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**EU Democracy Promotion through Conditionality: The
Temptation of Membership Perspective or Flexible
Integration?**

A Case Study on Ukraine

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Abstract

This paper will examine the use of conditionality for democracy promotion within the European Neighbourhood Policy in Ukraine and its conditions, possibilities and limitations. To achieve this, I will first develop a theoretical framework for analysing mechanisms of democracy promotion in general and conditionality as a state-centred, rational-choice mechanism in particular. I will show that, apart from the attractiveness of the incentives, there are other variables crucial for a successful use of conditionality. Furthermore, conditionality might be used as a promising strategy regarding the formal implementation of democratic institutions. However, for completing the consolidation of democracy, conditionality is highly limited. The empirical part of the paper will focus on EU democracy promotion in Ukraine and the incentives the EU offers to Ukraine instead of a membership perspective. It will be discussed whether these elements of flexible integration are suitable for promoting democracy. Examples of such incentives are a visa-free regime, a new enhanced agreement or a free trade area.

1 Introduction

Accession to the European Union (EU) is oftentimes considered as the most successful instrument for the promotion of democracy in post-communist countries. We can observe that all post-communist countries being members of the EU are more or less consolidated democracies, whilst all post-communist countries staying apart the EU are still “non-democracies” on a path between open authoritarianism and hybrid regimes. As the democratisation of non-member states is both a normative and strategic aim of the EU, democracy promotion is a main element of its foreign policy. It is reflected in its relation with third countries in general (European Commission 2001) and the European Neighbourhood Policy, in particular (European Commission 2003, 2004). The European Neighbourhood Policy (ENP) was designed in 2003 to “prevent the emergence of new dividing lines between the enlarged EU and its neighbours and to offer them the chance to participate in various EU activities, through greater political ,security, economic and cultural co-operation” (European Commission 2004: 3)¹. At the same time, the prospect of membership for countries is restricted by the limited capacity for further enlargement due to the EU’s fear of internal efficiency problems in an ever enlarged Union. Thus, policy makers have to think about alternative integration modes, keeping in mind the normative and strategic aim of the EU to promote democracy and ensure stability, peace and prosperity in third countries. Especially, as countries like Ukraine, Georgia or Moldova demand for a membership perspective.

¹ The European Neighbourhood Policy applies to the EU's immediate neighbours (by land or sea): Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Occupied Palestinian Territory, Syria, Tunisia and Ukraine.

Even though the membership perspective might be a promising instrument to promote democracy in external countries, the underlying causal mechanisms have to be identified in order to provide evidence for this assumed causality. Conditionality serves in this context both as a promising tool of the EU to promote democracy and a theoretical framework to explain causalities between an EU membership perspective and successful democratisation process in the target country (Kubicek 2003; Kneuer 2007; Pridham 1997; Schimmelfennig/Sedelmaier 2005). As conditionality is based on a carrot-and-stick-mechanism, the membership perspective is assumed to be the only attractive “stick”. Following this assumption, critiques argue that the European Neighbourhood Policy cannot provide attractive incentives without offering a membership perspective. Thus, the ENP fails to exert a real influence on the democratisation process through conditionality (Kempe 2007, O’Donnell/Whitman 2007).

Questioning this I seek to discuss the following question: Is conditionality a promising strategy of the European Union (EU) to promote democracy in post communist neighbouring countries without membership perspective? To do so, the paper has two basic lines of argumentation: First, I aim to show, that apart from the attractiveness of the incentives, there are other variables crucial for a successful use of conditionality. As Schimmelfennig argues, the effectiveness of political conditionality depends on three core conditions, including the attractiveness of the incentives, the size of domestic adoption costs, and the credibility of political conditionality (2005). Following this theoretical approach, I will argue that there might be attractive incentives other than the membership perspective. These alternative incentives are trade agreements, possibly leading to a free trade area, visa-free regimes, special modes of cooperation in certain policy areas or security cooperation enhanced in association or partnership agreements. These elements of cooperation might lead to a considerable high level of integration between the EU and third countries, but do not need to result in membership. Therefore, these elements can be named as “modes of flexible integration”. Later on I will outline this terminology and concept and show for the case of Ukraine its chances and limitations.

The second line of argumentation relates to the mode of action of conditionality itself. In this respect I will use transitional theory to elaborate further conditions under which conditionality might work to promote democracy, which has not been taken into consideration so far. I aim to show that conditionality might be used as a promising strategy regarding the formal implementation of democratic institutions, but not to complete the consolidation of democracy.

The paper is structured along these lines of argumentation. First, I will provide a theoretical approach regarding conditionality as a tool for EU democracy promotion and discuss the action mode of conditionality. In the empirical part a case study on Ukraine shows the limits and chances

of conditionality without the incentive of a membership perspective. On this basis I will suggest a concept of flexible integration instead of a membership perspective to offer neighbouring countries real, attractive and credible incentives.

2 A Theoretical Approach towards EU Democracy Promotion and Conditionality

2.1 Theorizing external factors of democratisation

To assess whether conditionality is a promising strategy to promote democracy, one first has to identify possible causal mechanisms between EU policy to promote democracy and the democratisation process in target countries. Second, one has to give evidence for the EU's influence. EU democracy promotion in its external relations is a growing research area. Following studies on the impact of EU enlargement on the democratisation process in new member states (Dimitrova/Pridham 2004, Schimmelfennig/Sedelmaier 2005, Sedelmeier 2006, Kneuer 2007), recent studies focus on democracy promotion within the European Neighbourhood Policy, a policy explicitly withholding membership perspective, or Central Asia (Emerson 2005, Schimmelfennig 2007, Jünemann/Knodt 2007, for Central Asia see: Warkotsch 2008). However, a generally accepted explanatory concept for the analysis of democracy promotion giving evidence for the influence of external actors is still missing.

The possible tools and instruments of democracy promotion are various: consultancy, political dialogue and moral support, financial aid, loans or economic cooperation, peace keeping interventions, election observation, the threat of financial or moral sanctions in case of non-compliance, to name only a few (Sandschneider 2003). Accordingly to the used instrument, the "sender recipient relationship" in democracy promotion differs: On the side of the recipient, it is the democratisation process, which can be divided into actors and phases of the democratisation process. On the side of the sender are external actors, which undertake certain actions to promote democracy². These actors can be divided into governmental or state actors (national governments, international or regional organisations like the EU, the Council of Europe, the OSZE or the UN) and non-state actors (e.g. Non Governmental Organisations (NGO), foundations, interest groups). Depending on the actors involved and actor constellations (state-to-state, society-to-society, state-to-society) different mechanisms of democracy promotion are in place (see table 1): Every instrument depends on different modes of action, reaches different actors and stages of the

² The external context as an additional external influence on democratisation is not taken into account in this paper. The external context concerns the international scenery like power constellations, geographical circumstances or political "events" like wars, revolutions etc.

democratisation process and, consequently needs different theoretical basement and analytical tools to research on.

Table 1: External Factors and Democratisation

	Differentiation			
- Level of Recipient - Actors	Governmental		Non-Governmental	
	Political Elites	Government	Administration	Society Elites (Economy; NGO's;..) Population
-Level of Recipient - Democratisation Process	Phases		Arenas	
	Liberalisation Transition Consolidation		Civil Society Political Society Rule of Law Economic Society	
				„Level“ of Democracy Procedural Democracy Substantive Democracy
External Factors	External Actors			External Context
	Governmental		Non-Governmental	
	States International Organisations Regional Organisations	NGOs foundations interestgroups		International setting; Global, regional and bi-lateral power constellations; geographic factors events in the international environment
Actor Combinations	State-to-state Non-governmental – political Social processes		government-to-government government – to – society society – to – society	
- Level of Interaction - Logic of Interaction	short-term – long-term official – informal rational – affective direct – indirect		with coercion – without coercion conditional – non-conditional intended – non-intended	
- Level of Interaction - Direction of the Influence	Top-down <i>Bottom-up</i>			
- Level of Interaction - Activities	moral support consultancy political dialogue, agreements financial aid, loans		Trade liberalisation Role models Incentives/Conditionality Militärisch – Friedenstruppen	
Impact on Democratisation Process	Eu-functional (supporting dysfunctional (impeding Non-functional			

Characteristics of EU democracy promotion through conditionality

Source: Own illustration, partly based on Kneuer 2007, Sandschneider 2003

The mere coincidence between EU policy and the democratisation process in a country does not provide evidence for influence; the causal links and mechanisms have to be identified. To deepen the insight of these mechanisms and its interaction with the democratisation process, we can learn much from theories of International Relations (IR) which have to be combined with theories of democratisation and transition. Results from the field of democratisation and transitional studies

can be used to disaggregate the democratisation process and split it in different stages, to operationalize the term “democratisation”. Theories of International Relations give us insight about possible interactions between external influences and internal development, in general. Regarding democracy promotion they seek to answer the question how external influences can exert leverage on the democratisation process. The two main schools of thought of IR-theory, the realist and the constructivist model, also serve as the two main theoretical models in the context of democracy promotion: The “realistic model” sees a state-centred, rational process of inter-state bargaining about interests and power presuming cost-benefit calculations of the involved actors. The influence on the democratisation process can be top-down. The other strand views international or transnational cooperation on the basis of socialisation processes, mutual learning and convergence of democratic ideas and norms. This model sees the role of an external actor in offering social exchange and bottom-up initiatives, for example by supporting civil society or local administration. In the research of democracy promotion conditionality and convergence are named as the main causal mechanisms (Schimmelfennig 2005, Whitehead 2001). The first is related to the realistic school and an external incentive model, whereas convergence is based on social, indirect processes of social learning and diffusion. This paper focuses on the EU membership perspective as an incentive for democracy promotion through conditionality. Thus, the consequences of a missing membership for democracy promotion through convergence are not taken into consideration in this incentive-based analysis.

However, a link to transitional theory is missing. I argue – my second line of argumentation – that the promise of conditionality as a strategy to promote democracy does not depend only on the conditions derived from a cost-benefit analysis. One has to take into consideration the stage and actors of the democratisation process to estimate the chances of success of a certain strategy, which asks for a connection between the theory of IR and transitional theory.

2.2 How does conditionality work?

Conditionality can be defined as an agreement between two actors, in which actor 1 offers a reward to actor 2 (see Checkel 2000). This reward is granted if actor 2 fulfils certain conditions. In the case the conditions are not met by actor 2 the reward is simply withheld (positive conditionality) or punishment follows (negative conditionality). To exert conditionality as a reward-based-policy between two actors, asymmetric negotiation power has to be in place; actor 1 has to be able to offer attractive incentives which actor 2 wants to have and cannot achieve easily otherwise. By analysing social interaction from an incentives- and interest-based position, conditionality is first of all a mode of action. Second it can be used purposely as a political strategy to exert a reward-based-policy between to political actors and institutionalize asymmetric

interaction. Conditionality can be used to promote democracy by combining attractive rewards with certain conditions of democratic development. In this case I will use the term democratic conditionality.

Hence, Conditionality as a political strategy depends on the following basic conditions: Two actors have to be in place with certain interests. These actors are state governments or governmental international or regional organisations. They have to be capable of acting in general, plus acting rational on a reliable cost-benefit-calculation. The incentives offered by one actor can be either social (national and international prestige and appreciation) or material (financial aid or trade liberalization), but they have to be of certain attractiveness for actor 2. Following, the main characteristics of conditionality are outlined:

- Conditionality is a top-down-approach acting in a state-to-state constellation
- Conditionality works on a formal, direct, short-term level
- Conditionality depends on clear conditions; compliance with these conditions can be observed and measured

2.3 Under which conditions is conditionality a promising strategy for democracy promotion?

I will show that, apart from the attractiveness of the incentives, there are other variables which are crucial for a successful use of conditionality as a political strategy. These conditions will be derived from IR-theory and from transitional theory.

Following my first line of argumentation, I will present the tested hypotheses of Schimmelfennig/Sedelmeier (2005) and Kubicek (2003) who assume a cost-benefit-calculation of the actors involved. In this context, six conditions have to be taken into account when assessing the promise of conditionality to promote democracy:

1. *Attractive Incentive:* The incentives offered by the external actor have to be attractive for the target country or as Kubicek stated “carrots must constitute a sizeable stick” (2003:17). These rewards can be material (trade liberalization, financial assistance, military protection) or social, such as international recognition or public praise (Schimmelfennig 2007: 127).
2. *Credibility:* The “carrots and sticks” offered must be real (Kubicek 2003: 18). The external promoter must be able and willing to realize and withhold the incentive in accordance to democratic performance of the target country. Credibility needs clear, measurable criteria and evaluation mechanisms including time-frames to provide a credible, comprehensible procedure (Schimmelfennig/Seldemeier 2005: 15).

3. *Low Adoption Costs:* The merit gained from the incentives has to be higher than the adoption costs to fulfil the conditions. The adoption costs depend on the conditions, which mean the conduct of democratic reforms. The adoption costs increase with alternatives (see 4.) and interest of important stakeholders (see 6.). In this respect under “adoption costs” I will measure the conditions set by the EU.
4. *Lack of Alternatives:* The lack of alternatives for the target country relates to the attractiveness of the incentives offered. The attractiveness of cooperation or integration increases if the target country has no alternative possibility to gain the incentive (Kubicek 2003: 18). EU conditionality would not be effective if the target government had other sources offering comparable benefits at lower adjustment costs (Schimmelfennig/Sedelmeier 2005).
5. *Asymmetry in negotiations in favour of the EU:* Asymmetry between the EU and the target country results from a lack of alternatives for the target country. But at the same time it demands from EU-side no serious interests in the target country. Economic and political power between the target country and the EU should be asymmetric in favour of the latter, meaning that target is more dependent on the EU than the EU on the target (Jünemann/Knodt 2007, Moravcsik/Vachudova 2003: 44)
6. *Interests of important Stakeholders and Veto Players should not be harmed:* If the incentives offered by the EU can benefit important stakeholders, the adoption costs for the government decrease. If the EU “can find domestic allies, who in turn can apply pressure to the existing authorities” (Kubicek 2003: 18) EU conditionality is likely to be successful; the other way around, if democratization is against the favour of important veto players, the likelihood of compliance is weakened due to the higher adoption costs for the target government.

These assumptions are based on a rational-choice-model of action and an actor-orientated analysis. From this perspective, actors take their decision to comply with the norms set by the EU following a cost-benefit-analysis. The above conditions developed and tested by Kubicek and particularly by Schimmelfennig/Sedelmaier provide us with useful insights about the possible impact of conditionality in democracy promotion. Unfortunately, a systematic link to transitional theory is missing.

I argue – my second line of argumentation – that one has to take into consideration the stage of the democratisation process to estimate the promise of conditionality. In this context, Pridham noted that the qualitative difference between transition and consolidation “points to different kinds of external impacts, which these being longer-term and conceivably deeper in the latter case” (2000:

296). Still, he does not provide a systematic model to analyse these differences. The question from this perspective is: At what stage of the democratisation process is conditionality applied best and which democratic deficits can be best aimed at by conditionality? Results from the field of democratisation and transitional studies can be used to disaggregate the democratisation process and split it in different stages, to operationalize the term “democratisation”. From transitional studies we learn that the democratisation process can be divided into three stages: liberalization, transition and consolidation (O’Donnell et al. 1986; Linz/Stepan 1996, Pridham 2001: 16f., Merkel 2004). Going deeper, five “arenas of democratisation” can be defined with each having different actors and processes (Linz/Stepan 1996) – they identify the area of political society, civil society, bureaucracy, rule of law/functioning judiciary and economic society.

As conditionality is a top-down approach in state-to-state constellations it can only cause changes at the governmental level; the democratisation process can only be influenced top-down, by governmental elites. Important actors of a democratisation process like civil society, economic elites, political parties, the administration or judiciary on local or regional level cannot be reached through conditionality. In contrast to convergence, conditionality works on formal procedures and negotiations: conditionality depends on clear conditions where compliance can be controlled and measured; the conditions and rewards have to be formulated clearly in intergovernmental agreements and they have to be measurable to evaluate compliance transparently. From these logical assumptions consequences for democracy promotion through conditionality can be derived: The institutionalisation of formal democratic procedures, of a democratic constitution or the codification of human rights or free and fair election procedures can be formulated as clear conditions. Accordingly, to promote these elements of democracy, conditionality can be a promising strategy. In contrast, elements of democratic consolidation as the spread of democratic norms, a civil society, the establishment of a party system and its root in society or a functioning judiciary accompanied by a judiciary culture can only be marginally influenced through conditionality: The legal framework can be established through the threat of conditionality but not the real implementation, as I will show, argumentatively following the arenas of democratisation established by Linz/Stepan (1996):

- *Civil Society*: The EU as an external actor can demand to establish the legal framework for a functioning civil society. But civil society itself lies beyond the scope of governmental influence as a civil society is per definition non-governmental. The legal framework is crucial for the establishment of a civil society, but more important is the real constitution which can hardly be measured and thus not formulated as a clear condition.

- *Political Society*: The same applies for the “political society” (party system, opposition); an external actor as the EU can only demand to establish a, supporting, positive legal framework.
- *Free and Fair Elections*: In contrast, the performance of free and fair elections can be influenced through conditionality. Election procedures are first and foremost based on an election law which is a formal process. The democratic conduct of free and fair election is measurable as the reports of the Organisation for Security and Cooperation (OSCE) in Europe show (OSCE/ODIHR 2005, 2006).
- *Rule of Law & Bureaucracy*: Through conditionality an external actor can demand formal implementation of certain norms but a culture of rule of law and the compliance on local level can hardly be influenced through conditionality. The same applies for *bureaucracy* or the *fight against corruption*; a change of mentality and culture cannot be reached by a state-centred top-down approach as conditionality.

As the analysis shows, not all elements relevant for democratic development can be aimed at through a state-centred action mode as conditionality. In the field of institution-building conditionality seems to be a quite suitable instrument, but in the field of consolidation and rooting of democratic culture and behaviour, including a civil society, conditionality fails to derive certain influence, simply due to its mode of action. Regarding the leading question if conditionality is a promising strategy to promote democracy I have shown on a theoretical level that

- conditionality is a promising strategy to promote the formal institutionalisation of democracy
- in contrast, conditionality is no promising strategy to complete the consolidation of democracy.

Following, under certain conditions regarding the democratisation process in target countries other mechanisms than conditionality might be more effective in promoting democracy– regardless of a membership perspective.

3 Case Study on Ukraine: The Temptation of Membership Perspective or Flexible Integration

The empirical part of the paper will focus on the incentives the EU offers to Ukraine instead of a membership perspective. It shall be discussed whether they are suitable to promote democracy. Following the theoretical approach from above, I will argue that there might be alternative attractive incentives besides a membership perspective the EU can offer to lead to democratic reforms in neighbouring countries, even through conditionality.

I choose Ukraine as a case study, due to the following reasons: After the Eastern enlargement of the European Union Ukraine is a neighbouring state of certain geographical, geo-strategic and economic importance. Ukraine shows a comparatively hopeful path to democratisation. Furthermore, a membership perspective for Ukraine is - at least theoretically - far from being absurd, taking into account that countries like Turkey, Serbia or Albania have a concrete membership perspective. Additionally, Ukraine demands for membership and exerts constant pressure on the EU³. Nevertheless, Ukraine is only a target country within the European Neighbourhood Policy and the bilateral relation is based on a Partnership and Cooperation Agreement (PCA). As the EU is not willing to offer a membership perspective it is a main challenge to design a suitable alternative policy towards Ukraine. After a short overview about the democratic development and EU-Ukraine relations I will use the conditions from chapter 2 to make statements about the prospect of conditionality to promote democracy in Ukraine.

3.1 The democratic development in Ukraine

Ukraine cannot be named a consolidated democracy. Independence from the Soviet Union (1991) and the comparatively late adoption of a post-soviet, formal-democratic constitution (1996) marked first steps to democracy. But, continuity of old elites and formal and informal institutions hampered a democratic development from the very beginning of the transformation process (D'Anieri 2007). The reports of "Nation in Transit" show continuing shortcomings in the fields of the democratic election process, civil society, independence of the media, democratic governance, an independent judiciary, and corruption (Freedom House 2006).

The so called "Orange Revolution" following the presidential elections in winter 2004/2005 was a democratic signal of the Ukrainian citizens and the civil society (Aslund/Mc Faul 2006); after serious shortcomings in the election process in favour of candidate Viktor Yanukovich, citizens demonstrated nationwide persistently for the elections to be repeated. In the rerun the reform-oriented democratic candidate Viktor Yushchenko won and was appointed as President. The following parliamentary elections in March 2006 were a positive "litmus-test" for the prospect of democratic reform in Ukraine after the Orange Revolution. The elections were conducted in a democratic way, but the followed complicated coalition building lead to the rather undemocratic Victor Yanukovich as a Prime Minister. Only a few months later, at the beginning of 2007, the coalition failed to work effectively. President Yushchenko dissolved the Parliament in a democratically and legally dubious way and new elections took place in September 2007. Again, the elections were conducted democratically and a new government under Yulia Tymoshenko

³ Georgia would be the only country among the ENP providing a similar case design as Ukraine.

came to power. Even though Freedom House indicators show that the main democratic improvements in Ukraine after the Orange Revolution are in the field of democratic elections, freedom of the media and civil society; slight improvements can be identified in the area of national government; areas like corruption, local government or rule of law failed to democratize after the Orange Revolution (Freedom House 2006). The Orange Revolution marks a window of opportunity for democratic development and brought sustainable changes in the field of democratic election, freedom of the media and civil society. Nevertheless, Ukraine is far from being a consolidated democracy. Albeit, Ukraine's democratic performance since the Orange Revolution differs positively from Russian or Central Asian neo-authoritarianism and remains a special case of democratisation among post-soviet countries. In this paper it is of certain interest, if an influence of the EU on the democratic improvements can be identified, which should be conducted in the following section.

3.2 EU-Ukraine relations and the use of democratic conditionality

The official relations between the EU and Ukraine rest on bilateral agreements through which conditionality is exerted. The main bilateral agreement and legal base of cooperation is the Partnership and Cooperation Agreement (PCA), which came into force in 1998. The Action Plan (AP), which came into force after the Orange Revolution in February 2005, is the most relevant document to identify possible incentives and conditions for recent times. The PCA will be replaced by a New Enhanced Agreement, on which the EU started negotiations with Ukraine in March 2007.

Can democratic changes from 2004 up to now be traced back to EU policy? Does the EU apply *democratic* conditionality in EU-Ukraine relation? To answer these questions a content analysis of all official EU-Documents regarding Ukraine (see references) was exerted. It shows that after the Orange Revolution the EU used conditionality to promote democracy in Ukraine: Before the Orange Revolution incentives and conditions were formulated very vaguely and were not clearly related to each other, as an analysis of the Action Plan shows (Action Plan 2005: 1): Some incentives are mentioned, as participation in the EU's internal market, possible negotiations for an Free Trade Agreement, financial assistance, security cooperation, support in the implementation of the *acquis* or participation in EU's cultural, academic and social exchange programmes (Action Plan 2005: 1). In return, conditions the EU names are a democratic conduct of the Presidential and parliamentary elections (2004, 2006), the settlement of the Transnistrian conflict, an improvement of the conditions for foreign investments and the preparation for WTO membership, an agreement on readmission and the use of nuclear energy (Action Plan 2005: 1). However, the conditions were

so broadly and vaguely defined, that Ukrainian governments might not know precisely which changes are required of them and which measures would satisfy EU conditions.

Directly after the Orange Revolution, the EU (precisely the General Affairs and External Relations Council) clarified the incentives and conditions and linked them to each other in the *ad hoc* offered 10-point-plan to Ukraine (GAERC 2005). In this document, the democratic improvements are explicitly named as the motivation to enhance and concretise the incentives: “the new commitment to democracy and reforms opened new prospects for EU-Ukraine relationship” (GAERC 2005). Further: “As Ukraine makes genuine progress in carrying out internal reforms and adopting European standards, relation between the EU and Ukraine will become deeper and stronger”. Thus, an ex-post democratic conditionality is in place. Albeit, a membership perspective was not under consideration.

The second important step towards democracy is the democratic conduct of the parliamentary elections in March 2006. After the elections the EU realized some of the announced incentives. Following this pattern of democratic conditionality, the EU enhanced the incentives after the third important step, the forming of a government (August 2006). Negotiations on a New Enhanced Agreement were launched in October 2006, while in March 2007 the negotiations officially started. The establishment of a free trade area and the negotiation on a Free Trade Agreement will be launched, as well. Further on, an agreement for visa facilitation was signed in October 2006, further negotiations on visa facilitation will take place (Boratynski et al. 2006). As I have identified by process-tracing and analysing the relevant documents (agreements, EU statements and press releases)⁴, there was a set of incentives which developed in relation to the democratic development. The incentives were already “on the table” before the Orange Revolution. After the Orange Revolution main changes can be observed in the speed and the political will of realization. Every EU statement contains that the democratic conduct of the parliamentary elections (in March 2006 and September 2007) was a basic pre-condition for any further cooperation. The rhetoric provides consistency in real EU action – after the democratic conduct of the parliamentary elections in 2006 the main incentives were realized. If the election had suffered serious shortcomings, the EU would not have started negotiations on a new enhanced agreement or visa facilitation.⁵

Despite granting some incentives until the end of 2006, the Ukraine’s maximum aims still remain open. It is not clear to which mode of integration the launched negotiations will lead - the

⁴ This article gives a short summary of the process tracing to identify a correlation between EU policy and Ukrainian democratisation process.

⁵ This confirms a high representative of the Delegation of the European Commission in Kiev in a personal interview (conducted on 05.09.06).

negotiations on a New Enhanced Agreement might lead to an Association Agreement (Ukraine’s maximum aim) but might also bring only slight changes in bilateral cooperation. The same applies for the launched negotiations on a Free Trade Agreement: it might lead to a free trade area between the EU and Ukraine but can also be on a much lower level of cooperation. The visa facilitations are an improvement for Ukraine, but at the same time far not the maximum aim: a visa free regime, like Ukraine offers to EU-citizens. Thus, some unfulfilled incentives are still on the table – a Free Trade Area, an association and a visa free regime. The question this paper focuses on is, whether these incentives are suitable to support democratic development through conditionality. Are the granted incentives – named *elements of flexible integration* here - really less attractive to Ukraine than a membership perspective?

3.3 Elements of Flexible Integration vs. Membership Perspective – the Ukrainian Case

In this chapter I will conduct an assessment of the granted incentives and distinguish it from the missing incentive of a membership perspective. The conditions about the use of conditionality have to be in place, to identify a possible influence of the EU by these incentives: The more conditions are in place for a certain incentive, the higher the possible leverage of conditionality. The following table 2 shows the results of an examination of relevant EU incentives and conditions about its potential efficiency.

Table 2: Possible Interplay of Incentives and Conditions EU-Ukraine

<i>Conditions</i>	Attractive Incentive	Low Costs to fulfil the Conditions	Lack of Alternatives for Target Country	Asymmetric Negotiations in favour of the EU	Interest of Stakeholder	Credibility
<i>Incentives</i>						
Free Trade Agreement/ Free Trade Area	+	-	-/+	-/+	+	+
New Enhanced Agreement	+	-/+	-/+	+	(?)	+
Visa Facilitation/ Visa Free Regime	+	-/+	+	+	-/+	+
Membership Perspective	+	-	-/+	-/+	-	-

Note: (+) = condition given; (-) = condition not given; (-/+) = mixed; (?) = no estimation available

As the table shows in the last line, a granted membership perspective does not provide a guarantee for successful democratisation in the target country. Taking the rational-choice base of conditionality seriously, one has to state, that the membership perspective is not a panacea for successful democracy promotion through conditionality, as the stated conditions are by the majority not in place, respectively the result is mixed. In the following I substantiate the results summarized in table 2 with brief explanations and empirical evidence. This paper provides rather

a rough estimation than an in-depth analysis. Therefore an expert-survey and interviews for each incentive and each policy field be required.

Free Trade Agreement/Free Trade Area: A free trade agreement might lead to a free trade area between the EU and Ukraine. As a free trade area opens the EU internal market for Ukrainian export products, this is an attractive incentive (Shumylo 2006, 2007). At the same time, the costs to fulfil the relevant conditions are high: Legal approximation in the field of quality standards, consumer protection, intellectual property rights and environmental standards, to name only a few, have to be undertaken, which is costly for Ukraine (Shumylo 2006: 7). In this respect, a prerequisite for a free trade area is accession to the WTO, which demands further reforms and legal adjustment. A free trade area with the EU is in the interest of the oligarchs, as they hope for better trading conditions. They are the most important stakeholders and at the same time possibly the greatest beneficiaries of a free trade area. This reduces the costs to comply with European conditions. The results regarding alternatives for Ukraine and asymmetric negotiations are mixed. Russia offers an alternative integration space and with the Single Economic Space (SES) an alternative area for economic cooperation. This reduces the asymmetry in negotiations between the EU and Ukraine in favour of the latter. Even though, economic integration with the EU is financially more attractive than with Russia, Ukraine has with the SES an alternative and thus a better negotiation position towards the EU. So, I decided to assess the existence of these both conditions as mixed.

New Enhanced Agreement: To assess the attractiveness and costs of a new enhanced agreement between the EU and Ukraine is difficult, as the scope of this currently negotiated agreement is very broad. It could preserve the status quo, but also might lead to a substantive association of Ukraine with the EU. As I evaluate the possibilities of real alternatives to a membership perspective, I presume here a maximum of possible integration areas within the new enhanced agreement. This would be an attractive incentive for Ukraine, as it enhances the level of cooperation. The costs are hard to estimate as they vary among policy fields. In general they should be lower as for a full membership in the EU which requires the implementation of the whole *acquis communautaire*, which is only partially necessary in the frame of an association agreement. Russia might be an important integration space not only in economic issues but various policy fields and thus an alternative for Ukraine. Nevertheless, the possible degree of integration with the EU contains more incentives than with Russia (Kropacheva 2006). Thus, an alternative exists, but the European option is more attractive for Ukraine, which leads to a mixed assessment. Ukraine has a great interest in negotiating a new enhanced agreement with the EU and

is in the weaker negotiation position. The interest of stakeholders is hard to evaluate by this rough estimation, as it is highly dependent on the respective policy field.

Visa facilitation for Ukrainian Citizens/ Visa-free Regime: Visa facilitation or even a visa-free regime, the maximum aim, might be a part of a new agreement. Due to its importance I evaluate it separately. Definitely, a visa free regime is a very attractive incentive for Ukraine. The EU did not state any conditions so far. I consider them to produce rather low implementation costs, as Ukraine already established a visa free regime for European citizens. On the other side, a visa free regime with the EU might imply a visa regime with Russia, which raises the political and social costs. Russia is no alternative to visa facilitations with the EU as this does not have to exclude each other. Thus, negotiations are quite asymmetric in favour of the EU. Interests of stakeholders/oligarchs are not harmed, provided that the visa free regime with Russia will not be changed.

Now, I aim to contrast these findings about alternative incentives with the membership perspective.

Membership Perspective: Membership perspective is an attractive incentive. Ukraine has stated a few times its interest in joining the European Union and a majority of the political elite shares this aim, at least officially (Shumylo 2007). In any case, a membership perspective would have a positive symbolic meaning for the population and the international business and foreign investors and, thus, is an attractive incentive. But, at the same time, an EU membership perspective might lead to high internal and external costs: First, costs of adjustment due to the adoption of the *acquis communautaire* and extensive political and economic reforms. Additionally, only 43% of the Ukrainian population support integration into the EU without reservations (numbers from 2006; Shumylo 2006), which raises the political costs for an EU-friendly government. The costs related to Ukraine's external relations can be named as the "Russian factor": On the one hand, the benefits from an EU-membership are attractive and unique, as financial aid from EU-funds and participation in the European decision making process, plus the benefits related to the internal market and visa free regime I estimated above. However, these advantages exclude benefits, which Ukraine gains currently from Russia like visa-free-regime with Russia, participation in the Single Economic Space (SES) or financial aid by cheaper energy supplies. A comparison of these both "sets of integration" leads to the assumption that integration with the EU is more attractive, but at the same time the costs are higher.

The asymmetry regarding membership perspective is not totally in favour of the EU: The benefits from a membership in the EU are for Ukraine higher than for the EU, but, the EU has a certain

interest in close relations with Ukraine (security and geo-strategic reason). So, under an Ukrainian government rather in favour of an integration with Russia, the EU might fear to lose its influence in Ukraine and offer certain benefits (like technical assistance, visa facilitation, economic integration) to Ukraine, whilst Ukraine can “milk two cows”, pick and choose the benefits from both, Russia and the EU. The oligarchs as important stakeholders wish, first of all, integration into the internal market of the EU, to be independent from the Russian market and have access to the European market. As an EU membership would enhance participation in the internal market, they do not oppose membership. But, the political conditions of EU membership would marginalize their influence, as in a democratic system economic elites should not lead the political process, as they do in Ukraine (Pleines 2005). At the same time, they can reach their aim of economic integration with the EU in the scope of a free trade area. All in all, the oligarchs as important stakeholders are not in favour of EU membership, as they can gain the same benefits from a less costly free trade area.

The Russian Factor: The main burdens for the attractiveness of the incentive “membership perspective” are the high costs Ukraine has to carry out. In this respect, Russia plays a crucial role for the impact of EU’s democracy promotion in the eastern neighbourhood in general. The “Russian factor” raises the costs for Ukraine to comply with European standards and conditions (Shumylo 2006). Two aspects have to be considered: First, the costs resulting from integration into the EU are comparatively higher for Ukraine than for the Central European accession countries: these countries were not so closely related politically and economically to Russia as Ukraine (Light et al. 2000); second, the population was unambiguous pro-European⁶. Especially the social costs of EU integration might be much higher for Ukraine due to the large number of Russian people living in Ukraine and the close historic, cultural and social ties. The raising costs make it even more difficult for Ukraine to achieve a favourable cost-benefit calculation regarding the offered incentives. The “Russian factor” raises the costs for Ukraine and thus the attractiveness of the incentives is reduced.

The second aspect of the “Russian factor” is advantageous for Ukraine, but at the same time lowers the effectiveness of EU conditionality: Russia and the Commonwealth of Independent States (CIS) as an alternative integration space for Ukraine lessens the asymmetry in negotiations. The Central and Eastern European countries did not have such an alternative integration space.

⁶ The Baltic States fit only partly in this pattern: They had quite close economic and social ties with Russia, but the majority of the population was pro-European. Despite a high number of Russian people living in these states and former membership in the USSR, the identification with the Soviet Rule was not as strong as in most regions of Ukraine. Thus, it is legitimate to suggest that the costs also for the Baltic states were comparatively small.

Taking into account that the EU has a certain interest to integrate Ukraine, Ukraine can assert pressure as well if the conditions for the review of some incentives are too high. At the same time, the adoption costs for integration with Russia are lower: From a material point of view, participation in the Single Economic Space is maybe not such attractive as in the European market. On the other hand, the costs are lower: no implementation of e.g. technical standards or strict consumer protection laws or even the entire *acquis communautaire*. Additionally, language and cultural ties causing lower transaction costs for political and economic actors might lead to an orientation towards Russia.

3.4 Result

Presuming that state actor's behaviour in the target country is based on a strict cost-benefit-analysis, EU membership prospective offers less real incentives than commonly assumed. I have shown this for the case of Ukraine: A free trade agreement with the EU might bring full participation in the common market, including the "four freedoms" (free movements of goods, services, persons and capital); a visa free regime would bring much facilitation for the population, especially free movement of people, possibly including workers; technical assistance programmes like TACIS already include financial assistance, which could be easily increased. As I have shown, many interests of Ukraine can be satisfied without offering the membership perspective. Additionally, by staying apart of the EU, Ukraine can avoid high costs of legal adjustment towards the *acquis communautaire* and the threat of a tough and constant monitoring process. Solely, participation in the European decision-making process and a certain prestige of being an EU member state is not included.

All in all, Russia has a negative impact on EU democracy promotion through conditionality. As I have shown, integration into the EU is costly for Ukraine – both these costs, social and material, are higher as they were for the Central and Eastern European accession countries. This has to be taken into consideration when demanding a membership perspective for a certain post-communist country to support the democratisation process. Conditionality and the membership perspective are no panacea, but have to be applied carefully to be credible. Under certain conditions, alternative, rather indirect mechanisms of democracy promotion by the EU like technical assistance or support and training at the society-/NGO-level might be even more effective than the simple granting of a membership perspective.

Indeed, granting the membership perspective randomly to several countries will lead to disappointment and decreasing credibility of the EU⁷ and, following, a membership perspective might lose its attraction and credibility, in general. As I have shown, alternative areas of cooperation might be attractive incentives, have lower adoption costs for Ukraine and increase the credibility of the EU. Depending on the scope and design of these cooperation areas, these incentives can be named and designed as elements of flexible integration.

4 A Concept of Flexible Integration with the EU for Neighbouring Countries

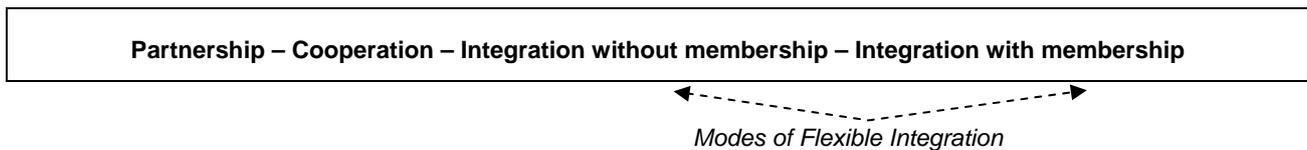
The concept and terminology of *flexible integration* or *differentiated integration* means basically the general mode of integration strategies which try to reconcile heterogeneity *within* the European Union (Stubb 1996: 283, 2002, Holzinger 2001: 155). The concept includes models of differentiated integration *among* member states according to the main models like multi-speed, variable geometry and an so called *à la carte* –integration: *Multi-Speed* relates, for example, to the European Monetary Union or accession agreements with new member states including temporary transitional periods for certain policy areas. Member States decide to pursue the same policies and actions, but at different times (see Stubb 2002: 45f). *Variable geometry* can be defined as a mode of flexible integration “which admits to irreconcilable differences within the main integrative structure by allowing permanent separation between a core of countries” (Stubb 2002: 48). A variable geometry enables willing and able member states to pursue further integration in a number of policy areas within and outside the institutional framework of the Union. Third, a mode of flexible integration is *à la carte*, whereby respective member states are able to pick and choose, as from a menu, in which policy areas they would like to participate, while at the same time holding only to a minimum number of common objectives. For Example, like no participation of the United Kingdom in the Social Charter or the Schengen Agreement (e.g. limited participation of the United Kingdom and Ireland, but full participation of non EU member states Norway and Island).

In principle, the concept of flexible integration is designed to enable member states to establish alternative modes of integration and cooperation inside and outside the treaties. Based on this assumptions, I suggest, that concepts of flexible integration might be used to handle certain modes of cooperation with non-member states, going deeper as bilateral cooperation, but at the same time do not lead to membership in the European Union. I argue that the EU will have to establish modes of cooperation with neighbouring countries which differ from the current existing models. In this context I suggest a more differentiated graduation of possible integration levels. Between a

⁷ Turkey is a good example for these consequences.

loose partnership and full integration one can identify graduations which can be differentiated in *cooperation* and *integration without membership*. Cooperation is going deeper than a partnership but at the same time not reaching the level of integration without membership. Here, the terms “cooperation” and “integration” have to be defined and distinguished carefully along certain criteria. So far I argue that modes of flexible integration can be underlying an integration without membership and full integration.

Table 3: *Gradual Integration of third countries with the EU*



Within the use of conditionality, concepts of flexible integration might be a possibility to face future challenges of the European Union in its cooperation with neighbouring countries and offer attractive modes of cooperation and integration for both sides. One might argue that “flexible integration” is simply a term, sounding better than “non-member of the EU” but in fact does not provide anything more than non-membership and an empty promise. As shown, from a cost-benefit-perspective, elements of flexible integration like a free trade area or a visa free regime without full integration into the EU might bring advantages for the EU and the neighbouring country. Both sides gain benefits from each other but at the same time they do not have to carry the costs of rule adoption (target country) or full integration (EU). How to establish such a win-win-situation for both parties depends highly on the design of the flexible integration, the establishment of which is a future task for research in this field.

Another critique might be that using the term flexible integration for certain modes of cooperation with non-member states is just a “semantic game” and confuses the debate about differentiated integration among member states and the huge amount of already existing terms (Stubb 1996). I suppose, indeed, that the existing concepts of flexible integration within the EU might offer usable models how to create certain modes of integration with non-members. Norway and Switzerland provide some forms of cooperation and elements of “integration without membership” with the EU, albeit being non-member states. Admittedly, flexible integration with post-communist neighbouring countries differs from flexible integration with Norway and Switzerland regarding the economic capacity of the country, state power and asymmetry in negotiations between the EU and the target country. And democracy promotion, which is the focus of this paper, is not needed in these countries, at all. Nevertheless, the derived incentives like association agreements, a free

trade area or a visa-free regime show possible areas of intensive cooperation, possibly even “integration without membership”.

I pledge to integrate this cooperation and modes of EU external governance into the analytical concept of flexible integration (see also Cremona 2000). First of all, the terms “cooperation” and “integration” have to be defined and differentiated carefully. Second, the theoretical and practical challenge is the design of regulation mechanism for such modes of flexible integration: Shall they be open or rather strict and legally binding? How legally binding do they have to be, to establish a certain scope of integration? How are control mechanism designed and established to ensure the implementation of the commitments among non-member states?

As research on Europeanization can provide information about possible interplays between the EU and member countries, the analytical concept of Europeanization research can be used to analyse interplays between the EU and non-member countries based on modes of flexible integration. Concepts of an “Europeanization beyond Europe” (Schimmelfennig 2007) or EU democracy promotion via “sector-specific co-operation” (Freyburg/Skripka/Wetzel 2007) might serve in this context as a theoretical grounding for further research on how these modes of flexible integration can be designed. Here, a differentiation from the perspective of policy areas might be a suitable approach. In the context of Ukraine, the incentives like a Free Trade Agreement or a New Enhanced Agreement expand the scope of cooperation or even integration in heaps of policy areas, as consumer protection policy, environmental policy, migration policy or nuclear policy, to name only a few. Each of them can be designed differently and then analysed individually.

5 Conclusion

In this article was discussed, if conditionality is a promising strategy of the EU to promote democracy in post-communist neighbouring countries without membership perspective. To answer this question I followed two lines of argumentation. First, I have shown that the promise of conditionality depends on the stage of the democratisation process and the democratic deficit an external actor wants to aim at. This allows the generation of prepositions about possible influence of an external democratisation strategy. First, the stages of democratisation in a target country and democratic deficits have to be identified. These deficits can be subordinated due to the criteria developed in transformation theory. Following this, the second step allows to determine which strategy of democracy promotion might be suitable. Regarding conditionality one has to ask if the stated deficit can be reached by conditionality. Second, I have shown that other variables beside the attractiveness of the incentives have to be in place for a successful use of conditionality. I assessed in a case study the country Ukraine according to these conditions and came to the result, that alternative incentives are attractive and at the same less costly than membership. Within the

use of conditionality, concepts of flexible integration might be a possibility to create attractive incentives and, thus, face future challenges of the European Union in its cooperation with neighbouring countries⁸. Additionally, the used set of conditions might be applied to analyse the promise of democracy promotion through conditionality without membership perspective for other countries, as well.

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⁸ Nevertheless, this article and the derived conclusion are based on a rational-actor-model and did not take into account the influence of a membership perspective if the strict rational-actor-model is put into question and modes of social learning or diffusion are exerted to promote democracy.

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