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The European Neighbourhood Policy towards Ukraine

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Introduction

In the beginning of the 21st century, the role of the European Union as a regional power in Central and Eastern Europe has become one of the main priorities of the EU's external policy. According to the European Security Strategy, the EU needs to extend the benefits of economic and political cooperation to its neighbours in the East while tackling political problems there (*European Union 2003*). The European Neighbourhood Policy was designed to provide coherent strategy towards Eastern and Southern European states, by establishing a ring of security and friendship around the Union's new borders (*Commission 2003*). The ENP, as an attempt to integrate the three EU pillars within the framework of one policy towards its strategically important neighbours, does not rely on instruments but rather offers a way of integrating existing instruments via 'soft' frameworks (the European Council and Council Conclusions as well as Commission policy papers among others) (*Cremona and Hillion 2007: 20 – 22*). The main objective of the Policy is the mutual interest of the EU and its neighbours in promoting prosperity, security and stability as well as advancing freedom and democracy through the neighbourhood of the enlarged European Union.

The reason why this paper concentrates on Ukraine is that its size, geopolitical standing and ambivalent external orientation make it an important element in evaluating the impact of EU initiatives in the former Soviet Union. Situated on the fault lines between two emerging geopolitical power blocs and constantly torn between a European and an East Slavic choice, Ukraine constitutes a critical test case for the viability and success of the European Union Neighbourhood Policy.

The aim of the paper is to find the answer to the question of the role of the European Neighbourhood Policy in influencing political developments in Ukraine. The emphasis will be put on democratization and protection of human rights.

The European Neighbourhood Policy within the framework of EU foreign policy on Eastern Europe

With the fall of the Berlin Wall in 1989 and the collapse of the Soviet Union in 1991 the EU focused on Central and Eastern Europe and with Russia itself, thereby largely neglecting the newly independent states in Eastern Europe (Belarus, Moldova, Ukraine), the Caucasus (Armenia, Azerbaijan, Georgia) and Central Asia (Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan). As the 2004 enlargement grew closer, the EU was compelled to tackle this blind spot and define policy towards what would become its new neighbourhood (for a detailed analysis of EU – CIS – Russia relations, see Malfliet *et al.* 2007). As Stephan Keukeleire (*Keukeleire*

and *MacNaughtan 2008: 270*) indicates: ‘In this region, the EU’s main emphasis is on developing contractual relations, which only to some extent constitute a basis for a structural foreign policy. Only recently has the EU also undertaken some elements of a conventional foreign policy, a development which has been limited by Moscow’s influence over the former Soviet republics and its global strategic importance.’ Examining the EU policy towards Eastern Europe, I follow Keukeleire’s approach¹ and analyse the elements of the structural foreign policy. Currently, the main tools of EU cooperation with the post – communist states are: Partner and Cooperation Agreements (PCAs) concluded with all former Soviet republics ; the European Neighbourhood Policy (ENP) with the states in Eastern and the Southern Caucasus ; and various financial instruments to support these policies.

Partnership and Cooperation Agreements were concluded in the late 1990s for a period of ten years with all countries in the region². PCAs provide a framework for political dialogue; sets the principal common objectives in terms of promotion of trade and investment, harmonious economic relations, sustainable development and support to the countries’ efforts to consolidate its democracy and develop its economy. The PCAs also established an institutional framework for pursuing these goals.

Launched in 2004 the European Neighbourhood Policy (ENP) complements rather than supersedes the PCAs. The major advantage of the ENP Action Plans is that they allow for a more tailor – made approach for each country and, if the partner countries meet the objectives set, for intensified cooperation and involvement in specific EU policies (*Keukeleire 2003: 271 – 272*). They jointly define an agenda of political and economic reforms by means of short and medium-term (3-5 years) priorities. Like the PCAs, ENP Action Plans highlight respect for shared fundamental values and aim to support structural changes or consolidation in the direction of democracy, rule of law, good governance, respect for human rights and free market principles (*Cremona and Hillion 2007: 20 – 26*). As from June 2007, Action Plans had been adopted for Ukraine, Moldova, Georgia, Armenia and Azerbaijan.

At the St. Petersburg Summit in May 2003, the EU and Russia agreed to reinforce their cooperation by creating in the long term four ‘common spaces’ in the framework of the

¹ While conceptualizing foreign policy, professor Keukeleire makes a distinction between conventional and structural policy. The former is oriented towards states, military security, crises and conflicts, the latter refers to a foreign policy which, conducted over the long – term, seeks to influence or shape sustainable political, legal, socio – economic, security and mental structures. These structures characterize not only states and interstate relations, but also societies, the position of individuals, relations between states and societies, and the international system as a whole (*Keukeleire and MacNaughtan 2008: 25 – 28*).

² The European Union concluded nine similar partnership and cooperation agreements (PCAs) with the nine new independent states (NIS): the Republic of Armenia, the Republic of Azerbaijan, Georgia, the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Moldova, the Russian Federation, Ukraine and the Republic of Uzbekistan. The PCA with Ukraine, see: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998D0149:EN:HTML> , 3 January 2009.

Partnership and Cooperation Agreement and on the basis of common values and shared interests: 1) economy, 2) freedom, security and justice affairs, 3) external security, and 4) research, education and culture.

The European Neighbourhood Policy towards Ukraine

In the late 1990s, the rigid Central and Eastern Europe – CIS, Europe Agreement – PCA dichotomies had begun to break down. EU officials continued to turn down requests by Ukraine and Moldova to discuss membership, but the EU accepted, at least rhetorically, that it must take more responsibility for these countries, as reflected in the proposal put forward by the Council of Ministers in 2002 for a New Neighbours Initiative that would define a new status for these countries somewhere between membership and exclusion. In November 2002 the EU foreign ministers reiterated the need for the European Union to formulate a long term and integrated approach towards each of these countries, with the objective of promoting democratic and economic reforms, sustainable development and trade (*Council 2002*).

In March 2003 the Commission issued its Communication on ‘Wider Europe’, which proposed that the European Union ‘should aim to develop a zone of prosperity and a friendly neighbourhood – a ‘ring of friends’ – with whom the EU enjoys close, peaceful and co – operative relations’ (*Commission 2003*). It was followed by a more developed Strategy Paper on the European Neighbourhood Policy published in May 2004. This document sets out in concrete terms how the EU proposes to work more closely with Eastern European countries. The section of monitoring bodies deserves particular attention. They are set up under the Partnership and Cooperation Agreements or Association Agreements and bring together representatives of partner countries, member states, the European Commission and the Council Secretariat. Partner countries are asked to provide detailed information as a basis for this joint monitoring exercise. Also, the sub-committees, with their focus on specific issues, as well as the economic dialogues, are useful for monitoring. The Commission draws up periodic reports on progress and on areas requiring further efforts, taking into account assessments made by the authorities of the partner country (*Commission 2004a*).

Simultaneously, as a contribution to the Strategy Paper, the Commission (2004b) prepared the Country Report on Ukraine assessing the political and economic situation as well as institutional and sectoral aspects, to assess when and how it is possible to deepen relations with this country. The provisions on human rights and fundamental freedoms constitute an important part of the document. Although it discerns the progressive transition to democracy and that Ukraine is beginning to show signs of transformation into a modern, multi – layered society, with

respect to the situation of civil society, various weaknesses in the field of human rights protection are pointed out in order to improve the system. According to the Paper, media freedom remains one of the crucial issues for political reform. While press freedom is guaranteed by law and the Constitution, the press has come under increasing pressure since 2003. As far as national minorities are concerned, members of such groups such as formerly deported persons (in particular Crimean Tartars), the Roma community, immigrants with or without legal status, asylum – seekers and refugees are reportedly faced by racism, direct and indirect discrimination, intolerance or disadvantage. Gender discrimination in political, economic, social, and cultural spheres is prohibited under the Ukrainian constitution and domestic laws, and Ukraine is also a signatory to relevant international conventions. However, in practice, Ukrainian women reportedly face obstacles to their full and equal participation in the labour force (*Commission 2004b*).

Above-mentioned institutional developments of the ENP towards Ukraine were driving by a purely external factor: the EU's enlargement, which focused attention on the challenges for the EU of 'wider Europe' and which bring into the new members with a direct stake in expanded relations with their Eastern neighbours (*Casier 2007: 73 – 94*). Poland in particular has declared its intention to promote 'Eastern Dimension' to CFSP (*Cimoszewicz 2003*), in much the same way that Finland and Sweden joined with Denmark to promote the Northern Dimension after their accession in 1995. The orange revolution and the victory of democratic forces in the presidential election of late 2004 brought another, internal factor. Ukraine under president Viktor Yushchenko has pursued an agenda of ambitious reforms in order to root democracy and the market economy firmly in the country. The strong expression of commitment to democracy and the 'European' choice made by Ukrainians during the revolution outlined the way which the country is going to follow. This motivated the EU to go beyond the list of objectives of the ENP and launch the 'action plan' (AP) (*Leigh 2005: 113 – 115*).

The European Neighbourhood Action Plan on Ukraine was launched in 2005. As it is said above, it is intended to set out political and economic priorities for action by the country. It provides for a benchmarked roadmap in bringing about needed reforms and fulfillment of these priorities is meant to bring Ukraine closer to the European Union (*Solana 2006*). In the section on political dialogue and reform of the document, Ukraine declares its intention to continue internal reforms based on strengthening democracy, rule of law, respect for human rights, the principle of separation of powers and judicial independence, democratic election in accordance with OSCE and Council of Europe norms and standards (political pluralism, freedom of speech and media,

respect for the rights of persons belonging to national minorities, non discrimination on grounds of gender, and on political, religious and ethnic grounds).

The implementation of the mutual commitments and objectives contained in the Action Plan is regularly monitored through the sub-committee with Ukraine, dealing with those sectors or issues. In December 2006, the Commission (2006) issued its first periodic report concerning Ukraine on progress and on areas requiring further progress. A second progress report on implementation of the ENP in Ukraine in 2007 was adopted in April 2008 (*Commission 2008*).

According to Benita Ferrero – Waldner (2007), European Neighbourhood Policy is a strategic policy to support the reform agenda in EU partner countries and bring more prosperity and stability to Europe’s neighbourhood. However, as mentioned by some scholars, the most important factor – Ukraine’s future membership in the EU – is not an objective in this case. Whilst the ENP carries the potential to support structural reforms, it does so without the major incentive of accession. By defining it as distinct from the enlargement process, rather than the gateway to EU membership, the ENP in practice also limits its own potential to inspire reforms (*Gromadzki et al. 2005*).

Also, recent developments indicate that the perspective of the accession for Ukraine as well as other Eastern neighbours of the EU becomes distant. The best example constitutes the Commission’s proposal for a new Eastern Partnership (EaP). Although, the EaP goes further than the ENP and offer ‘the maximum possible’, taking into account political and economic realities and the state reforms of the pattern concerned, bringing visible benefits for the citizens of each country and proposes to engage more deeply bilateral relations with the EU’s Eastern neighbours as well as to launch a new multilateral framework for cooperation (*Commission 2008: 2 – 3*), it does not say anything about their possible membership of the EU. The European Council (2008) welcomed the proposal and instructed the Council to analyze it and report back. The EaP was definitively approved at the Council meeting in March 2009, under the Czech Presidency. By accepting the Commission’s document on ‘partnership’, the European Council clearly shows the EU accession of Ukraine’s as well as other Eastern European countries is still politically and economically out of the question.

Implementation of the provisions on democracy, human rights and fundamental freedoms within the framework of the ENP.

Since the adoption of the joint Action Plan, Ukraine has advanced in its political and economic reform process, most prominently with the conduct of overall free and fair elections in March 2006 and September 2007, and steps taken to strengthen respect for human rights, rule of

law and freedom of expression (*Cremona and Hillion 2007*). Now, two progress reports on the implementation of the ENP (from the perspective of democracy and human rights) are going to be analysed.

The European Commission's (2006) first evaluation of the implementation of the ENP Action Plan with Ukraine indicates that it has made the Action Plan a major point of reference its internal changes. In terms of legislation, Protocols 12 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms were ratified in July 2006. A step towards setting up of public service broadcasting was taken when, in January, the Parliament adopted the Law on television and radio broadcast, although not much measurable progress has been made, while a National commission for strengthening freedom of speech and development of the information sphere began work in June 2006. However, The Parliamentary ombudsperson in Ukraine notes that ill-treatment by the police is still widespread. The expulsion from Ukraine of 10 Uzbek refugees in February 2006 raised serious questions about the authorities' compliance with its international obligation of "non-refoulement" under the 1951 Geneva Convention on Refugees.

A second progress report on implementation of the ENP in Ukraine in 2007 points that the September 2007 pre-term parliamentary elections in Ukraine were observed by an International Observer Mission under the leadership of the OSCE/ODIHR. The mission concluded that the elections 'were conducted mostly in line with OSCE and Council of Europe (CoE) commitments and other international standards for democratic elections'. Regarding human rights and fundamental freedoms, cases of torture and ill-treatment continue to be reported, in particular in pre-trial detention and prison facilities. Investigation into complaints of torture and ill-treatment and prosecution of the perpetrators remain insufficient. A number of positive measures were taken with respect to rights of persons belonging to national minorities, such as the ratification of the European Convention on Nationality in December 2006, and the appointment of an Ambassador at large to combat racism, xenophobia and discrimination in November 2007. However, a number of measures are still needed to comply with CoE standards, such as the strengthening of the criminal legislation against hate speech and racially motivated crimes and the improvement of the antidiscrimination legislative framework (*Commission 2008*).

Implementation of the reports and other actions within the framework of the ENP are supported by financial instruments. European Community assistance over the period 1991 – 2006 has amounted to approximately € 2.4 billion. This includes assistance under the TACIS programme (including its national, regional, cross border and nuclear safety components plus macro – financial assistance, support under thematic budget lines such as European Initiative for

Democracy and Human Rights (EIDHR) (€ 5.9 billion) and humanitarian assistance provided by ECHO (€ 20.5 billion) (*European Commission 2007*).

Simultaneously, as it is evident from numerous statements and comments by Ukrainian policy – makers and analysts, the ENP is regarded not only as an additional mechanisms of cooperation but also as an instrument to limit possibilities of convergence. The ENP is perceived as a policy of diminishing Ukraine’s EU partner status because it puts it among less reformed countries that are less interested un deepening cooperation with the European Union (*Overhaus et. al 2006*). However, as Iryna Solonenko points out, although the political elite in Ukraine was not satisfied with the long – term prospects of the ENP, it realized that without it and successful implementation of the ENP EU – Ukraine Action Plan any further rapprochement towards the EU would be impossible. Therefore Ukraine accepted the ENP as a short – term and intermediate framework and has tried to make the best use of the opportunities offered by it (*Overhaus et. al 2006*).

Conclusion

Taking into account all the issues examined above, it should be noted that the European Neighbourhood Policy has boosted activities of Ukrainian authorities in pushing forward democratization, carrying out systemic reforms as well as strengthening protection of human rights.

However, there are still fundamental problems that have a negative effect on effective implementation of the Action Plan as well as other documents within the scope of the ENP. In my opinion, the obstacles should be examined at three different levels. First of them is the level of internal situation in Ukraine. Although the country, as a result of the orange revolution, declared its stance on the integration with Western structures, being in favour of enhancing the relations with the EU and strengthening its commitment towards ‘common values’, the east – west divide in historical terms makes region of residence a major cleavage in Ukrainian politics (*Gatev 2004*). At the European level, the EU still needs to formulate clear answer to the question of the possibility of Ukraine’s future membership. Finally, at the level of new EU’s member states, particularly Poland, the cooperation with Ukraine within fields covered by the ENP requires to be enhanced.

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Specjalizuje się w problematyce z zakresu międzynarodowej ochrony prawa człowieka, ze szczególnym uwzględnieniem praw uchodźców.

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