

**International Summer School**  
**“Approaches to Post-Soviet Transformations”**  
**Dnipropetrovsk (Ukraine)**  
**5-9 July 2010**

**The EU's “Transformative Power” Beyond Enlargement:  
The Case of Ukraine**

**Iryna Solonenko**  
**National Academy of Public Administration, Kyiv, Ukraine**  
solonenko@irf.kiev.ua

**I Overview of the academic debate on the EU’s transformative power: within and beyond enlargement**

The concept of the EU’s ‘transformative power’ (Grabbe 2006) (often referred to as Europeanisation) was developed soon after the 10 countries of the Central and Eastern Europe (CEE) joined the EU in the course of the 2004-2007 enlargement. By that time almost two decades had passed since the ‘founding’ elections in the CEE countries took place, following which the countries embarked on the process of post-Communist transformation. During that time all the countries of the region became consolidated democracies (although with many deficiencies in some countries more than in others) and market economies. Due to the fact that the process of post-Communist transformation (consisting of state-building, democratisation and transition towards market economy) was taking place in parallel to the process known as ‘return to Europe’ (aspiring EU membership and fulfilling the conditions to become EU members), it is believed that the EU has played an important role in transforming those countries. A body of literature has also covered relevant developments in the Western Balkans, pointing to the limited transformative power of the EU in the countries that face serious state-building challenges. Both the literature on the CEE and the Western Balkans deals with the EU’s enlargement policy.

Scholars of the EU’s transformative power agree that the success of reforms that the countries of the region have witnessed since the collapse of communism would not have been possible without both the necessary domestic preconditions and the EU’s involvement. The EU seems to have played an important role at the certain stages of the accession process, while having had limited impact at other times. For instance, some scholars argue that the EU had impact starting from the early 1990es (Vachudova 2004, Pridham 2005), whereas others believe that it was only since 1997 that the EU started making a difference (Sadurski 2004, Grabbe 2002, Schimmelfennig and Sedelmeier 2004, Haughton 2007). Similarly, it is believed that the EU’s impact was strong in some areas, while marginal in the others. Jacoby (2004), for instance, argues that the more developed and ‘communitarised’ EU rules are in a specific sector, the more likely that emulation will take place. Also, according to her, emulation is more difficult in those areas where domestic structures are well entrenched and many potential veto players exist.

Despite these differences scholars agree that it was due to conditionality that the EU managed to make a difference in the accession countries. Schimmelfennig and Sedelmeier (2005) call this ‘the external incentive model’, whereby the EU reinforces reforms by offering rewards or incentives. This strategy works if “the benefits of EU rewards exceed the domestic adoption costs” (Schimmelfennig and Sedelmeier 2005, p. 12). In the case of the CEE countries it is believed that the incentive of membership was strong enough to downplay the costs related to reforms. One can also single out another component of the EU’s involvement into transformation processes in the CEE, which is socialisation. Unlike conditionality that implies rational choice and is predominantly targeted at elites, socialisation does not necessarily presupposes rational choice<sup>1</sup> and works through “multiple personal and institutional contacts”<sup>2</sup> (Mungiu-Pippidi, 2005, p.17).

In studying the EU’s impact on the domestic change in the EU’s partner countries scholars soon turned their attention to the countries not covered by the EU’s enlargement policy. This became possible soon after the European Neighbourhood Policy (ENP) was launched in 2004. This new policy clearly had the ambition of transforming the EU’s neighbours, not to mention the fact that the DG Enlargement of the European Commission was asked to develop the policy. Earlier debates focused more on the ENP as such without attempting to trace impact. At that stage it was established that the ENP was a weaker derivative of enlargement policy, referred to as the ‘new wine in old wineskins’ (Kelly 2004). Further studies became more interested in the impact, attempting to primarily answer two questions. Firstly, can the EU replicate the success of enlargement to Central-Eastern Europe with the ENP countries without offering the prospect of membership, but using similar tools (Kelley 2006; Emerson et al. 2005; Smith 2005; Lynch 2003)? Secondly, to what extent are domestic factors in countries like Ukraine different from those in the CEE countries and how do these differences matter (Wolczuk 2003; Kelley 2006)?<sup>3</sup> Schimmelfennig (2007) for instance, classifies the ENP as ‘a low-credibility association policy’ and argues that because the policy excludes the membership perspective, it is doomed to fail. Delcour (2007) argues that the case of Ukraine demonstrates that the ENP implementation in Ukraine took the shape of ‘accommodated conditionality’, whereby Ukraine has accommodated the ENP to its own preferences and built its own interpretation of the EU requirements. Sasse (2008) offers the concept of ‘conditionality-light’: since conditionality in the ENP is so vague, it only provides external reference points for domestic political actors (both pro-EU and anti-EU), which they can utilize in domestic politics, as well as offering a

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<sup>1</sup> See, for instance, Checkel (1999) and Risse and Sikkink (1999) for constructivist understanding of socialisation (from this perspective socialisation leads to change of interests and perceptions of domestic actors). See Schimmelfennig (2000) for rational understanding of socialisation (from this perspective domestic actors conform to international norms in order to benefit from international legitimacy).

<sup>2</sup> Some scholars tend to interpret socialisation as elite involvement only (Kelley 2004). Yet, most view it in broader terms. Pridham (2005), for instance, proposes to distinguish among several levels at which EU’s involvement works: elite level (this is often called as ‘political dialogue’ or ‘structural dialogue’), intermediary actors’ level (transnational party and NGO linkages), and broader society level (various educational exchange programmes, participation of a country in question in Community programmes, etc.).

<sup>3</sup> From the methodological point of view the question is whether the analytical tools developed to explain the EU’s impact on domestic change in the countries of Central-Eastern Europe can be applied to analyse the EU’s impact on ENP countries (Wolczuk 2007).

loose framework for socialization. Lavenex (2008) takes a different angle by promoting the ‘external governance model’, which argues that the institutional extension of the EU’s sector-specific governance frameworks to the neighbouring countries results in integration at the sectoral level and in the adoption of democratic standards and procedures in sector-specific governance, although not necessary implementation in practice.

## **II A framework to deal with Ukraine**

I depart from the assumption that transformation and reforms cannot be imposed from outside, but in order to succeed the external pressure has to be matched by strong reform coalitions inside a partner country. The external actors, including the EU, can at best support domestic actors, structures and processes that already have a potential to foster reforms, but not replace them. The Europeanization literature, which combines rationalist and constructivist approaches (Börzel 2010), offers a useful framework for our analysis. It emphasises the role of both state actors and non-state actors in bringing about the change. From the rational choice perspective, the EU can have an impact through conditionality by offering rewards that outweigh the domestic adoption costs. If the costs are too high for the ruling political elites, the EU’s conditionality works through ‘differential empowerment of domestic actors’ by changing the domestic opportunity structure in favour of pro-European domestic actors outside of the power structures (Schimmelfennig/Sedelmeier 2005: 11-12). In the latter case the EU creates a power asymmetry, since it makes the electorate reassess the costs of having a government, which hinders the integration of their country with the EU (Schimmelfennig et al. 2005: 40). The constructivist approach emphasises the role of norm entrepreneurs, such as epistemic communities and advocacy networks, who socialise domestic actors into EU norms and therefore change their interests and identities (Börzel 2010: 3). Brought together, these two approaches try to establish the EU’s interplay with different domestic actors, both within the power structures and outside them.

In the case of Ukraine and other ENP countries in the East, the EU’s policy, which can be characterised as a much weaker derivative of enlargement, is matched by the domestic situation, which poses many more challenges than was the case with the CEE countries. The EU’s conditionality and incentives structure is much weaker, which reduces the EU’s pressure for reforms in Ukraine and the adoption costs for incumbent rent-seeking political elites are too high and civil society structures too weak, which makes domestic pressure for adaptation insignificant. Given these conditions, what potential does the EU have to ‘transform’ and ‘Europeanise’<sup>4</sup> Ukraine, given the experience of the ENP so far? Has this interplay of the EU’s

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<sup>4</sup> ‘Europeanization’ is understood here in a rather narrow sense as domestic adaptation of EU demands resulting from incentives, pressure, capacity building, financial assistance and other instruments. This definition is proposed by Gawrich et al. 2009: 11 specifically for the analysis of the EU’s neighbourhood. This understanding of Europeanization falls short of looking at whether EU norms and values become ‘internalised’ or ‘domesticated’ (Olsen 2002 and Schimmelfennig and Sedelmeier 2005 understand Europeanization in these terms when dealing with EU accession countries). This approach is justified given that we deal in the paper with rather recent developments (the period of time since 2005 when the EU-Ukraine Action Plan was signed; before this the EU was hardly an actor where domestic reform process in Ukraine is concerned).

policy on the one hand and various actors and processes in Ukraine on the other hand made any difference to the developments in the country?

I argue that although the EU has had a limited impact on Ukraine since the ENP was introduced in 2005<sup>5</sup>, this impact varied depending on the domestic actors and structures. More specifically, I argue that the EU has had no impact on the political elites and the reform process, yet the EU has triggered the process of incremental integration, with civil society and bureaucracy having become the key ‘agents’ of such integration.

### **III The case of Ukraine**

#### **III.1. Conditionality and the incentives structure: do the long-term incentives match the short-term thinking?**

As mentioned above, conditionality is often perceived as one of the most powerful instruments of the EU vis-à-vis the accession countries. While the above approach seems to have worked in the EU accession countries, the situation with the countries covered by the European Neighbourhood Policy (ENP) is rather different. On the one hand the type of the conditionality the EU has offered had not been appealing enough. The only incentives on the table include the deep and comprehensive free trade area (a part of the Association Agreement currently being negotiated) and the visa free travel (it might result from the visa dialogue currently underway). Both incentives are too distant and not credible until the Association Agreement is signed and comes into force and until the visa free roadmap<sup>6</sup> is adopted. Moreover, conditionality will appear only after these documents are signed, since the incentives will be linked to the specific reforms Ukraine will have to undertake.

On the other hand, the domestic situation in Ukraine is different from that of most accession countries. Unlike the latter, who shared a strong desire of ‘return to Europe’, Ukraine has so far lacked the sense of direction. Moreover, unlike the Central and East European Countries (CEECs) who embarked on the path of reforms early after the liberation from the communism, the policy of partial reforms and strong presidency for 10 years under Kuchma in Ukraine led to the establishment of the ‘patrimonial’ system with capture of the state by ruling clans (Wallander 2007<sup>7</sup>; Van Zon 2001) or business-administrative groups (BAGs) (Balmaceda 2008). Although after the Orange Revolution this oligarchy system became pluralized with multiple centres of authority having emerged, the politics and business have never become separated. After the 2010 presidential elections Ukraine returned to de-facto on party rule and it remains to be seen whether political pluralism will be preserved. Public policy under these circumstances is subordinated to the corporate interests of

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<sup>5</sup> The launch of the EU-Ukraine Action Plan in February 2005 is understood as the starting point for the ENP implementation in Ukraine.

<sup>6</sup> In the case of Ukraine this will be called the Visa Free Action Plan to differentiate from the Road Map – a formula offered to accession countries only (Western Balkans).

<sup>7</sup> Wallander (2007) uses this term with respect to Russia. However, this term can be easily applied to Ukraine under Kuchma, with the difference that Ukrainian version of the system was weaker and patchy, not covering the whole of the society, political life and economy. Many elements of this system are still present today with industrial-economic interests heavily involved into political life.

the ruling elites, who, given the uncertainty of such a system, aim at the extracting short-term benefits for themselves and hardly think beyond the next elections or even a shorter time horizon.

The long-term and vague benefits the EU has on offer, matched with the short-term and narrow corporate thinking (rather than thinking in terms of the national interests) hardly make any difference in the reform process in Ukraine. The approach to extract the immediate benefits from whatever opportunities appear is not compatible with the logic of European integration, which presupposes the need to pay short-term costs for the sake of the long-term benefits. Moreover, given the vague nature of the requirements the EU has developed so far, it is possible for the political elite claim Ukraine's rapprochement with the EU without implementing any reforms in practice.

### **III.2. Stimulating the pressure from within: empowering reform-minded constituencies and structures in Ukraine**

According to our framework for the analysis, a strong demand and pressure for reforms from within is an important prerequisite for the EU to make a difference in a given country. If the power holders are veto-players, the EU's conditionality changes the domestic opportunity structure in favour of pro-European domestic actors outside of the power structures (Schimmelfennig/Sedelmeier 2005: 11-12). This was the case in Slovakia, where Vladimir Mečiar lost to Mikuláš Dzurinda in 1998, an event that changed the pace of the country's integration with the EU. The Romanian elections in 1996 and the Bulgarian elections in 1997 are also sometimes given as examples of the impact of the EU's leverage<sup>8</sup>. Thus, the domestic reform-minded actors both from oppositional political parties and the civil society served as interlocutor between the EU and the broader society (electorate), and the society started to associate the rapid transformation of their country towards the EU with these actors (Vachudova 2005: 162).

The situation of the EU-Ukraine relationship is somewhat different for two reasons. Firstly, the incentives structure is rather weak, as was shown in the previous chapter, which makes it difficult to mobilize society against the current power holders. This might partially have to do with the fact that there is no prospect of membership, while the incentives available to Ukraine, such as the deep and comprehensive FTA and the visa-free regime are not appealing enough to mobilise the electorate and society at large. Moreover, the absence of competition with other countries of the region on their way towards the EU reduced the pressure for reforms. Secondly, there are no strong oppositional actors in Ukraine whose power base lies outside the oligarchy structures and could therefore challenge the current system based on rent seeking. As the 2010 presidential election in Ukraine has shown, political contestation, although challenging the system rhetorically, predominantly took place among the candidates who are part of the system. Given the nature of Ukrainian politics, where ideological underpinning is largely missing and political competition is limited to economic and corporate interests with many artificial candidates and parties – something, which Wilson (2005) calls 'virtual politics' – it is clear that the EU has no partners among

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<sup>8</sup> Vachudova (2005), for instance, argues that the EU's 'active leverage' led indirectly to the defeat of illiberal elites in Romania, Bulgaria and Slovakia in 1996, 1997 and 1998 respectively.

the political spectrum actors on whom it could rely in terms of bringing about a change in the regime. In this situation, reform-minded actors can only be found within civil society, especially within the non-governmental organizations sector. When the EU promotes the same requirements, which civil society supports and advocates for<sup>9</sup>, the chance of reforms taking place increases. In this respect, the commitments the Ukrainian government has made in the course of its relationship with the EU serve as an important reference point for the EU and civil society actors in Ukraine to combine efforts in advocating for reforms.

The EU, through the ENP, has managed to become involved with the Ukrainian civil society in several ways. Firstly, it has opened up various socialization channels with the civil society in the EU. Secondly, the EU has provided limited support in the form of grants to Ukrainian civil society organizations (CSOs). Thirdly, the EU has increasingly involved Ukrainian CSOs into the consultation process over various issues. The launch of the Eastern Partnership (EaP) offers enhanced opportunities for civil society organizations to become involved into the policy process. Thus, the EaP Civil Society Forum offers additional socialization opportunities for CSOs from the region.

Yet, the EU's impact on strengthening civil society as an actor in the reform process has been mixed. On the one hand, the very form of the EU-Ukraine relationship, which lacks a strong incentives structure, has not been conducive to mobilising reform-minded parts of the society against rent-seeking and non-accountable elites, as was outlined above. Neither has the EU been able to tackle the structural weaknesses of civil society in Ukraine, which include limited impact (both in terms of influencing policy and influencing public opinion) and dependence on foreign funding among other deficiencies. Moreover, the EU has reached only the most active and vibrant niches of civil society, who are also the most professional, yet this segment is rather small, while the broader segments of civil society such as, for instance, trade unions and civil society platforms working on environment, disabled, and other themes have so far remained ignorant about the Ukraine's EU-related agenda and as such have not been able to instrumentalise the EU requirements and policy instruments in their advocacy and public opinion activities in Ukraine. On the other hand, the EU has created a new dimension and new reference points for civil society activities, as well as having offered new tools that civil society organizations might use to push for a domestic reform agenda. In many ways, the Ukrainian civil society still has to get exposed to this new dimension, as well as still having to learn how to use the tools. Yet, the instruments are there, they can be improved, and it is in many ways the Ukrainian civil society's homework to capture the opportunities.

In short, while the EU has not contributed to civil society development and tackling the structural problems concerning civil society's lack of links with both the political elites and the broader public, it has contributed indirectly. As argued by Rommens (2010) by making authorities committed to certain reform agenda and certain requirements, the EU has produced the 'second order' effect, since it offered

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<sup>9</sup> Jacoby (2006), for instance, argues in his review of several studies that external influences tend to be successful if they operate in tandem with domestic actors and interests. Other scholars support the opinion that the external actors have better chances of having an impact on the domestic reform process if they operate 'in coalition' with domestic actors and structures that share the same interests and goals (Schimmelfennig/Sedelmeier 2005; Carothers 2004).

additional reference points to non-governmental organisations, with the help of which NGOs can attempt to hold the governments accountable and demand compliance. The EU-related requirements open up enormous potential for the EU and the civil society organizations to create coalitions aimed at demanding compliance with reforms, to which the governments have themselves committed, yet this potential still needs to be realised.

### **III.3. The role of institutional inertia: bureaucracy as an agent of change?**

Departing from the framework for our analysis, bureaucracy might be another actor relevant in terms of tracing the EU's impact on the reform process in Ukraine. Both in the case of the EU accession countries and in the ENP, the EU has relied heavily on this class in promoting its norms and preparing the partner countries for deeper integration with the EU. For the EU, as a highly institutionalised community, the institutions and procedures have naturally played a strong role in its policies towards third countries. For instance, the accession countries had to create strong coordination mechanisms in the government to guide the pre-accession process, to change administrative-territorial systems so as to be eligible for structural funds after the accession, and to create fast-tracking mechanisms of adopting the *acquis*-related legislation in the parliaments, among many other adjustments. New institutions were created and the existing institutions adjusted for these countries to deal with the growing EU-related agenda, and more and more professionals were involved at all levels in the European integration business. All these activities were aimed at making the countries 'Europeanised' and preparing them to become fully integrated with the EU in view of the forthcoming accession. Moreover, given the rather technical nature of the process of integration with the EU, with the *acquis*-related requirements being in the centre of the process, bureaucracy at all levels was heavily involved.

Under the ENP Ukraine has experienced a similar process, yet, with one substantial difference. In the context of countries like Ukraine, where political leadership and political will for reforms are absent, the bureaucratic nature of the process where civil servants are the key agents is a positive, rather than a negative trend. Under the Ukrainian circumstances, the bureaucratized nature of the process of dealing with the EU has provided for at least some sort of implementation of EU requirements. Moreover, under the conditions of political instability and crises, which Ukraine experienced between the 2005 and 2010 presidential elections, this has made implementation at least partially immune against political turbulence (Wolczuk 2009: 207). Therefore, the bureaucratic class in charge of the European integration of Ukraine might be another important actor, along with civil society, which accounts for the domestic pressure to adopt the EU requirements.

The similar process, although of the significantly lesser scale, has been taking place in the EU's relations with the ENP countries. Unlike the EU accession countries, where this process was oriented towards the goal of accession, in Ukraine the process has reflected the EU's growing attention and engagement in the region. Thus, the already existing structures created under the Partnership and Cooperation Agreement (PCA) started dealing with the new evolving issues, such as the EU-Ukraine Action Plan (2005-2008), Association Agenda (to be launched in October 2009), negotiations on the Association Agreement (started in March 2007) and numerous

sectoral initiatives (cooperation in JHA, Ukraine's joining the European Energy Community, the Common Aviation Space, the Community programmes and agencies). The Eastern Partnership initiative (EaP) launched in May 2009 also creates new structures, mostly for multilateral cooperation. On top of that such programmes as Twinning and TAIEX offered by the EU have involved more and more bureaucracy who has become more informed where the EU standards are concerned. Where the domestic side is concerned, Ukraine launched the new Coordination Bureau for European and Euro-Atlantic Integration in November 2008, while several Ukrainian ministries acquired a rather strong European dimension due to their important role in coordinating the work of the subcommittees within the EU-Ukraine Cooperation Committee. Less activities of the kind take place outside of the capital Kyiv and the central authorities, yet more opportunities are also emerging on the regional and local levels.

Whether the abovementioned institutional changes and adjustments resulted in any substantial changes beyond the immediate institutional settings is difficult to estimate, not the least due to the fact that the time frame since 2005 has been rather short. Nevertheless, two observations can be made. Firstly, there has been a steady increase in the number of institutions, activities and human resources involved. As Wolczuk (2007) puts it, 'enclaves of Europeanization' have been emerging in Ukraine. Secondly, no summits, meetings, the negotiation process on the AA, the Association Agenda, the visa dialogue, or other activities have been cancelled or seriously postponed despite the constant political turmoil in Ukraine. In fact, despite the never-ending political crisis during the post-Orange years, the lack of political will for reforms, and the economic recession to make things worse, the EU-Ukraine cooperation agenda has been growing and indeed moving from partnership to integration. As EU and Ukraine are moving towards new integration projects, more and more European-minded bureaucracy and structures are likely to appear. For instance, the AA which includes a deep and comprehensive free trade area and sectoral integration will require that Ukraine aligns its legislation with that of the EU in many sectors and modernises its regulatory environment accordingly. This alone will have an immense impact on the judiciary, which is currently highly politicised, but will have to adjust itself to a more liberal economic environment and increased competition. The same can be said about Ukraine's prospective membership in the European Energy Community, as well as Ukraine's chances of becoming a part of the European Aviation Space. As bureaucracy negotiates these integration projects with the EU with very little political leadership, at some point it might turn out that the integration channels have become numerous and well-entrenched, which will require different domestic actors to accept the new rules of the game. The theory of path-dependency suggests that one might become locked into a path and that 'locking out' of it might be too costly (Pierson 2004). In other words, the institutional entrapment or institutional inertia might become strong enough to put Ukraine firmly on the European track in the long-term perspective.

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