

The Two-Track Approach to Democracy Promotion in the European Neighbourhood Policy

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The European Neighbourhood Policy (ENP) is claimed to be based on shared values and commitments between the European Union and its partner countries. Within this set of values, as stated in various official documents, democracy plays a central role. The way in which the value of democracy has been translated into the ENP Action Plans, however, is rather diverse. In some cases it is mentioned as a value, without being transposed into specific action points. This is most notably the case in the relations with the countries of the Southern Mediterranean. Other Action Plans contain specific action points on democracy, for example in the case of Ukraine and Moldova. This paper focuses on ENP relations with the latter, i.e. the bilateral relations where democracy promotion features prominently at the level of concrete action points.

It is argued in this paper that, in order to understand the EU's role in democracy promotion towards its Eastern neighbours, we must distinguish between two tracks underlying the EU's approach to democratisation beyond its borders. The first track is aimed at the export of a democratic institutional framework, forming the basis of the most essential criteria for free and fair elections and the separation of powers. The second track is formed by the promotion of less tangible elements of democracy, most notably transparency, accountability and active citizen participation outside the formal election process. Without opening a conceptual debate on both multi-interpretable concepts, I catch the criteria of the first track under the label democratic government, while I label those of the second track as democratic governance.

Not only should we make a distinction between the two tracks. In order to measure effectiveness, we should also approach the promotion of democratic government and governance differently. Based on earlier research, two explanatory variables of democracy expansion - the fit with domestic agendas and active legitimacy-seeking by neighbouring states - are applied to rule

transfer in both tracks. Using Ukraine as a case, the hypothesis is explored that the differences in visibility and domestic capacity requirements are crucial to understand how these variables lead to diverging results in both tracks. The conclusions of this paper are a – modest – step towards a new research agenda with a more diversified approach to democracy promotion under the ENP.

1. Two types of democratisation

Democracy is both institutionally and as an object of analysis a complex and multi-faced phenomenon. The major part of the democratisation literature focuses on ‘major institution and laws of government about participation in elections’ (Rose 2008: 253). A regime can only be labelled as democratic when the necessary mechanisms are in place to give citizens the opportunity to participate in the electoral process and to guarantee free and fair competition – directly or indirectly – for major public posts. The focus is then on free and fair elections, the conditions they imply, a multi-party system, etc. and on a number of basic institutional requirements such as the separation of powers and the rule of law.

A considerable part of the literature on democracy accepts that more is needed than the formal application of rules guaranteeing fair and free elections, the rule of law and the separation of powers, but that citizens should effectively participate, have an impact on the agenda and have access to information (see also Dahl’s criteria of democracy, Dahl 1998).

Norberto Bobbio, for example, made a distinction between political or vertical democracy on one hand and horizontal or societal democracy on the other (Bobbio 1987). In a vertical democracy, the control of the ruled over the rulers is mainly guaranteed by the electoral process. In the electoral process parties compete for the support of the electorate. According to Bobbio this is an incomplete form of democracy. It reduces a democracy to the four- or five-yearly delegation of power. It may perfectly well exist in a country where the civil society is weak or absent altogether. This form of ballot box democracy offers nothing but the basic rules of the game. According to Bobbio it needs to be supplemented by other forms of on-going control by society. Horizontal democracy refers precisely to ‘the increasing distribution of power in the different spheres of civil society’ (Bobbio 1987: 55). Horizontal democracy is crucial to balance the power of the elected leaders by creating forms of societal control over different policy processes.

Distinctions like this resonate widely in academic literature (see also Héritier 1999), but come under many different labels. Also in the policy-world, aspects of horizontal democracy have

gained in prominence, with international organisations referring to the need for a ‘day-to-day experience of living democracy’ (OSCE 2007: 1). A genuine democracy cannot be limited to the sporadic involvement of citizens in elections, but requires a continuous democratic culture. In order to set the context for a meaningful democratic electoral process, one needs to guarantee a sustained participation of citizens, true accountability and transparency. If not, democracy is reduced to a formalistic democracy or ballot-box democracy. The OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) presents the concept of democratic governance as follows: ‘... the OSCE has recognized that it is "necessary to develop a democratic culture, on the local, regional and national level, in order to sustain new democratic institutions". In practice, democratization is a continuous dual effort of "fine-tuning" democratic structures and processes and nurturing a democratic culture based on respect for human rights, the rule of law, peace, and security. Democracy is not restricted to one-off electoral events; it also requires democratic institutions that discharge their electoral mandate through consensus-driven, open, and transparent processes.’ (ODIHR 2009)

Criteria of good democratic governance have been translated by various institutions into a wide array of principles, such as:

- Civil society involvement
- Active motivation by the government to participate
- Channels for participation, dialogue and consultation
- Civic awareness
- Transparency of decision-making
- A well-functioning and accountable public administration
- Absence of corruption
- Constraints on lobbying
- Avoiding the abuse of immunities
- No direct state control over media, diversity of free and critical media, including in ownership terms

Whereas the institutional criteria of democratic government are absolutely essential conditions for a democracy, these criteria are important to guarantee its quality by avoiding that a representative democracy would be limited to the pure delegation of power.

This distinction between democratic government and governance is particularly crucial for the transition process in Central and Eastern Europe. After the collapse of communism, most

countries have adopted liberal-democratic constitutions. Their civil societies, however, were weakly developed. As a result some countries have developed a purely procedural or formal democracy, where the required formal institutions were in place, but where a democratic culture was weak. The problem of formal or ballot-box democracy has received considerable attention in the transition literature from the very early days of post-communism on (see for example early texts such as Mischelitz 1990, Kolarska-Bobinska 1991).

Since this paper does not aim at making a theoretical contribution but wants to distinguish between two aspects of democracy promotion, I pragmatically opt for the terms democratic government and democratic governance. While the first one refers to the institutional and procedural characteristics of a regime, guaranteeing a fair and free competition for the votes of the citizens as a basis for the attribution of public posts, the term democratic governance refers here to principles and practical elements that allow for an on-going societal control over policy processes and the distribution of power beyond the ruling elite, in different institutions and spheres of society. The crucial triangle is formed by the acceptance and implementation of principles of transparency, accountability and active participation in various policy processes (Héritier 1999, Freyburg 2007: 14).¹

2. The European Union as democracy promoter

While the EU can be regarded as a community of democratic states (Mayer & Palmowski 2004), it is striking that it has only profiled itself as an active democracy promoter relatively late. The Birkelbach report in the European Parliamentary Assembly mentioned standards of democracy for prospective members for the first time back in 1961 (Birkelbach 1961).² The European Community also played an important role in solidifying the young democracies of Spain and Portugal. Still, it took until the Treaty of Maastricht of 1992 before a reference to democracy was included in the treaties and the EU was given a responsibility in promoting democracy. Soon after, the European Council made democracy a formal admission condition at its meeting in Copenhagen in 1993. This has led some to argue that the EU largely became an active democracy promoter by accident, as a reaction to the enlargement challenge after the end of the Cold War (Baracani 2009). Also in its external cooperation, conditionality clauses on democracy appeared

¹ The term democratic governance has also been applied specifically to the application of those principles in different sectoral policies (Freyburg 2007).

² The report of the Political Committee (with Birkelbach as its Rapporteur) was adopted by the European Parliamentary Assembly in December 1961 and was published in January 1962.

rather late. Only in the fourth Lomé Convention in 1989, development aid was made dependent on respect for human rights. Two years later, in 1991, a Council resolution would recognise the principle of human rights and democracy conditionality in development policy (Dimier 2006: 263).

Within the neighbourhood the EU has often appeared a 'reluctant debutante' (Emerson 2005). Several authors have indicated that strategic considerations, reflecting the EU's interests, have in practice often prevailed over its proclaimed commitment to export democratic values (Warkotsch 2006, Mayer 2008).

Though the EU has appeared as a strong democratiser in the enlargement process, it should be noted that is not the producer of democratic norms. This appears inter alia from ENP-related documents where the EU is not setting its own democratic standards, but borrows them from other institutions, most notably the OSCE/ODIHR and the Council of Europe (including the Venice Commission). In other words, the EU's strategy of democracy promotion is mainly a reinforcement strategy. The EU does not create its own standards of democratisation, but uses its bargaining power behind the existing democratisation strategies of other organisations.

3. Democracy promotion and the ENP

The ENP is nothing but a framework which integrates diverse policies towards different neighbouring countries. The policy is aimed at developing privileged relations with the neighbouring countries, inviting convergence on EU rules and standards, without offering the prospect of membership. While most ENP documents mention democracy as one of the core values, huge discrepancies can be found in the various ENP Action Plans. This results from the joint ownership of these documents. Formally these are bilateral documents, in which the EU and the ENP partner country agree on strategic priorities and action points for reform. Although they largely reflect the EU's preferences, the bilateral character gives ENP states the possibility to 'veto' certain provisions. This explains the absence of concrete action points on democracy in the case of the Southern Mediterranean countries. On one hand the ruling elites in these countries resisted the emphasis on democratisation, on the other hand the EU was reluctant to push the case of democracy too vigorously, fearing political instability and the potential success of Islamist forces (Cavatorta 2008). In the case of Eastern European countries, Ukraine and Moldova, however, democratic reforms feature prominently in the Action Plans.

An analysis of the Action Plans indicates that the EU relies on a two track approach in its democracy promotion, reflecting both democratic government and democratic governance. The emphasis, however, is clearly on the former. The first three ‘priorities for action’ in the AP refer to:

- ‘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 the respect for the freedom of the media and freedom of expression’(EU/Ukraine Action Plan 2005)

The democracy chapter of the Action Plan refers predominantly to the strengthening of institutions ‘guaranteeing democracy and the rule of law’ (EU/Ukraine Action Plan 2005), human rights and the reform of the judicial apparatus. Reference in this field is made to ‘international standards’ and ‘OSCE standards and OSCE/ODIHR recommendations’.

The same chapter also contains references to democratic governance, most notably the fight against corruption, the transparency and accountability of the administration (both under item 3), the development of civil society and the involvement of citizens in the decision-making process (item 5). Apart from that most of the action points related to democratic governance are dispersed throughout the AP. There are many references (13) to transparency in economic and sectoral chapters, as well as to participation, usually coined in terms of ‘dialogue’ or involving of civil society (around 10 references). When looking at the projects, the EU has been rather active in the democratic governance field. Predating the ENP, it has run numerous projects aimed at introducing principles of good governance in the administration, empowering and involving civil society organisations, etc.

This leads to a preliminary conclusion confirming the EU’s two track approach in its promotion of democracy in Ukraine, but indicates that:

- At the political macro-level, the democratic government is most explicitly and prominently present. The benchmarks, with reference to the OSCE standards, are clear-cut. Democratic governance is equally present, but tends to be less more diffuse and scattered over the document. A call is made to respect the principles of of transparency, accountability and participation, but clear benchmarks are lacking.
- At the micro-level of projects democratic governance features more prominently. The governance principles of participation and transparency are mainly translated into financial assistance for specific projects, such as twinning or training civil servants.

This distinction is quite important because it indicates the two tracks of democracy promotion are to be situated at different levels and hence may be based on different mechanisms.

4. Explaining success and failure of ENP democracy promotion

In earlier research I have tried to find an explanation for the selective rule transfer from the EU to its neighbouring states. Starting from the assumption that the models of rule transfer under enlargement (Schimmelfennig and Sedelmeier 2004) could not explain the much more partial rule transfer under the ENP (Magen 2006), I developed an alternative explanation for the limited and selective transfer of rules under the ENP.

On the negative side, ENP rule transfer can in general not be explained on the basis of conditionality. As the ENP excludes a membership prospect, it scores weakly on the incentives side. On the side of conditions, however, the Action Plans contain hundreds of reform action points. Even if the language is often vague, the Action Plans are as detailed as the Accession Partnerships. Most importantly, however, the link between conditions and rewards under the ENP is extremely vague. If ‘a stake in the internal market’ is one of the main carrots, it is very unclear what conditions need to be fulfilled in order to obtain this reward. However, it was found that a distinction needs to be made between macro-conditionality and micro-conditionality. The macro-level refers to conditionality at the general political level, including broad criteria such as democracy. The link between conditions and rewards under the ENP is virtually absent, so it is hard to detect any real conditionality at this level. At the level of rule transfer in a specific sector, there may be certain forms of conditionality. For example, the EU uses the signing of readmission agreements as a condition for a – modest – facilitation of visa regimes.

On the positive side, it was found that the degree and nature of rule transfer under the ENP was highly determined by three interrelated factors:

1. *The fit of ENP action points with domestic agendas.* The ENP Action Plans are used by certain actors as a menu for choice to legitimise domestic political preferences and strategies or as a platform for mobilisation. The transfer of EU rules to ENP countries increases as the rules are more in line with the reform preferences of influential domestic actors.
2. *The active legitimacy seeking of certain ENP countries.* States like Ukraine, who have made accession to the EU a strategic priority, will try to appear as the best pupil in the class by (selectively) adopting certain rules (see also Bauer 2007). Even if membership is

formally excluded under the ENP, these countries hope to create pressure on the EU in the longer term to put the door ajar for membership.

3. The *nature of the ENP* reinforces this process of active legitimacy seeking. The ENP is a policy without clear finality and is highly dynamic. The benchmarks and outcomes change as the policy evolves. As the ENP is a framework for tailor-made bilateral policies, the benchmarks and the outcomes may considerably diverge from one country to another. As a result the ENP is a much more political and less subjective policy than the enlargement policy. Progress is much more dependent on bilateral support from EU member states, because objective, collective criteria are lacking.

In this paper I want to apply and elaborate these findings to democracy promotion by the EU in Ukraine, testing the validity of the first two factors to explain the diverging effectiveness of rule transfer in both tracks of democracy promotion. The hypothesis will be explored that active legitimacy-seeking and fit of agendas lead to different outcomes in democratic government and governance because of two reasons: the visibility of reforms and the capacity problems they imply.

- *Visibility* is considered to be important against the background of the argument of legitimacy-seeking. It is hypothesised that an active legitimacy-seeking country, such as Ukraine, will opt for the most visible democratic reforms to prove itself as a trustworthy potential EU candidate. This would suggest a higher emphasis on democratic government, rather than the less tangible democratic governance.
- *Capacity*, in turn, plays an important role because of domestic reasons. It is hypothesised that democratic reforms which pose considerable capacity problems will be avoided and those with relatively limited capacity implications will be preferred. In other words, it is easier to reach domestic agreement on reforms with limited capacity implications, as long as they do not run against the interests of veto players.

5. Applied to Ukraine

Assessing democratisation

The Orange Revolution of 2004 is widely regarded as a turning-point in Ukraine's recent history. It closed the era of "managed democracy" under President Kuchma. The country's political system liberated itself from a number of semi-autocratic traits (Wolczuk 2006). The changes were reflected in a number of constitutional amendments which entered into force in 2006. Let us

first assess to what extent Ukraine has effectively democratised in both tracks since the events of late 2004, using the findings of some International Organisations.

At the level of *democratic government*, Ukraine is regarded to have made substantial progress in organising free and fair elections (Commission 2008). The last elections were considered to be free and fair by international standards (PACE 2008). They have been praised as the “third peaceful and democratic change of power in three years” (PACE, art. 9). On the other hand, there remain important institutional issues which disturb a smooth democratic process. This is most notably the case of the existence of two centres of power in the executive branch (PACE 2008, Commission 2008). There is an unclear division of authority between the President and the Government. The current constitutional system does not balance the power of both well. As a result Ukrainian politics find themselves in an almost ongoing political crisis. Fierce competition leads to recurring political instability and often paralyzes decision-making and implementation. The PACE report mentions that ‘the inherent flaws in the Ukrainian political system – constant sources of legal chaos and systemic constitutional crisis – have not been remedied. All political debates continue to be overshadowed by the internal tug of war over the redistribution of political authority, both inside the coalition and between different power institutions’ (PACE 2008: par. 6) The constitutional changes which entered into force in 2006 were considered to be ‘a shift to a parliamentary system, away from the semi-presidential system envisaged by the 1996 Constitution and the system which led to the abuse of power by President Kuchma.’ (Wolczuk 2006: 13). As Wolczuk argues, however, it has remained a semi-presidential system, which de facto may evolve towards a parliamentary system ‘depending on how the presidency behaves as a political actor.’ (Wolczuk 2006: 13)

While substantial progress has been made in the field of democratic government, the situation remains rather problematic in the field of *democratic governance*. A Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) in 2008, though recognising the progress in organising free and fair elections, was strikingly critical: ‘Regrettably, the political culture in Ukraine continues to be extremely low. Rather than playing by the rules, Ukrainian politicians keep on playing with the rules, and stretch them as they wish. Ukrainian politics being primarily run by powerful businesses and their lobby groups does not help the situation.’ (PACE 2008: par. 19). The report is particularly worried about:

- corruption in the parliament (par. 21)
- the end of state funding of political parties which is likely to foster political corruption (par. 27)

- the lack of reform of the judiciary in order to increase transparency and accessibility (par. 49)
- control over the appointment of judges (par. 53 and 54)
- the non-implementation of anti-corruption strategies (par. 59) and the lack of public participation in anti-corruption activities (par. 60)
- state-control over media and the lack of transparency of media ownership (par. 65 and 67)

From this sketchy overview we can conclude that at the level of democratic government the substantial progress at reforming institutional procedures has been counterbalanced by domestic political issues, stifling a solution to the problem of double authority in the executive. At the level of democratic governance, progress has been limited or non-existent. In particular in the field of implementation, the results are feeble. In the field of anti-corruption, for example, there are ample references to the need to fight corruption. A strategy was approved in 2006 ('On the road to integrity'), but very little changed on the ground (PACE 2008: par. 59). This is indicative of the commitment to principles of democratic governance at the rhetorical or declarative level, without effective rule adoption and even less so implementation.

Explain diverging results in both democracy tracks

A limited discourse analysis of strategic documents and speeches by leading Ukrainian policy-makers (which needs to be extended further in upcoming research) reveals a considerable number of references to the necessity to carry out reforms in the interest of the country's 'European choice' to reforms required in the field of democratic government, but very few references in the field of democratic governance. The objective of joining the EU is shared by all political parties and the most influential business people (Copsey and Shapovalova 2008). An analysis of some key speech by President Yushchenko and Prime Minister Yulia Tymoshenko reveals a high frequency of the term 'European choice' (i.e. the strategic priority to become a member of the EU), of which both actors claim to be the main guarantors. Institutional changes in democratic government (or the need for such) are legitimised in terms of Ukraine's European choice (see for example Tymoshenko 2008a and b). Also in his speech proposing constitutional reform, President Yushchenko refers to 'example of democratic models widely applied these days in many EU countries'. For example, he links the proposal of introducing a bicameral parliament, to Ukraine's strategic goal of EU membership, arguing that two thirds of the EU countries have such a system. (Yushchenko 2009).

Interviews held with a number of diplomats involved in the ENP negotiation process confirm that *visibility* of reforms for the EU and its member states plays a prominent role in establishing a domestic consensus. The acceptance of the principles of democratic government is considered to be the most crucial way to prove the trustworthiness of Ukraine as a potential candidate member state (see also Bobitski 2008). Democratic government is considered to be the most important benchmark, but can only be achieved if there is no opposition from veto-players. Interviews confirm that democratic governance is considered to be of secondary importance, because they are perceived as less determining for Ukraine's long term chances of accession.

Turning to the *capacity problem*, the 60 to 80 billion USD of costs Ukraine is estimated to need to implement the Action Plan is in sharp contrast with the 500 million EUR allocated for Ukraine under the ENPI for 2007-2010. Under these conditions it is logical for Ukraine to give precedence to those options which are visible and relatively cheap at the same time, such as the democratic reform of state-level institutions and the organisation of a democratic electoral process. Governance-related reforms, in contrast, pose more complex capacity problems. Often they require both extended bureaucratic infrastructure (e.g. procedures for consultation, communication with citizens, etc.) and an internalisation of the principles of participation, transparency and accountability.

In sum we have seen a threefold development since the Orange Revolution:

- The adoption of institutional changes at state level allowing a 'free and fair' electoral process
- Remaining institutional issues, in particular the unclear division of authority between the President and the Government, creating de facto political instability
- Limited progress in the field of democratic governance, which disrupts daily democratic practice: lack of participation, lack of accountability, lack of transparency, a considerable degree of corruption

The limited discourse analysis and interviews seem to confirm that democratic government changes have been made to gain legitimacy with the EU. Especially after the Orange Revolution, Ukraine, which had been a laggard in democratisation for most of the 1990s, felt a strong need to affirm its new identity through highly visible changes at the institutional level. Domestic support, however, was a necessary condition for introducing these institutional changes. This is precisely the reason why Ukraine managed to democratise the electoral process, but failed to introduce a new institutional balance of power between President and Government. Agreement on the latter was lacking within the broad Orange coalition. The intense conflict and fierce accusations

between Yushchenko and Tymoshenko would lead to a complete stalemate on further reforms in democratic government.

This visibility of reforms is generally much weaker in the field of democratic governance. Whereas democratic government reforms mainly require substantial changes at the constitutional level, democratic governance requires new sophisticated procedures in a wide array of institutions and sectors. Per definition this is a much more complicated process, requiring not only a high capacity, but also an internalisation of principles of accountability, transparency and participation. Progress here may be made through other mechanisms, such as socialisation – through intensive contacts, training, twinning – but the poor results in this area indicated by the PACE report indicate that this has so far not been very successful.

6. Towards preliminary conclusions

Although this requires further research, this leads to the tentative conclusion that standards and rules of democratic government and democratic governance are transferred according to different mechanisms. When starting from the assumption that active legitimacy seeking with the EU and the usefulness of rules for domestic reasons are the most determining variables to explain the transfer of rules to ENP countries, then we may expect a higher success rate in the short or mid-term of democratic government for the following reasons:

The transfer of rules and practices of democratic government is highly visible and requires a rather limited capacity, while in the case of democratic governance, the visibility is perceived to be small and the capacity required is high and complex in terms of political and administrative infrastructure and culture.

1. Ukrainian diplomats and policy-makers consider *democratic government* as the litmus test of Ukraine's trustworthiness as a potential candidate member state. They believe that successful and visible reforms in this field will increase the chances of Ukraine to join the EU in the longer term and legitimise democratic reforms in these terms. Active legitimacy seeking by Ukraine was an important factor in creating domestic support for introducing highly visible reforms in the field of democratic government. Although conditionality is not the central mechanism explaining rule transfer under the ENP, we could speak of a sort of self-imposed conditionality: Ukraine perceives democratic government as the benchmark par excellence to gain legitimacy with the EU and to enhance its chances of membership. The lack of domestic consensus on the division of authority of executive

power (President vs Government) has, however, constrained these reforms mainly to the electoral process.

2. The adoption and implementation of principles and rules of *democratic governance* is perceived to be contributing little to the search for legitimacy because they are considered to be less visible. This is related to the fact that the instructions or criteria for democratic governance are vague, diffuse and scattered over different areas. Moreover, the implementation of democratic governance principles poses serious domestic challenges. Not only does it challenge vested interests, it also requires a high administrative capacity and a substantial change in the political and administrative culture. This is illustrated well by the difficulties to tackle corruption. Democratic governance is unlikely to lead to become a self-imposed condition. Progress may rather happen through mechanisms of socialisation, persuasion or contagion.

Further research is needed to confirm these findings and to extrapolate them to other ENP countries with an Action Plan in which democracy features prominently. As to the more general agenda for further research, a need for a more differentiated approach to explain the transfer of rules and principles to the ENP countries is needed. Quite some studies depart from the assumption that rule transfer – limited and selective as it may be – can be explained on the ground of the same mechanisms in different areas and sectors.

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