

Université de Montréal

Norm Implementation in the Enlarged European Neighbourhood:
Justice and Home Affairs in Moldova and Ukraine

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Ce mémoire intitulé :
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Abstract

The European Union (EU) relies heavily on normative tools to exert power in world politics, such as the promotion of its own laws and standards. The most successful case is the EU enlargement process, which has contributed to stabilize the vicinity and transform candidates into market-based democracies by promoting alignment with European legislation and offering the prospect of EU accession. The European Neighbourhood Policy (ENP) uses the same mechanisms that have made enlargement a successful policy, notably incentives-fueled reform. It does not however offer participating states a membership perspective and therefore most scholarly studies have drawn bleak prospects on its ability to promote reform. While cooperation in the ENP framework is not as intense as during the enlargement rounds, we find that some countries have indeed been making changes to their legislation and aligning themselves with the *acquis communautaire*, while other countries have not been so successful. By comparing norm implementation in the field of Justice and Home Affairs in the cases of Moldova and Ukraine, we show that differences are explained by the significant impact of domestic factors, such as contested state identities and domestic political battles over foreign policy.

Keywords: European Union, normative power, norms, enlargement, European Neighbourhood Policy, Justice and Home Affairs, domestic factors, constructivism, rationalism, Moldova, Ukraine.

Résumé

L'Union européenne (UE) se sert principalement d'outils normatifs pour exercer du pouvoir sur la scène internationale, notamment par la promotion de ses propres lois et standards. Le meilleur exemple est l'élargissement de l'UE, processus ayant contribué à stabiliser l'Europe et à transformer les candidats en des démocraties de marché, notamment en promouvant un rapprochement avec les normes européennes en échange d'une perspective d'adhésion à l'UE. La Politique européenne de Voisinage (PEV) utilise les mêmes mécanismes développés lors des élargissements, notamment la promotion de réformes en échange d'incitatifs financiers. Par contre, la PEV n'offre aucune perspective d'adhésion à l'UE aux États qui y participent. Ainsi, plusieurs études ont conclu que cette politique ne pourrait engendrer les réformes escomptées. Bien que la coopération au sein de la PEV ne soit pas aussi fructueuse que lors des élargissements, on remarque que certains pays plus que d'autres ont, malgré l'absence de perspective d'adhésion, fait des changements à leur législation en conformité avec les normes européennes. En comparant la coopération dans le secteur de la Justice et des affaires intérieures en Moldavie et en Ukraine, nous montrons que la différence s'explique par l'importance des facteurs internes des pays concernés, notamment l'existence d'identités nationales contestées et les batailles politiques intérieures portant sur la politique étrangère.

Mots-clés : Union européenne, normes, pouvoir normatif, élargissement, Politique européenne de Voisinage, Justice et affaires intérieures, facteurs internes, constructivisme, rationalisme, Moldavie, Ukraine

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Liste des sigles

CAP	Common Agricultural Policy
CFSP	Common Foreign and Security Policy
CEECs	Central and East European Countries
CSCE	Conference on Security and Co-operation in Europe
DG RELEX	Directorate-General on External Relations
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EDC	European Defence Community
EEA	European Economic Area
EFTA	European Free Trade Association
EMU	Economic and Monetary Union
EMP	Euro-Mediterranean Partnership
ENP	European Neighbourhood Policy
EU	European Union
EUBAM	European Union Border Assistance Mission
FYROM	Former Yugoslavian Republic of Macedonia
GRECO	Council of Europe Group of States Against Corruption
IR	International Relations
JHA	Justice and Home Affairs
NATO	North Atlantic Treaty Organization
OSCE	Organization for Security and Co-operation in Europe
PMR	Pridnestrovian Moldavian Republic
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union

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Introduction

In recent years, scholars have paid increasing attention to the European Union (EU) as a promoter of norms in the international arena. It is suggested that, unlike other world players, the EU relies less on power politics and cold military strategy than on normative tools as its preferred instrument in the international arena. Such policies of cooption tend to reduce the risk related to the arbitrary nature of nation-states by domesticating foreign policy. Relying on the predictability of law, the EU has come to tame sovereignty's most erratic and volatile behavior. This has favored the development of new forms of governance that are normatively based, among Member states but also between the EU and foreign states. The most salient and successful example of the EU's normative power is the enlargement, a process whereby in order to join the bloc, aspiring Member States are asked to implement into their legislation the *acquis communautaire*, a 170,000-pages rulebook of norms, standards and legislation. Through enlargement, many former communist and dictatorial states have embraced democracy, market-based economy and respect for human rights as core norms they defend and promote as their own. This can be explained by the fact that the EU is itself a normative project – the EU has emerged as a risk-averse, hybrid polity integrating supranational and intergovernmental elements. “The concept of normative power is an attempt to suggest that not only is the EU constructed on a normative basis, but importantly that this predisposes it to act in a normative way in world politics” (Manners 2002, 252).

Since the 2004 enlargement, the most important foreign policy of the EU has been the European Neighbourhood Policy (ENP). This framework applies to the EU's land neighbours in the East (Belarus, Moldova and Ukraine), to all of North Africa (Algeria,

Egypt, Libya, Morocco and Tunisia), to Middle Eastern states and territories (Israel, Jordan, Lebanon, Occupied Palestinian Territory and Syria) and to the Caucasian states (Armenia, Azerbaijan and Georgia). It does *not* apply to Russia, which benefits from a ‘strategic partnership’, nor to members of the European Economic Area (EEA) and Switzerland, which already implement the *acquis* into their legal framework without being part of the decision-making structures. Moreover, current accession candidates (Croatia, FYROM, Iceland, Montenegro and Turkey), European microstates and the Western Balkans “protectorates” are *not* included in the framework.

ENP is a “cooperation” framework between the EU and its neighbours, but in a very peculiar sense. ENP is analogous to the enlargement process, in that it intends to promote the alignment of national laws with European *acquis*. The EU does so by offering its neighbours material incentives: “in return for concrete progress demonstrating shared values and effective implementation of political, economic and institutional reforms, including in aligning legislation with the *acquis*, the EU’s neighbourhood *should benefit from the prospect of closer economic integration with the EU*” (European Commission 2003, 4, emphasis added).

But contrary to enlargement, it is clear that ENP is not a path to membership within the EU. The aim is “to provide a framework for the development of a new relationship which would not, in the medium-term, include a perspective of membership or a role in the Union’s institutions. A response to the practical issues posed by proximity and neighbourhood should be seen as separate from the question of EU accession”. As a normative policy however, ENP is problematic. The academic literature is clear on the limits of the normative and transformative power of the EU over neighbours when no

prospect for membership is offered. Indeed, most scholars have argued that material incentives were no replacement for membership and therefore that ENP had little hope of success.

While we are far from the clear modes of influence witnessed during the enlargement rounds, ENP does seem work in some states, while it fails in others. Indeed despite the equal absence of membership prospect for all neighbours, the implementation of the *acquis* and other norms varies among countries. What is driving this differentiated compliance with European norms? Could it be that some neighbours are more receptive to EU norms than others? One thing that immediately strikes students of ENP is that the policy is aimed at states that have little in common with one another. From Algeria to Ukraine, neighbours of the EU have very different political systems and cultures, varying degrees of economic interdependence and unequal levels of human development. The current academic consensus on the limits of the transformative power of ENP, compared with the enlargement process, fails to explain why some countries within the neighbourhood do comply with some of the norms embedded in the ENP framework, while others do not.

The current literature cannot elucidate this puzzle because it has paid scant attention to the domestic sphere – it has largely overlooked the internal make-up of neighbouring states and focused solely on the mechanics of ENP as a policy. Scholars have scrutinized thoroughly how norms were projected in the neighbourhood, yet have neglected to analyze how they were implemented. There is a tendency for Eurocentric points of view in parts of the literature that describes how norms are disseminated in a one-sided

process, leaving little explanation for the varying successes of the policy. The present dissertation fills this lacuna.

ENP being a far-reaching strategy dealing with many countries, it would not be possible to examine all aspects of implementation within the limited context of this paper. We can however focus on a particular field of ENP and use that knowledge to infer on the larger picture. As a matter of fact, the structural constellation of EU foreign policy, which includes notably ENP and broader strategies of enlargement, has increasingly emphasized the importance of Justice and Home Affairs (JHA). This includes notably border control, asylum provisions, and the fight against drug trafficking, issues that directly affect EU security while touching to the very core of neighbours' sovereignty. To what extent JHA norms are implemented in countries of the neighbourhood will determine a great deal if ENP can succeed overall – whether ENP can bring about change “will be decided first and primarily in the field of JHA” (Knelangen 2007).

The first part of this dissertation considers critical theoretical frameworks drawn from sociology and International Relations to assess the identity of the EU on world politics. We show that the normative underpinnings of the EU favor a type of international power based on rules and norms that tend to include, rather than exclude, the near-abroad. The second part examines how the enlargement of the EU and consequently, of its neighbourhood, can be understood as a projection of European norms. Whereas enlargement and ENP both aim at the alignment of national legislation with the European *acquis*, we show that most scholars agree that ENP cannot induce major transformations because it does not offer the ‘golden carrot’ of membership. We distinguish between norm projection and norm implementation to show that the latter, while usually

neglected, is crucial in explaining the uneven success of ENP. We argue that domestic factors have a significant impact on the success of ENP because they determine the extent to which an otherwise uniform policy is implemented in different national structures. In the third part, we reflect on the European Commission's 'benchmarking of progress' and propose tools to measure the different trajectories taken by ENP countries with regards to JHA norms implementation. The differentiated norm implementation, the dependent variable, is evaluated by the distance between the commitments to reform in the mutually agreed ENP *Action Plan* and the actual accomplishments showcased by the Commission's *Progress Reports*. We compare the experiences and trajectories of two Eastern neighbours of the EU: Moldova and Ukraine. Both countries share a Soviet past and a similar geopolitical location, yet we find that Moldova has not been very successful in implementing JHA norms into its legal framework – there is an “implementation deficit” (Lampinen and Uusikylä 1998). This contrasts with Ukraine which has complied, not perfectly but to a certain extent, with the provisions set out in the Action Plan. In the last part, we explain this differentiated norm implementation by proposing two independent, domestic variables: the *contested state identities* and the *domestic political battles over foreign policy*.

In Search of an International Identity

The nature of the EU and its international identity are hard to pin down. When he was in power, European Commission President Jacques Delors called the EU an “unidentified political object”. Since then, scholars have suggested new ways of interpreting the EU’s international presence. For Rosecrance, the EU “represents a magnetic force in world politics” which has “reversed the balance of power and drawn other nations into its web of economic and political associations” (1998, 16). For others, the EU is either a “quiet” (Moravcsik 2002) or a “European” (McCormick 2006) kind of superpower. Robert Cooper (2000), a former adviser to Tony Blair and High Representative Javier Solana suggested that the EU is a “post-modern state” using “double-standards” in its relations with third countries. Zielonka (2007) has claimed that the EU is a “neo-medieval empire”, with fuzzy borders, multiple centers of allegiance and complex networks of power. The EU has famously been said to be “less than a federation and more than a regime” (Wallace 1983) and according to Fabbrini (2007) the EU is becoming a “compound democracy” increasingly similar to the United States and less to its own Member States. Weaver has highlighted its “postnationalist” tendency to disconnect itself from nation-states (Weaver 1996) while others have simply dubbed the EU a “strange animal” (Cameron 2007). These analyses, regardless of the fact that they do not agree on the nature of the EU, all point towards the same central idea: a construction *sui generis*, one that is unique to its characteristics.

In this chapter we will argue that the atypical structure of the EU, which combines elements of supranational and intergovernmental decision-making, favors a specific type of international identity that is rules-based and normative (Manners and Whitman 1998).

We will show how this normative basis is rooted in the Treaty of Rome and on the subsequent jurisprudential work of the European Court of Justice (ECJ) on the one hand, and on the political traumatism that has do with specific events of contemporary European history on the other. Lastly, we will infer from this normative structure that it predisposes the EU to act in a normative way in world politics.

The Treaty of Rome, the Court and the supranationalization of European law

The EU has always been a unique polity. Yet when the Treaty of Rome was signed in 1957, the exact nature of the newly created international organization was unclear, even for those who had drafted it. Would this treaty produce direct effects? Would it be above the constitutional dispositions of Member States? Would legislation adopted through its mechanisms be binding? The European Court of Justice (ECJ) has since solved these complex legal problems in various landmark decisions, notably in *Van Gend en Loos*, *Costa v. Enel* and *Internationale Handelsgesellschaft*. In these cases, the Court ruled that not only do treaty provisions have direct implications on individuals that the national courts must uphold, but also that even secondary legislation can overrule national constitutions. In other words, European Union treaties acquired a quasi-constitutional shine. From international public law, the 1957 Treaty evolved into the most advanced international organization in the world. What is most remarkable about these crucial steps of treaty constitutionalization is that they have not been the result of referendums or head of states decisions – they are the legacy of a slow jurisprudential work.

The role of the Court in the creation of a supranational legal order is often underestimated and has long been understudied. It is telling in that respect that Rasmussen (1986), the first major scholar of the Court, wrote almost thirty years after the signing of the Treaty

of Rome. He argued that in the early years of the Community, the judges in Luxembourg over-reached their mandate by ruling repeatedly in favor of increased supranationalization. Through its decisions, the ECJ extended its own power and that of the Commission. He contends that the Court was guilty of “judicial activism” because it was essentially creating new policies out of the judicial rather than simply doing its interpretive job. It undermined democracy, he argued, as judges substituted elected representatives in Member States.

Charges of activism are frequently made towards constitutional courts. In the United States, judicial lawmaking is the usual critique made by those supporting an “originalist” take on the Constitution, a method which aims at staying close to either the intent or the meaning of the original drafters. The primary alternative to originalism is usually called “constitutional constructionism”, an interpretation method that draws on the idea that Courts should take the dynamic nature of societies into account when interpreting constitutional texts.

Indeed legal interpretation is neither an exact science nor a simple transposition to specific cases of policies devised by legislators. Treaties, like constitutions, contain values that may exist in tension, and not in harmony, with each other; courts must give meaning to them in the light of all other legal provisions and precedents. In the case of European directives – whose objective is legally binding but the means of achieving the result are up to Member states – they must be vague enough to allow twenty-seven national parliaments the space to legislate according to their own political context and methods. Furthermore, interpretation is rendered even more complicated by the fact that legal texts in any of twenty-three official languages of the EU are held in equal standing,

which means European judges must reconcile different versions of the same text. Obviously because of different legal traditions, concepts will not have the same meaning in all Member States, which means that judges need to fill in the gaps. In a famous English case¹, the national judge emphasized this intricacy in the interpretation of the Treaty of Rome:

“This Treaty is quite unlike any of the enactments to which we have become accustomed. The draftsmen of our statutes have striven to express themselves with the utmost exactness. They have tried to foresee all possible circumstances that may arise and to provide for them [...] How different is this Treaty [the Treaty of Rome]! It lays down general principles. It expresses its aims and purposes. All in sentences of moderate length and commendable style. But it lacks precision. It uses words and phrases without defining what they mean. An English lawyer would look for an interpretation clause, but he would look in vain. There is none. All the way through the Treaty there are gaps and lacunae. These have to be filled in by the judges, or by regulations or directives. It is the European way.”

What is this European way? In terms of legal interpretation, it suggests that the ECJ cannot rely solely on the meaning of the words. Contrary to most courts where literal interpretation is the usual way to go, the ECJ pays more attention to the objectives of the text – it is a teleological method of interpretation. This is made easier by the preamble and the first articles of the Treaty which set out the principles and goals on which rests the European legal edifice. The Court has used these repeatedly to judge in favor of a clear supranationalization of European law, and particularly in the early years of the

¹ *Bulmer Ltd v Bollinger SA* ¹ [1974] Ch 401, 425

Community, against the short-term interests of Member States (Arnull 2006). A good example of this is the *Van Gend & Loos* case and the doctrine of direct effects. The idea is that the good functioning of the Single market – the main objective of the Treaty – requires that the legal rights thus created benefit not only states but individuals as well:

The Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields and the subjects of which comprise not only Member States but also their nationals. Independently of the legislation of Member States, community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage.

One of the immediate consequences of the direct effects doctrine is that EU law takes precedence over national law. This supranationalization through jurisprudence came about not only because of the Court own legal flexibility, but also because of its ability to convince national judges that such a novel legal hierarchy was both inevitable and positive for Europe. At least three consequences resulted from this. Firstly, it bound EU Member States to comply with European norms, legislations and standards, even in the cases where this would go against their national interest. Secondly, it displaced the national state from the centre of concern and encouraged a fragmenting of power: horizontally as between Member States and vertically as between the various EU institutions. Thirdly, it favored the development of forms of governance that emphasize the centrality of law and away from the more traditional power politics associated with Westphalia and the modern nation-state.

A risk-averse polity

The EU is also an atypical polity because it is averse to political risks. In the European Parliament for instance, the European's Peoples Party and the European Socialist Party will compromise on the vote and strike a deal to share the five-year presidency; in the Council, decisions are made on a consensual basis as often as possible. Unlike the United States or its own Member States, the EU has to some extent escaped politicization. Indeed, most of the political infighting takes place not at the EU, but at the national level. Some of this can be explained by the technocratic nature of the European Commission and its insistence that it works towards the general European good and above the political fray. Yet we argue that a large part is better explained by what we call "political traumatism" associated to previous unsuccessful integration projects.

An early example like the 1954 European Defence Community (EDC) project illustrates how integration in a sovereignty-sensitive field such as defense proved to be too politically difficult and was abandoned. Paradoxically while the idea of fully integrated European forces remains a taboo in the political sphere, the sector actually witnessed a degree of Europeanization, including military cooperation projects and some harmonization of practices. This is because failures such as the EDC undermined other EU integration objectives that were deemed important, such as the effective creation of a single economic space. Deserted by national figures, the political vacuum of defense became occupied by supranational actors who could avoid the stumbling blocks and were able to integrate through norms. Every time Europe clashes into the unpredictability of its Member States, normative integration is used as an alternative way to achieve integration away from the glare of politics.

The 1954 EDC was a French project guided by a need, on the one hand, to reinforce the European defense alongside Germany in the face of the Soviet threat and on the other, by European federalists wishing to apply to the military realm the principles of the Schuman Declaration that had inspired the creation of the European Coal and Steel Community (ECSC). The plan was first unveiled in 1950 by French premier René Pleven. It proposed “the creation, for our common defense, of a European army tied to political institutions of a united Europe.” Under the plan, the six European states negotiating the ECSC would renounce definitively national defense and commit all their military capabilities to NATO under a European command (Maury 1996, 94). A year and a half later the treaty was signed and there was an agreement that the United States and Britain, which were not part of it, would nevertheless cooperate with the EDC (Judt 2006, 244). Yet French communists and Gaullists opposed the project on the grounds that it would mean a loss of national sovereignty. As de Gaulle puts it: “By giving [to the Community] our soldiers and our decision-making, we would lose all possibility to act as a state” (quoted in Maury 1996, 101). In 1954 the French National Assembly voted against by a vote of 319-264, following new Premier Pierre Mendès-France’s refusal to make it an issue of confidence.

The project of common European defense has since been a political taboo, let alone the idea of a European army. As realist thinkers have argued, defense lies at the core of sovereignty and even though European states cooperate in certain fields of mutual interests, they were not likely to lose their statehood to a supranational entity. To adopt an analogy first used by Hoffman (1966, 883-4) sovereignty is not like an onion that can be peeled away to nothing, but rather like an artichoke where the heart would remain

intact even after the outside leaves have been eaten. Neo-functionalists (Haas 1958; Lindberg 1963; Nye 1970; Pentland 1973), however, made the case that integration was more likely to happen in functional sectors of the economy through positive spillover – integration in one sector would create incentives for further integration in a related sector. Much of the “Monnet-method” of integration owes to this idea that political unity requires economic interdependence, something that would be achieved in a slow, incremental process.

Although defense is located at the core of sovereignty and has been a political traumatism since the failure of EDC, there has nevertheless been some degree of harmonization in that sector. Realists are correct in their account of the *output* – states have not allowed political integration to challenge the core of sovereignty – while neofunctionalists rightly describe how the *process* has taken place in more functional sectors such as the single market. How can we explain the fact that there has actually been some integration without the political backing of the Member States? This is because the integration process in the field of defense has been normatively, rather than politically, based. The EU has preferred micro-steps with norms, regulations, directives and general standardization processes rather than radical attempts at displacing sovereignty that would have bumped inevitably into the opposition of Member States. Of course at some point the European Council will give its benediction– but most of the work will have been done previously. Other examples of integration through norms abound: the creation of the Euro, or the Schengen passport-free travel zone.

The EU as a normative power in the international arena

The argument in the first two sections of this chapter established how the EU was built on norms and rules. Drawing from theoretical findings of constructivist and sociological schools of International Relations, we argue that this normative basis predisposes the EU to act normatively in world politics. In fact, most of the power of the EU originates neither from its military might nor from the sheer size of its economy, but from its ability to have its norms abided by foreign countries.

Rooted in part in Max Weber's sociology, constructivism posits that individuals "are cultural beings, endowed with the capacity and the will to take a deliberate attitude towards the world and to lend it significance" (Weber quoted in Ruggie 1998, 856). Indeed the world can be divided, in the words of philosopher John Searle, in two types of facts: natural facts and social facts. While natural facts (such as rain, forests or the law of gravity) can exist independently of human agreement, social facts (such as sovereignty, justice, diplomacy or marriage) exist because of shared social significations and the presence of human institutions to support them. Their meanings are therefore constructed by "collective intentionality" and not given by nature (Searle 1995). In the study of international relations, constructivism considers the world's ontology to be built less on material givens than formed in values and identities. Knowledge on world politics can therefore be generated not by looking at facts "as they are", but rather by studying the interaction between ideas and the institutions that frame and formalize our collective experience of reality. In a famous article Alexander Wendt argued that anarchy, or the common idea that the international arena is fundamentally distinct from the national

realm because it is characterized by the absence of a Leviathan, was not a natural fact but rather a shared belief: “Anarchy is what states make of it” (Wendt 1992).

Sovereignty/anarchy is among traditional dichotomies of international relations, with low/high politics and inside/outside borders that “are interesting less for the substantive explanations they offer about political conditions in the modern world than as expressions of the limits of the contemporary political imagination” (Walker 1993, 5). In political realism and other modernist-inspired discourses, state sovereignty and national interest are presented as timeless natural facts waiting to be discovered and revealed. Critical theorists have instead argued that these are shared beliefs rooted in the political thought of liberal modernism, the Enlightenment and the dawn of nation-states. Yet these prevailing ideas still inform much of contemporary International Relations as a discipline. In other words, unable to think beyond these aged dichotomies and regardless that anachronisms still constrain our understanding of ontological possibilities, we are reflecting on today’s world using yesterday’s concepts. Political realism must be read, not solely as an explicative theory of international relations, but as a constitutive practice of reality.

This is particularly problematic in the case of foreign policy of the EU. Political realists have painted a picture of states as cold monsters selfishly battling for timeless interests. Here is one counter-example: in early EU history in the aftermath of the war, against the logic of an irrefutable and natural antagonism between French and German interests, the creation of a common authority monitoring the use of essential resources, coal and steel, actually became possible because both sides constructed their social identities in such a way as to marginalize aggressive nationalism. Certainly, France and Germany still

disagree on a number of issues. But who would dare to argue that today in their relations with China, the United States or in the Security Council, their interests are fundamentally opposed? As such an already misleading metaphor, realists still try to convey the idea that the EU, which is not a state nor aspires to be, nevertheless behaves in international politics as one. We reject the model of the EU as an actor that would be cohesive and unitary that the realists vainly try to establish (Bretherton and Vogler 1999). Instead, we argue that the EU is one of a kind, and that European power is *sui generis*.

Here is why: the history of European integration can be read mostly as the simultaneous domestication of foreign relations and the permeabilization of borders through law. Indeed, the EU has relied on the legal predictability to tame sovereignty's most erratic and volatile behavior – during the last century aggressive nationalism became not once, but twice Europe's grave. The EU chose to transform foreign relations into home affairs, solving problems through institutions it consents to abide by, rather than with the muscle of power politics. The EU is a normative power – it uses norms and laws as the preferred, if not exclusive, instrument in the international arena. The contractualization of world relations on the basis of treaties and conventions owes much to the idea that interactions do not have to be a zero-sum game and that interests are not timeless material givens, contrary to what realists assert. In itself, the history of European integration challenges core realist postulates asserting state territoriality, fixed borders and the clear separation between internal and external security structures (Laïdi 2006, 63-5).

The idea that the EU is a normative actor is not entirely new. During the 1970s, French author François Duchêne offered his “civilian power” concept, claiming that the importance of raw military power was declining while economic and cultural factors

were becoming more important in exerting international power. Writing at the height of the Cold war where the two superpowers were squeezing the nine-member Community, Duchêne claimed that “the nuclear and super-power stalemate in Europe has devalued purely military power and given much more scope to the civilian forms of influence and action.” He suggested that the EU had been playing civilizing roles at home between its Member States, and that it could do the same abroad: “this means trying to bring to international problems the sense of common responsibility and structures of contractual politics which have in the past been associated almost exclusively with ‘home’ and not foreign, that is *alien*, affairs [...] The European Community in particular would have a chance to demonstrate the influence which can be wielded by a large political co-operative formed to exert essentially civilian forms of power” (Duchêne 1973, 19-20, emphasis in the original).

In a seminal article that builds upon Duchêne’s findings, Manners (2002) suggests that the EU pursues goals on the international scene that reflect its own normative construction. He identifies five norms that are central to the identity of the EU: *peace*, *liberty*, *democracy*, *rule of law* and *respect for human rights*. He also includes four minor norms: *social solidarity*, *anti-discrimination*, *sustainable development* and *good governance*. These norms are a good indication of what the EU is about, but they can also tell us how the EU might behave in world politics – its international identity.

In fact, the border between internal policy structures and external relations has been hazy from the dawn of European integration. Firstly, as we argued, because relations between Member States of the EU are at the same time foreign and home affairs. Secondly because most EU policies set out provisions which from the outset, apply also to the

outside world. While European institutions recognized this only recently (European Commission 1995, 2005a), the creation of a common market, for instance, meant something for foreign firms operating on EU soil. And the trade policy has since 1992 provisions related to human rights (Orbie 2008). What is now called the “external dimension” of a European policy has been documented early in the scientific literature (Twitchett 1976), way before the creation of DG RELEX or Maastricht’s pillar structure. Consequently unlike other world powers – that is, nation-states – the EU always had an inherent tension between “low” and “high” politics. However, the collateral effect on foreign countries of internal policies is not so atypical that it can be observed only in the EU; we can reasonably assume for instance that the United States competition law also has an influence on foreign countries. The normative power of the EU is astonishing however when the avowed objective is the implementation of its norms and standards into the legislation of foreign countries – in other words, when the EU projects its *acquis communautaire* towards the outside world with the clear intention of transforming it.

Enlarging the neighbourhood

The enlargement process and ENP are salient examples of the EU's normative power in the international arena that directly challenge state-centric assumptions on the inevitability of the inside/outside dichotomy in world politics. In this chapter we examine how the enlargement experience in general – the evolution from six to twenty-seven Member States – and the Eastern enlargement of 2004 in particular can be understood foremost as a successful projection of European norms. We then assess why ENP, a policy devised towards non-candidate neighbours which uses most of the tools of enlargement has nevertheless been criticized as mostly ineffective. We follow by arguing that the major part of the literature has neglected to study how EU norms are implemented, missing some successes and attributing failures of ENP to a faulty design.

Enlargement as projection of European norms

It is commonly said that the EU is an “economic giant and a political dwarf” – the largest economic entity in the world struggles to have its voice heard in the international scene. There is however at least one foreign policy that has been quite effective: the enlargement process. Within 50 years, the bloc has evolved from six to twenty-seven Member States, contributing to stabilize new democracies, promote human rights, integrate the near-abroad and foster growth region-wide. This has been possible because the EU has benefitted from a considerable power of attraction over aspiring members. In fact, in the 1980s, Spain, Greece and Portugal were willingly brought in after the collapse of their dictatorships. A decade later with the fall of communism, a similar process followed in Central and Eastern Europe.

Following the ratification of the Maastricht Treaty in 1993 and the fact that countries such as Sweden, Finland and Austria, part of the European Free Trade Association (EFTA) were expected to join the EU in the next years, Central and East European Countries (CEECs) leaders demanded some kind of pledge from the EU, a path of eventual accession. The aftermath of the collapse of the Berlin wall and the violence exploding in the Balkans showed that a clear promise of membership would empower reformers and promote peace and security. Yet at the time, EU Member States could not agree politically on the advisability on either widening or deepening the Union. Some like the United Kingdom claimed that more integration would make it harder for CEECs to ever join. France disagreed, arguing that “the Community should enlarge only after it integrated further, as a way of ensuring that a united Germany would be well secured to a more integrated EU” (Smith 2005a, 273). Still, most Member States were hesitant on the benefits of enlargement, particularly seeing that these would-be Member States were considerably poorer and more agricultural than the EU15 average. At the time (and to a large extent, still today), a substantial share of the EU budget went to the Common Agricultural Policy (CAP) and on regional and structural funds. Consequently, those countries that were net beneficiaries would receive less than what they used to, because some of those funds would shift eastwards. In that regard, even those states most supportive of enlargement were uneasy. But it was hard to write off enlargement completely, as under Article 49 TEU, “Any European State” could apply to become a member of the Union. Faced with the political deadlock of having to decide on a calendar for enlargement, Europe created instead a norm. The 1993 Copenhagen European

Council declared that states could join the EU under certain conditions, now known as the Copenhagen Criteria:

Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union. (European Council 1993)

Enlargement is not however like any other policy and its study poses a number of methodological, ontological and epistemological problems. It has been said that enlargement – or more precisely, its prospect – has been the EU's “most important foreign policy instrument” (European Commission 2003, 5). In aspiring countries, laws have been changed, constitutions have been amended, and practices have been brought in line with European and international standards. Indeed over the years, political conditionality has been used by the EU to transform neighbouring countries into market democracies, impose common standards on human rights and on the respect of minorities. It has given impetus for reform and rewarded successful applicants with the biggest “carrot” of all – membership into the EU. The 2004 enlargement in particular marked a turning point in European history by signaling the powerful attraction that the EU exerted over mostly post-communist candidate countries, which were willing to profoundly alter their institutions and make the necessary reforms in order to accede to the bloc. This is not to say that Eastern European Member States are now fully formed

market democracies. But rather than considering the historical background of divisions and wars, the Eastern Enlargement has been an unmitigated success story for the EU.

The study of EU enlargement has witnessed many great debates. A first distinction can be made between *macro* and *meso-political* approaches (Dakowska 2009). *Macro-politically*, enlargement can be understood as a process dominated by spectacular outbursts, such as the political statements made at European Councils. These studies will focus on the role of national governments and their conflicting interests, and use a materialist ontology and rationalist epistemology. Most of the studies in this field relate to the motivations for enlargement or on the “internal” impact on European integration, such as the economic consequences of enlargement (see for example Baldwin et al. 1997). A *meso-political* view, by contrast, would put a greater emphasis on the “daily routine” of enlargement, on institutional power relations, on the inter-subjective meaning of norms, and would center on mid-level actors. An example of this would be the smaller but constant bureaucratic steps that are completed in the slow course of the so-called “enlargement negotiations”. Led by officials from the Commission and from the candidate country, negotiations consist on monitoring the implementation of the *acquis communautaire* into the national legal framework of candidate countries. In that view, high-level actors have only small roles in a big play, their final consent being merely ceremonial.

It has been said that enlargement is a policy that becomes redundant at the very moment it is successful. Once a candidate becomes member, enlargement conditionality loses all of its appeal and simultaneously diminishes the EU’s ability to steer its choices or bend its political trajectory. This apparent contradiction rests on the common idea that

enlargement is located at the border between foreign relations and the domestic front, between high and low politics, between the inside and the outside of sovereignty, and that therefore, enlargement is a borderline case of either International Relations or European integration theory. This paradox can be resolved by exiting the comfortable confines of the realist paradigm. Enlargement is not a policy sitting on the verge of two unconnected worlds, but simply a more clear-cut manifestation of the EU's usual *projection of norms*. This is crucial: the promotion of the *acquis* into national legal frameworks, no matter if it concerns Member States, candidates, or neighbours, is the usual *modus operandi* of the EU. As a normative power, legal instruments adopted at EU level (such as regulations and directives) ought to be simultaneously implemented in Member States, in candidate countries and in neighbouring states. How this is achieved differs but the overarching objective of norm projection remains.

Another fracture line among scholars is how knowledge on enlargement is built. Did the EU enlarge because of rational, self-interested factors? Or rather because shared European identities and socialization made the EU wish to erase the continent's historical divisions? Schimmelfennig (2003) has provided an interesting conceptual model to understand the epistemological interplay between rationalism and constructivism. What he dubbed "rhetorical action" is the "strategic use of norms-based arguments". The problem is the following: why in the context of unanimity those Member States that did not have a strong interest in the 2004 enlargement ultimately voted in favor? He argues that Member States supporters of enlargement justified "their preferences on the grounds of the Community's traditional pan-European orientation and its liberal constitutive values and norms" (2003, 77-8). In other words, pro-enlargement Member States

interpreted strategically community norms in a way that favored their interest. Anti-enlargement states were “shamed” into opposing them. The EU as a whole remained trapped into this liberal rhetoric and had to enlarge, even against the interests of Member States that could have blocked the process. Building on Schimmelfennig, we admit that there is an element of EU self-interest in the enlargement process, such as the will to increase the bloc’s relative power in the world, or to create a larger, more prosperous internal market. But it also owes to the very normative idea that democracy, a functioning market system and respect for human rights are *better* than authoritarianism, planned economy and aggressive nationalism.

ENP or the alternative to enlargement

In a 1962 essay titled “Discord and collaboration: essays on international politics”, Arnold Wolfers wrote about “milieu goals” by contrast with “possession goals”. While not specifically about the EU, his insights on cooperation in international relations are valuable. A nation with milieu goals, says Wolfers, is “not out to defend or increase possessions it holds to the exclusion of others, but aims instead at shaping conditions beyond its boundaries”. Milieu goals do include an “element of national self-interest, however farsighted, that lead nations to improve the milieu by rendering services to others” (Wolfers 1962).

With its objective of creating a “ring of friends” around Europe, ENP can be understood as a policy aimed at shaping the neighbourhood favorably without actually possessing it. The main assumption in terms of international security is, perhaps self-interestedly, that it is better to be surrounded by friends than by enemies. But up until the launch of ENP and the simultaneous ‘big-bang’ enlargement of 2004, the EU had always transformed the

milieu by enlarging itself: “The history of post-Cold War relations between the EU and its non-EU European neighbours can be read largely as a history of the EU coping with the exclusion/inclusion dilemma by eventually choosing inclusion” (Smith 2005b, 757). Yet much of the discourse surrounding the 2004 enlargement became dominated by debates over ‘absorbing capabilities’ and on the geographical ‘limits of Europe’. In this respect, ENP was designed as an acknowledgment of the alleged ‘enlargement fatigue’ in founding Member States. The key was to replicate some aspects of the enlargement process and gain from its transformative power without actually enlarging. Neighbours more similar to the EU would facilitate the maintaining of good relations, it was thought, and would avoid creating new cleavages – a “Fortress Europe” (Gordon 1989) or a “Velvet Curtain of Culture” (Huntington 1993). Arguably, continental integration has succeeded because Europeans opened their borders to the socializing virtues of commerce and agreed to pool their decision-making. Thus the projection of norms such as democracy, human rights, good governance and a functioning market system – although to some extent self-interested – was Europe’s take at constructing harmoniously the interests and identities of the neighbourhood in a way that would smooth out the edges of the enlarged Union.

“The enlargement will bring about new dynamics in the European integration. This presents an important opportunity to take forward relations with neighbouring countries based on shared political and economic values” (European Council 2002). Indeed, ENP is a direct response to the challenges that arose with the 2004 enlargement. It acknowledges the need for a policy towards its new neighbours resulting from the pushing back of its borders – the enlargement of the neighbourhood. As Christopher Hill

has argued, the extension of the borders of the EU is “the most important of all the foreign policy implications of enlargement” (Hill 2002, 97). “With the Cold War division of Europe finally undone, a new fault line as appeared much farther to the East of where the Iron Curtain used to be” (Schmidtke and Yekelchik 2008, 2). The idea behind ENP dates back to a 2002 General Affairs Council, where the Commission and the High Representative Javier Solana suggested coming up with ideas to rethink the relations of the EU with its new neighbours (Council of the European Union 2002). The next year, the Commission published “Wider Europe - Neighbourhood: a New Framework for Relations With our Eastern and Southern Neighbours”, which was the first exhaustive communication on the subject. The avowed objective was to “avoid drawing new dividing lines in Europe and to promote stability and prosperity within and beyond the new borders of the Union” (European Commission 2003, 4). In 2004 the Commission released the “ENP Strategy paper”, an operationalized version of its earlier document. It said:

The privileged relationship with neighbours will build on mutual commitment to common values principally within the fields of the rule of law, good governance, the respect for human rights, including minority rights, the promotion of good neighbourly relations, and the principles of market economy and sustainable development. Commitments will also be sought to certain essential aspects of the EU’s external action, including, in particular, the fight against terrorism and the proliferation of weapons of mass destruction, as well as abidance by international law and efforts to achieve conflict resolution. (European Commission 2004a)

ENP is a cooperation framework that applies to the EU land neighbours in the East (Belarus, Moldova and Ukraine), to all of North Africa (Algeria, Egypt, Libya, Morocco

and Tunisia), to Middle Eastern states and territories (Israel, Jordan, Lebanon, Occupied Palestinian Territory and Syria) and to the Caucasian states (Armenia, Azerbaijan and Georgia). It does *not* apply to Russia, which benefits from a different “strategic partnership”, nor to members of the European Economic Area (EEA) and Switzerland, which already implement the *acquis* into their legal framework without being part of the decision-making. Current accession candidates (Croatia, FYROM, Iceland, Montenegro and Turkey), European microstates and the Western Balkans “protectorates” are *not* included in ENP (see figure 1).

There are major similarities between ENP and enlargement that must be mentioned, in form and substance. In a seminal early study on ENP, Kelley (2006) has argued that these two policies are comparable because ENP has largely been modeled on the enlargement process. Drawing from organizational management theory and path dependency, she claims that the Commission wanted to extend the foreign policy power it acquired during enlargement through a new policy, in order to “continue playing a significant, and perhaps even stronger, role in external affairs”. The fact that “many of the Commission officials who worked on enlargement transferred to the ENP [...] led to some direct mechanical borrowing from enlargement experiences”. She cites for instance many early drafts of the Action Plans which were “modeled directly on the association agreements used for the recent accessions”, or even references found in them about the Copenhagen criteria. Furthermore ENP, just like enlargement, is based on the benchmarking and the monitoring of progress. Indeed already back in 2002, Commission President Romano Prodi argued on the “need to set benchmarks to measure what we expect our neighbours

to do in order to advance from one stage to another. We might even consider some kind of Copenhagen proximity criteria” (Prodi 2002).

Moreover, both policies are under the political control of the same Commissioner, whose full title is “Commissioner for Enlargement and European Neighbourhood Policy”. Enlargement and ENP are both aimed at transforming and stabilizing the vicinity through the alignment of national legislations, norms and standards with the European *acquis*. Indeed as Andreas Herdina, one of the principal architects of the policy puts it, “the majority of agreed measures consists of projecting first pillar Community policies beyond our external borders” (quoted in Lavenex and Wichmann 2009). In other words ENP is similar to enlargement: a projection of norms beyond the territorial borders of the Union in exchange of ‘carrots’.

The carrots are however not of the same breed. ENP is still based on political conditionality, yet the major difference with the enlargement process is that ENP is not a path to EU membership. Under the framework, neighbours must implement European law but doing so will not lead to a seat within the institutions. While the EU insists that it is not forcing ENP states to implement the *acquis*, “in order to participate in EU programs, harmonization with the relevant *acquis* may be required to fully reap the benefits of such participation” (European Commission 2010a). The incentives are not insignificant: it includes notably a perspective of moving beyond co-operation to a significant degree of integration, including a stake in the EU’s internal market and the opportunity to participate progressively in key aspects of EU policies and programs; an upgrade in scope and intensity of political co-operation; the opening of economies and reduction of trade barriers; an increased financial support; the participation in

Community programs promoting cultural, educational, environmental, technical and scientific links; a support for legislative approximation to meet EU norms and standards; and a deepening trade and economic relations. In that respect, the most important material incentive in ENP is a privileged access to the Single market: “in return for concrete progress demonstrating shared values and effective implementation of political, economic and institutional reforms, including in aligning legislation with the *acquis*, the EU’s neighbourhood *should benefit from the prospect of closer economic integration with the EU*” (European Commission 2003, 4, emphasis added).

Norm projection and norm implementation

ENP follows to a certain extent Romano Prodi’s famous promise that the neighbours of the EU would benefit from “everything but institutions”; they would receive the same treatment and economic advantages of EU membership, except actual participation in the decision-making. It was clear from the outset that the will to improve the relationship with the new neighbours should not be confused with, and was distinct from, the membership possibility offered to European states (that is, states geographically located on the European continent). However, the literature is quite clear that ENP would be unable to shape the neighbourhood favorably without the prospect of the ‘golden carrot’ of membership. For some reasons, norm projection seems to work better on candidate countries than on non-candidate ones. Therefore, scholars that have studied ENP have drawn bleak prospects of its success.

Most authors who studied ENP in its early phase have stressed that contrary to enlargement, the incentives for reform are too minimal to induce transformation: “Whereas in the case of the CEECs the conditionality approach acted as leverage also for

unpopular adaptations, the lack of membership prospects or other attractive incentives poses serious limits” (Lavenex 2004, 694). ENP “follows the enlargement logic in the sense that it seems to rely on the same instruments, incentives, and normative underpinnings as towards potential EU members. However, since it rules out this option, the cost-benefit ratio is not the same as in the case of prospective EU membership.” Furthermore “in its present form, it does not provide relevant and adequate incentives for the political elites and the societies concerned to tackle far-reaching economic and political reforms” (Del Sarto and Schumacher 2005, 37). “Without the membership perspective, the ENP countries might not be motivated to undertake domestic reforms” (Kelley 2006, 36). As Karen Smith adds, “ENP requires much of the neighbours, and offers only vague incentives in return. The hovering ghost of enlargement will not vanish if ‘all but institutions’ proves to be meaningless” (Smith 2005b, 772). Again, “one of the underlying realities of the EU’s transformative capacities [is that it] has been very much dependent on the offer of the ‘prize’ of future membership and, when this is absent, the EU’s powers of attraction diminish substantially” (Dannreuther 2006, 188).

As these authors show, the case that conditionality works better on candidates than on neighbours is overwhelming. However, the main problem with this scholarly literature is that it has paid scant attention to the possibility that some countries within the neighbourhood are more likely to cooperate with the EU on a number of key issues than others, even when no prospect of membership is offered. Why are some countries more receptive to EU norms than others? The current literature cannot elucidate these puzzles because it has largely overlooked the internal make-up of neighbouring states and instead focused solely on the mechanics of the policy itself. Indeed there is a tendency for

Eurocentric points of view in parts of the literature that describes how European norms are disseminated in a one-sided process, leaving little explanation of the varying successes of this policy. This is why this paper focuses on the implementation of these norms.

Justice and Home Affairs as Norms

This chapter will build upon the theoretical toolbox of the first two chapters and propose a methodology for assessing the differentiated success of ENP among neighbouring countries. The implementation of JHA norms, the dependent variable, will be benchmarked using three types of official EU documents: the *Country Report*, the *Action Plan* and the *Progress Report*. As we will show in our case studies, we find that Moldova experiences more difficulties than Ukraine in implementing EU norms in the field of JHA.

A central pillar of ENP

ENP is a very broad interdisciplinary project aimed towards the strengthening of democracy, human rights, rule of law, good governance, market economy principles and sustainable development. But it may well be that some policy areas within ENP are more significant to the chances of success of the whole project. Following Knelangen (2007), we argue that “JHA has a key role within ENP” and whether ENP can bring about change in the neighbourhood “will be decided first and primarily in the field of JHA”. The reasons for this are threefold.

Firstly, the relative importance of JHA in the EU framework has greatly increased in the recent years. Indeed, if the successive completion of the Single market and the Economic and Monetary Union (EMU) marked decisive steps in the history of European integration, JHA has emerged undoubtedly as one of the new frontiers of the EU. Secondly, the EU has acknowledged that security challenges permeate across borders and that cooperation with third countries is needed in order to reach its policy goals. Within

JHA, there are issues in which the EU is particularly dependent on close links with its neighbours, notably the fight against drugs, organized crime or trafficking in human beings. Since the 1999 Tampere European Council, the EU constantly stresses the importance of “comprehensive” or “global” approaches to JHA, involving notably the use of foreign policy instruments in order to engage third-countries into the EU security apparatus (European Council 1999; European Commission 2005a). Thirdly, in the cases of migration and asylum policies, the EU has increasingly framed border controls, readmission of migrants or the fight against smuggling and trafficking as security challenges that need to be externalized towards third-countries. This includes traditional tools of migration control such as visas or readmission agreements as well as ‘preventive’ measures destined to deter potential migrants and asylum-seekers from entering Europe (Boswell 2003). But the need for cooperation and dialogue with the neighbourhood has become more acute in face of contradictions between these policies of externalization and the EU’s international obligations, such as the *1951 Geneva Convention on the Statute of Refugee*.

Within the framework of ENP, JHA includes border management, migration regulation, readmission agreements, asylum, the fight against organized crime, drugs and money laundering, trafficking in human being, judicial cooperation and the protection of personal data. These are the policy fields we will more closely analyze.

Benchmarking progress

Like enlargement before it, ENP is very explicit on the importance of setting clear objectives in order to correctly benchmark progress. Back in 2003, the first Commission communication on ENP proposed the establishment of *Country Reports, Action Plans*

and *Progress Reports*. Country Reports were the first country-specific document published by the Commission, as early as 2004 for most countries, including for Moldova and Ukraine. The format of each Country Report is the same for all neighbours: the first part is an introduction to ENP and to the relations of that particular country with the EU, the second part is on political issues and the third is on the economic and social situation. There is no general conclusion. The document is not prescriptive, in that it does not yet give indications or injunctions as the way to go, and simply describes some aspects of the country. It does highlight a few challenges mentioned by other organizations, but does not give its own position, probably to emphasize the idea that the norms the EU promotes are not political. For instance:

The 2003 Transparency International (TI) report on corruption in the world ranks Moldova in place 100. Public opinion polls rank corruption as the second most pressing problem in Moldova after poverty. In 2003, the Council of Europe Group of States Against Corruption (GRECO) concluded that “the Republic of Moldova is without any doubt one of the countries deeply affected by corruption”.

The second type of benchmark is the Action Plan. It is a political document agreed between the EU and the neighbouring country that builds on the Country Report and sets out a number of short and medium-term objectives. Each Action Plan is negotiated by the Commission “in close cooperation with the Presidency and the High Representative on issues related to political cooperation and the CFSP” (European Commission 2006a). The Commission first submits a draft proposal and a Country Report and then the Council issues a decision with the final Action Plan. It is stressed that “Action Plans should be comprehensive but at the same time identify a clearly limited number of key priorities

and offer real incentives for reform. Action Plans should also contribute, where possible, to regional cooperation” (Council of the European Union 2004, 12). Moreover, they are to “be based on common principles but be differentiated, as appropriate, taking into account the specificities of each neighbour, its national reform processes and its relations with the EU”. Indeed while the EU insists on the principle of *differentiation* in the sense that each ENP country should agree to an Action Plan that is both specific to its situation and tailor-made to its characteristics, there are striking similarities between the twelve Action Plans. This is even though neighbours of the EU are all quite different from each other. (So far, Action Plans have been agreed with all but four ENP countries: Algeria, Belarus, Libya and Syria. For Ukraine, an Association Agenda replaces the Action Plan, but while the name of the document changes the substance remains similar). In fact, it could be said that Action Plans use the same means to attain the same goals: give incentives, get legislative approximation. Obviously, when the EU speaks about “cooperation” or legal “rapprochement”, it means that neighbours should change their legislation to meet EU standards, and not the other way around. For instance, the EU/Morocco Action Plan states that

the EU neighbourhood policy sets ambitious goals based on the mutually recognized acceptance of common values such as democracy, the rule of law, good governance, respect for human rights, market economics, free trade, sustainable development, poverty alleviation and the implementation of political, economic, social and institutional reforms. (European Commission n.d.)

It would be easy to use the opportunity to denounce the EU’s approach as being ethnocentric, but our point is rather that differences in national situations have not made a tremendous impact on the way ENP was designed. While some Action Plans focus more

on one policy aspect than others depending on the country, the overarching objective is still to get all ENP countries in line with as many aspects of the *acquis* as possible. However, whereas the Action Plan is not a legally binding document and there are no formal sanctions following a failure of implementation, there is nevertheless a clear political monitoring of progress made by the Commission in the implementation of the Action Plan. In fact since the end of 2005 when an overall assessment of the main achievements was carried out, the Commission has published annual Progress Reports on all the neighbours for which an Action Plan has been agreed.

The gap between on the one hand, the Action Plan in the light of the Country Report and on the other, the various Progress Reports is an indicator of the approximate distance between the political commitments to reform and the actual implementation the *acquis*. The gap can be used to measure compliance with JHA norms, the dependent variable. We use the definition of compliance given by Jacobson and Brown-Weiss, which “refers to whether countries in fact adhere to the provision of the accord and to the implementing measures that they have instituted” (1995, 123). However, “one must be careful to distinguish cases of deliberate compliance from serendipitous compliance, where states actions fit international obligations but without deliberate choice” (Haas 1998, 18). We will supplement our findings with reports from Freedom House, the Bertelsmann Stiftung Transformation Index (BTI) as well as other sources.

A differentiated implementation

In comparative analyses, the first step is to define the scope of the enquiry. Within the ENP framework, most states are in a transition process towards democracy; it does not make them all akin. A comparative study of Ukraine and Tunisia, for instance, would

have stumbled into many obstacles. The most important one being that the membership perspective variable would fail to be controlled for. We have already stressed that ENP and membership were separate processes, but that Article 49 TEU did not preclude eventual accession for European states, even if very remote. Therefore if we search for domestic factors, we must absolutely neutralize external ones and compare countries that are geopolitically similar. We could have chosen to compare North African countries, or Caucasian states. But we thought that the influence of the EU was more likely to be felt on the European continent. In that regard, only three ENP countries can reasonably entertain equal EU aspirations: Belarus, Moldova and Ukraine. EU relations with Belarus are however a bit frosty; in the context of ENP, no Country Report has been published, let alone an Action Plan. Belarus' embattled leadership has yet to express any desire for membership; it is still dubbed by the US State Department "Europe's last dictatorship". We are left with Moldova and Ukraine: two countries of the near abroad that are comparable on many aspects, notably their shared firsthand experience of the Soviet Union's collapse, their quick inclusion into the ENP framework and their geographical location in the easternmost part of Europe. In this chapter, we compare these two countries, first by an overall assessment of their respective engagement with the EU, and secondly by benchmarking implementation of norms in the particular field of JHA.

Since the fall of the Soviet Union, Ukraine has enjoyed a relatively free media, basic protection of human rights and a pluralistic and competitive political arena. The Constitution, adopted in 1996 and amended in 2004 in the aftermath of the Orange Revolution, provides for a semi-presidential regime where the two executive offices share power. Leonid Kravchuk was the first president following independence. His mandate

oversaw a period of economic decline and high inflation. He was succeeded by Leonid Kuchma who brought economic recovery “but was accused of conceding too much to Russian economic interests” (BBC News 2010), controlling media freedom and not doing enough to fight corruption. In 2004 he chose Victor Yanukovych as his successor to run for the presidential election, facing Victor Yushchenko in the second turn. During the campaign, the government did everything to sabotage Yushchenko’s campaign:

“For six months, government-controlled national television had subjected Yushchenko to a steady torrent of negative press and distortions, while refusing him the opportunity to defend himself. Yushchenko's campaign faced other impediments as well. Sometimes his plane was denied landing privileges minutes before major rallies. Road barriers slowed his travel and, once, a truck tried to force his car off the road” (Karatnycky 2005).

Furthermore, two months before the election, Yushchenko became gravely ill and was forced to leave the campaign trail, his face badly scarred. It was revealed that he suffered poisoning by dioxin. “The opposition cried foul, but the government-controlled media responded that Yushchenko had contracted the disease himself, by eating contaminated sushi, getting herpes, or undergoing botox treatment to preserve his 50-year-old good looks”. The day of the election, the authorities tried to rig the result in favor of Yanukovych. Some regions recorded a record turnout of 96%, way above the national average of 78% and with more than 97% in support for Yanukovych. Once it became known, massive demonstrations ensued. Images of protesters displaying orange flags, the color of the opposition, were shown around the world and in a surprising turn of events, the Ukrainian Supreme Court declared a re-run of the election. Yushchenko eventually

won. It was hailed as a major turning point in Ukraine's history, and a dramatic shift westwards.

Just south of Ukraine is located Moldova, formerly known as Bessarabia and annexed in 1940 by the USSR. Most Moldovans share ethnic, cultural and linguistic ties with neighbouring Romania, and during the turmoil years of 1989-1991, the leadership toyed with the idea of unification. The country eventually declared itself an independent republic in 1991. In the early years of independence, "Moldova was often praised by international organizations for its quick and courageous economic reforms compared to some other post-Soviet states" (Kennedy 2010, 64). The country had promising economic and trade potential, but much of that came to a grinding halt, however, when the issue of Transnistria – a separatist region located in the East and adjacent to Ukraine – evolved into an armed conflict with Russia. By 1993, the economy of Moldova had shrunk by about two-thirds of its pre-transition levels. "Without access to significant minerals or fuel resources with which to offset current account deficits, Moldova's economy was also slower to recover than other post-Soviet states" (Kennedy 2010, 64). The economic downturn was particularly harsh on the country and a conservative backlash resulted from the erosion of public trust in economic reforms. In 2001 the Communist Party, riding on nostalgic sentiment, was voted back in. The party won the 2005 elections as well and most economic reforms have stalled, even with non-communist ministers in the government. Moldova has become one of the poorest countries in Europe, relying on migrant remittances as the main source of capital.

Moldova and Ukraine made generally uneven progress implementing European norms in general and achieving democracy in particular. While Ukraine has known highs and lows,

Moldova has been stalling since 2001, and the entry into force of the ENP Action Plan did nothing to change this situation. We can see this is the case with Freedom House's ratings for transitioning states, which measures democracy around the world by quantifying seven concepts: electoral process, civil society, independent media, national democratic governance, local democratic governance, judicial framework and independence, and corruption (see Figure 1 and 2 – low values are better). The democracy score of Ukraine peaked at 4.88 in 2004 when ENP was launched, and then steadily made slight progress. It went from being classified as “partly free” in 2005 to “free” in 2006, notably as a consequence of the annulment of the fraudulent election result leading to the Orange Revolution. It has since then remained “free”. Moldova, on the contrary, interestingly also received 4.88 in 2004, but did not make significant progress and instead stagnated at around 5 for the period under review. It has continued being classified as “partly free”.

In another important data set, the Bertelsmann Transformation Index (BTI), Ukraine also did better than Moldova. The BTI measures progress made by countries towards democracy and market-based economy, notably in implementing liberal norms and standards, and aligning itself with international conventions and instruments. We can visualize (figure 2) that Ukraine's performance is in overall better than Moldova's. Concerning the specific indicators related to democracy, Ukraine still does better on average, although this is mitigated in the case of the “stability of democratic institutions” and “political and social integration”, perhaps because of the political instability of the 2004-2005 Orange Revolution. (On a related note, those countries that joined the EU in 2004 and 2007 still enjoy a considerable lead over both Moldova and Ukraine – accession for those two countries is indeed far-off – see figure 3).

Both Moldova and Ukraine approved their Action Plan at the same time in early 2005 (European Commission 2005b). Yet Ukraine has been reforming at a faster pace than Moldova, also because Ukraine has been more ambitious in its commitments in the general framework of ENP. In 2006 following the Orange Revolution, the re-run election was deemed free and fair by EU and international observers. In Moldova the parliamentary elections at the end of 2010 were deemed to meet many international standards according to a press release from OSCE, “but further improvements are needed”. In Ukraine the Commission recognized in its 2006 Country Report that “considerable steps have been taken towards consolidating respect for human rights and the rule of law” (European Commission 2006b) and in 2008, the country became the World Trade Organization's 152nd member. A visa dialogue was launched the same year. In 2009, Ukraine’s Action Plan evolved into an Association Agenda, which includes talks for a Deep and Comprehensive Free Trade Area (DCFTA). Negotiations are already ongoing while they have not started in Moldova. In the EU’s Common Foreign and Security Policy (CFSP), Ukraine aligned itself with nearly all CFSP position open to third countries and was also active in regional peace building.

In the particular case of JHA norms, Moldova generally experiences more problems than Ukraine. The most outstanding achievement in Moldova and the one most repeatedly showcased by the Commission is one that also includes Ukraine: the EU Border Assistance Mission (EUBAM). It was set up in 2005 as a structure intended to control the traffic on the border of both countries, to rein in illegal traffic of goods and persons, as well as irregular migratory movements. In the words of the Commission, it “aims to bring transparency at the Moldovan-Ukrainian border and to foster a business environment that

demonstrates to economic operators, including those in Transnistria, the advantages of working on the basis of Moldovan legislation to benefit from international and EU trade preferences” (European Commission 2010b). However still in the field of border management, the Moldovan government committed to reform its border guard services to transform them into a law enforcement agency; this still has not been done, according to the EU’s Progress Reports.

In the field of asylum, the Progress Reports note that while some amendments have been made to the national refugee law, major improvements are still needed. Concerning the fight against organized crime, including trafficking in human beings, the Commission notes that while Moldova has ratified the *UN Convention against Transnational Organized Crime and its protocols on smuggling of migrants and trafficking in persons*, implementation was still lacking: “effective implementation of these international instruments is of great importance”, stresses the Commission. Furthermore, “despite these efforts, more progress is needed to punish acts of trafficking, to protect and reintegrate victims, to implement the witness protection law and to assist NGOs and international organizations in their work” (European Commission 2006c). It also adds that “cooperation with civil society in this area needs to be consolidated in order to prevent trafficking and provide rehabilitation assistance to its victims” (European Commission 2008).

The sectors of fight against drugs and money laundering are of those where compliance with European norms is most lacking. The Commission highlights that reports from the Dublin Group, part of the United Nations Office on Drugs and Crime, “point to a growth in drug-related problems in Moldova”. This is because “implementation is hampered by a

lack of human resources, financial means and experience, as well as technical equipment” (European Commission 2006c). “Further attention and resources need to be invested in implementing these reforms” (European Commission 2008). In police and judicial co-operation, most measures agreed in the Action Plan had either not been adopted, had stalled in the parliament or lacked effective execution. The Progress Reports highlights that Moldova still needs to ratify relevant international conventions in criminal and civil law; improve inter-agency co-operation, develop risk-analysis methods comparable to those of the EU and establish a network of contact points with EU member states.

Two Determinants of Compliance

How can we explain this ‘implementation deficit’ (Lampinen and Uusikylä 1998) on the Moldovan side? In this chapter, we seek to give this differentiated norm implementation a theoretical and empirical explanation. Our hypothesis is that domestic factors have a significant impact on the success of ENP. Two independent variables are examined: *the contested state identities* and *the domestic political battles on foreign policy*.

Obviously, we do not claim that domestic factors are the sole explanation of the differentiated implementation of JHA norms in the European neighbourhood. Social sciences in general and International Relations in particular frown upon mono-causal explanations. Other elements might be at play, such as world-systemic influences, internal politics of the EU, or the inherent contradictions within the ENP policy. However, this research seeks to highlight the significant impact domestic factors have in the success or failure of ENP.

Contested state identities

The first variable is the extent to which *state identities are contested*. In a study on the Euro-Mediterranean Partnership (EMP), Del Sarto (2006) argues that “domestic conflicts over state identities put a strain on the ability of states to consistently engage in Euro-Mediterranean region-building and to develop a strategy toward regional security”. EMP – a predecessor of sorts to ENP – was launched in 1995 at the Conference of Barcelona. It “can be seen as an original experiment of constructing a security region” which “emphasized the importance of common interests, common problems, and shared regional features” (Del Sarto 2006, 2). It is a distinctive regional peace process in large

part because of its unusual understanding of security. Indeed, the 1990s saw the relatively peaceful and unexpected ending of the Cold war and in turn, a renewed interest in IR approaches that sought to redefine the meaning of security. These studies, which are not unconnected with Duchêne's definition of civilian power, depart from the traditional focus on military issues to give greater importance to cultural, economic and human security. The creation of EMP must be understood within this intellectual context.

We must be careful however because ENP is not exactly like EMP. Multilateralism, a key aspect of EMP, has made way to bilateral agreements while region-building has fallen out of the agenda. On the contrary, ENP recognizes that EU neighbours are an eclectic grouping: "given these different starting points and objectives it is clear that a new EU approach cannot be a one-size-fits-all policy" (European Commission 2004b). Yet as we have already argued, the objectives remain the same among countries. Just like EMP, ENP seeks to reshape the relation between the EU and its neighbouring states by stressing that they share the same challenges: "Proximity, Prosperity and Poverty". (On a side note, it seems as if the Commission is guided, particularly for its flagship initiatives, by esthetic choices rather than sound policymaking; one might be forgiven to wonder why they happen to be so memorable – for another bewildering example, see the EU's climate change policy by 2020.)

Another decisively common aspect to ENP and EMP is the fact that both policies deal with these 'common' challenges by exporting the liberal set of values and norms that underpins the *acquis communautaire*, such as democracy, market-based economy or human rights, and by branding them as 'jointly owned'. In spite what the Commission claims, in order to succeed it would "necessitate the emergence of common of interests,

values [and] shared beliefs” (Del Sarto 2006, 24) that do not necessarily exist. Cooperation in the field of JHA – which includes mostly provisions about security – therefore implies “a reconsideration of how a state defines itself and how it relates to other states”. The unsettled identity of a state puts a strain on its ability to engage in security terms because “a state cannot consistently define who its enemies and its friends are as long as it does not know what, or ‘who’ it is”. Therefore, “these questions cannot be clearly answered as long as the political design of the state is contested at the domestic level” (Del Sarto 2006, 24). Contested state identities could be measured by asking the following questions: Are there major ethnic or linguistic divisions? Is there a profound religious-secular fault line? Do ideological cleavages have a strong influence on domestic politics? If the answer is strongly positive then we can expect that it will negatively affect JHA cooperation.

In that respect, a crucial explanation of Moldova’s lesser engagement in ENP can be found in the fact that the state identity is not recognized by all segments of the population. In fact, Moldova’s state identity is heavily contested and since independence, most political efforts have gone into consolidating the nation-state rather than towards pro-European reform. This is not the case in Ukraine, although the country also had to face some secessionist movements.

Indeed, while there are major ethnic and linguistic divisions in Ukraine, they have not threatened the identity of the nation-state, nor induced competing claims of sovereignty like in Moldova. According to the 2001 census, Ukraine is made of Ukrainians (77.8%), Russians (17.3%), Belarusians (0.6%), Moldovans (0.5%), Crimean Tatars (0.5%), Bulgarians (0.4%), Hungarians (0.3%), Romanians (0.3%), Polish (0.3%), Jewish (0.2%)

and others (1.8%). Therefore two big groups, Ukrainians and Russians, comprise the bulk of the population and the rest account for less than 5%. Victor Yushchenko of 'Our Ukraine' was based mostly in the Western and Northern parts of the country. Most ethnic Russians live in the Eastern and Southern part of the country, a fact visible in the voting results (compare figure 4 and 5). In the 2004 presidential election for instance, the 'Party of Regions' and its leader, Victor Yanukovich of the pro-Russian 'Party of Regions' enjoyed wide popular support in the East and South, even though the party lost power in the aftermath of the Orange Revolution. While the party strives to make Russian the second official language, it has not done so by rejecting the nation-state: the BTI report stresses that "the Ukrainian nation-state is accepted by all relevant actors and groups in Ukraine", which has "thus emerged as a civic nation" (Bertelsmann Stiftung 2009b). The 'Party of the Regions' has since reclaimed power and its electoral program "recognizes the role of the Ukrainian language as a symbol of the Ukrainian state" but opposes the "exclusion of other languages, especially Russian" (Party of Regions 2010). Obviously, recognizing the plurality of languages does not equate to claiming competing sovereignty.

Ukraine has nevertheless faced some separatism, both in the autonomous Southern region of Crimea, as well as in two Eastern regions together known as the Donbas. The Donbas are "often portrayed as the last frontier of Europe in both a literal and symbolic sense. [...] To many, they represent the least European area – the area least amenable to European civilization and democracy" (Kuromiya 2008, 97). Indeed these regions are far from the center of Europe, border Russia and are populated mostly by Russophones. Images of the Donbas in the rest of Ukraine are mostly negative, the region being "known

as an unmanageable place, alien to culture and civility”, sometimes even portrayed as anti-Ukrainian for its historical pro-Russian stance. During the repeated second turn vote of the 2004 presidential election, the Donbas voted overwhelmingly in favor of Victor Yanukovich, a candidate hailing from the region, despite the fact that he had twice served jail time for violent crimes and that he tried to rig the elections in his favor. As a coal-and-steel industrial region however, the Donbas are hard to dismiss: 30% of total exports come from there. In spite of being close to Russia, the Donbas supported, during the 1991 referendum and like the rest of the country, the independence of Ukraine. Yet the post-Soviet collapse of the economy hit harder in the Donbas, for which Kiev was blamed for mishandling. It accused the capital of favoring Western regions at the cost of the Donbas and in 1993, huge strikes erupted, most of them being supported by locale elites. The struggle appeared to be between the Donbas and the rest of the country, and for a while, threatened the unity of the country. In 1994 when Kuchma was elected president with the vast support of the Donbas, demands for independence were not satisfied but several economic and political concessions we made. “Despite a host of scholarly works emphasizing regional splits, the polls suggest that even the citizens of the most disaffected Donbas think of their future in terms of an independent Ukraine” (Kuromiya 2008, 97).

The picture is much different in neighbouring Moldova. The 2004 census shows – just like Ukraine – a multi-ethnic country: it is composed of Moldovans/Romanians (78.2%), Ukrainians (8.4%), Russians (5.8%), Gagauz (4.4%), Bulgarians (1.9%) and others (1.3%). However unlike Ukraine, multi-ethnicity does not translate into a clear acceptance of the Moldovan nation-state by all segments of the population. Indeed, the

most important challenge to state identity comes from Transnistrian separatism. Located mostly in a strip between the Dniester River and the Moldovan border with Ukraine, the so-called Pridnestrovian Moldavian Republic (PMR), or Transnistria, has been a de facto, non-recognized state that has escaped the authority of the Moldovan government. This area is populated by a greater number of ethnic Ukrainians and Russians than in the rest of Moldova. Transnistria has known times of relative autonomy during the twentieth century, but the end of bipolarity has meant, as in many other places in Europe's edges, renewed possibility for expressing otherwise latent nationalism. In 1989 three city governments located in the strip, Tiraspol, Bender and Râbnita, refused to acknowledge the new language laws approved by the Moldovan Parliament. These laws made Moldovan the only official language, retaining Russian solely for secondary purposes and declaring a Moldovan-Romanian common identity. Starting then, the breakaway territory ignored all further laws adopted by the Parliament: "this began the transfer of authority from national to local institutions and the development of a competing claim of sovereignty and identity" (Roper 2005, 502).

As a result in 1991 and 1992 violence flared between Moldovan forces and the Russia-backed PMR regime. Over the last decade, many negotiations on the future status of the entity were unsuccessful, and the conflict remains the dominant issue in Moldovan politics (Roper 2005). Against the will of the Transnistrian leadership, a 2006 agreement between Ukraine and Moldova provided that all Transnistrian exports to Ukraine ought to be stamped by Moldovan authorities (BBC News 2007). Russia, on behalf of Transnistria, retaliated with a ban on the import of wine products from Moldova into Russia, resulting in significant negative consequences for the Moldovan economy. This

has led “successive Moldovan governments to bend over backwards to accommodate Moscow as the key backer of the PMR regime in Tiraspol”, demonstrating “Moldova’s political and economic dependency on Russia” (Roper 2005, 503). While Transnistria has only received the international recognition of three other non-UN, secession-seeking entities in Abkhazia, Nagorno-Karabakh and South Ossetia, it has kept functioning de facto executive, legislative and judicial branches. PMR has “remained virtually independent of Moldova” and its leaders “sought to portray differences as based on ethnic and linguistic rights”. Indeed, “the debate between the Moldovan central government and the breakaway region of Transnistria has been the primary focus of these competing visions of identity”, putting “constraints on any pro-European reform endeavors” (Roper 2005, 503). The existence of the PMR and its contestation of national identity hinders cooperation in the field of JHA because it weakens the fragile authority of the Moldovan state and its ability to legislate in the field of security, with consequences felt in the EU: “the Dnjestr Republic has become a black hole of the global economy, a hotspot of organized crime, trafficking and bootlegging” (Bertelsmann Stiftung 2009a).

There has been another, albeit less violent, challenge to the central authority of Moldova known as Gagauzian separatism. Located in the South of the country, Gagauzia (or Gagauz Yeri) is populated with Turkic-speaking, orthodox Christians whose ancestors have fled persecution in the Ottoman Empire during the 19th century. In the December 1991 referendum, 95% of the population voted in favor of the independence of Gagauzia, while the Moldovan presidential election was boycotted by the regional authorities. Separate elections were held in which the leader of a secessionist movement, Stefan

Topal, won over 90% and became the first president of the unrecognized Gagauz Republic. Martial law was declared over the secessionist entity by the Moldovan central government, until an agreement was reached in 1994 conceding autonomy to the region. Gagauzia has maintained links with the breakaway entity of Transnistria, despite the frozen conflict with the Moldovan government (Katchanovski 2006).

Domestic political battles on foreign policy

The second variable is influenced by the literature on Europeanization and from the debates on Member States compliance with EU law that emerged at the end of the 1980s. This period coincides with the undertaking of the completion of the Single market and its massive legislative programme comprising some 300 measures. Both academics and the European Commission started to take a greater interest in the alleged ‘implementation deficit’ of European directives, that is, whether enough effort was put by Member States to “make European policies work” (Siedentopf and Ziller 1988). “Whereas progress at the legislative stage was impressive, Member States’ compliance with the programme turned out to be poor” (Mastenbroek 2005, 1104). While some Member States, such as the United Kingdom, have traditionally been rather successful in implementing EU legislation, others like Italy and France are often criticized and brought to Court by the European Commission, under Article 259 TFEU, for failing to correctly implement a directive. The problem, in academic terms, is to explain the differentiated compliance among Member States in implementing the agreed measures into their legislative corpus.

As Mastenbroek argues, “the first wave of scholarship on EU compliance was highly variegated”, lacking “strong theoretical frameworks, combining insights from implementation research, international relations theory and legal studies” (2005, 1104).

Many explicative factors were put forward or tested, but they revolved around the problem of institutional efficiency (Treib 2008, 1). These include the national constitutional characteristics (Krislov et al. 1986), the complexity of directives (Weiler 1992), the complexity of the existing national laws (Collins and Earnshaw 1992) and gold-plating (Dimitrakopoulos 2001). A new wave of research called the “goodness of fit” took the lead in the late 1990s. It sought to explain the diverging impact the EU had on its Member states and came to be included within the broader field of studies on Europeanization (Héritier 1995, 2001). Rooted in neo-institutionalist theory, it moved from institutional efficiency to institutional compatibility. Indeed, these scholars “pointed to the degree of fit or misfit between European rules and existing institutional and regulatory traditions as one of the central factors determining implementation performance” (Treib 2008, 8). “The argument is that in cases of high adaptation pressure, implementation of European requirements is likely to be ineffective, since European policies require fundamental changes of core structures and practices of national institutions” (Haverland 2000, 84). Yet, various empirical studies have later shown disappointing results for the goodness of fit hypothesis (see Haverland 2000; Mastebroek and Keulen 2006). For instance, Knill and Lenschow (1998) show that compliance with four environmental directives were implemented rather well by the United Kingdom even though this implied major changes to existing institutions, while Germany had great difficulties implementing even incremental changes despite an almost perfect fit. These empirical studies highlight that “a good fit is neither a necessary nor a sufficient condition for smooth compliance” (Mastebroek 2005, 1109). One reason

could be that the goodness of fit posits a dubious and static appetite among national actors for keeping the status-quo (Treib 2003).

A more promising, constructivist approach is modeled along the lines of sociological institutionalism. Compliance is theorized “as a process of substantive assessment of international rules in the face of pre-existing domestic norms and beliefs” (Mastenbroek 2005, 1112). It is therefore not measured in binary and static terms (compliant or not compliant) but rather looks “to see *how* European norms relate and interact with different domestic norms” (Dimitrova and Rhinard 2005, 2). “Such studies start from the assumption that a rule will be complied with if it is deemed appropriate by the stakeholders. If not, compliance will not be automatic and hence more time-consuming and dependent on a process whereby the rule becomes internalized through socialization, persuasion, or learning” (Mastenbroek 2005, 1112).

How can measure if norms are deemed appropriate by stakeholders? Realist scholars argue that a recurring problem with studies that emphasize the centrality of norms in world politics is that they understate – some say completely neglect – the importance of power in response to those norms. They claim that states react selfishly according to national interest and therefore that compliance with norms depends heavily on state preference. Liberals usually concur that power is important in determining the outcome of state behavior, but they argue that the national preference is not a natural fact waiting to be discovered, but rather the result of domestic political battles – those who are at the top have a decisive influence on the behavior of a state in world politics. Within this liberal conception of politics, the state is not an actor but rather an institution that balances the diverging interests of its constituents in order to create policy out of

contradicting claims. As Moravcsik (1997) argues, “representative institutions and practices constitute the critical ‘transmission belt’ by which the preferences and social power of individuals and groups are translated into state policy”. This is not to say that all individuals and interest groups have an equal influence on state policy, like orthodox pluralists would argue: “No government rests on universal or unbiased political representation; every government represents some individuals and groups more fully than others”. Therefore if the ENP framework is to succeed, the decisive phase of implementation is in the hands of the national leadership. As Treib writes, “national political processes have a logic of their own and [...] national political actors play a crucial role” (Treib 2003, 4).

Indeed, domestic political battles have affected both countries’ ability and willingness to implement international norms into their legal framework. Cooperation of Moldova and Ukraine with the EU is determined in large part by the extent to which ruling parties and politicians are pro-reform and EU-minded. In fact since independence, the main ideological divide in both countries has been between nationalist/pro-European and communist/pro-Russian parties. “Communist and nationalists opposed each other on such key political issues as the independence of Ukraine and Moldova, foreign policy orientation, and language and privatization policies” (Katchanovski 2006, 67). Although communist parties in Moldova and Ukraine accepted market reforms and the role of private property, they refused at least in principle the idea of mass-privatization. Nationalists were mostly liberals in the European sense and supported comprehensive reforms towards free-market. We argue that whereas both Ukraine and Moldova have experienced stalemate in their transition process, such deadlocks have been greater and

longer when communist/pro-Russian parties were in power, and that has happened mostly in Moldova.

Since achieving independence, Ukraine has sought to establish a post-Soviet identity. During forty years, most of Ukraine's identity was informed by the security dimension of the Cold War confrontation, and the collapse of the Soviet Union discredited the ideology which had been inspiring Ukrainian politics since the October Revolution. While the trajectory towards Europe since independence has not been linear, "a consensus has been built around the idea of Europe as the fulfillment of Ukraine's post-Soviet aspirations: a strong market economy, domestic stability, regional peace and security, democratic values, social progress and high standards of living" (Mychajlynszyn 2008, 31).

During the tenure of Leonid Kravchuk (1991-1994), Ukraine's first president after independence, the country started to redefine its identity in non-Soviet terms and closer to Europe. In January 1992, Ukraine became member of the Conference on Security and Co-operation in Europe, what would later become the Organization for Security and Co-operation in Europe (OSCE). Ukraine also became the first post-Soviet state to sign the Partnership for Peace, a bilateral forum where former Cold War adversaries could pursue activities with NATO on defense cooperation, such as military exercises and joint seminars. Under Leonid Kuchma (1994-2004), Ukraine engaged decisively with Europe. At first it seemed like the incumbent Kravchuk was keener to lean towards the West while Kuchma wanted to keep the historical ties with the former imperial power. Indeed, Kuchma signed in May 1997 the Treaty of Friendship and Cooperation with Russia. Yet, the European dimension of the Ukrainian identity was not forgotten. Ukraine under Kuchma invited the OSCE to establish a mandate in order to resolve the political status of

Crimea. And between 1997 and 1998 it agreed to various treaties with NATO, including the NATO-Ukraine Charter on a Distinctive Partnership, the opening in Kiev of the NATO Information and Documentation Center, and the NATO-Ukraine Commission. During Kuchma's administration however, relations with Europe advanced only when they did not hurt the relation with Russia: "security relations with European institutions and the subsequent impact on the European dimension in Ukraine's identity were pursued only insofar as they did not undermine the Ukraine-Russia relationship" (Mychajlynszyn 2008, 32).

"If Kuchma's administration was a period of either/or in Ukraine's post-Soviet identity, the election of Viktor Yushchenko in the controversial 2004 presidential election harkened an era of 'Europe and Russia'" (Mychajlynszyn 2008, 32). It highlighted a wish to maintain both orientations in Ukraine's post-Soviet identity. "Time passed and discussions among policy-makers and analysts about Ukraine post-Soviet identity has moved away from the divisive dichotomous nature of 'either Europe or Russia' perspective to one that acknowledges Ukraine's integration of Europe and Russia" (Mychajlynszyn 2008, 32). In 2004, "the role of external actors in the Orange revolution is frequently overestimated", yet "there was a strong sense that Yushchenko was the favored candidate of the West". "Russia did not trouble to hide its preference: it was for Yakunovich, pure and simple" (Copsey 2010, 35). For Russia, the Ukrainian election of 2004 was of significant geopolitical and strategic interest. "It is a well-know aphorism that with Ukraine, Russia becomes an empire, and moreover, that the origins of the Russian empire lie to a great extent in the conquest and colonization of Ukraine and its victory over Poland-Lithuania for influence in that region". Therefore, "Ukraine was a

crucial test of Russia's foreign policy and its ability to exercise decisive influence over its former empire. As such the outcome of the presidential election was a near-unmitigated disaster" (Copsey 2010, 35).

In Moldova like in Ukraine, the difficulty of implementing pro-European reforms has much to do with domestic political battles between nationalists and communists. The difference is that the broad Ukrainian consensus towards Europe is not shared in Moldova. In fact since independence, Moldova has been ruled either by weak nationalist leaders or by pro-Russian communists. In 1990 as the leader of the nationalist Popular Front, Mircea Snegur was elected President of the Soviet Republic of Moldova. As a moderate, he eventually split from his party over his opposition to the reunification with Romania, a demand he considered too radical. He nevertheless became the first President of the newly independent republic in 1991. And in 1993 and 1994, shortly after the Transnistrian war, President Snegur sent letters to the European Commission "urging the EU to develop a framework for relations with Moldova" (Roper 2008, 85). The EU was not very receptive, considering that war was still being fought in the former Yugoslavia. In 1994, after the Democratic Agrarian Party (pro-Russian communists) captured an absolute majority of seats during the parliamentary elections, President Snegur had no choice but to realign Moldova's foreign policy towards Russia while neglecting Romania and most of Europe. Moldova then joined the Community of Independent States (CIS), although not its military component.

At the subsequent presidential election in 1996, Snegur was defeated in a runoff against Petru Lucinschi, the speaker of the Parliament and former first secretary of the Communist party. Lucinschi did not fare much better, having to face a very hostile

Parliament and dismiss various pro-Western prime ministers. Trying to get through with a plebiscite, Lecinschi proposed a referendum that would have strengthened the executive. His attempt did not work out when the Electoral Commission declared that the number of voters did not exceed the minimum threshold required of 60%. A weakened leader, he could not do much when in 2000, Parliament abolished against his will direct elections of the President. Moldova became a parliamentary republic in which the President was elected by a vote of 2/3 of the Parliament. Mazo (2004) argues that the establishment of a parliamentary system with the abolishment of direct presidential elections allowed one party to control all branches of power and brought the end of democracy. While this is a bit exaggerated, it is true that the switch to a parliamentary system removed many checks and balances within the institutions.

Several communist parties emerged as possible successors of the Soviet Communist Party of Moldova. The most organized was the Party of Communists of the Republic of Moldova (PCRM), which won 50,75% of the vote 71 out of 101 seats in the Parliament at the 25 February 2001 elections. It had no trouble electing its leader, Vladimir Voronin as President. The PCRM became the first unreformed communist party to be democratically elected in the post-Soviet space since the fall of the Berlin wall (Kennedy 2010). Voronin was then re-elected in 2005 within the red-orange coalition, with support from the arch-rivals of the PCRM, the Christian Democratic People's Party (CDPC). After the Russian wine import ban of 2006, Moldova tried to reorient its exports towards the EU and away from Russia. Yet most economic links remained with CIS countries. Moldova intended to stay clear of Russian-dominated multilateral institutions, such as the Common Economic Space, a trade organization comprising Belarus, Kazakhstan, Russia and Ukraine. But

“the continuing presence of Russian troops on Moldovan soil provided another important source of Russian leverage over Moldovan domestic and foreign policies” (Roper 2008, 85) “Just as the EU was divided in how to deal with southeastern Europe, Moldova elites were equally divided over whether to pursue a pro-European foreign policy or a pro-Russian one. Ultimately, the results of the parliamentary election in 2001 indicated a triumph for those who wanted closer cooperation with Russia” (Roper 2008, 85).

Conclusion

Why do states comply with the norms embedded in international institutions? “Scholars have proposed two competing answers to this compliance puzzle, one rationalist, the other constructivist. Rationalists emphasize coercion, cost-benefit calculations, and material incentives, whereas constructivists emphasize social learning, socialization, and social norms. Although both schools explain important aspects of compliance, the challenge is to build bridges between them” (Checkel 2001). This dissertation lies within this inter-paradigm debate and contributes to create such a bridge by exposing the determinants of compliance with norms in the framework of ENP.

We demonstrate that the normative behavior of the EU in the international arena is due to the centrality of norms that permeate its own construction. This is the case because the Court gave EU treaties a quasi-constitutional value, and because post-war EU history is characterized by an aversion to power politics. In the EU, the predictability of law has come to tame sovereignty’s most erratic behavior, both in domestic affairs and in relations with third countries. A notable and successful example is the enlargement process, whereby aspiring candidates are asked to implement the *acquis communautaire* into their national legislation in order to accede to the bloc. The most common explanations for the compliance motivations of EU candidates are those that emphasize the rational response to the incentive of membership.

Early scholarly literature on ENP has highlighted that countries were less likely to comply with norms in the absence of a membership perspective. What had been neglected until now – and the gap this dissertation fills – is that even among countries without membership perspective, there is an uneven level of compliance with norms. On

a theoretical level, the preliminary conclusions we can draw are twofold: while rationalist arguments focusing on direct responses to incentives explain in large part the mitigated success of ENP compared with the clear modes of influence witnessed during the previous enlargement rounds, they fail to account for differences among ENP countries. This suggests that other factors are at work, unrelated to the design of the policy.

We find that Moldova experiences more difficulty than Ukraine in complying with EU norms in the field of JHA. A compelling explanation for the differentiated integration of the *acquis communautaire* must be sought in the domestic realm of neighbouring countries. The first variable, *contested state identities*, draws clearly from constructivism and the literature on socialization processes, by focusing on ideational and identificational parameters. The second variable stresses a more rational type of argument, focusing on power in response to norms. Among these two factors, it would be both difficult and premature to identify which one is the most significant in explaining differentiation. An eventual research program could test these variables on other ENP countries.

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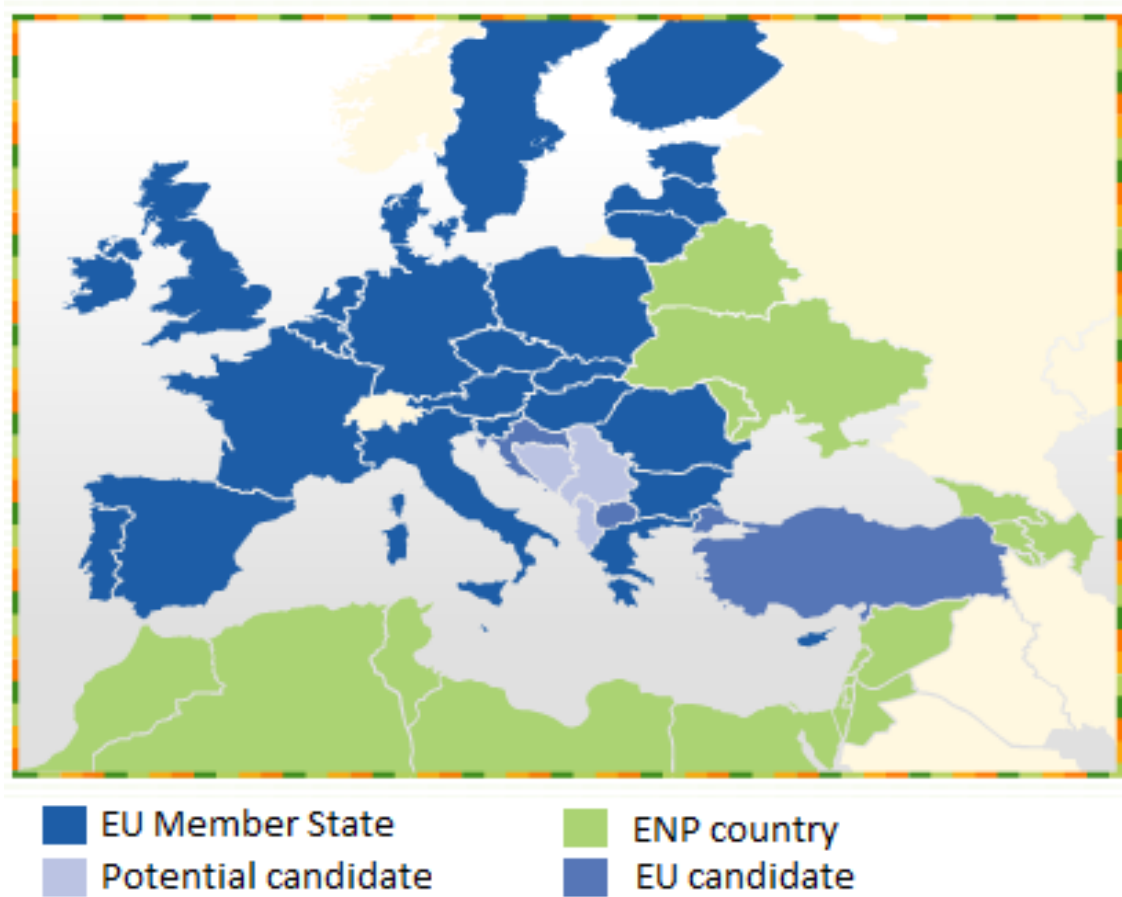
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Annexes

Figure 1: Political Map of the European Neighbourhood Policy



Source: European Commission. 2010. European Neighbourhood Policy. On line:
http://ec.europa.eu/world/enp/index_en.htm (page viewed October 10, 2010)

Table 1: Moldova Transit Ratings and Average Scores

	1999-2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Electoral Process	3.25	3.25	3.50	3.75	4.00	4.00	3.75	3.75	3.75	4.00
Civil Society	3.75	3.75	4.00	3.75	4.00	4.00	4.00	3.75	3.75	3.75
Independent Media	4.00	4.25	4.50	4.75	5.00	5.00	5.00	5.25	5.50	5.75
Governance*	4.50	4.50	4.75	5.25	5.50	n/a	n/a	n/a	n/a	n/a
National Democratic Governance	n/a	n/a	n/a	n/a	n/a	5.75	5.75	5.75	5.75	5.75
Local Democratic Governance	n/a	n/a	n/a	n/a	n/a	5.75	5.75	5.75	5.75	5.75
Judicial Framework and Independence	4.00	4.00	4.00	4.50	4.50	4.75	4.50	4.50	4.50	4.50
Corruption	6.00	6.00	6.25	6.25	6.25	6.25	6.00	6.00	6.00	6.00
Democracy Score	4.25	4.29	4.50	4.71	4.88	5.07	4.96	4.96	5.00	5.07

Source: Freedom House. 2009. Nations in Transit. On line: <http://www.freedomhouse.org/template.cfm?page=485> (page viewed November 11, 2010)

Table 2: Ukraine Transit Ratings and Average Scores

	1999-2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Electoral Process	3.50	4.00	4.50	4.00	4.25	3.50	3.25	3.00	3.00	3.50
Civil Society	4.00	3.75	3.75	3.50	3.75	3.00	2.75	2.75	2.75	2.75
Independent Media	5.00	5.25	5.50	5.50	5.50	4.75	3.75	3.75	3.50	3.50
Governance*	4.75	4.75	5.00	5.00	5.25	n/a	n/a	n/a	n/a	n/a
National Democratic Governance	n/a	n/a	n/a	n/a	n/a	5.00	4.50	4.75	4.75	5.00
Local Democratic Governance	n/a	n/a	n/a	n/a	n/a	5.25	5.25	5.25	5.25	5.25
Judicial Framework and Independence	4.50	4.50	4.75	4.50	4.75	4.25	4.25	4.50	4.75	5.00
Corruption	6.00	6.00	6.00	5.75	5.75	5.75	5.75	5.75	5.75	5.75
Democracy Score	4.63	4.71	4.92	4.71	4.88	4.50	4.21	4.25	4.25	4.39

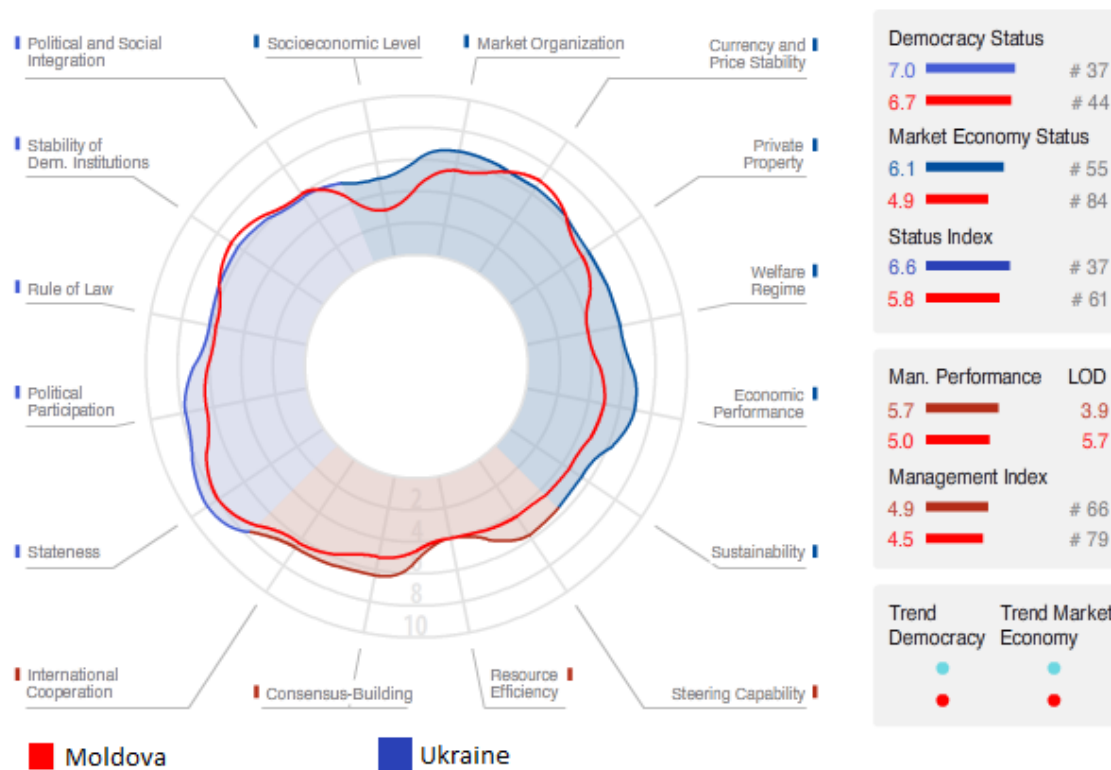
* Starting with the 2005 edition, Freedom House introduced separate analysis and ratings for national democratic governance and local democratic governance to provide readers with more detailed and nuanced analysis of these two important subjects.

NOTE: The ratings reflect the consensus of Freedom House, its academic advisers, and the author(s) of this report. The opinions expressed in this report are those of the author(s). The ratings are based on a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest. The Democracy Score is an average of ratings for the categories tracked in a given year.

Source: Freedom House. 2009. Nations in Transit. On line:

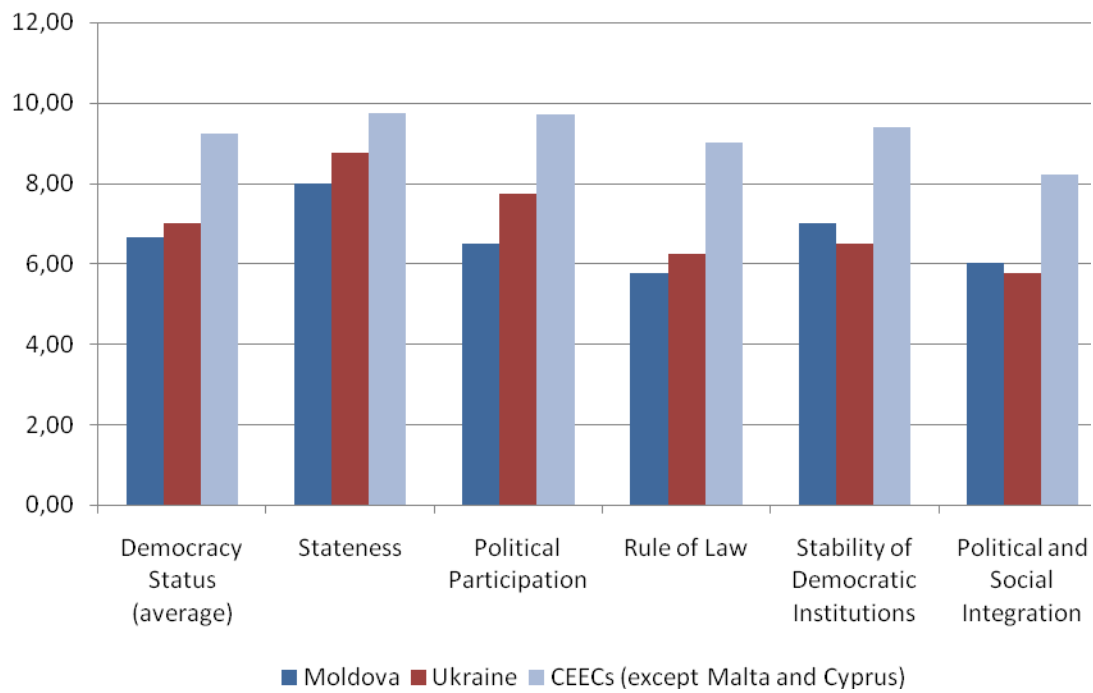
<http://www.freedomhouse.org/template.cfm?page=485> (page viewed November 11, 2010)

Figure 2: Transformation towards democracy and market economy in Moldova and Ukraine, where 10 is the highest



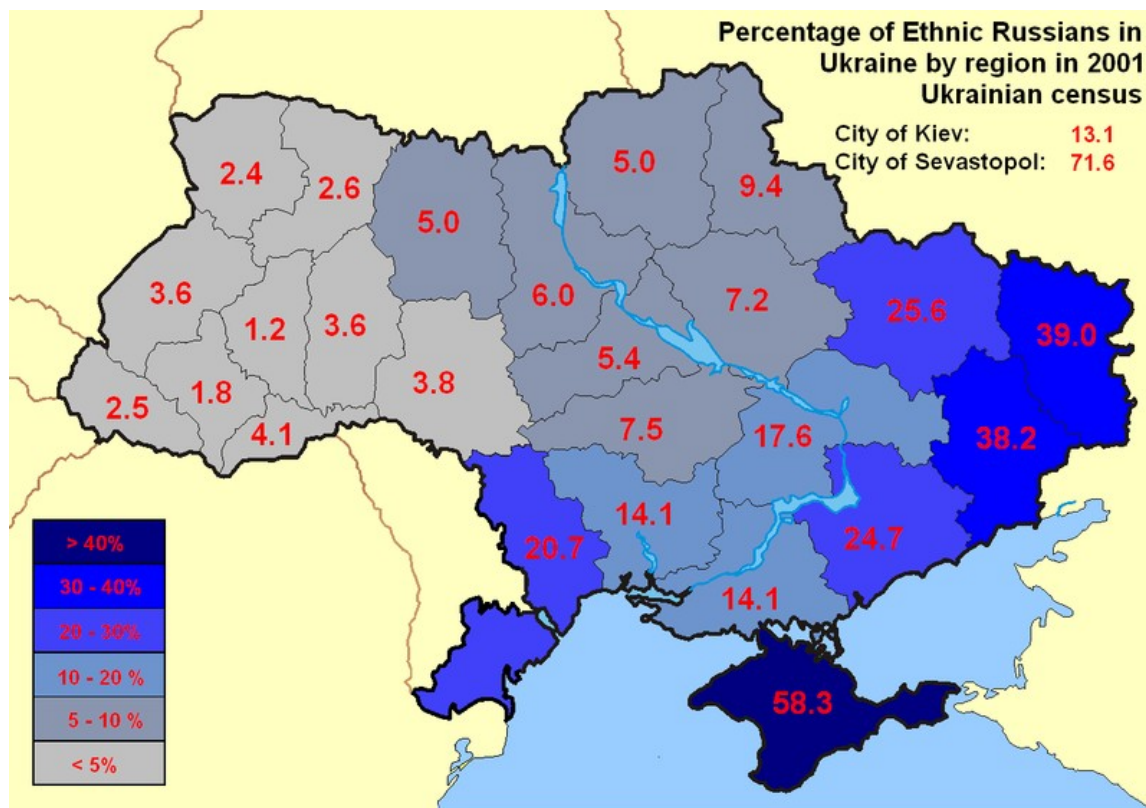
Source: BTI Transformation Index Atlas. 2010. Online: <http://www.bertelsmann-transformation-index.de/en/bti/atlas/>

Figure 3: Transformation towards democracy in Moldova, Ukraine and the CEECs (except Malta and Cyprus)



Source: Adapted from BTI Transformation Index. 2010. Status of Democracy and Market Economy. Online: <http://www.bertelsmann-transformation-index.de/en/bti/ranking/>

Figure 4: Percentage of ethnic Russians in Ukraine by region in the 2001 Ukrainian census

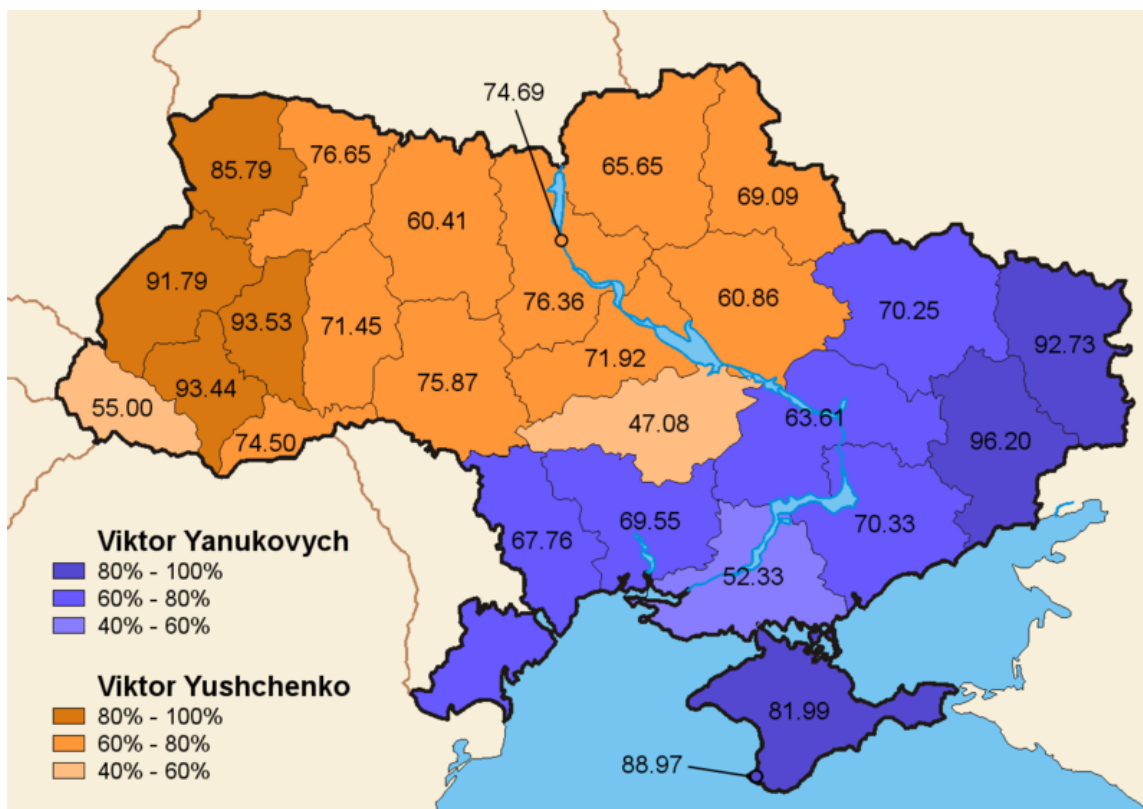


Source: Kazak, K. 2007. *Map of ethnic Russians in Ukraine, based on the 2001*

Ukrainian census, as a proportion of each region. Online:

http://commons.wikimedia.org/wiki/File:Russians_Ukraine_2001.PNG

Figure 5: Ukraine political map of the 2004 presidential election



Source: Adapted from Wikimedia commons.

http://commons.wikimedia.org/wiki/File:Ukraine_ElectionsMap_Nov2004.png

Table 3: Results of the December 26, 2004 Repeat Presidential Election in Ukraine

Candidate	Number of votes	% of vote
Viktor Yushchenko	15,115,712	52
Viktor Yanukovich	12,848,528	44

Source: <http://electionresources.org/ua/president.php?election=2004>

Table 4: Results of the March 26, 2006 Parliamentary Election in Ukraine

Party	Votes	%	Seats
Party of Regions	8,148,745	32.1	186
Bloc of Yulia Tymoshenko	5,652,876	22.3	129
Bloc "Our Ukraine"	3,539,140	14.0	81
Socialist Party of Ukraine	1,444,224	5.7	33
Communist Party of Ukraine	929,591	3.7	21
People's Opposition Bloc of Natalia Vitrenko	743,704	2.9	0
Bloc of Lytvyn	619,905	2.4	0
Others	3,332,330	13.1	0

Source: <http://www.electionguide.org/results.php?ID=984>

Table 5: Result of the September 30, 2007 Parliamentary Election in Ukraine

Party	Votes	%	Seats
Party of Regions	8,013,895	34.4	175
Bloc of Yulia Tymoshenko	7,162,193	30.7	156
Bloc "Our Ukraine - People's Self Defense"	3,301,282	14.2	72
Communist Party of Ukraine	1,257,291	5.4	27
Bloc of Lytvyn	924,538	4.0	20
Socialist Party of Ukraine	668,234	2.9	0
Progressive Socialist Party of Ukraine	309,008	1.3	0
Others	661,928	2.8	0

Source: <http://electionresources.org/ua/deputies.php?election=2007>

Table 6: Result of the February 7, 2010 Presidential Election in Ukraine (second round)

Candidate	Votes	%
Viktor Yanukovich	12,481,266	49.0
Yulia Tymoshenko	11,593,357	45.5

Source: <http://electionresources.org/ua/president.php?election=2010>