

## The Substance of the EU Democracy Promotion in Ukraine: Is Embedded Democracy the Right Concept?

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### Abstract

*Despite the EU’s experience in the field of democracy promotion, a question remains whether the EU seeks to promote a specific democratic model. The paper aims to determine whether the embedded democracy is the right concept to address the substance of the EU democracy promotion, based on the case of the EU’s enhanced democracy promotion efforts following the Euromaidan Revolution in Ukraine. The paper starts with exploring different approaches to the substance of the EU democracy promotion. Then, the scope of the concept “embedded democracy” is addressed with a special emphasis on its application within the field of the EU democracy promotion. The central part of the paper concentrates on the substantial analysis of the EU democratization efforts in Ukraine, in light of “embedded democracy”. The findings regarding the applicability of the “embedded democracy” concept to the substance of the EU democracy promotion in Ukraine are formulated. The directions for future research are addressed.*

### Keywords

European Union, democracy promotion, democracy model, embedded democracy, democratization, Ukraine

## Introduction

The history of democracy promotion dates back to the “law and development movement” of 1960s, when the USAID, the Ford Foundation and a range of private donor institutions set an agenda for ambitious legal systems’ reform in Asia, Latin America and Africa. Viewing law as a major engine for change the participants of the movement aimed to promote broad social transformation. Despite the fact that the “law and development movement” was merely recognized as a failure due to a hope “to easily transplant legal norms into the legal systems of developing countries” (The World Bank 2010: 1) without sufficient theoretical basis, the idea of promoting fundamental values sustained. Since the 1990s<sup>1</sup> the EU has managed to become one of the world’s leading promoters of a range of fundamental values<sup>2</sup>, including democracy.

It is clear that the EU could not have maintained the same substantive and procedural approaches to promoting democracy over the whole period of its activities in this field. The Union’s strengthening as an international actor and democracy promoter, as well as the changing international context led to the emergence of new views regarding both the substance and methodological approaches to democracy promotion.

Understanding the EU approaches to the substance of democracy promotion is important for three key reasons.

Firstly, the sound theoretical foundation of the democracy promotion is essential for the EU to avoid the mistakes of the “law and development movement” and ensure mutual reinforcement of its assistance and aid projects. In this regard, the substantial elaborateness of democracy promotion will also help the EU to secure its interplay with the promotion of other values (e.g., human rights, good governance and the rule of law<sup>3</sup>).

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<sup>1</sup> Most commonly the starting point of the history of the EU is associated with the inclusion of the first political conditionality clause into the Lomé IV Agreement between the EU and ACP states (African, Caribbean and Pacific group) in 1989. For a more detail information about the history of the EU fundamental see: Börzel, Tanja & Risse, Thomas (2004): ‘Venus approaching Mars? The European Union’s approaches to democracy promotion in comparative perspective’, in Amichai Magen, Thomas Risse, Michael A. McFaul (eds.) Promoting democracy and the rule of law. Basingstoke: Palgrave Macmillan, pp.34-60.

<sup>2</sup> According to Art 2 of the Treaty on European Union (TEU), “the EU 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”. In turn, Art. 21 TEU singles out the principles that the EU seeks to promote in the wider world, such as democracy, the rule of law, the universal and indivisible nature of human rights, equality and solidarity etc. The article also provides for the EU to build partnerships with third countries and international organizations, sharing the above principles.

<sup>3</sup> To learn more about the complexities of the interplay between different values, promoted by the EU, see: Kuon, Dorothee (2010): Good governance im Europäischen Entwicklungsrecht. Baden-Baden: Nomos.

Secondly, determining the substance of the democratic model, sought to be promoted by the EU, is an essential step to developing the system of measuring effectiveness of the EU democracy promotion<sup>4</sup>. In turn, the quantification of democracy within the context of the EU aid, can substantially improve the credibility of the EU as an international value promoter (Youngs 2004: 417). In light of the above considerations and the need to establish a nexus between the scholarship and policy practice, an essential question remains whether it is possible to promote the same framework democratic model worldwide<sup>5</sup> and use similar indicators for measuring compliance and progress.

Overall, studying the substance of democracy promotion contributes to understanding democracy assistance as a crucial dimension of the EU external action, the links between democracy and other values the EU promotes worldwide, as well as the EU role in democratic transitions across the globe.

## Literature review

The scholarship in the field of the EU democracy promotion can be conceptually divided into three major groups. The first and largest group concentrates on the EU role in promoting democracy in specific states or groups of states. Within this group, many contributions focus on the survival of democracy promotion under authoritarian regimes (Risse 2015; Van Hüllen 2012) and sacrificing democracy for stability (Powel 2009). Furthermore, while considering specific cases, a range of authors try to determine self-interests the EU hides under the guise of democracy promotion (Crawford 2005; Warkotsch 2006; Seeberg 2009; Del Biondo 2015). Studies, addressing “success stories” of the EU democracy assistance efforts, as well as respective challenges and failures also fall within the above category (Simao 2012; Niemann and Bretherton 2013)

The second important group of contributions aims to explore specific instruments the EU uses to promote democracy worldwide and construct models of the EU democracy promotion. The most frequently explored democracy promotion instrument is conditionality (Börzel and Risse 2004; Schmmelfennig 2007). Political dialogue (Börzel and Risse 2004; Kelley 2006) capacity-building (Dryzek 2009) and the application of sanctions (Del Biondo 2015) are also frequently addressed, based on the case studies of specific regions or thematic instruments of the EU. Moreover, a number

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<sup>4</sup> For an extensive debate about measuring quality of democracy, see: Bühlmann, Marc, Merkel, Wolfgang, Müller, Lisa and Wessels, Bernhard (2012): ‘The Democracy Barometer: the new instrument to measure the quality of democracy and its potential for comparative research’, *European Political Science* (11): pp. 519-536

<sup>5</sup> The question, whether it is possible to state that the EU promotes specific model of democracy remains open. While a variety of authors (e.g., Börzel and Risse 2004; Youngs 2011; Kurki 2012) state that the EU defines the substance of its democracy promotion on case-by-case basis, others (e.g. Wetzel and Orbie 2011; 2015) claim that it is possible to ‘map’ the substance of democracy promotion, shared across different locations.

of empirical studies consider the EU support for civil society as an important instrument of strengthening top-bottom democracy (Jünemann 2002; Raik 2006). Studying the complex application of the EU democracy promotion instruments at multiple locations, S. Lavenex and F. Schmmelfennig (2011) identify and describe three models of the EU democracy promotion, emphasizing the success of the “governance” approach to promoting democracy at the level of state administrations. The benefits of integrating bottom-up and top-down approaches into a single model are addressed by Dimitrova and Pridham (2004).

Finally, the studies, aimed to find out whether the EU seeks to promote a specific democratic model are rather limited and fragmented. Addressing the substance of the EU democracy promotion, Kurki (2012:1-2) emphasizes a “fuzzy” and “uniquely non-committal” nature of the conceptual foundations of the EU democracy promotion, substantiating it by the Member States’ divergent traditions of democracy<sup>6</sup>. Moreover, the differences in the EU’s substantial approaches to democracy promotion are considered to be rooted in the contextual considerations, accompanying the EU democracy promotion (Wetzel & Orbie 2011). Despite the clashes in the EU democracy narratives, the liberal democratic model is most frequently considered as a substantial basis for the EU democracy promotion efforts (Risse 2009: 249; Kurki 2010). At the same time, Carothers (2009) emphasizes the link between the EU democracy promotion and its development efforts, and suggests viewing the substance of democracy promotion from socio-economic standpoint. Furthermore, as it stems from the studies of the EU democracy promotion practice, “the EU’s approach to democracy support still heavily relies on exporting its own technical rules” (Youngs and Pishchikova 2013). A trend to depoliticizing the democracy promotion agenda in the EU Neighborhood and emphasizing technical rules’ transfer was also underlined by Santiso (2003) and Korosteleva (2015). Kochenov (2006) specifically marks the difference between the rule transfer and democracy promotion, emphasizing the broader scope of the latter. An attempt to reconcile all the above approaches and “map” the EU democracy promotion was made by Wetzel and Orbie (2015).

Similarly to the overall body of scholarship regarding the EU democracy promotion, the consideration of the EU democracy promotion in Ukraine focuses on the EU’s instruments of democracy promotion (Kubicek, 2005) and its challenges and results (Solonenko 2009; Gawrich, Melnykovska & Schweickert 2010), rather than the substance of democracy promotion efforts. The only contribution, directly addressing the substance of democratic reforms, promoted by the EU in

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<sup>6</sup> As it is explained by Kurki (2012:3), the EU does not promote a single concept of democracy, but strives to make its democracy promotion more flexible to include “27 different models of democracy”, as well as take into account political environment in partner states.

Ukraine, is the one by Casier (2011), who aimed to frame a difference between formal and substantive EU democracy promotion in Ukraine. Importantly, in both procedural and substantial domains only minor efforts were employed to investigate the changes in the EU democracy promotion agenda in Ukraine following the Euromaidan Revolution (Pishchikova and Ogryzko 2014: 14-18) and the signing of the ambitious EU-Ukraine Association Agreement (AA) in 2014<sup>7</sup>.

The analysis of the existing body of scholarship reveals the need to explore the novelties in the substance of the EU democracy promotion in Ukraine, driven by the Euromaidan Revolution and signing the EU-Ukraine AA, in light of existing theoretical approaches to the substance of EU democracy promotion.

### **Theoretical framework**

The theoretical framework for the current study is represented by the root concept of embedded democracy, introduced by W. Merkel (2004) as an alternative to the classical concept of electoral democracy<sup>8</sup> and a contrast to defective democracies<sup>9</sup>. The choice of the “embedded democracy” concept for the purposes of addressing the substance of the EU democracy promotion in Ukraine is determined by a range of considerations.

First of all, the analytical concept of democracy, suggested by W. Merkel (2004), is based on the experience of the Third Wave of Democratization<sup>10</sup> that includes the democracy-building in post-Soviet states. Secondly, it is important to underline that the concept has already been applied to researching the substance of the EU democracy promotion. In their works, Wetzel and Orbie (2011; 2015) use “embedded democracy” to determine different agendas for democracy promotion, employed by the EU, and single out the peculiarities of the EU approach to democracy promotion without a reference to a specific case study. The concept was also applied by Reynaert (2011) to distinguish the cornerstones of the EU democracy promotion in the Mediterranean, as well as Bossuyt and Kubicek (2011) to compare the EU democracy agendas across Central Asian states.

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<sup>7</sup> The EU-Ukraine AA represents the new generation of the EU AAs with Eastern Partnership countries that bring together close political association and economic development. For an in-detail analysis of the EU-Ukraine AA as an “integration without membership”, see: Petrov, Roman, Van der Loo, Guillaume, Van Elsuwege, Peter (2015): “The EU-Ukraine Association Agreement: a new legal instrument of integration without membership?”, *Kyiv-Mohyla Law and Politics Journal* (1): pp.1-19.

<sup>8</sup> Merkel (2004: 34) defines electoral democracy as the regime, “where the election of the ruling elite is based on the formal, universal right to vote, such that the elections are general, free and regular”.

<sup>9</sup> Merkel (2004:48) contradistinguishes embedded and defective democracies. If at least one partial regime is damaged in a way that leads to the change of the logic of embedded democracy, a certain type of defective democracy is present (e.g. domain democracy, delegative democracy, illiberal democracy etc.)

<sup>10</sup> The Third Wave of Democratization is considered to start in 1974 with the Carnation Revolution in Portugal and include democratic transformations in Latin America in early 1980s, Asia Pacific region in 1986-1988 and Eastern Europe following the breakdown of the Soviet Union.

The important characteristic of the “embedded democracy” concept is that it goes far beyond a traditional *“institutional checklist as a basis for creating programmes, and the creation of nearly standard portfolios of aid projects consisting of the same diffuse set of efforts all over – some judicial reform, parliamentary strengthening, civil society assistance, media work, political party development, civic education and electoral programmes”* (Carothers, 2002: 18). In contrast, apart from addressing internal partial regimes of democracy (electoral regimes, political liberties, civil rights, horizontal accountability and effective power to govern), “embedded democracy” emphasizes the external conditions for enabling and stabilizing democracy. According to W. Merkel (2004), these external conditions include socio-economic context, functioning civil society, as well as international and regional integration. Importantly, by including the socio-economic context within the scope of the “embedded democracy”, Merkel (2004) revived the debate about the links between democracy and market<sup>11</sup>, and partly removed the artificial dichotomy between political and developmental approaches to democracy assistance (Carothers 2009). Furthermore, the idea of “embeddedness” allows considering the EU democracy promotion programmes in complex, putting larger emphasis on local context and the interplay between different instruments and agendas. Finally, the construction of the concept allows for representing it as a set of criteria.

The conceptualization of embedded democracy, elaborated by Merkel (2004: 42), encompasses only the five partial regimes and their criteria. For the purposes of further case study analysis, it is required to further differentiate the proposed criteria and expand the model to include external preconditions for democracy and emphasize embeddedness.

### Conceptualization and operationalization

While the basis for the model below is constituted by the “embedded democracy” concept, its further differentiation is conducted with the help of several worldwide known democracy measurement instruments, such as Freedom House Rating (Freedom House, 2015), Economist Intelligence Unit Democracy Index (Kelzic 2007) and Bertelsmann Transformation Index (Bertelsmann and Stiftung 2016). The choice of the indexes is to great extent determined by their scope and the degree of differentiation. The final set of criteria for analysis is as follows.

#### FIGURE 1. THE CRITERIA OF EMBEDDED DEMOCRACY

- A. Electoral regime
  - a. Elected officials

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<sup>11</sup> For an overview of the debate, see: Robinson, James (2006): ‘Economic development and democracy’, Annual Review of Political Science 9: pp.503-527.

- b. Inclusive suffrage
  - c. Right to candidacy
  - d. Functioning party system
  - e. Correctly organized, free and fair elections
- B. Political rights
  - a. Press freedom
  - b. Freedom of association
- C. Civil rights
  - a. Negative rights of freedom against the state
  - b. Equality before the law
- D. Horizontal accountability
  - a. Horizontal separation of powers
- E. Effective power to govern of elected officials
- F. Internal embeddedness
- G. Socio-economic context
  - a. Macro-economic situation
  - b. Functioning competition legislation
  - c. Equality of opportunities
- H. Functioning civil society
- I. International and regional integration
- J. External embeddedness

Despite the fact that the “embedded democracy” concept was already used to explore the substance of the EU democracy promotion in single case study (Reynaert 2011) and from a comparative perspective (Bossuyut and Kubicek 2011), neither of the contributions questioned the concept’s applicability to exploring the substance of the EU democracy promotion.

In view of the above, current contribution aims to discuss the applicability of the “embedded democracy” concept to the substance of the EU democracy promotion in Ukraine, rather than just distinguish the major substantial directions of the EU democracy promotion following the Euromaidan Revolution in Ukraine.



## Methodology and data

The research is based on the case study of Ukraine. Most commonly, both the methods of the EU democracy promotion and its substance are researched based on the case studies of the EU democracy promotion in specific states or groups of states<sup>12</sup>. The choice of the case study of Ukraine is determined by a number of reasons.

Firstly, Ukraine is of significant importance for the EU in terms of security and stability due to the fact that the EU and Ukraine share largest joint border (Shumylo-Tapiolo 2013). Ukraine has developed trade relations with the EU that are currently expected to accelerate due to the start of the implementation of the EU-Ukraine DCFTA. It is also the most important transit state for Russian gas, being delivered to the EU (Shumylo-Tapiolo 2013). Secondly, Ukraine is one of the leaders of the EU Eastern Partnership (EaP) programme (Eastern Partnership Civil Society Forum et al 2014: 6), and the EU has been employing a broad range of legal instruments to promote fundamental values in Ukraine. In this regard, it is important to underline that the EU-Ukraine AA is the Union's most ambitious Association Agreement with a third state, despite the lack of membership perspective (Petrov, Van der Loo and Van Elsuwege 2015: 1-2).

Thirdly, the Russian annexation of Crimea and the following military intervention to the Eastern Ukraine demonstrates a clear threat for European security, calling for the EU support for territorial integrity of Ukraine and peace-building efforts. Finally, the internal reform process, currently taking place in Ukraine, is marked by comprehensiveness (National Reforms Council of Ukraine 2016) and significant involvement of civil society actors and international donors.

The study of the substance of the EU democracy promotion efforts, accompanying an ongoing reform process in Ukraine, will be conducted with the help of the "black letter law approach". Four major data sources, used to conduct an analysis, are summarized in the table below.

FIGURE 2. DATA SOURCES

<u>Category</u>	<u>Major data sources</u>
<b>Eastern Partnership</b>	<b>Multilateral Platforms current work programmes 2014-2017</b>

<sup>12</sup> See, for instance: Simao, Licia (2012): 'The problematic role of EU democracy promotion in Armenia, Azerbaijan and Nagorno: Karabakh, Communist and post-communist studies 45(1-2): pp.193-200; Korosteleva, Elena (2015). 'The European Union and Belarus: democracy promotion by technocratic means'. Accessible at WWW: <http://www.tandfonline.com/doi/abs/10.1080/13510347.2015.1005009?journalCode=fdem20> [Accessed 14 March 2016].



<b>multilateral dimension</b>	<ul style="list-style-type: none"> <li>– Democracy, good governance and stability</li> <li>– Economic integration and convergence with EU policies</li> </ul>
<b>The Union's unilateral technical and financial assistance instruments</b>	<p><b>Geographic instruments</b></p> <ul style="list-style-type: none"> <li>– European Neighborhood Instrument (Programming of the European Neighborhood Instrument (ENI) -2014-2020; Programming Document for EU Support to ENI Cross-Border Cooperation -2014-2020)</li> <li>– Special Measure 2014 in favour of Ukraine to be financed from the general budget of the European Union</li> <li>– Special Measure 2015 for Private Sector Development and Approximation in favour of Ukraine to be financed from the general budget of the European Union</li> </ul> <p><b>Thematic instruments</b></p> <ul style="list-style-type: none"> <li>– The European Instrument for Democracy and Human Rights</li> </ul>
<b>EU-Ukraine bilateral agreements</b>	<ul style="list-style-type: none"> <li>– EU-Ukraine Association Agreement</li> <li>– EU-Ukraine Association Agenda</li> </ul>
<b>EU-Ukraine Inter-parliamentary Cooperation</b>	<ul style="list-style-type: none"> <li>– Report and Roadmap “On internal reform and capacity-building of Verkhovna Rada of Ukraine” (by the European Parliament's Needs Assessment Mission to the Verkhovna Rada of Ukraine)</li> </ul>

## Analysis and findings

The principle of democracy is emphasized in the vast majority of instruments of the EU democracy promotion, applied in Ukraine. However, the peculiarities of the considered geographic and thematic instruments determine the contexts of democracy promotion. Thus, the Platform 1 of the Eastern Partnership's multilateral track views democracy in conjunction with good governance and stability (EEAS 2014b). At the same time, the ENI and 2014 and 2015 Special Measures in favour of Ukraine specify the link between the democratic governance and the rule of law (EEAS and EuropeAid 2014a: 2-3) (European Commission 2014; 2015). Being a highly specific<sup>13</sup> thematic instrument, the

<sup>13</sup> The peculiarities of the EIDHR are as follows. Firstly, it functions complementary to geographical instruments and is not directly envisaged to support projects, run by the governments of third states. Moreover, the instrument can be still

EIDHR aims to reinforce the role of the civil society in the democratic cycle. While the vast majority of the above instruments consider the promotion of the rule of law along with the democracy promotion, the EIDHR views the rule of law as the *means* to reinforce democracy (EuropeAid 2014: 2-3). Finally, the EU-Ukraine Association Agreement mentions multiple values to be promoted in terms of the political dialogue between the parties, such as the rule of law, good governance, human rights and fundamental freedoms, as well as non-discrimination (EEAS 2014a: 4).

Despite multiple references and divergent contexts, “democracy” is never defined for the purposes of the EU democracy promotion instruments. However, the substance of promoted value can be addressed with the help of studying the objectives, measures, expected results and other elements, envisaged by the legal instruments of its promotion.

### ***Partial Regimes. Internal embeddedness***

#### ***A. Electoral regime***

The major function of electoral regime is making the access to power positions competitive and ensure vertical accountability (Merkel 2004:36). Particularly electoral regime can be viewed as the cornerstone of embedded democracy and “*the most obvious expression of the sovereignty of the people, participation of citizens, and equal weight of their individual preferences*”. (Merkel 2004:38)

The legislation of Ukraine provides for the election of officials, inclusive suffrage and the right to candidacy. Nevertheless, the electoral standards remain a hard issue in Ukraine, especially with regard to the restrictions to the right to candidacy (Venice Commission, OSCE/ODIHR 2013). Choosing not to address specific deficiencies in Ukraine’s electoral standards to be overcome in terms of the EaP instruments, the EU sees the cooperation with the Council of Europe as the major means of supporting electoral reform through the EaP multilateral track in all the Eastern neighbors (EEAS 2014b: 1). The support for the improvement and observance of electoral standards is also envisaged in the EIDHR. The related formulations include “*enhancing participatory and representative democracy*”, “*strengthening the overall democratic cycle*” and “*improving the reliability of electoral processes*” (EuropeAid 2014: 26-30).

Also refraining from setting specific targets and defining indicators, the 2014 Special Measure in favour of Ukraine underlines the need to observe OSCE and GRECO recommendations in the field

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used, when there is no consent of the third state’s government. Secondly, the EIDHR emphasizes the role of civil society action and its potential to monitor human rights and democracy developments. Finally, it is a flexible instrument that can be used, when there is no available bilateral framework for aid, and in case short-term targeted measures are required.

of electoral standards and party financing (European Commission 2014:13). Similar formulation is contained in the EU-Ukraine Association Agenda (EU-Ukraine Association Council 2015: 6).

The necessity to ensure the functioning party system is underlined in the EU-Ukraine Association Agenda (EU-Ukraine Association Council 2015: 15), despite the fact that it does not find its reflection in the EU-Ukraine AA. The recent Report by the European Parliament's Needs Assessment Mission included several recommendations, aimed to improve the functionality of party system, such as launching the inter-party Conciliation Board (European Parliament 2016:9).

The issue of free and fair elections falls within the scope of the broad elections-related formulations, contained in the EIDHR (EuropeAid 2014: 18-19). Specific support for free and fair elections in Ukraine is realized through the Programmatic Cooperation Framework (PCF), agreed by the Council of Europe and EU. The emphases of the Framework include the improvement of the legislation on elections and strengthening the mechanism to address electoral disputes (Council of Europe, EU 2015:3). Importantly, the PCF does not contain any clear system of progress measurement.

### ***B. Political rights***

Political rights represent the important preconditions of free and fair elections. They form a so-called "backbone" of a partial regime, enhancing competitiveness of political forces and steady public control in-between the elections (Munck and Verkuilen 2002). Moreover, particularly political rights help to form the arena, whereby different paths of a state's development are deliberated, and mature. The support for the observance of political rights lies at the crossroads of the EU democracy and human rights promotion, as well as strengthening of civil society.

The importance of promoting the freedom of expression and media freedom is underlined in the current working programme of the EaP Platform 1 "Democracy, good governance and stability". However, no specific objectives are provided for either of Eastern neighbours (EEAS 2014b). The ENI does not aim to promote political rights over the period of 2014-2020 (EEAS and EuropeAid 2014a). Neither of the Special Measures in favour of Ukraine addresses political rights (European Commission 2014; 2015).

The EIDHR provides for support for the freedom of assembly, peaceful protest, as well as public participation in political processes. While the above formulation does not specify how the freedom is to be promoted, the EIDHR human rights promotion framework allows tackling this freedom in a number of ways. These ways include supporting strengthening capacity of the NGOs *"to resist, report and fight human rights abuses and to contribute to the democratic reforms reinforced"*, an increased compliance

with international human rights instruments and strengthening the EU capacities to react to human rights urgencies etc. (EuropeAid 2014: 26).

Finally, the freedom of expression, assembly and association is underlined as a priority for political dialogue in the EU-Ukraine Association Agenda (EU-Ukraine Association Council 2015: 11). The Agenda provides for concrete steps<sup>14</sup> to be taken to improve the observance of the above freedom without mentioning expected results and progress indicators.

### ***C. Civil rights***

Initially, civil rights as are viewed as “*negative rights of freedom against the state*” (Merkel 2004: 40). This formulation allows for singling out its major elements, such as the (1) presence of legal norms, specifying civil rights and (2) an individual’s ability to protect his/her rights in court. In turn, particularly guaranteeing an individual’s ability to protect his/her rights in court against a state’s intrusion, strongly associated with the concept of the rule of law<sup>15</sup>, is emphasized by the EU.

Neither bilateral nor unilateral track of the EaP considers the issue of civil rights and their protection. Focusing on democracy and human rights<sup>16</sup>, the EIDHR captures the right to life (through prioritizing the issues, relating to death penalty, torture and ill treatment, as well as the promotion of children’s rights) (EuropeAid 2014: 10). Freedom of religion and belief is also one of the EU human rights priorities. Despite prioritizing many of the civil rights, the EIDHR does not refer to their efficient protection in local courts as the instrument’s objective<sup>17</sup> (EuropeAid 2014). Both Special Measures in favour of Ukraine (2014; 2015) do not address civil rights and primarily mention the rule of law outside the context of human/civil rights protection (European Commission 2014; 2015).

At the same time, the EU-Ukraine Association Agenda explicitly mentions a range of steps to be taken by Ukraine to improve its legislation in the field of civil rights protection (e.g., via the implementation of the international and European standards of protection). However, addressing the

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<sup>14</sup> These steps include *inter alia* taking steps to ensure equal access to media for electoral competitors; adopting the framework regarding public broadcasting; ensuring effective protection of journalists by the law enforcement agencies (EU-Ukraine Association Council 2015: 11).

<sup>15</sup> The rule of law is one of the fundamental values, promoted by the European Union. Similarly to the case of democracy promotion, there is neither an agreement as regards the substance of the rule of law promoted by the EU, nor the unified rule of law indicators. Most commonly, the rule of law promotion is concerned with reforming the judiciary and the system of law enforcement.

<sup>16</sup> The difference between the concepts of “human rights” and “civil rights” can be formulated as follows. The concept “civil rights” encompasses the first generation of human rights that emerged in the eighteenth century (the rights to life, freedom and property). In turn, the notion “human rights” also includes next generations of rights, such as political, economic, social, cultural and environmental rights.

<sup>17</sup> The reason for that may be attributed to the fact that the EIDHR tends to rely on civil society organizations and human rights defenders, rather than governmental institutions, with regard to the protection of human rights.

reform of judiciary and law enforcement agencies, the Agenda does not link it to the need to enhance the protection of civil rights (EU Ukraine Association Council 2015: 9).

Equal access to law and equal treatment represent basic civil rights that simultaneously constitute crucial prerequisites of democracy, guaranteeing equal importance of citizens' voices during elections (Merkel 2004: 40). The principles of equality and non-discrimination are most commonly reflected in the EU documents within the context of the respect for diversity and minority rights. Importantly, gender equality and non-discrimination tend to take the form of objectives and principles of political dialogue, rather than specific benchmarks. Such situation is can be traced in the vast majority of considered instruments. Gender equality is addressed as "objective" in the EaP Platform "Democracy, good governance and stability" and both Special Measures in favour of Ukraine 2014-2015 (EEAS 2014b: 4) (European Commission 2014: 28; 2015: 17). However, no expected results and progress indicators regarding the improvement of gender equality are envisaged. Being directed to the promotion of democracy and human rights, the EIDHR tackles both equality and non-discrimination, mentioning a variety of the grounds for discrimination (EuropeAid 2014: 13).

The EU-Ukraine Association Agenda views equal treatment, the protection of minority rights and implementation of the EU best practices in the field of non-discrimination as crucial elements of the EU-Ukraine political dialogue (EU-Ukraine Association Council 2015: 7; 51-52).

#### ***D. Horizontal accountability***

While the term "vertical accountability" refers to the responsibility of government, being secured via regular free and fair elections, "horizontal accountability" envisages a system that allows powers to check and balance each other (Merkel 2014: 40).

The issue of the separation of powers has long been the cornerstone of Ukraine's constitutional development. Despite the overturn of the Yanukovich super-presidential regime and the return to the parliamentary-presidential republic, constitutional reform remains one of the most pressing issues in the EU-Ukraine dialogue. That is why, the constitutional reform is one of the short-term priorities for action, envisaged by the EU-Ukraine Association Agenda (EU-Ukraine Association Council 2015:5). Furthermore, the action "State-building contract for Ukraine", included into the 2014 Special Measure in favour of Ukraine, provides for support to constitutional reform, along with the electoral and public administration reforms. Similarly to the case of the electoral standards, the EU does not clarify the substance of the necessary constitutional changes, but refers to the respective recommendations of the Venice Commission (European Commission 2014: 3).

***E. Effective power to govern of elected officials***

Highlighting the effective power to govern of the elected officials, Merkel (2004) underlines that it is necessary to address the goals of democratic elections, rather than solely their procedural aspect (41-42). The core of the concept deals with *“preventing extra-constitutional actors, not subject to democratic accountability, like the military or other powerful actors, from holding final decision-making power in certain policy domains”* (Merkel 2004: 41). Importantly, Merkel (2004) emphasizes that the effective power to govern is “self-evident” in established democracies, but *“cannot be taken for granted”* in new ones (Merkel 2004: 41).

Taking the above negative approach, it is possible to state that the EU does not take any explicitly legally defined steps to prevent democratically unaccountable actors from making final decisions in Ukraine. As it stems from Merkel’s own empirical application of the embedded democracy concept, it is possible to associate the concept of the “effective power to govern” with the one of “functioning of government” (Merkel 2012: 215). At the same time, it is important to remember that Merkel (2004) has initially claimed the concept’s relating solely to the powers of elected officials. That is why it is considered incorrect to discuss the EU’s multiple efforts in the field of administrative reform, capacity-building of regional and local actors and public administration reform in Ukraine as falling within the scope of the fifth partial regime of embedded democracy.

The only way the EU uses to strengthen the capacity of Ukraine’s elected officials to govern effectively is the EU-Ukraine Inter-parliamentary Cooperation. The major directions of envisaged changes include the improvement of legislative capacity and processes in the Verkhovna Rada, political oversight of the Executive, as well as openness, transparency and accountability to citizens, administrative capacities and the approximation of Ukrainian legislation to the EU *acquis* etc. (European Parliament 2016:23).

***F. Internal embeddedness***

According to the vision of Merkel (2004:43), the above partial regimes can only function successfully, *“if they are mutually embedded”*. The embeddedness manifests itself in the following domains. Firstly, each partial regime shall support the functioning of other partial regimes. For instance, the protection of political and civil rights represents the basis for competitive party landscape and democratic electoral regime. At the same time, some partial regimes prevent specific actors from intervening into the functioning of other partial regimes. In this way, horizontal accountability and effective power to govern prevent democratically accountable actors from going beyond their authorities and do not let democratically unaccountable actors to intrude into policy-making process (Merkel 2004: 43).

For the purposes of the empirical study of the EU democracy promotion in Ukraine, internal embeddedness can be addressed from two perspectives. On the one hand, the abovementioned logical links between the partial regimes preserve, because the EU puts some efforts to promote virtually all partial regimes. Moreover, using a variety of approaches and instruments to promote democracy and engaging a broad range of stakeholders, the EU promotes complementarily and mutual reinforcement of its efforts.

On the other hand, unequal level of the different partial regimes' development in a partner country<sup>18</sup> and the substantial overlaps between the EU geographic and thematic, as well as unilateral and multilateral instruments may lead to misbalance of the EU democracy promotion efforts in a partner country. Finally, while some of the considered instruments<sup>19</sup> describe cross-cutting nature of the EU democracy promotion efforts, others group efforts by themes without mentioning the way different actions are embedded.

### ***External Preconditions of Democracy. External embeddedness***

#### ***G. Socio-economic context***

The correlation between the level of a state's socio-economic development and its ability to sustain democracy has always been a controversial topic in political science. On the one hand, a range of authors support the famous claim of Lipset (1959), stating that the wellbeing of a nation positively correlates with a nation's ability to sustain democracy. On the other hand, this correlation was challenged in a number of works, tracing the relation between economic development and democracy over time (Robinson 2006: 505) (Merkel 2012: 201)

The key to the debate deals with the way one understands "socio-economic development". While it is found unacceptable to trace the correlation with the help of two or more bare criteria (e.g., GDP per capita; free and fair elections) (Merkel 2012: 201), there is still a number of links to be addressed. Firstly, both an increase in socio-economic wellbeing and democratization can be viewed as mutually reinforcing elements to a broader modernization process (Lipset 1959). Secondly, democracy is found to be positively correlated with development, going beyond macroeconomic situation and including social dimensions, such as distribution of income, life expectancy, education etc (Robinson 2006: 506). Furthermore, existing scholarship recognizes the link between the equality of

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<sup>18</sup> For instance, as it is underlined by Merkel (2004), a lot of young democracies suffer from the lack of elected officials' effective power to govern.

<sup>19</sup> Cross-cutting issues are addressed in Special Measures in Favour of Ukraine (2014; 2015).



opportunities and democratic governance (Christiano 2011). In view of the above, socio-economic development is distinguished by Merkel (2004) as an important external precondition of democracy.

The EU uses multiple instruments to enhance socio-economic situation in Eastern neighbours in general and Ukraine in particular. Firstly, the multilateral track of the EaP involves Panel 2 “Economic integration and convergence with EU policies”. The Platform focuses on sustainable development of market economies in partner states through a range of thematic panels, such as transport, trade and regulatory cooperation, agriculture and rural development etc (EEAS 2014c). Furthermore, the EaP provides Eastern neighbours with an opportunity to take part in the EU COSME programme that aims to improve competitiveness of small and middle-size enterprises (SMEs) by facilitating their access to loans and equities. The development of private sector is a key focus of the EU Special Measure for Ukraine 2015, aiming to improve authorities’ capacity to elaborate and implement effective policies in the field of economic development (European Commission 2015:7). In bilateral terms the EU funds projects, aiming to promote the development of SME in Ukraine, improve sector competitiveness and support the regional development policy<sup>20</sup>.

Importantly, the EU sees launching of the DCFTA and gradual removal of trade barriers<sup>21</sup> between the Union and Ukraine as an important incentive for the improvement of macroeconomic situation in Ukraine. Aiming to improve conditions for business, the EU-Ukraine Association Agenda mentions the reforms of deregulation, public procurement and taxation as short-term objectives for action (EU-Ukraine Association Council 2015: 6-7).

Apart from using SMEs development as an instrument of promoting the equality of opportunities, the EU facilitates it with the help of a variety of projects, aimed to promote education and people-to-people contacts. These projects are financed via the multilateral and unilateral tracks of the EaP.

### ***H. Functioning civil society***

There is a clear link between functioning civil society and democracy. Merkel (2004: 47) singles out four most important functions of civil society, such as protecting an individual from arbitrary state rule, establishing the balance between central political authorities and society, promoting civil virtues (tolerance, mutual acceptance etc.) and ‘*expanding the sphere of interest-articulation and interest-aggregation*’.

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<sup>20</sup> E.g., “Support to Ukraine Regional Development Policy” (2012-2016); “Ukraine-NIF Guarantee Facility as part of the ENI regional project DCFTA Initiative East” (2013-2016).

<sup>21</sup> E.g., “Promoting mutual trade by removing technical barriers to trade between Ukraine and the European Union” (2011-2015).

Viewing civil society as a “watchdog” to promote public accountability and reforms in partner countries, the EU uses a variety of means to strengthen capacity of civil society actors and increase their chances to exert impact on governmental policies. The cooperation between civil society actors from the EU and its Eastern partners takes place in terms of the Civil Society Forum. Specific NGOs can also benefit from the EU cooperation programmes, financed under Platform 4 “People to people contacts”. EIDHR provides civil society actors with an opportunity to win tenders and grants to conduct projects in the field of democracy and human rights (EuropeAid 2014). Grants are also available for civil society under the Neighborhood Civil Society Facility. Importantly, the EU Special Measure in favour Ukraine 2014 includes “Ukraine civil society support programme” that is expected to work in synergy with the above instruments and facilities. The major objectives of the programme deal with strengthening the NGOs capacity to participate in policy dialogue, monitoring and oversight, as well as creating the environment conducive to the activities of civil society (European Commission 2014: 21). Unlike other EU instruments, the programme’s description includes expected results, planned activities, as well as cross-cutting issues (mainly, the link between the civil society development and domestic reform agenda).

The EU-Ukraine Association Agenda mentions the government’s consultations with civil society as an important part of institution-building and the promotion of the freedoms of expression, assembly and association. The civil society’s participation is considered a necessary prerequisite for countering corruption. Finally, the EU-Ukraine AA provides for constituting of the EU-Ukraine Civil Society Platform that aims to monitor issues, deemed important for both sides of the Agreement and report on them (EEAS 2014a).

### ***I. International and regional integration***

Nowadays many international organizations promote democracy by creating international law, binding for the Members, establishing respective reporting obligations and launching cooperation programmes.

The EU promotes international integration of Ukraine in several ways. Firstly, it maintains active bilateral links with Ukraine, emphasizing democracy as one of the foundational shared values of the parties. Secondly, the Union encourages Ukraine’s participation in a broad range of cooperation programmes (e.g, COSME, Horizon 2020, Erasmus+). In this regard, it is crucial to mention that the EaP provides for institutionalized cooperation between different types of stakeholders from the EU and partner states, such as parliaments, civil society actors, businesses and students. Thirdly, in the majority of considered instruments the Union underlines the need of bringing the legislation of

Ukraine in compliance with international instruments (e.g., European Charter of Local Self-Government, UN Convention on the Rights of Persons with Disabilities) and recommendations of international organizations and bodies (e.g., OSCE/ODIHR, Venice Commission, GRECO) (EU-Ukraine Association Council 2015: 6).

Ukraine's regional integration is being supported by the ENI Cross-Border Cooperation programme. The strategic objectives of the Programme deal with promoting region's socio-economic development; addressing common challenges (e.g. environment, public health, organized crime) and promoting better conditions for the mobility of goods, persons and capital (EEAS&EuropeAid 2014b: 4). Under the Programme Ukraine can cooperate with Romania, Belarus and Poland, as well as contribute to the development of Black Sea basin.

### ***J. External embeddedness***

According to Merkel (2004: 44), *“every democracy as a whole is embedded in an environment that encompasses, enables and stabilizes the democratic regime”*. When speaking about external embeddedness dimension of the model, it is necessary mention that the EU underlines the links between civil society development and democracy, as well as international integration and democracy. However, the links between socio-economic conditions and democracy are not explicitly addressed, while support for business development is seen as a separate aspect of the EU-Ukraine bilateral relations and EU aid.

### **Summary of the findings**

	EaP Platforms	ENI	ENI CBC	EIDHR	Special Measure 2014	Special Measure 2015	EU-Ukraine AA/ Agenda	EU-Ukraine Inter-parliamentary cooperation
Electoral standards	CoE standards	-	-	Objective	OSCE GRECO standards	-	OSCE GRECO standards	-
Party system (party financing)	-	-	-	-	-	-	Priority action	Specific steps to be taken
Free and fair elections	PCF with COE	-	-	Objective	-	-	Priority action	-
Political rights	Importance is	-	-	Objective, human	-	-	Priority action,	-

(freedom of association; media freedom)	underlined			rights priority			specific steps to be taken	
Freedom against the state (civil rights)	-	-	-	Human rights priority (death penalty, tortures, children's rights)	-	-	Specific steps to be taken, transfer of the EU acquis	-
Rule of law	-	-	-	Rule of law in relation to democracy agenda	Rule of law outside civil rights agenda	Rule of law outside civil rights agenda	Principle, objective of political dialogue, not linked to civil rights	-
Equal treatment	Objective	-	-	Priority for action, link to non-discrimination	Objective	Objective	Element of political dialogue, transfer of the EU acquis	-
Horizontal separation of powers	-	-	-	-	Objective	-	Priority for action	-
Effective power to govern of elected officials	-	-	-	-	-	-	-	Specific steps to be taken
Internal embeddedness	Puts actions together without explaining the links between them	-	-	Explains how actions are linked (e.g., human rights and civil society support)	Cross-cutting issues	Cross-cutting issues	Priority for action	-
Macroeconomic situation	Separate Platform, rule transfer	-	-	-	-	Specific projects, private	Multiple priorities for action, use of	-

							DCFTA as an incentive	
Functioning competition legislation	Access to COSME programme	-	-	-	-	Specific projects	Specific actions, rule transfer	-
Equality of opportunities	Access to multiple EU programmes (Erasmus+. Horizon 2020); contacts between people	-	Support for equality-related projects of civil society	-	-	-	-	-
Functioning civil society	Civil Society Forum, contacts between people, Erasmus+, Neighborhood Civil Society Facility	Grants and tenders in the field of cross-border cooperation, and democracy and human rights respectively		Specific measures, expected results, activities	-	Need for consultations, EU-Ukraine Civil Society Platform	-	
International and regional integration	Promotion of international standards Cooperation between stakeholders at different levels Access to the EU programmes	Regional integration	Promotion of international standards	Promotion of international standards	-	Promotion of international standards, rule transfer	Inter-parliamentary cooperation. Promotion of international standards	
External embeddedness	Strong link between civil society development and democracy, as well as international/regional integration and democracy Limited link between socio-economic factors and democracy							

## Conclusion

Summarizing the findings of research, it is possible to state that the concept of embedded democracy can be used to address the substance of the EU democracy promotion in Ukraine in 2014-2015. The rationale behind this statement is that all the partial regimes and external preconditions of democracy find their reflection in the legal instruments the EU uses to promote democracy in Ukraine. The application of multiple mutually reinforcing democracy promotion instruments is viewed as a crucial manifestation of embeddedness.

However, a number of considerations can be still raised in this regard.

Firstly, in many cases the EU chooses to address specific issues by setting rather vague objectives without defining expected results, specific activities and the mechanism of progress monitoring. Sometimes such design of legal instruments can be explained by their thematic nature (e.g., the EIDHR). However, even country-specific instruments (e.g., the EU-Ukraine Association Agenda) often set priorities without determining the mechanism of reaching them. In this view, it becomes hard for the EU to continuously monitor the state of partial regimes and external preconditions of democracy and ensure balanced approach to its promotion efforts, leading to the embeddedness of the partial regimes and external issues.

Furthermore, the above-mentioned challenge is aggravated by the fact that the EU tends to use a combination of instruments to promote specific values and standards in a given country. Synergy effects need to be thoroughly planned and empirically tested to prevent overlaps and secure maximum contribution to overall democracy promotion efforts. Otherwise, the overlaps between the EU geographic and thematic, as well as unilateral, bilateral and multilateral instruments are likely to lead to the misbalance between different partial regimes, external conditions of democracy and the links between them.

Thirdly, current EU democracy promotion lacks specific links between the criteria, included to the model. For instance, Merkel (2004) explicitly links the rule of law to an individual's ability to protect his/her rights in court. The EU repeatedly recognizes the need for civil rights protection and provides for priorities in the field of human rights. However, the Union's democracy promotion instruments address the rule of law in primarily institutional terms instead of testing an extent to which the legal means grant protection to an individual. Furthermore, the EU instruments do not address the improvement of socio-economic context in a partner country as a precondition of successful democracy promotion. That is why, the external embeddedness dimension of the embedded democracy model is not fully reflected in the EU democracy promotion agenda in Ukraine. Further efforts need to be applied by the Union to achieve synergy between the promotion of democracy on the one hand, and macroeconomic stabilization, competition and equality of opportunities in Ukraine.

To conclude, the concept of embedded democracy can be applied to research the substance of the EU democracy promotion, as it stems from the single case study analysis of the EU democracy promotion efforts in Ukraine in 2014-2015. The application of the model to the case of Ukraine

reveals several directions the EU can take to enhance its democracy promotion efforts in Ukraine. They include specifying the steps to be taken to achieve democracy-related objectives and expected results; promoting synergetic effects of multiple democracy promotion instruments and paying extra attention to ensuring the embeddedness between different aspects of democracy, as well as democracy and its external preconditions.

### **Directions for future research**

The study of the substance of the EU democracy promotion efforts in Ukraine allowed revealing a number of issues, worth further consideration.

Firstly, it is broadly known that the EU uses rule transfer as a means of democracy promotion. Testing the effectiveness of transferred norms in a legal system of a partner state requires is needed to determine the degree of contextualization, necessary for successful rule transfer.

Secondly, it is interesting to trace synergetic effects of a variety of *means* the EU uses to promote democracy, such as political dialogue, granting access to cooperation programmes, institutional capacity-building etc. Special attention is to be paid to international and regional integration as both the external precondition of democracy and the means of its promotion.

Thirdly, present composition of partial regimes in an embedded democracy concept does not allow considering several important aspects of the EU democracy promotion efforts within the scope of the model. They include *inter alia* the promotion of accountability and transparency, decentralization and capacity-building of local authorities, as well as civil service reform. Considering the above aspects of democracy-building in relation to the embedded democracy concept is of vital importance for further adjusting “embedded democracy” as a tool to “map” the substance of the EU democracy promotion.

Finally, special interest is constituted by the partial regime “effective power to govern by elected officials”. It is simultaneously least promoted by the EU, but most controversial aspect of democracy promotion from conceptual standpoint. While the “effective power to govern...” provides for diminishing influence of external stakeholders on the government, a question arises whether the EU democracy promotion as such constitutes such influence. An extent to which such influence is justifiable is to be considered from the viewpoints of democracy studies, international relations and international law.



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