

Anticipated EU Accession Conditionality and Democratisation in the European Neighbourhood

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*,Were we to say ,no, never' to Ukraine, our political
influence on the future development of Ukraine would
be radically diminished'*

Olli Rehn, EU Commissioner of Enlargement, 04/08¹

INTRODUCTION

With the enlargement of the Central and Eastern European countries in 2004, the European Union (EU) introduced a new framework for relations with its future neighbours towards the East and the South. This strategy, which became known as the European Neighbourhood Policy (ENP), was designed with the aim of creating a 'ring of friends', *i.e.* 'a zone of prosperity and friendly neighbourhood' (European Commission, 2003: 4). In so doing, the ENP appears quite comparable to the goals and strategies pursued by the EU in its enlargement policy (cf. Kelley, 2006; Magen, 2006). In contrast to the latter, however, the ENP seeks to foster and maintain political stability, security and energy supply by pursuing a policy of sectoral integration and harmonisation with the *acquis communautaire* below the level of membership. The ENP thus presents an attempt to balance the relation between tight involvement in the European integration process and rejection of full membership.

¹ http://ec.europa.eu/commission_barroso/rehn/pdf/interviews/080612_esharp_magazine_en.pdf [30.07.2009].

Therefore, in the absence of true leverage, studies evaluating the EU's impact on democratisation processes in the neighbourhood have been very sceptical about the EU's prospects to induce change (Freyburg, et al., 2009; Sasse, 2008; Schimmelfennig and Scholtz, 2008; Smith, 2005). They argue that while the EU was able to speed up the reform process by membership conditionality in Central and Eastern Europe, without the carrot of a membership offer the EU's efforts to promote democracy in its near abroad will produce only marginal effects, if at all (Schimmelfennig and Scholtz, 2008). Whereas developments in the Southern neighbouring states rather confirm the hitherto predominant assessment, the Eastern neighbourhood presents a more differentiated picture with some countries partially complying with the political accession criteria. Obviously, there are democratisation effects similar to those of the enlargement policy in the Central and Eastern European countries (Wolczuk, 2009; Verdun and Chira, 2008). Do we observe EU influences on democratisation processes in Eastern ENP states that resemble those produced by accession conditionality – even without a credible membership perspective?

In contrast to the recent literature being rather sceptical, we take a more optimistic view on the prospects of EU democracy promotion in the neighbourhood by considering the perception of the EU's neighbourhood strategy by the ENP states. To this end, we wish to introduce the aspect of anticipation into the debate. Based on sociological approaches, we reason that ENP states, which declare membership highest priority, impose accession conditionality on themselves and anticipate that by doing so they will finally be rewarded with the opening of negotiations.

This paper firstly depicts the causal mechanism of anticipated accession conditionality. Thereafter, we will empirically illustrate the hypothesised relationship by taking the example of Ukraine, *i.e.* the ENP-country aspiring after EU-membership the most. We will conclude that the detected effects of ENP in neighbouring countries aspiring after accession present a new dimension of influencing democratisation processes in post-socialist countries in the framework of EU's external governance.

EUROPEAN NEIGHBOURHOOD POLICY AND DEMOCRATISATION

The literature on democracy promotion widely acknowledges that EU's political accession conditionality considerably contributed to political transformation processes in the Central and Eastern European candidate states. Explanations predominantly refer to rationalist reasoning, *i.e.* the external incentives model. If the expected political costs of compliance with EU requirements do not exceed the benefits of a – credible – membership perspective, the respective candidate country will comply with the political accession criteria (Schimmelfennig, et al., 2006; cf., Ethier, 2003; Grabbe, 2006; Vachudova, 2005). In Central and Eastern Europe these conditions for the effectiveness of the EU's enlargement policy were largely met, and, overall, change was successfully effectuated. Yet, in the absence of a membership perspective it is more than questionable whether the EU will be able to repeat this story towards its neighbourhood, where, again, democratic change features high among the prioritized objectives. Contrary to most of the literature, we take a different venue by arguing that the external incentives model's mechanism may well be triggered in ENP countries that do strongly aspire after accession but do not have a (formal) membership perspective.

ENP and political conditionality

At the core of the European Neighbourhood policy lies external governance which 'takes place when parts of the *acquis communautaire* are extended to non-member states' (Lavenex, 2004: 680). In contrast to the enlargement context where accession rules determine that institutional membership ('opening of institutional boundary') presupposes the adoption of the *acquis* ('extension of regulatory boundary'), in the framework of the ENP, the EU seeks to extend its legal rules without a parallel institutional expansion (*ibid.*).

Complementary to the external governance model, political conditionality is applied in the ENP. Incentives offered by the EU to third countries range from enhanced cooperation on economic issues, including a stake in the internal market, to sectoral incentives such as favourable visa regimes in return for the fulfilment of conditions similar to the 1993 Copenhagen accession criteria. The former Commission president, Romano Prodi even spoke of the 'Copenhagen proximity criteria' (cf., Sasse, 2008: 302) in the context of the ENP.

The Copenhagen criteria feature most prominently among the Communities' set of, arguably, 'quasi-legal' means applied to prepare candidate states for accession (Hillion, 2002: 402). They basically consist of three different criteria, namely the political, the economic and the *acquis* criterion to be fulfilled by the applying state, and continued playing an important role in the regulation of enlargement rounds after 2004. The political criterion – stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities – became the most important one since it needs to be satisfied before accession negotiations are opened by the European Council. The economic criterion of existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union is closely linked to the requirements of the internal market. Finally, and technically outside the Copenhagen criteria, comes the third condition that all prospective members must enact legislation in order to bring their laws into line with the body of European law built up over the history of the Union. In preparing for each admission, the *acquis* is divided into separate chapters, each dealing with different policy areas of which not all need to be adopted by domestic legislation at the moment of accession.

Yet, a reading of the EU's neighbourhood policy through glasses of the enlargement policy suggests that the criteria linked to the general cooperation incentive, *i.e.* the prospect of a stake in the EU's internal market, are of striking similarity. The promotion of democracy, human rights, and the rule of law constitutes the core of the EU's effort in achieving political stability in its immediate Eastern neighbourhood. For instance, similar to Europe Agreements the existing Partnership and Cooperation Agreements (PCA) with the Western Newly Independent States contain in their preamble a reference to 'the common values that they share'.² The "essential elements" clause in the PCAs' preamble also covers 'the paramount importance of [...] economic liberalization aimed at setting up a market economy' and thus refers to the second, economic criterion. Finally, legal approximation of domestic legislation to the EU *acquis* features high among the ENP's priorities. In essence, its focus on the extension of the EU's legal body beyond its borders eventually corresponds to the *acquis* criterion.

² See for example Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine OJ 1999 L49, 19/02/1998, p.3

By seeking to comply with the accession criteria, we argue, ENP states considering themselves as candidate states aim at ‘entrapping’ the Union (Schimmelfennig, 2001; 2009) in order to finally provoke the opening of accession negotiations. Although the EU tries to ‘prevent a repeat of the EU’s “rhetorical entrapment”’ by explicitly excluding membership for all ENP countries, the ENP thus ‘paradoxically paves the way for a “procedural entrapment” in ENP countries that harbour membership aspirations’ (Sasse, 2008: 295).

While the conditions are consistent and clear, the incentive structure of the ENP is rather imprecise and characterised by ambiguity (Sasse, 2008: 296; Smith, 2005: 769; Wolczuk, 2009: 208). Most prominently, the European Union cannot prevent countries such as Ukraine and Moldova to submit a membership application. According to Article 49 Treaty on European Union every candidate should be a ‘European state’, sharing the values of Article 6(1), *i.e.* democracy, human rights protection and the rule of law. Moreover, whereas the ENP explicitly rejects the membership perspective for its neighbouring countries and rewards progress only with approximation and sectoral integration below the level of membership, individual EU member states are pushing for a clear prospect of membership (e.g., Poland, Slovakia and the Czech Republic for Ukraine, cf. Solonenko, 2008: 87; Kubicek, 2007: 2).³ Finally, the EU institutions are also not united in one position. ‘[S]ome language in the Commission’s papers and in the positions taken by the European Parliament (EP) suggest that *approchement* may be more likely than the official restrictive language suggests’ (Verdun and Chira, 2008: 431). ENP states thus do not enjoy a credible membership perspective; the preclusion of membership is however not credible as well.

We argue that the ENP’s balancing act between tight involvement in the European integration process and rejection of full membership is perceived differently by the Eastern neighbouring states aspiring membership than the official reading of the EU’s official statements suggests. Whereas the EU centres external governance rather than conditionality in order to closely bind the neighbouring countries to the Union below the threshold of membership, some ENP countries that consider

³ It is also noteworthy that the liberal party in Germany, FDP, which is chaired by the new Foreign Minister Guido Westerwelle, requested in its manifesto for the parliamentary elections in 2009 an explicit membership perspective for Ukraine.

themselves as future candidate states interpret approximation and sectoral integration as pre-stage towards accession and impose accession conditionality on themselves anticipating that in case they finally comply with the accession criteria the European Council will feel obliged to open accession negotiations with them.

Anticipated accession conditionality and democratic change

Anticipation presents a central component of political behaviour. A foresight influences in many different situations how political actors will decide. Drawing on sociological literature, we speak about anticipation when actors predict the behaviour of others under the terms of insecurity, forecast certain scenarios as a consequence of their own behaviour, and, correspondingly, adopt their own behaviour on the basis of a cost-benefit-calculation (cf. Leuffen and Hertz, 2009}. Anticipative action is thus perfectly compatible with rationalist theorising and can be integrated in studies explaining the effectiveness of political conditionality.

Consistently, we consider compliance with the EU political accession criteria as the result of conscious decision-making on part of the respective target state. In the context of the European Neighbourhood policy in which a membership perspective is explicitly excluded, we concentrate on the political behaviour of the neighbouring state. With regard to anticipative action, we reason that a neighbouring state aspiring after EU membership anticipates that the EU is to grant it a candidate status if it increasingly progress in compliance with the required accession criteria. In so doing, it consequently adopts its political behaviour to self-imposed accession conditionality. We expect this effect to be the strongest at the beginning of ENP conditionality and to decrease with the enhancing likeliness that the anticipated entrapment effect will not be satisfied.

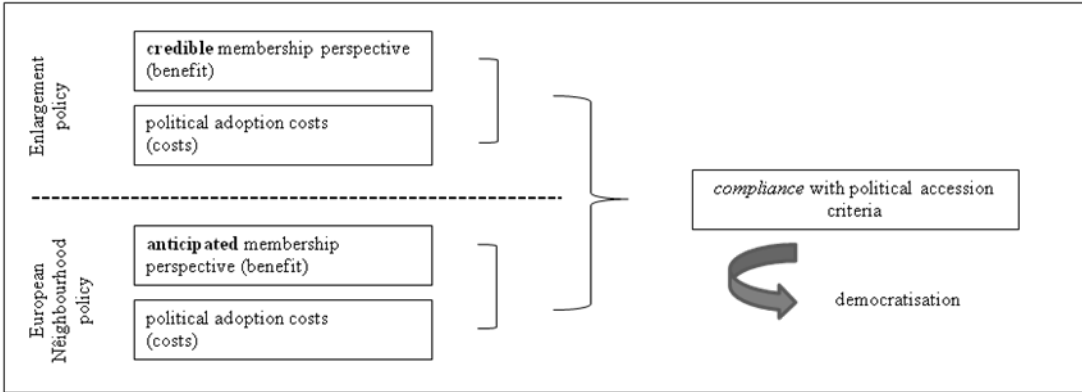


Figure 1 The external incentives model and anticipated membership conditionality

Despite the absence of a (credible) membership perspective, we expect these self-declared candidate states to show at least a stable tendency towards democratic change if the expected political adoption costs are not too high. Brief, we suggest replacing the condition of a credible membership perspective in the external incentives model with an anticipated one motivated by strong aspiration after accession (see Figure 1). On the basis of this reasoning, we formulate the following hypothesis:

If a third state declares EU accession the highest domestic and foreign policy priority, it will comply with the required political criteria, even in absence of a (credible) membership perspective – anticipating the EU to reward successful compliance accordingly.

In order to provide evidence for this argument, we need to demonstrate that aspiration towards EU accession triggers a mechanism of anticipated accession conditionality, and thereby influences the formulation of state interest and the government's political actions. In other words, it needs to be shown that the possibly detected (tendencies) of democratic change can be traced back to an anticipated accession conditionality, *i.e.* that the respective government engages in processes of political transformation driven by the EU's conditionality framework in the Action Plans in order to 'entrap' the EU to grant candidate status.

ANTICIPATED CONDITIONALITY IN THE EU NEIGHBOURHOOD

To empirically illustrate the plausibility of the argument of anticipated accession conditionality, we singled out the most-likely-case in the European neighbourhood: Ukraine. Characterised by a high level of membership aspiration, we expect to find democratisation effects produced by anticipated conditionality in Ukraine, dependant on the level of political adaptation costs. Our country selection hence implies that only negative findings can be generalised, whereas positive findings do not signify that we can expect similar effects in countries less close to the EU.

Ukraine is considered the Eastern frontrunner among the ENP states (Emerson, et al., 2007: 10). Already at the beginning of the EU's new 'wider Europe' strategy, Ukraine had undertaken a 'substantial commitment' in the human rights and governance field (European Commission, 2006: 2). The ENP was 'a bit of a

disappointment' (Kubicek, 2007: 1) for Ukraine since it was perceived as separating it from the candidate states in the Western Balkans and grouping it with countries that clearly do not meet the geographic requirements of membership specified in the EU's primary law, *i.e.* in the Maghreb. Since the Orange Revolution, at the latest, the political leadership has constantly confirmed that it perceives the EU policy as leaving the back door open towards membership and emphasised that they will make every effort to implement the required political and economic reforms.

ENP conditionality in Ukraine

The EU's relationship with Ukraine is legally based on the Partnership and Co-operation Agreement (PCA) signed in 1994 and ratified in 1998. The Action Plan agreed in 2005 comprises a series of priority areas including strengthening political institutions, ensuring democratic elections, and ensuring media freedom. With the Action Plan, the EU concretized its conditionality approach, but felt short to include strong incentives. A membership perspective is explicitly not offered by the EU. However, the procedural and institutional setting of the ENP in general as well as the ambivalent statement of EU officials towards Ukrainian membership aspiration leaves room for hopeful interpretation. Even statements of the current commissioner in charge of the EU's enlargement agenda, Oli Rehn, acknowledges that it would be absurd for the EU not to pursue a politics of the half-open door towards the Eastern neighbouring countries in order to maintaining the EU's influence: "Were we to say "no, never" to Ukraine, our political influence on the future development of Ukraine would be radically diminished."⁴

After the Orange Revolution in 2004-2005, the EU did not upgrade the status of Ukraine to a candidate state as was hoped by the 'Orange elites'. In recognition of the improved democratic credentials of the country, the EU only adopted the so-called 'List of Additional measures' which accompanied the signing of the Action Plan. This list was meant to 'emphasise the EU's commitment to Ukraine's reform path and the speedy implementation of the Action Plan', and contained most importantly 'a promise that [the EU] would 'respond' if Ukraine implements the Action Plan' (Sasse, 2008: 309). However, the possibility of enlargement 'remains a

⁴ http://ec.europa.eu/commission_barroso/rehn/pdf/interviews/080612_esharp_magazine_en.pdf [30.07.2009].

crucial feature that characterizes EU-Ukraine relations' (Dimitrova and Dragneva, 2009: 855). As reward for Ukraine's first reform steps and its – albeit inconsistent – compliance with the Action Plan, the EU opened negotiations on visa facilitation, inter alia. In 2007 the EU started negotiations with Ukraine as the only ENP state on a new enhanced agreement that will replace the PCA and leaves the way open for further progressive developments in EU-Ukraine relations (Hillion, 2007). This Agreement resembles the Association Agreements with the Central and East European as well as the Stabilisation and Association Agreements with South Eastern Europe. In December 2008, negotiations were launched on a 'New Practical Instrument' to replace the Action Plan once the new Association agreement is in Place (European Commission, 2009: 1).

Conditionality as most important democracy promotion tool of the EU is therefore prevalent in the EU's relationship with Ukraine. The concrete incentives offered by the EU are, 'on balance, smaller and less defined than [... the conditions] the Ukrainian authorities are confronted with' (Sasse, 2008: 306). Although the EU acted as a 'weak democracy promoter in the case of Ukraine' (Solonenko, 2009: 711) compared to its policy towards Central and South Eastern Europe, the EU's conditionality approach in Ukraine resembled the enlargement policy.

Compliance with the EU accession criteria

Contrary to expectations in the academic literature drawing a rather negative picture on the ENP's impact, Ukraine made some progress with the implementation of objectives agreed in the EU-Ukraine Action Plan and showed compliance. Most evident is Ukraine's good record in the economic sphere. Ukraine fulfilled all necessary reform requirements to become member of the World Trade Organisation (WTO) in spring 2008 – the most important pre-condition for economic integration into the EU's internal market. With the opening of negotiations on free trade provisions in the new Enhanced Agreement, the EU rewarded Ukraine for its efforts to comply with one of the ENP's economic priorities (Solonenko, 2009: 716).

Given the ENP's strong focus on the extension of the EU *acquis* towards the neighbouring countries and Ukraine's standing as a 'willing partner' (Emerson, et al., 2007: 10), it hardly surprises that Ukraine is on a good track of approximating

its legislation to EU rules and laws. [... more on compliance with EU sectoral acquis, e.g. Melnykovska and Schweickert 2008; Langbein 2009]

Finally, and most importantly in terms of this paper's focus, Ukraine demonstrates compliance with the political criteria. According to the most common indices on the state of democracy, *i.e.* Freedom House's political freedom and civil rights indicators and the Bertelsmann Transformation Index, Ukraine showed a continuous tendency towards democratisation. 'With the preparation and conduct of overall free and fair parliamentary elections in March 2006 and September 2007, Ukraine consolidated the breakthrough in conducting a democratic election process that began with the Orange Revolution and which is also a key element of the Action Plan' (European Commission, 2006: 1). The Commission further notes 'considerable steps' towards 'consolidating respect for human rights and the rule of law', e.g. by removing pressure on the media and civil society or progress as regards respect for the rights of persons belonging to national minorities (European Commission, 2006). Consequently, 'political competition and pluralism of information [... became] indispensable elements of today's political reality' (Solonenko, 2009: 710). Thus, although Ukraine does not count as consolidated democracy today, it is far more democratic than it was at the time the EU started pursuing its new approach towards the neighbourhood. '[E]ven if the actual adjustment in Ukraine has been limited, this is the first time that the EU has stepped in to promote domestic change' (Wolczuk, 2009: 188).

Yet, the existing literature does not account for this, though moderate, effect of the ENP on democratisation processes in Ukraine in the absence of true leverage, *i.e.* membership. According to our argument, EU political conditionality does not necessarily need to be based on a credible membership perspective if the respective target state strongly aspires after joining the Union. As shown in the Ukrainian case, the EU's activities allow for being interpreted as leaving the door open for ultimate accession. Is this half-door policy of the EU reflected by an anticipated accession conditionality of Ukraine? To what extent did the Ukrainian government thus seek to comply with the political criteria in order to finally provoke the granting of candidate status?

Membership aspiration and anticipated accession conditionality

Ukraine's membership aspiration was founded in 1998 when president Kuchma proclaimed membership of the EU as Ukraine's long term strategic goal. Over time, 'the political elites have uniformly become favourable disposed towards the 'European choice' proclaimed by the president' (Wolczuk, 2009: 193). By 2002, there was broad consensus among the most important political leaders and parliamentary parties on the Ukraine's foreign policy goal of integration with the EU. However, this consensus did not translate into reform priorities or decisive action to implement far-reaching domestic reforms, apart from some first steps to harmonise legislation. European integration was perceived by political leaders as a 'rather hollow-sounded policy' (ibid.: 194). Institutions working on the implementation of this European choice were non-existent or weak. Until 2004, the declared 'European choice' remained a 'pragmatic rhetorical device' for president Kuchma (Sasse, 2008) and was not reflected by domestic politics.

After the Orange Revolution in 2004/5, president Yushchenko strongly affirmed Ukraine's commitment to European integration. The new government perceived the ENP as a temporary framework for relations, 'suitable for a pre-candidate phase' (Wolczuk, 2009: 198). It anticipated becoming subject to accession conditionality by promising to 'close the gap between declarations and deeds by greater attention to 'domestic homework', *i.e.* implementation of the Action Plan (ibid.: 200). Thus, in contrast to the Kuchma-period, with Yushchenko EU integration became a cornerstone of governmental policy and Ukraine was set on a reform path (Sasse, 2008). Institutional change firmly 'domesticised' (Wolczuk, 2009: 208) EU conditionality. For instance, shortly after the Orange Revolution, a new deputy prime minister was responsible for co-ordinating the efforts to proceed with European integration. This deputy prime minister quickly drafted a 'Road-Map' on the implementation of the Action Plan and enforced that it became binding for all agencies within the executive branch. The successive road maps for 2005, 2006 and 2007 were 'decisive' for the Action Plan's mobilising impact on domestic policy making and became the 'equivalent of a governmental programme', and as such the 'first, lasting and transparent blueprint for reforms' in Ukraine (ibid.: 200).

The example of the reform of the judiciary is striking for the ENP's impact on democratisation processes, and therewith anticipated accession conditionality. The 'reform of the judiciary in order to ensure its independence, impartiality and effectiveness' was listed as the second priority in the Action Plan's section on Political Dialogue and Reform. In the following years, changes to the Law on the Judicial System of Ukraine were first prescribed in the 2005 road map, in 2006 submitted by the president to parliamentary procedure and finally discussed in parliament (first reading 2007, second reading 2008; adoption still pending) (Wolczuk, 2009: 206). While slow, incoherent and of limited progress, these first reform steps would not have been possible without the reference to accession criteria demanded by the EU.

[reform example → process-tracing; reflection on political adaptation costs & concrete EU policy & Ukrainian justifications of reforms]

CONCLUSION

This paper wished to explore whether political conditionality had an impact in the Eastern neighbourhood aspiring after accession in the absence of a credible membership perspective. Contrary to the literature on EU democracy promotion in the near abroad which draws a rather gloomy picture, we took a more optimistic perspective by considering the perceptions of the rule addressees. Drawing on sociological approaches, we complemented the rationalist external incentives model with the aspect of anticipation and demonstrated that it can well be applied to countries lacking a credible membership perspective.

We introduced the theoretical argument that if a neighbouring country declares EU accession the highest foreign policy priority, it will comply with the required political criteria, even in absence of an official membership perspective – anticipating the EU to accordingly reward successful compliance. We empirically supported this argument by taking the example of Ukraine, a most-likely-case. Despite the absence of an official membership perspective, Ukraine declared itself a candidate states and complied with the Action Plan criteria by implementing some democratic reform packages in cases where the expected political adoption costs were not too high.

What, then, can be concluded with regard to the effectiveness of the EU's political conditionality criteria as instruments of democracy promotion in the neighbourhood? The enlargement of the EU was hitherto one of the big success stories of the European integration process regarding the EU's impact on democratic reforms in the Central and Eastern European states. The EU is still attractive and unfolds some transformative power – even without a clear strategy and strong incentives. As if attracted by a magnet of welfare and political stability, many European governments, that cannot imagine anything better for their country than joining the Union, line up in Brussels. Although the European Union may have good reasons to not enforce an internal dispute by trying to give a clear answer to where the ultimate external borders of 'Europe' are to be fixed, we conclude that it is still the membership perspective – be it formalised or official, be it anticipated, that is necessary to induce profound and sustainable democratic change. Eventually, however, the countries' acceptance of EU-demanded and -guided reforms will be a function of the ultimate *finalité* of the relationship, which remains to be clarified by the Union. As the example of Ukraine shows, countries strongly aspiring after accession will ultimately confront the Union with the question what if 'European' countries fulfil the accession criteria though they are not officially acknowledged candidate states? If the EU were still interested in effective democracy promotion but reluctant to grant membership, it needs to convincingly promote the concept of a variable geometry and differentiated integration towards its neighbourhood, otherwise it risks to fail to achieve the primary ENP goals, stability and security in the near abroad.

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