

Ukraine's European Integration and the Role of Parliament

SARAH WHITMORE

Oxford Brookes University

Introduction

The Rada and EU integration?

At first glance, parliaments are not a 'central site' for European integration in current, candidate or aspiring members. Indeed, policy making is a realm that regardless of specific constitutional arrangements has increasingly become the preserve of the executive due to the growing complexity of government, the concomitant growth of the bureaucracy and globalisation (Norton 1990). European integration has been seen as contributing to this process due to the delegation of substantial legislative functions 'upwards' to the EU and the limited capacities of national parliaments to hold executives to account over their role in EU policy formation (Judge 1995). Furthermore, given that much of the literature of post-Soviet politics has pointed to the dominance of presidential executives over weakly institutionalised parliaments (e.g. Ishiyama and Kennedy 2001), it would be expected that in these 'neighbouring' states the legislature would have an even more marginal role to play in shaping the pattern and pace of integration with European (and other international) structures. As Protsyk (2003: 437-9) argues, this was the case in Ukraine under President Kuchma, where the parliament (Verkhovna Rada) was willing to accept presidential leadership in European matters.

But I argue that parliament does and will have if not a central then an important role in shaping the pace and nature of EU integration in Ukraine for three reasons:

- The implementation of the EU-Ukraine Action Plan (signed on 21 February 2005) requires the adoption of a large raft of legislation by the Rada in conjunction with the government. Therefore, the Rada's legislative capacity is likely to impact on this process (the shenanigans over the WTO legislation discussed below offer strong evidence of this).
- After the constitutional reforms adopted on December 8 2004 came into force at the beginning of 2006 the Rada's formal policy influence increased, including on European issues.
- A parliament able to perform its constitutionally-designated functions is necessary for Ukraine to meet the political aspects of the Copenhagen criteria: 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities' (Sweeney, 2005). This is not only because the Rada adopts the necessary legislation to support these political criteria, but also by *being* a stable democratic institution itself.

So, I am arguing that the Rada matters to Ukraine's democratic and European development in both the narrow and broad senses.

If we accept this premise, then understanding the Rada's institutional capacity and legislative process will provide insights into the some of the domestic factors affecting Ukraine's prospects for European integration. Therefore, this paper will examine the Rada's legislative capacity by first looking at internal institutions and structure and then its interactions with the government of Yulia Tymoshenko (February-September 2005). Although progress in institutionalising the legislative process was made, the main obstacles to constructive interaction between the

branches remained rooted in the weakness of the party system in the context of a semi-presidential system that did not create clear lines of accountability. How far the constitutional reforms that came into force in 2006 are showing signs of ameliorating these problems will be considered in conclusion.

Legislative Capacity in Ukraine

Ukraine's further European integration depends to certain extent on the adoption of legislation necessary for the implementation of the Action Plan and a continuation (acceleration) of the process of harmonising Ukraine's legislation with that of the EU's. Clearly, Ukraine's ability to do this is intimately connected to the Rada's legislative capacity. Initially, we can note the growing legislative capacity of the Rada as with each convocation the Rada adopted more laws: for 1994-8 there were 752 laws passed (compared to 471 1990-4); for 1998-2002 the figure was 1131, and for the 2002-6 convocation 1250 (Apparat of the Verkhovna Rada, 2006: 96). Although this broadly suggests an increasing capacity to draft, scrutinize and adopt legislation, this is rather a crude measure that does not indicate the importance or quality of legislation. Indeed there were serious concerns about the quality of legislation adopted in terms of its internal consistency and its compatibility with existing legislation (Lytvyn 2003).¹ Contradictory legislation was a symptom of broader problems in the Rada: a lack of institutionalisation of norms and procedures in this relatively new institution;² the fragmented, relatively unstructured and clientelistic composition of the deputy corpus; and a constitutional arrangement that provided relatively few incentives for cooperation between the executive and legislative branches. These factors were not significantly altered by the 'orange revolution' and the advent of President Yushchenko's administration and will be examined below.

Inside the Verkhovna Rada

Although internally the Rada did make significant progress in institutionalising norms and procedures concomitant with a modern democratic parliament, adopting for example standing orders (1994) and the law 'on standing committees' (1995), internal divisions prevented these from being brought into line with the subsequent constitution (1996) and their implementation remained patchy.³ This meant that more controversial legislation tended to be examined and adopted by *ad hoc* procedures which regularly sidestepped the formal rules.⁴ At the same time, the Rada built a committee system which formally resembled its western counterparts – permanent, paralleling government, comparatively well-resourced and (loosely) representative of the parent chamber, which enabled committees to process and scrutinize a growing volume of legislation. Although this did lead to a shift away from examining legislation on the floor of parliament, thus enhancing the parliament's legislative

¹ The case of tax legislation was notorious. For example, the State Tax Administration Order on VAT refunds contradicted the law on VAT, giving the tax administration the scope to choose which to adhere to. See Bidai, Frensch and Leschenko (2004, p.7, footnote 26).

² Although the Verkhovna Rada was in fact created in 1937, it was not until 1990 that it began to assume genuine law-making and representative functions.

³ To bring parliamentary procedures into line with the constitutional changes that came into force in January 2006, new standing orders were adopted in March 2006.

⁴ For example, the first reading of the bill to amend the constitution on December 24 2003 was passed using a highly irregular voting procedure by a show of hands. Also see Whitmore (2004: 86-90, 145).

capacity, the structure of committees remained sub-optimal, with significant workload variations because all attempts at reform were blocked by the cross-cutting interests of parliamentary factions (party and non-party based caucuses) seeking resources and influence in specific policy areas (Whitmore 2006).

Moreover, the orange revolution and creation of a new administration proved disruptive to committees' operations as eight committee chairs were appointed to the government and these positions were left vacant. Although this indicated that the Rada had become a genuine pool for elite socialisation and recruitment, it also meant the Rada was deprived of some of its most experienced deputies. The failure to make new appointments was largely due to the fragmented distribution of political forces in the Rada, who each sought to control these valuable positions.

The elusive parliamentary majority

A multi-party system emerged relatively late in Ukraine, after the semi-free elections of 1990 and the system of political caucuses⁵ (party-based factions and non-party deputy groups) did not become formally institutionalised until after the 1994 elections (Verkhovna Rada, 1994). Until the 2006 elections, the Verkhovna Rada was characterised by a large and fluctuating number (usually 12-15) factions and deputy groups with a rapid turnover of membership. For example, during June 2005 there were 12 factions in the Rada, although in the aftermath of the presidential elections, the frequency of members switching factions was high (around 2 per week in May-July 2005). Figure 1 shows the composition of the Rada on 24 June 2005.

⁵ I have used the term 'political caucuses' instead of the more usual 'party caucuses' to denote the non-party basis of many of these bodies. As well as deputy groups, which could be formed by any 14 deputies, factions that were based on political parties often included a considerable (and fluid) number of non-party members, while party members sometimes chose to join factions or groups outside of their party affiliation.

Figure 1: Composition of the Verkhovna Rada, 24 June 2005

Faction/Deputy Group	Number of members
<i>Pro-Yushchenko/government</i>	194
Our Ukraine	88
Ukrainian People's Party (Kostenko)	24
Bloc of Yulia Tymoshenko	40
Party of Industrialists and Entrepreneurs	15
Socialist Party of Ukraine	27
<i>'Centrists'</i>	89
People's Party (Lytvyn)	40
Democratic Ukraine (Sharov, Pinchuk)	20
United Ukraine (Hubs'kyi)	21
Democratic Initiatives (Havrysh)	10
<i>Opposition</i>	126
Regions of Ukraine	50
SDPU(o)	20
Communist Party of Ukraine	56
Non-affiliated	40

Source: www.rada.gov.ua

Although the factions of Tymoshenko, the Socialists and Volodymyr Lytvyn's People's Party were initially able to swell their ranks as deputies deserted the former pro-Yanukovich factions and sought to realign themselves with the new administration, and the opposition factions were disorientated by their new status and rarely able to coordinate their actions,⁶ a parliamentary majority to support the government did not emerge. Even ostensibly 'pro-administration' factions were less than whole-hearted in their commitment to support the government. Deputy Prime Minister Anatoliy Kinakh's Party of Industrialists and Entrepreneurs did not vote in support of the government's budget, while the Socialists and Yuriy Kostenko's People's Party announced their unwillingness to support government bills where they did not coincide with their principles (Lymar' 2005 and Action Ukraine Report, no. 507, 22 June 2005). Thus, bills were passed by situational majorities formed around each piece of legislation, some of which gained in excess of 300 votes as the pro-government and centrists plus part of the so-called opposition voted in favour. At the same time however, the process was rendered unpredictable and the government could not always rely on a majority to enact key legislation. This was clearly illustrated by the failure to adopt key amendments to the law on intellectual property (i.e. concerning laser disc piracy) on May 31, which was required for Ukraine's entry to the WTO and for the lifting of US sanctions. The bill failed by just 17 votes as the government did not get the full support of deputies from 'its' factions – Our Ukraine and the Party of Industrialists and Entrepreneurs (Kuzio 2005).

This situation was not unusual for the Rada. The lack of a parliamentary majority characterised most of the post-Soviet period. Twice, from January 2000 until January

⁶ For example, the voting on the budget on 25 March demonstrated this, as Regions of Ukraine refused to participate, while SDPU(o) and the Communists voted in favour.

2001 and from November 2002 until September 2004, President Kuchma was able to generate pro-presidential majorities with the help of loyal deputy-oligarchs by a combination of blackmail (using *komprobat* from Ukraine's extensive surveillance system inherited from the Soviet period, or various inspections of deputies' businesses) and bribery. For limited periods, Kuchma's 'blackmail state' was efficient at producing a relatively compliant parliament to enact legislation,⁷ although because of the artificial nature of such majorities, their cohesion and life-span was limited. The creation of artificial majorities was facilitated by the large number of deputy-entrepreneurs⁸ who had business interests to protect (and advance) and were also potential clients for executive patronage (Protsyk and Wilson 2003). At the same time though, this engendered a proliferation of attempts to pass 'lobbyist laws', particularly in the sphere of tax legislation.⁹ Initially under Yushchenko, the bribery and blackmail tactics to put together a majority were not in evidence (Syrotiuk 2005, Riabchenko 2005, Ter'okhin 2006), but unfortunately this meant that insufficient incentives existed for a majority to form, an issue that haunted the administration until the parliamentary elections were held in March 2006.

Semi-presidentialism in Ukraine: Explaining inter-branch conflict and the absence of a majority

Ukraine's semi-presidential system did not create incentives for a parliamentary majority. The 1996 Constitution created a president-parliamentary system where the president and parliament had 'competing political legitimacies, rigid terms of office and differing electoral bases' (Protsyk 2003a: 1078) while the powers of parliament and president overlapped in terms of oversight and dismissal of the government, the organisation of other executive bodies and law-making. This design created the potential for inter-branch conflict or deadlock also seen in presidential systems as well as a few incentives for the formation of a parliamentary majority (Mainwaring 1992, Linz 1990). In many ways the president had precedence over parliament regarding the formation, control and dismissal of the government and the Rada had limited opportunities for influencing the government. There were no provisions for the Verkhovna Rada to play a role in appointing the government or in taking responsibility for its actions. Parliament was simply required to confirm the president's nomination for Prime Minister (art.85.12) and the government's annual programme (art.85.6). This formally implied that there was no role in the constitution for a

⁷ Such 'efficiency' was however at best partial as since the mid-1990s the proportion of government legislation enacted has tended to decline, contrary to trends in Western democracies where the '90% rule' (90% of legislation is initiated by the government and 90% of it is passed) operates. See Whitmore (2004:151-2), Pavlenko (2002) and Protsyk (2003a: 1083). Nevertheless, during 1998-2002, factions which belonged to the 2000-1 majority voted along with executive initiatives 83% of the time (Protsyk and Wilson, p.715). For more on the mechanisms of a 'blackmail state', see Darden (2001).

⁸ 364 (of 450) in 2000 according to Mykola Azarov, then head of the State Tax Administration (*Holos Ukrainy*, 25 April 2000, p.2). However, this figure increased after the 2002 elections.

⁹ Evidence for this was provided in accounts by parliamentary deputies and staff in interviews with the author, March 2003. Also see Hellman, Jones and Kaufman (2000:10).

parliamentary majority and thus, no incentives for factions to form and maintain a coalition that would enact the government programme and take responsibility for its actions (see Protsyk 2003a). Yushchenko's decision to form a coalition government allocating proportions of posts to the parties in the 'Force of the People' coalition and those that backed him in the second round of the presidential election (i.e. the Socialists and Party of Industrialists and Entrepreneurs) broke with the tradition of appointing non-partisan 'technocratic' governments and clearly attempted to give various parliamentary factions a stake in the government in the hope that this would lead to the emergence of a majority, but this was not a sufficient 'carrot' to overcome disparate interests and squabbling. Therefore, when Tymoshenko's government was dismissed by President Yushchenko in September 2005, it was replaced by a more 'traditional' technocratic government led by Yuriy Yekhanurov.

In the context of a weak party system, semi-presidentialism in Ukraine produced cabinets more closely reflecting presidential preferences, unable to rely on a parliamentary majority to enact their legislative programme. Indeed, 1994-2006 figures indicate a declining capacity of governments to get their legislation passed (Protsyk 2003a: 1079 and author's calculations from Apparat of the Verkhovna Rada, 2006: 100). The absence of institutional mechanisms to resolve disputes over policy between parliament and the executive (i.e. the president and/or the government) means that inter-branch conflict was built into Ukraine's political system and became one of its defining features, along with an ongoing debate about constitutional reform.¹⁰

Inter-branch relations in the new administration

Initially after Yushchenko became president, relations between the president and Rada became less confrontational than under Kuchma, largely as a product of a management style different from his predecessor and based on the desire to maintain good relations with speaker Lytvyn and other allies in the Rada in the run up to the March 2006 parliamentary elections. During 2005, Yushchenko refrained from making the kind of trenchant criticism of the Rada's operation that Kuchma frequently made and from utilising Kuchma's 'divide and rule' tactics, but at the same time he did by-pass the Rada on several occasions, using presidential decrees to regulate areas properly in the jurisdiction of the Rada (Rakhmanin 2005) and rarely using his right of legislative initiative. In sum, Yushchenko stood aloof from the legislative process.

Turning to the government, under Kuchma in general legislative-executive relations were persistently confrontational – as indicated by the prolonged battle by the president to increase his competences vis-à-vis the Rada, firstly via the constitutional process and subsequent enabling legislation, then via various attempts to amend the constitution (Whitmore 2004). At a more micro-level, relations with the Rada's committees were characterised by frequent contacts and generally seen by deputies as constructive. However, successive governments (including Yushchenko's (2000-

¹⁰ On the constitutional debate see Christensen, Rakhimkulov and Wise (2005), pp.207-230. For elaboration on the incentive structures and interactions between the three actors: president, parliament and government, see Protsyk (2003) and Pavlenko (2002).

2001)) tended to consult factions and committees only on an *ad hoc* rather than routine basis (Pavlenko 2002: 152). Effective cooperation over legislation was also impeded by the high turnover of ministers and the dependence on personal relations due to the lack of a regulatory framework (a consequence of the failure to adopt the law 'on the Cabinet of Ministers').¹¹ There was also a tendency for ministries to send low ranking officials to committee meetings, which did not inspire deputies' confidence. Deputies also consistently complained about the quality of bills emanating from the Cabinet of Ministers and it remained common for the Rada to pass the committee's 'alternative' bill rather than the government's draft (Whitmore 2004: 173-4).

Interactions between the coalition government under Tymoshenko and the Rada initially looked promising. The government was confirmed by a record number of votes as was the government's budget in March 2005. However, the institutional context had not altered, so ministers - seeing the Rada as largely unable to sanction them - lacked incentives to routinely engage with parliament during the legislative process. Therefore, like its predecessor, the Tymoshenko government struggled to get its legislation through the Rada. During the 7th session (Feb-Jul 2005), only 31% of bills initiated by the government were enacted.¹² Familiar frustrations were vented by speaker Lytvyn about flawed and rushed government bills sent to the Rada at the last minute and ministers not coming to the Rada themselves, but sending 'their ten deputies' (Riabchenko 2005). That contacts between the government and parliamentary committees remained *ad hoc* according to the needs of the government was illustrated by the emergency situations minister failing to meet with members of the relevant committee to discuss planned reforms to the Chernobyl policy, so that the chair complained that the committee found out about this via the media (*Holos Ukrainy*, 13 April 2005: 2). Dissatisfaction was also expressed on the government side, with a sharply worded article in *Ukrains'ka Pravda* by Deputy Prime Minister Mykola Tomenko (2005) in which he lambasted the Rada for excessive lobbyism on behalf of their business interests, adopting unrealistic, unworkable laws and the leadership of the Rada for violating the standing orders to further their personal interests. By the end of summer 2005, an exchange of increasingly sharply-worded statements between the government and the Rada indicated that patterns of inter-branch relations had reverted to type (e.g. *Holos Ukrainy*, 14, 15 July 2005 and Syrotiuk 2005a).

¹¹ This meant that the activity of the Cabinet of Ministers and the authority of the Prime Minister were regulated by a large number of laws. In 1997, 440 laws formed the legal framework for the operation of the Cabinet, while 250 laws framed the Prime Minister's activities (*Holos Ukrainy*, 9 April 2005, pp.8-9). Although these figures may have changed somewhat, the overall situation has not, though in autumn 2006 both president and the government of Viktor Yanukovich each renewed initiatives to adopt the law on the Cabinet of Ministers, and the Rada adopted the government's bill in first reading on 16 November 2006.

¹² For comparison, on average during 2002-5, 39% of government legislation was enacted. Calculations by independent NGO Laboratory F-4 on the basis of official figures made available on the Rada website (www.rada.gov.ua), supplied to the author by Edward Rakhimkulov.

To bring into sharp relief how difficult inter-branch relations and Ukraine's fragmented political caucuses can impact on Ukraine's implementation of the Action Plan and broader integration into European structures, the process of adopting the legislation required for WTO entry provides an appropriate illustration. WTO entry (along with gaining market economy status) was considered a key precondition for Ukraine's further European integration and Yushchenko made entry in autumn 2005 a clear priority (Action Ukraine Report no.505, 20 June 2005). However, this necessitated the adoption of 21 priority laws by the end of July 2005, yet the government allowed insufficient time for these to pass through the usual legislative process. By June 20, less than a month before the end of the session, only 16 of these bills had been passed to the Rada for examination (although the president promised the other 5 would follow within a week). The Rada leadership expressed serious doubts about parliament's ability to adopt these bills in such a short period (Riabchenko 2005 and 2005a). Prime Minister Tymoshenko's response was to ask the faction leaders to adopt 14 economic bills in a single package, by-passing the normal legislative process of committee scrutiny, first and second readings (Action Ukraine Report no.507, 22 June 2005). Yushchenko supported the Prime Minister's move, stating: 'There is little to discuss [in the draft laws], they should just be approved' (Action Ukraine Report no.505, 20 June 2005). While the executive's haste in order to facilitate joining the WTO as soon as possible was understandable, it also intimated a disregard by its two most senior politicians for due process.

In the Rada, the situational position of factions with representatives in the government was highlighted as, perhaps unsurprisingly, faction leaders reacted badly to the request for 'package voting': the Socialists flatly refused while Kostenko's People's Party attempted to leverage some concessions for their various constituencies in exchange for compliance (Action Ukraine Report no.507, 22 June 2005) and the opposition of the Party of Regions and Communists successfully disrupted several plenary sessions by blocking the rostrum, brawling and refusing to vote on WTO legislation ostensibly in protest at around 30 members of the executive illegally retaining their deputy's mandates. However, such procedural wrangles merely served to obscure elements of broader opposition to the WTO (in some cases in principle, in others to specific pieces of legislation linked to their business constituencies) that ran across institutions and threatened to split the government coalition. For example, the minister of agriculture, socialist Oleksandr Baranivskyi, publicly opposed the government's WTO legislation relating to agriculture. Eventually 8 of the 14 economic bills were passed by the summer recess, including the crucial intellectual property bill which enabled the lifting of US sanctions. This became possible after the president belatedly engaged in the process, met with faction leaders and demonstrably supported the government by attending key plenary sessions, but in the aftermath the Prime Minister and speaker engaged in bitter recriminations over who was to blame for the WTO debacle (*Holos Ukrainy*, 14, 15 July 2005 and *Zerkalo Nedeli*, 16 July 2005). Yushchenko vowed that the remaining WTO legislation would be passed in autumn 2005. However, the impending parliamentary election campaign made factions less likely to compromise on legislation that might affect their business and electoral constituencies, so this task was only returned to in autumn 2006 under the

new government of Viktor Yanukovich, with the working deadline of WTO entry officially shifted to February 2007.¹³

Ineffective cooperation between the Tymoshenko government and the Rada was compounded by the large number of executive structures responsible for Euro-Atlantic integration and the unclear and contested division of competences between them. These included the Ministry of Foreign Affairs, the newly upgraded National Security and Defence Council, the Deputy Prime Minister for European Integration and the Presidential Secretariat (Kuzio 2005). In the absence of a law 'on the Cabinet of Ministers', 'on the president' and on other executive organs, it remained uncertain which bodies or officials parliamentary committees and the Rada leadership should be coordinating their activities with over the issue of WTO legislation. If we recall the aforementioned internal problems that factions and committees within the Rada have in coordinating *their* activities, then the fate of much of the WTO legislation during 2005 seemed overdetermined.

Conclusion and Prospects

Ukraine's legislative process is an important domestic factor in the process of European integration both in terms of fulfilling the Action Plan and in the broader sense. Although the Rada made significant progress in institutionalising the procedural basis for a functioning democratic parliament and in raising its legislative capacity through greater structuring via parliamentary factions and committees, serious impediments to effective law-making remained, which contributed to Ukraine's convoluted, patchy, occasionally contradictory and difficult-to-implement legal framework. The most fundamental problems were:

- Weakness of the party system, leading to a fragmented and clientelistic deputy corpus where factions lacked cohesion and promoted individualistic agendas
- The absence of a parliamentary majority, which rendered the legislative process unpredictable, leaving governments struggling to enact their policy programme even after its parliamentary approval.
- Inter-branch cooperation was *ad hoc* and relations were often confrontational, tendencies that grew out of the incentive structure created by the semi-presidential system.

On December 8 2004 parliament adopted changes to the constitution and a new fully proportional electoral law which together re-shaped the division of powers in Ukraine when they came into force in 2006. These changes ostensibly sought to address the problems listed above by creating incentives for the formation of a parliamentary coalition (the president is able to dissolve the Rada if it does not form one), which then appoints the government and can dismiss ministers unilaterally, so that ministers are more likely to respond to the Rada as their principal. Technically, these changes sought to replicate the incentive structures between the branches found in

¹³ Movement was made on adopting this legislation during the autumn 2006 session due to a complete about-face of the Party of Regions, whose role in disrupting the attempts of summer 2005 had been prominent. However, despite the existence of a formal parliamentary coalition, legislation was adopted by *ad hoc* coalitions of the Party of Regions and Socialists together with Our Ukraine and the Tymoshenko bloc.

parliamentary systems.¹⁴ Furthermore, the move to a 100% proportional representation electoral system on the basis of party lists aimed to strengthen the role of parties in the political system, which form the basis for the parliamentary coalition. In principle, more cohesive parliamentary caucuses were also encouraged by the inclusion of the so-called 'imperative mandate' into the constitution – deputies now lose their mandate if they leave the party faction on whose list they were elected.

However, early indicators suggest that the constitutional and electoral law changes may not resolve fully the problems they were intended to address, and indeed have created new problems. This is predictable to a certain extent as formal institutional arrangements have typically told us little about the actual structure and operation of power in Ukraine as the 'rules gap' between legal norms and elite behaviour has been substantial, making the outcomes of reforms difficult to predict (Whitmore 2004). Furthermore, the constitutional amendment bill 4180 was vague in key areas (Koliushko and Tymoshyk 2004) and required further enabling legislation, including specification of the parliamentary coalition and the long-overdue law on the Cabinet of Ministers, on the president and on other executive bodies. Such bills in Ukraine have always been the object of a struggle over the division of powers and thus difficult to adopt (see below). This leaves considerable room for manoeuvre in terms of the operation of informal practices and will also potentially prolong institutional uncertainty in Ukraine, and thus to fulfilling the political aspects of the Copenhagen criteria. More generally, transferring powers to the Rada will not necessarily make the authorities in Ukraine more responsible or accountable because a key mechanism for popular accountability in consolidated democracies is a stable party system, which has not yet emerged in Ukraine.

Early evidence suggests that the new electoral law may not do as much as hoped to encourage a more structured parliament. Formally, the new structure is much clearer: only five parties and blocs passed the 3% threshold in the March 2006 elections (Party of Regions, Bloc of Yulia Tymoshenko, Our Ukraine, Socialists and Communists), there were only five factions in parliament and deputies were not allowed to switch membership. However, as the 1998 and especially 2002 elections demonstrated party list seats can be bought, this practice was reportedly even more widespread in 2006 across all parties. A secure place on a party list cost an estimated \$2-8m (Paskhover, 2006: 32) and was easier to 'buy' than a constituency. So the change to party lists did not necessarily strengthen parties *per se* or reduce the number of 'deputy-entrepreneurs' seeking a deputy's mandate to further their own business interests, who in turn would be susceptible to executive pressure on their businesses to vote 'correctly'. Moreover, the imperative mandate included in the constitutional amendments is not likely to lead to more cohesive factions, just less disciplined ones when it comes to voting. Early indicators in the new parliament bear this out, as during key votes such as the first reading of the 2007 budget or the dismissal of Interior Minister Yuriy Lutsenko, despite a strict voting decisions neither Yulia Tymoshenko Bloc or Our Ukraine were able to hold the faction together. By December 2006, eight deputies had been expelled from their factions for breaking

¹⁴ It is worth remembering that the changes were pushed by Kuchma primarily as a means of reducing the impact of a potential presidential victory for Yushchenko and retaining power for his allies in parliament, thus minimising the impact of the 'orange revolution'.

party discipline, but either sat as independents or joined the coalition as despite the constitutional change, there was no clear mechanism to remove their deputies' mandates.

In the first instance, the new constitutional arrangements did not clarify the division of powers or bring greater stability to Ukraine's political system. Due to the fragmentation of political forces and uncertain rules of the game, it took over four months to form a coalition and a government. From August 2006 the 'anti-crisis coalition' of the Party of Regions, the Socialists and Communists supported a coalition government headed by Viktor Yanukovich. The new arrangement fundamentally altered the structure of principal-agent relations in the political system: as previously, the Prime Minister was subject to two principals – president and parliament – but after the constitutional reform, it was the parliament (or rather the coalition) that was decisive in the appointment and dismissal of both the government and individual ministers. This created powerful incentives for the government to work closely with the Rada¹⁵ and left the president isolated and struggling to assert his remaining prerogatives, including in the sphere of foreign policy (for example, see *Zerkalo Nedeli*, 23 September 2006). Nevertheless, the anti-crisis coalition was a rather heterogeneous body, and many bills were adopted by situational majorities where Our Ukraine or the Tymoshenko Bloc voted with part of the coalition. A case in point was the voting on seven bills required for WTO accession on November 2 2006 (see roll-call votes on www.rada.gov.ua).

At the same time, the gaps in the new rules rapidly engendered inter-branch conflict. Although such conflict has been a defining feature of Ukrainian politics, the new constitutional rules shifted the dimension from president-parliament to president-government, with the latter backed by the coalition. As well as the aforementioned struggle over the prerogative to form foreign policy, the president and prime minister became embroiled in disagreements over the role of the prime minister's counter signature on presidential decrees, over the discretion of the president in accepting no-confidence votes in governors taken by oblast councils and over the right of the parliament to dismiss the foreign and defence ministers, who were appointed by the president. Attempts to adopt enabling legislation to clarify these issues, in particular a law on the Cabinet of Ministers, embodied this conflict with both president and government each initiating their own draft laws that attempted to frame the government's operation to their own advantage. Consequently, the chances for this law to be enacted remained small, but during autumn 2006 the debate about 'completing' the constitutional reform with either further changes to the constitution or by overturning the changes of 2004 gained momentum.¹⁶ This meant that uncertainty about Ukraine's political system was likely to continue in the short to medium term.

¹⁵ For example, this was immediately visible in plenary sessions, where the government lobbies in the Rada were well-staffed on a daily basis, which had often been far from the case in previous convocations (author's observations, 2000, 2003, 2006).

¹⁶ During autumn 2006, the Ukrainian national television news and press were full of items concerning the need to either overturn or 'improve' the constitutional reforms. For example, see *Den*, 3 November 2006 and *Ukrains'ka Pravda*, 3 November 2006 and 8 November 2006.

Yet Ukraine's altered political landscape after the 'orange revolution' is a source of possible optimism. Lines of accountability should be enhanced under the new arrangement as it is clearer to the electorate who is responsible for policy decisions (i.e. the government and the parliamentary coalition). The new constitutional framework could in the longer term facilitate the realisation of Bagehot's 'efficient secret' of a strongly linked parliament and government that engenders more effective and predictable law-making. Until then, the legislative process and the relatively low level of parliamentary institutionalisation present significant challenges for the implementation of the Action Plan and other legislation that will facilitate Ukraine's greater integration with Europe. Overcoming them will require a commitment to clarify the responsibilities between executive organs and between the branches of power. At the same time, the EU can contribute to improving the quality of bills by providing increased technical support to the government and parliamentary committees on the preparation/harmonisation of legislation along the lines of that offered to EU candidate states (Ukrainian Monitor 2004). Plans to re-launch and substantially expand the activities of UEPLAC should be welcomed in this light.

References

- Apparat of the Verkhovna Rada, (2006), *Verkhovna Rada Ukrainy: Infomatsiynyi Dovidnyk*, Kyiv: Parlaments'ke Vydavnytstvo.
- Bidai, V., Frensch, R. and Leschenko, N. (2004), 'VAT Replacement or Better Administration?', *Osteuropa-Institut München Kurzanalysen und Informationen* No.20, September 2004, pp.1-11.
- Christensen, R., Rakhimkulov, E. and Wise, C (2005), 'The Ukrainian Orange Revolution brought more than a new president: What kind of democracy will the institutional changes bring?', *Communist and Post-Communist Studies*, 38, pp.207-230.
- Darden, K. (2001), 'Blackmail as a tool of state domination: Ukraine under Kuchma', *East European Constitutional Review*, 10(2-3), 2001, pp.67-71.
- Hellman, J., Jones G., and Kaufman, D. (2000), *Seize the State, Seize the Day: State Capture, Corruption and Influence in Transition*, World Bank Policy Research Working Paper no.2444 (September 2000).
- Ishiyama, J. and Kennedy, R. (2001), 'Superpresidentialism and Political Party Development in Russia, Ukraine, Armenia and Kazakhstan', *Europe-Asia Studies*, 53(80), pp.1177-91.
- Judge, D. (1995), 'The Failure of National Parliaments', *West European Politics*, 18(3), pp.79-100.
- Koliushko, I. and Tymoshyk, V. (2004), 'Have you read the bill 4180? A critical assessment of Ukrainian political reform', *Ukrains'ka Pravda*, 19 December 2004.
- Kuzio, T. (2005) 'Washington concerned Ukraine may not join WTO this year', *Eurasia Daily Monitor*, 2(116), 15 June 2005.
- Linz, J. (1990), 'The Perils of Presidentialism', *Journal of Democracy*, 1(1), pp. 51-69
- Lymar, Iu (2005), 'Vins'ky, I.: Tymoshenko vziala nashi lozungi, ikh ispol'zuet i sumela postaviti ikh v piar-ruslo', www.glavred.org.ua, 27 June 2005.
- Lytvyn, V. (2003), 'Speech at the opening of the third session of the Verkhovna Rada of the fourth convocation', www.rada.kiev.ua/Lytvyn-Speech-Feb03.htm.

- Mainwaring, S. (1992) 'Presidentialism in Latin America' in A. Lijphart (ed.), *Presidential versus Parliamentary Government*, Oxford: Oxford University Press, 1992, pp.111-7.
- Norton, P. (1990), 'Parliaments: A Framework for Analysis', *West European Politics*, 13(30), pp.3-9.
- Paskhover, A. (2006), 'Vlast', deneg', *Korrespondent*, 18 November 2006, pp.28-33.
- Pavlenko, R (2002), *Parlaments'ka vidpovidal'nist' uriadu: svitovyi ta ukrains'kyi dosvid*, Kyiv: KM Akademia.
- Protsyk, O. (2003), 'Domestic Political Institutions in Ukraine and Russia and their responses to EU enlargement', *Communist and Post-Communist Studies*, 36, pp.427-442.
- Protsyk, O (2003a), 'Troubled Semi-Presidentialism: Stability of the Constitutional System and Cabinet in Ukraine', *Europe-Asia Studies*, 55(7), pp.1077-1095.
- Protsyk, O. and Wilson, A. (2003) 'Centre Politics in Russia and Ukraine: Power, Patronage and Virtuality', *Party Politics*, 9(6), pp.703-27.
- Rakhmanin, S. (2005), 'Administrative Deadlock', *Zerkalo Nedeli*, 19-25 March 2005.
- Riabchenko, V. (2005), 'Parlaments'ka bil'shist' – buty chy he buty?', www.deputat.org.ua, 17 June 2005.
- Riabchenko, V. (2005a) 'Martiniuk povidomiv, shcho stanom na s'ohodni do Rady nadiishlo blizko 20 zakonproektiv iaki stosuut'sia chlenstva u SOT', www.deputat.org.ua, 17 June 2005
- Sweeney, S. (2005), *Europe, the State and Globalisation*, Harlow: Pearson.
- Syrotiuk, Iu (2005), 'Velykyi parlaments'kyi peredil: Syl'a prava chy pravo syl'y', www.deputat.org.ua, 19 May 2005.
- Syrotiuk, Iu (2005a), 'Parlaments'ko-urjadova spivpratsia v umovakh vidsutnosti bil'shosti: na viini iak na viini', www.deputat.org.ua, 6 September 2005.
- Ter'okhin, S., (2006) interview with the author, 23 November 2006.
- Tomenko, M. (2005) 'Iakyi parlament potriben Ukrainy?', *Ukrains'ka Pravda*, 21 June 2005.
- Ukrainian Monitor, 'EU-Ukraine Action Plan: Unresolved Dilemmas', Policy Paper No.4/2004, <http://foreignpolicy.org.ua/eng/papers/index.shtml?id=2820>
- Verkhovna Rada (1994), *Polozhenie pro deputats'ki hrupy (fraktsii) u Verkhovnyi Radi Ukrainy* (11/94), 13 May 1994, published in *Vidomosti Verkhovnoho Rady Ukrainy*, 1994, 21, pp.607-610.
- Wilson, A. (2005), *Virtual Politics: Faking Democracy in the Post-Soviet World*, Yale University Press, 2005.
- Whitmore, S. (2004), *State Building in Ukraine: The Ukrainian Parliament 1990-2003*, L: Routledge, 2004.
- Whitmore, S. (2006), 'Challenges and Constraints for Post-Soviet Committees: Exploring the Impact of Parties on Committees in Ukraine', *Journal of Legislative Studies*, 12(1), pp.32-53.

