THE AGENCY FOR LEGISLATIVE INITIATIVES
ANALYTICAL REPORT

# WHY «EUROPE» MATTERS

**Europeanisation of the Lawmaking Process and Parliamentary Practices: Lessons for Ukraine**

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# ABBREVIATIONS

| | |
|---|---|
| **CoE** | Council of Europe |
| **COSAC** | Conference of Community and European Affairs Committees of Parliaments of the European Union |
| **COSAC, «3rd Bi-annual Report»** | COSAC, «3rd Bi-annual Report on EU Procedures and Practices» (Luxembourg, 17–18 May 2005) |
| **COSAC, «8th Bi-annual Report»** | COSAC, «8th Bi-annual Report on EU Procedures and Practices» (Estoril, 14–15 October 2007) |
| **COSAC, «9th Bi-annual Report»** | COSAC, «9th Bi-annual Report on EU Procedures and Practices» (Bled-Brdo pri Kranju, 7–8 May 2008) |
| **EAC** | European Affairs Committee |
| **EEA** | European Economic Area |
| **EFTA** | European Free Trade Association |
| **EioP** | European Integration online Papers |
| **EJLR** | European Journal of Law Reform |
| **ELJ** | European Law Journal |
| **ELRev** | European Law Review |
| **ENP** | European Neighbourhood Policy |
| **EPAP** | European Press Academic Publishing |
| **EU** | European Union |
| **EuConst** | European Constitutional Law Review |
| **Gov't & Oppos** | Government and Opposition |
| **J Comp Pol'y Analysis** | Journal of Comparative Policy Analysis |
| **J Europ Integration** | Journal of European Integration |
| **JCMS** | Journal of Common Market Studies |
| **JEPP** | Journal of European Public Policy |
| **JLS** | The Journal of Legislative Studies |

| | |
|---|---|
| **Living Rev Euro Gov** | Living Reviews in European Governance |
| **MP** | Member of Parliament |
| **MS** | Member State |
| **NP** | National Parliament |
| **OJ** | Official Journal of the European Union |
| **OSCE** | Organization for Security and Co-operation in Europe |
| **PA WEU** | Parliamentary Assembly of the Western European Union |
| **Parliamentary Procedure Act** | Parliamentary Procedure Act of the Verkhovna Rada of Ukraine No. 1861-VI of 10 February 2010 |
| **PC** | Parliamentary Committee |
| **PCA** | Partnership and Co-Operation Agreement between the European Communities and their Member States, and Ukraine signed on 14 June 1994 |
| **PCoEI** | Parliamentary Committee on European Integration of Ukraine |
| **PSGE** | Program for the Study of Germany and Europe |
| **SPS** | Scandinavian Political Studies |
| **TEU** | Treaty on European Union, signed at Lisbon of 13 December 2007 [2008] OJ C 115 (Lisbon Treaty) |
| **TFEU** | Treaty on the Functioning of the European Union, signed at Lisbon of 13 December 2007 [2008] OJ C 115 (Lisbon Treaty) |
| **The *acquis*** | The *acquis communautaire* |
| **The CMU** | Cabinet of Ministers of Ukraine |
| **The Head of State** | President of Ukraine |
| **The Law** | Law of Ukraine on the National Programme for Adaptation of Ukrainian Legislation to the Legislation of the European Union No. 1629-IV of 18 March 2004 |
| **The Parliament** | Verkhovna Rada of Ukraine |
| **The President** | President of Ukraine |
| **The National Programme for Adaptation** | Law of Ukraine on the National Programme for Adaptation of Ukrainian Legislation to the Legislation of the European Union No. 1629-IV of 18 March 2004 |
| **UkrSSR** | Ukrainian Soviet Socialist Republic |
| **W Eur Pol** | West European Politics |
| **WTO** | World Trade Organisation |

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## DIAGRAMS



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## CASE STUDIES

# EXECUTIVE SUMMARY

Although the Europeanisation studies have recently substantially broadened the «geography» of their analysis, little attention so far has been paid to the Eastern neighbours of the European Union (EU), in particular Ukraine. This Report attempts to fill the gap, by considering the Europeanisation of the Ukrainian parliament. It focuses on three dimensions: (i) development of the parliamentary procedures and practices under the influence of the European parliamentary traditions; (ii) institutional and procedural transformations of the legislative process due to the adaptation of Ukraine's legislation to the *acquis communautaire*, and (iii) Europeanisation of the policy-making process, in particular, the role of the «European argument» in the law-making.

For the EU readers, the Ukrainian experience, presented by this Report, restores the initial stages of European integration with their impact on the functioning of the legislative and executive branches of power, demonstrating formation of the grounds for the inertness of the national parliaments (NPs) in EU-related matters. For the Ukrainian audience, this study accesses the scale on which «the European factor» influences the parliamentary activities, the legislative process and the modelling of domestic reforms, while comparison with other EU countries presents a possibility for a timely understanding of the need for the development of the institutional capacity of the Parliament of Ukraine in the issues dealing with European integration, in particular concerning the adaptation of Ukraine's legislation to the *acquis communautaire*. Being critical regarding the current state of play, this Report suggests a set of parliamentary reforms, arguing that the need for development is nowadays particularly appealing in the context of negotiations regarding the EU-Ukraine Association Agreement, where the adaptation of Ukraine's legislation to EU law is one of the key priorities.

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# Part I.
# INTRODUCTION

The influence of the European Union on the internal transformation of its Member States is profound. For the past twenty years, political, economic, social and other changes which have emerged at the national level as a result of the European integration have been referred to by researchers as «Europeanisation». In the legal context, on the one hand, these transformations are related to the harmonisation of the legal systems, the introduction of uniform regulatory principles and the formation of a system of common European institutions; on the other hand, a whole series of changes have been activated by the overlaying of the European norms on the legal traditions and practice of each individual country. The latter often produces a divergence effect with various responses from the Member States in view of their specific initial conditions.

The variability of the European integration influence can be illustrated by the consequences faced by the national parliaments.

Indeed, EU membership envisages an objective reduction of the competences exercised by the national legislative bodies. The role of the parliaments in the legislative process at the EU level is negligible: although the substantial scope of traditionally «parliamentary» functions has been passed over to the European stage, the legislative decisions are taken in the triangle «European Commission – European Parliament – national governments». The progressive growth of the areas attributed to the EU competence, due to the gradual changes of the foundational treaties and development of the EU legal order, did not result in the proportional strengthening of the role played by the national law-making institutions in the adoption of the decisions at the European level.

As a result, back in the 1990s, the EU was accused of causing «de-parliamentisation» trends in Europe, while researchers started describing parliaments as «peripheral institutions»,[1] «latecomers»,[2] «losers»[3] and «victims»[4] of integration processes. Even though the Treaty of Lisbon formally introduced a new procedure for the monitoring of the subsidiarity principle by the national parliaments, such a mechanism plays a rather symbolic role and it could not overcome the disbalance of competences caused by the European integration. The European Commission, the European Parliament and national governments act as the EU legislators, while the national parliaments have been put in

1 Philipp Kiiver, «The Composite Case for National Parliaments in the European Union: Who Profits from Enhanced Involvement» (2006) 2 EuConst 227, 228.

2 Andreas Maurer and Wolfgang Wessels (eds), *National Parliaments on their Way to Europe: Losers or Latecomers?* (Nomos Verlagsgesellschaft, Baden-Baden 2001).

3 Ibid.

4 John O'Brennan and Tapio Raunio, «Introduction: Deparliamentarization and European Integration» in John O'Brennan and Tapio Raunio (eds), *National Parliaments within the Enlarged European Union: From Victims of Integration to Competitive Actors?* (Routledge, Abingdon 2007) 2.

charge of the implementation of directives and other European norms in the national legislation, as well as being made responsible for the control of the actions undertaken by their governments. Recent studies demonstrate that the «de-parliamentarisation» effect is especially evident in the candidate states. The necessity to transpose the *acquis communautaire* turns parliaments into a formal legitimising institution for the policy decisions that were made at the European level and then drafted by national governments accordingly to be applied at the domestic level.[5]

However, the homogeneity of the influence that the European integration has on various parliaments is debatable. The fact that *de jure* the EU membership establishes similar legal conditions for the functioning of the national legislatures has not removed the differences between national parliamentary systems[6] and, thus, its actual effect may vary from the weakening to strengthening patterns.

At the current stage, more than twenty per cent of the legislative acts passed by the German Bundestag have been adopted in response to the «European impulse».[7] German researchers consider this situation as proof of undermined parliamentary competence, in particular in view of the weakness of the national mechanisms of parliamentary control over the legislative process at EU level. Relative inertness of the parliament in relation to the EU issues has become one of the reasons behind the decision made by the German Federal Constitution Court on the Lisbon Treaty,[8] which can be seen as a call for more active involvement of the parliamentary institutions in EU-related matters. On the contrary, in the context of the Italian parliament, the necessity to implement the EU directives is considered to be a factor improving the efficiency of its legislative work, as this makes it possible to avoid the political «logrolling» widespread in the past.[9] An example of a different experience can be found in Denmark with its tradition of minority governments, which had already at the initial stages of integration introduced such an efficient mechanism of parliamentary control over the governmental decisions at the European level that, without a parliamentary mandate, the members of government are not authorised to vote at the meetings of the Council. In the United Kingdom, where the government's position in law-making is traditionally dominant, EU membership has not had such an evident impact on the functioning of the legislature as in the countries with weaker integration of the parliamentary majority and the government. At the same time, the membership has had other consequences for the United Kingdom, lying in the reconsideration of a basic constitutional principle of the «parliamentary sovereignty», as well as in certain strengthening of the role of the House of Lords which, having a rather narrow legislative role at the national level, prepares probably the most competent and comprehensive, as compare to other national parliamentary institutions, analysis of individual legislative initiatives at the European level. An unexpected strengthening effect for weak parliaments has also been observed in situations where monitoring of policy-making at the EU level creates additional possibilities for parliamentary control of governmental actions, as has been the case in Cyprus.

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5 See, e.g. Attila Agh, «Europeanization of Policy-Making in East Central Europe: The Hungarian Approach to EU Accession» (1999) 6 JEPP 839, 843–844.

6 Katrin Auel and Arthur Benz, «The Politics of Adaptation: The Europeanisation of National Parliamentary Systems» (2005) 11 JLS 372, 377.

7 Annette Elisabeth Töller, «How European Integration Impacts on National Legislatures: The Europeanization of the German Bundestag» (2006) Harvard University, Center for European Studies, PSGE Working Paper Series 06.2 <http://www.ces.fas.harvard.edu/publications/docs/pdfs/toller.pdf> accessed 10 August 2010.

8 Issued on 30 June 2009.

9 Vivien Schmidt, «Europeanization in Simple and Compound Polities: Institutions, Ideas, Discourse» (American Political Science Association Meeting, Chicago, 1–4 September 2004) 8.

Thus, EU membership has a considerable impact on the activities of the national parliaments, in particular by causing change in parliamentary competences, internal *mondus operati* and content of the government's oversight. However, despite the equal restriction of the legislative competences, the change in status of the legislative body depends on a range of characteristics of the national legal systems and its internal potential for transformations. Efficient adaptation of the institutional and procedural mechanisms becomes a condition that makes it possible to adapt to the new legal environment and use the possibilities created by European integration to strengthen the parliament, among other things, through consolidation of its controlling powers. The initial national conditions will also determine the scale of positive transformations associated with the preparation for EU membership, for instance, democratisation of the legislative practices, encouragement of internal reforms, establishment of a platform for the exchange of experience and dissemination of the best practices of legal regulation.

The above processes are actively discussed in the European Union. The «parliamentary issue» has become one of the key matters considered within the most recent process of the Treaty reform in the context of an attempt to overcome the «democratic deficit». Furthermore, since not only national parliaments within the EU experience the impact of the decision-making process that is taking place in «Brussels», the geographical coverage of Europeanisation literature has recently grown considerably covering the EEA, EFTA, the accession of new Member States and the candidate countries.[10] At the same time, the EU's influence on the activities of the legislative bodies beyond the «official queue» for membership does not normally get proper attention. The analytical report **«Why «Europe» Matters»** attempts to fill this gap as regards Ukraine, examining the Europeanisation of the Ukrainian parliament and its legislative practices. This concerns not only analysis of the adaptation of Ukraine's legislation to EU law. The authors look at the issue in a broader context, and demonstrate the comprehensive character of the consequences resulting from the EU neighbourhood and European integration priorities that are declared by the Ukrainian political elite. Between the lines, this report also asks whether the discussion on the de-parliamentarisation and re-parliamentarisation trends that are caused by the EU can be applied to the Eastern European countries.

Thus, the analysis covers **three main components**: (i) development of the parliamentary procedures and practices under the influence of the European parliamentary traditions; (ii) institutional and procedural transformations that have occurred in the legislative process due to the adaptation of Ukraine's legislation to the *acquis communautaire*, and (iii) the phenomenon of Europeanisation of the policy-making process in the non-Member States, in particular, the role of the «European argument» in the Ukrainian law-making process. Before passing to the analysis of the Ukrainian realities (**Part III «Europeanisation beyond the EU: The Verkhovna Rada of Ukraine»**), however, the authors sketch out the processes taking place in the EU Member States (**Part II «Europeanisation and Parliamentary Transformations in the EU Member States: Limits and Benifits»**). This approach aims to help the reader link the Europeanisation processes inside and outside the EU, and it should provide the foundation for the recommendations to the members of the Ukrainian parliament, which are provided in **Part IV («Building Links and Bringing the Pieces of the «Puzzle» Together»**).

[10] See Ulrich Sedelmeier, «Europeanisation in New Member and Candidate States» [2006] 1:3 Living Rev Euro Gov <http://www.livingreviews.org/lreg-2006-3> accessed 10 August 2010; Frank Schimmelfennig, «Europeanization beyond Europe» [2007] 2:1 Living Rev Euro Gov <http://www.livingreviews.org/lreg-2007-1> accessed 10 August 2010.

# Part II.

# EUROPEANISATION AND PARLIAMENTARY TRANSFORMATIONS IN THE EU MEMBER STATES: LIMITS AND BENEFITS

## 1. The Logic of Change: De-Parliamentarisation v Re-Parliamentarisation[11]

The discussion about the impact of the European Union on the national parliaments of the Member States starts with the identification of different levels of Europeanisation, which can be found in, most notably, the transformation of legislative competence (*Europeanisation of competence*), institutional and procedural developments (*institutional and procedural Europeanisation*), and the influence on lawmaking practices and the substance of laws (*legislative Europeanisation*). A further question arises regarding the substance of changes caused at each level and their positive (or negative) impact upon the national parliamentary institutions. The latter provoke quite controversial discussions, dividing the views of those who argue that the EU has a destructive impact on the national parliamentary democracies[12] and those who stress the positive dynamic of parliamentary transformations.[13]

The position of the proponents of de-parliamentarisation is based on three «classical» arguments.[14] First, the EU national parliaments have not obtained a meaningful place in the system of EU governance and, as one of the leading British parliamentary experts concludes, «have been left behind in the rush».[15] Second, EU membership not only limits the legislative competence of domestic legislators, but also shifts the balance of power at national level by strengthening the position of executives in the lawmaking process. The third argument draws from empirical studies of parliamentary responses to European integration, concluding that slow adaptation and the weakness of national parliamentary institutions is still obvious.[16] These arguments have laid the foundation for the radical claim that «it belongs to the conventional wisdom that national parliaments have increasingly lost in overall

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11 For more on the theoretical discussion see Auel and Benz (n 6); John O'Brennan and Tapio Raunio (eds), *National Parliaments within the Enlarged European Union: From Victims of Integration to Competitive Actors?* (Routledge, Abingdon 2007); Klaus H Goetz and Jan-Hinrik Meyer-Sahling, «The Europeanisation of National Political Systems: Parliaments and Executives» [2008] 3:2 Living Rev Euro Gov <http://www.livingreviews.org/lreg-2008-2> accessed 10 August 2010.

12 Maurer and Wessels (n 2); Ana Fraga, «After the Convention: The Future Role of National Parliaments in the European Union (and the Day after ... Nothing will Happen)» (2005) 11 JLS 490; Philipp Kiiver, *The National Parliaments in the European Union: A Critical View on EU Constitution-Building* (Kluwer Law International, The Hague 2006).

13 See, e.g. Francesco Rizzuto, «The New Role of National Parliaments in the EU: No Longer Victims of Integration?» (2003) 19/03 Federal Trust Online Paper <http://www.fedtrust.co.uk/uploads/constitution/19_03.pdf> accessed 10 August 2010; Francesco Duina and Michael Oliver, «National Parliaments in the European Union: Are There Any Benefits to Integration?» (2005) 11 ELJ 173; O'Brennan and Raunio (n 11).

14 These three arguments have been summarised by Goetz and Meyer-Sahling. See Goetz and Meyer-Sahling (n 11) 6–12, and also Auel and Benz (n 6) 372–373; O'Brennan and Raunio (n 4) 2–8.

15 Philip Norton, «Conclusion: Addressing the Democratic Deficit» (1995) 1 JLS 177, 192.

16 See, e.g. Dionyssis G Dimitrakopoulos, «Incrementalism and Path Dependence: European Integration and Institutional Change in National Parliaments» (2001) 39 JCMS 405; Johannes Pollak and Peter Slominski, «Influencing EU Politics? The Case of the Austrian Parliament» (2003) 41 JCMS 707.

importance due to the evolution of the EU's political system».[17] The trend of de-parliamentarisation is argued to be already obvious by the end of the 1980s when executives started to use the advantage of direct contact with the EU institutions to «reduce parliamentary powers and control».[18] Consequently, the increased marginalisation of national legislatures[19] has raised discussions about «the end of parliamentary democracy» and the «post-parliamentary democracy».[20]

The first «revisionist» analyses of the «orthodox» de-parliamentarisation argument on the failure of national legislatures to deal with EU affairs could be already found by the mid-1990s.[21] In response to the «classical» arguments regarding the devolution of national parliaments, these analyses state that the thesis on de-parliamentarisation originated from «an unrealistic conception of parliamentary democracy, and tended to mistakenly presume some kind of golden era of parliamentary government that existed before the EU cast its shadow over national politics».[22] The claims about de-parliamentarisation and the role of Europe in these processes are argued to originate from the misinterpretation of cause-effect relations, since the dominance of executives in lawmaking had already become evident in the 1960s and 1970s.[23] In addition, in 2006, in response to the criticism of the «democratic deficit» of EU decision-making, the European Commission initiated direct communication with the national parliaments of the Member States (the «Barroso initiative»).[24] Later, the Treaty of Lisbon introduced their involvement in the EU legislative process making the national parliaments «true actors in their own right in the European Union».[25] At the same time, the legislatures have demonstrated a gradual adaptation of procedural and institutional mechanisms to the challenges of European integration. A number of the most recent country-based reports have found that the NPs «are investing more resources in European matters than before», «clearly become more active in European affairs» and «subject their governments to tighter scrutiny in EU issues».[26] Such transformations have resulted in claims about the recent re-parliamentarisation trend in the EU.[27]

At the same time, there is still no common vision about the nature of the trends and consequences of the European integration for the national legislative process and the status of parliaments. Part II of this Report («Europeanisation and Parliamentary Transformations in the EU Member States: Limits and Benefits») offers a brief sketch of transformations related to the EU influence on the activities of the national parliaments in the Member States, demonstrating that no consensus is possible. Europeanisation includes diverse – strengthening and weakening – patterns, while its practical effect in each Member State is largely determined by legal and political conditions at the domestic level.

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17 Andreas Maurer, «The Convention and the National Parliamentary Dimension» (2005) ARENA Working Papers 05/01 <http://www.arena.uio.no/publications/papers/wp05_01.pdf> accessed 10 August 2010, 2.

18 Ibid 4.

19 Ibid.

20 Fraga (n 12) 505.

21 David Judge, «The Failure of National Parliaments» (1995) 18 W Eur Pol 79, 79. For the most recent criticism regarding the devolution of NPs see Katrin Auel, «Democratic Accountability and National Parliaments: Redefining the Impact of Parliamentary Scrutiny in EU Affairs» (2007) 13 ELJ 487; Ricardo Passos, «Recent Developments Concerning the Role of National Parliaments in the European Union» (2008) 9 ERA Forum 25; Tapio Raunio, «National Parliaments and European Integration: What We Know and What We Should Know» (2009) ARENA Working Papers 02/2009 <http://www.arena.uio.no/publications/working-papers2009/papers/WP02_09.pdf> accessed 30 August 2010.

22 O'Brennan and Raunio (n 4) 8.

23 Ibid.

24 Commission (EC), «A Citizens' Agenda – Delivering Results for Europe» (Communication) COM(2006) 211 final, 10 May 2006.

25 Leonard Besselink, «National Parliaments in the EU's Composite Constitution: A Plea for a Shift in Paradigm» in Philipp Kiiver (ed), *National and Regional Parliaments in the European Constitutional Order* (Europa Law Publishing, Groningen 2006) 123.

26 John O'Brennan and Tapio Raunio, «Conclusion: National Parliaments Gradually Learning to Play the European Game?» in O'Brennan and Raunio (eds) (n 11) 272–273.

27 See (n 11).

## 2. Parliamentary Competence under EU Membership

The transformation of legislative competence under EU membership is a dynamic process that has a diverse shape across policy fields and countries. The following analysis aims to outline the major points of «competence creep» that have resulted from the membership. It demonstrates the dual impact of Europeanisation: the growing intervention of the EU in the legislative competence of national parliaments in some areas and gradual developments in others.

### 2.1. The Transfer of Legislative Competence to the EU Level

The limitation of legislative competence of national authorities is one the most basic consequences of EU membership. However, the scope of lawmaking power that has been transferred to the EU institutions cannot be measured. According to Article 5 TEU and Article 2 TFEU, the Community cannot legislate beyond the competence that is attributed to it by the Treaty. Although the Treaty of Lisbon has listed the areas of exclusive, shared and complementary competences of the EU more precisely than it has been done before,[28] several «flexible» provisions (e.g. Articles 115 and 352 TFEU) provide a legal framework for intervention in practically any policy field. The limits of non-exclusive competence are drawn by the dynamic and politically sensitive principles of subsidiarity and proportionality (Articles 5(3) and 5(4) TEU) that makes the delimitation of the powers even more complicated.

Since regulatory provisions leave room for quite broad interpretations, the EU legislative discretion takes on a political rather than legal nature.[29] As a result, in many cases the borders for legislative actions are decided by the EU legislators or the Court of Justice of the European Union, while the national parliaments have hardly any right to be heard regarding this matter. Even though the Treaty of Lisbon has introduced the monitoring of subsidiarity by national parliamentary institutions,[30] it only formally enhances their power towards EU legislative competence and does not make the «borders» more evident.

### 2.2. Legal Restrictions Imposed on the National Lawmaking Process

Another important implication of EU membership derives from the legal restrictions that are imposed on the national lawmaking process bounding the parliaments in «exercising their remaining legislative competencies».[31] Such restrictions could be classified in two categories as «passive» and «active».[32] Under the «passive» restrictions, the Member States should legislate only within the field of non-exclusive competence of the EU, considering the overall corpus of EU law and its constitutional principles. The «active» restrictions require national authorities to undertake some legislative and regulatory actions.

Within the existing legal frame, the legislative pressure of «passive» restrictions is increasing. Such a conclusion derives not from the enhanced «productivity» of the EU legislative process, since there is no sign of recent extensive developments. The annual number of legislative initiatives of the Commission and, consequently, EU legislative acts, is roughly stable and has even decreased in the last

28 See Articles 3, 4 and 6 TFEU.

29 Stephen Weatherill, «Better Competence Monitoring» (2005) 30 ELRev 23, 25.

30 See Article 12 TEU; Protocol No. 1 on the role of national Parliaments in the European Union, signed at Lisbon on 13 December 2007 [2008] OJ C 115 (Lisbon Treaty); Protocol No. 2 on the application of the principles of subsidiarity and proportionality, signed at Lisbon on 13 December 2007 [2008] OJ C 115 (Lisbon Treaty).

31 Katrin Auel and Arthur Benz, «The Politics of Adaptation: The Europeanisation of National Parliamentary Systems» (2005) 11 JLS 372.

32 Töller offers to classify the restrictions of legislative competence in two categorises: restricted in total and partially. See Annette Elisabeth Töller, «How European Integration Impacts on National Legislatures: The Europeanization of the German Bundestag» (2006) Harvard University, Center for European Studies, PSGE Working Paper Series 06.2 <http://www.ces.fas.harvard.edu/publications/docs/pdfs/toller.pdf> accessed 10 August 2010.

decade.[33] However, the scope of EU regulatory tools is not limited to directives, regulations and decisions. The Community successfully employs soft legal methods to reach its goals. In addition, a vital role in shaping legal systems is played by the Court of Justice of the European Union. The involvement of all these tools[34] results in a gradual, but constant expansion of the EU in national legislative competence.

The second category of restrictions refers to the areas where the Member States have to (or are encouraged to) legislate due to EU requirements, namely: (i) to transpose EU directives into domestic legislation; (ii) to adjust the national law based on EU regulations; (iii) to react to the decisions of the Court of Justice of the European Union; (iv) to introduce changes according to the Treaty provisions or its transformations; and (v) to respond to other kinds of legal and policy initiatives of the EU.[35]

A number of empirical country-based studies provide a quantitative evaluation of the effect caused by the «active» restrictions measuring the Europeanisation of national legislation. For instance, approximately 12 per cent of laws that were adopted by the Finish Eduskunta between 1992 and 2007 were found to include «explicit» EU-related references.[36] König and Mäder (2008) estimate that «European impulses» affect approximately 24 per cent of all bills in Germany,[37] whereas Töller demonstrates that the index of legislation passed in the German Bundestag under «European impulses» doubled between the mid-1980s and 2002–05.[38] A vast majority of «impulses» were provided by EU directives and regulations (50 and 20 per cent respectively).[39] According to Töller, such results show only the «tip of the iceberg».[40] The European-wide data are even more illustrative: in 2007, the overall body of EU legislation consisted of more than 9000 legislative measures, including approximately 2000 directives «each requiring between 40 and over 300 measures for transposition into national and regional legislation».[41] Moreover, with regard to the transposing of Community directives, the competence of NPs is even more reduced than it appears. In many cases, they have to «rubber-stamp» the decisions that are taken in Brussels (Strasbourg), because of detailed provisions that do not leave scope for choosing national measures.[42]

Even though the data provided above cannot give a complete picture (it does not evaluate the content of required measures), it still demonstrates the pressure that is placed on the legislative activities of the Member States.

### 2.3. Changes in the Legislative Agenda Setting Power

The third consequence that should be briefly mentioned concerns the changes in the legislative agenda setting power. The EU determines the domestic legislative agenda through the «active» restrictions described above. For instance, in the Finish Eduskunta the number of EU-related items in the agendas of committee meetings has doubled since the accession.[43] Furthermore, the national

33 See Commission (EC), «The Report of the European Commission «Better Lawmaking» (14th report)» (Report) COM(2007) 286 final, SEC(2007) 737. According to the Report, the average annual number of the Commission's proposals between 1996 and 2006 was relatively stable (528 in 1996, 474 in 2006).

34 See, e.g. Rinus van Schendelen and Roger Scully (eds), *The Unseen Hand Unelected EU Legislators* (Frank Cass, London 2003).

35 A similar approach is used for the definition of «European impulses» in Töller (n 32).

36 Tapio Raunio and Matti Wiberg, «How to Measure the Europeanisation of a National Legislature?» (2009) SPS 10.

37 Thomas König and Lars Mäder, «The Myth of 80% and the Impact of Europeanisation on German Legislation» (Workshop «'Delors' Myth: The Scope and Impact of Europeanization of Law Production», Bordeaux 13–14 November 2008) <http://www.sowi.uni-mannheim.de/lehrstuehle/lspol2/Veroeffentlichungen/Koenig_Maeder_bordeaux.pdf> accessed 10 August 2010, 3.

38 Töller (n 32).

39 Ibid.

40 Ibid.

41 Commission (EC), «A Europe of Results – Applying Community Law» (Communication) COM(2007) 502 final, 5 September 2007, 2.

42 European Convention Secretariat, «Information Note on the Role of National Parliaments in the European Architecture» CONV 67/02 of 29 May 2002, 5.

43 Tapio Raunio and Matti Wiberg, «How to Measure the Europeanisation of a National Legislature?» (2009) SPS 1.

parliaments have no impact on the content of the legislative programme at the European level, since the latter is under the responsibility of the European Commission. Thus, the EU policy-making priorities are formulated by the European institutions and the national legislatures can shape only a small domestic part of this agenda in reaction to EU initiatives.[44]

Recently, the issue of the involvement of national parliaments in the formulation of the Commission's legislative programme has been widely discussed; in particular, it was one of the questions considered by the Working Group IV of the Convention.[45] The proposals that were examined vary in form and result.[46] Among the options were regular briefings of Commissioners in the NPs, annual joint hearings with the European Parliament, or simultaneous hearings with the European Parliament followed by parallel debates in each parliament. Some suggestions were even more extensive, including a preliminary parliamentary consultation regarding the draft programme with potential stakeholders. However, the Convention «slashed» these proposals and, consequently, the provisions of Protocol No. 1 on NPs[47] provide the legislatures only with better access to agenda setting documents. The initiative of the European Parliament to organise annual Joint Parliamentary Meetings on the agenda issue is valuable, but cannot increase the impact on its substance. This is equally true regarding the patchy efforts to discuss the EU annual legislative programme at national parliamentary plenary sessions (e.g. in Lithuania[48]).

### 2.4. The «Substitution» of Legislative Competence by Controlling Functions

All the implications described above demonstrate the decline of parliamentary power. The fourth consequence, however, concerns the transformation of legislative competence of national parliaments and its «substitution» by controlling functions. Such a tendency can be indicated at a domestic level (with regard to parliamentary control vis-à-vis national governments) and on the EU stage (European scrutiny functions concerning the compliance of EU drafts with the principle of subsidiarity). Before the Treaty of Lisbon entered into force bringing progress in the «European» parliamentary role, this trend was doubted to be an obvious Europeanisation outcome.[49] For instance, one of the reports issued in 2005 concludes that the development of executive-legislative relations in Denmark depends more on domestic political conditions than on the Europeanisation impact.[50] However, the recent reforms at the European level that introduce the system of subsidiarity control provide arguments to claim a gradual enhancement of the role of parliaments as controlling institutions: either as domestic or European players, or in both roles.

### 2.5. Increasing Role of the Parliaments as «Multi-Level» Players

The final implication is the most forward-looking, since it is based on the development of the parliamentary role in its European dimension. Currently, national parliaments are much more concerned by the matters of wide European importance than ever before. For instance, within COSAC[51]

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44 Katrin Auel and Arthur Benz, «The Politics of Adaptation: The Europeanisation of National Parliamentary Systems» (2005) 11 JLS 372, 377–378.

45 Andreas Maurer, «The Post-Lisbon Treaty's Future of Interparliamentary Cooperation» (Seminar «National Parliaments Ante Portas?», Brussels 15–16 June 2009) 5.

46 Ibid 5–6.

47 Protocol No. 1 on the role of national Parliaments in the European Union, signed at Lisbon on 13 December 2007 [2008] OJ C 115 (Lisbon Treaty).

48 Maurer (n 45) 6.

49 See, e.g. Thomas König and Lars Mäder, «The Myth of 80% and the Impact of Europeanisation on German Legislation» (2009) MZES Working Papers No 118, 2009 <http://www.mzes.uni-mannheim.de/publications/wp/wp-118.pdf> accessed 10 August 2010, 9.

50 Erik Damgaard and Henrik Jensen, «Europeanisation of Executive-Legislative Relations: Nordic Perspectives» (2005) 11 JLS 394, 410.

51 Created in 1989, the Conference of Community and European Affairs Committees of Parliaments of the European Union is a major platform of inter-parliamentary cooperation at the European level (COSAC is an acronym of the title in French).

the representatives of legislatures discuss the issues of climate change, the financial crisis and energy security in a regional context, provide monitoring of EU budget matters and analyse the Community's external relations.[52] The new tools for making an impact on policy formulation at the European level provides the NPs with the competence that is not inherent to national legislators, since their decisions would influence not only domestic voters, but also other EU citizens. Clearly, at this stage, such influence is minor and the number of strong «multi-level» players among the national parliaments is limited.[53] However, further institutional and procedural developments would enhance the European dimension of their legislative activities, especially if the initiative of the establishment of another legislative chamber comprised of NPs, not supported within the recent process of Treaty reform, returned as a possibility.

**To sum up, the transformation in the legislative competence of the Member States is dominated by two contradictory trends. On the one hand, the EU brings about an ongoing transfer of legislative competence to the European arena, imposes legal restrictions on domestic lawmakers and shapes the parliamentary agenda. On the other hand, Europeanisation potentially opens two important prospects that could turn its destructive character into a reinforcing pattern. It stimulates a gradual development of parliamentary controlling functions and opens a new, European, dimension for the policy-making activities of national legislators.**

## 3. Changes in Lawmaking Practices

The EU influences not only the scope of parliamentary competences. It also offers some benefits to national legislators in relation to exercising their lawmaking power. Analysis of these benefits could call into question the conclusion that European integration makes national parliaments weaker.[54]

### 3.1. Lawmaking Process: Democratisation of Legislative Practises

One of the most widely accepted positive results of Europeanisation is the spreading of democratic values. The countries that express their willingness to join the Community should meet the conditions laid down in Article 49 TEU, which requires respecting the values and principles set down in Article 2 TEU:

*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.*

Among the political criteria of membership is the stability of institutions guaranteeing democracy, the rule of law and human rights. Through this conditionality, the EU has triggered democratic transformations, including those that are related to the operation of national representative institutions, in many European countries (e.g. Greece, Portugal, Bulgaria and Romania).[55]

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52 See, e.g. COSAC, «Contribution and Conclusions adopted by the XXXVII COSAC» (Berlin 14–15 May 2007).

53 According to Maurer and Wessels, only Denmark and Finland could be classified as «multi-level players» in the EU-15. See Andreas Maurer and Wolfgang Wessels, «National Parliaments after Amsterdam: From Slow Adapters to National Players?» in Andreas Maurer and Wolfgang Wessels (eds), *National Parliaments on their Way to Europe: Losers or Latecomers?* (Nomos Verlagsgesellschaft, Baden-Baden 2001) 463.

54 Francesco Duina and Michael Oliver, «National Parliaments in the European Union: Are There Any Benefits to Integration?» (2005) 11 ELJ 173.

55 See, e.g. Roberto Di Quirico (ed), *Europeanisation and Democratisation: Institutional Adaptation, Conditionality and Democratisation in EU's Neighbour Countries* (EPAP, Florence 2005); Heather Grabbe, *The EU's Transformative Power: Europeanization through Conditionality in Central and Eastern Europe* (Palgrave Macmillan, NY 2005).

However, the democratisation impact is not limited to the accession stage. The Union constantly promotes the idea of good governance by setting high standards of transparency of decision-making and open deliberations («better involvement and more openness»[56]). The modes of participatory democracy are not common for many European countries that have republican (Italy), corporatist (Germany), or other political traditions.[57] Even though wide consultation practices have some analogy in Denmark, France, or the UK, in the traditions of civil law they are typically narrowed to the involvement of experts in a particular policy field.[58] The example of the EU frequently brings the strategy of «open dialogue» into national democracies. For instance, some new Member States have legitimised the lobbying practices at a national level (e.g. Lithuania, Poland) or established more advanced participatory procedures (e.g. Estonia, Latvia).

### 3.2. Substance of Laws: Forcing Reforms and Setting the Collective Standards of Law-Drafting[59]

The EU has high potential and several tools to catalyse the legislative activity of its Member States.

First, it transmits impulses that necessitate the adoption of legislative acts and reforms in certain policy areas. The empirical case studies regarding Austria, Denmark, France, Finland, Germany, the Netherlands, Sweden and the UK demonstrate that EU-driven legislation varies between 10 and 40 per cent, depending on the methodology of analysis.[60] Among the most «influenced» policy areas are agriculture, trade and industry, transport and environment.[61] Through such impulses, the EU has widened the scope of lawmaking power in several Member States by enforcing the regulation in those spheres of social life that were traditionally «not subject to domestic legislation» (e.g. the regulation of consumption of alcohol and tobacco products in some northern European countries).[62]

Second, EU pressure removes some «barriers» for specific policy solutions at a domestic level. Such «barriers» might be rooted in national legal traditions, but more often have a clearly political nature, for instance: a strong pressure of lobbying or other interested groups (e.g. regarding the regulation of relations between the retailers and farmers), political constraints (e.g. post-legislative referenda, strong opposition, weak majority), or a lack of political will to take the responsibility for socially or politically unpopular decisions (e.g. higher taxes on cigarettes). Especially noticeable is such «pressing» influence at the accession stage, when the process of transposing the *acquis* initiates the fundamental reforms and facilitates the progress of domestic legal systems.[63]

And finally, by imposing time-frames for national implementation measures and involving the constitutional principles of EU law (e.g. direct effect), membership adds the dynamic to domestic legislative processes. Furthermore, to certain extent, the EU enhances the level of political responsibility of national authorities for their actions and involves the Court of Justice of the EU as guardian.

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56 Commission (EC), «European governance – A White Paper» (White paper) COM(2001) 428 final, 25 July 2001, 4.

57 Francesca Bignami, «Three Generations of Participation Rights before the European Commission» (2004) 68 LSP 79.

58 Helen Xanthaki, «The Problem of Quality in EU Legislation: What on Earth is Really Wrong?» (2001) 38 JCMS 651, 662.

59 Xanthaki (n 58) 675.

60 See Tapio Raunio, «National Parliaments and European Integration: What We Know and What We Should Know» (2009) ARENA Working Papers 02/2009 <http://www.arena.uio.no/publications/working-papers2009/papers/WP02_09.pdf> accessed 10 August 2010; Raunio and Wiberg (n 36).

61 Ibid.

62 Duina and Oliver (n 54) 176. It is worth pointing out that in each situation the role of EU impulse should be carefully analysed, since by involving a «zero-variant» approach one might conclude that these regulations would have appeared anyway because of development of the society. See Markus Haverland, «Does the EU Cause Domestic Developments? The Problem of Case Selection in Europeanization Research» (2005) 9:2 EIoP <http://eiop.or.at/eiop/texte/2005-002a.htm> accessed 10 August 2010.

63 See, e.g. Bernard Steunenberg and Antoaneta Dimitrova, «Compliance in the EU Enlargement Process: Institutional Reform and the Limits of Conditionality» in Alain Marciano and Jean-Michel Josselin (eds), *Democracy, Freedom and Coercion: A Law and Economics Approach* (Edward Elgar, Cheltenham 2007).

The above also brings a «consolidating» influence in the EU scale that can be found in common legal terminology, concepts and «the architecture of laws»[64]. Indeed, EU legal acts are frequently characterised as a European-wide «compromise» or a «droit diplomatique», being commonly criticised for long titles, confusing preambles, complicated sentences, unclear references and other drafting problems.[65] However, the criticism of «too many laws and badly drafted» can be applied to any European country.[66] Since 1992, the EU has undertaken a number of steps to improve the quality of legislation.[67] The institutional developments and adoption of EU law-drafting guidelines come under the aim to create a new drafting culture that involves the clarity of acts and transparency of lawmaking process. The evidence of progress in better regulation can be found in the public annual reports that have been issued since 2001.[68] Today, «the EU drafting system is very much a reflection of the collective modern drafting style of the Member States» that is based on long national parliamentary traditions and demonstrates «the modern approach [...] to common drafting problems»[69]. Even through the EU law-drafting standards might be of little added value for countries with well-established lawmaking traditions, in the countries with weaker national drafters they stimulate the development of more progressive practices (e.g. impact analysis).

### 3.3. Capacity-building: Providing Platforms for the Exchange of Best Practices and Institutional Support for Better Lawmaking

The EU has become an important source of information on policy-making issues «helping national parliaments to fulfil their functions as regulators of society».[70] It has elaborated a number of formats for the exchange of views and best practices between EU national parliaments («horizontal cooperation») and with EU legislators («vertical cooperation»). The platforms of inter-parliamentary cooperation include meetings and conferences, electronic web-pages and databases, programmes and initiatives. They aim at providing the possibilities for policy transfer and ensuring proper implementation of EU legislation at a national level. For instance, one of the available tools is the open method of coordination that could «be leveraged by national legislators to produce more successful domestic legislation».[71] Applicable in the policy areas that follow under the competence of Member States (e.g. employment or education), it may contribute to better regulation by enhancing mutual learning, developing joint policy initiatives for the Member States and regions, identifying best practices and the possibilities for policy transfers between the states.[72]

The EU also offers diverse capacity-building and learning programmes for those involved in the lawmaking process.[73] At the accession stage, it provides financial and expert support to enhance the

64 Jean-Claude Piris, «Legal Orders of the European Union and of the Member States: Peculiarities and Influences in Drafting» (2004) 6 EJLR 1, 3.

65 Xanthaki (n 58) 651.

66 Ulrich Karpen, «On the State of Legislation Studies in Europe» (2005) 7 EJLR 59.

67 See, e.g. Council Resolution of 8 June 1993 on the quality of drafting of Community legislation [1993] OJ C 166; Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation [1999] OJ C73; Commission (EC), «European governance – A White Paper» (white paper) COM(2001) 428 final, 25 July 2001; Commission (EC), «European Governance: Better lawmaking» (Communication) COM(2002) 275 final, 5 June 2002; Interinstitutional Agreement of 16 December 2003 on better law-making [2003] OJ C 321.

68 See Commission (EC), «Third strategic review of Better Regulation in the European Union» (Communication) COM(2009) 15 final, 28 January 2009. In general, 9 reports on better lawmaking is available (2001–09) and 3 strategic reviews (2006, 2008 and 2009).

69 Xanthaki (n 58) 675.

70 Duina and Oliver (n 54) 178.

71 Francesco Duina and Tapio Raunio, «The Open Method of Co-ordination and National Parliaments: Further Marginalization or New Opportunities?» (2007) 14 JEPP 489, 494.

72 Some critical positions regarding the new modes of governance should be taken into account. See, e.g. Myrto Tsakatika, «A Parliamentary Dimension for EU Soft Governance» (2007) 29 J Europ Integration 549.

73 Duina and Oliver (n 54) 178.

capacity of national authorities to adapt domestic legal systems to EU standards (e.g. TAIEX[74]). There are also a number of opportunities for the Member States. For example, the Commission Legal Revisers Group organises seminars for the domestic legislators and supporting staff dedicated to the quality of law-drafting, including drafting skills training, and discussions on efficient transposition and application of Community legislation.[75] Another initiative, the Cooperation and Exchange Programme, which offers informational seminars for parliamentary staff, is run by the Directorate for Relations with National Parliaments.[76]

**Thus, the EU potentially brings several benefits for national lawmaking activities at the level of legislative practices, substance of laws, technical law-drafting issues, informational resources and capacity-building programmes. Of course, the importance of these advantages depends on the initial position of parliaments as it would be higher for weaker institutions. Notwithstanding, these implications should not be neglected, since they set the same standards to all Member States bringing an important difference to some national lawmakers and European parliamentarism in general.**

## 4. Institutional and Procedural Europeanisation: the Determinants of Parliamentary Efficiency and Convergence of Domestic Responses

The effect of Europeanisation at the domestic level can be found regarding policy, politics and polity.[77] While the EU imposes certain requirements for policy outcomes, the decisions upon domestic procedures and tools are left for the consideration of national authorities.[78] Such an approach results in diverse domestic institutional and procedural responses[79] – the examples of similar institutional forms and synchronised procedures of dealing with EU Affairs in the Member States are very limited.[80]

### 4.1. Diverse Models of the Parliamentary Scrutiny of EU Matters

The key institutional development that has occurred in all Member States is the establishment of parliamentary committees on European Affairs (EAC). As shown by Maurer and Wessels, since the creation of the EAC by the German Bundesrat in 1957, other national parliaments of the EU-15 have set their own institutions and procedures, though «the degree of effective parliamentary scrutiny varies a lot, ranging from simple ex-post information rules to mandatory procedures».[81] Although this conclusion was drawn almost a decade ago, it is fully applicable concerning the enlarged EU of 27 Member States. Twelve new Member States have established special parliamentary committees prior to their accession and adopted different procedural models following the examples of old Members.

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74 Technical Assistance and Information Exchange (TAIEX) is a technical assistance programme of the EU providing the support in approximation matters.

75 Legal Service of the European Commission, Official Web-Page <http://ec.europa.eu/dgs/legal_service> accessed 10 August 2010.

76 European Parliament Relations with National Parliaments, Official Web-Page <http://www.europarl.europa.eu/webnp> accessed 10 August 2010.

77 Tanja Börzel and Thomas Risse, «When Europe Hits Home: Europeanization and Domestic Change» (2000) 4:15 EIoP <http http://papers.ssrn.com/sol3/papers.cfm?abstract_id=302768> accessed 31 August 2010, 3–4.

78 Ibid 11.

79 See, e.g. Olaf Tans and others (eds), *National Parliaments and European Democracy: A Bottom-Up Approach to European Constitutionalism* (Europa Law Publishing, Groningen 2007).

80 COSAC, «Guidelines for Relations between Governments and Parliaments on Community Issues (Instructive Minimum Standards)» (the «Copenhagen Parliamentary Guidelines» of 27 January 2003) [2003] OJ C 154/1.

81 Andreas Maurer and Wolfgang Wessels, «National Parliaments after Amsterdam: From Slow Adapters to National Players?» in Andreas Maurer and Wolfgang Wessels (eds) (n 53) 439.

Based on the major object of scrutiny, the parliamentary models of dealing with EU matters can be classified in three categories: (i) procedural systems; (ii) document-based systems; and (iii) mixed systems. This categorisation is used as a basic frame for the COSAC survey of EU parliamentary scrutiny systems in the Member States conducted in 2005 and 2007.[82] According to the COSAC definition,[83] the document-based model focuses on the scrutiny of documents that come from EU institutions in the early decision-making stages. This system does not include the element of mandating the government; however, it may include a «scrutiny reserve» and thus ministers would require a parliamentary decision before expressing the position to the Council. The procedural model focuses on a decision-making process and scrutinises the negotiating position of government. Therefore, some parliaments that use a procedural (or mixed) approach are empowered to issue a direct recommendation to the national government that binds the ministers at Council negotiations.

In brief, the analysis of responses provided by 40 parliamentary chambers illustrates the diversity of national choices: (i) the document-based system is used by eleven countries, (ii) the procedural system by six, and (iii) the mixed approach is taken by seven Member States (**See Table 1**).[84] Only five chambers responding to the COSAC questionnaire did not identify their systems of scrutiny, arguing that the proposed categorisation was «too simplistic» (Belgium, lower chamber, and Malta), needed «redefining» (Ireland), was «not necessary» (Slovakia), or their system of scrutiny was under reform (Spain).[85] The above categorisation is built on a «self-assessment» basis that reflects the legal procedures; however, from the COSAC Secretariat's point of view «in practice, most systems can be seen as hybrids, containing elements from both the document-based and the procedural models».[86]

**Table 1. The Models of Parliamentary Scrutiny of EU Matters in the Member States**

| Document-Based System | Mixed System | Procedural System | | |
|---|---|---|---|---|
| | | Mandating Practice | | |
| Belgium (upper chamber)<br>Bulgaria<br>Czech Republic (both chambers)<br>Cyprus<br>France (both chambers)<br>Germany (both chambers)<br>Italy (both chambers)<br>Luxembourg<br>The Netherlands (upper chamber)<br>Portugal<br>The UK (both chambers) | Hungary<br>the Netherlands (lower chamber)<br>Romania<br>Poland (upper chamber) | Estonia<br>Lithuania<br>Poland (lower chamber)<br>Sweden | Austria<br>Denmark<br>Finland<br>Latvia<br>Slovenia | Greece |

*Source: The data is based on COSAC, «8th Bi-annual Report» (2007) 14–19.*

### 4.2. The «EU-Driven» and «Domestic-Driven» Factors of Parliamentary Efficiency

The internal procedures of the EAC's operation, their role in the legislative process and the modes of interaction with other parliamentary committees differ from country to country. The efficiency of the

82 COSAC, «3rd Bi-annual Report» (2005); COSAC, «8th Bi-annual Report» (2007).
83 COSAC, «8th Bi-annual Report» (2007) 8–9.
84 The results are provided for 2007; therefore, some minor adjustments might be required.
85 COSAC, «8th Bi-annual Report» (2007) 14–19.
86 Ibid 7.

EACs depends on various factors.[87] The «EU-driven» factors are determined by the possibilities of parliamentary involvement in policy formulation at the European level. For instance, the availability of information, legal procedures of parliamentary involvement in decision-making and political channels for exerting influence on EU decisions. The «domestic-driven» factors cover a much wider range of aspects, including initial institutional conditions (e.g. the power of the parliament, its relations with the executive), political dynamics (e.g. political composition of the legislature, public opinion on European integration), the procedures for dealing with European matters and even the interest of MPs in EU affairs.

For a long time the national parliaments of the Member States had been left outside the EU legislative and policy-formulation processes. While the inter-parliamentary cooperation was gradually built up, the Assize, the Conventions on fundamental rights and the Future of Europe took place,[88] the national legislatures were still in the position of «reserve players» in the EU decision-making arena. In 2006, however, the situation changed. The «Barroso initiative» and, later, the Treaty of Lisbon provided a response to the «Europe-driven» challenges that were undermining the efficiency of parliamentary operation with EU matters. The Treaty of Lisbon became the first of the European treaties to mention the term «national parliaments» in its main text.[89] It recognised the involvement of NPs as one of the basic democratic principles[90] – the consultations with NPs have become a compulsory stage in the lawmaking process and the condition of validity for legislative acts.[91] The national legislatures secured direct access to information about the legislative process of the EU, obtained the possibility to express opinions regarding draft legislative and consultation acts, and intensified the communication with the Commission and the EP in the policy-making field.

A number of parliaments admit that these reforms have a significant impact on dealing with EU issues at the domestic level. For instance, in Austria such changes are expected to increase attention on European debates, in Hungary the number of MPs involved in European matters and policies, and in Belgium the role of the EAC by introducing «eurowhips».[92]

Even more important is that these reforms have forced the evolution of the systems of parliamentary scrutiny at a domestic level.[93] According to the answers submitted to the COSAC questionnaires in 2008, the vast majority of legislatures are undergoing the changes that were triggered by the process of Treaty reform.[94] In some countries, these amendments have already been adopted, in others they are in progress, under preliminary consideration, or expected in the future **(see Table 2)**. Only five countries responded that their provisions do not require any changes. The scrutiny systems in the Member States are moving to the mixed approach: the document-based systems are gradually adopting some elements of the procedural model, while many procedural systems intend to include the documents that originate from EU institutions in the scrutiny process.[95] The Treaty of Lisbon brings a further «harmonising» effect providing the same access

87 See, e.g. Torbjörn Bergman, «National Parliaments and EU Affairs Committees: Notes on Empirical Variation and Competing Explanations» (1997) 4 JEPP 373.

88 For details see, e.g. Christina Bengtson, «Interparliamentary Cooperation within Europe» in John O'Brennan and Tapio Raunio (eds) (n 11).

89 With the exception of the failed Constitutional Treaty.

90 Article 12 of the TEU.

91 See, e.g. Ricardo Passos, «Recent Developments Concerning the Role of National Parliaments in the European Union» (2008) 9 ERA Forum 25, 36.

92 COSAC, «Responses from Parliaments to Questionnaire for 9th Bi-annual Report» (Bled-Brdo pri Kranju 7–8 May 2008) 8–227.

93 Such a conclusion derives from the comparison of parliamentary responses to the COSAC questionnaires that were prepared in 2005, 2007 and 2008. See: COSAC, «3rd Bi-annual Report» (2005); COSAC, «8th Bi-annual Report» (2007); and COSAC, «9th Bi-annual Report» (2008).

94 The Constitutional Treaty and the Treaty of Lisbon.

95 COSAC, «8th Bi-annual Report» (2007) 7–8.

to the objects of scrutiny (EU legislative drafts), time-frames (eight weeks), decision requirements (subsidiarity compliance), the impact of investigation (two voices per parliament) and even challenges (e.g. limited time, necessity to develop closer cooperation between the EACs and other parliamentary committees).

**Table 2. Changes in the EU Parliamentary Scrutiny Systems of the Member States forced by the Treaty Reform**

| Adopted | In Progress | Under Preliminary Consideration | Expected in the Future | Not Required |
|---|---|---|---|---|
| Austria | Cyprus | Czech Republic (both chambers) | France (upper chamber) | Bulgaria |
| Belgium (both chambers) | Germany (upper chamber) | Denmark | Ireland | Estonia |
| Hungary | Greece | Finland | Slovakia | Lithuania |
| Germany (lower chamber) | Latvia | Italy (both chambers) | Sweden | Malta |
| the Netherlands (lower chamber) | Luxembourg | Poland (upper chamber) | the United Kingdom (upper chamber) | Slovenia |
| Portugal | the Netherlands (upper chamber) | Romania | | |
| France | Poland | the United Kingdom (lower chamber) | | |
| | Spain | | | |

*Source: The data are based on the analysis of the responses of the national parliaments of the Member States provided in COSAC, «Responses from Parliaments to Questionnaire for 9th Bi-annual Report» (Bled-Brdo pri Kranju, 7–8 May, 2008) 8–227.*

**So, the number of common institutional and procedural developments brought about by EU pressure at the domestic level is limited. The most obvious institutional change is the creation of EACs. Although the role and functions of these institutions have always been highly variable, the «Barroso initiative» and the Treaty of Lisbon bring a certain «harmonising» effect. These reforms forced the changes that enhance the convergence in the basic orientations and methods of operation of national parliaments with EU drafts. However, the efficiency in dealing with EU matters is determined not only by EU rules.**

**When the recent EU reforms responded to a number of obstacles that were caused by EU-related factors, it became even more clear that the responsibility for parliamentary operation with EU matters largely lies with national authorities being determined by domestic factors, which raises reasonable doubts regarding attempts to consider the legislatures as the «victims» of the EU.**

# Part III.

# EUROPEANISATION BEYOND THE EU: THE VERKHOVNA RADA OF UKRAINE

## 5. Ukraine: Simply «Beyond the Borders»?

Part II demonstrated that EU membership is linked with substantial changes in political systems and patterns of governance at the domestic level. The experience of the «newcomers», for instance, Poland, Hungary and Bulgaria, demonstrates that the constrains upon the national parliaments are even more obvious at the pre-accession stage as the process of transposing the *acquis communautaire* into a domestic legal order adds pressure and is dominated by the executive.[96] Furthermore, these countries have to comply with a political and economic conditionality that supplies the EU with additional tools of influence.[97] The government not only controls the negotiation process, but also becomes a main initiator of EU-related drafts providing strict guidelines to and time limits on those who initially purposed being the main «legislator». In the same line of argument, discussions regarding the EEA critise a «fax democracy», concluding that the EU frequently determines the policy-making choices of national legislators.[98] At the same time, Switzerland, being «outside» accession processes and «direct Europeanisation», shows no evident shift in a parliamentary role.[99]

But what happens to non-Member States that are less closely linked with the EU? As a rule, these states are expected to pursue different policies and demonstrate less evident impact of Europeanisation.[100] This assumption is questionable when it comes to Ukraine. Being frequently considered as the biggest open question in Europe in terms of its geopolitical priorities and prospects, Ukraine is in a middle-stage position. Its political, economic and social problems, along with the internal difficulties of the EU, impose serious obstacles to a straightforward path from Ukraine's European aspirations to EU membership. However, in the last fifteen years, a number of legal and policy instruments have been set up framing EU-Ukraine cooperation and providing the ground for Europeanisation of the legislative process and parliamentary activities. The negotiations on the new Association

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96 Adam Łazowski, «The Polish Parliament and EU Affairs: An Effective Actor or An Accidental Hero?» in John O'Brennan and Tapio Raunio (eds), *National Parliaments within the Enlarged European Union: From Victims of Integration to Competitive Actors?* (Routledge, Abingdon 2007) 203; Enikö Györi, «The Role of the Hungarian National Assembly in EU Policy-Making after Accession to the Union: a Mute Witness or a True Controller» in O'Brennan and Raunio (eds) Ibid 220; Pavlina Stoykova, «Parliamentary Involvement in the EU Accession Process: the Bulgarian Experience» in O'Brennan and Raunio (eds) Ibid 272.

97 See, e.g. Heather Grabbe, *The EU's Transformative Power: Europeanization through Conditionality in Central and Eastern Europe* (Palgrave Macmillan, NY 2006).

98 See, e.g. Stephan Kux and Ulf Sverdrup, «Fuzzy Borders and Adaptive Outsiders: Norway, Switzerland and the EU» (2000) 22 J Europe Integration 237.

99 Pascal Sciarini and others, «How Europe Hits Home: Evidence from the Swiss Case» (2004) 11 JEPP 353, 370.

100 Ulrich Sedelmeier, «Europeanisation in New Member and Candidate States» [2006] 1:3 Living Rev Euro Gov <http://www.livingreviews.org/lreg-2006-3> accessed 10 August 2010, 17 and 21.

Agreement herald further progress in EU-Ukraine relations. On the one hand, the EU widely promotes institutional development of the Verkhovna Rada of Ukraine, emphasising the importance of strengthening the stability, independence and effectiveness of institutions guaranteeing democracy and the rule of law in its bilateral agreements with Ukraine. On the other hand, the Community forces legal integration by setting up certain priorities for internal reforms and approximation of laws.

Building upon the discussions that take place in the EU, Part III of this Report applies the conceptual framework of Europeanisation to Ukraine and examines the EU impact on the Ukrainian parliament. Linking the processes of Europeanisation within the EU and beyond its borders, it identifies the patterns of Europeanisation in the lawmaking practices of the Verkhovna Rada of Ukraine and discusses whether Europeanisation has any transformative, reinforcing, or undermining power beyond the EU borders, whether the lack of creditable accession prospects helps to preserve the autonomy of legislative power, and asks how far the «harmonising» influence of the EU may reach.

Part III starts with an overview of the changes in parliamentary practices that have taken place, either being dictated by the Ukraine's commitment to strengthen democratic institutions under the strategic goal of further European integration, or inspired by parliamentary traditions of European democracies **(section 7)**. The next sections focus on the approximation of laws and provide a detailed examination of institutional **(section 8)** and procedural **(section 9)** transformations that aim at increasing convergence of law and practice in Ukraine with the EU *acquis*. And finally, **section 10** looks beyond the official approximation agenda and assesses practical implications for law-drafting practise.

## 6. Legal and Policy Frameworks of EU-Ukraine Cooperation: Europeanisation or EU-isation?

The principles of freedom, democracy, respect of human rights, fundamental freedoms and the rule of law have been set forth in a number of important international documents, including Articles 2 and 6 of the Treaty on the European Union and Article 3 of the Statute of the Council of Europe.[101] Respect for these principles, as well as ensuring the stability of the institutions which guarantee democracy, rule of law, human rights and protection of minorities is a pre-condition for the EU membership, while recognition of the rule of law and security of human rights and fundamental freedoms is an obligation for each member of the Council of Europe. Establishment of the above principles in the Council of Europe and EU documents has given a momentum to democratic transformations in a number of the European countries, including the reforms related to the operation of the national parliaments. Ukraine is no exception in this respect.

In 1995, Ukraine became a member of the Council of Europe, having undertaken a number of obligations on democratic reforms. In 1998, when the Partnership and Cooperation Agreement between Ukraine and the European Communities (PCA) came into force, Ukraine officially announced its aspiration for associated EU membership. In 2005, Ukraine and the European Union adopted the EU-Ukraine Action Plan aiming at the fulfilment of the PCA goals. Under this Plan, Ukraine has undertaken certain obligations to continue the reforms targeting consolidation of democracy, rule of law, respect of human rights, establishment of the system of checks and balances and independent judiciary, democratic elections in accordance with OSCE and Council of Europe norms and standards. For the purpose of the general aim of strengthening stability and efficiency of the institutions ensuring democracy and rule of law, the Action Plan envisaged a number of more specific obligations.

[101] Statute of the Council of Europe of 5 May 1949, ETS No 1 <http://conventions.coe.int/treaty/en/treaties/html/001.htm> accessed 10 August 2010.

Thus, among other things, Ukraine was supposed to undertake its legislative reforms in accordance with international standards, as well as to promote broader involvement of citizens in the decision-making process.[102] Further, consolidation of respect for democratic principles, rule of law, good governance, human rights and fundamental freedoms was also defined as a priority in the political dialogue and cooperation between Ukraine and the EU in the next important document – the EU-Ukraine Association Agenda,[103] which replaced the EU-Ukraine Action Plan in 2009.

### Legal and Policy Frameworks of EU-Ukraine Cooperation

*1st frame:* In 1994-96, the EU concluded bilateral partnership and co-operation agreements with a number of post-soviet states, including Ukraine (June 1994), Moldova (November 1994), Azerbaijan, Armenia and Georgia (April 1996). These agreements were enforced in January 1998, July 1998 and July 1999. And, as a result, the process of approximation of laws was initiated, although the level of approximation that should be achieved was not indicated;

*2nd frame:* In 2004, due to the EU enlargement the status of the aforementioned countries was changed from merely «post-soviet states» to «Eastern neighbours». The common border resulted in renovated policy conditions – the relationships with Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine were framed in the European Neighbourhood Policy (ENP). This instrument was elaborated for all EU neighbours by land or sea[104] with the exception of the Russian Federation. Although the ENP encourages closer cooperation, it was not accepted equally positively by all states, in particular Ukraine. In 2004–05, after the Orange Revolution[105] Ukraine expected a clear sign from the EU concerning the accession prospects, which did not emerge. The EU-Ukraine Action Plan concluded in 2005 is a part of ENP;

*3rd frame:* The next European initiative, the Black Sea Synergy, which was offered in 2007, covered not only Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine, but also other countries of the Black Sea basin, namely: Greece, Bulgaria, Romania (in the west), Russia (in the north) and Turkey (in the south). Although the Black Sea Synergy aims at pursuing democratic and economic reforms in general, its main attention is narrowly focused on a number of practical-oriented regional projects, for instance, in such areas as transport, energy, or the environment;

*4th frame:* The most recent policy instrument, the Eastern Partnership (EaP), was presented jointly by Poland and Sweden in May 2008 and officially launched one year later. It involves Armenia, Azerbaijan, Belarus (depending on the general dynamic of EU-Belarus relations), Georgia, the Republic of Moldova and Ukraine. The EaP does not declare straightforward prospects of accession; however, it does aim at strengthening economic integration and establishing a Free Trade Area based on the model of the EEA. In addition, closer cooperation would also take the form of Association Agreements that include energy interdependence chapters and road-maps to a visa-free regime. Among the core elements of the EaP is a legislative and regulatory convergence that is «essential to the partners» progress in coming closer to the EU».[106] The approximation of laws, which was initiated in the mid-90s, according to the EaP should become a more structured process based on a «more for more» principle;

*5th frame:* The next goal for the Eastern Neighbours is the conclusion of enhanced bilateral cooperation agreements. The negotiations between the EU and Ukraine started in March 2007 in Brussels. In 2009, the EU-Ukraine Association Agenda replaced the EU-Ukraine Action Plan aiming at preparing for and facilitating the early entry into force of the future EU-Ukraine Association Agreement, an integral part of which would be a deep and comprehensive Free Trade Area.

Ukraine's accession to the Council of Europe and strengthening cooperation with the European Union opened the way to adaptation of the national legislation, governing the parliamentary activities and decision-making, to the European standards. In this context, it is important to underline that EU-Ukraine joint documents do not directly define any specific «European Union standards» or «European standards» which should be taken into account for the purpose of such adaptation. In fact, the «EU standards» in this area coincide with the generally accepted international and regional standards, in particular those that are set forth in the documents of the Council of Europe,

102 EU-Ukraine Action Plan adopted on 21 February 2005 <http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf> accessed 10 August 2010.

103 EU-Ukraine Association Agenda should prepare and facilitate the implementation of the Association Agreement. See EU-Ukraine Association Agenda from 15 October 2009, UE-UA 1056/2/09 REV 2 <http://ec.europa.eu/delegations/ukraine/documents/eu_uk_chronology/association_agenda_en.pdf> accessed 10 August 2010.

104 Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Occupied Palestinian Territory, Syria, Tunisia and Ukraine.

105 The Orange Revolution took place in November-December 2004. It was a set of democratic protests against political corruption and vote fraud at the presidential elections.

106 Commission (EC), «Eastern Partnership» (Communication) COM(2008) 823 final, 3 December 2008, 10.

OSCE and other international organisations. For instance, certain recommendations made by the Venice Commission summarise the practices of some European countries in the area of parliamentarism and functioning of the democratic institutions. The EU-Ukraine Association Agenda refers to the Venice Commission recommendations when it calls for a comprehensive constitutional reform and further development of an efficient system of checks and balances between public authorities. Accordingly, this generally established practice can also be considered as a component of the EU/European standards in the relevant area.

> **Thus, if in the context of EU Member States Europeanisation is considered as an EU-isation, in the case of Ukraine, the Council of Europe also plays an important role as an international organisation that defines European standards of democracy and human rights. Article 6(3) TEU provides an institutional bridge between the common principles shared and promoted by the EU and CoE, stating that «fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law».**

## 7. The Impact of European Standards and Practicess on Parliamentary Developments in Ukraine

### 7.1. Democratisation of Public Authorities during 1990–1996

During 1990-1993, the European approaches did not yet have such an obvious influence on the regulation of the nationwide representative authorities and their decision-making as in the subsequent years. At that time, the national parliament was intensely focusing on the removal of the Soviet model of governance and the establishment of new institutional modes to substitute it. However, the new system of the public authorities, as well as the mechanism of cooperation between individual bodies within this system, had a number of traces that could hardly be considered typical for European democracies.

As a result of democratisation of public authorities in 1990–1994, the Parliament was turned into a permanent body which was supposed to hold at least two sessions annually. The right of a parliamentary question to the heads of central executive bodies and other public authorities was stated at the constitutional level.[107] Article 6,[108] which established the role of the Communist Party as the leading and directing force of the Soviet society and the nucleus of its political system, was taken out of the UkrSSR Constitution, which created conditions for the development of the multi-party system and the conduct of democratic elections. In 1991, the UKrSSR Constitution was amended by introducing new provisions, which envisaged formation of the Government by the Parliament, established the government's responsibility and accountability to the legislative body,[109] introduced the post of President of Ukraine (whose functions until 1991 had been in reality fulfilled by the Presidium of the Verkhovna Rada).[110] The reforms aiming at the improvement of the functioning of the Parliament continued in subsequent years. Thus, in 1992, the Verkhovna Rada defined the status of the members of Parliament and the principles for the operation of parliamentary factions.[111] In 1994, the Parliamentary Rules of Procedure[112] were adopted

[107] Law of the UkrSSR on Amendments to the UkrSSR Constitution (Basic Law) No. 8303-XI of 27 October 1989.
[108] Law of the UkrSSR on Amendments to the UkrSSR Constitution (Basic Law) No. 404-XII of 24 October 1990.
[109] Law of the UkrSSR on Amendments to the UkrSSR Constitution (Basic Law) No. 1213a-12 of 19 June 1991.
[110] Law of the UkrSSR on Establishment of the Post of the President of the UkrSSR and Amendments to the UkrSSR Constitution (Basic Law) No. 1293-XII of 5 July 1991.
[111] Law of Ukraine on the Status of the Member of Parliament No. 2790-XII of 17 November 1992.
[112] Parliamentary Rules of Procedure No. 129/94-BP of 27 July 1994.

and the parliamentary web-site was created; later, in 1995, the legal basis was laid for the functioning of the parliamentary committees.[113]

In formal features, all these changes could be called an adaptation of Ukrainian constitutional practice to European standards. This conclusion, however, does not appear to be fully objective. The new system of public authorities and Parliament's place was defined not so much as being under the influence of the European traditions of democratic governance, but as being built upon the Soviet traditions, which have left their imprint both on the 1990–1995 reforms, and on the transformations that took place later. Thus, before 1996, the Constitution actually stipulated the principle of the absolute power of local councils (Article 2 of the Constitution), while the councils themselves were part of a common system of representative authorities (Article 78 of the Constitution). Members of parliament were supposed to fulfil the voters' orders (Article 92 of the Constitution), which evidences the preservation of the atypical for the European tradition imperative mandate. Article 94 of the Constitution, which was to a large extent preserved in the 1996 Constitution, entitled the members of parliament to send inquiries to any public authorities, companies and organisations; this can also be considered as an expression of the Soviet principle of the absolute power of local councils, rather than European parliamentary traditions. Article 97 of the Constitution actually introduced formation of the government by various branches of power – the President (who was able to appoint the majority of the members of government) and the Parliament (which had to reconcile the appointment of individual ministers), which was not typical of European practice. A list of such examples could go on.

The influence of European standards of democratic governance on the national reforms, including those related to parliamentarism, becomes noticeable only from 1993, when the Venice Commission became actively involved in the drafting of the new Ukrainian Constitution. The Commission prepared a number of recommendations on the improvement of the draft amendments to the Constitution, which at that time were considered by the Parliament.[114] The majority of these recommendations found their place in the final text of Basic Law.[115]

The new Constitution includes a number of provisions present in the basic laws of many European countries, in particular the principle of separation of powers, free parliamentary mandate, and incompatibility of the parliamentary mandate with other activities. The judicial authorities (including the Constitutional Court) have been made sufficiently independent from the legislative power (in this context, it is worth remembering that the first drafts of the Constitution envisaged the formation of the Constitution Court by the Parliament). The new Basic Law has also more clearly defined the place of the Verkhovna Rada in the system of public authorities, the principles of its relations with the head of state and the executive branch. The provisions on the self-dissolution of the Parliament were taken out from the Constitution, as it had been previously recommended by the Venice Commission. The Constitution also laid down the grounds for the extension of Parliament's oversight powers: it has become possible to set up a temporary investigation commission on the initiative of the parliamentary minority (150 members of parliament); the Ombudsman's post has been introduced; the high authority to audit public finances (the Accounting Chamber) has been set up. In addition, the Parliament has become entitled to a no-confidence vote in the Government and to remove the President from

113 Law of Ukraine on Parliamentary Committees No. 116/95-BP of 4 April 1995.

114 Opinion on the Draft Constitution of Ukraine (text approved by the Constitutional Commission on 11 March 1996, CDL(96)15) adopted at the 27th Meeting of the Venice Commission on 17–18 May 1996, CDL-INF(1996)006e <http://www.venice.coe.int/docs/1996/CDL-INF(1996)006-e.asp> accessed 10 August 2010; Opinion on the Constitution of Ukraine adopted by the Venice Commission at its 30th Plenary Meeting in Venice on 7–8 March 1997, CDL-INF(1997)002e <http://www.venice.coe.int/docs/1997/CDL-INF(1997)002-e.asp> accessed 10 August 2010.

115 Paragraph 18 of the Explanatory Memorandum by the Reporters Tunne Kelam and Hanne Severinsen to the Report on Honouring of Obligations and Commitments by Ukraine of 2 December 1998 <http://assembly.coe.int/Documents/WorkingDocs/Doc98/EDOC8272.htm> accessed 10 August 2010.

his or her post through an impeachment procedure (with the participation of judicial authorities, as was recommended by the Venice Commission). Thus, the new Ukrainian Constitution made a considerable step forward towards the strengthening of Parliament's role in the system of public authorities, in particular as compared to the provisions of the Constitution Agreement of 1995,[116] which vested the Head of State with essential levers of influence on the legislative and judicial authorities.

At the same time, by no means all recommendations of the Venice Commission were included in the final text of the Constitution approved on 28 June 1996. For instance, the Parliament can overcome presidential veto by two thirds of its composition; the Constitution makes no clear division between the legislative competences of the Parliament, the President, and the Government (Articles 85, 92, 106, and 117 of the Constitution). These recommendations were partially ignored because the final text of the Constitution appeared to be the result of a consensus between the Parliament and the Head of State. The latter agreed to the restriction of his influence on the functioning of the public authorities, but not to the extent wanted by the Parliament. In such a way, the Constitution established «a half-presidential system, in many respects similar to the French system... [where]... the president is vested with significant powers».[117] Thus, even though not fully, the new Ukrainian Constitution is to a large extent based on the European approaches to the regulation of the organisation and functioning of representative institutions.

### 7.2. Establishment of the Institutional Mechanisms of Parliamentary Oversight

In addition to the Constitution, European practice has also been taken into account in the laws which introduced the institutional mechanisms of parliamentary oversight. In particular, in order to implement the relevant constitutional provisions, the Parliament passed the Laws on the Accounting Chamber[118] and on the Ombudsman.[119] The necessity to pass the Law on the Ombudsman was directly grounded by European standards on human rights,[120] while Parliament's wish to establish its own body of financial control over the budget funds (the parliament's oversight chamber) became a driving force behind the adoption of the Law on the Accounting Chamber. At the same time, during the discussion of the relevant draft, certain members of parliament[121] stressed the necessity of taking the experience of the EU countries into account in terms of the regulation and organisation of the functioning of the supreme auditing institution. Analysis of the current version of the Law on the Accounting Chamber evidences that it meets the key precepts guiding the organisation and functioning of supreme auditing institutions set by the Lima Declaration,[122] in particular concerning the competences of the Accounting Chamber (which used to be even broader than envisaged by Article 98 of the Constitution) and the guarantees of its independence. In its turn, the provisions of the Lima Declaration are used as a basis for the definition of the status of supreme auditing institutions in the majority of EU countries. In such a way, regulation of the functioning of the Accounting Chamber has been brought into compliance with the best international and European practice.

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116 Parliament-President Constitutional Agreement No. 1к/95-BP of 8 June 1995 on the Organisation and Functioning Principles for Public Authorities and Local Self-Governance in Ukraine until Adoption of the New Constitution.

117 Opinion on the Constitution of Ukraine adopted by the Venice Commission at its 30th Plenary Meeting (n 114).

118 Law of Ukraine on Accounting Chamber No. 315/96-BP of 11 July 1996.

119 Law on Ombudsman No. 776/97-BP of 23 December 1997.

120 See the transcript of the 26th Sitting of the Verkhovna Rada dated 5 March 1997: <http://www.rada.gov.ua/zakon/skl2/BUL27/050397_26.htm> checked on 10 August 2010, as well as the transcript of the 25th Sitting of the Verkhovna Rada dated 20 March 1997 <http://www.rada.gov.ua/zakon/skl2/BUL27/200597_85.htm> assessed on 10 August 2010.

121 See the transcript of the 16th Sitting of the Verkhovna Rada dated 6 February 1996 <http://www.rada.gov.ua/zakon/skl2/BUL25/060296_16.htm> assessed on 10 August 2010.

122 The Lima Declaration of Guidelines on Auditing Precepts adopted in October 1977 <http://www.intosai.org/blueline/upload/limadeklaren.pdf> assessed on 10 August 2010.

As a matter of fact, formation of institutional mechanisms of parliamentary oversight stopped at the adoption of the above two laws. For quite some time, the Parliament was not able to pass other legislation foreseen by the Constitution, including the Laws on the Cabinet of Ministers and on the Temporary Special and Investigation Commissions. The President repeatedly vetoed both laws, while the Parliament failed to overcome the veto (which needs 300 votes out of 450). The former law was passed only in 2008, and the latter – in 2009.[123] Lack of a law on a temporary investigation commission essentially complicated the holding of parliamentary investigations regarding the public administration, making the removal of the President from his post though the impeachment procedure practically impossible (as the establishment of a special temporary investigation commission was a necessary precondition for the initiation of the impeachment procedures).

The European experience of parliamentarism also influenced to some extent the way the Verkhovna Rada has regulated the procedural aspects of the parliamentary oversight. In particular, starting from February 1996, the Ukrainian parliament has introduced the Government Day in order to listen to the representatives of the Cabinet of Ministers.[124] Same forms of parliamentary control exist in many European countries, in particular in the United Kingdom. When the decision on the introduction of the Government Day was discussed, individual MPs referred to the relevant international experience, and proposed to make this form of oversight more periodic and less formalised.[125] These proposals were not accepted by the Parliament. Accordingly, the legal regulation was not able to ensure efficient parliamentary control over the functioning of the public administration. The Government Day was supposed to take place only once a month on the topic defined by the Parliament (normally, quite broad); the number of questions from a parliamentary faction was limited to one. Later, the Government Day was replaced by the «Question Hour for the Government»,[126] which was supposed to be held twice a week. The changed name of this oversight procedure had little influence on its nature, as it preserved all the main drawbacks featured in the Government Day.

The parliamentary acts also envisaged the introduction of two other procedures, partially related to the parliamentary oversight, namely parliamentary and committee hearings.[127] The committee hearings were modelled on the example of many European countries, whereas the parliamentary hearings are not very common in European practice. Regulation of the hearing procedure was rather poor and its role as a form of oversight was somewhat limited. A large number of participants (sometimes more than 400) determined the formal character of the «discussion» and decreased its influence on the functioning of the Parliament and the Government – while the committee hearings often turned into a deliberation on draft bills considered by the committees. These problems of legal regulation were not removed by the new version of the Law on Parliamentary Committees and the new Parliamentary Procedure Act, which in fact repeat the old norms of the Regulation that governed the hearing procedure.[128]

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123 It should be noted, however, that the Law on Temporary Investigation Commission, *Ad Hoc* Temporary Investigation Commission, and Temporary *Ad Hoc* Parliamentary Commissions was recognised as unconstitutional by the Constitutional Court, on the basis of formal grounds. For more details, see Decision of the Constitutional Court of Ukraine No. 20-рп/2009 of 10 September 2009 on the constitutional submission made by the President of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine on Law on Temporary Investigation Commission, *Ad Hoc* Temporary Investigation Commission, and Temporary *Ad Hoc* Parliamentary Commissions.

124 Regulation on the Government Day in the Verkhovna Rada of Ukraine approved by Verkhovna Rada Resolution No. 23/96-BP of 1 February 1996.

125 See the transcript of the 13th Sitting of the Verkhovna Rada of Ukraine of 1 February 1996 <http://www.rada.gov.ua/zakon/skl2/BUL25/010296_13.htm> assessed on 10 August 2010.

126 Articles 229 and 230 of the Parliamentary Procedure Act approved by the Law of Ukraine of No. 1861-VI of 10 February 2009.

127 Verkhovna Rada Resolution on Approval of the Provisions on Parliamentary and Committee Hearings No. 1385-IV of 11 December 2003 (invalid).

128 Article 29 of the Law of Ukraine on Parliamentary Committees of 4 April 1995 in the version of Law No. 3277-IV of 22 December 2005; Articles 233–236 of the Parliamentary Procedure Act.

### 7.3. Amendment of the Ukrainian Constitution and Extension of Parliamentary Powers (2004)

Reference to the European standards, in particular in the interaction between various branches of power, became especially popular in the context of the constitutional reform initiated by President Leonid Kuchma in 2003, which proposed the extension of parliamentary powers related to the formation of the government and oversight of its functioning. In his TV address to the Ukrainian people, on the occasion of presenting the draft constitutional amendments for public discussion (2003), President Kuchma stressed: «[We] have to come to the political system which would correspond to the parliamentary-presidential model, which is most common for the democratic European countries. Voters elect members of parliament from various political parties. The political parties that have received the most votes establish parliamentary factions. These factions form the majority. The majority forms the government».[129] Later the statement on the necessity to establish «the parliamentary-presidential model, which is most common for the democratic European countries» and the necessity to extend parliamentary powers was supported by a number of politicians, who stressed the compliance of the considered constitutional amendments with the best European practice and standards.[130]

The parliamentary form of governance is indeed widespread in Europe, and its introduction would generally correspond to European practices. At the same time, the façade of the parliamentary form of governance introduced by the constitutional amendments[131] concealed a number of provisions which contradicted the European models. In other words, European standards and practices were used only in the part that met the political interests of the Head of State and the parliamentary majority. Thus, the constitutional amendments established the norms on obligatory formation of the parliamentary majority in the Verkhovna Rada (failure to form the coalition would result in the Parliament's early dissolution), not typical of the European constitutions. Although the practice of the imperative or party mandate in Europe is not common,[132] the draft constitutional amendments envisaged the introduction of such a party mandate in Ukraine. In addition, they restored the general prosecutors' oversight over the laws, which actually meant that the public prosecution system was returned to the status it had under Soviet legislation. The draft amendments also preserved the existing dualism of the executive authorities, and even introduced a potentially conflicting approach to the formation of the Cabinet of Ministers: part of the Cabinet was supposed to be appointed by the Parliament on the submission of the President, another on the submission of the Prime Minister of Ukraine. The majority of these innovations were reflected in the Constitutional Amendments of 8 December 2004. These changes were critically assessed by the Venice Commission,[133] and then cancelled by the decision of the Constitutional Court of Ukraine on procedural grounds in September 2010.

Establishment of the parliamentary coalition status in the Constitution conditioned the necessity to regulate the status of the parliamentary minority (the opposition). Soon after the parliamentary

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129 TV address by President Leonid Kuchma on the occasion of the signature of a decree on submission of the draft constitutional amendments for the public discussion <http://comin.kmu.gov.ua/document/33127/president%5B1%5D.doc> assessed on 10 August 2010.

130 See the transcript of the 34th Sitting of the Verkhovna Rada on 8 April 2004 <http://www.rada.gov.ua/zakon/skl4/5session/STENOGR/08040405_34.htm> assessed on 10 August 2010.

131 Draft Constitutional Amendments (Reg. No. 4105 of 4 September 2003). On 8 April 2004, the parliament failed to adopt the bill, and thus it was removed from the Parliamentary agenda; Draft Constitutional Amendments (Reg. No. 4180 of 19 September 2003), passed as Law No. 2222-IV of 8 December 2004.

132 However, it is used in Serbia. See Report on the Imperative Mandate and Similar Practices, adopted by the Council for Democratic Elections at its 28th Meeting (Venice, 14 March) and by the Venice Commission at its 79th Plenary Session (Venice, 12–13 June 2009), CDL-AD(2009)027 <http://www.venice.coe.int/docs/2009/CDL-AD(2009)027-e.asp> accessed 10 August 2010.

133 Opinion on the Amendments to the Constitution of Ukraine Adopted on 8 December 2004 adopted by the Venice Commission at its 63rd Plenary Session (Venice, 10–11 June 2005), CDL-AD(2005)015 <http://www.venice.coe.int/docs/2005/CDL-AD(2005)015-e.asp> accessed 10 August 2010.

elections of 2006, the representatives of the two biggest parliamentary factions (Bloc of Yulia Tymoshenko and the Party of Regions) submitted two bills to the Parliament aimed at regulating the functioning of the opposition in the Verkhovna Rada.[134] The document authors stressed that, while preparing the bill, they analysed the European practices of the opposition governments and the efficiency of the checks and balances system.[135] Analysis of the document, however, suggests that the European standards and practices were included rather selectively, namely, only where it met the political interests of its developers. Thus, imitating the British model, the bill established the right for the opposition to form the opposition government but, at the same time, the opposition was also entitled to propose its representatives for the top positions in certain public authorities, to be present at the meetings of the government etc, which is not common in European practice. Even though this and the alternative bill were not supported by the Parliament, some of their innovations were later included in the Parliamentary Procedure Act, in particular the right to form the opposition government, inclusion of the issues proposed by the opposition into the parliamentary agenda, appointment of the oppositional members of parliament to the positions of the first deputy chairmen of the parliamentary committees chaired by the coalition members, as well as the right to the priority appointment as chairmen of certain committees (on budget, freedom of speech and information, fighting organised crime and corruption, social policy etc). In this sense, such provisions are compliant with the approaches of individual European countries employed to regulate the issues related to the functioning of parliamentary opposition.

### 7.4. Improved Transparency of the Parliament and Public Participation in the Law-Making

The European standards of democratic governance have had a certain influence on the improvement of parliamentary transparency and public involvement in the legislative process. In particular, today the official Parliamentary Portal publishes all registered bills, opinions of the parliamentary offices on the bills, transcripts and agendas of parliamentary sittings, voting results, general information on the members of parliament and their activities in the Parliament, contact information of the parliamentary staff etc. Over recent years, the parliamentary committees have also started setting up their websites. To improve the transparency of the Parliament, as well as other public authorities, the Verkhovna Rada considered a bill on access to public information.[136] In the explanatory note to the bill, it was stressed that it was drafted in accordance with the Council of Europe recommendations and was a «necessary condition for Ukraine's integration into the European community».[137] The need to pass this bill in line with Ukraine's obligations to the Council of Europe was emphasised by individual members of parliament.[138]

The above examples illustrate the influence of best European practices on access to information produced by the legislative body. At the same time, not all parliamentary activities are sufficiently transparent. For instance, the parliamentary budget is practically a confidential document; only 10 out of 28 parliamentary committees have their websites, while the information on the existing Internet pages is not regularly updated. Some committees do not publish the agendas of their meetings and reports on their activities. There is also no practice of publishing the minutes of the committee meetings, the results of the roll-call voting and transcripts of the open committee hearings.

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134 Draft Law on Opposition Political Activity (Reg. No. 1011 of 25 June 2006); Draft Law on Parliamentary Opposition (Reg. No. 1011-1 of 4 September 2006).

135 Valentyn Bushanskyi, «Opposition in Position» Viche Journal <http://www.viche.info/journal/367/> accessed 10 August 2009.

136 Draft Law on Access to Public Information (Reg. No. 2763 of 11 July 2008). On 12 June 2009, the Parliament adopted the bill in the first reading, but on 9 July 2010, it was sent for a repeated second reading.

137 Explanatory Note to the Draft Law on Access to Public Information (Reg. No. 2763 of 11 July 2008).

138 See the transcript to the 52nd Sitting of the Verkhovna Rada on 12 June 2009 <http://www.rada.gov.ua/zakon/skl6/4session/STENOGR/12060904_52.htm> checked August 2010.

To ensure more active public involvement in the legislative process, public and expert councils have been established under certain parliamentary committees. These bodies are composed of representatives of civil society organisations and specialised sector business associations.[139]

In the context of influence of European practice on involvement of the public and interested groups in the decision-making process, it is worthwhile to recall two other legislative initiatives, i.e. an attempt to confer the right of legislative initiatives (and «people's veto») on the voters and the legislative regulation of lobbying.

The first initiative is related to the draft constitutional amendments submitted to the Parliament by President Victor Yuschenko.[140] Article 79 of such amendments empowered 1,500,000 voters to initiate referenda on full or partial cancellation of laws, while Article 81 entitled 100,000 citizens to submit their bills (certain categories of bills) for the consideration of the Parliament. In this context, it should be noted that the right of the people's legislative initiative is established by the constitutions and laws of many EU Member States, such as Austria, Hungary, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovenia, Spain and others. Thus, in this sense the bill reflected the widespread European constitutional practice.

The second initiative is related to three bills dealing with regulation of the lobbyist activities in the Parliament, which used to be considered by the Verkhovna Rada. Two of them[141] were submitted to the 3rd Verkhovna Rada, and one[142] to the fourth. The necessity to pass the latter bill was, among other things, explained by the fact that a trend to regulate lobbyism was growing in Europe.[143] Another version of the Law of Ukraine on Lobbying (on the Public Influence on Adoption of Legislation) was drafted by the Ministry of Justice of Ukraine. Even though it was not submitted for parliamentary consideration, there are some important points to be mentioned in relation to it. One of the motives behind the development of the bill was attention drawn to the lobbying issues by PACE.[144] The public discussion of this bill evidenced the gradual adoption of the public consultation procedures in the best European practice. In particular, at the stage when the bill was developed, the Ministry of Justice held a series of public discussions on its concept and content, while the bill itself was published on the website with an interface allowing the visitors to leave their comments and proposals on the improvement of the bill. Such proposals and their analyses were published on the same website. Unfortunately, the practice of such public discussion has not yet been adopted by the Parliament.

### 7.5. Reform of the Election System and Political Parties Funding

Influence of the European standards and practices is observed in two other areas, which are, probably, not directly related to parliamentary affairs but, nevertheless, have a considerable impact on the Parliament's functioning. These are reform of the parliamentary election system and funding of the party activities.

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139 Thus, there is a research and expert council under the Parliamentary Committee for the European Integration, and a public council under the Committee for Freedom of Speech and Information.

140 Draft Constitutional Amendments (Reg. No. 4290 of 31 March 2009 submitted by the President). The President's initiative yielded no result as, on 22 October 2009, the Parliament did not support the decision on its inclusion in the agenda of the 5th session of the 6th Verkhovna Rada.

141 Draft Law on Lobbying in Ukraine (Reg. No. 3188 of 13 April 1999); Draft Law on Legal Status of the Groups United by Common Interests (Lobbyist Groups) in the Verkhovna Rada (Reg. No. 3188-1 of 3 November 1999).

142 Draft Law on Lobbyist Activities in the Verkhovna Rada (Reg. No. 8429 of 9 November 2005).

143 Explanatory note to the Bill on Activities of Lobbyists in the Verkhovna Rada (Reg. No. 8429 of 9 November 2005).

144 Mykola Onishchuk, «Legitimisation of the Public Influence on the Adoption of Legislation – Urgent Need of the Modern Lawmaking» in *The Problems of the Legitimisation of the Institute of Lobbying in Ukraine and Their Solutions* (public discussion materials, Kyiv, 12 October 2009) 4.

The 2006 parliamentary elections were conducted on the basis of the proportional representation system, with voting for closed party and bloc lists in the nationwide election district.[145] This version of the election system was introduced with a reference to the international, including European, experience in this area. In particular, references to the European experience[146] and relevant OSCE and Council of Europe recommendations[147] were made in the explanatory notes to the bill on the reform of the system which was supposed to be used for parliamentary elections 2006. When discussing these bills, members of parliament also paid attention to the acceptability and non-acceptability of certain system variants in the context of the experience gained by the European countries.[148] After the 2006 elections, it appeared that the proportional representation system with closed lists weakened the link between the political parties and voters, as well as strengthening the influence of the political party leadership on the internal party decisions. This problem produced many bills aiming at the change of the election system. Initiators of these bills were also actively using the European experience of the election systems,[149] international standards[150] and recommendations of the Venice Commission and OSCE in the area of elections.[151] As a matter of fact, none of these bills has been so far supported by the Parliament.

Such legislative practice formally corresponds to the requirements of the EU-Ukraine Action Plan and the EU-Ukraine Association Agenda, which stress the necessity to take the OSCE/ODHIR recommendations into account in the course of parliamentary elections. At the same time, the priority of political interests for party leaders results in a situation where the standards of democratic, fair and transparent elections are either reflected partially, or not reflected at all in the national legislation. This is confirmed by a number of Venice Commission opinions,[152] as well as by the multiple repetition of the same OSCE/ODHIR recommendations on the results of national elections.[153]

In addition to the legislation on parliamentary elections, European standards have forced attempts to introduce the state funding of political parties in Ukraine. Despite the fact that regulation of financial aspects of the activities of political parties has no diret influence on the legislative process, it is closely linked to such a process, as dependence of political parties on private funding strengthens the risks of corruption in the adoption of political decisions, which belong to Ukraine's priority

145 Articles 1 and 96 of the Law on Parliamentary Elections No. 1665-IV of 25 March 2004.

146 See, for example, an explanatory note to the Bill on Parliamentary Elections (Reg. No. 4285-1 of 17 November 2003); an explanatory note to the Bill on Parliamentary Elections (Reg. No. 4285-5 of 02 February 2004).

147 Explanatory note to the Bill on Parliamentary Elections (Reg. No. 4285-2 of 31 December 2003); Explanatory note to the Bill on Parliamentary Elections (Reg. No. 4285-3 of 23 January 2004); Explanatory note to the Bill on Parliamentary Elections (Reg. No. 4285-4 of 29 January 2004).

148 See the transcript of the 18th Sitting of the Verkhovna Rada on 5 March 2004 <http://www.rada.gov.ua/zakon/skl4/5session/STENOGR/05030405_18.htm> assessed on 10 August 2010.

149 Explanatory note to the draft Election Code of Ukraine (Reg. No. 4234 of 19 March 2009); Explanatory note to the Bill on Parliamentary Elections (Reg. No. 3366 of 15 January 2009).

150 Explanatory note to the Amendments to the Law on Parliamentary Elections (Reg. No. 3684 of 30 January 2009).

151 Explanatory note to the draft Election Code of Ukraine (Reg. No. 4234-1 of 23 March 2009).

152 Joint Opinion on the Law on Amending Some Legislative Acts on the Election of the President of Ukraine Adopted by the Verkhovna Rada of Ukraine on 24 July 2009, adopted by the Council for Democratic Elections at its 30th meeting (Venice, 8 October 2009) and by the Venice Commission at its 80th Plenary Session (Venice, 9–10 October 2009), CDL-AD(2009)040 <http://www.venice.coe.int/docs/2009/CDL-AD(2009)040-e.asp> accessed 10 August 2010; Opinion on the Law on Elections of People's Deputies of Ukraine, adopted by the Council for Democratic Elections at its 15th meeting (Venice, 15 December 2005) and the Venice Commission at its 65th Plenary Session (Venice, 16–17 December 2005), CDL-AD(2006)002 <http://www.venice.coe.int/docs/2006/CDL-AD(2006)002-e.asp> accessed 10 August 2010.

153 OSCE/ODIHR Election Observation Mission, «Ukraine. Presidential Election 17 January and 7 February 2010» (Final Report) Warsaw, 28 April 2010 <http://www.osce.org/documents/odihr/2010/04/43675_en.pdf> accessed 10 August 2010, 27–30; OSCE/ODIHR Election Observation Mission, «Ukraine. Parliamentary Elections 26 March 2006» (Report) Warsaw, 23 June 2006 <http://www.osce.org/documents/odihr/2006/06/19631_en.pdf> accessed 10 August 2010, 25–28; OSCE/ODIHR Election Observation Mission, «Ukraine. Presidential Election 31 October, 21 November and 26 December 2004» (Final Report) Warsaw, 11 May 2005 <http://www.osce.org/documents/odihr/2005/05/14224_en.pdf> accessed 10 August 2010, 38–44.

objectives on the way to European integration and has a negative impact on the quality of Parliament's composition. The Law on Political Parties[154] envisaged no state funding of political parties, efficient mechanisms of transparent funding and control of the financial activities of political parties. Furthermore, it contained a number of gaps in the regulation of the funding of political parties at the expense of private contributions (e.g. no limit was established for a contribution made from one donor). The solutions to some of these problems were proposed in the draft amendments to the Law on Political Parties submitted for parliamentary consideration in 2002.[155] The explanatory note to the bill stressed that the state funding of political parties existed in many European countries.[156] Individual members of parliament also actively appealed to European standards in the area of funding of political parties,[157] when the bill was considered by the Parliament. At the same time, the final version of the law passed by the Verkhovna Rada did not fully meet such standards, as it envisaged no funding for the non-parliamentary parties enjoying certain voters' support.[158]

> **In such a way, the legislation that regulates the functioning of the Verkhovna Rada and its decision-making process is gradually getting closer to the European standards and practices. Ukraine's obligations to the Council of Europe and Venice Commission recommendations become increasingly common (even though no more determinative) arguments for the decisions to be adopted by Parliament. At the same time, such practices are often interpreted by members of parliament in the light of their political interests (which is the case, for example, with the election systems), while their appearance in the legislative proposals is rather selective. The latter became particularly evident during the consideration and adoption of the constitutional amendments in 2004, as well as the bills regulating the status of the parliamentary opposition. In some cases, the European experience is implemented in Ukraine either without any proper studying of the possibility of its use under the Ukrainian conditions or in a rather distorted form (e.g. parliamentary form of governance). Quite often, the Parliament would ignore the generally recognised democratic standards in the interests of political expediency, in particular in the election laws. Such approaches considerably complicate the approximation to the European standards, as concerns the parliamentary functioning and its decision-making procedures.**

## 8. Institutional Europeanisation: the Role of the Ukrainian Parliament in the Process of Adaptation of National Legislation to the *Acquis Communautaire*

The initial idea of approximation of laws originates from the Partnership and Co-Operation Agreement (PCA) that entered into force in March 1998. According to Article 51 of the Agreement, Ukraine takes the obligation «to ensure that its legislation will be gradually made compatible with that of the Community».[159] The PCA listed 16 priority areas of approximation, i.e. customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers

154 Law on Political Parties in Ukraine No. 2365-III of 5 April 2001.

155 Draft Amendments to Certain Legislative Acts of Ukraine Due to the Introduction of the State Funding of Political Parties (Reg. No. 2097 of 29 August 2002).

156 Explanatory note to Draft Amendments to Certain Legislative Acts of Ukraine Due to the Introduction of the State Funding of Political Parties (Reg. No. 2097 of 29.08.2002).

157 Transcript of the 33rd Sitting of the Verkhovna Rada of 18 November 2003 <http://www.rada.gov.ua/zakon/skl4/4session/STENOGR/4SES/18110304_33.htm> checked on 10 August 2010.

158 See Guideline A4 of the Guidelines on the Financing of Political Parties adopted by the Venice Commission at its 46th Plenary Meeting (Venice, 9-10 March 2001), CDL-INF (2001) 8 <http://www.venice.coe.int/docs/2001/CDL-INF(2001)008-e.asp> accessed 10 August 2010.

159 Partnership and Co-Operation Agreement between the European Communities and their Member States, and Ukraine signed on 14 June 1994.

at the workplace, financial services, rules on competition, public procurement, protection of health and life of humans, animals and plants, the environment, consumer protection, indirect taxation, technical rules and standards, nuclear laws and regulations, and transport. In February 2005, this list was elaborated by the Action Plan Ukraine-EU. The priorities tasks for legislators have been further reviewed by the EU-Ukraine Association Agenda in order «to move beyond cooperation towards gradual economic integration and deepening political association».[160] To support Ukraine's efforts, the Community has offered technical assistance for the implementation of these measures (e.g. exchanges of technical expertise and advice, best practices and know-how, the sharing of information, support in capacity-building and institutional strengthening).

### 8.1. The Core Elements of the Institutional Mechanism

Establishment of the institutional mechanism for adaptation of Ukraine's legislation to the *acquis communautaire* began immediately after the PCA came into force. The key role in this mechanism was attributed to the central public executive authorities, in particular to the Ministry of Justice. In June 1998, the Ministry of Justice was conferred the function of coordinator of central executive public authorities dealing with adaptation of the national legislation to EU law. For this purpose, the Ministry established an Interdepartmental Coordination Council for Adaptation of Ukraine's Legislation to EU Law and the Comparative Law Centre.[161] The Coordination Council, headed by the Minister of Justice, was composed of deputy ministers and deputy heads of other central executive public authorities. Some researchers[162] conclude that this model has borrowed certain features of the institutional mechanisms used for the adaptation purpose in Poland. In 1999, the institutional mechanism for adaptation of the national legislation to EU law was supplemented by the Centre for Translation of the European Laws established under the Ministry of Justice.[163] During 1998–2004, this institutional structure underwent further transformations. Thus, in 2001, the office of Ukraine's Commissioner for European Integration was introduced (similar to the office of Polish Governmental Commissioner for European Integration),[164] and the next year the President established and headed the State Council for European and Euro-Atlantic Integration. [165] The State Council was supposed to fulfil coordination and oversight functions, similar to those of the Coordination Council. In 2003, the Ministry of Justice merged the Comparative Law Centre and the Centre for Translation of the European Laws into the European and Comparative Law Centre.[166]

Generally, before 2004, there were a number of important issues left unsolved. In particular, the central public executive authorities demonstrated weak capability in this area (mainly due to insufficient funding); there was no clear vision of adaptation priorities and objectives; the Coordination Council had no oversight powers over the implementation of its decisions.[167] This had a negative impact on the efficiency with which central executive public authorities were fulfilling the annual adaptation plans. Moreover, before 2002, when the Parliamentary Committee for European Integration was set up, the role and functions of the legislative body in the process of adaptation were not properly defined. Accordingly, it was not clear how to ensure EU-compliance of not only regulations issued

160 EU-Ukraine Association Agenda from 15 October 2009, UE-UA 1056/2/09 REV 2 <http://ec.europa.eu/delegations/ukraine/documents/eu_uk_chronology/association_agenda_en.pdf> accessed 10 August 2010.

161 CMU Resolution on Introduction of the Mechanism for Adaptation of Ukraine's Legislation to EU Law No. 852 of 12 June 1998.

162 Olena Zerkal, «Count on Others, But Watch Out Yourself or Adaptation of Ukraine's Legislation to EU Law' Law Newspaper No. 2 (38) of 17 February 2005 <http://www.yur-gazeta.com/oarticle/1289/> accessed 10 August 2010.

163 CMU Resolution on the Centre for Translation of European Law No. 1353 of 26 July 1999.

164 Presidential Decree on Commissioner for European Integration No. 1146/2001 of 26 November 2001.

165 Presidential Decree on the State Council for European and Euro-Atlantic Integration No. 791/2002 of 30 August 2002.

166 CMU Resolution on Establishment of the European and Comparative Centre No. 716 of 15 May 2003.

167 Official website of the Ministry of Justice, «Institutional Mechanism for Adaptation of Ukraine's Legislation to EU Law» <http://www.minjust.gov.ua/0/4748> accessed 10 August 2010.

by the government and central executive public authorities, but also the bills that were considered and passed by the Verkhovna Rada.

A certain part of these problems was solved by the Law of Ukraine on the National Programme for Adaptation of Ukraine's Legislation to EU Law No. 1629-IV of 18.03.2004 (the Law, the National Programme for Adaptation). It established adaptation priorities, as well as outlining the institutional and procedural mechanisms for adaptation of Ukraine's legislation to the *acquis communautaire*. The institutional mechanism has been composed by the Verkhovna Rada, the Cabinet of Ministers, the Coordination Council for Adaptation of Ukraine's Legislation, the competent executive public authority (the Ministry of Justice) and the Parliamentary Committee for European Integration. The Law, however, was not clear on whether the Head of State, the presidential advisory bodies, and the bodies supporting the functioning of the Cabinet of Ministers were involved in the institutional adaptation mechanism, and which objectives were to be met or could be met by such bodies in terms of the adaptation. The analysis provided below evidences that, even though the above bodies were not formally included in the adaptation mechanism by the Law, they actually are or potentially may be part of such a mechanism (in view of their powers in the executive or legislative dimensions).

### 8.2. Parliamentary Component

Under the Law, the Verkhovna Rada (i) ensures implementation of the National Programme for Adaptation of Ukraine's Legislation to EU Law through adoption of laws in the priority areas; (ii) amends the National Programme and annually hears a report on its implementation status; (iii) ensures expert analysis of the bills submitted for its consideration in terms of their compliance with EU law at all stages of the legislative process; (iv) approves the state budget bill submitted by the Government, including as concerns the funding of the measures envisaged by the National Programme. The Law has also established that the Parliament had (v) to define the aims and objectives of the second and subsequent implementation stages of the National Programme.[168]

In Ukraine, European matters had previously belonged to the competence of the Parliamentary Committee on Foreign Affairs, which corresponds with the institutional path of Member States.[169] In 2002, a newly elected Parliament established a parliamentary committee with a specific focus on European integration (Parliamentary Committee on European Integration – PCoEI). As demonstrated earlier, the establishment of EACs in the Member States has become the most obvious indication of EU impact on national parliaments in the institutional dimension. Their functions and efficiency reflect a parliamentary capacity for comprehensive participation in EU affairs. Following the same logic, the creation of PCoIE at the Verkhovna Rada of Ukraine provides evidence of an institutional Europeanisation beyond the EU, while the analysis of PCoEI's operation largely reflects the role of the Parliament in EU affairs.

The objective and powers of the Parliamentary Committee on European Integration are defined both by the general acts, which regulate the functioning of the Parliament and its committees (the Parliamentary Procedure Act and the Law on Parliamentary Committees),[170] and by special acts, such as the National Programme for Adaptation and the Regulation on the Parliamentary Committee on

168 Article 101 of the PCA. The first implementation stage was supposed to end in March 2008 together with expiry of the PCA. As the negotiations on the EU-Ukraine Association Agreement, which began in March 2007, are still in progress, the PCA is annually automatically extended.

169 See, e.g. José Magone, «South European National Parliaments and the European Union: An Inconsistent Reactive Revival» in John O'Brennan and Raunio (eds), *National Parliaments within the Enlarged European Union: From Victims of Integration to Competitive Actors?* (Routledge, Abingdon 2007).

170 See references to these documents in (n 126) and (n 128).

European Integration. Accordingly, its core functions include: (i) approximation matters, i.e. law-drafting that contributes to the approximation of national legislation to EU law, the prevention of adoption of acts that contradict EU law, the PCA, the WTO norms and the obligation of Ukraine regarding the CoE; (ii) parliamentary scrutiny, i.e. the monitoring of implementation of legal acts that belong to the Committee's competence, the scrutiny of Ukrainian cooperation with the EU, the NATO, the CoE and the PA WEU; and (iii) inter-parliamentary relationships with European countries concerning integration matters.[171]

### Parliamentary Committee for European Integration[172]

- annually reconciles the measures on implementation of the National Programme for Adaptation and monitors its implementation (together with the Government);
- undertakes a preliminary analysis of all bills submitted for parliamentary consideration, in terms of their belonging to the areas, regulated by EU law, and sends the relevant bills to the Ministry of Justice to check their compliance with EU law;
- on the instruction of the Verkhovna Rada and on its own initiative, arranges development of bills aiming at the adaptation of Ukraine's law to the *acquis communautaire*;
- establishes where the bills submitted to the Parliament are compliant with European norms, presents its position on the bills, adoption of which may be important for European integration (through a co-report by a member of the Committee);
- considers and prepares conclusions and proposals on the ratification of and denunciation by the Parliament international agreements, including those related to the adaptation of the national legislation to EU law;
- controls application of the laws related to European integration by the public authorities and local self-governance bodies.

Although the Parliamentary Committee on European Integration has been operating since 2002,[173] the position of the Parliament in EU affairs is still weak. *De jure* the Parliament and the Government are equally involved in the approximation of laws, but in fact the process is dominated by the executive. The foreseen function of the Committee is a regular screening of all drafts that are registered in the Parliament through the lens of their compatibility with EU law. If the Committee decides that the draft belongs to a sphere regulated by the EU, it has to proceed through a special examination that involves the Ministry of Justice. According to the National Programme for Adaptation, legal acts that do not comply with the *acquis* can only be adopted if they are supported by sufficient justification and for a limited period of operation.[174] However, the experience of the Member States that came through the approximation process demonstrates that, without cooperation with other specialised committees, this goal is overambitious. Therefore, rather predictably, the practice diverges from the legal provisions and the screening of all drafts is not provided. For instance, in 2006–07, the PCoEI issued only 143 reports on the compliance of drafts with EU legislation.[175] Moreover, the weight of Committee recommendations is rather low. The reasons for such results are in several difficulties of institutional, procedural and organisational nature that, in spite of the long period of the Committee's operation, still have to be overcome.

The first institutional challenge is that the EAC is one of the smallest and the most overloaded committees in the Vekhovna Rada of Ukraine. In August 2010, the Committee consisted

171 Regulation of the Verkhovna Rada of Ukraine on the Register, Membership and Policy Areas of the Parliamentary Committees in the 6th convocation of the Parliament No. 6-VI of 13 December 2007.

172 According to the Law and Clauses 2.1 and 2.4 of the Regulation on the Parliamentary Committee on European Integration.

173 Verkhovna Rada Resolution on Election of Chairman and First Deputy Chairman of the 4th Verkhovna Rada Committees, Establishment of the Special Oversight Parliamentary Commission on Privatisation, Election of the Chairman and First Deputy Chairman of the Commission, and Appointment of the Chief of Staff of the Verkhovna Rada of Ukraine (No. 13-IV of 7 June 2002).

174 Para 3 of Chapter IX of the State Programme.

175 The Communication of the PCoEI is available on the official Committee's website: <http://comeuroint.rada.gov.ua/komevroint/control/uk/publish/article?art_id=46450&cat_id=45629> accessed on 10 August 2010.

of 8 members having under examination 1303 drafts,[176] which makes its «work load» the highest in the Parliament. In comparison, in the Slovenian National Assembly, which is five times smaller than the Ukrainian legislature, the EAC consisting of 10 MPs was found to be insufficient and its membership was increased to 16 MPs after the accession.[177]

As in many EU Member States with weak EACs, in the Ukrainian Committee only a few members can be considered as well-known political figures. The delegation of «light-weight politicians» to the parliamentary committees on European affairs proves that major political actors do not consider their role as sufficiently important.[178] In addition, the political composition of the Committee does not correspond with the political configuration of the Parliament: seven members of the committees belong to the opposition factions; the biggest faction of the parliamentary coalition, the Party of Regions faction, is represented by only one MP; while two other parliamentary coalition factions, the Communist Party and Lytvyn Bloc factions, are not represented at all. Such incompliance decreases the probability that Committee's opinions (including those related to the bills) will be supported by the parliamentary majority.

Further, the PCoEI has a limited capacity to deal with EU-related matters. The Hungarian parliament, for instance, has a majority of lawyers in the composition of the EAC, while in Ukraine only a few Committee members have a legal background.[179] The situation is even worse when it comes to a knowledge of EU law. The language skills constitute another problem, especially through the lens of official records where approximately half of the *acquis* has been translated into Ukrainian.[180] Moreover, the quality of such translations is frequently poor.[181] Even if the size of the Secretariat is comparable to some EU Member States, it is still not enough to provide sufficient expert and administrative support for dealing with all assigned tasks.

Not only the members of parliament, but also parliamentary political parties in general do not demonstrate a genuine interest in technical and specialised aspects of European affairs. Attention is mainly drawn to the political debates on eventual EU membership instead of daily legislative work. Since 2002, EU issues have only twice become a topic of parliamentary hearings. However, this situation is not a specific Ukrainian problem. For instance, Łazowski with regard to the Polish parliament also concludes that «in most cases parliamentary involvement is undermined by populist argumentation reflecting limited expertise and understanding of EU-related issues».[182] Thus, in this respect, Ukraine is facing a problem that is common for the pre-accession

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176 It should be taken into account that according to the rules of parliamentary procedure, each draft is directed to the «main committee» that serves as a leading agent, but it could also be directed to other committees with a related field of competence. Thus, the overall number of drafts under the examination of the PCoEI was 1303, but only for 8 was it assigned as a leading agent. The data comes from the official Parliamentary Portal <www.rada.gov.ua> accessed on 10 August 2010.

177 Primož Vehar, «The National Assembly of the Republic of Slovenia and EU Affairs Before and After Accession» in John O'Brennan and Tapio Raunio (eds), *National Parliaments within the Enlarged European Union: From Victims of Integration to Competitive Actors?* (Routledge, Abingdon 2007) 251.

178 Enikö Györi, «The Role of the Hungarian National Assembly in EU Policy-Making after Accession to the Union: A Mute Witness or a True Controller?» in John O'Brennan and Tapio Raunio (eds), *National Parliaments within the Enlarged European Union: From Victims of Integration to Competitive Actors?* (Routledge, Abingdon 2007) 234.

179 Györi (n 178) 234.

180 The overall number of pages translated in 2005–09 is approximately 60 thousand in 100 thousand pages of the *acquis communautaire*. See Ministry of Justice of Ukraine, «Annual Report 2009 on the Implementation of the State Programme» <http://www.sdla.gov.ua/control/uk/publish/article?art_id=54133&cat_id=46960> accessed on 30 August 2010.

181 The example of linguistic problems can be illustrated by the bill that amends the provisions of the VAT Law of Ukraine on exported services (Reg. No. 4163 of 6 March 2009). The authors aimed to resolve the problem that arose from «the low-quality translation of the Sixth VAT Directive 77/388/EC from 17 May 1977 that became a source of paragraph 6.5 of the VAT Law of Ukraine».

182 Adam Łazowski, «The Polish Parliament and EU Affairs: An Effective Actor or An Accidental Hero?» in John O'Brennan and Tapio Raunio (eds), *National Parliaments within the Enlarged European Union: From Victims of Integration to Competitive Actors?* (Routledge, Abingdon 2007) 203.

period. In the countries that have recently joined the EU «it has been much more difficult to overcome know-how than institutional deficit, i.e. the lack of professionalism and expertise in the European policy field».[183]

While at the parliamentary level the approximation of laws is under the exclusive responsibility of the PCoEI, which has not shown any significant developments in recent years, the governmental structures and procedures are much more complex and dynamic. Since 2004, the governmental bills and other legal acts belonging to the EU-regulated fields and received by the Ministry of Justice from central executive public authorities and other public authorities have undergone an *acquis*-compliance examination at the Ministry. Starting with 2007, the Ministry of Justice also checks the compliance of the departmental regulations, drafted by public authorities and submitted to the Ministry for registration. Since 2009, the drafts have been preliminary screened for their compliance with EU law at the stage when they are reconciled with interested public authorities.[184] Furthermore, the intention of the Government to change the Parliamentary Procedure Act and adjust the mechanism of cooperation between the Committee and the Ministry of Justice according to the provisions of the National Programme for Adaptation has not been supported by the Parliament.[185]

All the above, as well as the traditionally low attention paid by the Parliament to external affairs, predetermine the low level of PCoIE's influence on the lawmaking process. Nevertheless, before making a conclusion about the limited parliamentary role in EU affairs, let us briefly consider parliamentary involvement in political and policy dialogue at European level.

Since the «EU-vector» constitutes a part of the Ukrainian foreign policy, the Government holds a dominant position in negotiations, while the role of the Verkhovna Rada of Ukraine is focused on a political dialogue and control. Parliamentary participation in the key bilateral institutions that were created under the PCA is limited. In the Co-operation Council it is represented by the Chairman of the Parliamentary Committee on European Integration, while the First Deputy Chairman and the Head of EAC Secretariat participate in the Co-operation Committees.

The main institution for inter-parliamentary cooperation, according to Article 90 of the PCA, is the EU-Ukraine Parliamentary Cooperation Committee which, however, plays merely a political role. Notwithstanding this, dialogue with the EP is developing. Before 2004, the European Parliament's delegation to the EU-Ukraine Parliamentary Cooperation Committee was a part of the joint delegation for relations with Ukraine, Moldova and Belarus. In 2004, it obtained a separate status that provided the possibility of holding annual meetings. Since 2006, after the amendment of procedural rules, the meetings have been held twice a year. Another dimension of inter-parliamentary cooperation has been opened up by the Eastern Partnership. In order to strengthen its parliamentary dimension, the European Parliament launched the creation of the EU-Neighbourhood-East Parliamentary Assembly (EURONEST). Even though the establishment of this new institution has been postponed, in the future it should expand the ongoing parliamentary collaboration between the EU and its Eastern neighbours.

In addition to contacts with the EP, the Verkhovna Rada of Ukraine is involved in cooperation with the national parliaments of the EU. Such interaction takes place through bilateral and multilateral platforms. Bilateral groups have been created with nearly all EU Member States. Multilateral cooperation with the EU national parliaments is built within the framework of the PA WEU and COSAC. A delegation of the Ukrainian parliament has taken part in the PA WEU since 2001. Cooperation

183 Ibid 224.

184 Ministry of Justice of Ukraine, «Annual Report 2009 on the Implementation of the State Programme» <http://www.sdla.gov.ua:8080/control/uk/publish/article?art_id=54133&cat_id=46960> accessed 10 August 2010.

185 Ibid.

with the COSAC is more limited; it was initiated only recently, forced by the development of relations between the EU and its Eastern partners. In May 2009, delegations from Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine were invited to the COSAC Conference in the status of special guests to contribute to the discussion on the Eastern Partnership initiative.

This overview demonstrates quite intense external parliamentary activities. It reflects a well-known pattern of executive dominance in key decision-making institutions, while the Parliament is involved in political deliberations. In the same way as in the EU, it may raise some doubts with regard to the practical output of inter-parliamentary platforms. However, such cooperation remains an important source, not only for the exchange of knowledge, but also for sharing European values and developing a culture of political dialogue, which makes it even more important than for stable democracies.

### 8.3. Governmental Structures

An important role in the institutional mechanism for adaptation of Ukraine's legislation to EU law belongs to the Cabinet of Ministers of Ukraine. The Government approves the annual plans for the implementation of the National Programme (including through adoption of regulations and development of the necessary bills), allocates the funding, oversees the implementation of the annual plans measures and supports training of experts in the area of European integration. In fact, the Cabinet of Ministers ensures implementation of the National Programme in all aspects that are not attributed to exclusive parliamentary powers.

The pre-consideration of the issues attributed to the competence of the Cabinet of Ministers (bills, draft CMU decisions etc), preparation of the opinions and proposals of the Cabinet of Ministers to the draft acts are carried out by the governmental committees.[186] The governmental committees can be headed by the Prime Minister, the First Vice Prime Minister, or one of the Vice Prime Ministers of Ukraine. For quite some time, the issues related to the European integration, including the adaptation of Ukraine's legislation to EU law, were dealt with by the «profile» governmental committee for economic policy and European integration (between March 2007 and January 2008),[187] then by the governmental committee for European integration and international cooperation (until March 2010).[188] But on 17 March 2010,[189] such a specialised governmental committee was liquidated, and its functions were attributed to the governmental committee for economic policy.[190]

Organisation and analytical support, as well as other assistance to the Cabinet of Ministers in the area of European integration policy and cooperation with the EU, is provided by a specialised office within the CMU Secretariat – the Coordination Bureau for European and International Integration.[191] The Bureau coordinates the activities of the executive public authorities on the development of legislative acts in priority areas of European integration, analyses the results of expert studies related to the compliance of the draft legislative acts with EU law, monitors, and analyses how efficiently public policy on European integration is being implemented. In addition, the Bureau also functions as the secretariat of the Coordination Council for Adaptation of Ukraine's Legislation to EU Law, prepares

186 Paragraph 27 of the CMU Rules of Procedure approved by CMU Resolution No. 950 of 18 July 2007.
187 CMU Instruction on the List of the Governmental Committees and Their Composition No. 109-p of 28 March 2007.
188 CMU Instruction on the List of the Governmental Committees and Their Composition No. 195-p of 30 January 2008.
189 CMU Instruction on the List of the Governmental Committees and Their Composition No. 460-p of 17 March 2010.
190 CMU Instruction on the List of the Governmental Committees and Their Composition No. 1548-p of 28 July 2010.
191 Paragraph 4 of the Regulation on the Bureau for European Integration of the CMU Secretariat.

joint meetings of the EU-Ukraine bilateral bodies, and participates in the implementation of the international technical assistance projects supported by the EU. The Bureau's place in the institutional adaptation mechanism, however, is not defined by the Law, while the regulations confer substantial powers on the Bureau in relation to the adaptation process, which to some extent weakens the role of the Ministry of Justice in this area (in view of the fact that the Bureau's powers overlap those of the Ministry).

In order to ensure cooperation between public authorities and non-governmental institutions as regards the implementation of the National Programme for Adaptation, in October 2004 the Cabinet of Ministers set up the Coordination Council for Adaptation of Ukraine's Legislation.[192] The Coordination Council defines the executive public authorities in charge of adaptation, prepares annual plans for the implementation of the National Programme and considers their implementation, as well as drafts an annual report on the implementation of the National Programme for the Parliament. Since the moment of its establishment, the Coordination Council has included 20–27 members: the Prime Minister of Ukraine, ministers and heads of central executive public authorities in charge of the adaptation of Ukraine's legislation to EU law, the Chairman of the Parliamentary Committee for European Integration and the Governor of the National Bank of Ukraine (on their consent), and the Chairman of the Entrepreneurs Council under the Cabinet of Ministers of Ukraine.

The Ministry of Justice coordinates the implementation of the National Programme for Adaptation.[193] It performs such coordination through the State Department for Adaptation of Legislation,[194] which analyses bills and drafts of other acts in terms of their compliance with EU law, monitors implementation of the legislation developed in accordance with the *acquis communautaire*, translates EU acts, undertakes various comparative studies, and ensures functioning of the nationwide information network for the European law. In addition, the departament coordinates EU-Ukraine cooperation on the adaptation of Ukraine's legislation to EU law in the areas of justice, liberty, and security, stability and efficiency of the institutions that ensure democracy, rule of law, and respect for human rights.

### 8.4. The President of Ukraine

Even though the Law does not mention the President of Ukraine as an element of the institutional mechanism of adaptation of Ukraine's legislation to EU law, the Head of State *de facto* is a part of this system. This is conditioned by the fact that the Ukrainian Constitution endows the President with important levers of influence on the legislative process, as well as on the operation of the legislative and executive authorities. Accordingly, exercising the attributed rights, the President may influence the process of adaptation of Ukraine's legislation to the *acquis communautaire*.

In the legislative process, the President may submit bills for parliamentary consideration, define certain bills as urgent (such bills are treated by the Parliament as a priority) and veto the laws passed by the Parliament.[195] The President's influence on the functioning of the Government is determined by the fact that he may suspend the validity of governmental acts on the ground of their unconstitutionality (in the President's opinion), which is followed by their simultaneous submission to the Constitutional Court. Besides, the President provides leadership in the areas of national security, defence

192 CMU Resolution on Adaptation of Ukraine's Legislation to EU Law No. 1365 of 15 October 2004.

193 Presidential Decree on Implementation of the Law of Ukraine on the National Programme for Adaptation of Ukraine's Legislation to EU Law No. 965/2004 of 21 August 2004.

194 CMU Resolution on Establishment of the State Department for Adaptation of Legislation No. 1742 of 24 December 2004.

195 Articles 93 and 94 of the Ukrainian Constitution of 28 June 1996.

and foreign policy.[196] The presidential acts passed for the exercise of these powers are not supposed to be countersigned[197] and thus the Government has no influence on their content.

The President also chairs and forms the National Security and Defence Council, which coordinates and oversees the functioning of the executive public authorities in the area of national security and defence. Its decisions are enacted by presidential decrees.[198] The competences of this body (as well as the notion of «national security») are not clearly defined, and thus it can deal with any issues, including those related to the European integration policy of Ukraine. According to Article 113 of the Constitution, the Cabinet of Ministers is responsible to the President of Ukraine, as well as being obliged to be governed by the presidential decrees issued by the President both for the exercise of the presidential powers, and for the implementation of the decisions taken by the National Security and Defence Council.

The President's activities are supported by the Presidential Administration.[199] Regulation of the Presidential Administration does not define the powers of this body in terms of the adaptation of Ukraine's legislation the *acquis communautaire* but, in practice, the Administration may have influence on the adaptation process through analysis of the laws passed by the Parliament and preparation of proposals on their signature or vetoing, preparation of the presidential decrees and bills to be submitted by the President for parliamentary consideration, submission of proposals to the Head of State on the suspension of governmental acts etc.

> **The problems related to the establishment of the institutional mechanisms of adaptation of Ukraine's legislation to EU law are still substantial. Among the core drawbacks is the lack of a comprehensive legal regulation of the institutional mechanism, as well as the imbalanced capacity of the Government and the Parliament to deal with European issues. The current system attributes the leading role in the adaptation process to the executive authorities, in particular the Ministry of Justice. The number of institutions and human resources involved in European affairs is significantly larger within the executive branch of power. Due to more detailed procedures the Government also provides a higher level of expertise, while the Parliament appears to be less dynamic, less capable and less experienced in EU matters. As a result, the dominance of the executive branch in EU-related lawmaking is becoming even more apparent and predictable.**

## 9. Procedural Europeanisation: The EU Influence on the Lawmaking Process through the *Acquis*-Compliance Examination

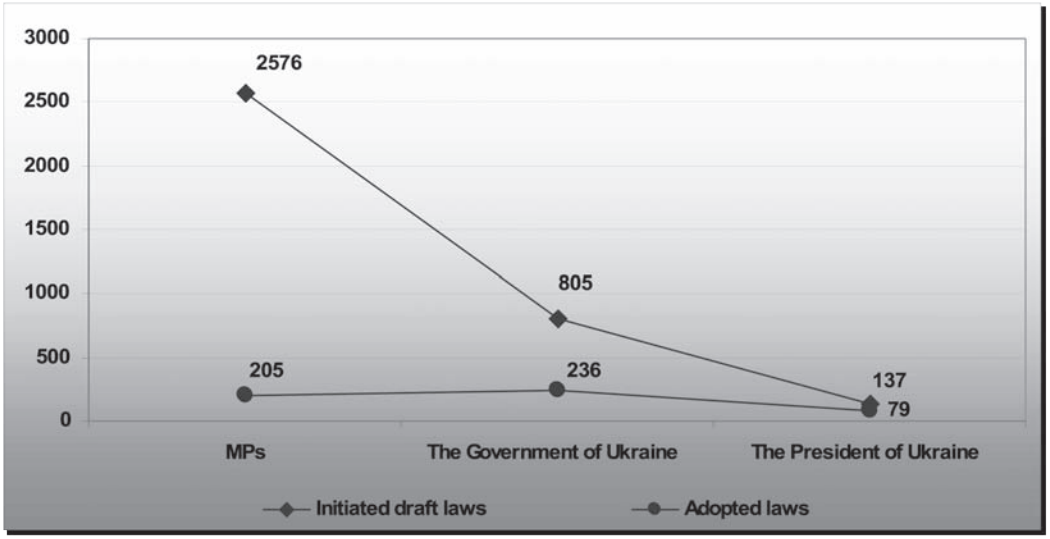
The weak position of PCoEI, demonstrated in section 8, leads to the conclusion that the process of legal integration is directed towards a strengthening position of the executive and subsequent marginalisation of the Parliament. The provisions of the National Programme for Adaptation, where the draft that does not comply with the *acquis* could be adopted only with sufficient justification and for a limited period of operation, give a reason to claim the limitation of the legislative competence of the Verkhovna Rada of Ukraine. However, such assumptions become quite disputable through the lens of the reality of the legislative process. The analysis of EU legal pressure in the *ex ante*, parliamentary and *ex post* stages provided below demonstrates the deviations in the implementation of legal provisions and the factual outcomes of the approximation of laws.

196 Clauses 3, 15, and 17 of Part 1 of Article 106 of the Ukrainian Constitution of 28 June 1996.
197 Part 4 of Article 106 of the Ukrainian Constitution of 28 June 1996.
198 Article 107 of the Ukrainian Constitution of 28 June 1996.
199 Clause 3 of the Regulation on the Presidential Administration approved by the Presidential Decree No. 504/201 of 2 April 2010.

### 9.1. *Ex Ante* Stage: The Screening of the Drafts Law on the Subject of *Acquis*-Compliance

According to the Constitution of Ukraine, the lawmaking initiative belongs to members of parliament, the Cabinet of Ministers of Ukraine and the President. The most active law-drafters are MPs initiating more than 70 per cent of all drafts;[200] however, the most efficient lawmaker is the Government, since more than half the laws adopted during the period of the 6th Parliament were governmental initiatives[201] **(see Diagram 1)**. In fact, not only the lawmaking «productivity» of these political actors, but also the provisions that determine the EU influence on law-drafting process vary.

**Diagram 1. The Efficiency of Law-Drafters at the Verkhovna Rada of Ukraine**
(the 6th Parliament, November 2007 to August 2010)




*Source: The data comes from the official Parliamentary Portal < www.rada.gov.ua >.*

At the pre-plenary stage, the Cabinet of Ministers of Ukraine appears as the main channel of Europeanisation. It set up the most elaborate system of screening draft acts for their compliance with the *acquis communautaire*. The mechanisms for the inclusion of the provisions of EU law in the governmental regulations and bills prepared by the Cabinet of Ministers before their submission to the parliamentary consideration are defined by the CMU Rules of Procedure.[202] According to Paragraph 46 of the Rules of Procedure, if a CMU act, the concept of the public policy, state programme, or law belong to the area regulated by EU law, the main developer of the act is supposed to prepare a reference note describing the area regulated by the act and the source of EU law to be considered. If the main developer disagrees with the appropriateness to follow the EU regulation, it should provide sufficient justification for this and establish the period of validity for the act. Thereupon, the act is supposed to be reconciled with other interested central

[200] The overall number of bills registered in the 6th Parliament (between November 2007 and August 2010) was 3518, including 2576 acts drafted by MPs (73 per cent), 805 by the Government (23 per cent) and 137 by the President of Ukraine (4 per cent).

[201] Among 520 laws adopted by the Ukrainian Parliament between November 2007 and August 2010, 236 acts were initiated by the Government. Thus, the Government drafted 46 per cent of adopted bills, MPs 39 per cent (205 acts) and the President 15 per cent (79 acts).

[202] CMU Rules of Procedure approved by CMU Resolution No. 950 of 18 July 2007. See, in particular, paragraphs 46, 56 and 57.

public authorities, as well as undergoing the legal examination by the Ministry of Justice, which also assesses its compliance with EU law.[203] On the results of the expert analysis, the Ministry of Justice issues its opinion on the compliance of the act with the *acquis communautaire*. Such opinion should state whether the act belongs to the priority areas regulated by the EU legislation and envisaged by the National Programme for Adaptation, access the compliance of the act with EU law, review the justification of the necessity to pass the act and the term of its validity in case of its incompliance with the *acquis*, as well as make proposals on the possible ways to improve the act. At the same time, according to Paragraph 58 of the Rules of Procedure, the opinion of the Ministry of Justice has no decisive role for the government – the Cabinet of Ministers may approve the draft act, even if it is incompliant with EU law. However, if the Ministry of Justice establishes that a draft act is fully or partially incompliant with the *acquis*, the decision on the necessity of its adoption is passed at a meeting of the governmental committee dealing with European integration.[204]

Analysis of the provisions of the CMU Rules of Procedure evidences that there is a certain overlap between the functions of the Ministry of Justice and the CMU Secretariat: after an act is submitted to the Cabinet of Ministers, the governmental Secretariat is supposed to analyse the results of the expert opinion on the compliance of the act with EU law,[205] thus «checking» the Ministry of Justice opinions. At the same time, the results of such analysis, just like the Ministry of Justice opinions, have no decisive significance for the adoption of the act by the Cabinet of Ministers.

The monitoring procedure over the compliance of the acts issued by ministries and other executive public authorities with EU law is established by the Regulation on the State Registration of the Regulations Issued by Ministries and Other Executive Public Authorities.[206] According to Paragraph 4 of this Regulation, any act that contains norms that concern social and economic, political, personal and other rights and legal interests of citizens should be subject to the mandatory state registration, which is an obligatory precondition for their enactment. State registration of the acts is done by the Ministry of Justice or its territorial bodies. Such registration may be denied should an act be found incompliant with EU law.[207]

In 2009, the Ministry of Justice issued 676 expert reports on the compliance of drafts laws and other legal acts submitted by the central bodies of the executive branch and other state authorities with the *acquis*.[208] As a result, about 11 per cent of acts were found to not comply with the Community *acquis* (71 acts), 5 per cent to comply (36 acts), and 84 per cent that did not contradict the *acquis* (**See Diagram 2**).

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203 Paragraphs 56 and 57 of the CMU Rules of Procedure (n 202).

204 Paragraph 66 of the CMU Rules of Procedure (n 202).

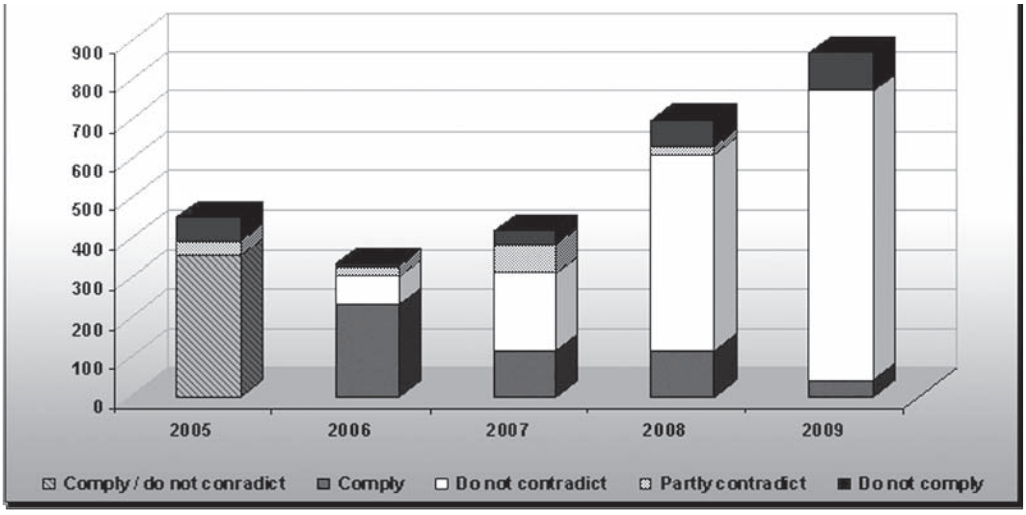
205 Clause 6 of Part 3 of Paragraph 63 of the CMU Rules of Procedure (n 202).

206 CMU Resolution on Approval of the Regulation on the State Registration of the Regulations Issued by Ministries and Other Executive Public Authorities No. 731 of 28 December 1992.

207 Clause 13 of the Regulation on the State Registration of the Regulations Issued by Ministries and Other Executive Public Authorities (n 206).

208 Ministry of Justice of Ukraine, «Annual Report 2009 on the Implementation of the State Programme» <http://www.sdla.gov.ua:8080/control/uk/publish/article?art_id=54133&cat_id=46960> accessed 10 August 2010.

**Diagram 2. The Results of the *Acquis*-Compliance Examination of Draft Laws and Other Legal Acts Conducted by the Ministry of Justice of Ukraine in 2005–2009**




*Source: The data comes from the Annual Reports of the Ministry of Justice of Ukraine on the Implementation of the National Programme for Adaptation in 2005, 2006, 2007, 2008 and 2009.*

The executive authorities not only include the EU screening procedures as a compulsory stage of law-drafting. In addition, the Government annually defines an action plan on implementation of the National Programme for Adaptation and drafts those legal acts that are required to reach the intended goals. Through these annual «state legislative agendas on approximation matters» the Government formulates lists of tasks, primarily lawmaking assignments, the *acquis* that should be transposed into the Ukrainian legislation, responsible executive bodies and time-frames. The plans are adopted and implemented through a strikingly complex procedure that involves many state institutions. However, the Parliament intervenes in the process only twice. First, the draft action plan for the upcoming year is agreed with the PCoEI. The Committee just has to give its consent, while the document is finally approved by the Coordination Council, which is dominated by the executive.[209] Second, the Government has to present an annual report on the implementation of the action plan at a parliamentary plenary session. Although such reports have been presented since 2005,[210] they cannot be recognised as a satisfactory controlling tool. In fact, the Parliament neither evaluates the results of the Government's performance nor approves (or rejects) the report submitted. Analysis of the parliamentary acts evidences that the Parliament has not taken any decisions on the reports presented by the Government.

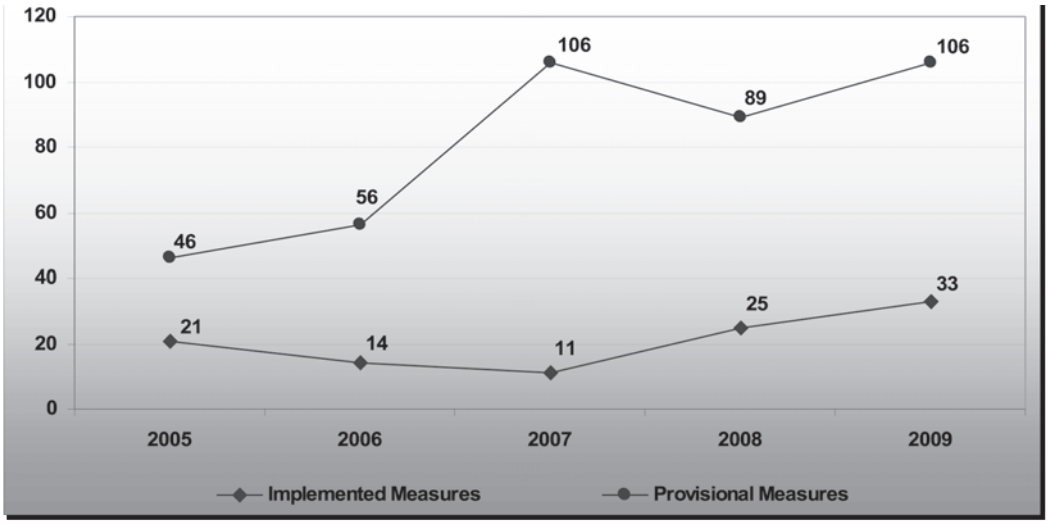
At the same time, the outcomes of the implementation of the annual plans are relatively modest. According to the Annual Reports of the Ministry of Justice of Ukraine, in 2005, the number of measures that were implemented was 21 from a provisional 46 (46 per cent); in 2006, only 25 per cent of tasks were fulfilled (14 out of 56); in 2007, the results dropped even lower to the level of 10 per cent due to the political crisis and pre-term parliamentary elections (11 out of 106); in 2008 and 2009, there was a gradual growth to 28 per cent (25 out of 89) and 31 per cent (33 out of 106) respectively (**See Diagram 3**). In order to improve the efficiency of the fulfilment of annual reports on the implementation of the National Programme for Adaptation, the Coordination Council approved the guidelines to analyse the outcomes of the implementation of recommendations on approximation

[209] The Coordination Council is composed of 25 members, 23 of them representing the executive branch of power.

[210] All reports are published on the official website of the State Department for Adaptation of Legislation. See <http://www.sdla.gov.ua/control/uk/publish/category?cat_id=46960> accessed 10 August 2010.

of Ukraine's legislation to the *acquis communautaire*,[211] as well as the methodology for the assessment of the efficiency of central executive public authorities on adaptation of Ukraine's legislation to EU law.[212] In 2009, however, the Coordination Council itself recognised that its guidelines were not being properly followed by the central executive public authorities.[213]

**Diagram 3. The Realisation of the Annual Action Plans on Implementation of the National Programme for Adaptation in 2005–2009**




*Source: The data comes from the Annual Reports of the Ministry of Justice of Ukraine on the Implementation of the National Programme for Adaptation in 2005, 2006, 2007, 2008 and 2009.*

At the presidential level, the mechanisms for the inclusion of EU law are envisaged only in relation to certain decrees and instructions which are defined by the Presidential Decree on Procedure for Development and Submission of the Presidential Acts.[214] Clause 7 of this decree establishes that draft acts, submitted to the Head of State, should be compliant with Ukraine's international obligations and EU law. If a draft presidential decree belongs to the areas regulated by EU law, such an act should be accompanied by an expert opinion of the Ministry of Justice on its compliance with the *acquis communautaire*. If the Ministry of Justice concludes that a draft decree is incompliant with EU law, the necessity of its adoption should be properly justified; another requirement is to set the term of validity for such as an act. At the same time, no similar requirements are established for the bills drafted by the President.

Thus, analysis of the law-drafting stage evidences that the mechanisms for ensuring compliance with the *acquis communautaire* are best developed at the level of the executive authorities. The Government takes a pro-active position: it attempts to ensure the «EU screening» of draft acts and to shape the policy-making agenda according to the National Programme's priorities. The situation in other institutions that have the right to initiate laws is less promising. Neither the Parliament nor the President of Ukraine has adopted procedural regulations ensuring the compliance of their bills with the *acquis* at the pre-plenary stage. As the parliamentary procedures impose no requirements

[211] Coordination Council Decision No. 4 of 11 April 2008 <http://www.kmu.gov.ua/document/243136835/протокол%204.doc> accessed 10 August 2010.

[212] Coordination Council Decision No. 5 of 9 February 2009 <http://www.kmu.gov.ua/document/243136842/протокол%205.doc> accessed 10 August 2010.

[213] Clause 8 of the Coordination Council Decision No. 5 of 9 February 2009 <http://www.kmu.gov.ua/document/243136842/протокол%205.doc> accessed 10 August 2010.

[214] Presidential Decree on Procedure for Development and Submission of Presidential Acts No. 970/2006 of 15 November 2006.

(or at least recommendations) to refer to in an explanatory note to the opinion on the compliance of the proposed bill with EU law, this creates preconditions for the submission for parliamentary consideration of the documents which either have not been checked for their compliance with the *acquis communautaire* or contradict EU law.[215]

### 9.2. Plenary Stage: The (Lack of) Cooperation between the Parliamentary Committee on European Integration and the Ministry of Justice of Ukraine

The National Programme for Adaptation stipulates a special procedure for draft laws and other legal acts that follow their registration.[216] A bill upon its registration at the Parliament has to be sent to the PCoEI. If the Committee decides that it belongs to the spheres that are regulated by EU law, the act (excluding those bills that were drafted according to the annual action plans) should be forwarded to the Ministry of Justice in three days for the *acquis*-compliance examination. Based on the report of the Ministry, the Committee takes the decision about the necessity to adopt the draft. Furthermore, Section III of the National Programme for Adaptation requires that the Parliament ensure expert analysis of the bills submitted for its consideration in terms of their compliance with EU law at *all* stages of the parliamentary consideration.

However, these provisions do not correspond with the Parliamentary Procedure Act and the Regulation on the Parliamentary Committee on European Integration. The rules of parliamentary procedures envisage that all registered acts are directed to the parliamentary committees *according to their competences*[217] and neglects to mention any specific examination of compliance with the *acquis*. The Parliamentary Procedure Act requires mandatory analysis of the bills only (i) by the main committee dealing with the preparation and consideration of the bill (such a committee is defined by the parliamentary leadership in accordance with the committee's competences); (ii) by the Budget Committee; and (iii) by the Parliamentary Rules Committee. While the National Programme for Adaptation gives the Ministry of Justice 20 days to provide its opinion on the compliance of a bill with EU law upon the parliamentary request, the Parliamentary Procedure Act allocates only 14 days.[218] Moreover, the rules of parliamentary procedure, being at the same level of legal hierarchy as the Law,[219] as well the Regulation on the Parliamentary Committee on European Integration, do not oblige the Committee to send the bills for consideration to the Ministry of Justice in order to get the Ministry's opinion on the bill's compliance with EU law.[220]

In addition, the question on the inclusion of a bill, incompliant with EU law, to the parliamentary agenda is decided not by the Parliamentary Committee on European Integration, but by the main committee.[221] Article 111 of the Rules of Procedure actually entitles the main committee to decide whether to recommend adoption of any given bill in the first reading or not. In this case, the opinion of the Ministry of Justice or the PCoEI stating that the bill is incompliant with EU law is not obligatory for the main committee to be taken into account. Moreover, incompliance of a bill with EU law is not the ground to return the bill to its developer.[222] The Regulation on the

215 There is no requirement to refer to the results of the analysis of the document in terms of its compliance with the *acquis communautaire* even in relation to the bills drafted by the Government, though the format of the explanatory note, used by the Cabinet of Ministers, includes a number of additional provisions (in particular, results of public consultations) as compared to the minimal standards set up by Paragraph 4 of the Regulation on the Procedure for Dealing with Bills, Resolutions, and Other Acts in the Verkhovna Rada approved by the Instruction of the Verkhovna Rada Chairman No. 428 of 22 May 2006.

216 Section IX of the National Programme for Adaptation.

217 Article 93 of the Parliamentary Procedure Act.

218 Part 4 of Article 103 of the Parliamentary Procedure Act.

219 The Parliamentary Procedure Act was adopted as the Law of Ukraine No. 1861-VI of 10 February 2010.

220 Part 3 of Article 103 of the Parliamentary Procedure Act.

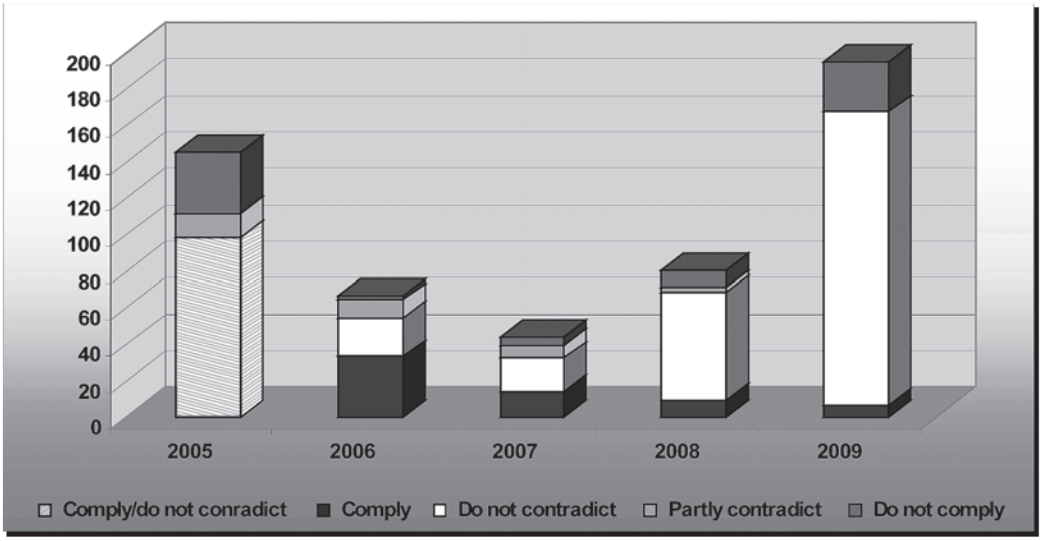
221 Article 93 of the Parliamentary Procedure Act.

222 Part 2 of Article 94 of the Parliamentary Procedure Act.

Parliamentary Committee on European Integration entitles the Committee representative to make a co-report on a bill. At the same time, the parliamentary rules of procedure set out that this right can be exercised only if the main committee has sent the bill to the PCoEI for its opinion, and no such opinion has been provided to the members of parliament.[223]

Due to the misconvergence of legal regulation, the overall procedure is not properly implemented, which turns the plenary stage into the weakest chain of the adaptation mechanism. In practice, the Parliament uses a mixture of provisions. The decision on whether the draft laws should be assigned to the Committee's consideration is taken by the Chairman of the Verkhovna Rada of Ukraine or by one of the Deputies. As a result, only about 65 per cent of all drafts are directed to the PCoEI[224] and some documents that belong to the EU-regulated spheres are left behind.[225] Another problem arises in relation to the cooperation between the PCoEI and the Ministry of Justice, which does not follow the procedure sketched out by the National Programme for Adaptation. In the absence of detailed procedural regulations, the interaction is built on «mutual understanding». The Committee selects a minor percentage of drafts for the Ministry's examination. In 2009, for instance, the Ministry of Justice issued 195 expert reports on the drafts that were submitted by the PCoEI (**See Diagram 4**). Consequently, the number of screened laws in those that were finally adopted by the Parliament is negligible. In 2007, only 2 per cent (2 laws out of 107), in 2008, 7 per cent (11 laws out of 156), and in 2009, 6 per cent (15 laws out of 234) proceeded through the Ministry's examination (**See Diagram 5**). An additional obstacle is imposed by the fact that governmental and parliamentary screenings are based on different methodologies. Thus, the efficiency of the entire mechanism is also weakened by unsynchronised actions.

**Diagram 4. The Results of the *Acquis*-Compliance Examination of Draft Laws Conducted by the Ministry of Justice of Ukraine under Parliamentary Request during 2005–2009**



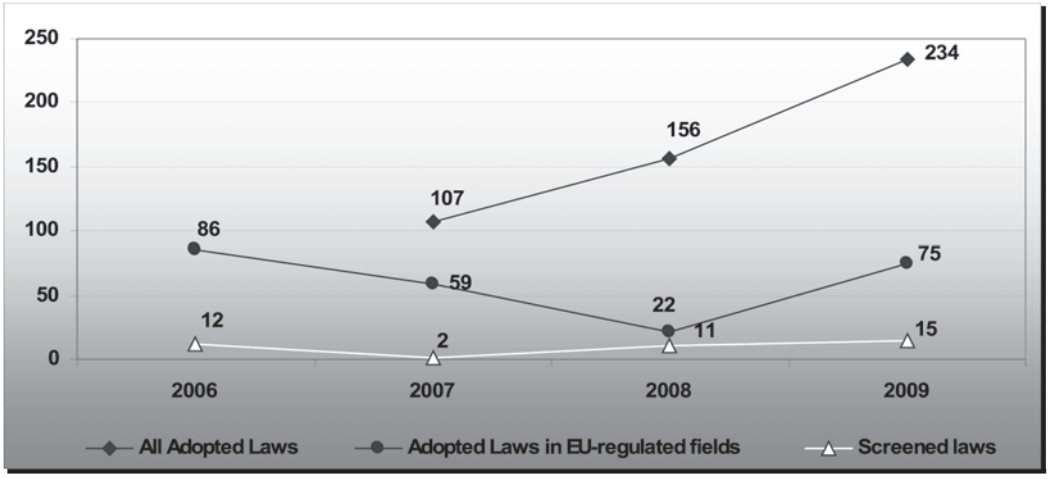

*Source: The data comes from the Annual Reports of the Ministry of Justice of Ukraine on the Implementation of the National Programme for Adaptation in 2005, 2006, 2007, 2008 and 2009.*

223 Paragraph 4 of Part 1 of Article 30 of the Parliamentary Procedure Act.

224 In total 1303 legal acts in 1972 registered at the parliamentary committees on 10 August 2010, the data provided according to the official Parliamentary Portal <www.rada.gov.ua> accessed 10 August 2010.

225 For instance, the bill that regulates the quality of imported farm products (Reg. No. 0868 of 23 November 2007), had not been forwarded to the PCoEI, and later it was vetoed by the President of Ukraine as such that contradicts with EU law.

**Diagram 5. The Number of Screened Laws in those Adopted by the Parliament during 2006–2009**




*Source: The data comes from the Annual Reports of the Ministry of Justice of Ukraine on the Implementation of the National Programme for Adaptation in 2005, 2006, 2007, 2008 and 2009.*

Although in 2009 the number of draft laws submitted to the Ministry of Justice by the PCoEI for examination had to some extent increased, the institutional mechanism is still underdeveloped. The procedural loopholes in the implementation of the National Programme for Adaptation allow the adoption of bills that do not comply with the *acquis*. In fact, only a small number of non-Governmental initiatives undergo the screening procedure.

### 9.3. *Ex Post* Control: The Presidential Veto

The situation is even more difficult with the implementation of those provisions of the National Programme for Adaptation that oblige the Parliament to analyse the bills in terms of their compliance with EU law at all stages of parliamentary consideration. Examination of the Ministry of Justice and the Parliamentary Committee on European Integration takes place before the first reading. After a bill is passed in the first reading, it becomes subject only to legal expertise. The Main Legal Department of the Verkhovna Rada Secretariat[226] does not have a special section that would be in charge of undertaking a special examination related to compliance with EU law. The problem of ensuring compliance with the *acquis* at the later stages of the legislative process therefore remains unsolved. The final act could include amended provisions that make the adopted law incompatible with the *acquis*, even if at the initial stage the text was drafted in accordance with EU requirements. Consequently, the *ex post* evaluation of the level of compliance of Ukrainian legislation with the *acquis* may be quite different from the expertise of draft acts. This incoherence of the current regulation considerably weakens the whole system and, in particular, the role of the European Integration Committee in the process of adaptation of Ukraine's legislation to the *acquis communautaire*. It actually allows ignoring the position of the Committee and the Ministry of Justice on the bills and passing the laws that contradict EU law.

*De jure* there is no procedure to ensure *ex post* control at parliamentary and governmental levels. The only mechanism that partly plays the controlling role is the institute of presidential veto. The analysis of the legislative activity of the 6th Parliament conducted by the Agency for Legislative

[226] Article 103 of the Parliamentary Procedure Act.

Initiatives in 2009 showed that the President examined the compliance of laws with the international obligations of Ukraine: about 10 per cent of the texts of presidential veto used incompliance with international obligations as a reason for sending a newly adopted act back to the Verkhovna Rada of Ukraine.[227]

**The above analysis demonstrates that direct EU influence caused through the process of approximation of laws is evident, although the incoherence of procedural issues and broken procedural links between the state authorities significantly decreases the outcomes. The impact of the EU is highest at the initial stage of the lawmaking process due to the mechanisms that were set up by the Government. However, only single drafts that are initiated by MPs or the President undergo scrutiny regarding the *acquis*-compliance at the PCoEI and (or) the Ministry of Justice. Moreover, there is no guarantee that the drafts that proceed through the examination will not be changed up until the final stage of the legislative process, as examination at all stages of the parliamentary consideration – envisaged by the Law – is not ensured in practice and the tools of *ex post* control are limited to the institute of presidential veto. Broadly, such a situation is comparable with the pre-accession period in Poland, where until 2000 «scrutiny was conducted only at the early governmental stages» and «roughly 50 per cent of proposals originating from authorities or sources other than government were not scrutinized at all».[228]**

***De facto* the process of approximation of laws has a rather asymmetrical impact on the Government and the Parliament. The executive should take into account the *acquis* in the process of drafting bills and regulations, while MPs are not bound in their lawmaking initiatives. The Government is responsible for the drafting of bills that are required to reach the approximation goals, while MPs could submit either an alternative proposal, or amendments to the original draft of the Government at the plenary stage. In both cases, MPs do not have to check the compliance of their proposals with the *acquis*, since the parliamentary EU-related examination is selective and does not provide any compulsory opinions. In this way, the inefficiency of EU-screening procedures makes the provisions of the National Programme for Adaptation purely declaratory and, as a result, diminishes the argument that Europeanisation puts the Ukrainian executives in a favourable position in the lawmaking process and limits the legislative competence of the Parliament. Furthermore, the Government remains the only branch of power that has to comply with the *acquis* in its law-drafting practice.**

## 10. Europeanisation and the Changing Patterns of Law-Drafting

Analysis of the EU influence on the law-making in Ukraine cannot be limited to the institutional and procedural aspects of adaptation of Ukraine's legislation to the *acquis*, since legal integration is much broader than the official adaptation plan. The objective picture of the influence would have been incomplete without analysis of the practice of legislative drafting. Part II of this Report refers to the examples of studies that measure the Europeanisation of the legislative practices in the EU through the notion of the «European impulse», examining the volumes of the bills that were developed in the context of EU membership. A similar examination in relation to the Ukrainian parliament will make it possible to demonstrate the examples of the «policy transfer» outside the EU borders, as well as to measure how far-reaching is the Europeanisation effect.

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227 The data is based on the content analysis of texts of veto, issued by the President of Ukraine between November 2007 and June 2009 (54 acts, full texts available on the official Parliamentary Portal <www.rada.gov.ua> accessed on 10 August 2009).

228 Łazowski (n 182) 205.

This examination covers all draft laws (1305 acts) that were under the consideration of parliamentary committees of the Verkhovna Rada of Ukraine on August 10, 2010.[229] The methodological approach involves analysis of explanatory memoranda to draft laws in order to disclose those acts that refer to the «European argument» reflecting either «Europeanisation though adaptation» or «Europeanisation through learning».[230] In its first form, the «European argument» refers to: (i) the multilateral and bilateral legal and policy frameworks of EU-Ukraine cooperation, including obligations that originate from such agreements; and (ii) a general argument about the prospect of European integration («Europeanisation though adaptation»). In the second role, the EU is mentioned as a source of best practice, new legal principles and institutes. The lawmaker refers to (iii) EU law, e.g. regulations, directives; and (iv) policy practices common for the EU or individual Member States («Europeanisation through learning»). Each parliamentary committee has been screened separately based on draft laws that were under its main responsibility. It is clear that such analysis potentially cannot cover all aspects. At the same time, looking into the arguments and examples guiding law-makers when they draft legislation is one of the few accessible indicators of indirect influence that the European integration has on the legislative process in Ukraine.

The major findings can be summarised as follows. The overall level of legislative Europeanisation is rather high. Indeed, the most general conclusion is that approximately 17,5 per cent of all Ukrainian draft laws (in other words, every sixth or fifth draft) registered in the Verkhovna Rada of Ukraine includes some kind of reference to the «European argument» in their explanatory memoranda (**see Table 3**). The percentage of documents with the European reference is about the same for the drafts that are under examination at parliamentary committees and those that were adopted by the Parliament.

Cross-committee analysis demonstrates that 12 parliamentary committees in 27, operating in the Verkhovna Rada of Ukraine, have an average level of references to the «European argument» higher than 17 per cent. Moreover, the agreements between the EU and Ukraine, not only *de jure* but also *de facto*, determine the priorities of approximation, since a vast majority of spheres that were initially listed in Article 51 of the PCA have a higher than average level of references to European practices (**see Table 4**). The only evident exception is labour protection. This belongs to the competence of the Parliamentary Committee on Social Policy and Labour that has one of the lowest indexes (5 per cent).

As in the Member States and their «closest» neighbours, Ukrainian figures vary a lot depending on the area of social relations. The most far-reaching impact is seen in the areas of transport and communications (50 per cent), public health (38 per cent), regulatory policy (33 per cent), finance and banking (32 per cent) and human rights (32 per cent). In real numbers, the economic and regulatory policies take the lead as this area involves approximately one third of all EU-related references that have been found, i.e. PC on Finance and Banking (33 drafts), PC on Taxation and Customs Policy (19 drafts), PC on Industrial and Regulatory Policy and Entrepreneurship (13 drafts) and PC on Economic Policy (12 drafts). The lowest number of references to the European experience was indicated in typically domestic areas such as matters concerning pensioners, veterans and disabled people (3 per cent). An accurate comparison of these findings with other countries is not possible, since studies conducted by European scholars are based on different methodologies. However, even though the ranking of the «most influenced» policies would not entirely correspond with the findings concerning the Member States or their neighbours, some correlation can be identified. For instance, in Switzerland the field of economic regulatory policy is found to be «strongly Europeanized», while the sector of social policy

229 All bills and supporting documents are available on the official Parliamentary Portal <www.rada.gov.ua> accessed 10 August 2010.

230 Classification used by Töller. See Annette Elisabeth Töller, «The Europeanization of Public Policies – Understanding Idiosyncratic Mechanisms and Contingent Results» (2004) 8:9 EIoP <http://eiop.or.at/eiop/pdf/2004-009.pdf> accessed 10 August 2010.

is one of those where Europeanisation is weak.[231] A similar pattern was also indicated in Germany and the same is true for Ukraine (20 and 5 per cent respectively).

In addition to the priority areas of approximation of Ukrainian legislation, a significant impact of the EU can be found in the spheres that have a great importance for the sustainability of democracy, i.e. human rights (32 per cent), fighting organised crime and corruption (30 per cent), judicial policy (24 per cent) and freedom of speech and information (17 per cent). Most of these areas (e.g. freedom of media) were specifically emphasised by the EU, notably in Action Plan Ukraine-EU, the EU-Ukraine Association Agenda etc. It should be mentioned therefore that democratisation is a common effect of Europeanisation in the new Member States and neighbouring countries.[232] By underlining the importance of democracy, human rights, the rule of law and other integral constitutional principles of the European community for future cooperation, the agreements with the EU do, in fact, force democratic transformations.

**Table 3.** **References to a «European Argument» in Draft Laws in the Legislative Practice of the Ukrainian Parliament** (10 August 2010)*

| Parliamentary Committee | Overall Number of Drafts under Consideration** | As a Leading Committee | Only Draft Laws | With European Reference | Per cent |
|---|---|---|---|---|---|
| Transport and Communications | 103 | 39 | 22 | 11 | **50** |
| Public Health | 93 | 40 | 29 | 11 | **38** |
| Industrial and Regulatory Policy and Entrepreneurship | 186 | 50 | 40 | 13 | **33** |
| Finance and Banking | 169 | 80 | 53 | 17 | **32** |
| Human Rights, National Minorities, and International Relations | 63 | 38 | 25 | 8 | **32** |
| Fighting Organised Crime and Corruption | 63 | 18 | 10 | 3 | **30** |
| Judicial Policy | 352 | 50 | 33 | 8 | **24** |
| Fuel and Energy Complex, Nuclear Policy, and Nuclear Safety | 67 | 35 | 30 | 7 | **23** |
| Science and Education | 145 | 91 | 61 | 13 | **21** |
| Taxation and Customs Policy | 320 | 193 | 156 | 30 | **19** |

[231] Yannis Papadopoulos, «Europeanization? Two Logics of Change of Policy-Making Patterns in Switzerland» (2008) 10 J Comp Pol'y Analysis 255.

[232] Roberto Di Quirico (ed), Europeanisation and Democratisation: Institutional Adaptation, Conditionality and Democratisation in EU's Neighbour Countries (EPAP, Florence 2005).

| | | | | | |
|---|---|---|---|---|---|
| Freedom of Speech and Information | 106 | 67 | 52 | 9 | **17** |
| Culture and Spirituality | 114 | 48 | 24 | 4 | **17** |
| Legislative Support to Law Enforcement | 416 | 287 | 194 | 31 | **16** |
| Foreign Affairs*** | 57 | 26 | 13 | 2 | **15** |
| Construction, Urban Development, Housing and Communal Services, and Regional Policy | 127 | 40 | 29 | 4 | **14** |
| Environmental Policy, Use of Natural Resources, and Clear-up of Chornobyl Disaster Consequences | 111 | 40 | 24 | 3 | **13** |
| National Security and Defence | 69 | 25 | 16 | 2 | **13** |
| Economic Policy | 263 | 133 | 103 | 12 | **12** |
| State Building and Local Self-Government | 335 | 223 | 110 | 12 | **11** |
| Family Matters, Youth Policy, Sports, and Tourism | 100 | 44 | 25 | 2 | **8** |
| Agrarian Policy and Land Relations | 170 | 90 | 72 | 5 | **7** |
| Budget | 1310 | 44 | 41 | 2 | **5** |
| Justice | 153 | 89 | 55 | 3 | **5** |
| Social Policy and Labour | 120 | 64 | 39 | 2 | **5** |
| Pensioners, Veterans, and Disabled Individuals | 106 | 56 | 35 | 1 | **3** |
| European Integration*** | 1303 | 8 | 0 | 0 | **0** |
| Rules of Parliamentary Procedure, Ethics, and Support for the Work of Parliament*** | 1164 | 54 | 14 | 0 | **0** |
| **OVERALL** | – | **1972** | **1305** | **216** | – |

* *The examination covers all draft laws that were under consideration of parliamentary committees of the Ukrainian parliament on August 10, 2010. The texts of drafts, including explanatory memoranda, are available on the official Parliamentary Portal <www.rada.gov.ua>.*

** *The category includes not only draft laws, but also other types of legal and political acts.*

*** *These committees are not taken into account for the analysis due to a small number of drafts that were assigned to them as to a leading agent.*

**Table 4. References to the EU in Draft Laws through the Lens of PCA Approximation Priorities** (10 August 2010)

| Parliamentary Committee | Priorities according to the PCA (Article 51) | Per cent |
|---|---|---|
| **Transport and Communications** | **Transport** | **50** |
| **Public Health** | **Public health, Protection of Human Life, Animals, and Plants** | **38** |
| **Industrial and Regulatory Policy and Entrepreneurship** | **Company Legislation<br>Competition Rules<br>Technical Rules and Standards** | **33** |
| **Finance and Banking** | **Banking Law<br>Financial Services** | **32** |
| Human Rights, National Minorities, and International Relations | – | **32** |
| Fighting Organised Crime and Corruption | – | **30** |
| Judicial Policy | – | **24** |
| **Fuel and Energy Complex, Nuclear Policy, and Nuclear Safety** | **Energy, including Nuclear** | **23** |
| **Science and Education** | **Intellectual Property** | **21** |
| **Taxation and Customs Policy** | **Custom Law<br>Business Accounting<br>Tax, including Indirect** | **19** |
| Freedom of Speech and Information | – | **17** |
| Culture and Spirituality | – | **17** |
| Legislative Support of Law Enforcement | – | **16** |
| Foreign Affairs *** | – | **15** |
| Construction, Urban Development, Housing and Communal Services, and Regional Policy | – | **14** |
| **Environmental Policy, Use of Natural Resources, and Clear-up of Chornobyl Disaster Consequences** | **Environment** | **13** |
| National Security and Defence | – | **13** |
| **Economic Policy** | **State Purchases<br>Consumer Protection** | **12** |
| State Building and Local Self-Government | – | **11** |

| | | |
|---|---|---|
| Family Matters, Youth Policy, Sports, and Tourism | – | **8** |
| Agrarian Policy and Land Relations | – | **7** |
| Budget | – | **5** |
| Justice | – | **5** |
| **PC on Social Policy and Labour** | **Labour Safety** | **5** |
| Pensioners, Veterans, and Disabled Individuals | – | **3** |
| European Integration*** | – | **0** |
| Rules of Parliamentary Procedure, Ethics, and Support for the Work of Parliament*** | – | **0** |
| **AVERAGE** | | **17** |

As it was mentioned earlier, the use of the «European argument» in the lawmaking practice of the Verkhovna Rada of Ukraine most frequently demonstrates «Europeanisation though adaptation» and «Europeanisation through learning».[233] In the first form, the «European argument» refers to the priority spheres of EU-Ukraine cooperation or approximation of laws, although sometimes in a very simplified form saying that the draft contributes «to further European integration of Ukraine». In such a role, the «argument» could exert a certain «European pressure» that resulted, for instance, in the adoption of several legal acts or provisions that were hampered by the Parliament due to political reasons. One of the recent examples is the adoption of the Ukrainian public procurement law, which is among the priorities for harmonisation of the Ukrainian legislation with the EU *acquis* **(see Case Study 1)**. In its second role, the EU supplies the examples for policy transfer helping the Parliament to fulfil its lawmaking function.

### **Case Study 1: The Public Procurement Law** (Law of Ukraine No. 2289-VI of 1 June 2010)

For a certain period, the procedure for public procurement in Ukraine was regulated by the Temporary Regulation on Public Procurement adopted by the Government in March 2008. In May 2008, the Government submitted to the Parliament the draft Law on Public Procurement. Its final version was prepared by the Parliamentary Committee on Economic Policy in October 2009.

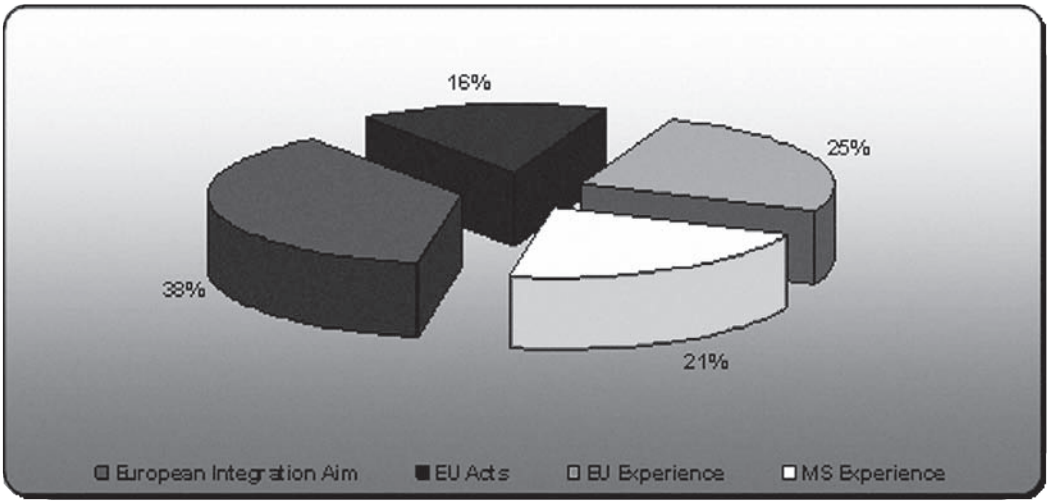
The European Commission and the World Bank provided extensive comments on this draft, based on the directives and international standards in the field of procurement regulation, as well as on experience of European countries. However, most of these recommendations were not taken into account by the Verkhovna Rada. In February 2010, the Parliament adopted the Law on Public Procurement in the second and final reading. The Head of the EU Delegation to Ukraine and the World Bank Regional Director for Moldova, Belarus and Ukraine recommended to the President to use its veto power on the ground that the law did not comply with the international standards and good practice of public procurement regulation. The President vetoed the law and returned it to the Parliament for revision. The Verkhovna Rada included a number of proposals recommended by the President and adopted a new version of the Law on Public Procurement, which was signed by the President.

As a result, a number of recommendations of the European Commission and the World Bank (EC/WB) were reflected in the final version of the Law on Public Procurement, most notably: domestic preference in bidding was cancelled, some definitions in Article 1 of the law were brought into consistence with the recommendations of the EC/WB, the number of required bidders was limited to two, representatives of parliamentary committees, ministries and independent experts were excluded from the Appeals Agency, confidentiality during a procurement process was ensured, the complaints procedure was reviewed and partly brought in compliance with the EC/WB recommendations, a validity period for tender documents was limited to 90 days as recommended, the prequalification in restricted tendering was made mandatory. Even though a number of crucial recommendations have been left behind, this example provides a clear evidence of the European pressure extracted on the lawmaking process in Ukraine.

[233] Classification used by Töller. See Töller (n 230).

A number of drafts provide rather detailed references to particular sources of EU law, most frequently directives, and explanations of «adopted» provisions. Altogether, about 16 per cent of all bills, dealing with the European experience, list specific EU acts, 46 per cent refer to the practice of the EU or its Member States, and 38 per cent in general terms state that their adoption is necessary or important for Ukraine's European integration **(see Diagram 6)**. Detailed elaboration of references is more common to the policy areas that are in the EU priorities, e.g. intellectual property or energy. A vast majority of draft codes that are currently under the examination of parliamentary committees include reference to European practices and standards.

**Diagram 6. The Substance of References to the European Union in the Explanatory Memoranda of the Draft Laws** (10 August 2010)




In this context, it is important to draw attention to individual paradoxes in the use of the «European argument» in the law-making process, as its practical role is often quite variable. In particular, in the legislative practice there are examples of bills which propose to establish a certain binding nature for the EU acts in Ukrainian legal practices. For instance, an amendment to the Law of Ukraine on Telecommunications[234] suggests that the methodology of analysis of the telecommunications service market should be approved by the National Committee for the Regulation of Communications and the Anti-Trust Committee of Ukraine «taking into account the directives of the European Parliament and the Council, the guidelines and recommendations of the European Commission adopted for their implementation» (Art. 42). According to the author, such an approach «will lay the ground for further harmonisation of the regulations of telecommunications in Ukraine with EU practices».[235] At the same time, it is rather typical to use the European experience or standards with a formal objective, i.e. to ground a policy variant that meets the political interests of its author. Such examples include amendment of the Law on Local Elections related to the ensuring of their transparency and democratic nature **(see Case Study 2)**.

[234] Bill with Reg. No. 3460 of 11 March 2009.
[235] Ibid.

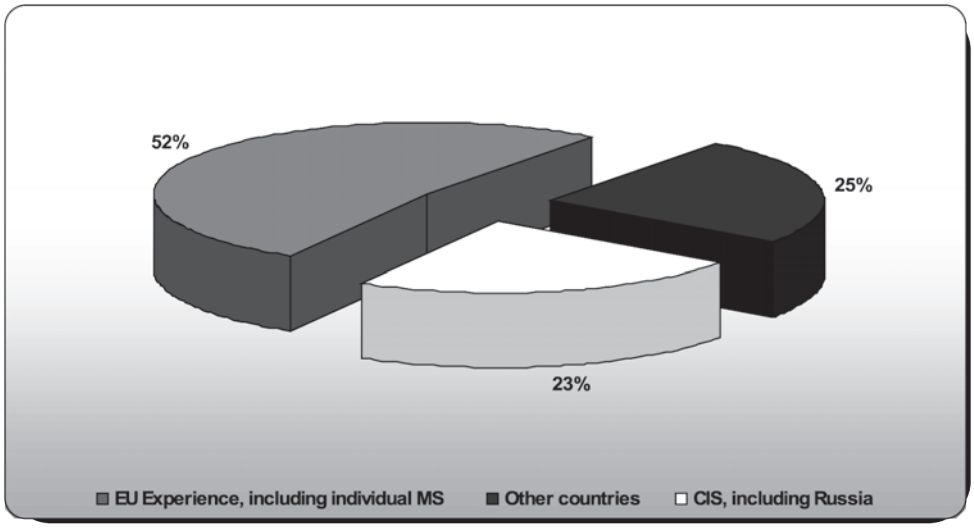
**Case Study 2: Amendment of the Law on Local Elections to Ensure Elections' Transparency and Democratic Nature** (No. 2491-VI of 30 August 2010)

Registered in the Parliament on 25 August 2010, the bill was passed as a law at a special parliamentary session on 30 August 2010. Its authors proposed to cancel the rule whereby only local organisation of political parties that had been registered no later than 365 days before the elections were entitled to nominate candidates for local elections; another suggestion was to change the approach to the formation of election commissions, which was done on the submission of the organisations representing only the political parties currently represented in the Verkhovna Rada. Such amendments were justified by the incompliance of the above provisions with democratic principles and international standards.

Without criticising the content of the bill, this example illustrates that in many cases guidance by democratic standards becomes possible only if and insofar as such standards meet the political interests of domestic political actors. Through this and a number of other «political» bills, Ukraine has again faced rapid change of the election rules, [236] which have been repeatedly criticised by the European institutions. However, the lack of political will to ensure the principle of legal certainty and abstain from making any amendment to the electoral legislation shortly before elections, leaves this practice, which contradicts democratic standards, typical of Ukrainian legal realities.

As Europeanisation is a part of the process of the internationalisation of policy-making, a number of references, of course, are also made to the experience of other countries such as the Russian Federation, or international actors, most notably, the Council of Europe, the World Trade Organisation and the United Nations. The content analysis of the explanatory memoranda shows that, in referring to the foreign experience, the Ukrainian lawmakers in the majority of cases apply the examples from the European Union and its Member States (in 52 per cent of cases), less frequently than they describe the practice of CIS countries, including the Russian Federation (23 per cent), and other countries of the world (25 per cent) (**see Diagram 7**).

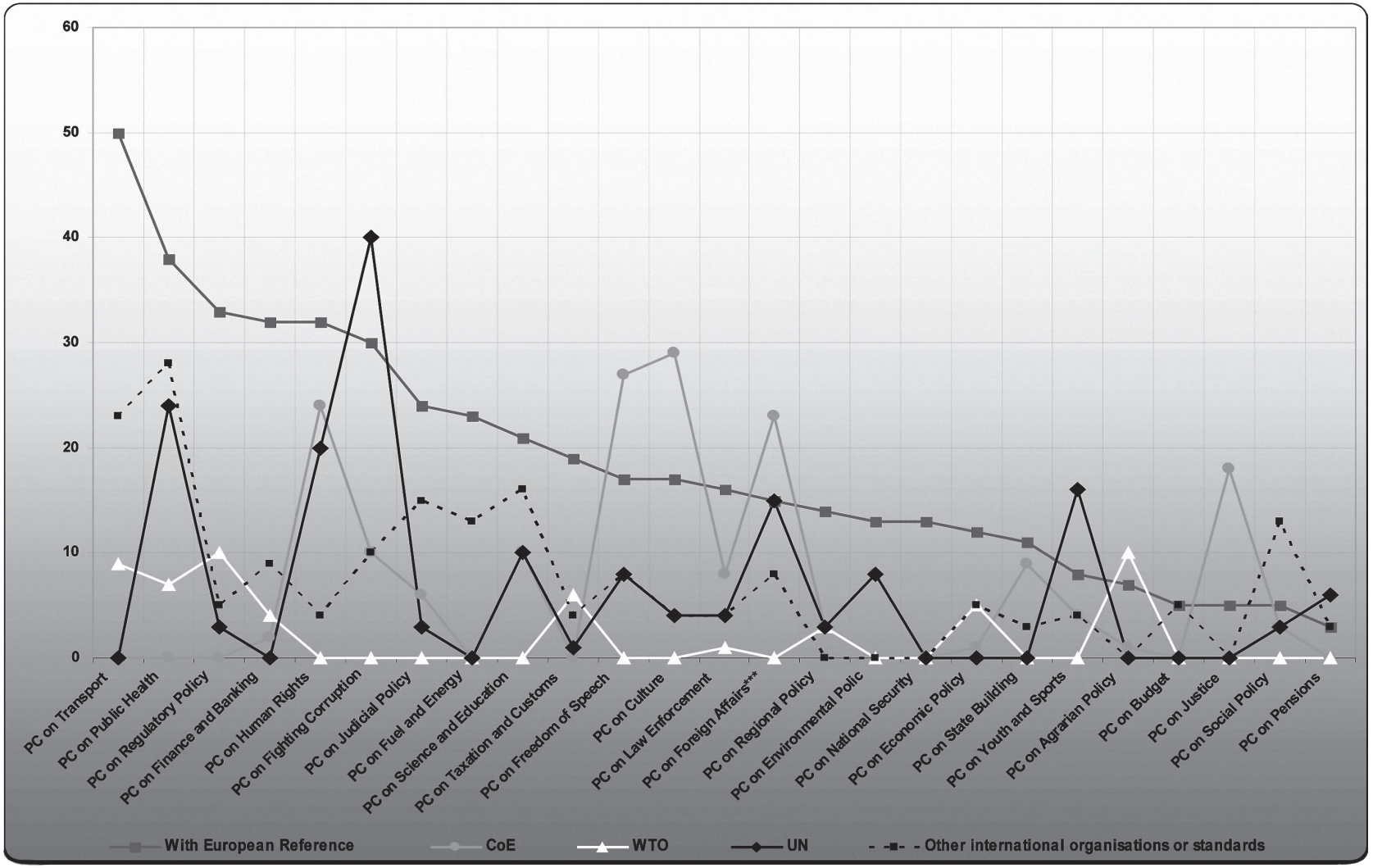
Diagram 7. **The Ratio of References to Country-Based Experiences: the European Union and its Member States, CIS (including the Russian Federation) and other countries** (10 August 2010)




Furthermore, the EU also holds a unique position as its impact can be found across all policy fields, in contrast to the international organisations that usually have a narrow focus as, for instance, the WTO. **Diagram 8** demonstrates that only in a few policy areas do other international actors hold a dominant position, in particular: the Council of Europe with regard to the freedom of speech (27 per cent), culture (29 per cent) and justice (18 per cent), the United Nations in fighting corruption and organised crime (40 per cent), and family, youth, sport and tourism (16 per cent), and the World Trade Organisation on the issue of agrarian policy (16 per cent).

[236] The local elections were scheduled for 31 October 2010.

Diagram 8. **The Internationalisation of Policy-Making in Ukraine: The Ratio of References to the European Union, the Council of Europe, the World Trade Organisation and the United Nations in Law-Drafting Practices** (10 August 2010)



**Analysis of the law-making practices of the Verkhovna Rada demonstrates that the EU influence is not limited to the formal adaptation of Ukraine's legislation to the *acquis*. The tendency where European models dominate is rather convincing. In the light of the modest results declared by the Ministry of Justice achieved (as regards the implementation of annual adaptation plans), as well as its unproductive cooperation with the Parliamentary Committee on European Integration, such influence becomes one of the key factors of Europeanisation of the Ukrainian legislation.**

**Indeed, these results may also be considered as «declarative Europeanisation». A number of examples presented in this Report evidence that EU law and practices are normally used only within the scope that meets the political interests of the law-drafters. At the same time, even such partial guidance by the European standards plays an important role. The Union serves as a source for the policy transfer, assisting the Ukrainian law-makers in their regulatory role.**

# Part IV.

# BUILDING THE LINKS AND BRINGING THE PIECES OF THE «PUZZLE» TOGETHER

## 11. Lessons Learned: Concluding Remarks

The changes in the conventional functions of national parliaments resulted from the process of the European integration force towards a rethinking of its role for national representative democracies. This Report starts with an assumption that the EU exerts an influence on national parliaments in a much wider European dimension than is frequently expected. Although membership is an important variable, Europeanisation is not determined by it, and some similar patterns can be found regardless of borders or creditable accession prospects.

In order to link the processes in the EU and its Eastern neighbours, this Report opens with an analysis of Europeanisation patterns in the EU Member States, sketching out the «matrix» of transformations taking place «within the borders». Such an overview has demonstrated that, obviously, EU membership limits the «legislative autonomy» of national parliaments through legal and (or) political tools; however, it does not necessarily bring a one-sided de-parliamentarisation pattern. The implications of European integration range from restrictions to benefits for national lawmaking activities, whereas the potential outcomes are not clear-cut: their magnitude largely depends on the initial domestic conditions and the readiness of the national parliaments for transformation.

Next, this Report proceeds to the Europeanisation of the lawmaking process and parliamentary practices taking place in Ukraine. The most evident parallel in the Europeanisation patterns within and beyond the EU borders has been indicated in relation to the institutional impact. The Europeanisation of the Ukrainian parliament is reflected in the establishment of the Parliamentary Committee on European Integration and the growing parliamentary involvement in dialogue in the European arena. Procedural Europeanisation takes place through the examination of draft laws on the *acquis*-compliance at the governmental and parliamentary levels as a part of the legislative process. Furthermore, a closer look into lawmaking practices reveals that the benefits of Europeanisation are rather obvious and, actually, similar to those indicated in relation to the new Member States. A gradual democratic evolution of parliamentary activities taking place in the last decade has been influenced by European standards, practices and values. The EU offers informational and other institutional support for the process of approximation of laws through various programmes and inter-parliamentary cooperation modes. It dominates as a source of policy transfer and provides «impulses» to the national legislative process through the official approximation agenda and indirect pressure.

The principal difference, however, lies in the extent of EU adaptation pressure. From a formal point of view, the EU limits the legislative power of the Ukrainian legislators based on the provisions of the National Programme for Adaptation, which envisages that the legal acts that do not comply

with the *acquis* should not be adopted unless supported by sufficient justification and only for a limited period of operation. However, problems with the implementation make the EU impact less evident. For instance, «the *acquis* test» does not cover all bills that belong to the area regulated by EU law, the conclusions of the Parliamentary Committee on European Integration regarding the drafts do not play a decisive role at the voting stage and the possibilities for *ex post* control are limited. As a result, the provisions of the National Programme for Adaptation are still declaratory and the Verkhovna Rada of Ukraine, in fact, is not bound by the *acquis* in exercising its legislative competence. The complex system of adaptation of Ukraine's legislation to the EU produces a minor input, forcing us to consider it as a pure imitation of work that needs to be undertaken. The limitations of the *acquis*, therefore, are primarily secured through soft means – political and economic incentives of closer cooperation with the EU; while the major channel of Europeanisation can be found in social learning, in other words, in the orientation of the Ukrainian law-drafters towards the EU policy choices.

A warning to be noted is that the gradual strengthening of the Government in EU matters, through more elaborated and efficient institutional and procedural mechanisms, builds the preconditions for executive dominance in EU-related lawmaking in the future. While at this stage the system allows for the adoption of laws that do not comply with the *acquis*, the improvement in the implementation of initial provisions of the National Programme for Adaptation will add more power to the EU and, consequently, to the Government. As soon as these developments take place and all existing legal provisions are implemented *de facto*, the Parliament might face an evident de-parliamentarisation effect. In this way, the Ukrainian example clearly demonstrates a turning point in state-building under the influence of European integration. It shows how the preconditions for frustrating de-parliamentarisation effect are built: while the Government is successfully setting the structures and procedures in response to new integration trends, the Parliament remains more passive and less efficient in its adaptation efforts. As a result, any progress in integration could weaken the legislative role of the Parliament not only through the limitations of the *acquis*, but also through executive dominance in EU-related lawmaking.

Before this happens, the Ukrainian parliament should look beyond its borders and recognise that it is a part of all-European processes. The national parliaments of the EU face the challenge of disempowerment due to the same pattern of behaviour: a lack of flexibility and capacity to deal with EU matters. The Verkhovna Rada of Ukraine requires institutional and procedural development to become a more effective player in EU-related matters. Otherwise, it may follow the same process as its EU peers, which «underestimated very much, for a long time, the impact of the EC's evolution on their political functions».[237] And, as a result, have to endure the adaptation that came after a long period of de-parliamentarisation.

## 12. The «Road Map» for Parliamentary Reforms

This Report calls for the strengthening of the institutional potential of the Verkhovna Rada, in particular in relation to EU-related expertise. This need becomes particularly appealing in the context of negotiations on the EU-Ukraine Association Agreement, as the adaptation of Ukraine's legislation is one of the key priorities on the way to the strengthening of political association and deepening of the economic integration with the European Union. The Association Agenda clearly identifies the priorities on a sector by sector basis that require urgent actions in anticipation of the entry into

[237] Karlheinz Neunreither, «The Democratic Deficit of the European Union: Towards Closer Cooperation between the European Parliament and the National Parliaments» (1994) 29 Gov't & Oppos 299, 303.

force of the Agreement.[238] From the position of the Cabinet of Ministers, appearance of «many legally binding obligations for Ukraine in the area of legislative adaptation, the failed fulfilment of which may result in certain economic sanctions against Ukraine» requires «changing approaches to the adaptation exercise».[239] For this purpose, in March 2010, the Sixth Coordination Council on Adaptation of Ukraine's Legislation to EU Law approved a Progressive Adaptation Plan based on the priorities envisaged by the draft EU-Ukraine Association Agreement and the EU-Ukraine Association Agenda, which has enabled Ukraine to already start fulfilling the Agreement at this stage.

Such progress in the EU-Ukraine relations requires subsequent steps at the national level. The key to respond to the risk of marginalisation of the parliamentary role in this period of legal integration should be found in adapting to new conditions and learning how to benefit from Europeanisation. The reforms, required by the Verkhovna Rada of Ukraine, should proceed in two dimensions. First, there is a need to ensure the consistency of democratic transformations on the basis of European parliamentary practices and the continuing democratisation of the lawmaking process **(see Priority A)**. The second objective has a more narrow focus aiming at strengthening the role of the Verkhovna Rada in the field of European integration, in particular in the process of adaptation of Ukraine's legislation to the *acquis* **(see Priority B)**.

**Priority A. Further Democratisation of the Functioning of the Verkhovna Rada and Organisation of the Legislative Process**

**Objective 1:** to establish a closer link between MPs and voters[240] within the proportional representation election system and decrease dependence of political parties on private funding.

**Recommended Measures:** (1) to pass over to such a proportional representation election system for parliamentary elections that will stimulate development of internal party democracy; (2) in a long-term perspective – to envisage a possibility of self-nomination in parliamentary elections;[241] and (3) to introduce state funding of political parties imposing restrictions on the private funding in accordance with European standards.[242]

**Objective 2:** to ensure more efficient public participation in the decision- and law-making processes.

238 EU-Ukraine Association Agenda from 15 October 2009, UE-UA 1056/2/09 REV 2 <http://ec.europa.eu/delegations/ukraine/documents/eu_uk_chronology/association_agenda_en.pdf> accessed 10 August 2010.

239 The official Governmental Portal <http://www.kmu.gov.ua/control/uk/publish/printable_article?art_id=223287610> accessed 10 August 2010.

240 Agency for Legislative Initiatives, «Concept of Amendments to the Ukrainian Legislation to Improve the Efficiency of the Verkhovna Rada («White Book» of the Ukrainian Parliamentarism)» [2010] 1 PARLIAMENT Journal 5; Maryna Stavniychuk, «Closed» Election System Has Exhausted Itself» (2009) 11(739) Weekly Mirror <http://www.dt.ua/1000/1550/65790/> accessed 10 August 2010; Andriy Yevstihneev, «2006 Election System: A Critical View» (2005) 11 Law Journal <http://www.justinian.com.ua/article.php?id=2006> accessed 10 August 2010.

241 OSCE/ODIHR Missions have repeatedly recommended that the Parliamentary Elections Law envisages a self-nomination possibility. For more details, see OSCE/ODIHR Election Observation, «Ukraine. Parliamentary Elections 26 March 2006» (Report) Warsaw, 23 June 2006 <http://www.osce.org/documents/odihr/2006/06/19631_en.pdf> accessed 10 August 2010, 25; OSCE/ODIHR Election Observation Mission, «Ukraine. Pre-Term Parliamentary Elections 30 September 2007» (Report) Warsaw, 20 December 2007 <http://www.osce.org/documents/odihr/2007/12/29054_en.pdf> accessed 10 August 2010, 26.

242 Recommendation Rec(2003)4 of the Committee of Ministers to Member States (Council of Europe) on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns adopted by the Committee of Ministers on 8 April 2003 at the 835th Meeting of the Ministers» Deputies <https://wcd.coe.int/ViewDoc.jsp?id=2183> accessed 10 August 2010.

**Recommended Measures:** (1) to entitle a certain number of voters to have the right of legislative initiative; (2) to establish a possibility for citizens to address the Constitutional Court of Ukraine with constitutional complaints on recognising certain laws as unconstitutional (in the cases envisaged by the Constitution); (3) to pass a new Law on Nationwide and Local Referenda in compliance with international standards; (4) to make amendments to the Ukrainian legislation in order to improve the procedure of parliamentary and committee hearings; (5) to envisage obligatory establishment of public councils under parliamentary committees and to define their legal status; and (6) to introduce the procedure of public consultations on the bills before their first and subsequent readings.

**Objective 3:** to improve transparency and accountability of the legislative body, as well as to prevent corruption in the legislative process.

**Recommended Measures:** (1) to pass a law on access to public information based on international standards; (2) to extend the list of information subject to publication on the parliamentary website and to establish an obligatory requirement to parliamentary committees to maintain web sites; (3) to make information on the functioning of the Parliament (in particular, on the legislative process) more accessible to ordinary citizens; and (4) to introduce the mechanism for prevention of corruption in the legislative process, in particular through obligatory declaration by members of parliament of their interests, incomes and expenses.

**Objective 4:** to optimise the organisation of the legislative process in order to eliminate excessive legislative burden[243] and to introduce the best European practices.

**Recommended Measures:** (1) to establish that the Government has the leading role in the formation of the law-making agenda and introduce clearer mechanisms for cooperation between the Government and the Parliament at the stage of the legislative work planning; (2) to strengthen the «legislative» role of the parliamentary committees, in particular by decreasing their number and ensuring that political configuration of the committees corresponds to the political structure of the Parliament; (3) to narrow the possibilities of reviewing the plans of parliamentary work; (4) to limit the possibility for replacement of the previously submitted bills; (5) to establish an exhaustive list of grounds for the consideration of bills through a fast legislative procedure; and (6) to narrow the possibility of changing the parliamentary procedures by *ad hoc* decisions and the possibility of passing bills as laws already at the stage of the first reading.

**Objective 5:** to promote respect for the rights of the opposition in the Parliament.

**Recommended Measures:** to consider if there is a need to supplement the rules of parliamentary procedure with provisions on additional mechanisms for protection of the rights of the opposition factions.

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243 For instance, in 2009, 1159 bills were submitted for parliamentary consideration. The Parliament also passes a considerable number of laws annually: 251 laws in 2009, 170 – in 2008, 117 – in 2007, 256 – in 2006, 295 – in 2005 and 297 – in 2004. See the official Parliamentary Portal <www.rada.gov.ua> accessed 10 August 2010.

**Priority B. Strengthening the Role of the Parliament in European Integration Matters and its Institutional Potential in the Context of the Adaptation of Ukraine's Legislation to EU Law**

**Objective 6:** to improve the institutional mechanism for the adaptation of Ukraine's legislation to EU law, in particular by strengthening the role of the Verkhovna Rada of Ukraine.

**Recommended Measures:** (1) functions of all public authorities, which *de facto* play or potentially may play an important role in the process of adaptation of the national legislation to EU law, should be exhaustively defined; such public authorities include, for instance, the Presidential Administration and the Bureau for European Integration; (2) the overlap of functions exercised by public authorities, as concerns planning, monitoring and oversight of adaptation, should be eliminated; and (3) the role of the Verkhovna Rada of Ukraine in the institutional mechanism of adaptation should be strengthened through specification of the principles of its cooperation with the Government as regards the elaboration and monitoring of fulfilment of the annual adaptation plans and with the Ministry of Justice for the purpose of analysis of bills in terms of their compliance with the *acquis*.

**Objective 7:** to make all bills that belong to EU-regulated spheres subject to compulsory analysis on their compliance with the *acquis* at all stages of the legislative process and taking the results of such examination into account for decision-making purposes.

**Recommended Measures:** (1) to amend the procedural requirements on the registration of bills in the Verkhovna Rada[244] and envisage that an explanatory note should contain information on whether a bill belongs to the areas regulated by the EU, as well as whether its text is compliant with the *acquis*; alternatively, the note may provide justification of the necessity to pass a bill that does not comply with EU law; (2) to bring the Parliamentary Procedure Act and the Regulation on the Parliamentary Committee on European Integration into compliance with the Law on the National Programme for Adaptation of Ukraine's Legislation with EU Law as concerns the procedure set for the analysis of bills in terms of their compliance with the *acquis* at all stages of parliamentary consideration; (3) to establish the mechanisms of horizontal cooperation between the Parliamentary Committee on European Integration, other parliamentary committees and the Main Legal Service of the Parliamentary Secretariat for the purpose of fulfilling the EU-screening of the bills and taking such assessment into account for decision-making purposes; and (4) to envisage the adequate human resources necessary to identify all bills that belong to the field regulated by EU law, to conduct their assessment by the Committee on European Integration and to provide expert support to a profile parliamentary committee in their consideration.

**Objective 8:** to ensure more active use of the mechanisms of parliamentary control over the governmental actions in the area of European integration.

**Recommended Measures:** (1) to establish on-going parliamentary monitoring of implementation of the annual adaptation plans and the evaluation of the annual reports presented by the Government; and (2) to introduce the practice of regular hearings of governmental officials by the Parliamentary Committee on European Integration.

[244] Regulation on the Procedure for Dealing with Bills, Resolutions, and Other Parliamentary Acts in the Verkhovna Rada approved by the Instruction of the Verkhovna Rada Chairman No. 428 of 22 May 2006.

# INFORMATION ABOUT THE PARTNERS OF THIS PROJECT

## Agency for Legislative Initiatives

The Agency for Legislative Initiatives is one of the leading Ukrainian think tanks. Established in 2000, it aims at promoting democratic values and contributing to an effective policy-making process in Ukraine, developing legal and political culture of its citizens and public authorities, and supporting Ukraine's integration into the European community.

Its major activities include the following:

- preparing analytical materials on public policies, policy recommendations and legislative proposals to improve the legal environment;
- organising public discussions on policy-related issues to promote a democratic dialogue and to transmit public concerns to the state and political actors;
- establishing training and networking programmes for the purpose of civic and political education; and
- monitoring of the activities of the parliament and other public authorities.

The Agency for Legislative Initiatives has impressing experience in implementing projects aiming at introduction of policy dialogue practices into the law-making process, ensuring participation of the public in the legislative process and monitoring of the activities of the parliament, studying the principles and problems of the Ukrainian parliamentarism, comparative studies in the area of election legislation, political parties, fight against corruption, social policies, information policy and media, budget and administrative decentralisation, and local self-governance.

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## Centre for European Reform

The Centre for European Reform is a think-tank devoted to improving the quality of the debate on the European Union. It is a forum for people with ideas from Britain and across the continent to discuss the many political, economic and social challenges facing Europe. It seeks to work with similar bodies in other European countries, North America and elsewhere in the world.

The CER is pro-European but not uncritical. It regards European integration as largely beneficial but recognises that in many respects the Union does not work well. The CER therefore aims to promote new ideas for reforming the European Union. The CER makes a point of bringing together people from the worlds of politics and business. Most of our meetings and seminars are by invitation only, to ensure a high level of debate. The conclusions of our research and seminars are reflected in our publications, as well as in the private papers and briefings that senior officials, ministers and commissioners ask us to provide. The CER's work is funded by donations from the private sector. It has never received core funding from governments or EU institutions.

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## Foundation for International Relations and External Dialogue

FRIDE is a think tank based in Madrid that aims to provide the best and most innovative thinking on Europe's role in the international arena. It strives to break new ground in its core research interests of peace and security, human rights, democracy promotion, and development and humanitarian aid, and mould debate in governmental and non-governmental bodies through rigorous analysis, rooted in the values of justice, equality and democracy.

FRIDE seeks to provide fresh and innovative thinking on Europe's role on the international stage. As a prominent European think tank, FRIDE benefits from political independence, diversity of views and the intellectual background of its international staff. FRIDE concentrates its work in the following areas: (i) Development Cooperation; (ii) Security and Conflict, (iii) Europe and the International System, and (iv) Democracy and Human Rights Policies.

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## European Programme of the International Renaissance Foundation

International Renaissance Foundation (IRF) is the largest Ukrainian charity organization that promotes civil society development in the country. The IRF is a part of the Open Society Institute (OSI) network founded by American financier and philanthropist George Soros. Its main objective is to provide financial, operational and expert support for open and democratic society development in Ukraine. IRF initiates and supports key civic initiatives, which foster the development of civil society, promote rule of law, independent mass media, democratization of education and public health, advancing social capital and academic publications and ensuring protection of national minority rights and their integration into Ukrainian society.

IRF's European Program was established in 2004. The goal of the Program is to promote Ukraine's European integration by providing financial and expert support to the relevant civil society initiatives.

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