The Politics of Demand for Law: The Case of Ukraine's Company Law Reform

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Abstract

This article explores the dynamics between external and domestic factors in legal reform in transition countries as demonstrated by the case of Ukrainian company law reform. Contrary to theoretical explanations pointing to the primacy of external supply and incentives, we locate the determinants of legal change firmly in the domestic arena. We conceptualise domestic factors using a political science framework regarding the role of veto players parliamentary factions and related informal business actors. The analysis supports the critical law and development literature in underlying the importance of the demand for law by such players. This demand, however, affects not just the implementation process but is critically expressed in the strategic use of formal legislative reform.

Keywords: company law, Ukraine, legislative process, veto players, external pressures.

A. Introduction

The discussion of legal reform in transition and developing countries has often emphasized the critical role of exogenous factors in stimulating legislative change. This discourse was particularly strong in relation to legal reform in the former Soviet Union, where a boom in legal assistance and legal transplant efforts by a range of external actors characterized much of the 1990s.[1] In this context, the adoption of new laws on the books along Western templates has tended to follow suit and scholars have identified the effectiveness of those laws rather

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1 T. Waelde & J. Gunderson, 'Legislative Reform in Transition Economies: Western Transplants – A Short-Cut to Social Market Economy Status?', 43 *Int'l & Comp L Q* 347 (1994), G. Ajani, 'By Chance and Prestige: Legal Transplants in Russia and Eastern Europe', 43 *Am J of Comp Law* 93 (1995), J. deLisle, 'Lex Americana?: United States' Legal Assistance, American Legal Models, and Legal Change in the Post-Communist World and Beyond', 20:2 *Univ. of Penn J of Int'l Econ Law* 179 (1999), J. Smits, 'Import and Export of Legal Models: The Dutch Experience', 13 *Transnational Law and Contemporary Problems* 551 (2003).

than their enactment as the main challenge of legal development.[2] In the European Union's Eastern neighborhood, more specifically, alignment with EU laws has been a key ingredient of EU's external relations.[3] Drawing on the enlargement experience of the EU, scholars focused on the role of conditionality and other external incentives in ensuring compliance with EU laws by neighbor countries.[4] External pressure for reform has been particularly important in countries, such as Ukraine, which have declared a wish to be recognized as an official candidate for EU membership.

Despite the efforts of multiple external actors, however, Ukraine's example challenges the assumption that external incentives lead legislative change. This article examines the case of company law reform in Ukraine which has proved to be particularly problematic by comparative standards. The area of company law and corporate governance is widely deemed as critical for successful economic development. A host of international organizations, among which the OECD, the EU, and the World Bank, have engaged in the promotion of reform in line with international norms and standards developed in the field.[5] In this context, Ukraine's other neighbors, chief among them Russia, have largely reformed their company laws on the books. Given Ukraine's relationship with the EU and the core place of company law and corporate governance in the EU's internal market *acquis,* domestic change should have taken place a long time ago. In contrast, after several failed drafts and prolonged and difficult bargaining, Ukraine adopted a modern company law only in 2008. The empirical puzzle we address in this paper is therefore, why has it been so difficult to adopt new company legislation in Ukraine, given that it embodied international norms which have been diffused through the region and supported by the EU and other international stakeholders.

To address this question, we examine the role of external and domestic actors and argue that domestic veto players, their changing configurations and preferences can account for the delayed reform in the area of company law. In doing so,

2 K. Hendley, 'Legal Development in Post-Soviet Russia', 13 *Post-Soviet Affairs* 228 (1997), K. Pistor, 'Patterns of Legal Change: Shareholder and Creditor Rights in Transition Economies', 1 *Eur Bus Org L Rev* 59 (2004).

3 A. Magen, 'Transformative Engagement Through Law: The *Acquis Communautaire* as an Instrument of EU External Influence', 9 *EJLR* 361 (2007).

4 J. Kelley, 'New Wine in Old Wineskins: Promoting Political Reforms through the New European Neighborhood Policy', 44 *JCMS* 29 (2006), A. Magen, 'The Shadow of Enlargement: Can the European Neighbourhood Policy Achieve Compliance?', 12 *Columbia JEL* 383 (2005-2006), G. Sasse, 'The European Neighbourhood Policy: Conditionality Revisited for the EU's Eastern Neighbour', 60 (2) *Europe-Asia Studies* 295 (2008).

5 The OECD Principles of Corporate Governance (both in their 1999 and 2004 editions) have become the most authoritative global set of best standards, <www.oecd.org/dataoecd/32/18/31557724.pdf>. A number of CIS-related documents have been developed on the basis of the OECD Principles, such as OECD, The White Paper on Corporate Governance in Russia, Paris 2002, <www.oecd.org/dataoecd/10/3/2789982.pdf>; EBRD, Principles of Corporate Governance and Corporate Governance Checklist, <www.ebrd.com/country/sector/law/corpgov/assess/check.pdf>. Both the EBRD, through their Legal Indicators Surveys, and the World Bank, through their Reports on Observance of Standards and Codes, have monitored compliance with the OECD Principles.

we use a political science framework to identify partisan veto players (parliamentary factions) and the informal business actors associated with them as critical in the Ukrainian case.[6] Through an in-depth case study which traces the legislative process of adoption of a new company law in Ukraine, we show that even though international pressure has been constant and even somewhat decreased in recent years, it cannot explain the dynamics of domestic adoption. Instead, we find that legislative change has been stalled or advanced primarily as a result of veto players' choices and strategic calculations in a complex and highly unstable institutional environment.

Thus, this article seeks to contribute to the critical law and development literature, underlying the importance of domestic factors in legal reform and seeking to depart from a simplistic, unidirectional transplant paradigm to one of complex transformational processes.[7] The primacy of the domestic sphere has been shown more convincingly in relation to the phase when new laws, or transplants, face the challenge of real life effectiveness and when the demand for law by private actors determines the extent to which they are used or ignored.[8] The case of company law reform in Ukraine, we argue, strengthens the case that this primacy defines the dynamics of the legislative stage as well, whereby demand for law or the lack thereof becomes a strategic tool for key veto players.

To develop our argument, we proceed as follows. In the first section, a brief overview of company law reform in Ukraine is provided, showing a pattern of delays and resistance by comparative CIS standards. In the second section, we highlight possible explanations for this pattern, based on external pressure (EU conditionality, transnational actors) or domestic veto players. In the third section, the role of external actors in Ukraine is discussed showing that their involvement and pressure cannot explain the pattern of adoption. In the fourth section, we analyze the configurations of domestic veto players in the Ukraine at critical points in the legislative process and show how the changing political and institutional context led these veto players to change their position on company law reform. The empirical discussion draws on sources such as official documents and media publications, but particularly on our own data compiled on the basis of voting records of the different political parties in the Ukrainian parliament. Finally, we conclude and discuss some of the implications of our findings.

6 G. Tsebelis, *Veto Players: How Political Institutions Work* 2002.

7 K. Davis & M. Trebilcock, 'The Relationship Between Law and Development: Optimists versus Sceptics', 57 *Am J Comp L* 765 (2009), R. Daniels & M. Trebilcock, 'The Political Economy of Rule of Law Reform in Developing Countries', 26 *Michigan J of Int Law* 99 (2004-2005), R. Pereenboom, 'What Have we Learned About Law and Development? Describing, Predicting and Assessing Legal Reforms in China', 27 *Michigan J of Int Law* 823 (2006), P. Potter, 'Legal Reform in China: Institutions, Culture, and Selective Adaptation', 29 *Law & Soc Inquiry* 465 (2004), E. Örücü, 'Law as Transposition', 51 *ICLQ* 205 (2002).

8 K. Hendley, 'Rewriting the Rules of the Game in Russia: The Neglected Issue of the Demand for Law', 8 *E Eur Const Rev* 89 (1999), K. Pistor, 'Supply and Demand for Law in Russia', 8 *E Eur Const Rev* 105 (1999), D. Berkowitz *et al.*, 'Economic Development, Legality and the Transplant Effect', 47 *Eur Econ Rev* 165 (2003).

B. Company Law Reform in Ukraine: An Overview

What stands out in examining company law reform in Ukraine is the extent to which it lags behind other former Soviet republics.[9] While countries, such as Russia, Armenia, Moldova and Kazakhstan, already had modern laws on joint stock companies (even if in need of further reworking) in the mid to late 1990s, Ukraine still relied on the 1991 Law on Business Associations (LBA), consisting of a mere 26 articles, embedded in a socialist, 'enterprise' paradigm for business organization. The LBA experienced several revisions, the most important one in 1997. They patched up the worst gaps but did not amount to a comprehensive modernization of the regime. Furthermore, while in the early 2000s other CIS countries adopted either 'second generation' laws on joint stock companies (*e.g.* Armenia, Kazakhstan, the Kyrgyz Republic) or passed further extensive amendments (*e.g.* Russia, Moldova, Uzbekistan), Ukraine was still in legislative limbo.

By comparative standards the work on a new law in Ukraine started quite late – a drafting group attached to the Commission for Securities and the Stock Market (SCSSM) was formed in late 1998,[10] and the first draft was submitted to the Ukrainian parliament (Rada) in December 2000. The initial delay was partly linked to the stalled process of adopting a Civil Code in Ukraine, seen as providing the general foundation for private law, including the legal regime for business organizations.[11] Yet, this was clearly not the sole reason and opposition to reform continued after the adoption of the Code.

After 2000, company law reform featured prominently on the legislative agenda – many drafts (often close versions of each other) entered parliament as shown in Table 1. A Decree issued by President Kuchma in 2002 and another by President Yuschchenko in 2007[12] and other official documents reveal that the adoption of a new law was recognized as critical. The issue was thrust to the centre of public attention by the problem of corporate raiding plaguing Ukrainian business where corporate control was contested through a variety of pseudo-legal or illegal means, corruption and criminal activity.

9 EBRD Legal Indicators Survey 2005 describes Ukraine (along with Azerbaijan, Belarus and Tajikistan) as exhibiting very low (*i.e.* the lowest rating) compliance with international norms, <www.ebrd.com/country/sector/law/corpgov/lis/index.htm>.

10 O. Martinenko & Y. Deyneko, 'Joint Stock Companies in Ukraine: Changes to the Legislative Framework', *Law in Transition* 90 (2008).

11 Ukraine was very late in this process relative to other CIS countries too (*e.g.* Russia, Armenia, Kazakhstan). Drafting on a Civil Code started in 1993 but was not completed before 2003. *See* A. Dovgert, 'The New Civil Code of Ukraine 2003: Main Features, Role in the Market Economy and Current Difficulties in Implementation', paper presented at a conference at the University of Illinois, 8-9 April 2005.

12 Decree No. 280 On Corporate Governance in Joint Stock Companies, 21 March 2002, <zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=280%2F2002>, Decree No. 103 On Measures to Enhance the Protection of Property Rights, 12 February 2007, <zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=103%2F2007>.

Table 1 Legislative History of the Law on Joint Stock Companies

Drafts	Initiator	Draft registered in Rada	Legislative progress	Rada's convocation
Draft 1	PM Yushchenko	Dec 2000	Rejected at first reading (July and Nov 2001)	3 (1998)
Draft 2	Private bill (Green) party MPs)	Sept 2001	Rejected at first reading (Nov 2001)	3 (1998)
Draft 3	Private bill (Our Ukraine – European choice MP)	March 2003	Rejected at first reading (July 2003)	4 (2002)
Draft 4	PM Yanukovich	Apr 2003, amended Dec 2003	Blocked by the Committee on Economic Policy prior to first reading (2004)	4 (2002)
Draft 5	PM Yekhanurov	Oct 2005	Committee on Economic Policy rejects and Rada votes against including it in the agenda for first reading (Jan 2006)	4 (2002)
Draft 6	PM Yanukovich	Feb 2007	Adopted at first reading (May 2007)	5 (2006)
Draft 7	PM Yanukovich, followed by PM Timoshenko	Oct 2007	Adopted at second reading (Sep 2008)	6 (2007)

Source: Own compilation from the Rada's web data-basis, <www.portal.rada.gov.ua>.

Nonetheless, as summarized in Table 1, the drafts were stalled by either being blocked by the Committee of Economic Policy (CEP) (the main parliamentary committee in charge of company legislation) or rejected by the Rada at first reading. It was only in May 2007 that a draft succeeded being adopted at first reading. The fate of this draft was not certain, however, as President Yushchenko dissolved the Rada in the beginning of April 2007, which tainted the bill passed by a parliament with a questionable legitimacy. The bill was brought back after the parliamentary elections and underwent discussions in the CEP and consultations with stakeholders. The final revised version was put to the Rada on 17 September 2008, when a 27-minute long debate and a substantial majority vote brought nearly ten years of stalemate to an end. Yet, the uncertainty as to the success of the bill did not disappear until 22 October when President Yushchenko promulgated the law. The positive outcome was not a foregone conclusion, as President Yushchenko's party, Out Ukraine, was the only one which voted against it in September, a new constitutional crisis was rapidly building up, and several bills related to company law reform had been refused promulgation prior to that.

This overview shows a pattern of delays, extensive difficulties and, indeed, resistance to company law reform, which is clearly traceable in the legislative process. In the next section we examine some of the key theories that may serve to explain the case of Ukraine.

C. Theoretical Explanations

There is extensive literature which asserts the primacy of external factors in incorporating international norms into domestic law. According to the findings of international relations scholars, the resulting degree of domestic change depends on the characteristics of those norms. In a seminal article, Finnemore and Sikkink argue that norms in the international arena evolve in a life cycle and that different stages of this cycle are dominated by different behavioural logics.[13] They suggest that mechanisms for norm diffusion in the international arena are similar to the ones that play a role in the domestic adoption of norms. Some of the key mechanisms identified in studies of domestic acceptance of international norms are social learning or socialization and persuasion.[14]

While we find norm and socialization perspectives rich in insights and relevant to our particular case, they imply that all members of the CIS should have adopted company law legislation more or less at the same time, when the norms reached tipping point. Thus, we would expect convergence in new laws across Central and Eastern Europe at roughly the same period. A study of legal change in creditor and shareholder rights between 1990 and 1998 by Katharina Pistor suggests that such a trend can be observed at least with regard to a set of formalized legal indicators.[15] Indeed, the author attributes this to external factors, such as technical assistance projects and a common pool of advisors, which she finds more important than differences in initial conditions. Nonetheless she notes that "there are notable differences in the pattern of legal change in different countries, suggesting that a simple convergence story does not do justice to the complexity of legal change".[16] The question therefore remains as to why some states have adopted company law norms while others, such as the Ukraine, have resisted them.

Ukraine is a critical case for testing also political science approaches which have sought to explain compliance with EU conditions in the European Neighborhood Policy (ENP) context. The fact that Ukraine has made it a long term strategy to strive for EU membership highlights the importance of explanations which focus on EU's influence on applicants for membership. The most prominent such explanation was developed in the literature studying EU's Eastern enlargement in the form of the so called 'external incentives' model.[17] This is a rationalist bargaining model which postulates that domestic actors change the domestic *status quo* if they perceive the benefits from this to be higher than the costs. The domestic *status quo* represents a certain equilibrium reflecting existing distributions of

13 M. Finnemore & K. Sikkink, 'International Norm Dynamics and Political Change', 52 *International Organization* 887 (1998).

14 *E.g.* J. Checkel, 'Why Comply? Social Learning and European Identity Change', 55 *International Organization* 553 (2001).

15 Pistor, *supra* note 2.

16 *Id.*, at 46.

17 F. Schimmelfennig & U. Sedelmeier, *The Europeanization of Central and Eastern Europe* (2005), at 8-18.

power and preferences. An external actor upsets this equilibrium by offering additional incentives for change.[18]

The name of the framework, "external incentives", is somewhat misleading in the sense that the main explanatory mechanism which it identifies points to the role of domestic actors and their cost-benefit calculations. It is a model that puts the stress firmly on the domestic political stage and its configuration of actors and their preferences. External actors and the incentives they offer can affect the domestic structure of opportunities and help empower certain actors and weaken others, but ultimately domestic preferences are decisive. Domestic veto players face certain adoption costs associated with change in the *status quo*, for example welfare or power costs. They also expect some benefits linked to the incentives offered by the international organization.[19]

The adoption of international norms, according to this model, depends on veto players in government whose agreement is needed for change in the *status quo*. This model takes into account the fact that the veto players change over time and that after elections a different preference configuration may emerge. If the key veto players perceive net adoption costs and resist change, a change of government may lead to a different equilibrium or else the international organization may offer additional incentives for change.[20]

The explanatory framework we propose here is compatible with the external incentives model, but takes into consideration the fact that EU's incentives are weakened considerably by the absence of a credible perspective for membership for the Ukraine. Therefore, we argue that we should focus on domestic veto players to explain the dynamics of adoption of international norms. Our proposed explanation is rooted in veto player theory as developed by George Tsebelis in his seminal work.[21] The main premise of this theory is that, "all political institutions [can be] translated into a series of veto players".[22] Veto players are defined by Tsebelis as political actors whose agreement is needed for a change of the *status quo*. There are two categories of veto players. The first are the 'institutional' veto players – those generated by the constitution, such as presidents and parliaments. There are also the so-called 'partisan' veto players – those generated by the political game, such as political party majorities. Partisan veto players can also be the parties in a government coalition.[23]

One of the main arguments of veto player theory is that the number and configuration of veto players is a crucial variable determining how easy or difficult it is to change a policy. We argue that this includes the adoption of international

18 F. Schimmelfennig *et al.*, 'Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey', 41 *JCMS* 497 (2003), M. Vachudova, 'The Leverage of International Institutions on Democratizing States: Eastern Europe and the European Union', EUI Working papers RSC 33 2001), at 10.

19 Schimmelfennig & Sedelmeier, *supra* note 17.

20 Schimmelfennig & Sedelmeier, *supra* note 17.

21 Tsebelis, *supra* note 6.

22 *Id.*, at 17.

23 *Id.*, at 19.

norms. In order to determine the direction of change, we need also to investigate the preferences of the veto players and the location of the *status quo*.[24]

Even though veto player theory has mostly focused on collective veto players such as parliamentary majorities and individual veto players based on the constitution such as presidents, there is room for other kinds of veto players. Tsebelis points out that when a single policy case is being analyzed,[25] individuals which have informal veto powers can also be included in veto player analyses. This brings us to the case of post communist regimes, where, as an increasing number of scholars have argued, an important effect of transition has been the penetration or capture of the state by powerful business networks of former communists.[26] These networks not only ensure that the economic winners of the early phase of the transition have plundered state assets, but, in the worst cases, they also serve to represent business interests in political decision making. In other words, business groups act as informal veto players.[27]

Thus, we analyze the attempts to adopt company law legislation as a result of the interaction between veto players over time. The expected outcome, reform in line with international norms being carried out or blocked, should then be subject to veto player theory mechanisms. We expect that more veto players will result in policy stability, that is, no company law reform. We also expect changes in the veto player configuration to affect the outcome. Last but not least, as we are conducting an in-depth case study, we can identify which veto players have changed their preferences and whether this led to change. Before we proceed further in this direction, we examine the influence of external actors and the incentives for company law reform they have offered Ukraine.

D. External Actors and Company Law Reform

Many external actors from international organizations to transnational networks have made significant efforts to influence the development of company law in Ukraine.

Improvements in the overall regulatory environment, private property rights protection and capital market development were required as part of the lending, investment and assistance programs of IMF and the World Bank, with which Ukraine established relations in 1995. The World Bank was particularly active in promoting privatization and structural reform. Legal and regulatory reform was initially part of the 'enabling business environment' requirement of structural adjustment loans, but was given further prominence in subsequent lending vehi-

24 *Id.*, at 18.

25 *Id.*, at 81.

26 J. Hellman, 'Winners Take All: The Politics of Partial Reform in Post-communist Transitions', 50 *World Politics* 203 (1998), V. Ganev, *Preying on the State: The Transformation of Bulgaria after 1989* (2007).

27 A. Dimitrova, 'The New Member States of the EU in the Aftermath of Enlargement: Do New European Rules Remain Empty Shells?', 17 *J of European Public Policy*, 17 (2010).

cles.[28] In its 2006 assessment of corporate governance in Ukraine, in particular, the Bank provided a list of detailed recommendations as to company law reform.[29]

Other international actors, such as the USAID,[30] the IFC,[31] and the American Chamber of Commerce, have been associated particularly with company law and corporate governance reform.[32] These stakeholders, among others, were represented in the consultative group set up by the SCSSM, drafted provisions and commented on drafts for various beneficiaries (government ministries, parliament committees, and non-state actors) and facilitated consultations on the tabled drafts to promote compromise.

Another channel for the international involvement has been the sponsorship of model laws within the framework of the CIS Inter-Parliamentary Assembly.[33] The European Bank for Reconstruction and Development (EBRD) as well as several individual country technical assistance agencies contributed to the process.[34] Their support for drafting the 2001 Model Law on Securities Markets and the 2004 Model Legislative Provisions on Investor Protection was particularly relevant to company law reform in Ukraine. Given this external involvement, the process of CIS legal harmonization represented an important parallel avenue for dissemination of international norms in the field.

The EU's influence on legal reform has been especially significant in view of Ukraine's neighborhood status and membership aspirations. Company law

28 World Bank, Ukraine Country Assistance Evaluation, Report Nr. 21358, 2000, <www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2001/01/10/000094946_00122105355694/Rendered/PDF/multi_page.pdf>, and Report Nr. 45329-UA, 2008, <www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/10/08/000334955_20081008052635/Rendered/PDF/453290ESW0P09310Box334072B01PUBLIC1.pdf>.

29 World Bank, Ukraine: Corporate Governance Country Assessment, (Reports on the Observance of Standards and Codes, 2006), <www.worldbank.org/ifa/rosc_cg_ukr.pdf>. The World Bank also joined forces with USAID in a Programmatic Technical Assistance Partnership on capital market development in 2007, which among other things, addressed the drafting of a law on joint stock companies.

30 The USAID started its commercial law development programme in 1994 and opened a Commercial Law Centre specifically to support drafting in 2001. USAID Ukraine, Ukraine Commercial Law Project: Final Report, (2008), <http://pdf.usaid.gov/pdf_docs/PNADP479.pdf>.

31 The IFC set up a Corporate Governance Project (1997-2002), followed by a Corporate Development Project (2002-2007). In addition to training activities, the projects targeted legislative and regulatory improvements. M. Onyschuk-Morozov & V. Ryabota, 'Promoting Corporate Governance in Ukraine', *Law in Transition* 82 (2008).

32 The American Chamber of Commerce set up a special working group on the new Law on JSC in 2007 as well as a related working group on illegal raider attacks.

33 Ukraine joined the CIS Inter-Parliamentary Assembly in 1999, yet Ukrainian experts participated in the drafting of key acts even before that, *i.e.* the 1994 Model Civil Code. For more, *see* R. Dragneva, CIS Model Legislation and its Contributions to Company-Law Reform and Harmonization, in: R. Dragneva (Ed.), *Investor Protection in the CIS: Legal Reform and Voluntary Harmonization*, 1 2007, R. Dragneva & A. Dimitrova, 'Patterns of Integration and Regime Compatibility: Ukraine Between the CIS and the EU', in: K. Malfliet *et al.*, *The CIS, the EU and Russia: Challenges of Integration* (2007).

34 The EBRD has been also active in its own right through technical assistance and the use of socialization techniques, such as ratings of compliance with international standards.

reform was among the priority areas for voluntary approximation to EU norms according to the Partnership and Cooperation Agreement (PCA), which entered in force in 1998. The PCA, however, provided a very general and 'soft' standard of compliance, subject only to weak, general political conditionality.[35] The Action Plan (AP) of 2005 adopted within the framework of the ENP added some substance to the scope and standard for approximation. In particular, it provided for the undertaking to "convergence with ensure effective implementation of key principles in relevant international and EU rules and standards".[36] It specifically referred to the need to adopt a new joint stock company law improving on several substantive aspects of corporate governance. Legislative alignment in the ENP context was connected to the promise of enhanced economic integration, or "a stake in the internal market" and increased assistance in technical assistance among other incentives.[37] Further alignment in the area of company law has been of key importance in the context of the negotiation of the Association agreement with the EU, incorporating a deep and comprehensive free trade area. Negotiations on this Agreement started in 2009, *i.e.* after the legislative period examined in this paper, yet the prospect for a new enhanced agreement was already mentioned in February 2005.[38]

Thus, the pressure from international actors, both in the form of external incentives and in the form of socialization efforts, has been consistent over the period of the legislative gestation of the law on joint stock companies (Table 1), and can be viewed as constant for the purposes of testing our framework. In fact, international pressure may have become weaker in recent years as international stakeholder frustration grew,[39] and EU's enlargement fatigue made Ukrainian accession prospects less realistic. Despite the efforts of Ukrainian diplomacy, Ukraine did not receive from the European Union the desired formal promise of membership or even a more relaxed visa regime. These developments affect the credibility of EU conditionality, thereby weakening external incentives to adopt international company law norms. The fact that breakthroughs took place as of 2007, as our review shows, indicates that there are other factors rooted in the domestic arena that need to be examined to explain the pattern of company law reform.

35 C. Hillion, 'The Evolving System of European Union External Relations as Evidenced in the EU Partnerships with Russia and Ukraine', PhD thesis, (2005).

36 EU-Ukraine Action Plan, Section 33(d), <http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf>.

37 The EU engaged in several technical assistance projects and set up the Ukraine-European Policy and Legal Advice Centre, which in 2002 prepared a legislative scoreboard of specific EU instruments to be taken into account in legal reform.

38 Dragneva & Dimitrova, *supra* note 33, at 182-183.

39 A. Yefymenko, 'Corporate Governance Under Ukraine's New Joint Stock Company Law', (2009), <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1387360>. For example, the World Bank's own evaluation of projects under the respective facilities concludes they are only partially effective, with very low disbursement ratios of funds compared to the Bank's average and blockage of range of objectives by vested interests, World Bank, *supra* note 29.

E. Domestic Dynamics: Changing Configuration and Strategies of Veto Players in an Unstable Institutional Context

In line with the framework developed in section C, we examine the changing configuration and strategies of veto players in relation to the legislative process on the law of joint stock companies and argue that they were critical in stalling developments until 2007. Post-2007, there is a clear change in the position of partisan veto players, which reflect changes in the strategies adopted to protect and further their core preferences. Partisan veto players reveal a close association with informal actors, state enterprise directors, oligarchs and financial-industrial groups. This fusion is one of the features widely identified as typical of the conditions of weak statehood and state capture defining Ukraine's political landscape.[40] We structure our discussion around the milestones in the legislative process, in particular, the submission and rejection of the various drafts as laid out in Table 1. The focus here is on the government sponsored bills, as voting records show that private bills were not subject to the same attention by MPs.[41]

I. Draft 1 (2000-2001)

The first draft of the joint stock company law was submitted by the government headed by Victor Yushchenko in December 2000. This non-partisan government was backed by a coalition of 10 parliamentary factions and, initially, had their support for engaging in extensive reform. The support, however, waned soon and the government collapsed in May 2001. Despite this, the next prime minister, Kinakh, and President Kuchma also backed the draft and urged for its speedy consideration.[42]

The vote at the first reading of the bill reveals the presence of a partisan veto player with preferences against the law. As Table 2 shows, the draft was strongly opposed by the Communist party, holding almost a quarter of all seats, as well as by the Socialist party. This vote is consistent with the broad ideological position of the hard left, which in this Rada and its previous 1994 convocation, opposed private sector reform.[43] A statement during the debates on a later draft of the company law expresses the view of the Communist party on this issue: "...Let Their Majesty The People be the shareholder, it is their ownership. Then you will not have all this nonsense around joint stock companies".[44]

40 *E.g.* K. Darden, 'Blackmail as a Tool of State Domination: Ukraine Under Kuchma', 10 *E Eur Const Rev* 67 (2001), R. Puglisi, 'The Rise of Ukrainian Oligarchs', 10 *Democratization* 3 (2003), L. Way, 'The Sources and Dynamics of Competitive Authoritarianism in Ukraine', 20 *J of Communist Studies and Transition Politics* 143 (2004), H. Pleines, 'Manipulating Politics: Domestic Investors in Ukrainian Privatization Auctions 2000-2004', 60 *Europe-Asia Studies* 1177 (2008).

41 For example, the proposers of Draft 2 did not vote at its first reading on 29 November 2001. During the vote on Draft 3 on 9 July 2003, only 13 MPs out of 439 took part.

42 The debates at the first reading of the draft on 11 July 2001 refer to Kuchma's request to review the bill as a matter of priority.

43 A. Wilson, *The Ukrainians: Unexpected Nation* (2009).

44 MP Solomatin, Communist party faction, during the debates on Draft 5 on 18 January 2006, <http://static.rada.gov.ua/zakon/skl4/8session/STENOGR/18010608_68.htm>.

Furthermore, this vote is consistent with the position of 'red directors', or state enterprise managers, traditionally affiliated with the Communist party. These actors had a strong interest in either blocking privatization to protect their *de facto* control rights from outsiders or directing privatization on their own terms thereby 'legalizing' those rights on privileged basis.[45] Their preferences on company law reform were linked to the fact that privatization had involved the creation of closed joint stock companies owned by managers and thousands of employees.[46] Given the rudimentary minority shareholder protection, enterprise managers were increasingly able to consolidate their control. It is the fate of those closed joint stock companies, representing two thirds of the entire corporate sector of Ukraine, that established itself as the key contentious issue during the debates on Draft 1.[47] The CEP recommended the adoption of the draft in principle, subject to revisions related precisely to the status of such companies. However, this proviso was clearly not enough to ensure the support of the Communist and Socialist party factions, as well as the young Party of Regions.

Next to the hard left, another partisan veto player emerged in this first vote. From the voting results shown in Table 2, it is clear that that party factions linked to big business were split in their support for the draft. While some oligarchs, such as Victor Pinchuk, and his faction Labour Ukraine, voted 'for' Draft 1, others were against. This division across factions, in addition to the strong opposition of the Communist party, was critical given that the promulgation of legislation was dependent on the fluid support of a large number of loosely organized oligarchic groups. In fact, this was one of the key aspects of Ukraine's 'competitive oligarchy' political system under President Kuchma.[48]

How can we identify the preferences of this second group partisan veto players? While private business had clear interest in buying stakes in privatized companies, their position reflected the differences in their progress in property acquisition, which was often dependent on a close relationship with the Kuchma presidency.[49] New owners were often interested in placing limits on the authority of incumbent managers. Others succeeded relatively quickly to either ensure the

45 State managers remained an important group well into the mid-2000s, with nearly 48% of the country's corporate capital (mostly in strategic commodities or energy) still in the hands of the state, OECD Economic Surveys, Ukraine: Economic Assessment (2007), <www.oecd.org/data-oecd/26/0/39196918.pdf>.

46 Often the workers collective set up closed joint stock companies in order to purchase a company subject to privatization as well as other companies. Thus, there emerge complex corporate webs around those companies.

47 The critical issue related to defining closed joint stock companies as companies with a limited number of shareholders and the length of the transition period during which companies either had to reduce the number of shareholders or transform themselves as open joint stock companies. Both options created serious inconveniences such as, among others, the potential for abuse of employee rights during a 'forced' sale of shares or the opening up of the companies to public contests for control thereby endangering the security of 'insider' control. Draft 1 imposed a limit of 100 persons for closed joint stock companies giving a two-year transition period (except for companies with more than 500 persons).

48 Puglisi, *supra* note 40, A. Äslund, *How Ukraine Became a Market Economy and Democracy* (2009).

49 The wave of privatizations in 1998-1999, for example, benefitted selected major oligarchs in support of Kuchma's pending re-election.

Table 2 Voting Results at First Reading of Draft 1 (6 July 2001)

Parliamentary factions	Faction members	For	% For	Against	Abstained	Not voted	Absent
Socialist party	17	0	0	0	7	10	0
Communist party	113	1	1	3	76	31	2
Regions of Ukraine	24	3	13	0	0	17	4
Bat'kivshchina	26	4	15	2	0	18	2
Independents	46	11	24	0	0	14	21
Democratic union	20	12	60	0	0	6	2
Peoples-Democratic party	16	12	75	0	0	3	1
Greens	17	13	76	0	0	1	3
Solidarity	21	16	76	0	0	5	0
Ukrainian People's Rukh	22	17	77	0	0	5	0
Peoples Rukh of Ukraine	14	11	79	0	0	1	2
Social-democratic party	36	29	81	0	0	6	1
Reforms and order	15	13	87	0	0	2	0
Jabloko	16	15	94	0	0	0	1
Labour Ukraine	46	44	96	0	0	2	0

Source: Own compilation from the Rada's web database, <www.portal.rada.gov.ua>.

support of incumbents or to appoint their own executives when the purchase of controlling stakes allowed them this, thus having little interest in extensive company law reform.[50]

II. Draft 4 (2003-2004)

In December 2003, following the 2002 parliamentary elections, Yanukovich's government submitted another bill to the Rada (Draft 4). The government was supported by a coalition consisting of nine oligarchic factions. The draft was discussed at the CEP, but never got to a parliamentary hearing.

We find that the Communist party continued to be a veto player. Despite its much lower representation in this parliament relative to the 1998 Rada, it continues to control the CEP.[51] The Party of Regions, which opposed the previous draft, increased its representation in the Rada and similarly had a strong presence in the CEP.[52] While oligarchic backing of the Party of Regions increased,[53] the 'red

50 Yefimenko, *supra* note 39.

51 The Chair, one of the deputy chairs of the CEP, and 4 of its members were Communist party MPs.

52 Two other deputy chairs and nine members were representatives of the Party of Regions. The remaining factions were represented in small numbers.

53 Most notably, Rinat Akhmetov of the Donetsk-based business group, System Capital Management, was a key financial backer of the Party. Aslund, *supra* note 48, at 159-162.

director' lobby was still strong. The various revisions of the company law drafts at this time show that the treatment of closed joint stock companies was still critical for the opposition of those veto players.[54]

It can be argued that the preferences of the other group of partisan veto players, the corporate oligarchs, still did not include company law reform. Expansion of business empires continued to be the priority, especially in view of the privileged privatizations, carried out by Prime Minister Yanukovich in 2003-2004.[55] Most famously, Pinchuk (the Lytvyn block in this Rada) and Rinat Akhmetov (the informal leader of the Regions) secured the purchase of one of the steel jewels of Ukraine – Kryvoryzhstal – in June 2004. At the same time, the massive penetration of big business into parliament and, especially, the privileged relationship of several of the richest oligarchs with the Kuchma's presidency ensured that property expansion and protection were secured through extra-legal means of patronage and political rent-seeking.[56] Finally, during the last part of 2004, political energy was already focused on the Presidential elections and the Orange revolution following them.

III. Draft 5 (2005-2006)

Another, fifth draft was introduced by the government of Yekhanurov in October 2005. The appointment of Yekhanurov followed the post-Orange revolution, controversial nine months of Timoshenko's cabinet, during which she engaged in re-privatization and other measures which were viewed as bringing instability to previously acquired property rights. Yekhanurov was ultimately confirmed as a prime minister with the expectation to stabilize those rights on the bases of a political coalition between the 'Orange' bloc Our Ukraine and its arch-rival, the Party of Regions.[57] Despite the fact that Draft 5 sought to further the concessions on the key bargaining issues, such as maintaining the three-year transition period introduced by Yanukovich's Draft 4, that was clearly not enough. Indeed, the CEP recommended the rejection of the draft by the Rada. As the voting record shows, the Rada voted against including the draft in its agenda. In fact, in an interesting twist, after this negative vote, the chair of the Rada, Lytvyn, reminded MPs of the importance of the bill, appealed to them for reconsideration and put it to a second vote, which produced the same result.

As Table 3 shows, the key opponents of the draft continued to be the Communist party and the Party of Regions. Oligarchic parties were again split, with

54 Draft 4 was first submitted in April 2003 and referred to a 100-member limit. In December 2003, the draft was revised raising the limit to 150. Although this is not a huge concession, it clearly shows the searching for compromise around the issue. Importantly also the December 2003 draft increases the transition period from two to three years. Indicative in this respect is also Draft 3, which was submitted in February 2003 with a 100-member limit. A revised draft submitted a month later exempts all existing closed joint stock companies from this condition, leaving it only for new companies.

55 Pleines, *supra* note 40.

56 Puglisi, *supra* note 40.

57 As records of the vote on the election of the Prime Minister show, Yekhanurov was strongly opposed by Timoshenko's bloc, the Communist party and the Social-Democrats. The Regions initially voted against too, but ultimately switched sides.

Table 3 Voting Results on including Draft 5 in the Agenda (18 January 2006)

Factions	Faction members	For	% For	Against	Abstained	Not voted	Absent
Communist party	56	0	0	0	0	56	0
Regions of Ukraine	60	0	0	0	0	59	1
Social-democratic party	19	0	0	0	0	19	0
Independents	31	9	29	0	0	6	16
United Ukraine	12	5	42	0	0	4	3
Party of Entrepreneurs	16	8	50	0	0	6	2
People's party	41	27	66	0	1	12	1
Ukrainian People's party	18	12	67	0	0	6	0
Socialist party	29	22	76	0	1	6	0
Reform and Order	15	13	87	0	0	2	0
Vydrozhdennija	16	14	88	0	0	0	2
BYT	35	32	91	0	0	3	0
Our Ukraine	40	38	95	0	0	2	0
People's Rukh	16	16	100	0	0	0	0
Lytvyn bloc	22	22	100	0	0	0	0

Source: Own compilation from the Rada's web database, <www.portal.rada.gov.ua>.

some, such as the Social-Democrats, headed by the Kiev businessmen Surkis and Medvedchuk, voting 'against' and others, such as Pinchuk and the Lytvyn block, voting 'for'. Furthermore, it is clear that the forced coalition between the Regions and Our Ukraine was quickly collapsing. In fact, this is the draft that had the shortest legislative life – it was thrown out only three months after its submission.

Generally, given the positions of the partisan veto players and the complexities of coalition building among fragmented political factions, no real progress was made in the field of company law during the 2002 convocation of Parliament. The only break-through relates to the adoption of the Civil Code in January 2003, which provides the general foundations of the regime. Yet, the effect of the Civil Code was seriously inhibited by the simultaneous introduction of an Economic Code based on contradictory state planning paradigms and including many conflicting provisions.[58] This contributed to the complication of the legal environment for protection of property rights, as it will be discussed below.

58 OECD, *supra* note 45, S. Shishkin & P. Drobyshev, 'Ukraine's Civil and Economic Codes', 50 *Problems of Econ Transition* 41 (2007).

IV. Draft 6 (2007)

The submission of Draft 6 followed the parliamentary election of 2006 and the election of the Yanukovich government on the basis of a coalition between the Regions, the Communists and the Socialists. During the legislative journey of this draft, the effort to adopt a joint stock company law in Ukraine entered a new phase. To start with, this is the first draft that managed to win parliamentary support at first reading which, despite the dissolution of the 2006 parliament, created a strong legislative momentum. Secondly, as shown in Table 4, this support came from the factions that were consistently opposed to it, namely the Regions, the Communist party and the Socialist party. Of importance to our analysis is the huge electoral success of the Party of Regions, which established it as a key partisan veto player. Further, this time one of the key oligarchic supporters of the Regions, Rinat Akhmetov, entered the Rada along with a large number of his employees, thus increasing the oligarchic, property rights-based backing of the Party.[59] Akhmetov also became a member of the CEP. We discuss the implications of this development with regard to the changed preferences of the parliamentary faction on company law reform in sub-section VI.

Importantly, Draft 6 offered far-reaching concessions on some of the issues previously identified as critical. It allowed existing closed joint stock companies to continue operating subject to the minimal regime of the LBA, thus effectively exempting the majority of joint stock companies operating in Ukraine from reform. It granted a much longer transition period, namely five years, for open joint stock companies to comply with the newly introduced requirements. The draft dealt also with another problem which had been the subject of a legislative stalemate. It related to the issue of the legal quorum required for holding a general meeting of shareholders. Existing legislation imposed the very high 60% threshold, which several bills seeking to amend the LBA brought in by Regions and Socialist party MPs in the late autumn of 2006 sought to reduce to 50%. This was clearly a very critical issue for those factions, who voted it through two readings and kept bringing it back on the table despite President Yuschenko's repeated vetos.[60]

Parties that tended to support this law in the past, such as Bloc Yulia Timoshenko (BYT) and Our Ukraine, found themselves in opposition. Much of this opposition can be explained by the fact that the draft was voted on 15 May 2007, after President Yushchenko dissolved parliament. The Rada became the centre of

59 Wilson, *supra* note 43, at 331, Aslund, *supra* note 48, at 214. The authors differ on the size of Akhmetov's sub-group in the Party of Regions. This was clearly not the only informal sub-group in the party, yet there is a consensus on its prominence.

60 The legal issue reflected several high profile corporate conflicts, such as the battle over Ukranafta, the biggest company in the oil and gas sector, responsible for more than 90% of oil and 40% of gas supplies. The business interests around Ukranafta were one of the main informal subgroupings within the Party of Regions. The state owned 50%+1 in the company through Naftogas Ukraine, but Privatgroup, one of the big financial and industrial groups, held 42% and was able to block unwanted general meetings of shareholders. A lower quorum would have allowed the state to reassert its control. See, *e.g.* N. Maksimchuk, 'Bor'ba Partii Regionov s Privatom mozhet zakonchitsia katastrofoi dlia korporativnogo upravlenija', 14 June 2010, <http://anti-raid.com.ua/news/5643-201006144.html>.

a huge constitutional battle, ending with the withdrawal of the 'Orange' MPs and the ultimate decision to hold new elections.

Finally, this was the first Rada where due to changes in the constitutional set up, the law-making balance depended on a smaller number of factions. There were only five factions in the 2006 Rada compared to fourteen in the previous one, which made a difference in terms of the political process.

Table 4 Voting Results on First Reading of Draft 6 (15 May 2007)

Factions	Faction members	For	% For	Against	Abstained	Not voted	Absent
Our Ukraine	77	5	6	0	0	0	72
BYT	125	9	7	0	0	3	113
Independents	9	7	78	0	0	0	2
Socialist party	31	28	90	0	0	1	2
Communist party	21	20	95	0	0	1	0
Party of Regions	185	178	96	0	1	4	2

Source: Own compilation from the Rada's web data-basis, <www.portal.rada.gov.ua>.

V. Draft 7 (2007-2008)

The draft adopted at the first reading was brought back to the new Rada in October 2007, after the parliamentary elections of 2007 produced the second government of Yulia Timoshenko, who came to power on the basis of a coalition between BYT and Our Ukraine. Following extensive consultations, a meeting of the CEP was held in July 2008. The second hearing of the draft took place on 17 September when the law on joint stock companies was finally adopted.

As Table 5 shows, the law was supported by all parliamentary factions, which voted for it in spring 2007 as well as BYT. In fact, only President Yushchenko's Our Ukraine opposed the bill. Further, it is important to note that many of the concessions made in Draft 6 were reversed by the CEP in July. For example, the quorum requirement was put back at 60% and the 100-member limit for closed joint stock companies was reintroduced. During the hearing on 17 September, another critical step was made by reducing the transition periods for all companies from five to two years.

Thus, the critical issue to understand here is what led to the reversal of the position of the Party of Regions and its coalition partners with regard to Draft 6 and its continued support for Draft 7.

VI. Changed Position of Veto Players

Successive SCSSM reports accompanying previous drafts referred to the dire need to replace the rudimentary regulation of the 1991 LBA, the importance of aligning Ukrainian legislation to international and European laws, and to the need to protect investors and promote stock market development. This 'modernization' appeal did not succeed in generating legislative action prior to 2007.

Table 5 Voting Results on the Second Reading (17 September 2008)

Factions	Faction members	For	% For	Against	Abstained	Not voted	Absent
Our Ukraine	72	6	8	0	0	56	10
Party of Regions	175	161	92	1	0	12	1
BYT	156	145	93	0	0	9	2
Lytvyn bloc	20	19	95	0	0	1	0
Communist party	27	27	100	0	0	0	0

Source: Own compilation from the Rada's web database, <www.portal.rada.gov.ua>.

Clearly, the concessions on critical issues made by Draft 6 were instrumental in changing the position of the key veto players and securing the adoption of Draft 6 at first reading. Yet, we identify also another and, arguably, more important factor, which relates to the problem of corporate raiding. As previously noted, corporate raiding was not a new phenomenon by 2007 and had already become a serious problem for Ukrainian business.[61] This, however, did not sway the draft law's opponents through much of the examined period. Post-2005, however, the situation changed in several ways.

There was an increase in the scale of the problem. As Mikola Azarov from the Party of Regions stated, the problem assumed "absurd proportions".[62] Reportedly, there were fourty-fifty corporate raiding groups acting on the territory of the country in late 2007, engaging in activity amounting to about US$ 2.5 billion annual turnover.[63] Nearly 3,000 companies were quoted in various sources as affected by corporate raiding.

Many raiders were associated with big financial and industrial groups. In fact, almost none of the biggest groups were excluded from the list of known raiders.[64] Many corporate conflicts (often used as the polite name for raiding), as in other CIS countries, were linked to the battle for property between business groups.[65] Indeed, 'dividing and ruling' between different regional clans accompanied the presidencies of both Kravchuk and Kuchma.[66] Conflicts between the Dnieprope-trovsk-region based groups Privatgroup and Interpipe, and between the Donetsk-region based System Capital Management and Industrial Union of Donbass characterized much of the late 1990s and early 2000s. Yet, these were also subject to what became a stable equilibrium between political power and rent-seeking business.

61 *E.g.* In a 2003 survey the IFC already identifies corporate conflict as a key concern, IFC, Corporate Governance Practices in Ukraine: A Survey, (2003).

62 Quoted in <www.telenor.ua/en/news-and-media/news/2007/Telenor-welcomes-the-creation-of-the-Corporate-Raiders-Commission>.

63 Interview with the then Minister of Economic Affairs, Anatoly Kinakh, 17 December 2007, <www.me.gov.ua/control/en/publish/printable_article?art_id=111205>.

64 *See*, for example, 'Strana dolzhna znat' svoikh geroev: krupneijshie reideryi Ukraininy', Upravlenie Kompaniei, 3 April 2007, <www.management.web-standard.net/articles/989>.

65 A. Barnes, *Owning Russia: The Struggle over Factories, Farms and Power* (2006).

66 Puglisi, *supra* note 40, Aslund, *supra* note 48.

With the Orange revolution, however, important changes took place. The new President and government soon became associated with a range of 'Orange' oligarchs: some of the large groups (*e.g.* Privatgroup and the Industrial Union of Donbass) as well as other 'smaller' oligarchs, such as Petro Poroshenko or David Zhvania.[67] It becomes clear that this new configuration was a problem for those previously secure in the Kuchma system. Indeed, as one Regions' MP, Irina Berezhnaya, said when asked whether there was raiding before the Orange revolution: "Yes ... but, first, these moments were rare, and second, there was one centre of decision-making power, and he was responsible for the facts – as opposed to the total irresponsibility of today." She continues talking about the 'Orange' oligarchs as the worst raiders and "raid as the side effect of the Orange revolution".[68]

Connected to this was the perception that the challenges to existing property structures were supported by the Orange parties – not just in repaying 'their' oligarchs and financial backers, as it was alleged in several high profile scandals at the time,[69] but in a process of re-privatization. The re-privatization of Kryvoryzhstal in 2005 became highly symbolic of the need to protect existing gains from the state.[70] As one of the leading Regions' MPs, ex-lawyer for Ahkmetov and a head of the sub-committee in charge of company law reform in the 2006 Rada, pointed out: "The first example of raiding in Ukraine is Kryvoryzhstal."[71] In this context, political rent-seeking was not a secure route to protecting and expanding property any more. Furthermore, as already noted, much of the post-2006 election period was marked by intense struggles between Prime Minister Yanukovich and President Yushchenko. The latter also made several high profile appointments which showed a clear preference of 'his' business supporters.[72]

This increased uncertainty regarding the continuation of political representation and protection of one group of oligarchs was paralleled by uncertainty in the state of legal and judicial institutions. Legal uncertainty was aggravated by the lack of a mechanism to resolve many of the conflicts between the simultaneously adopted Civil and Economic Codes (which entered into force in the beginning of 2004). As a result individual judges were left to determine the applicable law according to affinity and corruption benefits. It was also clear that through the wave of re-privatizations in 2005 the state itself suggested a new route for raiders, namely challenging the legality of prior privatizations. Given the extensive

67 Wilson, *supra* note 43, at 330-334, K. Malygina, 'Ukraine as a Neo-Patrimonial State: Understanding Political Change in Ukraine in 2005-2010', 1 *SEER Journal of Labour and Social Affairs in Eastern Europe* (2010), <www.seer.nomos.de/fileadmin/seer/doc/Aufsatz_SEER_10_01.pdf>.

68 I. Berezhnaya, speaking live on the parliamentary TV Channel Rada on 8 February 2008, <www.partyofregions.org.ua/digest/47ac38a37c8d4/>. Privatgroup is certainly mentioned in numerous media publications as the worst raider in this period, *see* Genadii Saharov, *Grupa 'Privat' – Rejder Nr 1 v. Ukraini*, <www.the-persons.com.ua/print_v/buzinessmen/2823>.

69 *E.g.* the case of *Nikopol Ferroalloy Plant*, *see* S. Umansky, *The Price for Nikopol Ferroalloy Plant*, Zerkalo Nedeli 27 (555) 16-29 July 2005.

70 For more on the (re)privatization, *see* Pleines, *supra* note 40.

71 Interview with M. Voropaev, 29 July 2008, <antiraider.ua/ucp_mod_news_list_show_3192.html>.

72 Wilson, *supra* note 43, at 333.

reliance on political patronage rather than legality, this made many owners who benefitted from privileged privatizations under Kuchma open to attacks. Indeed, one of the peculiarities of East European corporate raiding has been the use of 'formal' legal authorities, such as court orders and corporate resolutions, to cover up crude physical violence.[73]

All these factors, we argue, influenced the changed strategy of the Party of Regions and its coalition partners in relation to the law on joint stock companies. Introducing comprehensive company law legislation as well as the adoption of other measures to combat corporate raiding served the current interests of their business supporters.[74] Moreover, as noted, that was subject to the satisfactory solution proposed in relation to several deadlocked issues.

The continued support for Draft 7 by the Party of Regions and its partners is consistent with the arguments made above regarding the change of position. Further to the legislative momentum already created, corporate raiding and the threat to business interests remained problematic. There are plenty of examples to show that instances of corporate raiding continued to grow over the last part of 2007 and the summer of 2008, some of which affected major electricity distribution and oil-processing companies.[75] Thus, more of the informal sub-groupings within the Party of Regions were threatened.[76] Oligarchic groups associated with the Orange coalition, such as Privatgroup, were still linked to these attacks.

Furthermore, the support base for Draft 7 was extended through the support of BYT, whose position was affected by the severe battles between President Yushchenko and Prime Minister Timoshenko through much of 2008. This conflict led to the collapse of the government coalition when in early September Timoshenko allied with the Party of Regions on a vote to amend the Law on Council of Ministers, seeking to reduce the President's powers. This was not the first time that legal reform found itself influenced by the alliances and enmities of the bigger battle for constitutional powers between political forces.[77] Indeed, shortly after the adoption of the law Yushchenko attempted to dissolve parliament for a second time.

This atmosphere created uncertainty with regard to both the traditional political-patronage route and the legal route of property protection. As a recent

73 T. Firestone, 'Criminal Corporate Raiding in Russia', 42 *The International Lawyer* 1207 (2008).

74 Yanukovich also set up an inter-departmental Anti-Raiding Commission in February 2007.

75 A dramatic example was the raider attack on one of the biggest oil processing plants, Kremenchug NPZ, during October 2007, which negatively affected a web of business interests around it and had awkward implications with regard to relations with Russian groups. In another example, in July 2008, an attempt was made to change the management of the 75% state-owned electricity distribution company, Dneproblenergo.

76 Not just Akhmetov's lobby, but also the pro-Russian energy informal grouping. On the Party of Regions, *see* T. Olszanski, 'The Party of Regions Monopolises Power in Ukraine', *OSW Commentary Issue* 40, 29 September 2010, <www.osw.waw.pl/en/publikacje/osw-commentary/2010-09-29/party-regions-monopolises-power-ukraine>.

77 Attitudes to constitutional reform determined much of the political horse-trading throughout Kuchma's and then Yushchenko's presidencies. *See* P. D'Anieri, *Understanding Ukrainian Politics: Power, Politics, and Institutional Design* (2006), G. Flikke, 'Pacts, Parties and Elite Struggle: Ukraine's Troubled Post-Orange Transition', 60 *Europe-Asia Studies* 1177 (2008).

report put it, Yushchenko refrained from using the 'blackmail' state created by Kuchma, yet:

> did not replace this informal mechanism of state dominion by formal and really effective mechanisms of a democratic state based rule of law, something which resulted in an institutional vacuum and procedural deadlock, a chaotic situation where neither informal nor formal rules worked properly.[78]

We find that this 'bigger battle' took precedence over bargaining on particular issues for the Regions and their allies, including this time Timoshenko's bloc. Certainly, statements during the debate on 17 September show that MPs were prepared to compromise on the issue of the legal quorom for the general meeting of shareholders to avoid another veto by President Yushchenko. In these circumstances, the Regions and other partisan veto players acted through the institutional route open to them, namely the Rada and the government.

F. Conclusions

The analysis of company law reform in Ukraine shows that external pressure has been fairly constant, with the credibility of external actors even decreasing. Despite this, after significant delays, progress in adopting company law legislation was finally made in 2007. We explain the pattern of company law reform by tracing the position of key veto players to successive drafts of the joint stock company law and identify a number of important changes in their configuration, strategy and preferences as critical for the change in legislative outcome. In particular, we note the growing role of the Party of Regions as a key partisan veto player and the prominence of major oligarchic groups within it. We attribute their evolving stance on the law to the changing institutional and legal context, which essentially meant that uncertainty over privatization gains pushed veto players to seek new rules to protect their interests. With the Orange revolution, the reliance on the established extra-legal routes of political patronage, combined with the weakness of legal and judicial institutions, was not sufficient. This strategic use of legal reform entailed concessions on some critical issues, yet secured the core preferences of veto players at the time.

Thus we argue that the Ukrainian case is particularly instructive in placing the triggers for legal reform and the incorporation of international norms in the area of company law and corporate governance firmly in the domestic arena. While clearly external influence matters, it is the domestic opposition or support for legislation by veto players that determines legislative change. Accordingly, the in-depth study of Ukraine confirms the 'demand for law' argument, yet it shows that its salience and strategic use extends to the enactment of laws.

78 G. Gromadzki *et al.*, *Beyond Colours: Assets and Liabilities of 'Post-Orange' Ukraine*, International Renaissance Foundation/Stefan Batory Foundation (2010), <eu.prostir.ua/data?t=1&q=240765>, at 35.

In this sense, our study lends theoretical and empirical support to the thesis that political economy considerations are critical in the promotion of law reform. Further to the emphasis on perfecting the external stimuli and frameworks for import of laws, what is required is a "central engagement with the politics of rule of law reform".[79] This is particularly relevant in reforming external policies, such as the ENP, characterized by a low politics, technocratic agenda. The case of Ukrainian company law reform illustrates the limits of such approaches and of assumptions about a neat separation between state and business, legal and extra-legal worlds. In the complex and unstable institutional environment of Ukraine, these worlds are bridged and inhabited strategically, rendering a simple 'legal transplant' analogy an almost inapplicable concept.

79 Daniels and Trebilcock, *supra* note 7, at 109-110.