THE PROCESS OF LIBERALIZATION OF FOREIGN AND DOMESTIC POLICY: THE CASE OF UKRAINE – EUROPEAN UNION ENERGY COOPERATION

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Summary. This article is devoted to the analysis of the liberalization process on the example of Ukraine – European Union (EU) energy cooperation. Due to complexity of these processes, the main idea of the article is to demonstrate how some general international requirements may be completed by the state in a process of cooperation and domestic liberal transformations. Liberalization is presented as an integral part of the effective cooperation between the counterparts in conditions of international regime existence. Thus, this process is connected to the foreign policy of the state, as well as to the domestic reforms and transformation that may create possibilities for compliance with the international regulations. The example of energy cooperation is quite representative, since the tendencies of neoliberalization processes and establishment of the market rules can be observed in the European Union’s energy cooperation policy nowadays. On the other hand, cooperation with Ukraine is quite complicated at the current stage, however, this state has already started the implementation of the EU requirements in the sphere of energy cooperation. Therefore, analysis of this process may demonstrate some particular modern aspects of liberalization processes in East-Central Europe in current geopolitical and economic conditions.

Keywords: liberalization, neoliberal institutionalism, third energy package, EU foreign policy, Ukraine, transformations.
The process of liberalization of state’s foreign and domestic policy is an integral part of an effective cooperation in conditions of the European international system of common rules and regulations which creates strict obligations for all the counterparts. This issue is extremely important for exploration of the possible ways to increase cooperation between the European Community and former Soviet Union (FSU) states that are involved in deep partnership and aiming at further integration with the European Union (EU). On the other hand, the cooperation between Ukraine and EU in the sphere of energy is one of the most relevant and actual problems, which demonstrates the necessity of implementation of the liberal policy since the parties have already created a common framework for cooperation in this field (mainly based on the Association Agreement (2014) and Treaty establishing the Energy Community (2011)). Furthermore, this cooperation gives possibility to diversify the energy supplies of Ukraine and modernize its one of the largest former Soviet energy systems. These issues are extremely urgent for the successful policy in conditions of economic, security and military crisis and further integration with the European Community. Thus, the main aim of this paper is to explore the process of energy cooperation between Ukraine and the European Union at the level of state and international organizations through the prism of liberal transformations in foreign and domestic policy of Ukraine. Some other particular goals can be also pointed out in the paper: the analysis of theoretical background and defying the most appropriate narrow approach; exploration of the previous bilateral Ukraine – EU agreements and attempts of the Ukrainian Governments to comply with the commitments at the domestic level.

A precise exploration of the problem shall include the definition of a particular sub-theory, taking into account the dominant Neoliberal theories of international relations, since the classic Liberal theoretical background has a limited explanatory power due to modern innovations of the EU foreign policy in relations with the states of “Eastern partnership” and other FSU countries, as well as domestic changes in the European Community. Moreover, the overview of
Ukraine – EU cooperation in the sphere of gas, oil, nuclear and electrical energy trade, production and transportation as well as relevant changes in the Ukrainian legislation and reformation of the executive authorities are another important aspects of the problem. All these aspects of the analysis are aimed at demonstration of the interrelation between the liberalization of the state policy and compliance with the international standards for cooperation in the sphere of energy.

Finally, recent geopolitical and global economic aspects make this case quite different from the previous examples of liberal transformations in Central and Eastern Europe. Therefore, the case of cooperation between Ukraine and EU may be also important for further studies of liberalization processes in FSU states at the current stage. These aspects make the problem important for studies of the modern EU neighbourhood policy as well.

THEORETICAL APPROACH TO THE EU POLICY AND COOPERATION WITH THE FSU STATES

The theoretical approach to the exploration of the EU – Ukraine cooperation in the sphere of energy is quite a complicated issue to be defined clearly. The European Union as an international actor is presented by the number of states and interdependent economies that still preserve own goals in foreign policy and relations with other actors. However, recent reforms in the EU energy legislation (adoption of the Third Energy Package)\(^1\) and liberalization policy aiming at creation of the common free and integrated market, as well as other European Community’s principles of the international policy indicate the existence of a common position in internal policy and relations with foreign counterparts based on neoliberal approaches. For instance, the provisions of the Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks (Article 1) defines the main goals of the new legislation to be implemented in order to:

- set non-discriminatory rules for access conditions to natural gas transmission systems taking into account the special characteristics of national and regional markets with a view to ensuring the proper
functioning of the internal market in gas; b) set non-discriminatory rules for access conditions to liquefied natural gas (LNG) facilities and storage facilities taking into account the special characteristics of national and regional market; c) facilitate the emergence of a well-functioning and transparent wholesale market with a high level of security of supply in gas and providing mechanisms to harmonize the network access rules for cross-border exchanges in gas. The other documents of the Energy package also maintain the idea of liberalization of the European Communities energy regulations and markets.

On the other hand, there are still some critical views on the issue of liberalization process under the provisions of the Third Energy Package. For instance, Andrei Belyi from the Tartu University suggests that common EU energy policy and legislation greatly centralize the regulatory policy of the states and deprive the internal energy market of possibilities for foreign investment, since the Energy Package requires compliance with its measure especially in the sphere of gas market investment. However, such limitations of the EU legislation do not deny the neoliberal framework of cooperation and market functionality, but rather aim at further integration of the EU energy market and extension of the liberal policy for cooperation with the foreign counterparts. In the case of EU – Ukraine energy cooperation, such peculiarities are even more focused on neoliberal transformations and equal principles for partnership.

Finally, the EU approaches towards the functionality of the internal energy market, and cooperation with the third parties were fully expressed during the establishment of the Energy Community (international organization of the EU states and some other European countries aimed at development of common legal framework and liberalization of energy markets). The Treaty establishing the Energy Community determines the main common tasks and policies of the member-states. The adopted regulations are common for all the members of Energy Community (not only for the European Union states), thus, the neoliberal principles of energy cooperation remain to be mandatory for the participants of the agreement. Noteworthy that Ukraine joined the Energy Community in 2011.
However, liberal approach also has some limitations in case of EU – Ukraine energy cooperation, mainly because the official policy of many Ukrainian Governments was far from the neoliberal model. For instance, quite realistic approaches were implemented in Ukrainian – Russian relations in the sphere of energy, where the main actors remained to be states (state-owned entities) or companies owned by business-administrative groups which still sought their personal interests. Basically, realistic policy was officially declared by the second President of Ukraine Leonid Kuchma. For a long period of time, the idea of flexible international cooperation focused on achieving gains from different actors had been preserved by the Ukrainian authorities. In this respect, the energy cooperation in order to create a “bridge” between the East and the West was one of the main aims declared by the Ukrainian foreign policy-makers and Government (usually determined as a “multivectoral” policy). On the other hand, the Ukrainian foreign policy had not been stable until the recent geopolitical events. Eventually, the position of European Union was also quite changeable in some case of energy cooperation with Ukraine (one of the most prominent examples is Ukraine – Russia gas conflict in 2009, when some of the involved EU officials recognized that the problem is rather geopolitical than purely commercial). These factors can be also explained by the importance of particular member-states’ positions in such cases.

Nevertheless, the realistic approach itself seems to be weak for general exploration of the EU – Ukraine energy cooperation. Even though Ukraine – EU energy cooperation has some elements of realism, it does not satisfy such an important criteria of realism as an existence of anarchic system without a single governance, which is recognized as an integral part of the theory of Realism. Obviously, European Union takes all the important decisions for this cooperation collegially and in accordance with its regulations and rules of other international organizations (like the Energy Community, etc.). This aspect deprives some particular states or groups of states within the EU of opportunity to determine the policy towards Ukraine and act in their own interests. Furthermore, Ukraine has already
been accepted to some common European organizations and legal frameworks (Association Agreement, Energy Community), which makes it a part of common decision-making and regulations. For instance, the Association Agreement sets common procedural norms for dispute settlement in case of disputes on energy-carriers trade and transit between the EU state (states) and Ukraine. Thus, nowadays, Ukraine and EU act in a well-organized system of relations with some common norms, which leaves very limited possibility for anarchy.

Realistic approach might be more relevant from the general point of view of the Ukrainian foreign and domestic policy. However, Ukraine – EU energy relations is a very specific sphere where Ukraine has to adopt European regulations in order to participate fully. Unsuccessful period of Ukraine – EU energy relations after the Orange Revolution (see in the next sub-chapter) indicates that realistically-based policy does not provide opportunities for sufficient gains in cooperation with the EU without the accession to common international neoliberal system and relevant change at the domestic level. On the other hand, this cooperation cannot be described as representative in terms of liberal approaches due to a lack of relevant domestic reforms in the energy sphere. Neoliberal theory is very important for the general understanding and further logic of these transformations. Therefore, neoliberal approaches of the European Union are used in this paper as a “road map” for further Ukrainian transformations and possible options for cooperation.

As it was mentioned, the modern European Union neoliberal position on energy cooperation and policy was defined in numerous legal sources and current policy. In the context of particular sub-theory, such approaches are mainly defined by the Neoliberal Institutionalism theory especially in the paradigm of international regimes which were defined by Robert Keohane as “implicit or explicit principles, norms, rules, decision making procedures around which actor’s expectations converge in a given area of international relations”. In this regard, the implementation of liberal policy in the sphere of cooperation is also compulsory for foreign counterparts. Thus, the
implementation of the mentioned requirements is also compulsory for Ukraine since it joined the Association Agreement.

However, the neoliberal institutionalism approach can have sufficient limitations in case of the EU – Ukraine energy cooperation. Except a delayed liberalization of Ukrainian economy and, in particular, energy sphere, there are some other aspects why this theoretical approach is sufficiently restricted in our case. For instance, the significant transformations of the soviet-type and centralized national economy to the market one did not happen in Ukraine after the fall of the USSR (Union of Soviet Socialist Republics). Further transformations and privatization process did not lead to the emergence of a free market with a great participation of foreign investment similarly to the Central European states and Baltic republics. In contrary, a great number of industries related to energy sphere got under the control of so-called Business-administrative groups (BAGs); on the other hand, state also preserved its control over lots of the industries and companies (mainly, the National Stock Company of “Naftogaz” and its subsidiaries). These issues make the analyses of energy relations between the EU and Ukraine from the perspective of Neoliberal Institutionalism approach quite complicated, since most of the non-state actors in the sphere of energy in Ukraine are presented by the so-called oligarchic BAGs, which act in unequal market conditions and are still much linked to the state-authorities and policy-makers. On the other hand, the cooperation between European Union and Ukraine is mostly presented at the governmental level, whereas there is no sufficient cooperation at the level of private legal entities. Nevertheless, the analysis of possible ways to increase the competitiveness of the Ukrainian energy market and to attract foreign companies for participation in it is still very important.

Despite all these difficulties, the analysis of the peculiarities and perspectives of EU – Ukraine energy cooperation indicates that further exploration of this topic shall be conducted according to the neoliberal institutionalism approach. Neoliberal institutionalism approach is mainly focused on international cooperation that is based on mutual rules and regulations aimed at the establishment of the
common regime in order to achieve the main aims of every actor involved in the cooperation. In the case of the EU – Ukraine energy cooperation, the general framework of the international regime has already been created (mainly after the conclusion of the Treaty establishing the Energy Community). However, the implementation of the provisions for cooperation remains to be unresolved issue. Even though the energy cooperation with the European Union has started a long time ago, Ukrainian foreign energy policy has not been concentrated on deep cooperation with the Western counterparts and was mainly focused on relations with Russia. Nevertheless, nowadays Ukraine is returning to the European cooperation very actively. Due to these aspects of a current Ukraine – EU energy cooperation, the problem is to be explored from the perspective of the neoliberal institutionalism in this paper.

OVERVIEW OF UKRAINE – EU ENERGY COOPERATION

The cooperation between Ukraine and European Union in the sphere of energy is very connected to the general framework of bilateral economic and political partnership. This process has started at the beginning of Ukrainian independent state-building and endured a great number of changes since that time. The dynamic of the cooperation greatly depended on the political situation in Ukraine as well as on geopolitical situation in the region and global market conditions.

One of the first attempts to establish a sustainable cooperation were taken following the conclusion of Partnership and Cooperation Agreement between the European Communities and their Member States and Ukraine in 1994 (which came into effect in 1998). The provisions of the agreement are devoted particularly to energy cooperation issues. Partnership and Cooperation Agreement set general requirements for modernization of the Ukrainian energy policy towards the common strategy of the European Community. Particularly in Ukrainian case, it was rather an attempt to encourage transformations of the post-Soviet energy system to a market one in
order to increase possibilities of trading and cooperation. However, this non-legally-binding agreement neither prompted further rapid changes in Ukrainian energy policy nor increased the dynamics of cooperation with the EU. The process of transition from the Soviet authorities to the new independent Ukrainian Government was quite complicated and devoid of real possibilities and ideas from new governance in conditions of independence. Being not energy sufficient state, Ukraine obtained a great industrial and energy complex as well as big energy consumers (factories of chemical, steel and other industries). All these factors and an absence of reforms’ and energy diversification’ strategy led to a greater dependence on cooperation with Russian Federation and former-Soviet republics in Central Asia (mainly Turkmenistan), and that was far from the Neoliberal market norms.

The process of state energy cooperation in 1990s was mainly marked only by conclusion of the Partnership and Cooperation Agreement. New changes in the Ukrainian energy policy began only after the political shift in 2004–2005. Political reorientation of post-Orange Revolution towards the EU opened greater possibilities for cooperation and modernization of the legal framework. One of the first steps towards increasing the cooperation’s dynamics was taken within the framework of Action Plan of European Neighbourhood Policy and relevant agreement “Ukraine – European Union” which was concluded in February of 2005. On the other hand, the accession of former-socialist states that have a border with Ukraine (Poland, Hungary, and Slovakia) to the European Union in 2004 also greatly accelerated the cooperation between the European Community and Ukraine, since the Ukrainian energy transportation system started the direct supply to the EU territory.

The Action Plan adopted in 2005 in many aspects repeated the provisions of previous agreements concluded between the EU and Ukraine. The main aim of free market development was preserved in the Agreement of 2005. However, Action Plan also provided further integration with the EU energy market and adoption of common regulations for the parties. Some scholars estimate this kind of
bilateral agreements between the EU and non-member states (similar Action Plans were concluded with Moldova, Georgia, Armenia, etc.) as not-beneficial for one of the parties. For instance, Katja Yafimava suggests that Action Plans did not prescribe clear profits for adoption of the EU regulations and policy in case of Ukraine and Moldova.\textsuperscript{12} However, this assumption does not take into account that both actors (the EU and contracting states) are presumed to have benefits in long-term perspective not just from accepting the propositions of the more economically-developed actor (the EU) but from the process of cooperation itself, when the usage of more economically-developed actor’s rules is the only way to establish equal cooperation and competition. This idea is related to the general Neoliberal approach of cooperation, which is based on accepting the common rules and framework for cooperation in order to obtain mutually-beneficial gains. Furthermore, the implementation of Action Plan was mainly aimed at creating the possibilities for gradual accession to the European Community as an international institution based on common market regulations.

The parties continued mutual cooperation on the implementation of the Action Plan in following years. Thus, the Memorandum of Understanding and Cooperation in the field of energy was later concluded in December of 2005. Basically, memorandum repeated most of the Action Plan’s aims, including market and pricing reforms, energy security cooperation, technical assistance and others.\textsuperscript{13} However, the memorandum also determined a number of mutual programmes and projects to be completed in framework of previous agreements and general EU programmes for partnership with Ukraine and former-Soviet states (mainly TACIS project). Besides that, Ukraine and the EU agreed on creating a working group aimed at implementation of aims of Action Plan and memorandum, and a mutual group on hydrocarbons issues. The gradual integration towards the Energy Community was another important aspect of the memorandum since it gave a real possibility to join the international institution which has a direct relation to the EU. Later, the desire to join the Energy Community (as an observer, but with a possibility of a full membership) was expressed in Common Statement of the EU – Ukraine Summit
In general, the dynamics of mutual coordination in the implementation of Action Plan and energy cooperation projects remained quite active at the beginning of the process, for instance, parties decided on creation of the main working groups by the end of 2006. However, the process was greatly dependent on the domestic political situation and stability in Ukraine as well as on the geopolitical challenges. Consequently, the cooperation worsened in aftermath of the beginning of political crisis in Ukraine and energy conflicts with the main supplier state – the Russian Federation.

The energy relations between Russia and Ukraine sufficiently deteriorated just after the Orange Revolution and official declarations of European integration by the new Government. Nevertheless, the position of the EU remained to be in favor of Ukraine in most of the economic conflicts. For instance, the reduction of gas supply to the European consumers based on Russian accusations of stealing gas by Ukrainian party in 2006 was mostly perceived by the European countries as “politically motivated”.

However, in case of energy crisis in 2009, the reaction of the European leaders and, particularly, political leadership of the European Union was quite different from the statements in 2006. The European Commission President Jose Manuel Barroso in this case directly accused both Russian and Ukrainian parties of a “lack of trustworthy” and “disrespect of the agreements”. On the other hand, the crisis of 2009 and its impact on the European states led to encouragement of new projects aimed at modernization of the Ukrainian gas transmission system (GTS).

The political instability during the pre-election period and conflicts between the pro-Presidential and pro-Prime-Ministerial political forces in Ukraine prevented from the implementation of the ambitious energy project. The situation changed after the Presidential elections in 2010 when pro-Russian political forces came into the Government and a significant shift towards the convergence with Russia happened in Ukrainian foreign policy. On the other hand, a new Ukrainian political leadership did not deny agreements and integrational projects that were established by the previous government. For instance, the accession to the European Energy Community
remained to be one of the most important aims in foreign energy policy of the state.

Eventually, Ukraine received a full membership in the European Energy Community and ratified the agreement in 2011. The agreement opened new possibilities for Ukraine to join the common institution with the EU states and harmonize its domestic market conditions with the requirements of the European Community. Very important was that this agreement suggested to create a single market for all the member states removing the border-taxes on energy-products’ export and import and creating a non-border regime for transportation.\textsuperscript{17} No less important were the provisions on implementation of the principles of the European energy legislation at the domestic level. The agreement particularly required implementation of the Directives 2003/54/EC, 2003/55/EC, 1228/2003/EC (on the domestic market of electricity, gas and access to the cross-border electricity transportation)\textsuperscript{18}, the mentioned directives were repealed by the Third Energy Package’s documents (Directive 2009/72/EC, Directive 2009/73/EC and Regulation No 714/2009 respectively). All these elements of the Energy Community Treaty were aimed at further liberalization of the Ukrainian domestic energy market and implementation of the common principles for cooperation and energy trade. It was an important step from the Neoliberal Institutionalism perspective, since the framework of agreement expresses the general liberalist idea of creation of the international regime and regulation based on idea of mutual benefits with the respect for every actor’s interest.\textsuperscript{19} However, the success of the cooperation greatly depended on the domestic reforms and compliance with the commitments by Ukrainian Party.

The Ukrainian Government represented by the Party of Regions (chaired by the Prime-Minister Mykola Azarov) expressed its willingness to work on further implantation of the Agreement principles. Nevertheless, the previous Government did not hold the policy of gradual liberalization which was an integral part of cooperation. Most of analysts considered the approach of Ukrainian Government to be focused rather on receiving short-term benefits than on providing a course of reforms necessary for sustainable development of the
national energy market. For instance, in his research on the Ukraine’s first year in the Energy Community, Ihor Lyubashenko from the Polish Institute of International Affairs concluded that the main goal for the Ukrainian leadership was a support from Energy Community and the EU in gas relations with Russian Federation aimed at protectionism from the influence of Russian capital in the national energy market dominated by local business-administrative groups (BAGs) and preventing from Russia developing the “South Stream” project. These assumptions were mainly proved by the official discontents of the Ukrainian authorities with the participation in Energy Community. In general, Viktor Yanukovych accused the Energy Community of a lack of support in competition with Russia in the sphere of gas transit. Later, the Ukrainian political leadership officially expressed their intentions to leave the Energy Community. Remarkably, the announcement was expressed at the very beginning of political crisis and revolutionary events in Ukraine. Eventually, the denial to sign Association Agreement with the EU indicated the real shift of the Ukrainian foreign policy at the end of 2013.

However, the new Ukrainian Government (chaired by Prime-Minister Arseniy Yatsenyuk) restored the negotiations on Association Agreement with the European Community. The Association Agreement was one of the most important steps for integration and market development of the Ukrainian energy complex, since the participation in agreement allowed to conduct energy trade without any tax-barriers and to operate the energy market of Ukraine in the framework of European norms and regulations. It also created a new mechanism for trade and transit dispute resolution procedure based on common institutions and equal rules for the EU and non-EU states that participate in the agreement. Finally, the Association Agreement was signed by Ukraine in June of 2014 and ratified simultaneously with the European Parliament in September, 2014.

The Section IV of Association Agreement, which sets rules of trade cooperation, establishes the regulations on energy trade as well. The regulations set clear market rules for pricing procedure (determined solely by supply and demand), while the regulated price is
allowed only in cases of mutual benefit and transparent methodology of calculation.\textsuperscript{23} All the border-taxes and quantitative restrictions as well as dual pricing were removed by the agreement. Issue of the cooperation on energy infrastructure was defined in the agreement as one of the priorities, thus the parties shall not make any obstacles for the common usage of such infrastructure. Parties also agreed on the issue of unauthorized selection and interruptions of the transit. This aspect is extremely important for the further possible disputes on energy transit with a participation of the third party. The lack of legal definition of the transit state’s responsibilities in case of interruption from the supplier state led to numerous disputes previously (for instance, during the gas crisis in 2009). Finally, Ukraine took a commitment to establish fully independent regulatory authority in order to guarantee an effective competition and market’s functionality when the operators can appeal against any decisions of the regulator. No less important was the recognition of supremacy of the Energy Community Treaty in case of contradictions with the Association Agreement’s regulations. This norm emphasized the importance of previous Ukraine commitments and obligations to liberalize domestic energy market, thus the adopted strategies did not lose their legal power and shall be taken into account in a process of further cooperation between the European Union and Ukraine.

Nowadays, the energy cooperation between the EU and Ukraine got the highest stage since the beginning of 1990s. The social and geopolitical peculiarities of today’s situation in Ukraine approved the inevitability of liberalization in order to save the state. Ukraine has already been accepted to the European common strategy for the cooperation, which can be estimated from the neoliberal perspective as an accession to the international regime that creates a focal point around which expectations of actors converge.\textsuperscript{24} Further success of the cooperation depends on the implementation of domestic reforms and, particularly, the market pressure on Ukrainian policy towards the reforms.\textsuperscript{25} On the other hand, common Ukraine – EU projects in the sphere of energy are also extremely important for the process of the implementation of the common policy and normative framework
of multilateral cooperation. Indeed, the implementation of common projects is the best way to form a particular policy derived from the international European Communities regimes principles, which is an important part of state’s liberalization according to Neoliberal Institutionalism perspective.²⁶ International commitments, particular state policy and its implementation, constitute the gradual process of liberalization. Therefore, the analysis of the previous and modern domestic policy, legislation changes and reforms of the executive branches in order to comply with the EU regulations in the sphere of energy cooperation are extremely important for the analysis of the problem.

**DOMESTIC POLICY AND REFORMS IN ORDER TO COMPLY WITH THE EU REGULATIONS**

The modernization of energy sector in Ukraine has started since the beginning of state’s independence. Unfortunately, all the attempts to reform the system were quiet unsystematic in approaches exercised by all the Governments of Ukraine. An active Ukraine participation in foreign cooperation and international commitments played an important role for stimulation of the process. Nevertheless, Ukraine failed to perform its main obligations in order to implement the European Community’s principles of energy policy despite some of the commitments were fully or partly fulfilled by the Ukrainian authorities.

However, a new stage of Ukraine – EU cooperation after the Orange Revolution and the relevant international commitments of Ukraine required further changes in the national legislation, especially on the eve of the accession to the Energy Community. In fact, the visible changes had started only before the accession, despite the most of obligations were formulated even in the Action Plan (2005). Thus, the Ukrainian Parliament (Verkhovna Rada) adopted a new Law On The Principles of The Natural Gas Market’s Functioning only in 2010²⁷. The law provided more independence for enterprises of gas transmission and gas production, established rules of gas supply and
delegated the pricing procedure for consumers to the gas suppliers (according to the particular agreements), ensured an equal access to the GTS. Nevertheless, new regulations on energy market mostly remained incomparable with the requirements of EU and Energy Community. Basically, the Law on the Natural Gas Market did not define the transparent and market-based pricing procedure, since in most of the cases it was delegated to the national regulatory body without any further prescriptions and requirements towards the pricing methodology. The unbundling procedure was restricted to the organizational separation, while the measures of transmission operator’s independence (restrictions on the other enterprises management, appointment of the authorities’ issues, etc.) were not legally prescribed.

Thus, the adopted changes neither brought a real independence for the operator nor established market rules in the energy sphere. For instance, the unbundling procedure for the gas transmission enterprises appeared to be rather a formality than a real reform. The enterprise of “Ukrtransgaz”, which was a subsidiary of the “Naftogaz”, was reorganized into a Public Joint Stock Company with financial independence and the state ownership on the controlling stake according to the Order of the Cabinet of Ministers in 2012. It also gave company a status of a “state commercial enterprise”. However, according to the Ukrainian legislation and particularly the Commercial Code of Ukraine, such type of enterprises is greatly dependent on the central executive authorities. In fact, formally provided independence of the enterprise cannot be completed due to the legal restrictions. Therefore, initiated process of unbundling did not meet the main aims. The unsuccessful attempts to reform national energy sector were generally predetermined by the unreadiness of political leadership to start a gradual reformation based on the liberal principles.

The lack of political will to continue this process resulted in further “oligarchization” of the Ukrainian energy sector and restrained it from involvement of the foreign investment and a productive cooperation with the EU. Only dramatic revolutionary events and security crisis in Ukraine changed the perspective of a new Ukrainian
Government. The recent changes in the sphere of gas market’s regulations indicated a progress towards the compliance with the standards of Energy Community and EU.

A new Law on the Natural Gas Market was adopted by the Ukrainian Parliament in March of 2015 and supposed to take effect only in October, 2015. The law provides requirements more related to the ones of Energy Community, approaches towards the gas market and eliminates some of the previous legislation’s shortcomings. The definitions of all the international commitments of Ukraine is especially important aspect of this law. Thus, the prescribed legal framework for the gas market functionality includes the norms of the Energy Community Treaty and the Association Agreement, practice of the Court of Justice of the European Union, European Commission and Energy Community’s Secretariat (Article 2)\(^2\). Law also defines the operators of transmission, distribution, LNG storages and general gas storages, which act on their responsibility with the licensing by the Regulator. The authority of the Regulator is also defined with the regard of international commitments, for instance, the methodology of pricing procedure is compulsory for transmission, delivery and storage tariff-making, the Regulator shall monitor the competitiveness of the gas market and take measures for its maintenance, provide a wide control on the operators’ duties, including the international obligations on cooperation, etc. The law also suggested a free pricing for the gas delivery (according to the agreements between the provider and consumer). The fixed price can be applied only in cases when the main provider declared bankrupt or leaved the market and the Government appointed a so-called “provider of the last resort” («постачальник останньої надії») on the basis of competition between companies.

The issue of independent transmission operator was not defined unambiguously. The Law on the Gas Market provides two possible variants for establishment of the independent transmission operator. The first variant (OU) mainly suggests to delegate the functions of independent transmission operator to the owner of the gas transmission system (GTS), while the performance of gas production or gas
delivery functions is inadmissible and the participation of the operator’s authorities in the management and control of the gas production or delivery undertakings is forbidden as well. On the other hand, the second variant proposes to create an independent system operator (ISO model) separated from the GTS owner organizationally but related to it in the sphere of common financing projects and attracting investment (the GTS owner is responsible for investments).30 Despite similarities with the provisions of Directive 2009/73/EC, this aspect of the Ukrainian Law sets less choices for possible model of transmission system operator. The directive provides a free choice for each state to decide on the model (OU or ISO if the transmission system was subordinated to a vertically integrated structure before the September, 2009).31 While the Ukrainian legislation restricts the possible choice of ISO if the system is owned by the vertically integrated structure or was owned before the October, 2011. It results in possibility to implement a transmission system operator only by ISO model in a current situation.

In general, a new Law on the Natural Gas Market makes a progressive step forward towards the compliance with the Energy Commission and EU requirements. However, the sufficient changes in the national energy sector and particularly gas market might be possible only after the systematic modernization of the related authorities, for instance, the Regulator which implies further changes in the normative framework including the acts of the executive authorities. Some unclear aspects of the law (issues of the transmission operator, etc.) shall be excluded after the beginning of privatization and other reforms.

The market of electricity is another important field where the reforms shall be conducted. This part of the Ukrainian energy sector remained unreformed for a long time. Only in 1998, the model based on wholesale market of electricity was established.32 Most of analysts estimate this model as not very effective from the perspective of a free market approach.33 However, the conclusion of Energy Community Treaty and related international commitments accelerated the modernization of electricity market in Ukraine. At the end of 2013,
the Ukrainian Parliament adopted a new Law on the Principles of Functioning of the Electricity Market of Ukraine. The law established a new model for the electricity market of Ukraine. Thus, the electricity market consists of the following components: market of bilateral contracts; “day ahead” market; balancing market; market of ancillary services; and a retail electricity market (Article 4)\textsuperscript{34}.

However, the Law on Electricity Market did not take into account most of the recommendations of the Energy Community and EU on the reformation of national electricity market. One of the most visible non-compliance with the Directive 2009/72/EC was the unclearness of the independence of the system operator. The European Parliament Directive suggested establishment of an independent system operator similarly to the operator at the gas markets (Article 13)\textsuperscript{35}. In the case of Ukraine, law does not provide a concept of independent system operator, setting only the operator’s authority (dispatch, security, monitoring functions, authority at the balancing market, etc.) and requirement to separate the operator from the production, transmission and distribution of the electricity. Thus, the Ukrainian system operator “Ukrenergo” is fully subordinated to the Ministry of Energy and Coal Industry, and has no autonomy even formally. On the other hand, the authority of the Regulator and the independent supervisory bodies are also missed in the law. Unlike the Law on the Natural Gas Market, this legal act also does not prescribe the role of the cooperation with the Energy Community and legal framework for common projects. Overall, the Law on Electricity Market is far from the EU and Energy Community’s standards, despite this legal act created a new framework for the market and competition.

The lack of common principles and norms in the legislation of EU and Ukrainian electricity market greatly restrain the parties from cooperation and investment in Ukrainian electricity system. Taking into account that the modernization process of the Ukrainian energy system has already started, it would be logical to coordinate the reforms in different sectors. The gas and electricity markets could be reformed in the same package similarly to the reformation of the EU energy market in 2009. Furthermore, the electricity and gas markets
were recognized to be the most important for further innovations in the Energy Community Treaty.

Certainly, the systematism of reforms is one of the most important feature of the liberalization. This factor is extremely important for Ukraine since the real transition from the Soviet type of management to a market one did not happen in the state. It resulted in a rise of powerful oligarchic BAGs which directly or indirectly control most of the fields of Ukrainian energy sector. The isolation of the Ukrainian energy market from the foreign investment and cooperation was the main reason of the monopolization and oligarchization. On the other hand, restraint from the real market reforms aimed at energy sufficiency and security caused a great dependence on Russian energy policy. All these peculiarities of the Ukrainian energy market deprived the lawmakers of opportunities to establish a radical reform plan similar to, for instance, the legal and market reforms of the energy sphere in Estonia at the beginning of 1990s, which were conducted without such a big foreign pressure and existence of local oligarchic groups. However, the gradual liberal reforms are still possible in Ukraine. The changes in executive system are also an integral part of the modernization of Ukrainian energy system.

The analysis of reforms and transformations in Ukraine in accordance with the EU requirements indicates that these processes are aimed at further liberalization of the Ukrainian energy system and integration within the international common Ukraine – EU system of cooperation. It also explains why the Neoliberal Institutionalism Theory has bigger explanatory power in this case. However, it still has some limitations due to the incompleteness of the Ukrainian energy reforms in the current situation.

CONCLUSIONS

Foreign and domestic policy of the European Union is based on Neoliberal Institutional approach, which is reflected in its internal legislation (Third Energy Package, etc.) and practice of foreign cooperation. A Neoliberal Institutional framework and regime for
cooperation were also chosen for the partnership with Ukraine in the sphere of energy. In the aftermath of the accession of Ukraine to European Energy Community (2011) and Association with the EU (2014), a clear normative basis and binding obligations for cooperation in the sphere of energy were established. However, the Ukrainian foreign policy towards cooperation with European Community was not clearly defined from the perspective of international relations approach. It resulted in ineffective cooperation and a lack of binding commitments. While a shift to the neoliberal cooperation, which was mainly predetermined by social-political events, was not supported by relevant changes in legislation and policy-making. Some of the recent changes in national legislation were greatly inspired by a new paradigm of cooperation (for instance, the innovations in gas market), but still a systematic and gradual reforms are not completed. Analysis of the compliance with EU legislation and principles indicates that the spheres of state regulation, involvement of foreign investment, providing independent system operators and others are the most problematic issues of the Ukrainian energy policy. A successful implementation of the EU principles in Ukrainian legislation and energy policy is important not only for beneficial cooperation with the European Union but also for the solution of domestic problems of Ukraine. Liberalization of the Ukrainian energy market will allow to eliminate its monopolization, ineffective management and difficulties with the diversification of energy supply process. On the other hand, the accession to common institutional framework will stimulate a participation of foreign actors in the Ukrainian market and increase the level of competiveness. The process of liberalization in the Ukrainian energy market and institutional cooperation with the European Union is not only a part of beneficial partnership but also a necessary step for preservation of the sovereignty in conditions of military, economic and security crisis of Ukraine.
NOTES


Ibid., Annex I.


30 Ibid., Art. 25.
33 Коссе, І. Реформа ринку електроенергії в Україні // Інститут економічних досліджень та політичних консультацій: Консультативна робота No. 4, 2012, c. 6.
neoliberalizacijos procesais, laisvosios rinkos taisyklių propagavimu ir įtvirtinimu. Šiuo metu Ukrainos ir ES bendradarbiavimas energetikos srityje yra komplikuotas, tačiau Ukraina jau pradėjo įgyvendinti energetinio bendradarbiavimo reikalavimus, o išanalizavus šį procesą, matomi vykstančios liberalizacijos geopolitiniai ir ekonominiai aspektai Rytų ir Vidurio Europoje.

Reikšminiai žodžiai: liberalizacija, neoliberalus institucionalizmas, Trečiasis energetikos paketas, Europos Sąjungos užsienio politika, Ukraina, transformacijos.