EXPLAINING THE NEW INFLUENCE OF UKRAINIAN CIVIL SOCIETY

by

Jennifer L. Smith

Submitted in partial fulfilment of the requirements
for the degree of Master of Arts

at

Dalhousie University
Halifax, Nova Scotia
August 2016

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ABSTRACT

Ukrainian pro-democracy activism since Euromaidan has been called a "civic awakening," and civic coalitions have been credited with new strength and influence over the process of democratic reform. However, neither history nor theory predicts success for these groups: civil society was largely marginalized after the Colour Revolutions, and Ukraine remains a "competitive authoritarian" polity in which incumbents are strongly motivated to block democratic reforms. If this new civil society influence is real, it presents a puzzle: what accounts for this unexpected result?

This thesis offers case studies of two important democratic reforms enacted in 2015: political party financing and civil service reform. Using a process tracing analysis of available evidence, this thesis seeks to clarify the extent and character of civil society's new influence in post-Euromaidan Ukraine, and to identify the conditions and strategies that may be allowing activists to overcome the marginalization or co-optation that followed the Colour Revolutions.

List of Abbreviations Used

BPP	Bloc Petro Poroshenko
COE	Council of Europe
CSO	civil society organization
CVU	Committee of Voters of Ukraine
ENP(I)	European Neighbourhood Partnership (Instrument)
EU	European Union
GRECO	Group of States Against Corruption
IRF	International Renaissance Foundation
IRI	International Republican Institute
MFA	Macro-Finanical Assistance
NDI	National Democratic Institute
NED	National Endowment for Democracy
NGO	non-governmental organization
ODIHR	Office for Democratic Institutions and Human Rights (of the OSCE)
OSCE	Organisation for Security and Cooperation in Europe
RPR	Reanimation Package of Reforms
SIGMA	Support for Improvement in Government and Management
USAID	United States Agency for International Development
VLAP	Visa Liberalization Action Plan

ACKNOWLEDGEMENTS

I am grateful to the Social Sciences and Humanities Research Council of Canada, the Dalhousie European Union Centre of Excellence and Dalhousie University for supporting my studies.

CHAPTER 1: INTRODUCTION

1.1 THE PUZZLE OF CIVIL SOCIETY INFLUENCE AFTER EUROMAIDAN

The Colour Revolutions that swept Serbia, Georgia and Ukraine in the early 2000s were initially seen as democratic breakthroughs for countries that had made otherwise halting progress in their transition away from autocracy. Their success was largely ascribed to the emergence of a new and vibrant civil society. This optimism, however, did not outlast the decade. In Serbia, a movement heavily invested in its leader was fractured by his assassination and sidelined by a right-wing resurgence. In Georgia, the new regime absorbed many former activists, leaving few critical voices to counter the increasingly personalist direction of the government. In Ukraine, internal power struggles consumed the Orange Coalition and damaged its relationship with civic activists, while a reactionary backlash paralyzed and eventually overtook the parliament and the presidency. The civil society that had displayed impressive convening power during mass protests across the region was largely marginalized during the brief windows of reform that followed.

This loss of influence is consistent with theory. The leading theory of post-Soviet hybrid democracies predicts that although democratic institutions and competitive elections are the primary means of gaining power, incumbents will revert to authoritarian strategies to retain this power.[1] Even reform-minded governments, caught in this self-perpetuating system of competitive authoritarianism, see little value in working with civil society, and reformers within government and outside it lose popular support as they fail to deliver on their promises.[2] Post-Soviet civil society also battles a legacy of repression and non-participation. Neither experience nor theory bodes well for civic activists hoping to cement lasting change after protests have ended.

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[1] Steven Levitsky and Lucan Way, "The Rise of Competitive Authoritarianism," Journal of Democracy 13(2) (2002); also, *Competitive Authoritarianism: Hybrid Regimes After the Cold War* (Cambridge: Cambridge University Press, 2010).

[2] Timm Beichelt and Wolfgang Merkel, "Civil Society Functions and Transition," in *Civil Society and Democracy Promotion*, ed. Timm Beichelt et al. (Basingstoke: Palgrave Macmillan, 2014), 49.

Since Ukraine's Euromaidan, however, a different narrative has emerged. New civic initiatives have been described as "the first on this scale in the 25 years of Ukraine's independence."[3] The citizen movement that grew out of the protests on Kyiv's *Maidan Nezalezhnosti* (Independence Square) is said to be "larger, more confident and more capable" than after the Orange Revolution,[4] and to have "shown itself to be an independent political player, creating new demands for both the parliamentary opposition and the government."[5] Rather than being marginalized, civic groups seem to be taking their place in the reform process and even setting the agenda.

More sceptical views can also be found, expressing growing disillusionment with the governing coalition, the presidency and the reform project as a whole. This narrative holds that Western actors have been too quick to champion "'reforms' that haven't happened and 'progress' that hasn't been achieved"[6] despite the appearance of an active civil society.

The pressure to demonstrate results to funders and the desire to validate the government's branded statement that "Ukraine is changing" encourage some actors to make broad claims, unsupported by evidence, about the new influence of civil society. Furthermore, these claims tell us little about the precise strategies that may have led to greater influence. The question remains open: is the narrative of a newly-influential civil society in Ukraine—a "civic awakening"[7]—real, or is it hyperbole? If the former, this represents a departure from both theory and experience. It also presents a puzzle: what accounts for this unexpected result?

Civil society can perform many roles in a democracy, and there are many ways to measure its effectiveness. This thesis will address one of the essential tests of civil

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[3] Sergiy Solodkyy and Vitaliy Sharlay, *How Could the EU Accelerate Reforms in Ukraine?* (Kyiv: World Policy Institute and Reanimation Package of Reforms, 2015)
[4] John Lough and Iryna Solonenko, *Can Ukraine Achieve a Reform Breakthrough?* (London: The Royal Institute of International Affairs, 2016).
[5] Natalia Shapovalova, *Ukraine's new pro-democracy movement* (Madrid: FRIDE, 2014).
[6] "Monopoly on power," *Kyiv Post*, June 27, 2016, http://www.kyivpost.com/article/opinion/editorial/monopoly-on-power-417073.html
[7] Kateryna Pishchikova and Olesia Ogryzko, *Civic Awakening: The Impact of Euromaidan on Ukraine's Politics and Society* (Madrid: FRIDE, 2014).

society strength, namely influence over policy making.[8] The research question can be stated as follows: *Are civil society activists in Ukraine exerting new influence over the course of democratic reform? If so, what is the character of this influence and what conditions and strategies have enabled it?* In particular, the case studies that follow are concerned with democratic reform initiatives most likely to come into direct conflict with the interests of incumbents in a competitive authoritarian system. They therefore constitute a difficult test of civil society influence.

Ukraine's reform agenda is ambitious and ongoing: pronouncements on the overall impact of civil society on the quality of Ukraine's democracy would be premature. Negative assessments of the pace and scope of Ukraine's reform process abound, but there have also been successes which offer an opportunity to examine the mechanisms of change even as the process unfolds.

However, civil society is not the only actor credited with contributing to these instances of reform success. Such successes present instances of equifinality: the possibility of multiple causal paths to the same outcome.[9] This is particularly the case for reforms that are advocated by more than one actor. Identifying the impact of civil society requires separating this impact from other factors that could conceivably contribute to the outcome of successful democratic reforms. The most important of these are a) a change in the orientation of political elites and b) external conditionality.[10]

The analysis that follows begins with the assumption that change in Ukraine's essential power structures and the orientation of its elites has been at best incremental. Several indicators support this assumption. Ukraine's system of political parties remains largely unchanged in form and function; a powerful oligarchy remains in place and exerts

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[8] Larry Diamond, "Rethinking Civil Society: Toward Democratic Consolidation," *Journal of Democracy* 5(3) (1994): 106.

[9] Kyriakos Moumoutzis and Sotirios Zartaloudis, "Europeanization Mechanisms and Process Tracing: a Template for Empirical Research," *Journal of Common Market Studies* 54(2) (2016): 345.

[10] This triad of factors is found throughout the literature on Ukrainian politics and reform. Kuzio, Sushko, and Bratu all conclude that a shift in the mentality of oligarchs is unlikely at present, and that pressure from civil society and external actors are the two most relevant factors. Taras Kuzio, "Soviet Conspiracy Theories And Political Culture In Ukraine: Understanding Viktor Yanukovych And The Party Of Regions," *Communist and Post-Communist Studies* 44 (2011); Oleksandr Sushko, *Reforming Ukraine: Policymaking after the Euromaidan* (Kyiv: PONARS, 2015); Roxana Bratu, *Case Study Report on Control of Corruption and EU Funds in Ukraine* (London: University College London, 2016).

strong influence over political decision-making; and both domestic and external observers regularly cite a lack of political will on the part of incumbents to enact democratic reforms. While the new president and the two governments that have been formed since 2014 have been described as ambivalently or partially reformist, they have also regularly come into conflict with civic activists on those reforms most likely to undermine their incumbent advantage. A common refrain of civic activists is that "the system resists, the system is trying to play by the old rules."[11] Empirical evidence for this assumption is discussed further below. In short, the same incentives and veto players that frustrated previous attempts at reform persist. Ukraine remains a competitive authoritarian system, and few, if any, impartial analysts cite a more democratic political establishment as a driver of reform success.

International organizations, on the other hand, are prominent actors in the reform process. External players—notably the International Monetary Fund (IMF) and the European Union (EU) have negotiated agreements with Ukraine that demand reforms in exchange for financial aid and other benefits. While they have reserved their strictest conditionality for market reforms, both also demand progress towards deeper democracy. Though fundamentally an instrument of trade liberalization, the EU-Ukraine Association Agreement calls for "respect for democratic principles, the rule of law and good governance…and to contribute to consolidating domestic political reforms."[12]

It can be difficult to disentangle the influence of the EU from that of civil society on issues where policy demands of both coincide, but to do so is vital to measuring the real impact of civil society. The research question of this thesis can therefore be made even more specific: *are these instances of democratic reform success attributable primarily to EU conditionality, to civil society influence, or to an interplay of the two? If the latter, what is the nature of each participant's role?*

I will argue that well-resourced, experienced, and connected civil society organizations have been gaining strength since *before* Euromaidan, and are indeed capable of exerting influence over the direction of democratic reform. Although

[11] CentreUA. *Public Report 2015* (Kyiv: CentreUA, 2015), 4.
[12] EU-Ukraine Association Agreement Art. 4.1.e

conditionality has played a role in each of these cases, civil society has contributed to successful reforms in ways the EU cannot, by shaping the domestic agenda, participating intensively in policy formulation, and steering bills through parliament. The strategy of combining domestic advocacy and external conditionality is proving more effective than either could be alone.

I further suggest that the interplay between civic activism and conditionality represents a shift in the relationship between civil society and the EU. Rather than acting as auxiliaries to a reform agenda set by international actors, or being selectively empowered by the EU, Ukrainian activists are using their new European relationships to leverage outside pressure at critical points in the process, even shaping when and how the EU deploys its conditionality influence.

1.2 Theoretical Framework

The arguments of this thesis are couched within two theoretical frameworks. The first, competitive authoritarianism, originates from the field of comparative politics and offers a theory of the domestic political environment in which Ukrainian civil society must operate and in which the reform process unfolds. The second, conditionality, draws on institutionalist international relations theory and helps to explain how Ukraine's policy choices are shaped by the country's relationship with its most important external partner, the EU. These frameworks and their implications for my analysis are set out below.

1.2.1 Competitive Authoritarianism

Ukraine is one of a number of countries that shifted from authoritarianism to electoral democracy as the Soviet Union fell, joining the "third wave" of democratization worldwide. By the millennium, however, it had become increasingly clear that many of these countries were no longer making progress towards full democracy, and many showed signs of backsliding. A body of literature arose to explain political systems caught in this "grey zone" between autocracy and democracy.[13] Much of this literature

[13] The term applied by Thomas Carothers, in "Democracy Assistance: Political vs. Developmental," *Journal of Democracy* 20(1) (2009).

characterizes Ukraine as a *competitive authoritarian* regime, in which democratic institutions exist and regular, genuinely contested elections are the primary means of gaining power, but rules are regularly and seriously violated and playing fields are uneven.[14]

Ukraine's first governments following independence maintained a tenuous hold on power. Extensive privatization in the early 1990s had reduced the scope of state power over economic actors; presidents and governing coalitions held only weak control over the state's disparate regions and government departments; and a disorganized governing elite was subject to regular defections and internecine conflict. Improved state finances by the end of the 1990s furnished the resources for greater media and electoral interference, and incumbents gradually learned how to manipulate new democratic institutions. But while states like Belarus and Russia reverted to near-full authoritarianism, the net effect of weak incumbency and divided national identity in Ukraine has been to maintain "pluralism by default"—regular leadership turnover—even as leaders of all stripes resort to authoritarian strategies in an attempt to retain power.[15]

Competitive authoritarianism helps to explain why neither free and (procedurally) fair contested elections nor events such as the Orange Revolution and Euromaidan have led to lasting democratic opening in Ukraine, and why civil society struggles to influence policy even under ostensibly pro-reform governments. Competitive authoritarianism also offers a framework for understanding why the strategies that proved effective in previous waves of democratization have largely failed, and which ones might be more effective. These questions will be dealt with in further detail in Chapters 2 and 6.

Levitsky and Way's model of competitive authoritarianism also provides the criteria by which we can rule out systemic change as a driver of reform success. Competitive authoritarian regimes are distinguished from democracy by the presence of at least one of a) unfair elections, b) violation of civil liberties, or c) an uneven playing

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[14] Levitsky and Way, "The Rise of Competitive Authoritarianism" and *Competitive Authoritarianism*.
[15] Lucan Way, "Authoritarian State Building and the Sources of Regime Competitiveness in the Fourth Wave: The Cases of Belarus, Moldova, Russia, and Ukraine." *World Politics* 57(2) (2005). Haran, 2011 outlines the authoritarian strategies employed during both the Yanukovich and Yushchenko presidencies. Olexiy Haran, "From Viktor To Viktor: Democracy And Authoritarianism In Ukraine," *Demokratizatsiya*

field that gives significant resources to incumbents. On the first count, while organisations like the OSCE/ODIHR have declared Ukraine's elections to be generally free and fair, problems like vote-buying and unstable electoral legislation are still widespread. On the second, after being classified as "Free" from 2006-2011 in the Freedom House Freedom in the World report, Ukraine fell back to "Partly Free" and its scores have shown little change since. The report gives the country a present score of 3 (where 1>7) in the area of civil liberties and singles out problems in the highly politicized judiciary and procuracy.[16]

But Ukraine's deepest challenges lie in its skewed political playing field. One important contribution of Ukrainian civil society has been to expose the role of business groups (i.e. oligarchs) in politics. Ephemeral, personalist party-projects with murky financing and poorly-defined programs remain the norm.[17] Their short lifespan, lack of internal democracy and superficial programs means their connection to voters is weak. Ukraine's political parties function not as social interest aggregators but as vehicles for obtaining power.[18] Their weak institutionalization and volatile public support makes election winners unlikely to support democratic reforms that might require them to mount a substantive campaign or face defeat.[19] Oligarchs and political leaders (often one and the same) also retain significant power to influence media coverage of politics in favour of incumbents or their favoured candidates: a 2011 study found that four personalist business groups controlled 96% of Ukraine's terrestrial TV stations (the president himself has retained ownership of the Kanal 5 network despite an election promise to divest).[20] The current president has also appointed loyalists in key positions from the procuracy to the central bank to the prime ministership, tightening a monopoly on power and raising

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19(2) (2011).

[16] Freedom House, *Freedom in the World 2016* (Washington, DC: Freedom House, 2016).

[17] Another symptom is the phenomenon of "technical parties"—created by larger parties to gain seats on local electoral commissions—which persist despite the dismantling of the Party of Regions. See Nazar Boyko and Erik Herron, "The Effects Of Technical Parties And Partisan Election Management Bodies On Voting Outcomes," *Electoral Studies* 40 (2016).

[18] Kostyantyn Fedorenko, Olena Rybiy, and Andreas Umland, "The Ukrainian Party System Before And After The 2013-2014 Euromaidan," *Europe-Asia Studies* 68 (4) (2016).

[19] Sarah Birch, "Electoral Systems and Party Systems in Europe East and West," *Perspectives on European Politics and Society* 2(3) (2001).

[20] Natalya Ryabinska, "The Media Market And Media Ownership In Post-Communist Ukraine: Impact On Media Independence And Pluralism," *Problems of Post-Communism* 58(6) (2011), 8. Civic activists have recently pressed for media ownership transparency legislation.

concerns about use of state resources to tilt the political playing field. High-profile technocratic reformers have resigned, citing the impossibility of making change while facing pressure and opposition from the presidential administration and the president's business circle. Although it has vacillated between progress and regress since independence, Ukraine still fulfils the primary criteria of Levitsky and Way's framework, and incumbents still have strong incentive and ability to veto reforms that might erode their power.

The backdrop of competitive authoritarianism makes assertions about Ukraine's newly-influential civil society especially surprising. Because the case of Ukraine deviates from theory, it offers a chance to specify new variables and refine our understanding of the role of civil society in competitive authoritarian regimes. As a possible case of anomalous success, post-Euromaidan civil society may hold lessons for activists under other competitive authoritarian regimes, and for international actors who hope to support them.

1.2.2 Europeanization Through Conditionality

Conditionality—a bargaining strategy of reinforcement by reward under which the EU provides external incentives for a target government to comply with its conditions[21]—is a mechanism by which the EU exerts influence on the policies of states that aspire to a closer relationship with Europe. This thesis presumes (with good evidence) that conditionality is the most effective way for the EU to shape specific democratic reforms, and relies upon theories of the efficacy of conditionality in order to assess the role of the EU.

The notion of "normative power Europe" offers a starting point for understanding this influence. The EU can be seen as a new type of international actor, a promoter of norms which displace the Westphalian state as the centre of concern.[22] Manners'

[21] Frank Schimmelfennig and Ulrich Sedelmeier, "Governance By Conditionality: EU Rule Transfer To The Candidate Countries Of Central And Eastern Europe," *Journal of European Public Policy* 11(4) (2004), 662.
[22] Ian Manners, "Normative Power Europe: A Contradiction In Terms?," *Journal of Common Market Studies* 40(2) (2002): 236.

conception of "normative power Europe"[23] is founded on the centrality of human rights and the interdependent quality of the EU, features rooted in its unique history as a response to interstate conflict.[24] He identifies five core norms—peace, liberty, democracy, the rule of law, and respect for human rights and fundamental freedoms—found in the declarations and treaties of the EU. By reinforcing and expanding the reach of these norms, the EU pursues legitimacy and power beyond the realm of economic governance by defining "what passes for 'normal' in world politics."[25] The notion of normative power Europe explains *which* norms the EU extends and *why*. A further literature exists which examines *how* the EU achieves this in its accession and foreign policy.

The transformative power of the EU beyond member states has been credited mainly to the leverage generated by political conditionality. By setting the adoption of rules as conditions to be fulfilled if target countries are to gain rewards—such as financial assistance, institutional association, or membership—the EU has effectively induced countries to enact liberal norms.[26] Doing so entails costs for target governments: such norms may restrict the autonomy and power of existing leaders or adversely affect the interests of important stakeholders such as oligarchs. Building new institutions also has a material cost. These costs must be balanced by the "carrot" of tangible incentives. Conditionality is an essentially rational choice-based mechanism.[27]

The conditions for effective deployment of conditionality have been theorized by many scholars: I will draw on the criteria set out by Schimmelfennig and Sedelmeier. The first criterion in this theory is that conditions must be *determinate*: the more clear and formalized a rule, the greater the likelihood of its adoption. Determinancy provides

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[23] There are realist, critical theory, and other critiques of the concept of normative power, for example Helen Sjursen, "The EU As A 'Normative' Power: How Can This Be?," *Journal of European Public Policy* 13(2) (2006), and Ian Hyde-Price, "Normative Power Europe: A Contradiction In Terms?," *Journal of Common Market Studies* 40(2) (2002).

[24] Manners, "Normative Power Europe," 241.

[25] Manners, "Normative Power Europe," 253.

[26] Frank Schimmelfennig and Hanno Scholtz, "EU Democracy Promotion In The European Neighbourhood: Political Conditionality, Economic Development And Transnational Exchange," *European Union Politics* 9(2) (2008), 191.

[27] Schimmelfennig and Sedelmeier, "Governance by Conditionality;" Gergana Noutcheva, "Societal Empowerment And Europeanization: Revisiting The EU's Impact On Democratization," *Journal of Common Market Studies* 54(3) (2016).

information to governments, spelling out the precise steps needed to reap the promised reward. It also signals that there is little room for evasive interpretation. The effectiveness of rule transfer by conditionality also increases with the *size and speed of rewards*: smaller or more distant rewards will be less likely to motivate action than significant, imminent ones. Finally, both the promise of reward and the threat of withholding said reward must be *credible*. Credibility has two components: the EU should be capable of delivering on the reward, and the target state should be convinced that it will do so.

There are two other prominent frameworks for understanding the influence of the EU in the transfer of norms. The first is *network governance*. The European Neighbourhood Partnership (ENP), seen through this lens, provides a "roof over an expanding system of functional regional integration" in which relationships and policies converge through "soft" policy-making, formal and informal networks and coordination between agencies to extend the EU's regulatory and organizational boundaries. Lavanex calls this a structural/institutionalist theory. [28] On this basis, she argues, the success of the ENP should be greatest where interests converge and enforcement problems are low. This is most likely to be the case in areas of technical or functional cooperation. In the domain of "high politics," however, the EU would be expected to opt for conditionality and other hierarchical means of gaining influence. Norms of democracy are bound up with sensitive issues of identity, autonomy and power, and therefore fall into the category of policies most impervious to network governance.

A third mechanism of external Europeanization is *socialization*. The ideational impact of the EU on democratization has been modeled in a number of ways. Freyburg and Richter contrast the "logic of consequentialism" that underlies conditionality with a "logic of appropriateness" in which norms are assessed for their fit with a nation's self-identity.[29] Börzel and Risse differentiate between direct influence (promotion) or indirect influence (emulation). In addition to instrumental rationality such as conditionality, policies may be adopted on the basis of normative rationality (where

[28] Sandra Lavanex, "Integration Beyond Conditionality?," *Journal of European Public Policy* 15(6) (2008), 939.
[29] Tanya Freyburg and Solveig Richter, "National identity matters: the limited impact of EU political conditionality in the Western Balkans," *Journal of European Public Policy* 17(2) (2010).

actors have been socialized into adopting norms as part of a community) and communicative rationality (where actors deliberately argue and persuade). All of these mechanisms are employed by the EU in its relations with Eastern Neighbourhood countries.[30]

Western-oriented civil society activists in Ukraine have built close European relationships that facilitate diffusion of norms, as well as strategies and ways of working. At the level of Ukraine's political establishment, however, the evidence for social diffusion of democratic norms is weak or superficial. Romaniuk argues that the EU's capacity to spread democratic norms in the Eastern Neighbourhood, and in particular in Ukraine, has been overstated. This is because elites act as gatekeepers, regulating the extent to which these norms enter the political discourse[31] (although the Euromaidan movement may arguably represent a weakening of this power). Furthermore, normative pressure on Ukrainian elites has been exerted for years by external actors with little impact. Ukraine is an active member of both the Organisation for Security and Cooperation in Europe (OSCE) and the Council of Europe (COE), two organizations that exert influence primarily through social learning and moral pressure. A review of guidance from these organizations shows that the same concerns and policy recommendations have been raised for decades. Ukrainian leaders may be very conscious of the regard in which they are held by external actors, and may be motivated to shape a European identity, but this is has been more likely to affect their declarations than their actions.[32] Finally, socialization in most cases acts broadly on society, setting the context for all reforms, but it is not necessarily a useful way to explain why one reform might succeed while another might fail.

There is no doubt that the EU's ability to effectively deploy conditionality has met with challenges since previous enlargements, colliding with issues of national identity, accusations of vagueness, inconsistency and heavy-handedness, and "enlargement

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[30] Tanja Börzel and Thomas Rise, "From Europeanization to Diffusion," *West European Politics* 35(1) (2012), 10.
[31] Scott Nicholas Romaniak, "Not so wide, Europe: reconsidering the normative power of the EU in European foreign policy," *Romanian Journal of European Affairs* 10(2) (2010): 66.
[32] Tom Casier, "The EU's Two-Track Approach To Democracy Promotion: The Case Of Ukraine," *Democratization* 18(4) (2011); Bratu, *Corruption and EU funds in Ukraine*, 22.

fatigue" which has effectively removed the EU's most compelling offer—accession—as a credible reward in the near-term.[33] Nor is it useful to draw artificial distinctions: most of the above frameworks acknowledge that conditionality, governance and socialization can function together. There is evidence, however, that where the EU has focused on specific democratic reforms and institution-building, and where it has employed greater pragmatism and adaptability, it has continued to use conditionality to good effect in the Eastern Neighbourhood.[34] The core theory set out by Schimmelfennig and Sedelmeier remains relevant.[35] Of these three mechanisms—conditionality, governance and socialization—the evidence favours the former as being dominant in cases such as those analyzed below.

This thesis proceeds on the assumption that the strongest mechanism of policy influence available to the EU in present-day Ukraine, *especially at the level of proximate influence on specific reform decisions*, is conditionality, and that the effectiveness of this

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[33] Othon Anastasakis, "The EU's Political Conditionality In The Western Balkans: Towards A More Pragmatic Approach," *Southeast European and Black Sea Studies* 8(4) (2008); Judith Kelley, "New Wine in Old Wineskins: Promoting Political Reforms through the New European Neighbourhood Policies," *Journal of Common Market Studies* 44(1) (2006); Schimmelfennig and Schlotz, "EU Democracy Promotion." Youngs, 2009 offers an explanation of how the EU policy towards Ukraine has veered between strong support for the Orange Revolution (caused by "rhetorical entrapment" and geopolitical factors) but rejection of the membership perspective (due to "lowest common denominator" internal negotiation). Richard Youngs, "'A Door Neither Closed Nor Open': EU Policy Towards Ukraine During And Since The Orange Revolution," *International Politics* 46 (2009).

[34] Reinhard points out that because conditionality acts upon elites, not society, the effectiveness of non-accession conditionality in the Eastern Neighbourhood should be measured on the basis of policy outputs (legislation, institutions, i.e. the measures at hand in this thesis), not societal change. She also finds that conditionality based on lesser rewards than membership can be effective for securing the former, if not the later. This is similar to the argument of Casier, who differentiates between formal and substantive democratic progress. Burlyuk suggests that flexibility in conditionality in the Western Balkans has been a "virtue," achieving more sustainable results. Janine Reinhard, "EU Democracy Promotion Through Conditionality In Its Neighbourhood: The Temptation Of Membership Perspective Or Flexible Integration?," *Caucasian Review Of International Affairs* 4(3) (2010); Cassier, "The EU's Two-Track Approach;" Olga Burlyuk, "Variation In EU External Policies As A Virtue: EU Rule Of Law Promotion In The Neighbourhood," *Journal Of Common Market Studies* 53(3) (2015).

[35] Anastasakis, Burlyuk, Schimmelfennig and Simmons all conclude that this framework is still relevant. Schimmelfennig and Scholtz examine the process over 13 years in 36 countries, controlling for the effects of economic development and transnational exchanges. Their hypothesis—that the impact of the EU on democratization is a function of the size and credibility of conditionality—is largely borne out. Anastasakis, "The EU's Political Conditionality;" Burlyuk, "Variation In EU External Policies;" Frank Schimmelfennig, "EU Political Accession Conditionality After the 2004 Enlargement: Consistency and Effectiveness," *Journal of European Public Policy* 15(6) (2008); Peter Simmons, "The State of the Art in the EU Democracy Promotion Literature," *Journal of Contemporary European Research* 7(1) (2011); Schimmelfennig and Scholtz, "EU Democracy Promotion."

conditionality is determined first and foremost by the determinacy and credibility of the condition and the size and speed of the reward.

1.3 Approach and methodology

This thesis will seek to better understand the influence of civil society in present-day Ukraine through an analysis of two prominent cases of reform success using the methodological framework of process tracing—the use of evidence from within a case to make inferences about causal explanations of that case.[36]

Establishing causation in the process of Europeanization is notoriously difficult, particularly so when the objective is to establish relationships between non-binding EU stimuli and changes in national policy.[37] Quantitative methods that seek to establish a relationship between a dependent and independent variable across multiple cases are not appropriate for establishing causation in cases of equifinality, i.e. where a convergence of several stimuli—EU pressure, civil society pressure, etc.—may each have produced the same results. Process tracing has been proposed (but less frequently rigorously applied) as an appropriate methodology in such cases. As a within-case, qualitative method, process tracing makes it possible to distinguish the mechanism that has produced a particular policy change by enumerating the intervening steps between cause and effect.[38]

Where the suggestion of process tracing is invoked in studies of Europeanization, it has often been followed by what amounts to detailed historical description. However, this methodology is most effective when theoretically predicted explanations are rendered more formal and deductive, then tested against available evidence.[39] The process of collecting evidence should be structured based on diagnostic markers whose presence or absence can confirm or disconfirm alternative explanations.[40] Bayesian rules of logic can

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[36] Andrew Bennett and Jeffrey Checkel, *Process Tracing: From Metaphor to Analytic Tool* (Cambridge: Cambridge University Press, 2015), 4.
[37] Moumoutzis and Zartaloudis, "Europeanization Mechanisms," 337.
[38] Moumoutzis and Zartaloudis, "Europeanization Mechanisms," 346.
[39] Bennett and Checkel, *Process Tracing*, 18.
[40] Andrew Bennett, "Process Tracing and Causal Inference," in *Rethinking Social Inquiry: Diverse Tools, Shared Standards*, ed. H.E. Brady and D. Collier (Lanham: Rowman and Littlefield Publishers, 2010), 207-20.

be used to further "discipline our conjectures" by specifying the significance of each piece of evidence.[41]

Drawing on documentary sources like media reports, public statements, meeting transcripts and official documents, the following study will seek to test the hypothesis that Ukrainian civil society is exerting new influence on democratic reform by hypothesizing, then searching for, expected markers of such an impact. In the course of accumulating a "thick description" of this process, I hope to also gain insights into the strategies and conditions that may have contributed to civil society success.

A number of best practices can bring more rigour to the use of process tracing. One of these is the importance of thoroughly considering alternative explanations. This study will therefore also evaluate the evidence for EU influence, as the leading alternative explanation, on these cases of reform success. Specifically, I will assess the presence of evidence that would be predicted by theory if EU conditionality was the primary driver for the adoption of these reforms.

Process tracing can also have an inductive element. The apparently anomalous case of present-day Ukraine presents an opportunity to revisit the theories that would predict a disempowered civil society, and to examine the under-theorized interaction between the EU and civil society. Once the two main competing explanations have been analyzed I will turn to discussion of the implications of these results for existing theory and suggest new factors and interactions indicated by the "soaking and poking" of these cases, particularly in the area of civil society influence on the EU's use of its strongest source of influence, conditionality.

The two cases analyzed in this thesis have been selected for their comparability, their prominence, and their relatively transparent paths. Both represent instances of

[41] Bennett and Checkel, *Process Tracing*, 276. In short, according to Bayesian logic there are four main types of evidence (the following is based on Bennett, 2015 and Collier, 2011). They are the hoop test (a test in which the likelihood of passing the test if the theory is true must be higher than the likelihood of passing it if the test is false); the smoking gun (in which the likelihood of passing the test must be much lower if the theory is false than if it is true), the straw-in-the-wind test (evidence that supports the hypothesis but is not essential to its validity and does not disconfirm other explanations), and the doubly-decisive test (which definitively confirms the hypothesis and disconfirms all others). Bennett, "Process tracing;" David Collier, "Understanding process tracing," Political Science and Politics 44(4) (2011).

successful reform; both have long been advocated by democratic reformers with limited success until now; and both were established as priorities of civic coalitions in the immediate aftermath of Euromaidan. And while both were considered to be significant "wins"—perhaps the two most important thus far—their complexity meant that they did not invite the degree of populist posturing which complicates the analysis of some other reforms (such as, for example, decentralization, which touches on issues of national unity, or lustration, which offers the possibility of retribution and a purge of communist functionaries). Both cases are also instances of convergent positions, if not priorities, between Ukrainian civil society and the EU, and can illuminate the coordination that has taken place between the two actors.

1.4 LIMITATIONS

This project includes some clear caveats and limitations. First, it must be acknowledged that only a small segment of Ukraine's new civic activism is focused on policy and legislative reform. An unprecedented number of Ukrainians participated in the protests on the Maidan, and have contributed time or funds to the military operation in the Donbas and the effort to resettle internally displaced persons.[42] Their support has given rise to a thriving network of CSOs devoted to service delivery (and some to more illiberal ends) with important and complex implications for changing notions of civic participation in Ukraine. However, these organizations tend not to engage in the policy process and are therefore beyond the scope of this thesis. For reasons of readability, from this point onward use of the term "civil society" without qualifiers should be taken to refer to institutionalized groups engaged in democratic reform. As the next chapter will show, this focus on organized, institutionalized civic activist coalitions represents a particularly Western notion of civil society and one that excludes many other types of civic participation. Nevertheless, this type of activism is vital to creating systemic change. It is, therefore, an important object of research.

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[42] Rosaria Puglisi, *A People's Army: Civil Society as a Security Actor in Post-Maidan Ukraine* (Rome: Instituto Affari Internazionali, 2015); Pact, *Citizen's awareness and engagement of civil society: results of research conducted during November 2015-January 2016* (Kyiv: Pact, 2016).

Secondly, the passage of legislation measures progress towards *procedural* democracy but says little about the status of *substantive* democracy, nor does it speak to the implementation, enforcement and irreversibility of reforms. This point is made constantly by activists and cannot be overstated here. Europeanization also has a tendency to encourage the former with little impact on the later,[43] and the existence of rules that are regularly disregarded is in fact a defining characteristic of competitive authoritarian regimes. It is important to note that this thesis seeks to gauge the influence of civil society on policymaking, not on the ultimate quality of Ukrainian democracy: such an undertaking would be premature.

Nevertheless, the cases in this thesis were chosen because they are meaningful. I have selected instances of legislation that go well beyond previous laws in their quality and depth. These reforms faced (and continue to face) genuine and formidable resistance, which suggests that the establishment considers them a real threat to entrenched power. They have both since entered into force, thus clearing a hurdle that has blocked many reforms in the past. And while the roll-out of new laws and their actual impact will take years, early insights, while tentative, may be relevant to the process of implementation as it unfolds. My concluding chapter will offer suggestions for future research into the role of civil society in the implementation and long-term impact of these legislative reforms.

Finally, the focus on successful reforms should be put in the context of slow progress overall. An analysis of the positive, however, is both novel and useful. The reasons for failure of democratic reform in competitive authoritarian systems are well established. If there are new lessons to be learned they are likely to come from these cases of anomalous success.

A prominent scholar of Ukraine, in a recent stock-taking of the field after Euromaidan, identifies two sets of questions facing researchers. The first set relate to explanation, both of recent events and of how Ukrainian politics works; the second asks

[43] Casier, "The EU's two-track approach."

what policy measures can lead to more positive outcomes for Ukraine. This thesis, if successful, should address both types of questions.[44]

1.5 Outline

This thesis will commence with a review of the literature concerned with post-Soviet civil society, its weakness and distinct challenges. Chapter 3 surveys the conditions and characteristics of Ukrainian civil society since Euromaidan, showing that civic organizations and coalitions involved in the current reform process are better-resourced, more experienced, more organized and more connected than in the window that followed the Orange Revolution. Chapters 4 and 5 constitute the empirical component of the thesis. Each offers a structured process-tracing analysis to test the role of civil society in a case of successful reform. Chapter 6 contains a discussion of the conclusions that can be drawn from these case studies: the influence of civil society relative to EU conditionality, the factors that made this influence possible, and the nature of their interaction with the EU. The chapter concludes with a comment on future areas of research, and on the future challenges likely to face Ukraine's democracy activists.

[44] Paul D'Anieri, "Political Science and Politics in Ukraine After the February Revolution," *Journal of Ukrainian Politics and Society* 1(1) (2015).

CHAPTER 2: CIVIL SOCIETY, DEMOCRATIC TRANSITION, AND THE POST-SOVIET CONTEXT

The status of civil society has been a preoccupation for scholars of democratic transition, particularly since the dissolution of the Soviet Union. But while the third sector was credited with an important role in early democratic openings in the region, civic engagement since has been diagnosed as chronically weak, particularly in the former Soviet states. Understanding why this is so—and why it has sometimes been overstated—is a starting point for investigating the apparently newly-empowered civil society of Ukraine.

This chapter will briefly survey the most prominent definitions of civil society and clarify the sense in which it is used in this thesis. It will expand upon the role of civil society in democratic transition and European integration, with reference to both classical and current literature. This will be followed by a review of the explanations for the prevailing weakness of civil society in the post-Soviet (or broader post-communist) context, focusing on Ukraine where literature exists. The chapter will conclude with a survey of research on the role of civil society in the period that followed the Orange Revolution and the prevailing explanations for its marginalization.

2.1 DEFINING CIVIL SOCIETY

In the literature on democratic transition, civil society is often defined as "that arena of the polity where self-organizing and relatively autonomous groups, movements, and individuals attempt to articulate values, to create associations and solidarities, and to advance their interests."[45] The concept frequently carries a normative implication. Croissant *et al.* offer four minimal normative criteria for a movement or entity to be considered civil society: (1) voluntary action; (2) autonomy from the state and political parties; (3) civility (i.e. actors do not resort to violence) and (4) public orientation of

[45] Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (Baltimore, MD: The Johns Hopkins University Press, 1996), 17.

actions, interests and demands.[46] This thesis follows the above definitions, while concentrating in particular on the organized, institutionalized component of civil society engaged in democratic reform.

These definitions have their basis in classical and functional interpretations. Locke envisioned civil society as a defence against the arbitrariness of the state and a safeguard of individual freedoms. Building on this essentially liberal approach, Tocqueville argued that civic engagement, and especially the self-governance of civic associations, allows individuals to develop the skills and virtues required for participation in democratic life and defence against tyranny. Montesquieu conceived of civil society—particularly in its institutionalized form—as an intermediary between society and the state, linking the two and maintaining a balance in which state power is checked by rule of law.

There is also a more communitarian set of perspectives on the function of civil society. Habermas emphasized the role of civic groups as interest aggregators and amplifiers, playing the role of critic and advocate in the sphere of public debate and articulating the interests of marginalized or disadvantaged groups. [47] Civil society is credited by Inglehart with helping to build a democratic political culture by conferring a sense of efficacy and a degree of trust in institutions and fellow citizens.[48] Putnam introduced the notion of "social capital," referring to "connections among individuals—social networks and the norms of reciprocity and trustworthiness that arise from them."[49] Civic organizations of all kinds help to build this resource. This is a less institutionalized notion of civil society and one that is more salient outside of the Western liberal context.

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[46] Aurelie Croissant, Hans-Jurgen Lauth and Wolffgang Merkel, "Zivilgesellschaft und Transformation: ein internationaler Vergleich," in *Systemwechsel 5. Zivilgesellschaft und Transformation*, ed. Wolffgang Merkel (Opladen: Leske + Budrich Verlag, 2000), 16.
[47] Jürgen Habermas, *Legitimation Crisis* (Boston: Beacon Press, 1973).
[48] Ronald Inglehart, *Modernization and postmodernization: cultural, economic and political change in 43 societies* (Princeton, NJ: Princeton University Press, 1997).
[49] Robert Putnam, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton: Princeton University Press, 1993).

2.2 CIVIL SOCIETY IN DEMOCRATIC TRANSITION

As is apparent from these definitions, civil society and democratic development are closely linked. According to many theories of democratic transition and consolidation, civil society plays a critical role in these processes that may be distinct from its function in established democracies.

The literature on civil society in democratization grew significantly in the early 1990s. Accounts of this experience focused first on the initial phase of *transition,* in which the organizing, convening and mobilizing power of civil society is considered to be crucial in articulating demands and bringing pressure on elites. O'Donnell and Schmitter refer to a "resurrection of civil society:" the re-entry of non-government voices into public discourse which creates space to challenge authoritarian rule.[50] Lauth and Merkel characterize this as the "liberalizing" phase of transition, when existing institutions and incumbents are weakened and civil society can orchestrate or take the form of a social movement, creating a counter-hegemony to the regime.[51]

A second wave of scholarship examined the role of civil society in the *consolidation* of democracy: the phase of most relevance to this thesis. Diamond suggests that "a vibrant civil society is probably more essential for consolidating and maintaining democracy than for initiating it"[52] because of the need to prevent backsliding and to engage citizens in both legitimizing and scrutinizing the state. Lauth and Merkel differentiate between the period of change when new institutions are becoming established, and the later phases of consolidation. In the former, civil society has a broad field of opportunity in which to influence rules and structures as they emerge. In the latter, the normalization of the system and the rise of political parties as legitimately representative bodies displaces civil society to some extent, and activists face a choice of whether to participate within the democratic process or agitate from outside it.

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[50] Guillermo O'Donnell, Philippe Schmitter and Laurence Whitehead, *Transitions from Authoritarian Rule, Volume 4: Tentative Conclusions About Uncertain Democracies*. (Baltimore, MD: Johns Hopkins University Press, 1986).

[51] Hans-Jurgen Lauth and Wolffgang Merkel, "Zivilgesellschaft und Transformation. Ein Diskussionsbeitrag in revisionistischer Absicht [Civil society and transformation. A contribution to the discussion for revisionist purposes]." *Forschungsjournal NSB* 10 (1997).

[52] Diamond, "Rethinking civil society," 7.

These broad assertions have been challenged on a number of grounds,[53] however the importance of civil society in democratic transition and consolidation has been empirically confirmed: Karatnycky and Ackerman show that bottom-up democratic transitions are more durable than those driven at the level of elites. In a study of 67 countries over 33 years, the presence and strength of a cohesive, nonviolent civic coalition during transition was highly correlated with an increase in the level of "freedom" (based on Freedom House rankings) in the years that followed.[54] Lussier and Fish have shown through comparative analysis that the ability of civil society to constrain elites by causing them to self-regulate when they anticipate popular pushback is a critical factor in democratic deepening and survival.[55] Tusalem compares 60 states that democratized during the third and fourth waves, finding that a strong and dense civil society was a major factor in building robust institutions, as well as securing civil liberties in a sustainable way.[56]

But as Levitsky and Way have pointed out, a "democratizing bias" that assumes that all post-authoritarian countries are on an inevitable trajectory towards democracy may not capture the particularities of competitive authoritarian regimes. Civil society's ability to play its theorized role in democratic transition may be affected by the particular dynamics of competitive authoritarianism. Furthermore, the experiences of Central and Eastern Europe, where much of the literature on civil society and democratic transition/consolidation originates, differ from post-Soviet Eurasia, where ties with the West were fewer and the EU membership perspective has remained distant. Beichelt and Merkel transpose each of the functional roles of civil society to the particularities of countries experiencing democratic stagnation or regression. They predict declining space

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[53] See, for example, Fox, who argues that the causal mechanisms by which civil society improves democratic institutions are poorly specified, or Mercer, 2002, who exposes the role of civil society and NGOs in implementing a neoliberal agenda and criticizes the normative language and assumptions often found in this research. Berman, 1997 shows that an active civil society can have support the rise of authoritarianism. Jonathan Fox, *Civil Society And Political Accountability: Propositions For Discussion*, (South Bend, USA: University of Notre Dame, 2000); Claire Mercer, "NGOs, Civil Society and Democratization: a Critical Review of the Literature," *Progress in Development Studies* 2(1) (2002); Sheri Berman, "Civil Society and the Collapse of the Weimar Republic," *World Politics* 49(3) (1997).

[54] Freedom House, *Freedom in the World 2005* (Washington, DC: 2005).

[55] Danielle Lussier and M. Steven Fish, "Indonesia: the Benefits of Civic Engagement," *Journal of Democracy* 23(1) (2012).

[56] Rollin F. Tusalem, "A Boon or a Bane? The Role of Civil Society in Third- and Fourth-Wave Democracies," *International Political Science Review* 28 (3) (2007).

for the watchdog, balancing, socializing and communicating functions of civil society as authoritarian tendencies re-emerge. Resurgent autocrats may use their administrative power to weaken civil society by repression, or their discursive power to label CSOs as illegitimate vehicles of foreign influence.[57]

2.3 Civil Society in External Europeanization

Scholarly literature on external Europeanization has often been criticized for an emphasis on top-down mechanisms (conditionality, network governance etc.) that act upon or through political elites. This has led to a gap in theory about bottom-up societal processes such as the role of civil society.[58] The EU itself makes clear that it views civil society as both an important element of democracy and a participant in shaping and monitoring the action plans developed under the ENP, but activists and scholars have often noted the superficiality of this participation. The literature that does exist on this subject presents a picture of power imbalance: where the EU has not made civil society instrumental to its agenda, it has set the terms under which these organizations may be empowered.

The EU offers a range of supports to help civil society develop in Neighbourhood countries. At a material level, the EU offers direct support to civil society organizations in the form of grants, training and links with transnational networks and peers in other states.[59] At a discursive level, the EU can legitimize and provide normative backing to pro-democracy actors. At the level of institutions, one of the objects of the EU's democratic conditionality is to expand and safeguard associational rights and to encourage governments to create opportunities for public involvement in policy formation. In this way, the content of reform itself can improve the operating environment for civil society. But while these supports may strengthen the position of

[57] Timm Beichelt and Wolfgang Merkel, "Civil Society Functions and Transition," in *Civil Society and Democracy Promotion*, ed. Timm Beichelt et al. (Basingstoke: Palgrave Macmillan, 2014).
[58] Noutcheva, "Societal empowerment;" Cristina Elena Parau, "Impaling Dracula: How EU Accession Empowered Civil Society in Romania" *West European Politics* 32:1 (2009); Heather Grabbe, "How Does Europeanization Affect CEE Governance? Conditionality, Diffusion And Diversity," *Journal of European Policy* 8 (4) (2001).
[59] Tanja Börzel, "Why You Don't Always Get What You Want: EU Enlargement And Civil Society In Central And Eastern Europe," *Acta Politica* 45 (2010).

civil society overall, this type of empowerment does not necessarily shape policy outcomes.[60]

For CSOs with the capacity to form transnational links and engage strategically in policy formation the EU can offer an "opportunity structure" and a new reservoir from which to draw leverage. This strategy has been documented in new member states, where experienced domestic CSOs have circumvented recalcitrant governments by alerting EU bodies or transnational networks to non-compliance with the *acquis*.[61] However, what research exists on the impact of the EU on domestic civil society has been inconclusive, and often fails to establish clear causal links.[62]

Aspects of Europeanization may also be detrimental to civil society. The process of aligning domestic policy with EU standards under strict conditionality and time pressure leaves little room for input, substitutes technical assessments for political debates, and ultimately strengthens state power. The EU's interest in engaging civil society in this process has been called "instrumental," a way to construct democratic legitimacy and provide input-on-demand.[63] For CSOs to take up the formal roles designated for them in this process entails conforming to elaborate grant requirements, consultation timelines and styles of engagement. Many CSOs lack the administrative capacity to do this; others, especially in the post-Soviet context, consider engaging or collaborating with government to be a betrayal of their oppositional role. Multi-stakeholder forums or public-private partnerships, two approaches to engagement common in the "Brussels game,"[64] are perceived by some CSOs as clientelistic and exclusive. Börzel concludes that "the extent

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[60] Noutcheva, "Societal Empowerment and Europeanization;" Charlie Jeffery, "Sub-national Mobilization and European Integration: Does it Make Any Difference?," *JCMS: Journal of Common Market Studies* 38(1) (2000).

[61] For example, Jenny Fairbrass and Andrew Jordan, "Protecting Biodiversity in the European Union: National Barriers and European Opportunities?" Journal of European Public Policy 8:4 (2001). Parau, "Impaling Dracula," reviews this literature.

[62] Parau, who draws this conclusion, also describes an exception. She explores two cases from pre-accession Romania where a relatively weak, nascent Romanian civil society was able to prevail over the preferences of the executive by bringing to bear pressure from a committee of the European Parliament and other European advocates.

[63] Hans-Jurgen Trenz, "European civil society: Between participation, representation and discourse," in *Reconstituting Democracy from Below: New Approaches to Civil Society in the New Europe*, ed. U. Liebert and H.-J. Trenz (Oslo, Norway: Arena, 2008).

[64] Amelie Kutter and Vera Trappmann, "Civil society in Central and Eastern Europe: The ambivalent legacy of accession," *Acta Politica* 45 (1-2) (2010).

to which CSOs became empowered [in the accession processes in Central and Eastern Europe] depended on their willingness and capacity to make use of these new opportunities."[65]

Ukrainian civil society has often reflected this sense of an unequal relationship and a reliance on external actors for legitimacy and empowerment. As one activist stated: "Above all, democratic forces within the country need Europe's moral authority and approval. In this context, it is not only the EU's lack of political will to accept Ukraine's membership, but also its reluctance to offer concrete benefits – such as visa liberalization – that is so harmful for Ukraine's fledgling democratic self-consciousness."[66]

2.4 The Weakness of Post-Soviet Civil Society

Literature on the status of civil society in Ukraine and other post-Soviet countries oscillates between the sceptical and the cautiously optimistic. The dominant view of pervading weakness has been explained as a result of history and persistent social and economic conditions; the particular challenges posed by competitive authoritarianism; and the unintended effects of democracy assistance.

2.4.1 The Soviet Legacy

The first set of explanations for this weakness is founded on an assumption of path dependence. While some scholars have traced low civic engagement to the repressive policies of the Russian Empire,[67] most have focused on the impact of the Soviet system. Perhaps the most-cited view is that of Howard, who argues that post-Soviet civil society is weak as a result of repression and coerced participation. Because a sphere of public engagement unconnected to the state or the Communist Party was virtually non-existent, he argues, post-Soviet citizens either lack the "civic skills" to create a vibrant civil

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[65] Börzel, "EU enlargement and civil society," 2.

[66] Alexander Bogomolov and Alexander Lytvynenko, "Ukraine's Bottom-up Democracy," in *Democracy's Plight in the European Neighbourhood: Struggling Transitions and Proliferating Dynasties*, ed. Michael Emerson and Richard Youngs (Brussels: Centre for European Policy Studies, 2009), 82.

[67] Taras Kuzio, "Nationalism, Identity And Civil Society In Ukraine: Understanding The Orange Revolution," *Communist and Post-Communist Studies* 43 (3) (2010); Antonina Kolodii, *Na shliakhu do hromadians'koho suspil'stva. Teoretychni zasady i sotsiokul'turni peredumovy demokratychnoi transformatsii v Ukraini [Towards civil society: theoretical foundations and socio-cultural prerequisites of democratic transformation in Ukraine]* (L'viv: Chervona Kalyna, 2002).

society, or they choose not to after generations of compulsory participation. These effects can be traced to a legacy of mistrust of institutions, the persistence of informal networks, and "postcommunist disappointment" with a new system of government.[68] Other explanations in this group focus on the idea that the system caused citizens to retreat from the public sphere, producing an atomized society with low levels of interpersonal trust and a lack of civic culture.[69]

Other authors show that the effects of the Soviet experience continue to play out 25 years after the dissolution of the Soviet Union. These include the persistence of family-clan survival strategies, emigration and depopulation, alienation from the political class and the state, vestigial laws restricting the activities of public associations, and a citizenry that does not see civil society as an effective tool for advancing their interests.[70]

It may also be that the strain of civic activism that arose during the fall of communism (particularly in Central and Eastern Europe, but setting a template for other states) contained the source of later weakness. Smolar argues that anti-regime forces were less an embodiment of Toquevillian civil society than a manifestation of opposition to authority that only happened to distinguished itself from previous movements by its rejection of nationalist appeals and its liberal, Western orientation. Communist-era institutions, he argues, were dismantled and existing social bonds weakened before a true democratic civil society was strong enough to replace them. The result has been social atomization.[71]

Explanations for weak post-Soviet civil society can sometimes veer into the totalitarian, however, applying labels like "corrupted sociality,"[72] or a vision of the

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[68] Marc Morjé Howard, "The Weakness of Postcommunist Civil Society," *Journal of Democracy* 13(1) (2002).

[69] For example Bernard Wheaton and Zdeněk Kavan, *Velvet Revolution: Czechoslovakia, 1988-1991* (Boulder, CO: Westview Press, 1992).

[70] Victor Stepanenko, "Civil Society In Post-Soviet Ukraine: Civic Ethos In The Framework Of Corrupted Sociality?," *East European Politics and Societies* 20(4) (2006); also Ksenia Gatskova and Maxim Gatskov, *The Weakness Of Civil Society In Ukraine: A Mechanism-Based Explanation* (Regensburg: Institut für Ost- und Südosteuropaforschung, 2012); "Third sector in Ukraine: civic engagement before and after the 'Euromaidan.'" *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 27(2) (2015); Yuriy Bilan and Svitlana Bilan, "The Formation of Civil Society in Ukraine after the Orange Revolution," *Economics and Sociology* 4(1) 2011.

[71] Aleksander Smolar, "From opposition to atomization." *Journal of Democracy* 7(1) (1996): 24-38.

[72] Stepanenko, "Civil society in post-Soviet Ukraine."

Soviet model as one where "the state takes responsibility for solving all major political, economic and social problems, while all options for civic engagement into distribution of powers and resources are reduced to zero."[73] This disregards the many ways in which the Soviet power structure was diffuse and even disorganised, the many points and varieties of engagement, and the possibility of genuine belief and sincere participation. Furthermore, studies have shown that citizens of post-communist countries are no more distrustful of their fellow citizens than other countries.[74] In Ukraine, the Soviet legacy has been used to explain regional differences in ways that sometimes appear instrumental to political arguments (for example, that Eastern regions have been underrepresented in protest movements not because they legitimately disagree with the visions espoused but because they lack the civic traditions of Western Ukraine).[75] Space does not permit an exploration of the modes of civic engagement in the Soviet system, but the point to be made here is that explanations founded on path dependence and sociological generalizations should be read critically.

2.4.2 Competitive Authoritarianism

The present-day dynamic of competitive authoritarianism that characterizes most post-Soviet states may also contribute to keeping civil society weak. The arena of political competition and contestation creates space for civil society to influence political events, but in doing so they may elicit authoritarian backlash in the form of repression.[76] There is also a risk that civil society could perpetuate the system itself through events like the Colour Revolutions, which facilitate authoritarian turnover, undermine democracy as "the only game in town," and allow political leaders to turn civic movements into vote banks, leading to a loss of autonomy. The choice to advocate within the existing order may unintentionally legitimize it,[77] while a discourse of civil society as existing solely in opposition to the state (and leaders who see little benefit in these relationships once they

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[73] Smolar, "From Opposition to Atomization."
[74] Velina Petrova, "Civil Society In Post-Communist Eastern Europe And Eurasia: A Cross-National Analysis Of Micro- And Macro-Factors," *World Development* 35(7) (2007).
[75] Kuzio, "Understanding the Orange Revolution."
[76] Jason Brownlee, "Portents of pluralism: How hybrid regimes affect democratic transitions," *American Journal of Political Science* 53(3) (2009).
[77] Stephen Giersdorf and Aurel Croissant, "Civil Society and Competitive Authoritarianism in Malaysia," *Journal of Civil Society* 7:1 (2011), 5-6.

take power) leads groups to demobilize rather than engage following each change in government.[78] Civil society in a competitive authoritarian regime faces an especially complex challenge.

2.4.3 DEMOCRACY ASSISTANCE

Post-Soviet civil society emerged in a short period of time and with significant support from transnational networks, foreign states and international organizations. External resources boosted the capacity of nascent civic organizations, but they have also created a civil society with structural weaknesses.

A brief explanation of terms may be useful here. Democracy assistance is one tool in a larger strategy of democracy promotion—activity "aimed at establishing, strengthening, or defending democracy."[79] In addition to development aid (democracy assistance), democracy promotion may be carried out through leverage and incentives (democratic conditionality), diplomatic appeals (democratic diplomacy), and, in extreme cases, military intervention (coercive democratization).[80] Within this range of activities, democracy assistance "occupies the positive terrain, comprising elements of support, incentive, inducement and reward" and "recognizes the primary force for democratization is and must be internal."[81] In more practical terms, democracy assistance can be described as the transfer of funds, expertise and material support to foster groups, initiatives and institutions building a more democratic society.[82]

Democracy assistance activities are carried out by states, intergovernmental organizations, and non-governmental organizations. Efforts may target electoral commissions, political parties, civil society and independent media. The motives of these

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[78] Linz and Stepan, *Problems of Democratic Transition*.
[79] D. Azpuru, S.E. Finkel, A. Pérez-Liñán, and M.A. Seligson, "Trends In Democracy Assistance: What Has The US Been Doing?," *Journal of Democracy* 19(2) (2008), 151.
[80] Annika Poppe and Jonas Wolff, "The Normative Challenge Of Interaction: Justice Conflicts In Democracy Promotion," *Global Constitutionalism* 2(3) (2013), 376.
[81] Peter Burnell, "Democracy Assistance: The State of the Discourse." In *Democracy Assistance: International Co-operation for Democratization*, ed. Peter Burnell (London: Frank Cass, 2000), 9.
[82] Jeroen De Zeeuw and Krishna Kumar, "Democracy Assistance to Post-Conflict Societies," in *Promoting Democracy in Postconflict Societies*, ed. Jeroen De Zeeuw and Krishna Kumar (Boulder, Colorado: Lynne Reinner Publishers, 2006), 20.

external actors may be normative or instrumental,[83] and their focus may be political (concentrating on building electoral democracy and political liberties) or developmental (building effective governance and the societal preconditions for democracy).[84]

A distinct pathology identified in the literature on post-Soviet civil society is the tendency of Western donors to create competition for funding and to preferentially foster professionalized, grant-oriented groups. This has created a stratified civil society where most funds go to a small number of well-established organizations and incentives to coordinate or cooperate are few.[85] Organizations reliant on external grants have little motivation to establish a wider base of support, and this raises issues of sustainability and representative legitimacy.[86] Henderson goes so far as to label this "principled clientelism:" a sector defined by principled objectives but dominated by vertical, unequal relationships.[87]

The preference of foreign donors to direct their funds towards civil society can also neglect statebuilding and overlook the reality that civil society cannot influence policy without an effective state with which to engage.[88] This is one element of a broader critique which argues that civil society becomes a vehicle for the imposition of neoliberalizm and promotes a declining role for the state.[89]

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[83] Jonas Wolff and Iris Wurm, "Towards A Theory Of External Democracy Promotion: A Proposal For Theoretical Classification," *Security Dialogue* 42(1) (2001).
[84] Carothers, "Democracy assistance," 5.
[85] Hrycak notes this pattern amongst women's organisations; Lyutsevich outlines how this distances the most well-established groups from active citizens; Narozhna warns that this creates a veneer of civic engagement for authoritarian regimes; and Schimmelfennig ascribes the persistent weakness of post-Soviet civil society to this effect. Alexandra Hrycak, "Seeing Orange: Women's Activism and Ukraine's Orange Revolution," *Women's Studies Quarterly* 35(3/4) (2007); Orysia Lyutsevych, *How To Finish A Revolution: Civil Society And Democracy In Georgia, Moldova And Ukraine* (London: Chatham House, 2013); Tanya Narozhna, "Foreign Aid For A Post-Euphoric Eastern Europe: The Limitations Of Western Assistance In Developing Civil Society," *Journal of International Relations and Development* 7 (2004); Frank Schimmelfennig, "Democracy Promotion and Civil Society in Eastern Europe: Conclusions," In *Civil Society and Democracy Promotion*, ed. Timm Beichelt et al. (Basingstoke: Palgrave Macmillan, 2014).
[86] Irene Hahn-Fuhr, and Susann Worschech, "External Democracy Promotion and the Divided Civil Society—The Missing Link," in *Civil Society and Democracy Promotion*, ed. Timm Beichelt et al. (Basingstoke: Palgrave Macmillan, 2014); Lyutsevych, How to finish a revolution; Anna Matveeva, "Exporting Civil Society: The Post-Communist Experience," *Problems of Post-Communism* 55(2) (2008).
[87] Sarah L. Henderson, "Selling Civil Society: Western Aid and the Nongovernmental Sector in Russia," *Comparative Political Studies* 35(2) (2002).
[88] Matveeva, "Exporting civil society."
[89] See Adam Fagan, "Transnational Aid For Civil Society Development In Postsocialist Europe: Democratic Consolidation Or A New Imperialism?," *Journal of Communist Studies and Transition Politics*

Finally, the support of foreign actors can lead to accusations that civil society is beholden to outside interests: external funding in the Colour Revolutions featured in reactionary propaganda and contributed to an "authoritarian backlash."[90] The narrative of foreign influence also surfaced during Euromaidan.

2.4.4 COUNTERPOINT

Some scholars have questioned this pervasive narrative of weakness, arguing that post-Soviet civil society should not be assessed on Western terms. The EU's Eastern Neighbourhood is a site of intersection between Eastern and Western understandings of civil society, and these understandings are more a spectrum than a sharp divide, with liberal, independent, state-balancing civic activism on one pole and a more communitarian model on the other.[91] The social capital of interpersonal networks and the enduring leadership structures generated by, for example, collective farms and the communist party suggest that civil society may exist in unconventional forms.[92] The risk of assuming that civil society must be created "from scratch" is that creative and locally-meaningful approaches may be overlooked.

For donors of democracy assistance, there may be sound reasons to target a small reservoir of experienced civic groups, who are more likely to be stable, committed, focused on democratic goals, and able to deliver programs.[93] And given that political actors are not attractive partners in semi-authoritarian regimes, there may be few

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22(1) (2006); Joel Lazarus, "Contesting The Hegemony Of Democracy Promotion: Towards The Demos," *Critical Policy Studies* 8(1) (2014); Milja Kurki, "Governmentality and EU Democracy Promotion: The European Instrument for Democracy and Human Rights and the Construction of Democratic Civil Societies," *International Political Sociology* 5 (2011).

[90] Carothers, "Democracy assistance;" Susan Stewart, "Democracy Promotion Before And After The 'Colour Revolutions,'" *Democratization* 16(4) (2009), 646.

[91] Liam O'Dowd and Bohdana Dimitrovova, "Promoting Civil Society Across the Borders of the EU Neighbourhood: Debates, Constraints and Opportunities," *Geopolitics* 16 (2011).

[92] Ivan Kurilla, "Civil Activism Without NGOs: The Communist Party As A Civil Society Substitute," *Demokratizatsiya* 10(3) (2002); Mark Pomar, "The Role Of Informal Groups And Independent Association In The Evolution Of Civil Society In The Soviet Union," *Nationalities Papers* 18(2) (2007); Martin Aberg, "Putnam's Social Capital Theory Goes East: A Case Study of Western Ukraine and L'viv," *Europe-Asia Studies* 52 (2) (2009).

[93] Thomas Carothers and Marina Ottaway, *Funding Virtue: Civil Society Aid And Democracy Promotion* (Washington DC: Carnegie Endowment for International Peace, 2000); Lyutsevych, *How To Finish A Revolution*; Matveeva, "Exporting Civil Society."

alternatives.[94] Some of this literature also renders democracy assistance as a caricature or fails to acknowledge the ways in which the field has evolved to adopt a more pluralistic approach (supporting a wider range of initiatives), to be guided by local priorities, to draw on expertise from within the region, and to offer reliable core funding as well as project grants.

These critiques may also miss the perspective of civic activists themselves. Stewart finds that research participants from the Colour Revolution countries view themselves as equal participants in promotion efforts, and see external initiatives as supportive but secondary to the internal forces driving breakthrough events. Stewart and others have also noted that the real sources of backlash have not been citizens with legitimate concerns about sovereignty but neighbouring authoritarian regimes that fear the spread of domestic democratic change.[95]

2.5 Explaining the Marginalisation of Civil Society after the Orange Revolution

Early accounts of the Orange Revolution claimed it had "unearthed a vibrant civil society that few scholars and analysts believed had existed."[96] However, it did not lead to significant democratic deepening. Retrospective literature is mainly concerned with explaining why democracy activists were ultimately marginalized. One group of explanations find the source of weakness in civil society itself: another looks to the broader political environment.

Most scholarship on the post-Orange Revolution period concluded that civil society turned out to be weaker than expected for all the reasons common to the post-Soviet context. In addition to the institutional context, researchers have pointed to specific shortcomings amongst activists and CSOs, including a "confrontational attitude" towards state authorities[97] and a deficit of experience and know-how needed for projects that

[94] Beichelt and Merkel, "Civil Society Functions And Transition."
[95] Stewart, "Democracy Promotion," 646; also Carothers, "Democracy Assistance."
[96] Taras Kuzio, "The Opposition's Road to Success," *Journal of Democracy* 16(2) (2005), 117.
[97] Roman Kobets and Oxana Ruda, *Mapping study: CSO engagement in policy formulation and monitoring of policy implementation: Ukraine* (Brussels and Berlin: European Commission and Konrad Adenauer Stiftung, 2014), 5. The authors provide an in-depth diagnosis of the dysfunctions of

involve interaction with the state; taking a consistent position and staying active throughout the implementation and monitoring stages of new policies.[98] But perhaps the most-cited mistake of civil society in this period was the close alignment with one set of political figures and the emphasis on electoral change as a solution. As one analyst described it: "after the Orange Revolution there was a lot of support for the party leaders, especially Viktor Yushchenko. After his victory, civil society activism relaxed, demobilised, and waited for the politicians to fulfil the promises they made on the Maidan."[99]

Western efforts to foster civil society in Ukraine had also created a professionalized but insular civil society elite. These activists were able to forge broad coalitions and mobilize large numbers of people by harnessing potent forces like anti-incumbent anger and shared identity, but when those advantages were lost they lacked the roots and resources to influence decision-makers, establish sustainable structures or reach beyond their base.[100] Many groups were reticent to coordinate or build coalitions (perhaps replicating poor coordination by external donors).[101] A stratified, nascent civil society proved unable to hold leaders to account or engage meaningfully in policy formation.[102]

The sector was further weakened when Western democracy promoters re-directed funding to the new regime. Solonenko and Kubicek show that the EU had provided relatively little democracy assistance before 2004, and both authors pronounce its response afterwards inadequate. [103] Zielys and Rudinskaitė found evidence of a

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government-CSO interaction in Ukraine and the nascent understanding on both sides of civil society's role.

[98] Kobets and Ruda, *CSO engagement*, 75.

[99] "Дуже важливо, що ЄС пов'язує безвізовий режим з проведенням антикорупційних реформ [It is important that the EU visa regime connects with conducting anti-corruption reforms]," *EU-Ukraine Co-op*, February 9, 2016. http://gazeta.ua/articles/politics/_duzhe-vazhlivo-scho-espovyazuye-bezvizovij-rezhim-z-provedennyam-antikorupcijnih-reform/679787

[100] Schimmelfennig, "Conclusions."

[101] Stewart, "Democracy promotion." See also Palyvoda, who found that Ukrainian CSOs in 2011 had a lower-than-average level of participation in coalitions and networks. Lyubov Palyvoda, *Civil Society Organizations in Ukraine: the State and Dynamics* (2002-2013), (Kyiv: CCC Creative Centre, 2014)

[102] Theodor Tudoroiu, "Rose, Orange, And Tulip: The Failed Post-Soviet Revolutions," *Communist and Post-Communist Studies* 40 (3) (2007).

[103] Mainly via the "modest and… limited" European Instrument for Democracy and Human Rights (EIDHR) established in 1994. Serena Giusti and Enrico Fasti, "The European Endowment for Democracy and Democracy Promotion in the EU Neighbourhood," *The International Spectator: Italian Journal of International Affairs* 49(4) (2014), 115.

significant (but temporary) USAID budget decrease after the Revolution.[104] The authors interpret this as evidence of a redistribution of funds from civil society to the new government, replicating a pattern also seen in Georgia. Surveys conducted between 2002 and 2011 support the suggestion that reduced international funding contributed to greater competition for resources.[105]

The smaller civil society budget was accompanied by a change in strategy from supporting institutionalization of many CSOs to supporting programs delivered by those CSOs that were already well-established. CSOs were encouraged to work with the government, but many were not willing or able to make this shift. Funding from partners like the EU was largely project-based, rather than offering long-term support, and even NGOs that received democracy assistance struggled with sustainability.[106] In retrospective interviews, some activists interpreted these changes to mean that foreign donors were too optimistic, believing Ukrainian democracy to be consolidated. They felt abandoned just as the country entered the most challenging phase of reform.[107]

Another set of explanations argues that the source of civil society's marginalization lies with institutions, political leaders and the entrenched patterns of competitive authoritarianism. The Orange Coalition in government proved an unstable partner for civil society. The sources of policy paralysis and instability included conflicts within the parliamentary coalition; Yushchenko's weak and highly regionalised electoral mandate; opposition from Russian-oriented oligarchs; and inability to gain full control of security forces.[108] Some civil society leaders were coopted into government roles where they struggled to make an impact. Allies in parliament were few, and productive relationships between activists and government were difficult to establish.[109]

More systemic factors have been suggested as well. Civil society's ability to influence the course of the new government has been related to the strong

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[104] Between 2004 and 2007, the remaining US aid budget for Ukraine reflected a 71% decrease in funding for "strengthening citizen participation" and a 59% increase for "good governance."
[105] Paylovoda, *Defining Civil Society*.
[106] ADE, *Evaluation of the European Commission's Cooperation with Ukraine* (Brussels: ADE, 2010), 99.
[107] Zielys and Rudinskaitė, "US Democracy Assistance Programs In Ukraine," 87.
[108] G. Pop-Eleches and R. Robertson, "After The Revolution: Long-Term Effects Of Electoral Revolutions," *Problems of Post-Communism* 61(4) (2014), 19.

semi-presidential system, which creates few incentives for collaboration.[110] A corrupt bureaucracy proved resistant to new policies, and weak state capacity meant that many consultative bodies existed only on paper.[111] The Orange revolutionaries' idealistic promises clashed with a political culture that favoured at best evolutionary change,[112] and geopolitical and identity-based debates came to overshadow civil society reform agendas.[113] Debate has also surrounded the precise role of nationalism and identity in the protests, but whether the dynamic is characterized as "civic nationalism" or ethnic competition, there is consensus that clear differences in regional support reduced the representative legitimacy of the civic groups that emerged from the protests.[114]

Despite its exclusion during the reform window that followed the Orange Revolution, the larger trajectory of civil society in recent years been one of halting growth. While some democracy promoters scaled down their work, others changed tactics to support the development of more sustainable CSOs.[115] Crackdowns on public protest notwithstanding, some scholars argue that the Yanukovych presidency did not seriously restrict the everyday activities of organized civil society. In fact, the state marginally improved the regulatory framework for civic organizations during this period, established "civic councils" and other consultative mechanisms, and adopted action plans and policies to promote their development.[116] Much of this was undertaken at the urging

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[109] Stewart, "Democracy Promotion;" Hrycak, "Seeing Orange."
[110] N. Laverty, "The Problem Of Lasting Change: Civil Society And The Colored Revolutions In Georgia And Ukraine," *Demokratizatsiya: Journal of Post-Soviet Democracy* 16 (2) (2008).
[111] Jane L. Curry and Doris Göedl, "Why 'Together We Are Strong' Does Not Work," *Communist and Post-Communist Studies* 45 (2012).
[112] Alexander Motyl, "Three Years After: Theoretical Reflections On Ukraine's Orange Revolution," *Harvard International Review* (2008).
[113] Hrycak, in "Seeing Orange," demonstrates this in the case of women's activism.
[114] See, for example, Kuzio, "Understanding the Orange Revolution;" Lucan Way, "A Reply To My Critics." *Journal of Democracy* 20(1) (2009); Mark Beissinger, "The Semblance Of Democratic Revolution: Coalitions In Ukraine's Orange Revolution," *American Political Science Review* 107(3) (2013).
[115] Zielys and Rudinskaitė note that NDI, for example, shifted from leading election monitoring programs to support domestic monitoring groups like Committee of Voters of Ukraine and the more youthful OPORA starting in 2007. Sweden also began to provide core funding in an effort to build more sustainable CSOs. Cecilia Karlstedt, Megan Bick and Katerina Stolyarenko, *Evaluation Of The Sida Funded Programme Of Core Support And Connected Projects In Ukraine* (Stockholm: Swedish International Development Cooperation Agency, 2015).
[116] Iryna Solonenko, *Ukrainian Civil Society from the Orange Revolution to Euromaidan: Striving for a New Social Contract* (Institute for Peace Research, 2015) 225-226. These are the "Concept for State

of the EU. A regular survey designed to gauge advocacy and lobbying capacity has captured steady progress since the late 2000s.[117] Existing groups like the electoral watchdogs *Opora* and Committee of Voters of Ukraine became increasingly professionalized, and broad coalitions were launched, beginning with "New Citizen" in 2009 and *Chesno* in 2011, taking on the role of critics of government and convenors of public engagement. The lessons of the Orange Revolution and the capacity-building and socialization that took place throughout the intervening years laid the groundwork for renewal.

Support of Civil Society Development in Ukraine," endorsed by government in 2007, and the "Strategy of the National Policy for Supporting the Development of Civil Society in Ukraine" in 2011.

[117] Palyvoda, *Civil Society Organizations in Ukraine*, 83; *Palyvoda et al., Defining Civil Society for Ukraine.*

CHAPTER 3. MAPPING CIVIL SOCIETY POST-EUROMAIDAN: ENVIRONMENT, ROLES AND RELATIONSHIPS

The landscape of civic pro-democracy activism in Ukraine has changed significantly since the first years that followed the Orange Revolution. Groups involved in the present reform process are now better resourced, better organized, more experienced, and more connected to government, parliament and European institutions. In a competitive authoritarian political system, none of these factors necessarily leads to increased policy influence. However, all can be considered important preconditions for effectiveness. This chapter offers an overview of the main actors, their resources, their operating environment and their relationships during the present period of reforms.[118]

3.1 ROLE IN EUROMAIDAN

Euromaidan was initially seen by many as marking a qualitative difference in the unity and organizing power of Ukrainian civil society.[119] However, retrospective analyzes of the protests have argued that they were essentially fractious and uncoordinated. The message of the protestors and their specific motivation shifted over time, from an initial response to the abandonment of the Ukraine-EU Association Agreement and the refrain that "Ukraine is Europe" to "something bigger… a change in the system of… corruption

[118] This chapter will deal with the protests themselves only to the extent that they relate to later policy influence for civil society. Many accounts exist that examine the preconditions, events, dynamics and outcomes of Euromaidan. Some authoritative works include Saryusz-Wolski for an overview of Euromaidan; and Popova contrasting Euromaidan with the Orange Revolution, as well as Onuch and Sasse, cited here. Jacek Saryusz-Wolski, "Euromaidan: Time To Draw Conclusions," *European View* 13(1) (2014); Maria Popova, "Why the Orange Revolution Was Short and Peaceful and Euromaidan Long and Violent," *Problems of Post-Communism* 61(6) (2014); Olga Onuch and Gwendolyn Sasse, "The Maidan in Movement: Diversity and the Cycles of Protest," *Europe-Asia Studies* 68:4 (2016).

[119] Anastasiya Ryabchuk, "Right Revolution? Hopes And Perils Of The Euromaidan Protests In Ukraine," *Journal of Contemporary Central and Eastern Europe* 22(1) (2014); Steffen Halling and Susan Stewart, *Ukraine In Crisis: Challenges Of Developing A New Political Culture* (Berlin: Stiftung Wissenschaft und Politik/German Institute for International and Security Affairs, 2014); Irina Khmelko and Yevgen Pereguda, "An Anatomy Of Mass Protests: The Orange Revolution And Euromaydan Compared," *Communist and Post-Communist Studies* (2014); Pishchikova and Ogryzko, *Civic Awakening*.

and lies," "a better way of life," and the resignation of the president.[120] The suffix '-maidan' was attached to disparate, even competing groups including Student Maidan, Political Maidan, AutoMaidan and others, and protests sprang up independently in cities beyond Kyiv. And while some key civic leaders tried to create a structure and articulate unified objectives in their talks with the regime, their negotiating position was weakened by a "serious lack of connection between the people's Maidan and the Euromaidan of the political opposition and the activists."[121] The organized component of Ukrainian civil society found itself losing control of the message and the tactics of the protest, while the crowds grew not through concerted organizing but through spontaneous regional diffusion, a public appalled by violent repression, and the reach and speed of social media.[122]

This analysis suggests that the new influence of organized civil society did not grow out of the protests *per se*. Rather, activists and organizations who had increased their capacity over the previous several years were well positioned to take on the role of interlocutor with government and the international community during and after the protests, and to shape a new policy agenda.

3.2 Democracy Assistance

International organisations implicated in the crisis and countries invested in Ukraine's stability for geopolitical, economic or other reasons came under pressure to take action. New appropriations for democracy assistance became available from Ukraine's international partners, and with the political landscape in flux, civil society organizations were the most attractive target for this funding. The following section provides an overview of the scope and unique roles of the actors engaged in democracy assistance to civil society in Ukraine.

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[120] Focus group comment, Onuch and Sasse, "The Maidan in Movement," 566-7, also Pishchikova and Ogryzko, "Civic Awakening."
[121] Onuch and Sasse, "The Maidan in Movement," 572. The primary coalition was called Civil Sector Maidan.
[122] Onuch and Sasse, "The Maidan in Movement," 573.

3.2.1 USAID

USAID's flagship civil society program in Ukraine is Project UNITER (Ukraine National Initiatives to Enhance Reforms) delivered by PACT, a private contractor. Its mandate is to "strengthen and assist leading pro-reform Ukrainian civil society organizations to sustain and consolidate democratic gains."[123] The program splits its budget between projects on citizen participation, voter education and election support, and local government democracy. UNITER ran from 2008 to 2013, and was renewed and extended after Euromaidan. USAID launched two additional capacity-building programs to respond to the new reform window: Initiative to Support Social Action Ednannia, and the Ukrainian Centre for Independent Political Research.[124]

3.2.2 THE INTERNATIONAL RENAISSANCE FOUNDATION

The International Renaissance Foundation (IFR, the George Soros vehicle that has been active in Ukraine and throughout post-Communist Europe since 1990) has as its mission to "promote open society in Ukraine on the basis of democratic values."[125] IRF has been a consistent presence in Ukraine and a regular partner of pro-democracy civil society and think tanks both before and after Euromaidan. In 2014 the Foundation became directly involved in the reform process by supporting the establishment of Strategic Advisory Groups, bodies of domestic and international experts working in close cooperation with government departments to formulate priority reform legislation. Programming was also put in place to support the "new faces" in parliament and the communications and other needs of the EuroOptimists group of MPs (see below), and a program established to support reform-minded civic initiatives in communicating their goals to the public. The Foundation reorganized its programs following Euromaidan, making direct comparisons difficult, but an indication of the scope of its renewed investment is the increase in its budget for "Civil Society and Good Government" in 2013 ($438,662 USD) in relation to

[123] http://uniter.org.ua/eng/history_and_information.html
[124] Initiative to Support Social Action Ednannia (www.isar.net.ua) and Ukrainian Centre for Independent political Research (www.ucipr.org.ua).
[125] International Renaissance Foundation, *Annual Report 2015*, 5

a 2015 expenditure of $1,227,621 for "Civic Initiatives of New Ukraine," and the increase in its total Ukraine budget from $2 million to $8 million over the same period.[126]

3.2.3 The European Union

The EU's support to civil society in Ukraine has been criticized on a number of fronts, and its role in the past has been limited. Complex, time-consuming application and reporting procedures limit access for smaller groups,[127] with the result that EU funds go to a narrow set of organizations and interests.[128] Some have argued that the project-based nature of EU funding has meant that it does little to help CSOs become sustainable.[129] Others suggest that the EU's top-down approach has emphasized financing that flows primarily to government, hampering access for civil society.[130] In short, "the daily practices of promotion of democracy have been more modest than EU discourse on democracy."[131] EU programs have evolved in recent years in an attempt to address these criticisms, and allocations to Ukrainian CSOs have increased significantly.

The two primary vehicles of EU democracy assistance to civil society have been the European Instrument for Democracy and Human Rights and the Civil Society Organizations and Local Authorities thematic program of the European Neighbourhood Partnership Instrument. Support to civil society throughout the region via these programs totalled about €6 million between 2004 and 2006 (the first phase of the ENP), and reached €25 million between 2007-2013.[132] In 2014 the European Commission responded to the changes in Ukraine with the €355 million State Building Contract. The Contract was followed by a separate, linked allocation of €10 million in direct funding to civil society organizations, intended to enhance their role in promoting and monitoring

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[126] International Renaissance Foundation, *Annual Report 2015*, 66; *Annual Report 2013*, 65

[127] Natalia Shapovalova and Richard Youngs, *EU Democracy Promotion in the Eastern Neighbourhood: a Turn to Civil Society?* (Madrid: FRIDE, 2014), 6.

[128] Kurki, in "Governmentality and EU Democracy Promotion," for example, applies a lens of Foucauldian governmentality to suggest that the EIDHR favours a particular type of neoliberal civil society; at a more practical level, Shapovalova and Youngs point out that restrictions on re-granting and an English-only intake process exclude many smaller and less urbanized groups without international partners.

[129] ADE, *Evaluation of the European Commission's Cooperation with Ukraine*, 99.

[130] Bratu, *Case Study Report,* 17.

[131] Birch, "Electoral Systems and Party Systems," 75.

[132] European Commission - DG Development and Cooperation, *Support Package for Ukraine: Frequently Asked Questions* (Brussels, 2014), 4.

the reform process, especially in the areas of public accountability, conflict-affected communities and capacity-building. The funds combine the budgets of the ENI and ENPI programs that would normally be delivered to Ukraine, and are delivered via a call for proposals.[133]

Following the Colour Revolutions and the Arab Spring, some EU member states identified a need for a more responsive mechanism to support democratic transformations, especially when they unfold rapidly. The result was the creation of the European Endowment for Democracy (EED) in 2011.[134] Euromaidan became the EED's first test case. The EED is an autonomous grant-making organisation with a small staff, designed to be non-bureaucratic and flexible enough to respond quickly to emerging issues. It is mandated to support the activities of all types of civic groups and individuals, placing an emphasis on agency rather than structure.

In reviewing the activities of the EED during and immediately after the 2014 protests in Ukraine, Giusti and Fassi conclude that the Foundation was indeed nimble, autonomous and streamlined in its activities. The Executive Director travelled to Kyiv, met with civic groups and quickly provided direct support to protesters in need of medical or legal assistance.[135] During the protests, the EED provided support to both established and independent journalism, and to grassroots organisations working beyond Kyiv, following the organization's mandate to bolster the "likely actors of change," not only the most stable or familiar ones. In 2015, the EED supported 14 initiatives in Ukraine, focused mainly on public engagement in reforms and anti-corruption.

The EED is intended to have the latitude to take risks and bet on new and emerging actors, including those with a more political profile, and it has done so in Ukraine with its support to consciously unstructured groups like AutoMaidan. The lower, less official profile of the EED was designed to skirt backlash against EU intervention, but a more partisan approach could raise its own legitimacy challenges.

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[133] European Commission, *Guidelines for Applicants, ENI AAP 2014 Ukraine Civil Society Support Programme* (Brussels, 2014).
[134] Giusti and Fassi, "The European Endowment for Democracy," 113.
[135] Giusti and Fassi, "The European Endowment for Democracy," 125.

3.3.4 Bilateral Democracy Assistance

European democracy assistance in Ukraine has been driven more by individual states than by the EU. Sweden and the Netherlands, amongst others, have had longstanding roles in democracy assistance in Ukraine, and all increased their allocations following Euromaidan. Sweden's Civil Society Core Support Program provides ongoing rather than project-based support to 13 CSOs and has been credited with transforming the sector through institutional development.[136]

Canada has been a key partner of Ukraine's since independence, and one of the country's priorities has been supporting democratic electoral processes. Most support in this area was directed to government agencies, although some (under $.5 million per year) of this was directed to civil society through a contract with NDI.[137] New programs announced by Canada since 2014 include a $3 million CDN contract to IFES to build electoral capacity, particularly amongst CSOs;[138] a $4.1 million contract focusing on civil society and independent media delivered through the Polish Solidarity Fund and a further $5.1 million through the European Endowment for Democracy;[139] a $3 million contract with the National Democratic Institute, of which a third is to be directed to civil society;[140] and a $19.7 million project delivered by the Canadian Federation of Municipalities to support decentralization and more democratic local governance, of which 10% is to be directed to civil society.[141] These contributions make Canada one of the most prominent funders of the sector.

A trend identified in the literature is the growing profile of Central and Eastern European countries as providers of democracy assistance. These increasingly prominent (although not entirely new)[142] entrants to the scene may be motivated by solidarity, an interest in security and stability, or the building of soft power that allows them to "punch

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136 Karlstedt et al., *Evaluation of the Sida Funded Program of Core Support*.
137 Global Affairs Canada, "Project profile: Elections Monitoring Capacity Building." Accessed June 2016.
138 "Project profile: Building Capacity of Electoral Actors"
139 "Project profile: Developing effective and accountable democratic institutions for Ukraine's citizens."
140 Project profile: Strengthening democratic parties and civil society organisations."
141 "Project profile: Partnership for local economic development and democratic governance."
142 Poland, for example, has been active in sharing transition experience with Ukraine since the early 1990s. Tsveta Petrova, *From Solidarity To Geopolitics: Support For Democracy Among Post Communist States*, (New York: Cambridge University Press, 2014), 139.

above their weight" in shaping EU foreign policy.[143] Their distinct contribution and claim to legitimacy is their fresh experience and understanding of post-communist realities.[144] Ukrainian recipients of Polish and Slovak democracy assistance say that the first-hand experience of experts from these countries is an important advantage over most Western democracy promoters. They have also been more steadfast partners for civil society groups, and did not withdraw after the Orange Revolution to the same extent as USAID. SlovakAid continued to direct 81 per cent of its democracy assistance funding to civil society between 2004 and 2009 (the same period in which USAID directed its funding away from these groups and towards government). Poland, too, has made civil society its main priority, as well as encouraging the emergence of a competent and reform-oriented elite within government. These virtues have made them better able to broach sensitive issues, and their criticisms may be felt more acutely than those of the West.[145]

A unique contribution to Ukrainian democracy-building is made by the German political foundations (or *Stiftungen*, established as foreign development wings of their respective political parties). The three major Stiftungen have all been active in Ukraine since early 1990s. Brucker documents the activities of these groups and draws on Finnemore and Sikkink's theory of norm entrepreneurship and socialization to explain their impact. The foundations work much as predicted by Finnimore and Sikkink: leveraging their knowledge, expertise and persuasive influence to spread democratic values and targeting state actors as well as civil society and party activists. Their distinct advantages over other external actors include their long-standing commitment to Ukraine, the transnational linkages they are able to establish, and their respected status. [146]

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[143] Michal Simecka, "From Democracy Assistance To Importing Transition Experience: The Case Of Post-Soviet Local Government And Defence Reforms," in *Democratization In EU Foreign Policy: New Member States As Drivers Of Democracy Promotion*, ed. Berti Benedetta, Kristina Mikulova and Nicu Popescu (Oxon and New York: Routledge, 2016), 130.

[144] Simecka, "From Democracy Assistance To Importing Transition Experience," 129. Horký, 2012 reaches much less generous conclusions upon reviewing the case of Czech aid. He argues that the 'transition experience' is a useful myth that allows CEE countries to pursue their own instrumental interests in their neighbourhood while evading participation in EU development aid. Ondrej Horký, "The Transfer of the Central and Eastern European 'Transition Experience' to the South: Myth or Reality?," *Perspectives on European Politics and Society* 13(1) (2012).

[145] Petrova, *From Solidarity To Geopolitics*, 166.

[146] Matthias Bruckner, "Trans-National Actors In Democratizing States: The Case Of German Political

Table 1. Selected democracy assistance allocations to civil society[147]

In millions of USD. Not comprehensive, for comparative purposes only. Blank indicates program nonexistent or not funded in that year. A dash (–) indicates data not available.

Funder/program	2012	2013	2014	2015	2016	2017
USAID (total civil society funding)	**$9.036**	**$8.65**		**$7.36**	**$8.65**	**$16.01**
Project UNITER	*$12.29*	*$12.89*	-	-	-	-
Initiative to Support Social Action Ednannia			*$.12*	*$.46*	-	-
Centre for Independent Political Research			-	-	-	-
International Renaissance Fdn.	**-**	**-**	**-**	**-**	**-**	**-**
Civil society and good governance programming	-	*$.44*	-	*$1.23*	-	-
European Commission	**$3.26**	**$4.12**	**-**	**$6.98**	**$5.00**	**-**
Ukraine Civil Society Support Program				*$5.54*	*$5.00*	-
Neighbourhood Civil Society Facility	*$2.21*	*$2.21*				
Non-State Actors and Local Authorities in Development	*$1.05*	*$1.05*				
European Endowment for Democracy		*$.86*	*$1.07*	*$1.44*	-	-
Government of Sweden	**-**	**-**	**-**	**-**	**-**	**-**
Civil Society Core Support Program		$3.32	$4.32	-	-	-
Government of Canada	**$.38**	**$.38**	**$.38**	**$11.5**	**-**	**-**
NDI Contract – civil society portion	*$.38*	*$.38*	*$.38*	*$.76*	-	-
IFES Contract – CSO electoral capacity				*$2.29*	-	-
Via Polish Solidarity Fund				*$3.12*	-	-
Via European Endowment for Democracy				*$3.88*	-	-
Via Federation of Canadian Municipalities				*$1.50*	-	-

Foundations In Ukraine," *Journal of Communist Studies and Transition Politics* 23(2) (2007), 309; Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52 (4) (1998).

[147] US State Department, *Estimates*, 2016, 125-126; 2015, 120-121; 2014, 419; 2013, 484-485; 2012, 480; S. Tisch, A. Green, and O. Lutsevych, *Final Performance Evaluation of the Ukraine National Initiatives to Enhance Reforms (UNITER)* (2014), 1; http://ednannia.ua/en/about-us/richni-zviti; International Renaissance Foundation, 2015, 66; 2013, 65; European Commission - DG Development and Cooperation, 2014, 4; European Endowment for Democracy, Personal Communication (email), July 15, 2015; Karlstedt et al., *Evaluation of the Sida funded program of Core Support*, 74; Embassy of Sweden, *Cooperation in Ukraine: Factsheet 2014, Cooperation in Ukraine: Factsheet 2015*; Global Affairs Canada, 2016.

Civic groups in Ukraine have absorbed a dramatic increase in funding since Euromaidan from a range of actors, along with an influx of foreign expertise. This has allowed existing organisations to further professionalize and supported the work of new coalitions.

3.3 New Coalitions

While a number of pre-existing civil society organisations benefited from this increased funding in order to grow, professionalize or engage in more policy advocacy, the most fundamental change that followed Euromaidan was the re-organisation of the sector and the emergence of stable, highly functional coalitions. Chief amongst these was Reanimation Package of Reforms (RPR), a platform that brought together 50 organisations and around 300 experts.[148] Launched March 7th, 2014, RPR began by collecting previously-proposed reforms and negotiating with the interim government to include them in its mandate. By the end of the year, RPR had developed a comprehensive Reforms Roadmap for the new parliament, including draft legislation, and established a structured interface with government.[149]

A new genre of CSOs with specialised expertise has also become more prominent. CentreUA functions as a kind of communications secretariat for several groups, providing everything from strategic communications planning to web design and application development. The Ukraine Crisis Media Centre has become a hub for media events, providing the infrastructure needed for professional-quality press conferences to the global media.

The constellation of pro-democracy reformist CSOs in Ukraine now looks much more like a network than a disparate collection of organisations, it is more coordinated than after the Orange Revolution, and the coalitions formed have remained stable and well-funded.

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[148] Iryna Soloneko, "External Democracy Promotion In Ukraine: The Role Of The European Union," *Democratization* 16(4) (2009).

[149] Reanimation Package of Reforms, Roadmap of reforms for the Verkhovna Rada of Ukraine of the 8th Convocation (Kyiv, 2015); Pishchikova and Ogryzko, *Civic Awakening*.

3.4 New Relationships with Government

The number and depth of opportunities for civil society organizations to interact with government officials has grown since the years following the Orange Revolution, and particularly since Euromaidan. The mode of interaction has changed as well, from cursory consultation and pressure politics to a degree of collaboration. While international pressure has played a role in encouraging the creation of these channels, the CSOs themselves have frequently taken the lead on their establishment.

Of most relevance to the subject of this thesis is the creation of the Reform Support Centre. The joint government-CSO platform was a stipulation of the Association Agreement, and brings national and international non-governmental experts to work directly with the Cabinet of Ministers of Ukraine.[150] The joint body conducts public consultation, proposes priorities, drafts bills and makes recommendations on implementation.[151] Four civil society representatives also sit on the National Council of Reforms, the body that provides direction, project management and oversight to the reform process under the authority of the President.[152] All of these bodies have ambitious objectives to establish a more open policy process, but their success is difficult to gauge. The informal relationships they create may be just as significant to reform success as their official mandates.

Another channel for interaction that did not exist to the same extent following the Orange Revolution is the presence of the "new faces" in parliament—around 29 new deputies elected on the lists of the five main Western-leaning parties.[153] These appointments were initially seen by some as a cynical move by the parties to create a reformist façade or a strategy for decapitating critical CSOs,[154] but whatever the original motivation the result was the election of a core group of new, reform-minded deputies.

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[150] http://www.kmu.gov.ua/control/en/publish/article?art_id=247260898
[151] http://centre-reform.org
[152] Decree №644/2014
[153] National Democratic Institute, *Ukraine's second front: an assessment of the political and civic landscape following the October 2014 parliamentary elections* (Washington and Kyiv: National Democratic Institute, 2015), 11.
[154] Rafael Biermann, André Härtel, Andreas Kaiser and Johann Zajaczkowski, *Ukrainian Civil Society After The Maidan: Potentials And Challenges On The Way To Sustainable Democratization And Europeanization* (Kyiv: 2014).

These deputies are not all beholden to one or two parties, as reformists in the post-Orange Revolution period tended to be, and most have retained their links with civil society. Some have even engaged in public disagreements with their parties and sharply criticized their leaders and coalition partners. They also convened the Interfactional Union "EuroOptimists," a caucus of parliamentarians who have established ties with EU and member state officials and lobbied for bills of special relevance to European integration.[155] Analysis of voting patterns shows that there is indeed a vanguard of deputies across most parties who form a pro-reform, pro-Europe core of votes.[156] Although several of these new MPs lead parliamentary committees, few have formal roles in the government.

3.5 More and Stronger European Connections

Dialogue between EU officials and civil society has become an established practice, to the extent that "in recent years, almost no official visit from the EU has taken place without a meeting with civil society organizations."[157] In 2011 the presidents of the European Commission and Council met with civil society leaders for the first time, a step that was taken as a signal of recognition of civil society's political role. Such meetings became further regularized during Euromaidan, when EU officials sought both an alternative source of information and a partner in negotiating with the government. Other institutions such as the OSCE also regularly meet with civil society leaders during country visits and election monitoring. These discussions are mutually beneficial: activists bring international attention to their issues and international organisations receive a verification or counterpoint to information provided by government officials.

European institutions have also created new structures for regular interaction with civil society. The creation of the Civil Society Forum of the Eastern Partnership has been called a "turning point" in the EU's relationship with civil society in the region. The Forum provides a region-wide platform for activists to build closer relationships with one

[155] "Молоді депутати створили в Раді об'єднання 'Єврооптимісти.' [Young MPs have created the 'Council of EuroOptimists']," *Ukrainska Pravda*, February 3, 2015 http://www.pravda.com.ua/news/2015/02/3/7057341/

[156] Cmytro Ostapchuk and Tymofii Brik, "Beyond The Words: Actual Collaboration In The Ukrainian Parliament," *VoxUkraine*, December 25, 2015.

another and with the EU, and to influence the development and implementation of each country's agreements with the EU. While its networking function has been a strength, the forum generally has not succeeded in involving civil society in the policy process to the extent hoped.[158] The Ukraine subgroup is amongst the most active, however, with five working groups that meet regularly in Brussels and Kyiv.[159]

The Association Agreement provided a clearer role for a joint EU-Ukraine Civil Society Platform.[160] The body brings 26 Ukrainian civil society representatives to Brussels once a year (with an alternate yearly meeting in Ukraine). Its primary output so far has been in the form of joint declarations commending areas of reform progress and pointing out shortcomings and next steps.[161]

Following Euromaidan, the EU Delegation to Ukraine worked with domestic actors to develop a "Roadmap for Engagement with Civil Society" to 2017.[162] The document sets out long-term priorities for the EU's support to Ukrainian CSOs, centred mainly around improving their capacity, representativeness, and opportunities to participate in policy formation.

All of these measures are highly process-oriented and possibly duplicative, and while they represent improvements on past relations between the EU and Ukrainian civil society, their impact on reform outcomes is difficult to discern. The activists who participate, however, find bodies like the Civil Society Platform and the Eastern Partnership forums to be excellent opportunities for networking and information-sharing. They have been shown to perform a socialization function.[163] And while the unique value of each body is sometimes unclear, the existence of multiple forums avoids

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157 Solonenko, "External Democracy Promotion In Ukraine," 232.
158 Julien Bousac, Laure Delcour, Věra Řiháčková, Iryna Solonenko, and Gevorg Ter-Gabrielyan, *Improving The EU's Support For The Civil Society In Its Neighbourhood: Rethinking Procedures, Ensuring That Practices Evolve* (Brussels: Directorate-General for External Policies of the Union, 2009), 20, 21.
159 http://eap-csf.org.ua/natsionalna-platforma/
160 Art. 469, 470
161 EU-Ukraine Civil Society Platform. *Joint Declaration, 2nd meeting, February 11, 2016* (Brussels, 2016).
162 European Union, *Ukraine: EU Country Roadmap for Engagement with Civil Society, 2014-2017* (2014).
163 Hrant Kostanyan and Bruno Vandecasteele, "The Socialization Potential of the Eastern Partnership Civil Society Forum," *Eastern Journal of European Studies* 4(2) (2013).

competition and tensions between CSOs and involves a diverse range of groups.[164] More generally, the regular communication that now takes place between EU institutions and civil society has improved communication about priorities and concerns in the reform process.[165] In the case studies that follow, I will argue that the growth of these less formal connections has strengthened the influence of civil society in the reform process, helping activists to leverage European pressure when needed.

3.6 Sources of Weakness

Despite these improved material resources and relationships, Ukrainian civil society still operates with structural weaknesses, the most critical of which is its distance from the broader public.

Legitimacy and representativeness remain an issue. Despite appearances, membership in civil society organisations is low and even declining. As much as 17% of Ukrainians participated in or actively supported the protests, but there is little overlap between such participation and membership in civil society organisations.[166] The reformist core of civil society organisations continues to be largely Kyiv-based and to draw its membership and support from Central and Western Ukraine. It would be incorrect to claim that Euromaidan prompted deep change in this aspect of civic culture.

Membership and engagement must be preceded by awareness. Amongst other initiatives, Reanimation Package of Reforms conducted regional tours as it developed its Reforms Roadmap and several of the democracy assistance funders described above have invested in social marketing to compliment the work of the CSOs they support. Recent polling, however, shows that while groups providing assistance to the armed forces or internally displaced persons and charities sponsored by oligarchs have a high profile, only 10% of Ukrainians (outside Crimea and the Donbas) are familiar with a civic

[164] Pishchikova and Ogryzko, *Civic Awakening*.
[165] Solodkyy and Sharlay, *How could the EU accelerate reforms in Ukraine?,*10.
[166] Gatskova and Gatskov, "Third sector in Ukraine."

non-political initiative or movement, and the most popular opinion about CSOs is that their work benefits only some groups.[167]

That the majority of Ukrainians rate issues like the conflict in the Donbas or the economic situation as being more important to their lives than the details of democratic reform is not surprising. It has also been argued that these issues have drawn many potential activists away from legislative reform efforts.[168]

One drawback of the "new faces" in parliament being distributed across parties and often serving as the face of reform is that their influence is still "personalized more than institutionalised."[169] The civic organisations are vulnerable to a similar effect, with their outspoken and high-profile leaders, although new coalitions have helped to mitigate this. This again poses concerns about sustainability.

Finally, while the coalitions have been effective in developing united positions on key reforms, differences remain between groups. This is not in itself a weakness—and may even be evidence of a healthy and diverse sector—but the broad cleavage between more and less liberal groups is a concern for the sector and for society as a whole. Discontent with the pace of reform and with groups who choose to work within the system risks being channelled towards movements offering more militant solutions.

Many of the challenges identified in the previous chapter remain in place for Ukrainian civil society. In comparison with the years immediately following the Orange Revolution, however, CSOs engaged in democratic reform are better-resourced, better-coordinated, more professionalized and experienced, and more connected to government and to European institutions. These factors put Ukrainian civil society in a stronger position in the reform process, but they by no means guarantee its influence over outcomes. The following case studies seek to determine whether these strengths have translated into real influence.

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[167] Pact, *Citizen's Awareness And Engagement Of Civil Society*.
[168] Andreas Umland, "Forget Ukraine Fatigue: How the Kremlin's Hybrid War Against Ukraine Spoiled the Euromaidan Revolution," *Intersection*, February 18, 2016.
[169] Youngs, "Fine-tuning EU Support for Ukrainian Democratization."

CHAPTER 4: THE CASE OF POLITICAL FINANCE REFORM

The adoption of the law *On Amendments to Certain Legislative Acts of Ukraine on preventing and combating political corruption*[170] has been called the "first truly historic law passed by the current parliament."[171] The law creates a framework for public financing of political parties and enhances the transparency of political donations. These constitute the two fundamental European principles of sound political financing and are considered best practice internationally. [172]

Several factors make this legislation a useful case study of civil society influence. The success of the law was never a certainty: its passage ultimately rested on a three-vote margin. Vested interests have an obvious reason to oppose such reform, and public financing is often unpopular with the voting (and taxpaying) public. Populist appeal was not a factor motivating support for this bill, indicating that other dynamics were at play.

Furthermore, political finance reform has been a longstanding goal of democratic activists. Despite previous attempts, "party finance rules have not been the subject of game-changing revisions [and] the major continuity… is the absence of public funding for political parties."[173] In short, political finance reform, and public funding in particular, has generated decades of discussion in Ukraine with little tangible progress until now.

The underlying conditions that would make such a law difficult to achieve—the influence of oligarchs and personal party-projects—remain in place. Two key factors, however, differ from past attempts at political finance reform: an empowered civil society, and the inclusion of this reform as a condition in an accelerated Ukraine-EU visa liberalization dialogue. This case study seeks to determine the degree to which the

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[170] № 49-50, ст.449 (Draft law 2123a) ЗАКОН УКРАЇНИ Про внесення змін до деяких законодавчих актів України щодо запобігання і протидії політичній корупції http://zakon4.rada.gov.ua/laws/show/731-viii

[171] "Платитимуть усі: питання і відповіді про бюджетне фінансування партій [Pay all: questions and answers of budgetary financing]," *BBC Ukraine*, October 9, 2015 http://www.bbc.com/ukrainian/politics/2015/10/151009_parties_budget_financing_sx

[172] European Commission for Democracy Through Law, *Guidelines and Reporting on the Financing of Political Parties* (Strasbourg, 2001); *Code of Good Practice in the Field of Political Parties* (Strasbourg, 2009).

[173] International Institute for Democracy and Electoral Assistance (IDEA), "Ukraine," in *Programmatic*

surprising success of political finance reform was achieved through the efforts of a newly-influential civil society. The main competing explanation for this success—and the one that appears more conventional in a competitive authoritarian system—is that the reform succeeded because political decision makers made a rational calculation, weighing the cost of restricting their own sources of funding in relation to the benefits of securing visa-free status for Ukrainian citizens travelling to the EU. Process tracing provides a framework for assessing these competing explanations and better-specifying their respective roles.

4.1 Objectives of the Reform

This reform addresses one of the country's main challenges: the influence of oligarchs in politics. Ukrainian political parties find it difficult to finance their activities through membership fees and small individual donations, making support from private business interests a practical necessity.[174] The ability to finance campaign activities using personal fortunes has also contributed to the rise of personalist party-projects and to alarmingly high spending (the cost of the 2010 presidential campaigns has been estimated at US $1 billion).[175] The result is a system that "fuels corruption, inhibits the emergence of new parties, encourages the underrepresentation of women and other groups, penalizes qualified but underfunded or new candidates, distorts electoral and political outcomes and divorces parties and elected officials from the citizens they are meant to represent."[176]

A spectrum of effective parties is an oft-cited goal of democracy-building in competitive authoritarian regimes. Ukrainian democracy has been impeded by an unstable and poorly-institutionalised party system, and little has changed since Euromaidan.[177] This prevents the formation of long-term commitments between parties

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Parties (Stockholm: International IDEA, 2011).

[174] Oleh Protsyk and Marcin Walecki, "Party Funding in Ukraine," in *Political Finance in Eastern Europe*, ed. Daniel Smilov and Jurij Toplak (Farnham: Ashgate, 2007).

[175] Julia Keseru and Lindsay Ferris, "Civil Society In Ukraine Seizing The Momentum For Real Reform," Sunlight Foundation blog. May 23, 2014. The amount reported spent by all candidates in the 2014 presidential election was USD 373.85 million (Ostap Kuchma, and Anton Kushnir. "Хто профінансував президентські вибори? Післямова [Who financed the presidential election? Epilogue]," *Ukrainska Pravda*, July 4, 2014), although recently released documents suggest it may have been far more.

[176] National Democratic Institute, *Ukraine's Second Front*, 10.

[177] Ryiby attributes this to norms and rules (weak laws governing parties, insufficient enforcement, and frequent changes to electoral laws); societal factors (changes to electoral preferences and the ability of new

and voters and discourages incumbents from choosing democratic appeals or grassroots organizing over electoral manipulation. A dysfunctional system of political financing is both a symptom and a cause of competitive authoritarianism.

The new law on political financing aims to increase pluralism by supporting the participation of parties that lack an oligarch sponsor. State funding will be made available for statutory activities of parties that obtain 2% of the popular vote, and will defray some campaign costs.[178] The bill places limits on individual contributions, exposes funding sources through new reporting requirements, and institutes criminal penalties for violations. The law also creates an incentive for parties to nominate more women by offering a 10% funding bonus for parties whose parliamentary caucus is at least 33% female.[179]

The legislation is not without criticism. In their joint opinion, the Venice Commission (properly known as the European Commission for Democracy through Law) and the Organisation for Security and Cooperation in Europe (OSCE)'s Office of Democratic Institutions and Human Rights (ODIHR) identified shortcomings including the lack of funding for small or new parties, the lack of provisions placing limits on campaign spending, and other technical matters related to the processes of reporting and reimbursement. Broader reform of the electoral system is needed but has been slow to begin. And as with most other reforms adopted since 2014, the quality and timeliness of implementation will be the true measure of success. Overall, however, this legislation has been welcomed as a significant improvement and an "important tool in the fight against political corruption."[180]

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players to enter the electoral process, the absence of stable party bases, failure to build communication with voters, and weak ideological and strong personalistic ties between voters and candidates); and organizational factors (frequent changes of party names and opaque financing). Fedorenko et al., and Boyko and Herron have assessed progress since Euromaidan. Olena Rybiy, "Party System Institutionalization in Ukraine," *Demokratizatsiya: The Journal of Post-Soviet Democratization* 21(3) (2013), Fedorenko et al., "The Ukrainian party system;" Boyko and Herron, "The effects of technical parties."

[178] Although the threshold for the first tranche of funding, based on the 2014 parliamentary elections, is 5%, a parliamentary compromise that will be discussed below.

[179] Art.17.5, 1

[180] European Commission for Democracy through Law and OSCE Office of Democratic Institutions and Human Rights, *Joint Opinion On The Draft Amendments To Some Legislative Acts Concerning Prevention Of And Fight Against Political Corruption Of Ukraine* (Strasbourg/Warsaw, 2015).

4.2 Overview of the Process

4.2.1 Prior Efforts

The introduction of public funding and transparent reporting has been recommended to Ukraine by various international organizations since at least 2003.[181] Domestic groups have also been active on the issue. *Opora* has highlighted the lack of funding transparency and the resulting potential for corruption as part of their scrutiny of elections since 2004. *Chesno* was successful in encouraging at least some of the 2014 presidential candidates to voluntarily disclose their donor lists and campaign spending, and also drafted a bill on the financing of presidential elections, although it was not adopted.[182] Both groups have identified public financing as a solution.

Efforts at reform proceeded slowly during the years between the Orange Revolution and Euromaidan. A detailed proposal for reform of the Verkhovna Rada produced in 2010 by the think tank Agency for Legislative Initiatives prompted discussion, but no further legislative progress was made at the time.[183] A chapter of the 2011 State Programme for Preventing and Countering Corruption was devoted to political finance reform, but deferred any legislative action to 2013-15. The chapter also focused on transparency and failed to address the recommendation of public funding.[184]

A 2013 report by GRECO noted that Ministry of Justice officials had held a round table discussion on the issue of political financing with representatives for the Venice Commission and ODIHR, IFES, the EU Mission, the Council of Europe Office in Ukraine and other experts.[185] Amendments to the law on parliamentary elections were

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[181] See, for example: European Network of Election Monitoring Organisations, *Ukraine Early Presidential Elections 25 May 2014 Final Report* (Tblisi: 2014), Council of Europe and European Commission, *Funding Of Political Parties And Electoral Campaigns In Ukraine: Proposals For Further Reforms* (Brussels/Strasbourg: 2008).

[182] Kuchma and Kushnir, "Хто профінансував президентські вибори?;" Keseru and Ferris, "Civil society in Ukraine."

[183] Agency for Legislative Initiatives, *Concept Of Amendments To Legislative Acts Of Ukraine To Improve The Functioning Of The Verhkovna Rada Of Ukraine: The "White Book" Of Ukrainian Parliamentarism* (Kyiv, 2010).

[184] Oleksandr Banchuk, et al., *Ukraine's Progress In Fulfilling OECD Anti-Corruption Recommendations Under The Istanbul Anti-Corruption Action Plan: Shadow Report On Progress* (Kyiv: Transparency International, UNDP Ukraine and Ministry of Foreign Affairs of Denmark, 2014).

[185] Group of European States Against Corruption, *Third Evaluation Round Compliance Report On Ukraine, Transparency Of Party Funding,* (Strasbourg, 2013), 14-15.

drafted and tabled by the Ministry in July 2013, and a bill was eventually adopted in November of that year. However, ODIHR and the Venice Commission concluded in a joint opinion that the proposal "does not address some of the key recommendations" of previous opinions and election observation missions, most notably the provision of state funding.[186]

4.2.2 Halting Progress after Euromaidan

Political corruption was a major theme of Euromaidan, and civil society moved quickly to draw up anti-corruption reform recommendations for the new government. Political finance was also a priority area for several democracy assistance delivery organizations. Transparency International, IFES, and the International Institute for Democracy and Electoral Assistance (IDEA) in particular have specialized knowledge of electoral finance laws and began to help formulate and present policy proposals.

A bill introduced in May 2014 and developed in cooperation with IFES, *Chesno* and Reanimation Package of Reforms aimed to address financial reporting at all levels, although the most urgent intent was to regulate spending limits in the upcoming presidential election.[187] The bill failed at introduction.[188] The draft was, nevertheless, forwarded to the OSCE/ODIHR for an advisory opinion. Reporting back in September of that year, the OSCE expressed concern about the insufficiency of reporting and penalties, and reiterated its call for a system of public financing.[189]

4.2.3 Champions in the New Parliament

A new bill was initiated in July 2015 by 17 of the new reform-minded deputies. This bill was supported on first reading and was referred to the newly-established

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[186] European Commission on Democracy through Law and OSCE/Office for Democratic Institutions and Human Rights, *Joint Opinion On The Draft Amendments To The Laws On Election Of People's Deputies And On The Central Election Commission And On The Draft Law On Repeat Elections Of Ukraine*, (Strasbourg/Warsaw: 17 June 2013).
[187] No. 4846
[188] Chesno, "Parliament refused to disclose the funding of presidential candidates," 2014.
[189] OSCE/ODIHR, *Opinion on draft amendments to some legislative acts of Ukraine concerning transparency of financing of political parties and election campaigns* (Warsaw: OSCE/ODIHR, 2014).

Committee on Preventing and Combatting Corruption, where it underwent further study and revision. A text was prepared for second reading by late September.[190]

The law was adopted on second reading on October 8, 2015 as part of a package of bills tied to the implementation of Phase II of the EU-Ukraine Visa Liberalization Action Plan. The ODIHR/Venice Commission delivered its final, largely positive joint opinion on October 22. The President signed the bill into law on November 21.

On December 18, the European Commission issued its final report card on the conditions for visa liberalization. It offered a positive assessment of Ukraine's progress, briefly noting the adoption of the law.[191]

4.3 The Role of EU Conditionality

According to Schimmelfennig and Sedelmeier, EU conditionality is effective when it includes a highly determinate demand, a significant and imminent reward, and a credible claim on the part of the EU that it will deliver or withhold the incentive depending on the target state's actions. The analysis that follows seeks to confirm the presence of these factors in this case.[192]

4.3.1 Determinacy of the condition

In October 2008 the EU and Ukraine launched Phase I of the Visa Liberalization Dialogue, a process intended to result in the lifting of the visa requirement for Ukrainian citizens on visits under 90 days. The EU has engaged several of its Eastern neighbours in these dialogues, setting a mutually-agreed action plan (the Visa Liberalization Action Plan, or VLAP) and tailoring the criteria to each country. The VLAPs are structured around four policy blocks: document security, border and migration management, public

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[190] Information on committee work related to the bill can be found at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55653

[191] European Commission, *Report From The Commission To The European Parliament And The Council On The Implementation Of Macro-Financial Assistance To Third Countries In 2015* (Brussels, 2016) 7. A similarly brief assessment is made in the accompanying Commission Staff Working Document.

[192] In Bayesian terms, this constitutes a "hoop test." The explanation of EU conditionality is unlikely to be a significant causal factor in reform success if the predicted markers of effective conditionality are not present. A hoop test allows us to disconfirm a hypothesis, and although it does not speak directly to the role of civil society, in a case with only two main explanations this provides a powerful piece of deductive information.

order and security, and external relations and fundamental rights. Ukraine's VLAP process was re-started after Euromaidan.

Determinacy, in Schimmelfennig and Sedelmeiers' framework, refers to the clarity, explicitness and formality of the policy to be extracted from the target country. Political finance reform has been generally understood to be one of the conditions for visa liberalization (although the indeterminacy of this condition is discussed below) and was tabled for second reading as part of "Visa Free Day" in the Rada, framed explicitly as one of the last outstanding requirements.[193] However it was not explicitly called for in the Visa Liberalization Action Plan.

Negotiated in 2010, Ukraine's Action Plan called in the third block for "adoption of legislation on preventing and fighting corruption" and "adoption of relevant UN and Council of Europe conventions as well as GRECO recommendations.[194]" In the area of political financing (only one element of corruption prevention), this refers to a body of guidance including a) the Venice Commission's Guidelines and report on the financing of political parties; b) further recommendations by the COE Parliamentary Assembly and Committee of Ministers; and c) the recommendations of the Group of States Against Corruption (GRECO).[195] One of the themes GRECO has focused on in its periodic reporting on Ukraine is that of political finance reform.[196] The recommendations contained in these documents generally converge on fair and transparent public funding distribution to parties, restrictions on private financing, campaign spending limits and sanctions for infractions.

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[193] Delegation of European Union to Ukraine, "EU delegation statement on "the visa-free regime" day (8 October) in the Verkhovna Rada (08/10/2015)." News release, October 7, 2015.

[194] Available at http://www.kmu.gov.ua/control/publish/article?art_id=244813273

[195] European Commission for Democracy Through Law, *Guidelines and Reporting on the Financing of Political Parties* (Strasbourg, 2001); Parliamentary Assembly of the Council of Europe, *Recommendation 1516 (2001) Financing of Political Parties: Common rules against corruption in the funding of political parties and electoral campaigns* (Strasbourg, 2001). Political finance regulation is also embedded in the EU acquis, beginning with the Nice Treaty (2000) and appearing in at least 6 other instruments. These are outlined in Molenaar. GRECO is a body of the Council of Europe which provides detailed and highly technical guidance and evaluation of progress to countries engaged in anticorruption efforts. Fransje Molenaar, *The Development of European Standards on Political Parties and their Regulation* (Leiden: Leiden University, 2010).

[196] Group of States Against Corruption, *Third Evaluation Round Compliance Report on Ukraine*, being the most recent of these assessments.

Some debate exists about the efficacy of this type of second-order, indirect conditionality. Timuș argues that the EU has regularly coordinated with the COE and OSCE to bring determinacy to its demands, and that this has contributed to past success in the region.[197] The basis in COE guidance, which is in turn informed by interpretations of the European Convention on Human Rights (ECHR), also lends a degree of legality and thus formality to the condition.

However, to suggest that this meets Schimmelfennig and Sedelmeirs' criterion of determinacy is to draw a very long bow. The large and complex body of guidance leaves significant room to distort or only partially implement the often detailed and highly technical standards. Second-order conditionality has also given this reform a low profile. Political finance reform is rarely reflected in documentation or discourse surrounding visa liberalization. It is not named in any of the European Commission's assessment reports until late 2015, when it receives only passing mention.[198] Nor does it appear often in the wider discourse about the VLAP or even anticorruption reform in general.[199] One media report even stated that "Contrary to popular belief, the adoption of such a law was not a direct condition for the EU in the framework of the action plan on visa liberalization."[200] The linking of this particular reform to visa liberalisation appears to have been ambiguous.

EU pressure on Ukraine surrounding the VLAP anticorruption reforms boiled over into the media in October 2015. These exchanges, however, centred on high-profile

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[197] Natalia Timuș, "The Impact of Democracy Promotion on Party Financing in the East European Neighbourhood," *European Integration online Papers (EIoP)* 14(3) (2010).

[198] The 6th report states that "A law on political parties financing was adopted in 8 October 2015."
5th report: "Besides, the Commission will continue to monitor...the adoption of legislation reflecting the GRECO recommendations on party and electoral campaign financing."
3rd report: "Financing of political parties and election campaigns is an area where significant shortcomings remain. Draft legislation is under preparation with a view to addressing the outstanding GRECO recommendations."

[199] It is not, for example, specifically mentioned in the detailed May 2016 alternative assessment of Ukraine's progress on the VLAP by Europe Without Borders, or in the group's earlier 2012 assessment, nor in a similar report by Visa Free Europe in December 2015. The Vice Chairman of the Rada does not mention it in a September 15th op-ed about the VLAP conditions (Andri Paruby, "Безкоштовний політичний сир лише у олігархічній мишоловці. ВИЗВОЛИМО ПОЛІТИЧНІ ПАРТІЇ ВІД ОЛІГАРХІВ," *Pravda*, September 15, 2015 http://blogs.pravda.com.ua/authors/parubiy/55f805f4dfd30/). And it does not appear on any records of the National Reforms Council prior to the vote.

[200] Dmitry Lyhoviy, "Закон про державне фінансування партій: удар по «тіньових вождях» [The law on public funding of political parties: a blow to the "shadow leader"]," *PolUkr.net*, October 2015,

issues like the debacle over the appointment of the anti-corruption prosecutor.[201] EU officials were otherwise remarkably indeterminate about the democracy-related conditions for visa liberalization.[202]

In contrast, several other, more specific reforms were made explicit in the VLAP, the report cards, and the EU's public statements. One prominent example is the condition to amend the labour code to prohibit discrimination on the basis of sexual orientation. This likely speaks to the core interests of EU members and the direct relationship to visa liberalization: these amendments reduce the risk of asylum claims by Ukrainian citizens.[203] The benefits of a reformed system of political financing are less tangible from the EU point of view. This pattern is not unique: a number of scholars have pointed out that the substance of EU conditionality in the area of democracy promotion is vague because the strategic interests of member states often lead them to prefer stability to rapid democratic change.[204]

Second-order conditionality may be well-understood by experienced government officials, thus fulfilling the informational function described by Schimmelfennig and Sedelmeier. Even in this case, however, this approach leaves open the possibility of *intentional* misinterpretation, as described by one activist: "There is reason to believe that the president and prime minister are aware of what is necessary to achieve a visa-free regime. So, for example, it is surprising that the Cabinet of Ministers introduced draft amendments to the Labour Code that do not meet the requirements. There is a strange

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http://www.polukr.net/uk/blog/2015/10/zakonprofinpart/

[201] Delegation of the European Union to Ukraine, "EU delegation statement on 'the visa-free regime' day;" also, a review of the legislation package on October 7th did not refer to this bill: Iryna Sushko and Sergei Sidorenko, "Що стоїть на перешкоді скасуванню віз з ЄС: блок антикорупції та безпеки [What stands in the way of visa abolition by the EU: anticorruption and security unit]," *Europeicka Pravda*, October 7 2015.

[202] As when the EU Ambassador to Ukraine responded to the October 8th legislation package by saying: "I want to underline that neither the EU Delegation nor any other EU institution has expressed any comments on the content of the respective package—either in public or in any other format… the EU will be able to express a position only after having finalized its own thorough assessment." "Media: Poroshenko explained the need to withdraw the draft law on civil service false information," *UNIAN*, September 22, 2015.

[203] Agniezka Wienar, (European University Institute Florence), personal communication. 26 November 2015.

[204] Manasi Singh, "The EU's Democracy Promotion In Its "Neighbourhood": Renegotiating The Post-Arab Spring Framework," in *Democracy and Civil Society in a Global Era*, ed. Scott Nicholas Romaniuk and Marguerite Marlin (New York: Routledge, 2016).

communication between the Ukrainian government and the European institutions... on the Ukrainian side there is a kind of deafness. There is a conscious failure to act on several essential criteria."[205]

The EU has been consistent in advocating for anticorruption measures in general and encouraging compliance with the GRECO recommendations as a whole. However, the determinacy of the demand for political finance reform, at least in public documentation and discourse, was far less than would be expected for a strong and successful application of conditionality pressure.

4.3.2 Size and Speed of the Reward

Visa-free travel has been an important goal for Ukraine. It will benefit tens of thousands of Ukrainian citizens who travel for short-term study, business and personal reasons, and is expected to generate economic activity. Achieving visa-free status also carries a political value (allowing leaders to demonstrate tangible progress on the European agenda to an impatient electorate) and a symbolic value (affirming Ukraine's identity as a close partner of the EU). However, it remains minor in comparison with the main prize of EU accession. EU influence in the absence of a membership perspective has been shown to be weak.[206]

The pace of the process also seems to have been a factor in the enactment of this reform. The deadline for compliance was fast approaching when the bill was passed, and while technical benchmarks like biometric passports had been met at earlier stages in the process, anti-corruption reforms were amongst the last to be completed. The chairwoman of the Parliamentary Committee on European Integration described her colleagues as "students who are postponing their preparation for the exam till the last night" in the month prior to the final VLAP assessment.[207]

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[205] "The path to a visa-free regime has become more complicated, but Ukraine is showing its decision once again," *EU-Ukraine Cooperation News*, 22 October 2015. https://euukrainecoop.com/2015/10/22/visas-2/.
[206] Schimmelfennig and Scholtz, "EU democracy promotion in the European neighbourhood;" Kelley, "New Wine in Old Wineskins."
[207] "The path to a visa-free regime," *EU-Ukraine Cooperation News*.

The pressure created by deadlines is not necessarily easy for pro-reform actors to harness, however. One activist complained that "The closer we are to the goal, the greater resistance we face from the system, even on things that could produce quick results. It raises doubts whether the stated intentions of top officials to achieve results by the end of the year are sincere."[208] One of the deputies who sponsored the bill claimed the President had initially promised to sign the bill into law on the day it was adopted by the Rada, but this final step was delayed until November 21st, just weeks before the European Commission's final VLAP report was adopted.

Visa liberalization has the virtue of being a reward that can be enacted almost at the stroke of a pen (following the approval of the European Commission, Council and Parliament). Following Schimmelfennig and Sedelmeier, this speed of delivery should help make it an effective instrument of conditionality. The political nature of this approval process, however, caused many Ukrainian decision-makers to doubt that the EU would deliver on the reward in the near-term. As it turned out, this doubt was well-founded.

4.3.3 CREDIBILITY

Visa liberalization represents a tangible, modest step towards Ukrainian integration with Europe. The practical administrative costs for the EU and its member countries are minimal (it may even represent an economic benefit). Signals from the Commission, and even from the European Parliament, have been positive and encouraging throughout the visa dialogue.[209] The Commission's intention to proceed has been clear, but so has the insistence that there would be no automatic approval. These factors should indicate a credible, technocratic conditionality in which the target state can be assured of receiving the promised reward when conditions are met.

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[208] "Шлях до безвізового режиму ускладнився, але Україна знову демонструє рішучість [The road to visa-free regime was complicated, but once again demonstrates the determination of Ukraine]," *Ukrains'kyi Tyzhden'*, October 22, 2015.

[209] For example, the December 2015 letter signed by 31 Members of the European Parliament. European Parliament, *Letter by 31 MEPs to European Commissioners advocating visa liberalization for Ukraine*, (Brussels, 2015).

This, however, overlooks the political reality of mobility as a reward. While a report by Europe Without Borders concluded that member countries were ready to support visa liberalization once conditions are fulfilled, five of the ten member countries surveyed expressed a "neutral" attitude, one (France) declined to respond, and several raised concerns about the security and migration implications of the move. The need for the report and the tone it adopts speaks to the fact that Ukrainian advocates were well aware of the politics involved in liberalising travel for Ukrainians during an armed conflict and a global migration crisis.

When the Commission proposed visa-free status for Ukraine, Georgia and Kosovo in April 2016, several member states moved to tie it to the adoption of a mechanism that would allow for emergency suspension of visa-free travel in general. In foreshadowing the decision, the French Interior Minister brushed off the technocratic nature of the process, stating: "there's criteria and there's timing. And timing in politics is very important."[210] All parties voiced or implied that they understood the politicized nature of this reward even as they proceeded with a technocratic application of conditionality.

In a response to the Council of the EU and governments of member states, a group of Ukrainian civil society activists suggested that they had struggled to convince decision makers of the credibility of the VLAP conditions, stating "within the last year skeptics were constantly pushing the narrative of the 'hypocritical Europe that doesn't keep promises and was never going to waive visas.' This scenario would be perceived by the society as a proof of their arguments. The influence of this decision on political circles would be even stronger… [the] Verkhovna Rada has endorsed the most sensitive anticorruption laws…only after MPs were persuaded that the visa waiver is a real and close possibility." They warned that a delay in lifting the visa requirement would undermine future applications of conditionality and might even lead to reversal of recent hard-won reforms.[211]

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[210] Europe Online, "EU ministers back curbs on visa-free travel amid Turkey debate," 20 May 2015. http://en.europeonline-magazine.eu/1st-leadeu-ministers-back-curbs-on-visa-free-travel-amid-turkey-debateby-helen-maguire-dpa_456660.html

[211] "Ukraine's civil society calls on the EU to proceed with visa liberalization," *Euromaidan Press*, 24 May 2016.

Credibility has a negative dimension as well: the target state must be convinced that the EU will withhold the reward if the conditions are not met. In this process, and in general when conditionality has been applied to democratic reform in Ukraine, the EU has displayed what has been called "thin" conditionality—one characterised by fluidity, inconsistency of application, and a "weak… causal relationship between conditionality and outcome."[212]

Fungible priorities have been evident in many of the EU's interventions in Ukraine in the area of democratic reform. For example, 30% (EUR 148.2 M) of the EU's funding to Ukraine through the ENPI for 2007-2010 was designated for "support for democratic development and good governance." The actual expenditure in this area was 7% of the total tranche.[213] Instead, regulatory reform, infrastructure, economic development and facilitation of the Deep and Comprehensive Free Trade Agreement emerged as the areas of greatest expenditure. This low disbursement might indicate a "practical adjustment to the realities of the country," but it has been perceived as a "mismatch… between the EU's words and deeds."[214]

This flexibility and "thin" conditionality seems widely acknowledged in Ukraine. According to one government official: "The EU generally and European countries… are not as prescriptive as IMF is… [they] are not good at it – they don't know how to be assertive… The EU and the European countries are trying to make it very clear to Ukraine that it is not an accession country… They don't form joint institutions, they don't provide political guidance… they say… 'Here is our advice. You guys may follow it."[215]

4.3.4 Behind-the-Scenes Conditionality

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http://Euromaidanpress.com/2016/05/24/ukraines-civil-society-calls-on-eu-to-proceed-with-visa-liberalization/

[212] James Hughes, Gwendolyn Sasse and Claire Gordon, "Conditionality and compliance in the EU's Eastern Enlargement: regional policy and the reform of sub-national government," *Journal of Common Market Studies* 42(3) (2004).

[213] This pattern was repeated in 2011-2013, 20-30% (EUR 94-141M) was earmarked for "Good governance and the rule of law." Again, only 7% of the funds went to this priority. Bratu, *Case Study Report*.

[214] Bratu, *Case Study Report,* 16.

While not an explicit part of the October 2015 conditionality argument in favour of the political finance reform bill, there is evidence that conditionality pressure from other international actors may have played a part. According to "sources in the Cabinet" cited in one media report, the offer of visa liberalization was not the only factor in the decision to advance the bill to second reading: it was also linked to further financial support from the West.[216]

There are three other major instruments that exert conditionality pressure in Ukraine at the present time. The EU-Ukraine Association Agreement does not mention political finance reform, although it may be understood to contain the same type of second-order conditionality described above and it is referred to in the agenda of preparatory steps agreed to by the parties in March 2015.[217] The only explicit demand for this reform in a formal EU document appears in the 2014-15 Statebuilding Contract for Ukraine which links the "harmonisation of electoral legislation and political parties financing in line with the OSCE/ODIHR and GRECO recommendations" with the delivery of EUR 355 million in assistance.[218] However, reform of the law on local elections, not political finance reform, was the highest priority for Western donors in fall of 2015.[219] That these priorities were reversed when the former failed suggests either pragmatism or fungible priorities: in either case, it does not support the finding of credible conditionality.

The application of cumulative, behind-the-scenes conditionality by Western negotiators may well have influenced the presidential administration and cabinet of ministers. It would have done little, however, to sway most members of the Rada given

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[215] Bratu, *Case Study Report,* 23.

[216] Although the source also noted that the controversy surrounding the appointment of a new Prosecutor General was advanced more aggressively by Western officials. Yaroslav Konoshchuk, "Партіям підкинуть 400 млн з бюджету: Олігархи проти (Parties stole 400 million from the budget: oligarchs)." *112.ua*, October 12, 2015. http://ua.112.ua/statji/partiiam-pidkynut-400-mln-z-biudzhetu-oliharkhy-proty-264346.html

[217] EU-Ukraine Association Council, *EU-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement*, 16 March 2015, 8.

[218] Delegation of the European Union to Ukraine, "Responding to the discussion in media on civil service law, Jan Tombiński, the Head of the EU Delegation to Ukraine, made a following statement (22/09/2015)" September 22, 2015; Bratu, *Case Study Report*, 23

[219] High Representative of the European Union for Foreign Affairs and Security Policy, Joint staff working document: Implementation of the European Neighbourhood Policy in Ukraine. Progress in 2014 and

that it was not widely telegraphed and civic activists chose to focus only on the VLAP as the main argument behind their lobbying efforts. A preference for dealing with the executive branch to the exclusion of parliaments is one of the criticisms of conditionality as a mechanism for democratic reform—and one that contains echoes of the EU's own democratic deficits.[220] However this particular reform required the support of parliament, and defeat was an imminent possibility. The role of behind-the-scenes conditionality is difficult to detect without inside information, but the evidence fails to confirm that this factor was critical throughout the process.

Table 2. The role of EU conditionality in political finance reform

Criteria	Evidence	Strength of criteria
Determinacy	"Second order" conditionality, referred to only indirectly in the VLAP Absent from most discussion (media reports, briefings) of the VLAP requirements.	Low, until late September 2015
Size and speed of reward	Well below membership perspective, but still desirable. Deadlines prompted some action, but delay tactics still evident. Was presented as attainable by early 2016.	Moderate
Credibility	Delivering on visa-free status had low technical cost and strong support from the Commission and some states, but officials recognized that political factors were likely to interfere. EU priorities appeared to shift.	Low-moderate

4.3.5 A HOOP TEST OF CONDITIONALITY

recommendations for actions (Brussels, 2015).

[220] Grabbe, "How does Europeanization affect CEE governance?"

This analysis suggests that the determinacy of the EU's efforts to encourage political finance reform in Ukraine was low. The size of the reward was moderate at best, and there is little to indicate that Ukrainian officials believed that the EU's intention to deliver or withhold visa liberalization hinged upon this particular policy. On the other hand, the short timeline of the process appears to have helped to create pressure in the final months, and the grounding of the condition in COE guidance conferred a degree of formality. The evidence does not support a strong application of conditionality as a sufficient causal factor in the success of the reform. This suggests that other factors were at work.

4.4 The Role of Civil Society

Civil society activists have been credited for playing a significant part in the success of the political finance reform bill. Process tracing allows us to define the degree of influence of civil society on this reform decision based on available evidence.

No comprehensive theory of civil society influence exists in the literature on Europeanization or competitive authoritarianism (aside from the prediction that civil society will be marginalised). Instead, this analysis uses a framework that breaks down the dimensions of civil society influence. After Pollard and Court, these dimensions are defined as a) the capacity of civil society to set the policy agenda by raising and advancing an issue; b) the ability to play a part in policy formulation, shaping the content of legislation; and c) the ability to influence decision making at the relevant level of government.[221] What follows is an examination of the role of civil society along each of these dimensions of influence.

4.4.1 Setting the Agenda

As noted above, civic activists had raised the issues of public funding and transparency long before 2015. The Euromaidan protests focused public anger on political corruption

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[221] A. Pollard and J. *Court, How Civil Society Organisations Use Evidence to Influence Policy Processes: A Literature Review*, (ODI Working Paper 249, 2005).

and oligarchic influence in politics, and the coalitions that emerged from it incorporated political finance reform into their demands from the outset.

New civic coalitions were effective at highlighting the role of money in the 2014 presidential and parliamentary elections. During the campaign, the pressure generated by civic activist groups like *Chesno* and *Opora* and the general climate following Euromaidan put corruption on the agenda and generated competition for the "integrity space" in the election.[222] New political entrants moved to open their financial records for public scrutiny, and several established parties followed suit by posting asset declarations for their candidates through the *Chesno* website. This theme was reflected in the coalition agreement negotiated after the election, which included a commitment to adopt legislation on funding of political parties to ensure transparency in line with the GRECO recommendations.[223]

One of the results of this new integrity discourse was the decision of several parties to appoint prominent activists and investigative journalists to their lists. These new deputies (described in more detail in an earlier chapter) were directly responsible for initiating the political finance reform bill and introducing it in the Rada, quite literally placing it on the agenda.[224] They also dominated the committee charged with steering the bill throughout the development phase. In addition to placing the initiative on the parliamentary agenda, these activists worked throughout the summer of 2015 to keep it there.

4.4.2 Formulating Policy

Activists also shaped the content of the bill both at its drafting and throughout the revision process. The government had in fact introduced its own bill on the subject, but withdrew it in a "gesture of goodwill."[225] This cleared the way for prominent reformist MPs to introduce a bill drafted by experts from civil society. The first seven authors are

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[222] National Democratic Institute, *Ukraine's second front*.
[223] Verkhovna Rada of Ukraine, VIII Convocation, *Coalition Agreement*, Kyiv: A.III.5
[224] Verkhovna Rada of Ukraine, *Parliamentary hearings: future implementation of European Union Visa Requirements for citizens of Ukraine*, April 15, 2015.
[225] Verkhovna Rada of Ukraine, *Transcript of Plenary Session*, July 16, 2015

not parliamentarians or legislative counsel but longstanding activists with deep knowledge of the issue and prior drafting experience.[226]

Perhaps even more critical was the influence of civil society and their parliamentary allies in the revision of the bill. Earlier attempts had seen civil society producing or collaborating on draft bills, then "handing off" to friendly deputies or to the government. This law was sponsored throughout the process by individuals who identify both as lawmakers and as members of the civic reform movement and who maintained an ongoing collaboration with civil society.

The typical path of a bill in the Rada is a convoluted series of amendments and votes that progressively water down the intent—for example, the law on civil service reform was voted on 20 times and received 1,300 amendments. By contrast, this bill became stronger as it moved through the committee process, as attested to by the Venice Commission assessments.[227] The parliamentary committee that managed the revision process consisted mainly of the "new faces," and invited civil society experts to join in its work. The committee examined 268 amendments, bringing the bill into even closer alignment with international guidance.[228]

The direct authorship of the bill by civil society and the control they maintained over the text throughout the revision process was critical in producing a bill that went farther than any previous initiative.

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[226] The CSOs represented included IFES-Ukraine, RPR, TI-Ukraine, and the Centre for Political Studies and Analysis. (List of authors: http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=55653&pf35401=348585).The second author on the bill had been deputy minister of justice following the Orange Revolution, but had been "unable to defend" the 2003 law. The new law, he argued, is "much more comprehensive… with more detailed transparency and accountability requirements" and strict sanctions. ("Ukraine: new party financing law aims to break oligarchs' grip on parliament, experts say." *Kyiv Post*, 13 October 2015. http://www.kyivpost.com/article/content/ukraine/new-party-financing-law-aims-to-break-oligarchs-grip-on-parliament-experts-say-399846.html) He was also the author of proposals, drafted in collaboration with the COE and the European Commission, in 2008 and 2010. Agency for Legislative Initiatives, *Funding of political parties and electoral campaigns in Ukraine: proposals for further reforms* (Kyiv, 2008); *Concept of amendments to legislative acts of Ukraine to improve the functioning of the Verhkovna Rada of Ukraine: the "white book" of Ukrainian Parliamentarism* (Kyiv, 2010).

[227] European Commission for Democracy through Law and OSCE Office of Democratic Institutions and Human Rights (ODIHR), *Joint opinion on the draft amendments to some legislative acts concerning prevention of and fight against political corruption of Ukraine*.

[228] Committee on State Construction, Regional Policy and Local Self-Government, *Comparative Table for Second Reading: the Draft Law of Ukraine "On Civil Service,"* November 3, 2015.

4.4.3 INFLUENCING DECISION MAKING

From before the bill was introduced until the October 8th vote, civil society activists and their parliamentary allies conducted a lobbying effort based on both ethical and instrumental appeals: cleaner politics and visa-free status. But in the final decision those arguments alone proved insufficient. Instead, the decisive factor was an eleventh-hour compromise—one that eroded European advice but satisfied legislators and many in civil society.

The civic coalitions began as early as 2014 to assemble evidence of expert and public support for this reform, often with the support of democracy assistance delivery organisations.[229] While activists put so-called "de-oligarchisation" first in their media and public communications, they also acknowledged that this was unlikely to sway many decision makers. A member of the CVU expressed the representative view that "those MPs who are committed to serious reform of political life in Ukraine are ready to support these bills, but we, unfortunately, in this Parliament are more populist than reformers, so it will be difficult to find a voice."[230] Populist arguments remained potent in the lead-up to the vote, summarized by an Opposition Bloc MP: "Why, in the current difficult economic conditions, should the state put out money to finance parties? It seems that authorities have come up with an excuse to steal a little more from the state budget."[231]

Advocates of the bill also linked it to international conditions, particularly visa liberalization. The explanatory note to the bill includes the objective "to strengthen the conditions for liberalization of the visa regime between Ukraine and the EU,"[232] and

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[229] See, for example, Taran, 2014 on results of a survey conducted by the Centre for Political Studies and Analysis. IFES included questions on political party corruption in its June 2015 national survey and found strong support for reform (from 62% to 77% support for various measures related to limits and disclosures), however their poll did not specifically ask about public party financing. NDI also conducted focus group research on the issue. Viktor Taran, "Державне фінансування політичних партій: "Впровадити не можна заборонити"? [Public funding of political parties: "can not introduce a ban"?]," *Ukrainska Pravda*, September 8, 2014, http://www.pravda.com.ua/articles/2014/09/8/7036844/; International Foundation for Electoral Systems; *Key Findings: June 2015 Survey in Ukraine* (Washington and Kyiv: IFES, 2015); National Democratic Institute, *Results of 23 Focus Groups, Ukraine, January 2015* (Washington and Kyiv: National Democratic Institute, 2015).

[230] Dmitry Kryvtsun, "Чи реальне державне фінансування партій? [Will the state really finance political parties?]," *Deyn*, April 23, 2015 http://day.kyiv.ua/uk/article/podrobyci/chy-realne-derzhavne-finansuvannya-partiy.

[231] Yaroslav Konoshchuk, "Партіям підкинуть 400 млн з бюджету."

[232] Explanatory note on the bill:

activists' rhetoric on this link became stronger leading up to second reading (although it was often conveyed as a way to demonstrate Ukraine's readiness to join Europe more than a technical requirement). As has already been shown, however, that link remained tenuous until late in the process, and low determinacy and credibility on the part of the EU made this a useful but insufficient source of pressure, as evidenced by the fact that several other bills in the October 8th package failed.[233]

For the most part, publicly-stated positions and voting patterns were predictable, breaking down along the lines of the "real coalition"[234] with general but inconsistent support from the coalition-member parties (save dissent from "business factions"[235]). Opposition was expressed by most of the Opposition Bloc and the populist Radical Party. This left passage of the bill to rest on a narrow margin.

Furthermore, last-minute efforts by the business wing of the Bloc Petro Poroshenko (BPP) threatened to undermine key sections of the bill.[236] These manoeuvres were countered with a compromise brokered by the bill's sponsors and the BPP. The Venice Commission and the OSCE/ODIHR had encouraged lowering the per cent threshold of popular vote required for parties to qualify for funding. The bill had been revised to reflect this, placing the threshold at 3 per cent. The threshold to enter parliament, however, is 5 per cent, and the failure of the Communist Party to meet this threshold in 2014 was the source of much triumphalism. Just as off-putting for sitting deputies was the possibility of funding new challengers in an imminent election. A BPP deputy moved to raise the funding threshold to 5 per cent until after the next parliament had been formed "because I think it's a shame now to fund the communists, [the Party of Regions-affiliated] Tigipko and all the rest."[237]

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http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=55653&pf35401=348584

[233] Verkhovna Rada of Ukraine. *Report on Plenary Meetings of the Third Session of Parliament of Ukraine, Eighth Convocation*. October 8, 2015.

[234] Cmytro Ostapchuk and Tymofii Brik. "Beyond the words: actual collaboration in the Ukrainian Parliament," *VoxUkraine*, December 25, 2015.

[235] Konoshchuk, "Партіям підкинуть 400 млн."

[236] Viktor Taran, "Партии и политическая коррупция: как нельзя править законопроект [Parties and political corruption: the bill as it is impossible to rule)]," *Liga.net*, October 8, 2015. http://www.liga.net/opinion/253466_partii-i-politicheskaya-korruptsiya-kak-nelzya-pravit-zakonoproekt.htm

[237] Taran, "Партии и политическая коррупция;" Lyhoviy, "Закон про державне фінансування партій."

In the final assessment, the bill's sponsor claimed three factors motivated legislators on this issue: "Some of the MPs who voted 'yes' did so in the heat of local elections and did not study the text. Some pressed the button simply following the logic that it was part of the package of EU requirements for visa-free regime…. [but it was] the parliamentary political compromise that allowed to collect 226 votes 'for.'"[238]

4.4.4 Straw-in-the-wind evidence for civil society influence

Civil society played a clear and significant role in placing political finance reform on the parliamentary agenda, and in formulating a bill that went farther than any previous attempt. There is also evidence that activists influenced the final decisions involved. This constitutes "straw-in-the-wind" evidence in that it supports the hypothesis of civil society influence without ruling out a role for conditionality.[239]

Yet, according to the leader of RPR, "if the EU hadn't tied the adoption of the law to the issue of visa liberalization, the law wouldn't have stood a chance of passing."[240] Given the low determinacy, size and credibility of the EU's conditionality, this is a surprising statement. It also, like many comments on the issue cited earlier, seems to suggest that the condition was articulated or restated shortly before the vote to secure passage of this particular law.

An explanation for this is that civil society and the EU intersected in two main ways that suggest neither actor alone would have been likely to shape the same outcome. The advocates of this bill made a stronger, more determinate link in their rhetoric between political financing and visa liberalization than the EU, the government, or even other civil society actors working for visa liberalization more generally, and they repeated this until it became accepted as fact in the discourse in Parliament. There also appears to have been behind-the-scenes manoeuvring by activists which led the EU to push the

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[238] Leshchenko, Serhiy, Політична корупція: Є шанс поборотися [Political Corruption: There is a chance to compete] *Ukrainska Pravda*, October 9, 2015 http://blogs.pravda.com.ua/authors/leschenko/5616ed24701ac/

[239] Bennett and Checkel, *Process Tracing*.

[240] "Ukraine: new party financing law aims to break oligarchs' grip on parliament, experts say." *Kyiv Post*, 13 October 2015.

Presidential Administration to place the bill on the October 8th agenda.[241] The group of EU experts charged with evaluating Ukraine's progress on the anti-corruption elements of the VLAP arrived on September 1st and their assessment included discussion with civic activists.[242] This bill was poised for adoption at that time, and activists would have been anticipating a final push to secure the support of the Rada. In cases where evidence is lacking, Bennett and Checkel suggest formulating predictions of what such evidence would indicate if it becomes available in future.[243] Given the way in which assessment missions have consulted heavily with civil society and the close working relationships between the activists involved in this bill and European officials, it seems likely that civil society encouraged the Commission to press for the bill to be included in the October 8th package. While documentation surrounding these meetings was not available at the time of writing, future research could investigate this through document requests and information interviews.

In addition to putting this bill on the agenda both literally and figuratively, heavily shaping its content and striking a deal for the final needed votes, civil society activists appear to have made strategic use of conditionality and of the EU's flexible priorities, drawing on the EU as an external source of leverage on an issue of importance to activists.

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[241] "And approval of the law would be impossible without unremarkable, but the hard work of European diplomats and experts motivated Ukrainian authorities to this unpopular but necessary decision." Leshchenko, "Політична корупція."

[242] "Ukraine launches second evaluation of fulfillment of EU visa regime liberation plan," *Interfax-Ukraine*, 3 September 2015 http://en.interfax.com.ua/news/economic/287873.html.

[243] Bennett and Checkel, *Process Tracing*, 19.

Table 3. The role of civil society in political finance reform

Dimensions of influence	Evidence	Strength of influence
Agenda-setting	Influenced parties' behaviour somewhat during the election (lists, disclosures) and coalition negotiations to make party financing an issue. Former activists, now MPs, sponsored the bill.	Moderate-High
Policy formulation	Bill directly written and revised by activists and parliamentary allies. Defended against unfriendly amendments by committee dominated by "new faces."	High
Decision making	Reinforced the link to the VLAP in debates while the EU remained indeterminate. May have influenced the inclusion of the bill in the October 8th package. Brokered the compromise amendment.	Moderate-High

CHAPTER 5: THE CASE OF CIVIL SERVICE REFORM

Comprehensive reform of the civil service was one of the most ambitious objectives set by Ukraine's reformers following Euromaidan. The first step in this process, the passage of comprehensive legislation laying out new standards to de-politicise and curb corruption in the country's large public sector, has been called one of the most significant—and the most hard-won—successes of the past two years. The US Ambassador to Ukraine called it an "enormous accomplishment."[244]

The bill faced resistance at all levels of the political establishment, and both Reanimation Package of Reforms and the Kyiv Post called its passage a "miracle."[245] That the opposition was real and pervasive suggests that the bill was seen by all parties to be meaningful. According to RPR's lead on the initiative, "possibly, no other bill had so much resistance to its adoption. If the corrupt system resisted it so much, that means we are on the right track."[246]

This success presents a puzzle, however. Media accounts tend to portray the bill's passage in December 2015 as a hopeful indicator of growing civil society strength and the impact of public pressure on political decisions. At the same time, international institutions were deeply involved in the process: a conventional interpretation would likely emphasize that the initiative was conditionally tied to the disbursement of major new tranches of funding from the EU. The following analysis assesses the respective roles of EU conditionality and civil society activism in the passage of this bill.

5.1 OBJECTIVES OF THE REFORM

The institutional origins of Ukraine's dysfunctional bureaucracy lie in the process of transformation after the end of the Soviet system, when powerful self-interested elites

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[244] Geoffrey Pyatt, "Remarks by Ambassador Pyatt to the American Chamber of Commerce," Kyiv, 2015.
[245] Alyona Zhuk, "Ukraine gets new civil service from parliament," *Kyiv Post*, December 10, 2015 http://www.kyivpost.com/article/content/ukraine-politics/ukraine-gets-new-civilservice-from-parliament-403914.html
[246] Alya Shandra, "Ukraine's revolutionary civil service law: what you need to know," *Euromaidan Press*, December 12, 2015. http://Euromaidanpress.com/2015/12/12/ukraines-revolutionary-civil-service-law/

were well-positioned to subordinate weak or newly-formed state institutions to their political or economic interests. The result was an "informal institutional triad" of rent-seeking, patronage and coercion. While their strategies have differed, successive leaders and business elites have all been motivated to maintain a state apparatus dominated not by impersonal institutions and administration, rule of law and accountability but by informal levers of power. A main tension in Ukrainian politics has been a battle for control of these levers.[247]

The 2016 World Economic Forum's Global Competitiveness Report ranks Ukraine 130th of 140 economies for institutional effectiveness, with similarly low rankings for sub indicators in the areas of diversion of public funds (111), irregular payments and bribes (122), wastefulness of government spending (134), and favouritism in decisions of government officials (99).[248] The country also ranks 130 of 168 in Transparency International's index of perceived public sector corruption for 2015.[249]

More than some of the other priorities of reformist CSOs, Ukraine's dysfunctional bureaucracy also matters to citizens. Concerns about bribes and particularistic access to services and jobs figure highly in public opinion polls. The themes of grand and petty corruption appeared in the discourse surrounding Euromaidan.

Reform of the civil service is often associated with anti-corruption efforts. However, this reform is equally important for Ukrainian democracy-building. Depoliticizing the bureaucracy removes a main mechanism by which authoritarian elites compete for and consolidate power outside of the electoral arena; creates institutional continuity and a foundation for the success of other reforms such as electoral financing; and addresses one of the areas of Ukrainian citizens' greatest disenchantment with their

[247] Serhiy Kudelia, "The sources of continuity and change of Ukraine's incomplete state," *Communist and Post-Communist Studies* 45 (2012). Bureaucratic and political corruption in Ukraine has been studied through the lens of rational choice, behavioural and socio-cultural theories of corruption as well: it is likely that several factors contribute to this phenomenon, from low public sector wages to high "power distance."
[248] World Economic Forum, *Global Competitiveness Report 2015* (Geneva: WEF, 2016), 11, 355.
[249] Transparency International, *Corruption Perceptions Index for 2015*.

institutions. A competent, qualified, professionalized civil service has been portrayed as a foundation for the implementation of the full suite of reforms.[250]

Civil service reform is intended to change the legislative framework of Ukraine's bureaucracy to remove or limit opportunities for patronage and coercion, and to reduce the incentives and increase the costs of rent-seeking. The act sets out measures to support the principles of a civil service that is "professional, politically impartial, efficient, focused on the citizens of the state service, which operates in the interests of the state and society," as well as providing for "citizens of Ukraine the right to equal access to public service, based on their personal qualities and achievements."[251]

The most substantive elements of the bill are aimed at drawing a clear distinction between political appointments and professional public servants. The latter are now subject to merit-based, competitive hiring with a transparent salary structure designed to discourage bribes and reduce discretion by managers. The bill places restrictions on political activity by civil servants, particularly those at the highest levels, who may not be members of any political party (the appropriate level of restriction on less senior bureaucrats was a subject of debate: the bill prohibits them from holding executive positions but not from being members of parties). Civil servants are also transferred to the universal state pension plan. In a mark of the changing self-definition of national identity, the requirement of fluency in the Ukrainian language and minority languages as appropriate was included with little controversy.

A layer of senior bureaucrats, including the new role of Secretary, has been established to create continuity and expertise at the helm of each ministry. These individuals are to be vetted and recommended by a commission which includes representation for not only the president and Cabinet of Ministers but also MPs, public sector unions, and the head of the national anti-corruption agency. Four positions on the commission are also designated for representatives of NGOs and research institutes.[252]

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[250] Reanimation Package of Reforms, "Public statement on postponement of enactment of the Law 'On civil service'" News release, April 19, 2016.
[251] Law of Ukraine on Public Service Verkhovna Rada, 2016, No. 889-VIII
[252] Section III Art.14

The principal shortcoming of the bill is that it does not address the issue of low salaries. The extremely low compensation of most civil servants makes it difficult to recruit qualified individuals and encourages bribe-taking.

5.2 Overview of the Process

5.2.1 Prior Efforts

Reformist civil society had demanded most of these changes during previous rounds of reforms, notably in 2004 and 2010. Attempts to reform the Ukrainian civil service according to European standards have been made on several occasions in the past: one of the lead activists on this bill had been engaged in ongoing discussions for over 15 years.[253] Laws were revised in 2005 and 2011, but were not enacted: the latter was to have taken effect in January 2014, then was delayed to 2016.[254] As a result, the civil service in 2015 was still governed by the original post-independence 1993 law. The revisions, in any case, had received negative reviews from European institutions. Amongst their failings was the lack of a clearly merit-based system of recruitment and promotion, opportunities for politicization, and excessive discretionary power by managers over hiring and salary setting (allowing for up to 70% of salary to be based on discretionary bonuses, amongst other problems).[255]

One activist characterized the unprecedented feature of the new bill by saying that "all the previous laws were laws on privileges for civil servants. Ranks, categories—everything was needed only to define what a civil servant would receive for this rank or category—anything but how they had to serve citizens"[256]

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[253] National Reforms Council, "Історія підготовки проекту Закону «Про державну службу» (History of the adoption of draft law "On civil service.")" 28 December 2015.
[254] Law of Ukraine on Public Service No. 3723-XII, 1993 and No. 4050-VI, 2011; 1993; On state target program of development of public service in Ukraine No. 411, 2012.
[255] Airi Alakivi, *Implementation and observation of the civil service fundamental features and values* (Warsaw: OECD/SIGMA, 2013).
[256] USAID Rada Program, "Civil Service Law as "Personal Maidan" – IPTAC Meeting," News release, Sept 30 2015.

5.2.2 GROUNDWORK AFTER EUROMAIDAN

Civil service reform was one of the key demands of reformist civic activists following Euromaidan. Reanimation Package of Reforms and the Centre for Political and Legal Reforms initiated a working group on the subject in spring of 2014, producing a draft law. A few months later, the National Agency for Civil Service started its own expert advisory council and the two began to work jointly.

The Coalition Agreement provided for adoption of a new law on state service by the end of 2014[257] (and the Cabinet of Ministers' Action Plan by March 2015) and indeed an expert committee of government officials, non-governmental experts, civil society activists and European experts, with the guidance and partnership of SIGMA, began work in July 2014. SIGMA is the Support for Improvement in Government and Management program, a joint project of the OECD and the EU which provides training and support to Central and Eastern European countries in the modernization of their civil service.

By the end of the year, the committee had produced a draft law and SIGMA had delivered a positive assessment. The draft was submitted to the National Reforms Council, which expressed its support for the law's adoption.[258] It was transmitted to the Cabinet of Ministers January 17th of 2015, and introduced in the Rada by the Prime Minister on March 30th.

5.2.3 DIFFICULT PATH TO LEGISLATIVE APPROVAL

The bill's first major hurdle was its passage at first reading on April 23. It received the required 266 votes (213 from the coalition and 13 from non-coalition factions) only after the Speaker had steered it through debate involving several breaks and put it to the parliament in 20 successive roll calls. The process was described as "tortuous."[259] As activists noted, "it was already clear that the draft law will have a hard luck."[260]

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[257] Art. III.2.1
[258] Item. 8.2. NRR Protocol of 12.24.2014
[259] Lough and Solonenko, *Can Ukraine Achieve A Reform Breakthrough?,* 6.
[260] Reanimation Package of Reforms, "Civil Service Reform to be Delayed?," News release, July 6, 2015.

The bill was referred to the Committee on State Construction, Regional Policy and Local Government, where it was delegated it to an *ad hoc* working group. The working group entertained over 1382 amendments from 125 submissions,[261] but its attempts to secure the assent of the Committee were marked by gamesmanship, for example in a fruitless full-day meeting on September 15th and one without quorum on September 25th.[262]

It was in the midst of this controversial final committee phase that the Executive began to show signs of withdrawing its support. The President surprised the September 18th meeting of the National Reforms Council by suggested the bill be withdrawn and the drafting process begun again from scratch: the Prime Minister and other representatives of the Cabinet also began to send mixed messages about their support.[263] This prompted a surge of response from civil society, media and international actors, particularly by EU leaders who clarified their expectations that the reform be delivered before the release of the next tranche of assistance.

By October 6th the Prime minister had returned to urging speedy passage for the bill, citing the possibility of additional EU assistance.[264] However, it took several more days of debate and voting before the bill was finally passed on December 10th. The process had taken a total of 18 months.

After some moments of doubt and attempts to undermine the bill or delay its implementation, the law entered into force on May 1st, 2016. [265] Talks on additional €90 million EU assistance package tied to implementation, particularly to making civil service salaries more competitive, are underway.[266]

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[261] http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=54571&pf35401=361804

[262] National Reforms Council, 28 December 2015. http://reforms.in.ua/ua/news/istoriya-pidgotovky-proektu-zakonu-pro-derzhavnu-sluzhbu

[263] USAID RADA Program, "Shymkiv: EU Is Ready to Consider Financial Support for Civil Service Reform in Ukraine," News release, July 28, 2015.

[264] National Reforms Council, "Законопроект «Про державну службу» №2490 рекомендовано до другого читання [The draft law "On civil service» №2490 recommended for second reading]," October 7, 2015.

[265] Reanimation Package of Reforms, "Public statement on postponement of enactment of the Law 'On civil service'"

[266] "Набув чинності новий закон про державну службу [A new law on public service has entered into force]," *Ukrainska Pravda*, May 1, 2016. http://www.pravda.com.ua/news/2016/05/1/7107321/

5.3 The Role of EU Conditionality

5.3.1 Determinacy of the Condition

On the first element of determinacy—clarity and explicitness—the EU made first general, then increasingly specific demands for the adoption of this reform. The legal force of the condition, however, was less strong.

As Ukraine's financial crisis deepened in early 2015, the European Parliament approved a third package of macro-financial assistance in the amount of 1.8 billion EUR. A first tranche of EUR 600 million was disbursed in July, but second and third tranches were made contingent on a set of conditions, not all of which were directly related to market reform. Amongst the 15 conditions of the second tranche was the requirement that Ukraine "adopt a package of laws on public service ... to depoliticize and increase professionalism of public service by clear separation between political and administrative functions and facilitate effective management of human resources."[267]

But while the EU charged SIGMA with supporting Ukrainian officials through the process of drafting this law, the organization frames its role as promoting technocratic standards and best practices in candidate and neighbourhood countries rather than ensuring compliance with obligations. Its key documents set out the important but extremely general principles of "accountability, reliability, predictability, participation, openness, transparency, efficiency and effectiveness," and concepts like merit-based hiring and clear division between political appointees and public servants, but the guidance is largely process-oriented and not founded in law–in fact it is intended to be flexible in recognition of the different circumstances of the ENP countries.[268] SIGMA's assessments were not publicly released, and were aimed solely at improving the draft law, leaving it up to Ukrainian officials to decide to what extent they would use the

[267] European Union and Ukraine, *Memorandum of Understanding regarding Macro-financial assistance for Ukraine*, May 22, 2015, 7.
[268] SIGMA, 2015, *Guidance for Ukraine's civil service reform can also be found in the recommendations of the OECD Istanbul Anti-Corruption Action Plan* (Organisation for Economic Co-operation and Development, 2015)

advice.[269] Ukraine's collaboration with SIGMA bears more in common with models of network governance than of conditionality.

In this sense, the specifics of the law were not highly determinate. As will be shown below, however, this determinacy increased along with credibility as decision points drew closer and the failure of the bill looked increasingly likely.

5.3.2 SIZE AND SPEED OF THE REWARD

Against a backdrop of economic crisis, the macroeconomic assistance promised to Ukraine was clearly a significant reward, and the terms of the agreement set out a general timeline (the second tranche was envisioned for late 2015). The MOU on Macro Financial Assistance is primarily a financial instrument, but civil service reform was cited as "a kind of financial trump card" by EU officials, giving the Ukrainian leadership the ability to unlock support for other sectors.[270]

Nevertheless, one of the arguments of those opposed to the bill (including representatives of the Presidential Administration)[271] was that it would be unaffordable, and that the tranche was already designated for other purposes. Without a formal announcement, both parties began to raise the possibility of between EUR 70 and 90 million in direct salary support to a newly professionalized civil service in order to address this criticism.

The Prime Minister appealed to the Speaker and parliamentary factions to pass the bill, noting the new funding not so much as an explicit commitment that had been secured but as a bargaining objective which he hoped to raise it at the Dec 7th EU-Ukraine Association council in Brussels, and for which he required a mandate.[272] The EU Enlargement Commissioner struck an assertive tone, stating that the EU would not extend

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[269] Personal communication (email), SIGMA, July 29, 2016.
[270] USAID RADA Program, "Shymkiv: EU Is Ready to Consider Financial Support for Civil Service Reform in Ukraine," News release, July 28, 2015.
[271] "In my view, the financing is a question on principle. Because it might be 10 percent of the bill itself or less, but in terms of importance, it's 90 percent," Alexander Danyluk, "Про реформу держслужби. По суті [On the reform of the civil service. Essentially]," *Ukrainska Pravda*, September 25, 2015 http://www.pravda.com.ua/columns/2015/09/25/7082616/.
[272] Cabinet of Ministers of Ukraine, "Arseniy Yatsenyuk Urges Parliament To Adopt Law On Civil Service And Envisage The Establishment Of A Fund To Raise Salaries For Civil Servants," News release,

financing until the bill had been passed and an implementation plan was in place. "According to Hahn, the European Commission has many time financed Ukraine's promises, which is no longer the case - they will only provide money for real results."[273]

It should also be noted that MFA III was not the only source of support available to Ukrainian authorities in 2015. An additional EUR 850 million was disbursed by the EU in 2015 based on an earlier agreement (MFA I), and IMF support was also released. The degree to which Ukrainian authorities were motivated to pursue the "carrot" of EUR 600 million should be put in context, particularly as the EU began to signal that it might withhold the funding based on failure to complete other (mainly economic) reforms. Despite Ukraine's need for aid to avert financial crisis, the narrative surrounding this reform came to focus on the *insufficiency* of the reward.

5.3.3 CREDIBILITY

The threat that the EU would withhold the reward seems not to have been sufficiently credible to stop governing elites from pushing back against a reform that would undermine their power. In fact, leaders actually invoked conditionality to justify their opposition. Their attempts at manipulation pushed the EU to make firmer demands.

As noted above, the president and other members of the National Reforms Council backed away from the bill at the height of controversy in late September 2015. The President's claim that the EU had withdrawn its offer of financial support because it was dissatisfied with the revised text of the bill was rapidly discredited by activists and the media and elicited a strong response from the EU.[274] Senior EU officials clarified their support for the bill in statements that were striking in their directness (especially when compared with the non-committal language surrounding electoral finance reform). The head of the EU delegation to Ukraine released a statement affirming that "the adoption of this draft law is also a condition in bilateral assistance programmes between

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November 26, 2015.

[273] "EU to co-finance civil service in Ukraine only after reform strategy is drafted," *Censor.net*, November 19, 2015.

[274] "EU to co-finance civil service in Ukraine only after reform strategy is drafted," *Censor.net*, November 19, 2015; Semko, Vladimir. "Public Service: Reform Stalled." Zbruch, 2016; Zbruc, 2015; "Poroshenko National Council on reforms tried to hold up the law on civil service supported by the EU," *Evropeiska*

Ukraine and the EU, namely, the State Building Contract, the Macro- Financial Assistance, as well as for possible future assistance programmes on public administration reform. I expect that ongoing discussions on amendments to this draft law will enable the necessary clarifications and improvements with a view to adopt the proposed legislation within the shortest timeframe possible"[275]

Pressure came from other external institutions as well. The OECD's Anti-Corruption Network, which met October 7-9 to assess Ukraine's progress on the Istanbul Action Plan commitments, noted that "the draft law on civil service is still pending its second reading, which is a serious concern," and assigned a status of "No progress."[276]An about-face was evident within days. One presidential official stated that "we need to stop speculations on the draft law 'On civil service.' There is a draft law that meets the principles of the EU."[277] Another explained the episode as a misunderstanding resulting from conversations with the EU Commissioner for Enlargement.[278]

The government's wavering seems to have evoked stronger, more credible conditionality from the EU which then featured heavily in the arguments of the law's proponents. Despite the successful passage of the bill in December, however, the second tranche of macro-financial assistance for this agreement was not released as foreseen in 2015 due to "insufficient progress on a number of reform measures." The EU's second quarter 2016 report on the agreement notes that release of the second and third tranches hinges on Ukraine's meeting trade and financial conditions, which remain under negotiation.[279]

Pravda, September 21, 2015.

[275] Delegation of the European Union to Ukraine, "Responding To The Discussion In Media On Civil Service Law."

[276] Organisation for Economic Co-operation and Development, *Istanbul anti-corruption action plan third round of monitoring: Ukraine progress updates* (Paris: OECD, 2015).

[277] National Reforms Council, "Civil Service Reform Has Become A Hostage Of Political Games That Corrupts The Country's Image In The Eyes Of The International Community," September 22, 2015.

[278] Danyluk, "Про реформу держслужби."

[279] European Commission, *Implementation of macro-financial assistance to third countries*; "EU, Ukraine discussing possibility of getting additional preferences for Ukrainian goods in September," *Interfax-Ukraine,* July 20, 2016 http://en.interfax.com.ua/news/economic/358849.html.

5.3.4 A HOOP TEST OF CONDITIONALITY

Despite a longstanding network-governance approach on the part of European institutions and a significant and concrete reward linked to a moderately determinate deliverable, Ukraine's executive spent several months equivocating on civil service reform, and at times seemed intent on backing away. Officials' abrupt about-face in late 2015 appear linked to tighter, more credible conditionality established on the part of the EU when the success of the bill appeared in question. However the prevarication had by this time accumulated to make it difficult for the executive to deliver parliamentary support.

Table 4. The role of EU conditionality in civil service reform

Criteria	Evidence	Strength of criterion
Determinacy	General demand for this reform set out in Macro-financial Assistance MOU. Based on principle, best practice and flexible technocratic advice, not legal standards. EU officials clarified their support for the specific draft in late 2015.	Moderate, increased in late 2015
Size and speed of reward	Tied to imminent delivery of second tranche of aid, a tangible, substantial and needed reward. However other sources of support also open to Ukraine in 2015, with fewer democratic reform conditions. Some MPs argued that the reform was too costly in relation to reward. Support for the bill hinged in part on a further aid package to be delivered upon implementation (forecast for late 2016).	Moderate
Credibility	Signals that Ukrainian leaders initially perceived credibility that the EU would withhold the funds to be low. EU responded with stronger statements clarifying the link between condition and reward.	Moderate – increased in late 2015

5.4 The Role of Civil Society

5.4.1 Setting the Agenda

Civil service reform has been resisted by incumbent elites and remained a secondary priority for external actors: it fell to democratic activists to advance the reform after Euromaidan. One key activist observed that "it seems that the authorities do not need this draft law. They do not press on it. It is the Cabinet of Ministers that is mostly responsible for it, as technically this is a governmental draft law. Nevertheless, the Prime Minister has not made any appeals and demands to adopt this law as soon as possible."[280]

Beginning in September 2014, representatives of RPR, *Nova Kraina*, the Centre for Political and Legal Reforms and others raised the issue consistently in presentations of the Roadmap of Reforms and began to organise roundtables to introduce the core concepts of the reform to the media and parliamentarians.[281] The idea that other reforms would depend on an effective and de-politicized civil service, and that this reform should therefore be prioritized, appears regularly in their statements. The three organisations noted above established key members of their teams as subject matter experts and took the lead on developing a draft bill which formed a starting point for the law.

5.4.2 Formulating Policy

Several other groups also became members of the government-led committee that was established in late 2014, including Charitable Foundation "Creative Center" and the Eastern Ukrainian Center for Civic Initiatives. The drafts that emerged reflected SIGMA and other expert guidance, but also some key priorities of domestic Ukrainian activists such as the strong prohibitions on political engagement by civil servants at any level and the designated seats for non-governmental representatives on the commission to select senior civil servants, neither of which were drawn from European advice.

The most important role of activists in the content of the law, however, may have been in their defense of the law against amendments. As noted above, the parliamentary

[280] Viktor Tymoshchuk of the Center for Political and Legal Reform, quoted in Reanimation Package of Reforms, "Civil Service Reform to be Delayed?"
[281] For example, round table described in Natalia Andrusekno, "Are State Officials Too Expensive?"

committee considered a large number of amendments, and while most were technical in nature, a series of issues were raised throughout the process that activists considered to run counter to the intentions of the law. One such issue was the question of ministerial power to appoint and dismiss heads of departments and ministries. One minister went so far as to propose removing the provisions on competitive selection for these roles.[282] Other critiques included the cost of implementation, the perceived loss of ministerial control over departmental policy, and the idea that the law would make hiring and finding cumbersome, and proposals for amendment or delay were put forward on this basis.

These contentious points drew response from civic activists as swiftly as they were raised, and activists appear to have been successful at drawing media attention to the bill at critical points. From late September until October, the key CSOs hosted joint press conferences, media breakfasts, and round-tables with SIGMA and other experts, as well as conducting a media offensive that reached to all the major news platforms. These efforts presented a united front amongst advocates, who systematically addressed key criticisms on their substance as well as arguing that the bill had become a "hostage of political games."[283]

Activists worked closely with parliamentary "new faces" as well. The chair of the committee charged with revising the bill was also a member of the EuroOptimists and a prominent "new face" in parliament. She played a major part in defending the bill and steering it through the process, and spoke out on the fluid positions of leaders: "In September we encountered misunderstanding of the bill's basic provisions by some ministers, and Mr. Arseniy [Yatsenyuk, Prime Minister] stated somewhere in early September that the bill was bad. Probably, he forgot that it was he who had submitted it."[284]

The text passed on December 10th did not include everything reformers had hoped. In the final analysis, however, they expressed satisfaction with the bill and even suggested that it was their most significant achievement to date. Shkrum considered the

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Ukrinform, September 22, 2014.

[282] "The government is trying to derail reform of the civil service – RPR," *Kanal 24*, November 25, 2015.

[283] National Reforms Council, "Civil service reform has become a hostage of political games."

[284] USAID RADA Program, September 30, 2015

bill presented for second reading to be better than when it was first submitted;[285] RPR's lead activist rated it "8.5 out of 10."[286] Key disappointments included the failure of the law to provide clear guidelines for increased salaries and the concession that a full prohibition on party membership for all levels of civil servants was likely unconstitutional.[287] The core principles of depoliticisation and competitive selection, however, remained intact. Said RPR's representative, "This is the first law that was adopted in its entirety, the way it was originally intended."[288]

5.4.3 Influencing Decision Making

The series of votes that led to passage of the civil service law was the subject of one of post-Euromaidan civil society's first experiments with a mass advocacy campaign designed to create public pressure on legislators. A communications strategy surrounding each decision point was delivered by CentreUA, the platform that has provided communications support to RPR. The overall campaign was the longest and, according to CentreUA, the most successful that it had yet undertaken, and included press conferences, media partnerships and information events for media and the diplomatic community.[289]

Their tactics included social media publicity and demonstrations at the Rada the day of each key vote to back up direct lobbying efforts to MPs. The groups coined the slogans "*#Tsyny*" ("press it," i.e. the voting button) and "2490 without amendments" and asked citizens to share images of themselves holding signs with these slogans to send a personal demand to MPs. In an intersection with more populist sentiment, the most-shared image was of a soldier in the ATO zone holding a sign reading "#PressIt – so I don't have to." The groups continued to hold joint press conferences as well—with

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[285] Sergey Lavrenyuk, "Верховна Рада ухвалила закон про державну службу [Parliament adopted a law on public service]," *Holos Ukrainu (Voice of Ukraine),* December 11, 2015.
[286] "«Реформа державної служби — це початок смерті корупції»: експерт РПР ['Civil service reform - is the beginning of the death of corruption:' RPR expert]," *Hromadske Radio*, December 10, 2015.
[287] "Реформа держслужби на фінішній прямій [Reform of the civil service at the finish line]," *Ekonomichka Pravda,* October 9, 2015.
[288] Shandra, "Ukraine's revolutionary civil service law."
[289] CentreUA, *Public Report 2015,* 54.

the government back on board, these became a united affair led by CSOs but including the head of the civil service agency[290]

The impact of this advocacy on MPs' final decision to vote in favour is difficult to assess, but several accounts portray MPs as feeling pressured. While activists felt that many remained reticent until the final votes, in the end "the media publicity and public interest was too large."[291]

The step that appears most important, however, to the passage of the bill in December was a meeting convened by the committee chair on November 26th which brought together the advocates of the bill (including civil society experts) and the leaders of the parliamentary factions. After addressing all concerns about the bill, activists publicised the commitments of support made by all the factions, including this in their media work up until the day of the vote.[292]

5.4.4 Straw-in-the-Wind Evidence for Civil Society Influence

Activists took the lead by prioritizing this particular reform very shortly after Euromaidan, and while the goal had been a longstanding one for the EU and other international actors, it appears to have been CSOs who moved first to start drafting a text and to position the bill as foundational to the success of the larger reform process. The drafting process was broadened and drafts bore the marks of both European institutions and domestic activists, but the defense of the bill against unfriendly amendments was clearly led by CSOs, and an advocacy campaign and was judged by several observers to have created the domestic pressure needed to secure the final vote.

The quick fact-checking and feedback loop from the activists who sit on the National Reforms Council meant that EU officials responded promptly to the government's evasiveness on the bill in late September. The evidence available does not shed light on how the EU came to offer additional funding for implementation, but this may be something that future research could investigate.

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[290] "Chairman of the National Agency for Civil Service hopes that the draft law "On civil service" Thursday will vote all factions," *Ukrinform,* November 25, 2015.
[291] Shandra, "Ukraine's revolutionary civil service law."
[292] Taran, "Державне фінансування політичних партій," 5.

This was also another case where a seemingly strong conditionality reward may have worked on the executive, but parliamentary support was not a given nor easy for the executive to deliver. And while EU officials clarified their support for the bill in the final stages, exerted public pressure, and raised the prospect of additional financial assistance, this seemed only to invite greater scepticism from parliamentarians. Civic activists and their allies in parliament may have had difficulty influencing the executive, but they appear to have been critical to delivering parliamentary support.

Table 5. The role of civil society in civil service reform

Dimensions of influence	Evidence	Strength of influence
Agenda-setting	A consistent high priority noted by activists in the RPR Roadmap and elsewhere. Three CSOs established an independent working group and developed the first draft.	Moderate
Policy formulation	Participated in the drafting working group. Worked closely with "new faces" in parliament to review all proposals for amendments and defended against amendments in committee and parliament from all quarters (including the executive and coalition parties).	Moderate-High
Decision-making	Conducted public and media campaign to generate pressure on deputies prior to each vote. Worked with committee chair to secure agreement between parliamentary factions prior to second reading vote.	Moderate-High

CHAPTER 6: CONCLUSION

6.1 FINDINGS

The reforms analyzed above represent only interim steps towards full democracy and relatively rare cases of success. Nevertheless, they are meaningful reforms that went farther and deeper than any previous legislative change in Ukraine, and they had to overcome real opposition from an entrenched political establishment. They can therefore allow us to draw some conclusions about the influence of civil society in legislative reform, and to do so with greater specificity and evidence than many of the accounts published thus far. They also afford an opportunity to examine the conditions and strategies that allowed for this success—information potentially of value for the next phase of reform in Ukraine and for civil society in other transitional democracies. The following chapter synthesizes the case studies above to draw conclusions about civil society influence and its sources. It also identifies areas for further study.

These cases demonstrate that Ukrainian civil society been successful at shaping the domestic reform agenda. In both these cases, new civic coalitions leveraged the public appetite for change following Euromaidan and their new connections in parliament and government to insert their own reform priorities in the Coalition Agreement and the government workplan. They did this even before European institutions had clearly articulated these reforms as determinate and credible conditions with substantial and imminent rewards. Activists have shaped the *content* of legislative reforms in a direct way, participating as lead experts in multi-stakeholder drafting efforts and collaborating via parliamentary committees, and in some cases creating drafts independently. They have also been instrumental in defending legislation against unfriendly amendments and ensuring it retained its integrity while running the parliamentary gauntlet. Finally, they have played a key role in influencing *decision making*, especially in helping deliver vital parliamentary support for reforms.

Putting democratic reforms on the domestic agenda in a locally-relevant way, contributing specialised knowledge of the domestic context during the process of policy

formulation, and delivering on parliamentary support are noted weaknesses of EU conditionality, the main competing explanation for these cases of reform success. The narrative often goes that political elites are immune to the influence of civil society, despite its apparent new energy, and are ultimately motivated only by the material rewards or deterrents that can be offered by external actors. A closer look reveals that while external conditionality remains important, civil society has played a specialised and a necessary role in reform success, contributing elements that external actors cannot.

In the years following the Orange Revolution, civic activists struggled to achieve even modest influence in the areas of agenda-setting, policy formulation and decision making. What are the conditions or strategies that allowed post-Euromaidan activists to take on a greater role? Inferring from the above process-tracing analysis and from comparison with the literature on post-Orange Revolution marginsalisation, I offer the hypothesis that Ukrainian civil society owes its new influence especially to three main factors: new institutional strength, new parliamentary connections, and new relationships with European institutions.

6.1.1 Institutional Strength

As shown descriptively in Chapter 3, CSOs are now better-resourced, better-organised better-coordinated and more experienced than in the years following the Orange Revolution. The above case studies highlight specific ways in which these factors have allowed for greater influence.

The most prominent CSOs and coalitions have a sizeable cadre of professionalized, specialised individuals who have been working on particular issues for years. These experts are now in paid roles with civil society rather than choosing between tenuous project funding or being coopted into government. They are able to give input or even outright draft legislation, and to articulately defend it throughout the process. They have cultivated relationships with journalists, civil servants, and European experts, and the weight afforded to their expertise has made them go-to commentators in the media. The lead activists on the reforms above had been involved in failed attempts after the Orange

Revolution, and were able to draw on that experience to avoid pitfalls. In the case studies examined above, this expertise proved an asset throughout the process.

Their voices have in many cases been strengthened by their ability to present a united front when dealing with politicians, the media and external actors. Whether releasing joint statements or speaking on behalf of a coalition, they are now understood to represent, if not a broad portion of the electorate, at least a general consensus amongst reformist groups. United platforms like RPR allowed for pre-emptive strategies like the release of the Reforms Roadmap which put them in a strong position to shape election narratives, coalition negotiations and parliamentary agendas. Polished communications, enabled by democracy assistance funding and practical resources like CentreUA and the Ukraine Crisis Media Centre, have amplified their message. And their resources have enabled them to bring European experts to Ukraine to help explain complex reforms and enhance their legitimacy.

With stable funding and organisational structures, these activists were able to put into practice the most-cited lesson of the Orange Revolution: the need to maintain momentum and pressure on government. At no point has there been a lull in the pace of activism on these reforms. Groups were able to engage throughout the lengthy life cycle of each bill, and to spring into action at critical moments. They have also clearly felt secure enough to criticise leaders, often quite sharply, something they hesitated to do after the Orange Revolution.

6.1.2 Parliamentary Allies

As shown in Chapter 3, civil society now has more direct and structured access to government through forums like the National Reforms Council. But while this has afforded opportunities to collaborate on policy formulation, in the cases above the greatest influence appears to have come from the "new faces" in parliament who have played a key role in steering reforms through the Rada.

While still outsiders to the political establishment, the new deputies have access to the structures of government and parliament, allowing for more direct influence on the reform agenda and policy formulation by, for example, chairing and participating in

parliamentary committees. They have insight into the decision-making processes of their caucus and leadership, and have used this knowledge to craft effective lobbying strategies and broker deals for key votes.

Although groups like RPR have been careful to maintain their political independence, parliamentarians who moved from civil society and independent media to the Rada in 2014 have maintained their links with the civic coalitions and worked closely with them throughout the process. They are best seen as an extension of civil society or a bridge to democratic structures, if not to the political establishment. Working inside the system, some see them as maintaining their independence (especially compared to the post-Orange Revolution period), others as being co-opted. On one hand, their presence has been an electoral asset for their parties and leaders, demonstrating their commitment to reform and acting as an inoculation against more radical civic groups and opposition. On the other, their elected positions have afforded them a higher profile in the media, and they have not hesitated to use this profile to speak about key reforms and to name and shame their parliamentary colleagues.

6.1.3 European Relationships

The case studies above demonstrated how activists made rhetorical use of European values-talk and the desire on the part of many Ukrainians for a "normal" European democracy and standard of living. Activists' close relationships with European actors gave them greater authority in the use of this rhetoric: their media comments often involved explaining how models of reform had been applied in other countries, or explaining to Ukrainians how "Europe" perceives the country's policy choices, employing this authoritative voice when "naming and shaming" decision-makers.

But it also appears that civil society coordination with European institutions, particularly the EU, went deeper. With their unified coalition stances on reform priorities, domestic civil society appeared to set the agenda. If activists directly influenced the placement of democratic reforms on the list of conditions for visa-free status or Macro-Financial Assistance, those discussions would have relied upon relationships and likely private dialogues that were unfortunately opaque for an outside researcher. In terms

of observable influence, however, weak conditionality became stronger throughout each reform as civil society worked to bring Western pressure to bear at critical times, and on activists' own priorities. Civil society, in adopting European practices and organization structures, has moved faster than governments to "create de-politicized and pragmatic environments for cooperation" and have become a favoured partner for international officials.[293] CSOs have built relationships of trust with European institutions and this has proved an advantage, not just for attracting democracy assistance but now also for outmanoeuvring government by drawing on these connections. Groups appeared to coordinate internal and external pressure rather than simply follow or support an EU reform agenda. By linking reforms to EU integration even when they are only tenuously technical conditions, civic activists may even be influencing the EU's priorities and the way in which it deploys conditionality.

A more assertive Ukrainian civil society also tempered European actors' willingness to rest on the assumption that the new government represented genuine reform, a lesson perhaps learned from the Orange Revolution but reinforced by activists with new ability to monitor and expose government foot-dragging and bring it to the attention of Western officials.

It can also be instructive to consider which tactics were *not* critical to this success. Generating a high public profile for an issue is a frequently-used tool of civil society groups working to influence the political process from the outside. Civic coalitions in post-Maidan Ukraine have vastly improved their communications tools and media relations, and the reforms analyzed above showed that they made use of these levers.

But complex reforms are difficult to convey, the agenda is large, confusing and distant from people's lives, and surveys suggest that very few Ukrainians can identify specific reforms or CSOs. This suggests that civil society use of communications remains primarily an exercise of communicating amongst elites and the most engaged public, at

[293] Iwona Sagan, "Post-Socialist Transformation, European Neighbourhood and Civil Society Networks between Poland, Russia and Ukraine: a Case of Multi-level Contingency," *Journal of European Integration* 32(5) (2010), 442.

times seemingly with a European audience in mind. This type of communication can still create pressure on leaders, but may not translate into real electoral pressure.

That grassroots mobilisation is not a major strategy is not surprising in a competitive authoritarian system, where democratic appeals are not the major drivers of political behaviour. Democratic activists have made forays into public awareness and engagement since Euromaidan, but the groups most deeply involved in influencing legislative reforms are separated from other elements of civil society in their lack of a protest culture.

There are also few prominent cases of civil society achieving its legislative aims without external conditionality (none were sufficiently clear-cut to be selected for this study). Those cases that do represent major policy change in the absence of external conditionality often have a strong element of populism, making it very difficult to distinguish political populism from civil society effort—perhaps a matter for further study.

These findings help to clarify the extent of influence of Ukraine's new civil society on the democratic reform process, and the specific dimensions and strategies of this influence. The wider conversation about Ukraine's reforms is dominated by unsupported and contradictory statements: these findings are potentially valuable for anyone who wishes to better understand the unfolding process and for those who hope to support civil society in influencing the process.

6.2 Discussion

6.2.1 Implications for the Literature on Post-Soviet Civil Society

The literature on the strength and influence of civil society in the post-Soviet context features few successes, but this study indicates that the newly-strengthened civic groups in Ukraine are in fact able to exert a degree of impact on the outcome of key reforms.

As noted in Chapter 2, the factors that have been blamed for the weakness of post-Soviet civil society have included socio-cultural characteristics, competitive-authoritarian systems of government, and the unintended consequences of

Western democracy assistance. Of these three factors, the clearest change has been in the area of democracy assistance—but the change has been one of *increasing* support aimed at civil society, deeper international involvement and more complete implementation of Western models of activism. This suggests that democracy assistance to civil society is beginning to paying off with positive results in the area of policy influence (if not other types of strength). And although democracy assistance is often accused of promoting a specific mode of activism or a policy agenda, CSOs in Ukraine that have benefited from external support are drawing on international models, expertise and resources but advancing locally-defined priorities. This finding may suggest that some literature overstated or under-specified the negative impacts of democracy assistance. It may also reflect the changing approach of donors, who have provided more consistent, sustainable support than before, and the readiness of Ukraine's more mature civil society to absorb these funds and assert their own priorities.

This thesis did not focus on any of the other functions or measures of effectiveness of civil society, but it is clear that many predicted weaknesses still remain, particularly in the area of representative legitimacy (addressed further below). However this does not negate the progress made by Ukraine's reformers, aided by international democracy assistance, in their efforts to influence the legislative framework of Ukrainian democracy.

6.2.2 Implications for Literature on Conditionality

Perhaps the most surprising finding of this thesis is the poor performance of EU conditionality when subjected to the "hoop test" of determinacy, size and speed and credibility. While conditionality has no doubt been important in many of Ukraine's reform successes so far, this research suggests that the role of conditionality in these reforms may sometimes be overstated. These cases indicate that democratic reforms are unlikely to be prioritised by external actors with more realist interests, and that when such conditions are set they are unlikely to succeed without significant groundwork at the domestic level by civil society. As Bratu notes, EU funding and conditionality are essentially technical solutions that can be challenging to implement in the profoundly political arena of democratic reform, where competitive authoritarian elites cling to their

incumbent advantage.[294] Furthermore the lack of a membership perspective for Ukraine continues to limit EU leverage, restricting the size of the rewards the EU can offer. Finally, the disaggregated nature of the EU means that decisions to deliver or withhold rewards are subject to internal member-state politics, reducing the credibility of the ostensibly technocratic conditionality process. The risk of overestimating the impact of conditionality is that scholars and practitioners might neglecting other aspects of the policy process or undervalue democratization that is taking place through the efforts of domestic actors.[295]

These case studies also appear to confirm the thesis that the EU uses "thin" or soft conditionality for democratic reform, *vs*. hard conditionality for economic and security issues, unless otherwise prompted by domestic activists or the threat of imminent failure of the target reform. Several authors have described EU conditionality on democratic reform as being "mainly… of a rhetorical nature," as compared with conditionality in sectors like market reform or border security [296] This thesis confirms that EU conditionality remains highly malleable and politicized. Democratic conditions have been set out for Ukraine across a web of policy instruments and agreements, each alluding to one another and to secondary instruments that elaborate the policies expected, and each moving on a separate and often shifting timeline. That Ukrainian decision makers would perceive these conditions as flexible and indeterminate, and that they might question the credibility of the conditions, is not surprising.

6.2.3 Interplay of Civil Society and Conditionality

This leads to a third important, if still tentative, implication of this thesis: that civil society can shape EU priorities and the way in which the EU deploys conditionality. The literature that exists on the relationships between civil society and the EU in the process of Europeanization tends to focus on the ways that the EU selectively empowers civil society, instrumentalizing domestic activism in support of European policy goals or

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[294] Bratu, *Case study report,* 34.
[295] H. Haughton, "When does the EU make a difference? Conditionality and the accession process in Central and Eastern Europe," *Political Studies Review* 5(2) (2007); K. Ulusoy, "Turkey's reform effort reconsidered, 1987-2004," *Democratization* 14(3) (2007).
[296] Bousac et al., *Improving the EU's support for the civil society in its neighbourhood*, 14.

procedural legitimacy. There have also been many calls, particularly through the ENP, for the EU to cooperate more strategically with domestic activists on reform and application of conditionality.[297] The cases analyzed above suggest that this type of co-ordination is beginning to happen, and in fact that civil society has taken the lead, becoming a priority-setter rather than a priority-taker.

6.3 Further Research

As noted from the outset, this project is highly circumscribed. Some important questions remain outside the scope of this thesis: others have been raised in the course of this research. The following are three of the most important types of questions that could be addressed in future research.

6.3.1 Beyond Legislative Change

None of the activists involved, nor the scholars who observe this process, would suggest that the reforms analyzed here are an end point for democratic transformation. On the contrary, the most difficult work—that of making these changes irreversible and securing their implementation—remains to be done. It should be re-emphasized that the legislative changes addressed in this thesis must be put into perspective as procedural and incremental. Meanwhile, EU conditionality influence will be likely to wane once the "carrots" of visa liberalization and macro financial assistance are handed out (or to be undermined if they are not, as activists warned when visa liberalization was postponed). An important question for future research is whether activists can begin to influence implementation independently using domestic opportunity structures; to leverage weaker, more normative types of external pressure; or to convince external partners to strengthen the determinacy and credibility of their conditionality.

Both civil service and electoral finance reforms have been threatened since their adoption.[298] In both cases, civil society has fought back, and their efforts have thus far

[297] Solodkyy and Sharlay, *How could the EU accelerate reforms in Ukraine?*; and Iskra Kirova and Sabien Freizer, *Civil society voices: how the EU should engage its eastern neighbours*, (Brussels: Open Society European Policy Institute, 2015), amongst others.

[298] Ukrainska Pravda, "Набув чинності новий закон про державну службу;" Viktoria Matola, "Ігор Коліушко: Банкова хоче посилити повноваження Президента, змінивши закон про держслужбу [Igor

prevented either from being derailed. Both bills have come into force, and civic groups have become involved in their implementation in practical ways, for example, by working with the Central Election Commission to carry out audits of the political parties' first round of public financial statements. The EU has also adjusted its approach by tying release of funds to implementation (in the case of civil service reform) and proposing monitoring which allows for revocation of visa-free status if reforms are repealed.[299] These cases are both well suited to a longitudinal study that follows this process of implementation and gauges success in the longer term.

6.3.2 Democratic Deepening Within Civil Society

As noted by Matveeva, "There is nothing wrong with having professional NGOs… but observers and practitioners should be upfront about their function. Such NGOs should not be built on false premises of citizen empowerment and enhanced representation."[300] That civil society is able to take up its role in the legislative process and exert influence over policy is an encouraging sign of democratic opening; that activists may be able to steer external actors towards supporting domestic priorities gives them a new and needed tool to reinforce this influence. At a certain point, however, this tactic begins to look like trying to achieve democratic ends using undemocratic means—unelected activists leveraging foreign pressure, combining two actors with noted democratic deficits—even if there are few real alternatives in a competitive authoritarian system.

Particularly at the beginning of the process, CSOs and international actors pushed hard to increase the speed of reforms to take advantage of a brief reform window and the normative pressure created by Euromaidan. This risks creating what some analysts have called "executive overdrive," reducing opportunities for wider public consultation or buy-in.[301] Furthermore, to realise policy goals, civil society requires strong state institutions with which to engage, and political parties that act as effective and

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Koliushko: Bankova wants to strengthen presidential powers by changing the law on civil service]." *LB.ua News Portal,* May 30, 2016.

[299] Sergey Soroka, "Боротьба за адміністративні ресурси, або шокінізація Ковальчука [Fight for administrative resources, or 'shokinization' of Kovalchuk]," *Ukrainska Pravda*, June 15, 2016.

[300] Matveeva, "Exporting civil society," 12.

[301] Michael Meyer-Resende, *The seven pitfalls for political reforms in Ukraine* (Berlin: Democracy Reporting International, 2015).

representative interest aggregators to inject democratic legitimacy. And as noted in Chapter 3, the reformist, institutionalised component of civil society in Ukraine struggles to engage the broader public.

Future research could usefully explore the prospects for Ukraine's CSOs to improve their representative legitimacy and the question of whether their efforts at establishing a rapport with the broader public are proving effective.

6.3.3 Bridging vs. Bonding Social Capital

Any analysis of the present reform process in Ukraine is necessarily set against the backdrop of more existential questions surrounding national unity, sovereignty and identity. Civil society plays an important role in these issues. The Europeanized, institutionalised CSOs that have been most prominent in the reform process have their base primarily in Kyiv and Western Ukraine, although they have made efforts to expand their reach. This regional skew was a source of serious weakness following the Orange Revolution and raises questions of representative legitimacy.

Putnam's notion of bridging (cross-group) *vs.* bonding (within-group) social capital could offer a useful framework for future studies of the intersection of civil society and national identity in Ukraine. Which type of social capital are these organizations building? How does that compare with the types of social capital being built within other elements of civil society, such as the volunteers supporting Ukraine's operations in the East?

A related task would be to examine how the regional bias of Ukraine's most influential CSOs affects the policies they advocate, and how these policies in turn affect Ukraine's regional differences. For example, the electoral finance law permits donations to Ukrainian political parties from sister parties in the EU, but excludes all other foreign contributions; the civil service law includes a requirement of fluency in Ukrainian. A Western-oriented civil society appears to be steering Ukraine in a European direction, both explicitly and through more subtle mechanisms, and this process merits further investigation.

Many observers have argued anecdotally that Ukrainian national identity is changing, becoming more inclusive and defined more by civic allegiance than ethnic, linguistic or regional belonging. Public opinion research that explores these changes is increasingly becoming available. An important area of inquiry would be to understand whether this change is reflected in the programs, membership and activities of civil society organisations. Is there evidence that these groups are moving away from the nationalism-inflected liberalism of the Orange Revolution? Is the European identity-talk that surrounds these reforms inclusive, or is it simply a new way to draw lines between groups in Ukrainian society?

This thesis indicates that civic activists in Ukraine have been able to influence policy-making *despite* the competitive authoritarian system in which they operate, and to begin to create the institutional and legislative foundations for democratic deepening. If future research indicates that activists are able to exert influence without outside leverage; if legislative reforms achieve their aims and improve the quality of Ukraine's electoral democracy; if CSOs can improve their representative legitimacy and connection to broader society; and if they can build "bridging" social capital and an inclusive national unity, these achievements would indicate a more fundamental change in Ukraine’s political system and a pathway out of the grey zone between autocracy and democracy.

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