

The European Parliament in the EU-Ukraine relations - from independence to Orange revolution

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Abstract

The article provides insight into the involvement of the European Parliament in the EU-Ukraine relations for the 1991-2004 period. The article argues that the European Parliament proved to be capable of developing and actively promoting its specific “European values” agenda. It demonstrated the ability to maintain the multi-level influence on the relations with the target country by both direct and indirect means. Its involvement into the EU-Ukraine relations was one of the factors which led to the change of Ukraine’s development paradigm, marked by the increasing influence of the civil society on the political system. However, the limited number of EU incentives as well as the rigidity of the conditionality patterns application decreased the potential benefits for the bilateral relations. Moreover, the fallacious assumption that the conditionality patterns which were successful for the CEE countries would also be successful for post-Soviet countries became one of the factors that facilitated the split of the Ukrainian society.

Keywords: European Parliament, European values, conditionality, EU external relations

1. Introduction

The recent Ukrainian crisis can hardly be understood outside the historical context, as many issues shaping the current antagonism have a long history dating back to the Soviet past or the first decade of the Ukrainian independence. In this context, the EU policies towards Ukraine demand a closer look as Ukraine has always been a special case due to its geographical position, tight economic relations and unstable political situation, often characterised by dramatic extremes. Other issues that made Ukraine a special case are the high

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intensity and wide spectrum of EU-Ukraine relations, including technical and industrial cooperation, visa-free regime dialogue, trade relations, as well as special EU initiatives, such as European Neighbourhood Policy and the Eastern Partnership. Although these directions keep a certain degree of independence, they are the subject for the EU political conditionality with the European Parliament playing an important role in the process. Moreover, some scholars argue that the European Parliament has rather wide competencies on conflict management issues in the framework of Common Foreign and Security Policy (CFSP) (Diez, Albert and Stetter, 2008, p. 178; Popescu, 2010, p. 15).

Furthermore, the case of Ukraine is an illustration of the difference in the EU's attitude towards the limits of its involvement compared to the role it played in the transformation of Central and Eastern Europe countries (CEE countries). During 1990s, this difference was rather vivid against the background of CEE countries' full-scale EU accession preparation process. However, despite the differences on the agenda and incentives, the European Union paced along the road of conditionality in its relations with Ukraine, thus causing dubious feelings in the Ukrainian society and often leading to disappointment among its pro-European part.

The issue of the civil society formation is another point to stress as the Soviet system did not imply its existence, with absence of civil rights, suppression of people's initiative, total KGB control over all spheres of life and paternalism being the safest and most beneficial pattern for the people's behaviour. From this perspective, the time between the Ukrainian declaration of independence and the "Orange revolution" – i.e. 1991-2004 – marks a separate period in the Ukrainian history as it was the "Orange revolution" that altered the old Soviet paradigm in terms of the role that the civil society and people's initiative played. Furthermore, the extent to which EU conditionality contributed to the formation of the civil society in Ukraine is still to be studied.

This article provides an insight into the role that the European Parliament played in the EU-Ukraine relations for the 1991-2004 period. The role of the European Parliament in the EU-Ukraine relations can be defined as that of a multi-faceted external democratisation body. The article argues that the European Parliament proved to be an independent actor in the EU external relations capable of developing and actively promoting its specific "European values" agenda. It demonstrated the ability of maintaining the multi-level influence on the relations with the target country by both direct and indirect means. The levels of its participation *inter alia* include direct inter-parliamentary cooperation, which was one of the few possibilities for dialogue, the Parliament's specific influence on the EU policies inside its institutional system as well as direct influence of the relations by means of the Parliament's "power of debate", its thematic declarations and reports. The Parliament's involvement into the EU-Ukraine relations was one of the factors for change in Ukraine's

development paradigm, which was marked by the increasing influence of the civil society onto the political system, making in this sense the striking difference between Ukraine and other post-Soviet countries.

However, the limited number of EU incentives as well as the rigidity in the application of the conditionality patterns decreased the potential benefits of bilateral relations. Moreover, the fallacious assumption that conditionality patterns which were successful for the CEE countries would also be successful for post-Soviet countries with no-membership perspective became one of the factors that facilitated the antagonism in the Ukrainian society.

The article consists in two major parts accompanied by introduction and conclusions. Section 2 studies the issue of the EU conditionality in the context of its practical application for CEE countries and provides a dynamic comparative analysis between different patterns. Section 3 studies the involvement of the European Parliament in the EU-Ukraine relations for the 1991-2004 period from the perspective of the Parliament's role in the formation and practical application of the EU conditionality in a separate case.

2. EU political conditionality: patterns and limits

In its relations with third countries, the European Union has been persistently using political conditionality since the beginning of the 1990s. However, there has always been a clear interconnection between the level of the relations and the scope of the conditionality applied. Whether these are merely trade agreements, partnership and cooperation or association agreements, the volume of the conditions applied by the EU for third countries differs dramatically. The reverse tendency can be noted as the existence of a larger leverage for the EU to ensure the conditionality application depended upon the offered level of the relations.

According to the Copenhagen and Madrid criteria, scholars propose to distinguish two types of conditionality: democratic (political) and administrative *acquis* (Vachudova, 2001). The complete volume of conditionality is traditionally associated with accession, whereas trade agreements are usually associated with limited conditions, known as the "human rights clause". In the intermediate cases of partnership or association agreements, the conditionality usually includes central administration organisation, local self-government and social issues as well as the protection of minority rights.

In terms of the patterns for the application of EU political conditionality in the domestic systems of the partner-countries, scholars outline several distinct theoretical patterns, which explain the mechanism of the transfer of conditions into the internal rules of the target country (Jachtenfuchs, 2001; Kohler-Koch, 1999). From the experience of CEE countries transformation, Schimmelfennig and Sedelmeier developed three explanatory models, which will be referred to in this article:

- the external incentives model;
- the social learning model;
- the lesson-drawing model.

Quite often, the argument is made that the external incentives model is the best to explain the effectiveness of the CEE conditionality application as well as the variation between exact countries (Schimmelfennig and Sedelmeier, 2005a). This model is based on a strategy of reinforcement by reward, which is dependent upon the speed and effectiveness with which EU conditions are implemented. However, within this model, the issue of domestic costs, be it economic, political or compound, is the factor that matters. Obviously, the benefits of the EU rewards are to exceed the adoption costs for this model to be effective. In the cost-benefit balance, the factors which influence the process are:

- the determinacy of conditions;
- the size and speed of rewards;
- the credibility of threats and promises;
- the size of adoption costs.

The last point requires additional explanations as there is an interconnection between the domestic costs and the effectiveness of the EU conditionality application. The authoritarian style regimes tend to refuse EU offers for closer economic and social relations rather than take the political risks associated with the adoption of liberal and democratic rules, offered as conditions (Schimmelfennig and Sedelmeier, 2005b). For example, in the Czech Republic, regionalisation gained momentum only after the Klaus government had lost office (Jacoby and Cernoch, 2002). In Slovakia, rules for decentralisation were eventually adopted after the election victory of the anti-Meciar coalition (Brusis, 2003).

On the other hand, external incentives are not the only factor which influences the volume and speed of reforms. As the experience of such CEE countries as Poland and the Czech Republic demonstrated, the adoption of EU rules may not be the product of EU promotion actions, but could also be induced by domestic factors. Internal motives are stimulated due to social learning and lesson-drawing models. Within these models, actors try to form their attitude by choosing the most appropriate or legitimate action among the alternatives. The key elements characterising the process here are the legitimacy of rules and the appropriateness of behaviour vs. bargaining about conditions and rewards, persuasion vs. coercion, internal changes through learning vs. behavioural adaptation. The main challenge for the target state which wants to adopt EU rules under this model is the need to have the same understanding as for the collective values and identity (Schimmelfennig and Sedelmeier, 2004). Thus, the major weakness of this model is the absence of EU credibility which leads to the decreased effectiveness in terms of the practical aspects of implementation, as

quite often this model is driven by political imperatives which create a gap between the practical steps and the blueprint declarations they are supposed to be based upon (Tocci, 2011).

The lesson-drawing model is based on the supposition that a state adopts EU rules if it expects these rules to solve domestic political problems effectively. There is a narrow distinction between those two internal models (the lesson-drawing and the social learning), as whether a state draws lessons from EU rules depends on certain appropriateness. The government tries to choose options which provide solutions for domestic policy issues in the nearest period and raise political support; however, it has little desire for learning from previous experience. While acknowledging the differentiated impact across countries and policy areas, Sedelmeier argues that the Europeanisation of the candidate states' is evidenced by both "the significant extent to which EU actors and institutions directly enforce the adjustment process" and "the comprehensive nature of adjustment to cover the entirety of the *acquis*" (Sedelmeier, 2006). Mostly agreeing with the refereed point of view, it is important to emphasise the following: the implementation of the EU conditionality by the CEE countries was a two-way road. The presence of high-level EU incentives such as membership perspective was an important part of the game. On the other hand, the transformative impact of the EU on the CEE countries was also based on strong internal incentives which existed at different levels, from sharing the pan-European ideas to the lower pragmatic issues of the "common market" benefits to local communities.

However, even against this background, the speed and effectiveness of the EU conditionality application varied across countries, time and domains. In particular, the issue of the EU air pollution rules adoption was a big issue in Poland in the mid-1990s. Unlike the rapid implementation of the similar issue in the neighbouring Czech Republic, it took Poland a lot of time and effort to finalise the issue, which happened only closer to the moment of accession, when the implementation of the "*acquis*" became a must (Andonova, 2004). Another example of uneasy "Europeanisation" was the case of Romania.

It was argued that democratic conditionality was not sufficient for successful rule transfer due to the compound system of power in the modern state (Sedelmeier and Epstein, 2008). The issue is that the structure of the domestic governance system is one of the factors that influence the effectiveness of the transfer, as the process goes on differently in parliamentary republics and countries with strong presidential authorities. Certainly, this factor was among the key ones in the Romanian case. Quite often, the political risks of implementation can be abused by internal actors in the target country for selfish own political reasons. Then, the EU conditions can find themselves in the epicentre of sharp internal political debates. Against already existing rivalries, the issue can easily get over-politicised causing the turbulence at the national

level of the target country. Furthermore, the obstacle to the country's further integration can turn into antagonism at the president, government and parliament level. In this case, the formation of the reform-oriented political coalition turns into a major problem, especially in presidential republics.

Many authors stress that conditionality appears to have been successful in locking-in democratic change, even if the former authoritarian parties subsequently returned to power, but very few explain how to deal with a situation characterised by a lack of leadership in fragmented opposition and reform-minded people (Sedelmeier, 2012). From this perspective, during the last 20 years, Romania has been characterised by a permanent political and constitutional conflict between its president and government. This antagonism has a rather negative effect on the civil society, facilitating the division among citizens into two major camps, thus creating a permanent tension in the society (Sedelmeier, 2014). This example demonstrated that EU conditionality is a double-edged weapon, which does not only facilitate democratic reforms and reassures the rule of law in the target country, but can also become the issue dividing society and causing turbulence in the political system of the target country.

The existing theoretical approach developed and refined to explain the CEE countries transformation was used to achieve a similar degree of understanding of the impact of the EU conditionality on the post-Soviet states. However, several factors are to be mentioned – the arsenal of EU incentives, internal motives for reforms in the target country, the dynamics of the political situation as well as the elite's attitude towards the values which are traditionally at the core of the EU conditionality. Separately, one should mention, the possibility of alternatives or compromises, allowing the benefits offered by EU to be obtained without actually taking the pain of genuine reforms.

From this perspective, the 1991-2004 period in Ukraine provides an illustration of the underestimation of the complexity and the compound structure of the post-Soviet country. Moreover, the mere transfer of the CEE countries models onto a different situation had a rather controversial effect as the attempt to resolve new challenges using old instruments can obviously be considered as one of the key factors, which later developed into internal turbulence, leading to conflicts within society. It is worth noting that the external incentives models demonstrated the overall limited impact of the EU conditionality on post-Soviet countries. Such approach accompanied by uncoordinated implementation of EU conditionality led to building a hybrid, which was called "sporadic Europeanisation" (Wolczuk, 2007). Therefore, it is important to provide an insight on the key factors which shaped the EU-Ukraine relations for the referred period.

Discussing the arsenal of EU incentives for that period, it should be stressed that it is extremely limited. Indeed what were they? First and foremost, it was money. Different programs, different reasons, different schemes; however, money was the major incentive that the EU had for Ukraine for that

period. Second – sectoral agreements. But can these agreements actually be viewed as incentives? To answer this question, the voting behaviour of the European Parliament in the assent procedure can be viewed as one of the indicators. Unlike a number of high-profile cases, the Parliament treated these agreements as rather technical and never applied conditionality to its voting pattern. The framework document, which was the EU-Ukraine Partnership and Cooperation Agreement, was signed in 1994 and was designed for a period of ten years. Moreover, the need of such a framework agreement was evident as the EU relations with Ukraine were regulated by the old EC-USSR trade and cooperation agreement of 1988, that is, of an entire different epoch; therefore, the new agreement could hardly be considered as part of the EU incentives. Against the background of the European Association agreements for the CEE countries, implying their rapid convergence with the EU as well as the membership perspective, it was hardly possible to discuss any comparable incentives in terms of Ukraine. Moreover, the money, which was the only tangible incentive in that period, was aimed mostly at the Ukrainian elite. In the specific Ukrainian conditions with corruption already being “the talk of the town” at that time, such an incentive could obviously have only an extremely limited effect as it was not designed for a wider society.

Discussing the dynamics of the political situation in Ukraine in the context of internal motivation for reform, it is worth noting that the swiftly deteriorating economic situation was often associated by society with the reforms themselves rather than with the faults of the Soviet system or the Ukrainian political elite’s inability to ensure genuine reformation of the collapsing economic system. Thus, the issue of reformation was claimed to be a risky political enterprise associated with unpopular actions and loss of voters’ support.

Under the circumstances, as well as due to Ukraine’s own poor institutional capacity to solve the economic and social problems, some scholars emphasised that the Ukrainian government could be given sufficient impulse for the reformation process only by increasing EU commitment (Sedelmeier, 2007). In this context, it is important to underline that other described models – i.e. lesson-drawing or social learning – imply the existence of internal incentives and thus are highly dependent on internal formulation and promotion of public interests, which are much wider than the interests of the ruling elite. From this perspective, the existence of a strong civil society as well as the ruling elite’s qualities are the factors which determine the ability to formulate public interests as well as common values. However, in the 1990s Ukraine, these factors had rather specific features due to the long-term Soviet-style ruling system. The Ukrainian elite, brought up by Communist ideas and corrupted by the Soviet perverted law-enforcement system, could hardly be viewed as one genuinely sharing the European values of human rights and rule of law. Moreover, after seventy-five years of one-party monopoly with already anchored unofficial neo-

feudal succession rules, the principles of democracy with its major postulate of elite replacement by the open, free and equal popular vote could hardly be viewed as something natural for the Ukrainian elite.

Furthermore, at that time, the civil society in Ukraine could scarcely be identified as strong enough to adequately formulate the public interests or, which is equally important, to exert sufficient pressure on the elite in terms of the consistent promotion of these interests. Thus, the Ukrainian case was obviously different from that of the CEE countries, which was mainly based on the unity and coordination of value orientations. As a result, those countries needed less time for the development of a unified and stable administrative system, based on common values, and norms of behaviour. In Ukraine, as well as in other post-Soviet countries, the EU strived to make the states absorb new values at the expense of their internal inconsistencies, thus putting the major burden of transition on the shoulders of those countries. However, in terms of pragmatic responses, the Ukrainian elite has always had an ever-existing “Eastern option” at the background of growing authoritarian regimes in its neighbouring countries: Russia, Belorussia and Kazakhstan. Those rules and practices seemed at least familiar due to the common Soviet roots, as well as much safer from the perspective of the elite’s political survival potential. Moreover, those rules were also easier to implement as most of the old unofficial practices were still in place.

Against the background of the rather ambiguous EU policy towards Ukraine and the limited scope of the incentives, which were mostly oriented at the Ukrainian elite, the Ukrainian society was given rather controversial signals, causing disappointment among its pro-European part and increasing the confidence of the other part as for the absence of any tangible EU perspective for Ukraine (Wolczuk, 2002, pp. 21-22). The issue of European values, heavily abused by the Ukrainian politicians in their election campaigns, was used for the division of the Ukrainian society alongside other similar division-lines like East-West, language and religious differences historically existing among various parts of Ukraine.

Another specific feature of Ukraine for the discussed period was related to the strong presidential authority, which according to the Constitution of 1996 made the President of Ukraine the key figure of the political system. This development progressively shaped the regress to the authoritarian style of governing with the increasing number of unofficial practices, following the Soviet tradition of double standards and increasing the gap between the official legislation and the administrative practices. Moreover, the anti-presidential protest campaign “Ukraine without Kuchma”, which broke out in 2000, developed into a situation that was rather similar to the above described Romanian scenario, with the confrontation between supporters and antagonists of the president. Somehow, the issue of European values was also involved, as the anti-presidential protests made reference to the European values. On the

other hand, the increasing isolation of President Kuchma on the international arena, as well as his ostracism at international forums, influenced the internal climate as he lost much of his pro-European optimism. From this moment on, the issue of European integration became one of the major dividing lines in the Ukrainian society.

The growing gap between the official legal rules and unofficial practices is also a negative aspect related to President Kuchma's lead. From the perspective of the possible compromises for the Ukrainian elite in terms of EU conditionality application, this situation offered a number of opportunities. As the article argues, the major focus of the EU conditionality for the discussed period was on the alteration of the Ukrainian legislation and the implementation of international standards into the Ukrainian legal system. The practice was in focus only in few high-profile cases. However, the difference in the law enforcement practices between the EU and Ukraine is a well-known fact which required special attention for the conditionality application to be successful.

The last point to make is the issue of the two-way road of the EU conditionality application process. The need of dialogue in this context is twofold. In the absence of membership perspective, the dialogue was necessary for reaching agreement on the limits of conditionality and the clear criteria for the completion of the process. Moreover, the external incentives model is primarily based on a bargaining process with the parties being interested in maximising the effect of the process against reducing the size of domestic political and economic costs. In this context, the formation of the unified position is important as it allows reaching the goals within the framework, which is more convenient from the internal political process perspective. Moreover, the limited range for EU external incentives in the Ukrainian case required a more flexible approach with the shift into the realm of internal incentives, which would increase the effectiveness of the process. From this perspective, the involvement of the European Parliament in the EU-Ukraine dialogue can hardly be overestimated as it remained one of the few channels for communication as well as a discussion platform.

Summing up this part of the article, it is important to emphasise the interconnection of the EU conditionality level with the level of relationship with third countries. Persistently applied since the beginning of the 1990s, conditionality is believed to be a part of the EU normative power. The CEE countries' accession process is an illustration of the transformation process. However, the theoretical models developed upon this successful experience did not prove to fit into the EU - post-Soviet countries relations. The case of Ukraine demonstrated that the scope of the incentives has influence on the conditionality application process. Moreover, the domestic attitude to EU values application is another point to make as the internal impulse to implement EU rules requires their recognition as a benefit for society and not only as a pre-requisite trade or

bargaining tool in diplomatic games. From this perspective, the need for dialogue with the target country becomes important, especially with one holding a long-term totalitarian experience, as European values may not coincide with those shared by the ruling elite. As the Ukrainian case demonstrated, the European Parliament's involvement was one of the few tangible channels for such a dialogue.

Moreover, the inconsistency of internal elite values with those implied by the EU conditionality may cause turbulence in the target country, which can further develop into the division of society, ending up in a "protective response" of the ruling elite, including a U-turn of external policies. The Ukrainian case demonstrated that the rather dubious EU policy accompanied by a limited number of incentives and rigidity in the application of the conditionality patterns for the discussed period later developed into one of the factors that facilitated the split of the Ukrainian society.

3. From inspiration to scepticism - 1991-2004

The Ukrainian declaration of independence¹ and the Belovezh agreement² leading to the collapse of the Soviet Union marked the emergence of Ukraine as an independent state and subject of international law. This quite closely coincided with the creation of the European Union by the Maastricht treaty of 7 February 1992, which provided for the creation of a separate pillar of the Common Foreign and Security Policy³, established the objectives of the Union foreign policy⁴ and increased the European Parliament's assent powers⁵. Quite soon after the Maastricht treaty came into force⁶, Ukraine became one of the focuses of EU foreign policy, thus proving an illustration for the practical application of the new rules. The first documents on Ukraine date back to 1994 (Council of the European Union, 1994), providing the strategic vision of the EU-Ukraine bilateral relations. Alongside specific issues related to nuclear safety and disarmament of Ukraine as well as its economic stabilisation, the EU objectives *inter alia* included the development of a strong political relationship with Ukraine. In this context, the European Council stressed as a separate objective the need "to support democratic development in Ukraine, through offering advice on legislation and practical assistance in establishing democratic institutions" (European Council, 1999).

¹Act proclaiming the independence of Ukraine of 24.08.1991.

²Agreement between Russia, Ukraine and Belorussia of 08.12.1991, in fact dissolving USSR.

³Title V Treaty of European Union (Maastricht version).

⁴Art. JI *ibid*.

⁵Art. 300 Treaty of European Community (Maastricht version).

⁶ 1 November 1993.

From this perspective, the engagement of the European Parliament in the EU-Ukraine relations played an important role. The Parliament's traditional agenda of promoting the rule of law, human rights protection, democracy and good governance principles perfectly fit the specific needs of the young Ukrainian state, still bearing the imprint of the totalitarian communist system. Besides its specific influence on the EU policies inside its institutional system, the Parliament used two major channels for its engagement into the EU-Ukraine relations: direct inter-parliamentary cooperation under the EU-Ukraine treaty based institutionalised framework and direct influence by means of its thematic declarations and reports. Considering the limited scope of the EU conditionality, the combination of the referred channels turned out to be successful enough to ensure the achievement of the minimal declared goals.

The formal EU-Ukraine institutionalised framework was created by the Partnership and Cooperation Agreement (PCA), which was signed in 1994 and replaced the old Trade and Cooperation Agreement concluded by the Community and the Soviet Union in 1988. The PCA with Ukraine, being the first one of this type concluded with the post-Soviet republics, represented an innovative formula of EC external relations, as it was concluded by the Community and the Member States, "acting in the framework of the European Union"⁷ (Hillion, 2005, p.13). From both legal and political perspectives, this type of agreement was an alternative for the Europe (Association) agreements with the CEE countries, and was different from both an association and a trade agreement. The difference between PCA and an ordinary EU trade agreement led to a different legal basis, including an addition to Art.133 and 308 EC, a reference to Art.300 EC, thus requiring the Parliament's assent for the agreement under the enhanced Maastricht formula⁸. Moreover, the new political status of the Parliament after Maastricht, together with the political significance of this new type of EU international agreements, was another reason for the requirement of the Parliament's assent (Hillion, 2005, pp. 49-54).

After its coming to force on 1 March 1998, the PCA was the major legal instrument regulating the relations between the EU and Ukraine in the major areas of cooperation for more than fifteen years. Furthermore, it legally confirmed the objective of democracy consolidation in Ukraine, as well as its efforts to complete the transition towards a market economy.⁹ The institutional framework provided by the PCA *inter alia* includes inter-parliamentary cooperation in the form of the EU-Ukraine Parliamentary Cooperation

⁷Preamble of EU-Ukraine Partnership and Cooperation Agreement.

⁸Supra note 5.

⁹Art. 1 EU-Ukraine Partnership and Cooperation Agreement.

Committee (PCC), composed of an equal number of Members of the European Parliament and of the Verkhovna Rada (Parliament) of Ukraine¹⁰.

The PCC exerted parliamentary control over the implementation of the PCA, acting as a forum for debate on issues of mutual interest and providing an important impetus for successful democratic and market reforms in Ukraine and for its closer integration with the EU. In addition to the PCC meetings, the delegation held regular meetings to discuss important developments in the EU-Ukraine relations and to exchange ideas with Ukraine's political leaders, members of its parliament and government, as well as representatives of civil society.¹¹ Until 2004, the European Parliament delegation to the EU-Ukraine PCC was a part of the delegation for relations with Ukraine, Moldova and Belarus.¹² During the discussed period, there were six meetings of the PCC which took place on an annual basis starting from the 30 November -1 December 1998, when the first meeting took place in Brussels.

Despite the rather general and declarative nature of discussions, the forum certainly facilitated both the development of the dialogue and, shaping of the agenda to be considered *inter alia* at the level of the Ukrainian parliament. Besides discussing the current documents of the bilateral EU-Ukraine relations,¹³ the final statements of the meetings persistently emphasise a number of topics of mutual interest, such as integration of Ukraine into the world economy, environmental issues with an emphasis on Chernobyl consequences and remedies, regional conflicts and security cooperation as well as the enhancement of border control cooperation in the context of visa liberalisation dialogue.¹⁴ The EU conditionality agenda including the principles of human rights protection, rule of law and democratic governance was part of almost every final statement,¹⁵ as these principles were claimed to be "the essential elements in the

¹⁰Art.90-91 EU-Ukraine Partnership and Cooperation Agreement.

¹¹Information note on the work of the Delegation to the EU-Ukraine PCC, available at: http://www.europarl.europa.eu/delegations/en/d-ua/publications.html#boxtabheader1_value2.

¹²Information Note on the work of the delegation to the EU-Ukraine Parliamentary cooperation committee <http://www.europarl.europa.eu/document/activities/cont/201304/20130410ATT64282/20130410ATT64282EN.pdf>.

¹³Results of Summits and Cooperation Council meetings, as well as Common Strategy or Action Plan for Ukraine.

¹⁴EU-Ukraine Parliamentary Cooperation Committee.Final Statement and Recommendations of 3rd -6th meeting (http://www.europarl.europa.eu/intcoop/euro/pcc/ubm/pcc_meeting/recommendations_en.htm).

¹⁵See for example Final Statement and Recommendations. p. 10 of 3rd meeting, p. 11 of 5thmeeting, p. 11 of 6th meeting (http://www.europarl.europa.eu/intcoop/euro/pcc/ubm/pcc_meeting/recommendations_en.htm).

progress of Ukraine towards European standards”.¹⁶ Among the guarantees of these principles implementation, reference was made to the freedom of mass media and ensuring the security of journalists.¹⁷ The latter issue became a separate point due to the infamous assassination of Georgy Gongadze in 2000 and Igor Aleksandrov in 2001.

Ukrainian elections were another focus of the discussion as well as for the Parliament’s engagement. For the elections of 2002, the European Parliament sent a delegation headed by the President of the EP delegation to the EU-Ukraine Parliamentary Cooperation Committee, Mr. Wiersma. This delegation was part of the International Election Observation Mission, which was a joint effort with the OSCE, including the OSCE Office for Democratic Institutions and Human Rights, and the OSCE Parliamentary Assembly as well as the Parliamentary Assembly of the Council of Europe. The report of the *ad hoc* delegation, noting that progress was made over the previous parliamentary polls of 1998, towards meeting international commitments and standards, nevertheless emphasised considerable flaws in the election process in terms of administrative resources abuse and unbalanced media access. Concluding the observation, the report stressed that “the conduct of these elections, and in particular the active engagement of civil society in the process, marked a step forward in Ukraine’s democratic transition. While Ukraine met, in full or in part, a number of commitments such as universality, transparency, freedom and accountability, it failed to guarantee a level playing field, an indispensable condition to ensure the fairness of the process” (European Parliament, 2002).

Discussing the results of the elections at the fifth PCC meeting, the parliamentarians notified the elections “shortcoming”, calling for the rectification of the situation “for future elections in terms of relevant legislation, administration, campaigning and media coverage”¹⁸. This appeal was repeated in the anticipation of the Presidential elections of 2004 with an emphasis on “the importance of full implementation of the recommendations of the OSCE/ODIHR that followed the parliamentary elections of March 2002”¹⁹. However, these anticipations never became true, and the falsifications at the Presidential elections of 2004 initiated the outbreak of the “Orange revolution”.

In terms of the thematic Parliament’s document dedicated to Ukraine, there are at least two of them to be mentioned – those were declarations

¹⁶6th meeting Final Statement and Recommendations (P. 11) http://www.europarl.europa.eu/intcoop/euro/pcc/ubm/pcc_meeting/recommendations_en.htm.

¹⁷4th meeting (P. 7), 5th meeting (P. 11) Final Statement and Recommendations (www.europarl.europa.eu/intcoop/euro/pcc/ubm/pcc_meeting/recommendations_en.htm).

¹⁸5th meeting (P. 10) Final Statement and Recommendations (http://www.europarl.europa.eu/intcoop/euro/pcc/ubm/pcc_meeting/recommendations_en.htm).

¹⁹6th meeting (P. 10) Final Statement and Recommendations (http://www.europarl.europa.eu/intcoop/euro/pcc/ubm/pcc_meeting/recommendations_en.htm).

discussing two major EU unilateral documents, determining the strategic course of the EU-Ukraine relations: the Action plan of 1998 and the Common Strategy of 2001. The Action Plan (European Commission, 1996) was a thorough document containing the analysis of the situation in Ukraine after five years of independence, EU objectives and guidelines in the six major directions of cooperation, as well as the detailed plan of measures scheduled for 1996-99. The document paid substantial attention to the social transformation of Ukraine with the emphasis on the promotion of “the emergence of a pluralistic society, the consolidation of democratic institutions and of a state based on the rule of law and the protection of individual rights” (European Commission, 1996, p. 13), covering such areas as advice in the development of the new legislation, adaptation of the existing Ukrainian legislation to democratic criteria, support for NGOs, as well as numerous training and educational programs (European Commission, 1996).

The resolution on the Action Plan provided the Parliament’s view on the development of the situation in Ukraine. The document also covered a wide range of topics, such as economic cooperation, the energy sector and security issues. Welcoming Ukraine’s unilateral abandonment of the nuclear weapon, the ratification of the European Convention on Human Rights and abolition of the death penalty, the Parliament stressed that the EU “must continue to support the democratic process in Ukraine” and the development of civil society. From a practical perspective, the Parliament emphasised the importance of the “vital structural reforms at the national level” and the implementation of a number of international documents into the Ukrainian legal system (European Parliament, 1998).

The Common Strategy on Ukraine was another document dedicated to the bilateral relations. It proclaimed that “the strategic partnership between the EU and Ukraine, based on shared values and common interests, is a vital factor enhancing peace, stability and prosperity in Europe” (European Council, 1999, p. 1). The document was written in a rather optimistic tone, emphasising a number of Ukraine’s achievements, in particular the on-going process of nation-building and consolidation of the democracy, as well as Ukraine's nuclear disarmament and its intense cooperation in the maintenance of European and international peace and security. Acknowledging Ukraine’s pro-European aspirations, the Strategy identified three objectives:

- support for the democratic and economic transition process in Ukraine;
- ensuring stability and security and meeting common challenges on the European continent;
- EU-Ukraine cooperation in the context of EU enlargement (European Council, 1999).

In its resolution on the Common Strategy, the Parliament was less optimistic. Although the document noted a number of achievements of the

Ukrainian state, as well as the reference to the “European perspective”, it emphasised the deteriorating situation in terms of democracy and human rights protection. Indeed, state building and democratisation turned out not to be mutually reinforcing in the case of Ukraine (Wolczuk, 2002, p. 9). The resolution criticised the elections of 1998 and 1999, which failed to meet many conventional democratic standards, as well as the failure of the mass media to exercise their proper role in the process. The freedom of the press was another target for the resolution’s critics as the murder of Georgy Gongadze (an editor of the opposition newspaper) was the central issue in emphasising the inability of Ukrainian authorities to ensure adequate conditions for the true independence of the mass media and their professional performance. A separate stress was put on the inexplicably slow and inefficient police investigation of the case. In terms of the EU conditionality application, the Parliament concentrated on the need to eradicate all kinds of discrimination as well as to implement a number of international conventions into the Ukrainian legal system. In particular, three international conventions were mentioned: the United Nations Convention on Transnational Organised Crime, the Geneva Convention on the Status of Refugees, the Ottawa Mine Ban Treaty (European Parliament, 2001).

Statehood building in Ukraine required a substantial constitutional reform, which was started in 1996 by the adoption of a new Ukrainian Constitution, establishing “the parliamentary system, which conforms to the traditional principles of separation of powers, executive responsibility, application of the rule of law and independence of judiciary” (European Commission, 1996, pp. 9-10). In this context, the implementation of international standards into the Ukrainian legal system was viewed as one of the major tasks for reform. Therefore, the reference to different international conventions was an issue often raised by the European Parliament. Indeed, between 1991 and 2004, Ukraine ratified a large number of international documents, including the European Convention on Human Rights and its Protocol no. 6. With the Constitution of 1996 establishing the direct effect of the ratified treaties, this body of international documents created a stable ground for the practical implementation of European standards into the Ukrainian reality. Moreover, domestic Ukrainian legislation had to be based on these documents and the priority of international treaties was the general principle of the Ukrainian legal system, reaffirmed by a number of basic laws. The constitutional reform was continued by a number of essential laws²⁰ against the background of the declared adaptation of the Ukrainian national legislation to the EU “*acquis communautaire*”²¹.

²⁰Such as “About Political Parties”, “About Associations of Citizens”, “About Mass Media”, etc.

²¹Decree of the President of Ukraine # 615 of 11.06.1998, Resolution of the Cabinet of Ministers of Ukraine #852 of 12.06.1998.

The implementation of international standards facilitated the rise of the multi-party system and a comparatively independent mass media. The continuous election process with two parliamentary and two presidential elections created a favourable environment for peaceful public discussion of the political agenda, which was of great importance from the civil society development perspective. Certainly, numerous flaws of the election process were specified. However, if compared to the Soviet past and the current situation in other post-Soviet republics at the time, Ukraine could have been identified as among the leaders in the process of democratic transformation.

Nevertheless, the focus of the EU conditionality was mostly limited to legislation level as the alteration of the obsolete Soviet style legislation and the implementation of the international treaties were at the core of the process. The same pattern was followed by the European Parliament. From this perspective the engagement of the Parliament into the EU-Ukraine relations was successful, estimating the volume of reform of the Ukrainian legal system, its direction as well as the number and content of the international treaties ratified by Ukraine for the discussed period.

However, the specific feature of Ukraine as a post-Soviet country was the existence of two levels of regulation – the official law level and the level of unofficial practices. This Soviet-style tradition lingered even after Ukraine became an independent country. Moreover, during Mr. Kuchma's presidency, the unofficial practices received a second life, piercing through most of the governance systems of the state. At that time, his presidency "became the flagship institution under ex-nomenklatura elite members' control", overshadowing other branches of power by utilising its rather specific strategy of "blackmail and bribe" (Wolczuk, 2002, p. 10). And this situation was not adequately challenged, which enabled the dominating Ukrainian elite to exploit the issue of the European integration "as a declarative resource utilised both for domestic politics and foreign policies". This resulted in the growing gap between "the Westernisation of Ukraine's foreign policy and the floundering domestic political and economic reforms", adequately referred to as the "declarative Europeanisation" (Wolczuk, 2002).

4. Conclusions

The first decade of the Ukrainian independence was important in terms of shaping the foundations of the EU-Ukraine relations. However, the rather uncertain EU policy towards Ukraine for this period, accompanied by the limited scope of incentives, restricted the EU conditionality possibilities. Unlike its relations with the CEE countries, the EU did not set any distinct "normative targets" for Ukraine; therefore, its conditionality was practically mostly concentrated on the formal implementation of international standards into the Ukrainian legal system.

Against this background, the European Parliament proved to be capable of developing and actively promoting its own political agenda. Moreover, it demonstrated the ability of maintaining the multi-level influence on the relations with the target country by both direct and indirect means. The inter-parliamentary cooperation within the format of the EU-Ukraine Parliamentary Cooperation Committee became an important channel of the permanent dialogue facilitating direct discussions of the major topics of the bilateral relations.

The socialising role of the Parliament served a number of purposes. In the broader sense, the Parliament succeeded in making its traditional agenda of “European values” part of the legislative agenda of the Ukrainian state. In the asymmetric EU-Ukraine relations, the “European values” agenda developed into some kind of point of reference, with the Parliament holding the referee position. In a narrower sense, the Parliament managed to play the role of the agenda-setter as well as the mile-stones marker for the reformation process of the Ukrainian legal system.

Considering the limited scope of the EU conditionality for Ukraine and its major focus on the legislation level, the Parliament demonstrated its ability to effectively influence the behaviour of the target country, regarding the scope and content of the international documents implemented into the Ukrainian legislation during the discussed period. Moreover, the consolidation of the international standards at the legislation level was obviously one of the factors which facilitated the development of the civil society in Ukraine. The “Orange revolution” of 2004 clearly demonstrated that the Ukrainian civil society became capable of influencing the political system, thus making the difference between Ukraine and other post-Soviet countries.

Another factor of influence included the Parliament’s resolutions on the program documents adopted by the Commission and/or Council. The resolutions manifested the Parliament’s priorities and emphasised its traditional agenda. These documents had a double impact as they were addressed to both Ukrainian authorities and the EU institutions, which were supposed to take into consideration the Parliament’s appeals during the practical implementation of EU policies towards Ukraine. In this sense, the lack of Parliament’s legal instruments was partially compensated by the political weight of its resolutions.

Discussing the tonality of the European Parliament rhetoric towards Ukraine, it should be stressed that the general trend was the slide down from the initial optimism following the emergence of the independent Ukraine, declaring its commitment to the European values of human rights and democracy, to the scepticism and undisguised mistrust in the Ukrainian authorities with President Kuchma’s growing authoritarianism and his inability to ensure the true reformation of the Ukrainian society, or the implementation of declarations from the level of laws and international treaties into everyday practice. This growing

pessimism reflected the failure of the “declarative Europeanisation”, marking the need for an alteration of the EU-Ukraine relations paradigm.

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