The Normative Power of the EU in the Framework of the European Neighbourhood Policy

A Case Study on Ukraine
Abstract

Through the use of political conditionality, the EU has exercised what many have chosen to call an international normative power. The fast democratisation process of the central European countries that joined the EU in 2004 has often been attributed to the force of EU’s normative power. Here, the core of the political conditionality was found in a promised future membership – acting as a reward in exchange for democratic reforms. The new European Neighbourhood Policy however, initiated briefly after the 2004 enlargement, gave rise to new prerequisites to the Unions new neighbours and this time enlargement fatigue prevailed in the EU policy. This case study examines and assesses the ability of the EU to exercise its normative power on Ukraine through the new conditions set up by the European Neighbourhood Policy, were a membership perspective neither is promised nor ruled out. The result show that the effective conditions for the conditionality are favourable and that a good progress on the areas of democracy, rule of law and human rights has been achieved. Although difficult to prove, I argue that this progress most probably is partly due to EU’s normative power on Ukraine.
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<td>Central and East Europe</td>
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<td>Commonwealth of Independent States</td>
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<td>ENP</td>
<td>European Neighbourhood Policy</td>
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<td>EP</td>
<td>Eastern Partnership</td>
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<td>European Partnership and Co-operation Agreement</td>
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<td>EU</td>
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<td>MERCOSUR</td>
<td>Mercado Común del Sur – Southern Common Market</td>
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<td>NAFTA</td>
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1. Introduction

1.1 Background & Presentation of the Problem

In May 2004 the biggest enlargement yet to be seen took place in the European Union. Together with the new Central and East European member states, the EU had gone from 15 to 25 adherents. This enlargement process has often been considered to be one of the EU’s greatest achievements in terms of foreign policy, considering the large number of reforms in terms of democracy and market economy that had taken place in these states during the association period. The political conditionality made it possible for the community to put pressure on the candidate countries to make necessary democratic, legal and economical reforms with the carrot being a promised membership to the EU. This conditionality, based on the concept of asymmetrical power, has arisen as a powerful policy instrument of the EU through which it can canalise its normative power.

In the aftermath of the enlargement process, the community faced a new range of neighbouring countries although this time the EU showed a diminishing will of further enlargement. Nevertheless, to abandon a fruitful strategy of political conditionality would be unwise and furthermore, there had been little or no cooperation agreement with these new neighbouring countries. Thus, the European Neighbourhood Policy (ENP) was created with the purpose of promoting stability, democracy and economic growth in the region but without promising future membership for the countries concerned. The EU did not close the door to future membership, but it did not open it either; the ENP appeared rather as a membership neutral cooperation. As Roman Prodi, the at the time actual president of the European Commission put it: “The EU aims to build a ring of friends [...] Our willingness (is) to share everything but institutions with our future neighbours.”

Democracy, stable economical development and good governance in the proximity of the European Union are of strategic importance to the community. Deficiency in these mentioned factors might imply negative spillover effects to the borders of the Union. It therefore appears fundamental for the EU to foster good relations with these neighbouring countries and to promote the idea of shared common values. However, the incentives presented for the countries within the ENP do not include membership perspective, but instead the EU rewards institutional change in the concerning countries with successive access to the EU’s internal market and other beneficial trade agreements guided by the principle of conditionality.

The relations between the EU and Ukraine are today governed through The Partnership and Co-operation Agreement (PCA) in which all the neighbouring Commonwealth of Independent states (CIS) concluded with the EU some years after the fall of the Soviet Union. In Ukraine, the PCA was ratified in 1998 with a life span of 10 years. However, the ENP has been incorporated into the current agreement and as of today, new negotiations are being made between Ukraine and the EU on an Enhanced Agreement.

The use of international agreements by the EU is an imperative tool in its external policy-making and the ability for the community to promote reforms into more west-orientated standards. However, the preconditions for the political conditionality have been altered with the EU’s ENP strategy. Will the EU be able to repeat its successful pursuit of “Europeanising” the post Soviet countries with the new framework in which it does not promise future mem-

1 Prodi:2003
bership? Have the ambitions and the capabilities of the European Union as a norm exporter to its neighbours changed?

As in all of the CIS countries, Ukraine faced large political and economical problems after the dissolution of the Soviet Union in 1991. During the 90’s, extensive democratic and more market-oriented reforms were made. Nevertheless, today the country still faces a large deficit in terms of democracy, the rule of law, respect for human rights and economical stability. The Orange Revolution in 2004, as enormous amounts of people manifested the streets of Kiev in objection to the election frauds, gave the Ukrainians and the surrounding world hope of a future more democratic political climate. Ukraine however still suffers from a large cleavage amongst the population and politicians by those drawn more to the EU and by others who prefer to turn themselves towards Russia. The EU is dissentient when it comes to Ukrainian membership. Some member states, such as Sweden, have a pronounced will of tying Ukraine closer to Europe by offering a membership perspective, whereas others such as France are more sceptical about further expansion eastwards. The underlying dilemma seems to be whether the EU should act fast and invite Ukraine to the EU in order to avoid “losing” Ukraine to Russia. Even though a formal request for membership in the EU has not yet been handed in, a future membership is nevertheless the political ambition set up by the current president Viktor Yushchenko and opinions polls show that a majority of the Ukrainian people support an eventual membership.

The EU is a very important trade partner for Ukraine. Thirty percent of all of Ukraine’s export goes to the EU, and thus it is reasonable to believe there are large incentives for the country to conclude trade agreements in order to reduce tariffs on important merchandise. What conclusions can be drawn in the case of Ukraine when it comes to the EU’s norm exporting and its possibilities to induce institutional reform? Ukraine is one of the more developed countries and perhaps closer to an eventual membership than any other country taking part in the ENP program. On the other hand, it is subject to a large Russian interest of closer political and economical integration. Therefore, it is of great interest to examine how this country in particular is influenced by EU’s “Europeanising” attempts.

1.2 Purpose

The purpose of this thesis is to examine the possible normative influence that the EU is able to have on Ukraine through the European Neighbourhood Policy. It wishes to define the norms diffused by the EU, examine the way the norms are being diffused and investigate the capacity and strength of the norm diffusion within the ENP on Ukraine. Moreover, this study will examine domestic institutional reform as a result from EU’s normative role in Ukraine.

1.3 Method & Material

This thesis takes the form of a qualitative case study with comparative elements. Ukraine might be seen as the unit of analysis, institutional reform or rule adoption is the dependent variable and the ENP is the independent variable. More specifically, ENP is the variable that affects change on institutional reform in Ukraine. Indeed, many other variables affect change on institutional reform in Ukraine. This study however will focus on the ENP as mean for institutional reform.

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2 Landguiden online
3 Valasek:2008, p.11-12
The reason for using a qualitative approach to the study of norm diffusion by the EU to its neighbours is that it gives the opportunity to get an in-depth understanding of a process of great complexity. The EU conducts its ENP with thirteen countries, and performing a case study on one of them offers an opportunity to evaluate the process in a given context and to reach an understanding of the contextual influences on the process of norm diffusion.

The case study as a method has often been criticized by quantitative analysts for a lack of ability to generalize, being biased, difficult to summarize, only useful to generate hypotheses and is judged unscientific by people who claim that theoretical knowledge is more important than practical knowledge. Flyvbjerg argues that these are misunderstandings of the case study and highlights the advantages of contextual studies and the importance for the scientific community to accumulate knowledge of specific cases when understanding larger political problems and processes.

"A scientific discipline without a large member of thoroughly executed case studies is a discipline without systematic production of exemplars, and a discipline without exemplars is an ineffective one."5

Moreover, Flyvbjerg argues that in real terms, it does not and will never exist a predictable theory in human science and thus all knowledge that this science has to offer is dependent of the context. A common difficulty when conducting a case study is to identify the case itself, or more specifically, to specify "what the case is a case of". In this actual event, the case is Ukraine, and what is studied in Ukraine, is the case of norm diffusion by the EU. Often, it can be a more fruitful and interesting strategy - and a way to increase the possibility of generalizing - to select a case that perhaps is not representative, but rather a case that is extreme or deviant. This is to say, if for example a particular case has extremely good conditions for resolving certain issues, then if this case shows problems in resolving them, it is quite probable that other cases with less good conditions will suffer the same problem. In this thesis, the case of Ukraine is in some ways seen as a deviant case, but in a reversed sense than the latter example. Due to the fact that Ukraine has had an extremely instable political climate since the Orange Revolution in 2004, it is of interest to examine the influence that the EU can have as a normative power and to induce rule adoption, even under terms of great instability and disorder amongst the highest political power. If the EU can have a normative influence through its cooperation instruments on a country like this, it is probable to suggest that it also has an influence on other partner countries with a more stable political situation. I will however, due to predominating criticism in generalizing through single case studies, leave to the reader to assess if the conclusion of this case study is adoptable on other ENP countries.

Another strength of the case study as a method that is often highlighted, is that it is highly useful in refining and testing existing theory. The theoretical framework of political conditionality developed by Schimmelfennig & Sedelmeier to study the norm diffusion in the accession countries of the great EU enlargement in 2004 has been used on a great number of those countries. This thesis however wishes to apply this theoretical framework to countries that benefit from EU cooperation but has no outspoken membership perspective, and thus develops the scope of use and brings new challenges to the theoretical framework.

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4 Flyvbjerg:2006, p.219  
5 Ibid, p.219  
4 Ibid, p.223  
7 Ibid, p.238  
8 Ibid, p.230  
9 Ibid, p.229
Regarding the material, because of linguistic difficulties examining official Ukrainian documents, journals and newspapers, a lot of the material will consist of official EU documents and scientific articles by researchers who have written in English. An extensive examination of relevant EU documents have been made in order to interpret and systematize the mutual relations, the conditions for cooperation, the rewards and other information relevant to the theoretical framework.

1.4 Delimitation

This thesis aims to analyze EU’s normative power capability over Ukraine in the framework of the ENP and the current EPCA that contractualizes their mutual engagements. The EU’s normative influence in third countries can be demonstrated in many ways; this thesis however will focus on EU’s ability to act as a norm exporter as a result of their official engagements as is the case with the ENP. The period will be limited to a scope of ten years between 1998 and 2008 and is motivated by being the life span of the original EPCA. How this norm transfer takes place in Ukrainian institutions through rule adoption will be examined with the help of a theoretical framework developed in the forthcoming chapters. When evaluating the institutional change, a focus will be maintained on democracy, rule of law and human rights.

1.5 Disposition

First, a presentation of the theoretical framework will be done beginning with Ian Manners’s theory of the EU as a normative power and following with Schimmelfennig & Sedelmeier’s theoretical framework on political conditionality. Secondly, the empirical base will begin with a description of the political context in Ukraine and then move on to describe the EU-Ukrainian relations and ultimately the section will end with an account of the development made in the country as regards to democracy, rule of law and human rights. Finally, the analysis will be made intertwining the empirical research with the theoretical framework leading toward the conclusion.

2. Theoretical Framework

2.1 EU as a Normative Power

This section will lay out some of the principal ideas of norm diffusion by the EU in order to get an insight into the notion of EU as a normative power and furthermore help to identify the norms that it represents. Due to the scope of the notion, this section will furthermore work as an indicator on which type of norm transmission this thesis will focus on.

Ian Manners was the first scholar to define the EU as a normative power. The principal idea is that the classical English School division of states in either militarian or civilian powers is not sufficient to define the international impact of the EU.10 Some scholars have argued that, even after the development of the European security and defence policy, the EU is best seen as a civilian power because of its emphasis on non-military means. Others have questioned this idea claiming that the EU is rather to be found somewhere along a spectrum between two ideal types of civilian respectively militarian powers.11 Ian Manners, on the other hand, proposes that the development of the 1990s in international relations has led the EU into a new type of role that transcends these traditional notions, namely that the EU is rather to be considered as normative power.

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10 Manners:2001, p.2
11 Smith:2005, p. 16-17
An international norm, according to Manners, is to be defined as a shorthand for what passes as “normal” in international relations. Thus, normative power should be understood as the ability to shape or change what passes for normal. He emphasize the difference between the EU and other historical empires or contemporary global powers promoting their norms as being the exceptional historical context in which the EU was created. The once predominated nationalism in Europe resulted in a terrible war that left Europe shattered in pieces. Robert Schuman’s idea of making these countries dependent of each other by communalising the production of coal and steel was built upon the will of preserving and strengthening peace and liberty. Manners argues that these founding values and the willingness to disregard Westphalian conventions is the core of the Community’s commitments of placing universal norms and principles at the centre of its relations with its member states and with external actors. The principal idea of this new notion is to contemplate how the EU affects political ideas rather than focusing on the question of whether the means are civilian or militarian.

Manners identifies five “core” norms which have been developed over the past 50 years through series of declarations, treaties, policies, criteria and conditions by the EU: Peace, liberty, democracy, rule of law and respect for human rights. Peace is considered the founding idea of the EU which thrived in the aftermath of the Second World War. The other norms are all quoted in Art.6 in the Treaty on the European Union (TEU) that outlines the fundamental principles of the Union. According to Manner, these norms became more apparent when the EU recognized an importance to distinguish itself from the communistic domain in the east. Another four “minor” norms, albeit more vague, are also identified within the constitution and practices of the EU. These are social solidarity, anti-discrimination, sustainable development and good governance.

When considering the normative power of the EU and asking how these norms spread out, Manners identifies several causal factors, which all contribute to the diffusion process. I will not account for all of these factors, but only for those characterizing the ENP. These are:

- **Procedural diffusion** - The institutionalization of relationships between the EU and a third party. Examples of this are inter-regional co-operation agreements such as the ENP, membership of international organizations and the enlargement of the EU itself.

- **Transference** - The diffusion of norms takes place through exchange of goods, trade, aid or technical assistance with third parties through real or financial means. The norm exportation may be fortified with the use of political conditionality for the third party to access these benefits. Examples of Transference are the PHARE and TACIS programmes in Central and East Europe and the European development fund to the Cotonou states.

We now turn to the model that will be the core of the analysis.

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12 Manners:2001, p.10
13 Manners:2002, p.241
14 Schuman:1950
16 Manners:2002, p.242-243
17 Ibid, p.244
18 Ibid, p.245
2.2 Theories on the Europeanization of Central and Eastern Europe

In this thesis, the theoretical framework will be based on the analytical framework developed by Schimmelfennig & Sedelmeier on the Europeanization of Central and Eastern Europe (CEE). According to them, “Europeanization” is defined as a process in which states adopt EU rules.\textsuperscript{19} Central and Eastern European states (CEES) involved in some kind of cooperation agreement with the EU that implies an access to the EU’s internal market or pre-accession to a future membership, are obliged to adapt their institutions to the EU regulation. For example, membership requirements include proof of the ability to implement over 80,000 pages of EU legislation, the so-called \textit{acquis communautaire}.\textsuperscript{20} This rule adoption is not only a technical consequence but also a result of the conditionality that the EU applies to the countries it cooperates with. In giving certain countries beneficial rewards, such as lower trade tariffs, free trade agreements or prospects for future membership, the EU has the ability to induce these countries into making legislative reforms ranging from areas of democracy or market economy to a strengthening of the rule of law. This clearly allows the EU to have a great influence in restructuring the domestic institutions of the CEES.

In using the notion “rules”, Schimmelfennig & Sedelmeier include both formal and informal rules. In other words, the focus lies on the institutionalization of EU rules at the domestic level, and this can include transposition of EU law into domestic law but also implies change of domestic political practices according to EU standards.\textsuperscript{21} They elaborate three different explanatory models for Europeanization and non-member states’ adoption of EU-rules, which all contribute to explaining the EU rule adoption: \textit{The external incentives model, the social learning model and the lesson drawing model}. These three models are different in two main aspects. First, either Europeanization can be EU-driven or domestically driven which mostly is a question of who initiates the institutional reform. Secondly, Schimmelfennig & Sedelmeier wish to emphasize different logics of action that govern rule adoption in distinguishing between \textit{logic of consequences} and \textit{logic of appropriateness}. Logic of consequences considers the actors strategic and instrumentally rational driven by the will of maximizing their own power and welfare. Logic of appropriateness however sees the actors as motivated by identification, values and norms. In this case, the actors choose the alternative that is most appropriate or legitimate rather than thinking in terms of conditions and rewards as is the case in the former logic of action.\textsuperscript{22}

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<th>Logic of rule adoption</th>
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<td>EU-driven</td>
<td>Logic of consequences</td>
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<td>Social learning model</td>
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<td>CEEC-driven</td>
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\textsuperscript{19} Schimmelfennig & Sedelmeier:2005, p.7
\textsuperscript{20} Ibid, p.2
\textsuperscript{21} Schimmelfennig & Sedelmeier:2005, p.7
\textsuperscript{22} Ibid, p.8-9
2.2.1 The External Incentives Model

This model wishes to examine and capture the essence and understanding of political conditionality. It is related to those models often used in the study of international financing conditionality; for example within the World Bank or the IMF, in the case when lending money to developing countries is followed by strict conditions of institutional reforms.\(^\text{23}\) The model is actor-centered and implies a bargaining process in which actors exchange information, threats and promises according to their preferences, as well as where the outcome depends on the actor’s bargaining power. The bargaining power depends on the possession of information and the degree of necessity for the actors to participate in the cooperation. The actor with the least need of entering a specific cooperation also has the ability to threaten with noncooperation and therefore force the counterpart into making concessions.\(^\text{24}\)

In general, the EU follows a strategy that Schimmelfennig & Sedelmeier label *reinforcement by reward*, that is to say the EU pays a reward if the target government complies with their conditions and withholds the reward in case of non-compliance. All actors seek to minimize their costs and to maximize their profits. The conditions set up by the EU are the adoption of rules, and the rewards can be either assistance or institutional ties. Assistance can be of a technical or financial sort for the transition to market economies. Institutional ties, on the other hand, can be different sorts of trade and cooperation agreements, but also full membership perspective.\(^\text{25}\)

The point of departure in the analysis process with the model is a domestic status quo or a domestic equilibrium in which the current distribution of preferences are reflected. We take into account the domestic bargaining power, but also the bargaining power between international and domestic actors. The EU conditionality intervenes in this equilibrium and creates additional incentives for compliance with EU rules into the game. This conditionality can work in different ways:

1. *Intergovernmental bargaining*

   It works directly on the target government that calculates if the benefits of the EU reward outweigh the cost of domestic rule adjustment and takes into account the opportunity cost of discarding the rules promoted by other international actors.

2. *Differential empowerment of domestic actors*

   In this case, certain domestic actors might have independent incentives to adopt EU rules. This can be the case if a rule adoption increases their influence in the political system or if it useful to solve a specific domestic policy problem. The conditionality then changes the domestic opportunity structure of these domestic actors, who before then might not have been able to impose their preferred rules on the other domestic actors. Consequently, they strengthen their bargaining power vis-à-vis their opponents.

In brief, *reinforcement by reward* is explained by the fact that the governments adopt EU rules if the benefits of EU rewards exceed their domestic adoption costs. Schimmelfennig & Sedelmeier suggest that the cost-benefit analysis should be divided into four different dependent factors:\(^\text{26}\)

\(^{23}\) Haggard and Webb:1994, p.25-27  
\(^{24}\) Shimmelfenning & Sedelmeier:2005, p.10  
\(^{25}\) Ibid, p.11  
\(^{26}\) Schimmelfennig & Sedelmeier:2005, p.12
1. **The determinacy of conditions**

The probability of a rule being adopted increases if rules are set as conditions for rewards and the more determinate they are. It has both an informational value in helping the target to know more precisely what it is supposed to do in order to receive the reward, and enhances the credibility of conditionality in the sense that it clarifies the rules of game.  

2. **The size and speed of rewards**

The probability of a rule being adopted increases with the size and speed of rewards. For example, the promise of a future enlargement ought to bring more powerful and stronger incentives to the targets than the case of association, assistance or other types of cooperation agreements. The smaller the distance in regards to time of the actual reward, the bigger the incentive of compliance. The model states that a way of reducing problems associated with time distance, say for example if an EU membership is very distant in time, is by offering intermediary rewards. These intermediary rewards might be different kinds of trade- and cooperation agreements, association agreements, etc. The incentives are also stronger if the target country is a potential EU candidate than is the case with countries that for example are not a part of Europe or are not at all considered potential candidate states.

3. **The credibility of threats and promises**

This factor underlines the conditions under which bargaining power and conviction are strengthened or weakened. In order to exercise influence, the EU must have the capability of withholding the reward at little or no cost to itself and furthermore, it has to be less interested in giving the reward than the target country is of getting it. According to Schimmelfennig & Sedelmeier, this condition is generally satisfied in the relations between the EU and the CEECs. There exists, however, “sunk costs” in the rewarding process when it comes to enlargement. It is reasonable to believe that after extensive investments have been made in target countries, the cost of the EU to withhold the reward will be higher. These costs are much less extensive in the case of assistance than enlargement, and thus the threats in the latter case are not as credible. The credibility also depends on the consistency of the Union’s politics. For example, the EU will lose its credibility if it lets other political, strategic or economic considerations go before conditionality, and if it has internal conflicts about conditionality. This can create confusion amongst the target countries or tempt them to manipulate these conflicts to their advantage. Schimmelfennig & Sedelmeier also mention the notion **cross-conditionality**, which is not preferable for successful EU conditionality. Cross-conditionality implies that a country can get the same benefits offered by other sources, but to a lower adjustment cost. The last factor that affects the conditionality is asymmetries in information. This is mostly a question of monitoring the target countries, and the less perfect the information on the compliance, the more the credibility of the Unions conditionality decreases.

4. **The size of the adoption costs**

The external incentives model takes for granted that the action of adopting EU rules is costly, otherwise an adoption would already have taken place without the conditionality. The size of the domestic adoption costs and the distribution of the costs among the domestic actors is what determines whether the target country will accept the conditions or not. Adoption costs can take the form of opportunity costs when the CEEs consider adopting other rules and receiving other rewards, but they might also incur welfare or power costs to both public and

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27 Ibid, p.12-13
28 Ibid, p.13
29 Ibid, p.13-16
private actors. The idea behind this is nevertheless that eventually the rewards given by the EU will balance these costs. The success of the conditionality is dependant on the preferences of the government and other “veto players”. Schimmelfennig & Sedelmeier define veto players as “actors whose agreement is necessary for a change in the status quo”. In general, it is more difficult to succeed with a change in the status quo if there are many veto players, and thus rule adoption depends negatively on the amount of veto players.

In sum, the model predicts conditionality to be most effective if rules and conditions are determinate; conditional rewards are certain, high and quickly distributed; threats to withhold the rewards are credible; adoption costs are low; and veto players are few.

2.2.3. Other Explanatory Models

It is hard to prove that the external incentives model alone is capable of explaining domestic change in third states. Therefore, I have chosen to briefly account for two other explanatory models which are based on a logic of appropriateness. This in order to get a broader perspective in the conclusion about the causality between EU incentives and EU rule adoption that will be elaborated in the ending parts of this thesis. The logic of appropriateness implies that the driving force of institutional change is not incentives offered by the EU, but rather the motivation is to be found in the country itself, guided by motivations of identification, values and norms.

*The Social learning Model* implies that countries adopt EU rules if they are judged appropriate, in the sense that the country identifies itself with the values and the norms that the EU consists of. A government will adopt EU rules if persuaded by their appropriateness. The factors that affect the persuasive power is legitimacy, identity and resonance.

*The Lesson-Drawing model* emphasizes adoption of EU rules without inducement from the EU. The idea is that when domestic policy is unsatisfactory or insufficient, the country turns itself abroad to learn from other countries. They make an evaluation of whether or not these rules might successfully be implemented in the domestic context. EU rule adoption depends on four set of factors: Policy dissatisfaction, EU-centered Epistemic Communities (EU networks of experts that promote EU rules), Transferability of Rules and Veto Players.

In summarizing the theoretical chapter as a whole, we have now limited the scope of the norm diffusion into those of procedural diffusion and transference. These types of norm diffusion are plausible in the ENP framework.

The explanatory models of Schimmelfennig & Sedelmeier provide a more concrete method of examining and identifying the ability of the Union to export its norms. This study will focus on the EU rule adaptation as a means for the Community to diffuse norms. It is my intention however to relate these two theories by bringing greater clarity to the norm diffusion capabilities of the EU. In evaluating the EU rule adoption, the model applied will be the External Incentives model. This delimitation is motivated by Schimmelfennig & Sedelmeier’s conclusions. After extensive examination on different CEECs using these three models, they show that the external incentives model best explains the EU rule adoption. It is however, of great importance to emphasize and reason among alternative, and sometimes complementary, causes of the rule adoption, which is why these other two models have been included.

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30 Ibid, p.16
31 Ibid, p.17
32 Schimmelfennig & Sedelmeier:2005, p.211
3. Empirics

3.1 Ukraine, the Political Context

Even though Ukraine declared independence almost immediately after the collapse of the Soviet Union in August 1991, it would take the country five more years to elaborate a new democratic constitution. These years were marked by great political disagreement over which economic policy should be pursued, and differing ideas over the transition from planned economy to market economy. The new constitution in 1996 relaxed the power struggle to some extent between the government, the President and the Parliament in fixing their formal authorization.  

However, the somewhat chaotic struggle of power continued and furthermore involved the different “clan” composition’s claim for power. These clans are economically and politically dominating groups in the Ukrainian society mostly consisting of powerful oligarchs who strive do maintain influence and power. In 1999, the former President Leonid Kuchma who had been in the political power centre since the independence declaration, was re-elected and appointed the young liberal and former head of the central bank, Victor Yushchenko, as his Prime Minister. Kuchma and his government however became the subject of a vote of non-confidence after being suspected of collaborating on the murder of critical regime journalist Georgij Gongadzes. By the time of the elections to Parliament in 2002, Victor Yushchenko had set together a new political party called “Our Ukraine” which represented a more liberal western approach to politics. The fairness of these elections where broadly criticized both by the political opposition and foreign election observers but nevertheless, Kuchma succeeded to stay in power. This time he appointed Victor Yanukovych to become his Prime Minister.

The presidential elections in 2004 were to become the prelude for the famous Orange Revolution. Yanukovych and Yushchenko both ran for the presidency and the opinion and exit polls all stated Yushchenko as the winner. The Central Election Commission of Ukraine however assigned the victory to Yanukovych. As both domestic and foreign election observers criticized the outcome of the election and accused the elections of being exposed to fraud, hundreds of thousands of people gathered in the streets of Kiev to demonstrate and show their support of Yushchenko and Tymoshenko, using orange coloured symbols. The revolution developed into a huge machinery where different NGOs with financial support from the West conducted organised manifestations. Russia and President Putin however, showed a strong support for the pro-Russian candidate Yanukovych. The European Union was also to play a key role during the revolution. The EU engaged Yushchenko, Yanukovych and Kuchma in round table talks together with EU officials and politicians. These negotiations together with the rising pressure of the Ukrainian protestors resulted in a withdrawal of the Central Election Commission’s decision and made possible a re-election.

This time Yushchenko arose as the rightful winner of the presidency in January 2005 and the election observers confirmed the results. President Yushchenko together with appointed Prime Minister Yulia Tymoshenko, a liberal conservative who participated intensely in the Orange Revolution, promised the Ukrainian people an end to corruption, increased welfare and a series of reforms in order to approach Ukraine to a future membership of the European Union.

33 Landguiden
34 Ibid
36 Pifer:2007
Yushchenko and Tymoshenko both became representatives of Western liberal ideals, taking sides for the more Western-oriented population of Ukraine. Yanukovych on the other side, still with a popular support amongst the pro-Russian part of the population in Ukraine and many oligarchs, represented the other half of the Ukrainian people who felt stronger bonds with Russia. The coalition between Yushchenko and Yulia Tymoshenko would however not be long lasting. The period after the Orange Revolution until today has continuously been marked by political rivalries amongst the two. In September 2005, President Yushchenko dismissed the entire government, including Tymoshenko, in the shadow of a great corruption scandal, accusing it of not having a proper “team spirit”. In January 2006, a non-confidence vote, mostly initiated by Tymoshenko, was put through against the new government, stemming from a discontent over the gas price negotiations with Russia almost doubling the former price deal. As the new elections to Parliament took place in March 2006, Yanukovych and his “Party of Regions” showed a remarkable comeback in the results. Despite some technical problems in the election process, the OSSE election observers declared the elections open and free and Yanukovych’s advancement was mostly a result of discontent with non-performed reforms and continuous corruption in the country. The outcome of the elections posed great political conflicts and Yushchenko announced that further cooperation with Tymoshenko would not be possible. The tensions arose to the point that in August, Yushchenko was forced into approval of his former rival opponent Yanukovych as Prime Minister in order to avoid another political crisis. This of course caused great internal conflicts in Yushchenko’s party “Our Ukraine” and led the President once again declaring re-elections to be held on in May that he later extended until June. A conflict between Yushchenko and Yanukovych evolved regarding the legitimacy of the re-elections; and also involving the constitutional court of Ukraine. This conflict of power was close to being one of military means when the minister of the interior, supported by Yanukovych, ordered the riot police to take control over the office of the Prosecutor-General. Yushchenko responded by calling in the military, but fortunately a compromise was achieved through intense negotiations between the two parties and the re-elections where further extended to take place in September.

The elections in September resulted in an advancement of position for Tymoshenko and her party, with an increase from 22 to 30 per cent compared to the last elections. The voter participation, 62%, was a significant indicator of the people’s fatigue over political quarrels that did not seem to lead anywhere. Despite preceding ill will, Tymoshenko and Yushchenko agreed upon a formation of a coalition with Tymoshenko once again as Prime Minister. This new coalition was however not more successful than former attempts, and new quarrels arose over how politics should be conducted, with both parties accusing each other of corruption. The war in Georgia during the summer of 2008 intensified the antagonism between the President and the Prime minister. Yushchenko supported Georgia in the conflict, whereas Tymoshenko allied herself with the pro-Russian opposition. In this way, she was able to pass legislation that Yushchenko considered to be threatening to his position. Yushchenko withdrew his party from the coalition as a response to this, and after failing attempts of Tymoshenko to create a new majority, the President once again declared dissolution of the Parliament. The global financial crisis, which had severe effects on the Ukrainian economy, however led the parties to unite in order to deal with the urgent problems.

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37 Landguiden
38 Ibid
39 Ibid
Overall, the political conflicts and the high rate of instability in the decision-taking organs since the Orange Revolution were largely due to the lack of clarity on the power-sharing between the President, the Prime Minister and the Parliament stemming from the hasty revisions of the Constitution in 2004 and 2006. Moreover, the deputies in the parliament often switch loyalties in a sporadic way, affecting relations of majority and creating instability in the parliamentarian system.

When it comes to the political stance towards the EU in general, it is positive. During Kuchma’s presidency, the attitude towards the EU was rather passive, which furthermore was reflected in the weak institutional arrangements devoted to European integration. The work of the ministers was often limited to execution of the President’s decisions. However, no political party in Ukraine has since 2002 opposed themselves to EU membership. On the other hand, none of the 26 presidential candidates that ran for the election in 2004 campaigned for EU membership. The rhetoric did however change after the Orange Revolution, where Yushchenko actively promoted an approach to the Union.

3.2 The Relations between the EU and Ukraine

The legal foundation of the Union’s capability of entering co-operational agreements stems from article 310 in the TCE:

“The Community may conclude with one or more states or international organizations agreements establishing an association involving reciprocal rights and obligations, common practices and special procedures.”

The EU has cared for an active collaboration with Ukraine since its independence in 1991. The negotiations for a contractual co-operation agreement started in April 1992 that resulted in the Partnership and Co-operation Agreement. It was signed in 1994, and by 1998, it finally entered into force with a set life span of 10 years. In 2004, the EU introduced the European Neighbourhood Partnership with the aim of consolidating its relationship with the countries that now had become neighbours with the Union. The ENP was implemented in Ukraine within the framework of the already existing PCA, and in 2005, an Action Plan was set up with the purpose of identifying the prioritized policy areas in need of reform. In June 2007, the EU and Ukraine signed an agreement on visa facilitation that entered into force in January 2008. Moreover, in September 2008, the EU decided to further deepen the relationship in introducing the new Eastern Partnership (EP) and admitting Ukraine into an Association Agreement with the Union planned to be signed sometime during 2009.

3.2.1 The Partnership and Co-operation Agreement

This is the main bilateral agreement between the two parties that persists even today, even though other agreements on more specified areas exist. Ukraine was the first country of the twelve former Soviet Union states to sign a PCA with the Union. The main aims of the PCA are:

- to develop close political relations by starting a regular dialogue on political issues;

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40 Freedom House:2008
41 Landguiden
42 Wolczuk: 2007, p. 8
43 The Treaty Establishing the European Community
44 The European Commission’s Delegation to Ukraine Homepage:2008
45 Joint declaration on the EU-Ukraine Association Agreement: 2009
• to foster trade and investment and harmonious economic relations;
• to provide the groundwork for mutually beneficial economic, social, financial, scientific, technological and cultural co-operation;
• to support Ukrainian efforts to consolidate its democracy and to complete the transition to market economy.\textsuperscript{46}

The agreement does not have a rigid structure, which allows it to be flexible during its ten-year long period and reflect the current progress of relation between the two parties. The PCA highlights the mutual respect for democratic principles, human rights and the fundamental principles of market economy in the first title of the agreement.\textsuperscript{47} The agreement sets up a bilateral institutional framework for decision-making and a dialogue in establishing a Cooperation Council at ministerial level, as well as a Co-operation Committee and different Sub-Committees with experts. A summit is organized every year at the Co-operation councils where discussions about the current and future status are held. Although some framework was developed for the consolidation of democracy and reforms, the Union’s commitments were rather vaguely formulated and would rest that way until the European Neighbourhood Policy was launched.

3.2.2 The European Neighbourhood Policy

As mentioned in the introduction, the ENP was a result of the great EU enlargement in 2004. The idea of this new policy was according to the EU “[…] avoiding the emergence of new dividing lines between the enlarged EU and our neighbours and instead strengthen the prosperity, stability and security of all concerned”.\textsuperscript{48} More concretely, the EU engages itself in what it calls a privileged relationship, built on a mutual commitment to common values such as democracy, human rights, rule of law, good governance, market economy principles and a sustainable development. The degree to which these common values are effectively shared is what decides the level of ambition from the EU in its scope of cooperation with the partner country.\textsuperscript{49} In other words, this is the pronounced conditionality of the EU.

Concerning Ukraine, the EU wishes to upgrade the intensity of the former cooperation with Ukraine in several aspects. The Neighbourhood Policy emphasize issues such as legislative approximation to meet EU norms and standards, convergence on the economic legislation, deepened trade and economic relations, increased financial support and the possibility of entering into a new enhanced agreement depending on Ukraine’s fulfilment of the objectives envisaged.\textsuperscript{50}

The Union defines a set of differentiated policy priorities that it incorporates into an Action Plan. The EU/Ukraine Action Plan, elaborated during 2004 and finally adopted in 2005, was constructed for a three-year period until 2008. The Action Plan gives a good view of what the EU expects more concretely in terms of policy reforms and what the EU means with “shared values”. It also works as a framework for evaluating the progress made in the country and guidelines for the EU’s use of political conditionality.\textsuperscript{51}

\begin{itemize}
  \item EU-Ukraine Partnership and Co-operation Agreement, art.1
  \item Ibid, art.2
  \item European Commission – European Neighbourhood Policy Homepage
  \item Communication from the Commission - European Neighbourhood Policy – Strategy Paper, p.3
  \item EU/Ukraine Action Plan, p. 1-2
  \item EU-Ukraine Action Plan – Joint Evaluation Report, p.1
\end{itemize}
These priorities cover political dialogue and reform, trade and gradual integration into the EU’s internal market, justice and home affairs, energy, transport, information society, environment, research and innovation; and social policy. The progress in these agreed priorities is then monitored by the Union. Although the scope of this plan is extensive and it lists a great number of actions for Ukraine to take, a certain amount of so-called “prioritized actions” on which particular attention should be addressed, are presented in the beginning of the Action Plan. As the focus of this thesis is on matters of democracy, the rule of law and human rights, these are the aspects that will be examined in the Action Plan. On this theme, the following three priorities are to be found:

- Further strengthening the stability and effectiveness of institutions guaranteeing democracy and the rule of law
- Ensuring the democratic conduct of presidential (2004) and parliamentary (2006) elections in Ukraine in accordance with OSCE standards
- Ensuring respect for the freedom of the media and freedom of expression

Further on under the title “Political dialogue and reform”, more aspects on democracy, rule of law and human rights are highlighted:

- Further judicial and legal reforms, so as to ensure the independence of the judiciary and strengthen its administrative capacity, and to ensure impartiality and effectiveness of prosecution
- Ensure the effectiveness of the fight against corruption
- Ensure respect of human rights and fundamental freedoms, in line with international and European standards
- Foster the development of civil society
- Prevention of ill-treatment and torture
- Ensure equal treatment
- Ensure respect of children’s rights
- Ensure respect for trade unions’ rights and core labour standards
- Ensure international justice

The rewards for compliance of these and all other conditions outlined in the Action Plan are entering into an enhanced cooperation agreement including a complete free-trade area, visa facilitation and increased funding.

The bodies already established in the PCA with representatives from Ukraine, EU member states, the European Commission and the Council Secretariat do the monitoring of Ukraine’s progress regarding the Action Plan – thus a joint ownership is promoted. The Commission produces periodic reports, so called Country Reports, that later serve as a basis for the Councils decisions, as to whether or not they should extend the scope of future contractual links. Some, although not all, of these points will be further examined in the next section when presenting the progress registered by the European Union.

52 Communication from the Commission - European Neighbourhood Policy – Strategy Paper, p.3
54 Ibid, p.1-2
55 EU/Ukraine Action Plan, p. 4-5
56 EU/Ukraine Action Plan, p.2-3
3.3 Democratic Progressivism in Ukraine

3.3.1 EU Monitoring

The EU Country Report from 2004 marks the step for the entrance of Ukraine and the EU into the ENP and gives a description of the current level of commitments in the country regarding the priorities set up in the Action Plan. Hence, comparing the report together with the Action plan to the Progress Report from 2008 can work as an approximative indicator of what the EU has observed in terms of the development and the Ukrainian commitment to the Action plan – and consequently, how Ukraine has been responding to the EU conditionality.

The Country Report from 2004 argues that the division of powers according to the Constitution has been a source of many political problems and tensions since Ukraine’s independence. The amendments to the constitution that were done before the 2004 presidential elections were of dubious character and raised the Union’s concern. Nevertheless, these problems were not explicitly addressed in the Action Plan, and the Progress Report from 2008 states that constitutional reform in order to establish necessary checks and balance remains a key priority for Ukraine. Keeping in mind that the 2002 parliamentary elections persisted significant flaws, the Union raised its concern for the coming 2004 presidential elections and pronounced that they would be closely monitored.\(^\text{58}\) The Action plan (although the version used as a source here dates from 2005, the Action Plan itself was elaborated in 2004 and the 2005 version includes additional points that were added after the re-elections following the Orange Revolution) before the elections urged Ukraine to ensure a democratic conduct of the coming presidential (2004) and parliamentary (2006) elections.\(^\text{59}\) We know from the earlier section in this thesis from the political context in Ukraine that the Orange Revolution resulted in re-elections that were deemed free and fair by observers, including the EU. The 2006 and 2007 parliamentary elections were also conducted largely or mostly in line with OSCE and Council of Europe standards.\(^\text{60}\)

Although a reform was made in 2001 to strengthen the judiciary independence and efficiency, the 2004 Country Report highlighted persistent problems of inefficiency and vulnerability to political interference in the judiciary.\(^\text{61}\) This was also mentioned in the Action Plan, where the EU encouraged Ukraine to ensure an effective implementation of recent reforms of the judiciary and to further complete it based on European standards. Furthermore, Ukraine was to enhance the training of judges, prosecutors and officials in the judiciary, particularly on human rights issues.\(^\text{62}\) The Progress Report indicated that the training of judges and human rights experts took place in 2007 and that several draft laws on the judiciary in line with Council of Europe recommendations were presented to the Parliament the same year. However, severe problems persisted and further efforts and reforms were deemed necessary to ensure independence and efficiency of the legal system.\(^\text{63}\)

Regarding corruption, often presented as one of the major problems of Ukraine, the Country Report noted some legislation initiatives and a 2003 Presidential decree to fight corruption.\(^\text{64}\) The Action Plan encouraged Ukraine to join the Council of Europe Group of States Against

\(^{58}\) ENP Country Report – Ukraine, p.6
\(^{59}\) EU/Ukraine Action Plan, p.3
\(^{60}\) Joint Evaluation Report - EU/Ukraine Action Plan, p.2
\(^{61}\) ENP Country Report – Ukraine, p.7
\(^{62}\) EU/Ukraine Action Plan, p.4
\(^{63}\) Implementation of the European Neighbourhood Policy in 2007- Progress Report Ukraine, p.3
\(^{64}\) ENP Country Report – Ukraine, p.7
Corruption (GRECO) and to implement its relevant recommendations while also revising the actual national strategy against corruption. Furthermore, transparency and accountability of the administration was to be promoted.\textsuperscript{65} The Progress Report mentions efforts being made at the end of 2006 concerning anti-corruption legislation, but due to the political crisis the following year in Ukraine with the President dissolving the Parliament, these adoptions failed. Moreover, Ukraine effectively became a member of GRECO in 2006 and adapted an anti-corruption action plan in 2007 with several, albeit not all, of GRECO’s and the Council of Europe’s recommendations. The report concludes that no real progress had been made even though the corruption problem is denoted high priority by the government because of a lack of effective implementation.\textsuperscript{66}

The Country Report from 2005 expressed great concern for the situation of the media from 2003, with the media being exposed to increasing pressure by national and local governments. Today, as the Joint Evaluation report states, the EU considers Ukrainian media in both print and electronic form to be widely pluralistic. The respect of human rights and fundamental freedoms has to a great degree improved since 2005.\textsuperscript{67} According to the Country Report from 2005, most international human rights instruments had been ratified by Ukraine, however, not all obligations were fulfilled. In the Progress Report, only the Rome Statue of the International Criminal Court is addressed as an international convention yet to be ratified – although this non-ratification is mostly due to the requirements of constitutional amendments.\textsuperscript{68}

The Joint Evaluation report of the EU/Ukraine action plan from 2008 briefly evaluates some key points in the development of main areas since the Action Plan. According to this report, the parties have agreed on that generally good progress has been achieved regarding the implementation of the Action Plan.

\textsuperscript{65} EU/Ukraine Action Plan, p.4
\textsuperscript{66} Implementation of the European Neighbourhood Policy in 2007- Progress Report Ukraine, p.3
\textsuperscript{68} Implementation of the European Neighbourhood Policy in 2007- Progress Report Ukraine, p.5
3.3.2 Freedom House

Despite the persistent political turmoil in Ukraine, the country has made obvious progress in terms of democracy the last decade. In 2006, Ukraine passed from “Partly Free” into “Free” according to the Freedom House rating. In 2002, Ukraine was rated four on the Political Rights Score and four on the Civil Liberties Score, and in 2008 –these scores were three and two respectively. The overall tendency according to the Freedom House since 1998 has been positive regarding political and civil rights.

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<th>Year</th>
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<td>1998</td>
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The Freedom House’s Freedom in the World survey highlights corruption as one of the most serious remaining problem of the country. Corruption prevails on all levels of society, and Ukraine was ranked 118 out of 190 countries according to Transparency International’s 2007 corruption Perception Index. The media keeps getting more independent and pluralistic with the exception of state television. Direct interference by the government in the media has not taken place since the Orange Revolution. However, there still exist problems. For example, local media is often under the control of the local government and investigating journalists have reported becoming subject to physical violence. The civil society is very vivid in Ukraine and the number of officially registered NGOs reached approximately 50,000 in 2007 although the amount of real functioning NGOs probably ought to be significantly smaller.

When it comes to the juridical framework, the public lacks general respect for the juridical system as a whole, there is insufficient financing of the court system and judges are often appointed in a non-transparent way. The country report argues that reforms in this area were ignored by the government during 2007 largely due to preoccupation of the election campaign. The elections conducted since the Orange Revolution have all been deemed free and fair. Trade unions generally function, although factory owners have a strong influence on their workers and strikes seldom take place.

71 Freedom House – Country report on Ukraine, p.631
72 Ibid, p.632
4. Analysis

4.1. The External Incentives Model

4.1.1 Applying the Model

The rule adoption presented in the preceding section has principally been EU-driven, as the rules have been set up as priorities in the Action Plan by the Union. This fact makes an implementation of the external incentives model most appropriate according to the model scheme in the theory chapter. As regards the conditionality, it works through both intergovernmental bargaining and differential empowerment. The latter could be observed during the Orange Revolution when incentives for Tymoschenko and Yanukovich to follow EU rules regarding the fulfillment of democratic elections were high. When they were in opposition to Yuschenko, the EU conditionality strengthened their bargaining power vis-à-vis him, as rewards for EU compliance was interpreted higher than the eventual cost of opposing him. A domestically driven incentive also existed to support a democratic conduct of the elections, because fair elections would indeed result in a higher mandate for their respective parties. As of the Orange Revolution however, all political parties have supported Ukrainian membership in the Union and thus the conditionality has not subsequently changed the domestic opportunity structure in a radical way. Furthermore, there is no pressure from the Ukrainian public on the government or the politicians to conduct a certain type of foreign politics, including EU policy. This fact weakens the possibilities of differential empowerment in regards to the public opinion insofar as political actors do not change their opportunity structure drastically when choosing how to conduct EU relations. The difference between the political parties concerning the approach to EU is found in their motivation rather than the factual matter.

The intergovernmental bargaining – this is to say the EU presenting the rewards and Ukraine calculating the benefits – is the conditionality that works through the Action Plan as a guiding document. The model suggests that opportunity costs of discarding rules promoted by other international actors exist. The research has shown that the EU rules tend to be homogeneous with those promoted by other international actors and organisations like WTO, the European Council, IMF, etc, and thus no real competition is believed to exist between these actors. For example, in many of the EU documents, the EU also highlights the conditions of these organisations. Russia remains the strongest competing actor with possibilities to offer a visa-free-regime, participation in the Single Economic Space (SES) or financial aid by cheaper energy supplies. However, it does not offer the same types of systematic framework of rule adoption with rewards, as does the EU.

The rewards offered by the European Union are however not always explicitly clear. As the reader should be aware at this point, the nature of the ENP implies that no membership perspective is promised or envisaged, making the usage and application of the model significantly different had it been a country with a reciprocal pronounced membership perspective. This is to say, the rewards given by the EU are far less attractive then in the case of the CEE accession countries like Poland and the Baltic countries. Nevertheless, the ENP neither promises nor excludes Ukraine from an eventual membership – and a reasonable approach would suggest that the more Ukraine adapts to the EU in terms of rule adoption, the more probable and closer to membership it will become. Thus, indirectly, a future membership probability

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73 Wolczuk:2004, p.21
74 Ibid, p.21
75 Reinhard:2008
can be seen as an incentive in the eyes of Ukraine even though this is not an official “reward”
given by the EU. Rewards for compliance explicitly given by the EU to Ukraine consists of
entering into an enhanced cooperation agreement including a complete free-trade area, visa
facilitation and increased funding.\textsuperscript{76}

Below follows the operationalization of the dependent factors in the cost-benefit analysis of
the conditionality developed in the theory chapter.

1.\textit{ The determinacy of conditions}
The fact that rules have been set as conditions for rewards is quite clear when studying offi-
cicial EU documents. The Action Plan attempts to clarify the rules of the game and to state the
conditions required to obtain the rewards. However, the conditions stated in the Action Plan
have been criticized for being too general and vague for actual implementation and thus wors-
ening the potential of rule adoption. One supporting indicator of this is the fact that the
Ukrainian government adopted its own document, the so-called “Road Map”, in 2005 with an
extensive list of measures of how, when and by which institutions the priorities should be
implemented.\textsuperscript{77} Moreover, President Yushchenko has personally expressed his wish of clearer
conditions in the new EU association agreement that Ukraine was granted in December
2008.\textsuperscript{78} The clearness of the means which Ukraine should pursue to fulfil the conditions might
be contested, but the actual conditions are judged to be clear and apparent, thus increasing the
possibility of EU rule adoption for Ukraine. Furthermore, the conditions seem not to have
changed over time, which proves them rather determinant.

2.\textit{ The size and speed of reward}
Even though Ukraine is officially not a candidate, a future possibility of membership is not
ruled out, neither regarding the fulfilment of membership conditions nor regarding the geo-
ographical situation of the country. Thus, the PCA, the ENP and now the new Association
Agreement can be seen as intermediary rewards, as suggested by the model and offered in
order to reduce problems associated with incentives to rule adoption being low when the final
reward (membership) is judged distant in regards to time. In other words, the EU offers
Ukraine a gradual process of integration in the framework of different cooperation agreements
instead of offering a membership perspective directly – all of this to increase the incentives
for Ukraine to adapt to EU norms even though the “real” reward consisting of a membership
is far away time-wise.

Whether this is true or not, the rewards offered in the framework of the ENP can be assessed
independently. As I have shown, the visa facilitation and the free trade agreement were not
distant in time to when they were first presented to Ukraine as rewards. The same goes for the
funding directed to Ukraine. The size of these rewards is however, as mentioned before, much
smaller than that of a membership and thus inclined to be less attractive than an actual mem-
bership. This is not the same as to say they are not attractive to Ukraine. Taking into consid-
eration the large amount of export Ukraine has to the EU, reducing tariffs is nevertheless a
reward of considerable importance and a free-trade agreement with the EU ought to be lucra-
tive. The visa facilitation has more of a symbolical value to Ukraine; it is a step towards
breaking the isolation from west that unfortunately has been a remaining issue even after its
independence.

\textsuperscript{76} EU/Ukraine Action Plan. p.2-3
\textsuperscript{77} Wolczuk:2007. p.14
\textsuperscript{78} Euronews interview:2007
3. The credibility of threats and rewards

According to the model, there have to exist asymmetrical power relations in favour of the EU to allow it to exercise influence. The situation between EU and Ukraine meet the requirements of asymmetrical power, that is to say Ukraine ought to have more interest in receiving the rewards than the EU is of giving it. This accounts for all of the rewards, especially in economic terms, although mutual interests are to be found. The free-trade agreement is probably more lucrative for Ukraine than it is for the EU: 36% of Ukraine’s import comes from the EU while its share of total export to the EU is 31.5%. The EU on the other hand only has a 2% export share to Ukraine and a 1% import share. Consequently, Ukraine has a larger stake to gain from such an agreement than does the EU. The same follows for an eventual membership and the visa facilitation. The Central European enlargement in 2004 involved accepting countries who were net beneficiaries in terms of the EU budget, which would clearly be the case of Ukraine should it enter. Furthermore, the visa facilitation is obviously something Ukrainians value more than the EU, giving easier access to almost all of the member states. There exists however counterbalancing factors to the asymmetry of these rewards. Ukraine, with its population of almost 46 million people, is an important potential market for EU exports –and this is of course a non-negligible fact. Moreover, in a broader perspective it is also in the interest of the EU that Ukraine continues to develop, both economically and democratically, as to ensure a stable situation in its neighbouring country. In total however, Ukraine has more to gain from all of these rewards than does the EU, and the conditions of asymmetrical rewards are judged satisfied.

When it comes to the credibility of the awards offered to Ukraine, they differ depending on the reward. Regarding the implicit reward of improving the probability of future EU membership, the credibility is low. However, the remaining visa facilitation, funding and deepening the cooperation, including entering into a free trade agreement, are judged credible: today all of these rewards have more or less been granted to Ukraine. As mentioned earlier, in June 2007 the EU and Ukraine signed an agreement on visa facilitation that entered into force in January 2008. Although Ukraine has not yet entered into an enhanced cooperation agreement, the EU-Ukraine summit in September 2008 outlined the prospects of the new so-called Association Agreement, including a free-trade agreement with Ukraine that will probably be signed during the year 2009.

Nevertheless, the effective implementation of the visa facilitation agreement has been criticized for being deficient. Some EU member state’s consular offices have reportedly lacked in the implementation of the new visa rules, and Ukrainian citizens have had trouble obtaining visas to certain EU countries according to the new set of rules. This undermines the credibility of future rewards offered by the Union, but also has to be taken into the context that the EU administration itself does not issue the visas and hence is not fully responsible for the process itself.

My research have shown no indication of the EU threatening Ukraine for not living up to the stated conditions.

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79 WTO Statistics database, 2007
80 Eurostat: 2008, p.2
81 EU Press release, IP/07/849, 2007
82 Joint declaration on the EU-Ukraine Association Agreement: 2009
83 Silina: 2008
4. *The size of the adoption costs*

As the model suggests, adopting EU rules is costly for Ukraine; otherwise adoption would have already occurred. The costs however differ amongst the different key actors. In this analysis, Yushchenko, Tymoschenko and Yanukovych are depicted as the main public veto players, and the oligarchs are generalized into one important private actor, where business interest decides the preferences. Both the size of the adoption costs and its distribution among the actors of course differs according to each specific policy area addressed in the Action Plan, but here an overall assessment is conducted concerning the chosen policy areas of democracy, rule of law and human rights.

Yanukovych, being the one of the trio with the closest ties to Russia, is suggested to incur greater costs of EU rule adoption. Firstly, this is because adapting more towards the EU would imply distancing himself from Russia and its values. It would probably diminish both his pro-Russian supporters in Ukraine and the support given to him by the Russian government – the alternative costs for the rewards given by Russian integration are highly relevant. Secondly, the Presidential election campaign in 2004 showed that Yanukovych was a man willing to undertake authoritarian measures in order to stay in power, measures that the EU and the rule adoption in fact wishes to neutralize. Thus, adapting to this would consequently incur power-losses for Yanukovych.

For Tymoschenko and Yushchenko the costs are smaller, but not negligible. Adopting EU rules sometimes involves opposing both pro-Russian politicians such as Yanukovych and others, but also some of the oligarchs who prefer a situation with prevailing corruption, less transparency and a less rigid juridical system to conduct business as profitable as possible for them. On the other hand, the oligarchs have benefits to gain from getting access to the EU internal market, which would permit furtherer expansion of their private industries. Both Tymoschenko and Yushchenko are liberal and pro-western politicians with greater outspoken EU membership aspiration than Yanukovych, and thus share European values to a greater extent. They do not have the same bonds with Russia and thus are less likely to benefit from its competing rewards. Since the Orange Revolution, Yushchenko and Tymoschenko have shared the political power as President and prime minister respectively, with the exception of 2006-2007 when Yanukovych was prime minister to Yushchenko. For a majority of the time since the ENP came into force, the size of adoption costs has thus arguably been relatively small.

In general, because of the political structure in the Parliament allowing for individual deputies to switch party loyalty as it pleases, the number of veto players is considered high. This is also a reality when taking into consideration the heavy and unwieldy bureaucracy in Ukraine that render policy implementation difficult. As the model suggests, this might have a negative effect on EU rule adoption. In total however, the adoption cost are judged to be relatively small.
4.1.2 The Conditionality Outcome on Ukraine

According to the model, conditionality will be most effective if rules and conditions are determinate; conditional rewards are certain, high and quickly distributed; threats to withhold the rewards are credible; adoption costs are low; and veto players are few. Summing up the analysis, I argue that the circumstances are favourable for the conditionality to be effective.

<table>
<thead>
<tr>
<th>Type of reward</th>
<th>Determinacy of conditions</th>
<th>Size of rewards</th>
<th>Speed of rewards</th>
<th>Credibility of promises</th>
<th>Size of adoption costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explicit</td>
<td>+</td>
<td>-</td>
<td>+</td>
<td>+</td>
<td>-</td>
</tr>
<tr>
<td>Implicit</td>
<td>-</td>
<td>+</td>
<td>-</td>
<td>-</td>
<td>+</td>
</tr>
</tbody>
</table>

The dependant variable that I argue is the most important, namely the size of rewards, is what mostly impairs the effectiveness of the conditionality when it comes to the explicit reward. Even if the size of the adoption costs are relatively small; credibility of promises, size and speed of rewards and determinacy of conditions are high - the final reward is what ultimately compensates the costs involving rule adoption. I argue however, as mentioned in the analysis, that a future eventual membership takes the form of an implicit reward that Ukraine after all adds to their proper cost-benefit analysis. In light of this, both of these types of rewards need to be taken into account when evaluating the effectiveness of conditionality in the case of Ukraine. The implicit reward, as seen in the table, has opposite values than the explicit ones. The determinacy of conditions are low because they are not set up as conditions for a membership reward, even though fulfilling the conditions would improve Ukraine’s ability to be accepted into the Union. The speed is low because there is no envisaged time perspective for an eventual membership: there is no promise. The size of adoption costs would be higher because in the long perspective, Ukraine would have to adopt the total content of the acquis communautaire and follow it more rigidly. Moreover, the cost associated with Russia would be much higher: a full integration would imply distancing Ukraine even farther from Russia. The size of reward is however prominently larger.

Having concluded the circumstances for the political conditionality favourable, we now turn to the actual observation in terms of compliance of the conditions. As I have shown in the empirics section, the EU monitoring of the Ukrainian compliance has generally stated that a good progress has been made to the conditions. This is especially true regarding free and democratic elections, free media and the civil society in Ukraine. Ukraine has, however, not lived up to all of the assigned priorities, especially regarding the fight against corruption. The Ukrainian government has explicitly stated that this is a prioritized issue, but despite this, no actual progress has been made. This could be due to the large costs involved with changing the structure of corruption, deeply rooted in all levels of the Ukrainian society, and also taking into account the cost of opposing oligarchs who might profit from a corrupt situation. This is not necessarily due to the incentives being too small. Another highly believable explanation to the lack of commitment on certain issues is the chaotic political situation, accounted for earlier in the empirics section, which has subsisted since the Orange Revolution. This undeniably reduces the ability of the government to act, and instead of initiating important reforms it has been preoccupied with power struggles and quarrels revolved around the parliamentary situation. As a consequence, the size of adoption cost rises.

Nevertheless, the fact that the EU has granted Ukraine its rewards by offering the visa facilitation and a new prospect for an Association Agreement, reveals its positive judgement of
Ukraine’s compliance with the conditions. Furthermore, the Freedom House evaluations of the democratic situation in Ukraine have shown to be more or less homogeneous with the EU’s proper assessments, which further indicates Ukraine’s effective progress in terms of democracy. The PCA agreement had a framework for a type of norm diffusion involving conditionality, but it was not until the ENP came into force with Ukraine that the conditions and rewards became clear and Ukraine began making real progress. The progress can be traced to the more distinct conditionality pursued by the EU.

4.1.3. Problematizing the outcome

A direct causality between the reforms made by Ukraine in regards to democracy, rule of law and human rights, and the EU conditionality is nevertheless difficult to empirically prove. The numbers of other probable explanatory factors for Ukraine’s development not possible to rule out are prominent. The alternative explanatory models emphasize other driving forces and help broaden the view. Both the independence from the Soviet Union and the Orange Revolution were indicators of a new path set out for Ukraine, implying its strive for a new identity. The Social learning model would explain the democratic progress made out of identification with the EU and its values and norms – a growing reference point of importance in Europe. The Lesson-Drawing model on the other hand would further diminish the EU’s importance in the process and depict it and its rules solely as one of many competing references that Ukraine might take advantage of to deal with its own policy problems.

Another important issue to problematize is the fact that having existing legal framework for democracy, rule of law and human rights does not necessarily imply that these principals actually are guaranteed. Reinhard for example argues that conditionality is favourable in the creation of formal democratic institutions, but not as promising when it comes to democratic consolidation.84 Nevertheless, it is reasonable to believe that an existing developed democratic institutional framework is largely more advantageous for the respect of democratic values than if there had not been one.

84 Reinhard:2008, p.11
4.2. Conclusions

The norms diffused by the EU have been defined in line with Manner’s theories and democracy, rule of law and human rights - three of his stated “core norms” of the EU - have been chosen to delimit the thesis. These three norms have been identified in the framework of the ENP, in particular in the Action Plan. Furthermore, the way these norms have been diffused has been traced down to the political conditionality performed by the EU through the ENP.

Despite the difficulties of proving a direct causality between the EU conditionality and the reforms made by Ukraine, I have shown that the conditions for the conditionality to be effective according to the model are favourable. Furthermore, the study indicates that a good progress, both according to the EU and the Freedom House surveys, has been achieved since the conditionality became clear through the ENP in 2004. In light of this, I argue that it is reasonable to suggest that the normative power of the EU towards Ukraine is relatively strong. Even if the political conditionality on Ukraine has not been the causal mechanism of domestic change, it has at least supported Ukraine towards a more democratic direction and reinforced its capacity to carry through reforms in these areas.

"I came to this job, with the intention to bring political and economic freedom. In the four years I've been here, we've built the groundwork for a country with European values. And now we can't go backward. We have come closer intellectually and practically to a nation of European people. I am proud, that in four years, we can say we have a nation."\(^{85}\)
- The Ukrainian President Victor Yuschenko, February 2009

\(^{85}\) Yuschenko:2009
5. List of references

Articles


Manners, Ian, *Normative Power Europe: The International Role of the EU*, 2001


Smith, Karen, *Still “Civilian Power EU”?*, European Foreign Policy Unit Working Paper 2005/1

Valasek, Tomas, *Why Ukraine Matters to Europe*, Centre for European Reform essays, 2008


Books

Newspapers & Media

Euronews, Interview with Yuschenko, *Ukraine following road map*, 16 June 2007

Deutsche Presse-Agentur, Interview with Yuschenko, 16 February 2009

Official documents
Commission of the European Communities, *What is the Agreement on Partnership and Co-operation*, 1998


Joint declaration on the EU-Ukraine Association Agreement, *EU-Ukraine Summit*, 2008

The EU/Ukraine Action Plan, 2005

The European Commission’s Delegation to Ukraine Homepage, *Ukraine-EU: Chronology of Bilateral Relations*, 2008

**Reports**


The Swedish Institute of International Affairs, *Landguiden – Länder i fickformat*, Ukraine

**Speeches**

Pifer, Steven, Speaking at a 15 October 2007 Kennan Institute talk organized by the Woodrow Wilson International Center for Scholars. [http://www.wilsoncenter.org/index.cfm?event_id=279607&fuseaction=events.event_summary](http://www.wilsoncenter.org/index.cfm?event_id=279607&fuseaction=events.event_summary)

Prodi, Romano, ”looking ahead in transatlantic relations”, speaking at Rayburn House, Washington, 2003


**Statistics**


World Trade Organization Statistics database, 2007

**Treaties and Agreements**

The Treaty Establishing the European Community, Consolidated Version, 2006

Partnership and Co-operation Agreement between the European Communities and their Member States, and Ukraine, 1994