 16:6 *Journal of European Public Policy* 895.

Youngs, ‘EU Support to Civil Society in Turkey, Ukraine and Egypt: Mapping Reforms to External Financial Instruments’, annex to ‘EU External Financing Instruments and the post-2020 Architecture’, European Implementation Assessment, February 2018.

Youngs, ‘Europe’s Inconsistent Support for Democratic Reform in Ukraine’, UCD Dublin European Institute, Working Paper 08-5, July 2008.

Youngs, ‘Fine-Tuning EU Support for Ukrainian Democratization’, Carnegie Europe, 06.04.2016.

Youngs, ‘The European Endowment for Democracy, Two Years On’, Carnegie Europe, 04.09.2015.

Zaiotti, ‘Of Friends and Fences: Europe’s Neighbourhood Policy and the “Gated Community Syndrome”’ (2007) 29:2 *European Integration* 143.

Zakharov, ‘The Activities of the Parliament’s Commissioner for Human Rights’, The Kharkiv Human Rights Protection Group, *Human Rights Bulletin*, 22.06.2006 (in Ukrainian).

Zlenko, ‘Ukraine and the EU: It Takes Two to Tango’, in Lewis (ed), *The EU and Ukraine: Neighbours, Friends, Partners?* (The Federal Trust, 2002).