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Political Economy of Law Harmonization in EaP Countries: Informal Adjustment of Association?

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Abstract

In our paper, we look at the conditions for successful transfer of European Union (EU) rules in the areas of transport, environment and energy to the associated Eastern Partnership countries. We assume that in these areas there are fewer indirect external benefits of implementing EU rules than in the areas of trade and visa free regime and therefore the adoption of these rules should depend more on their direct relevance to the governments of associated countries. Our review of law harmonization in all three countries is complemented by three in-depth case studies in all three areas. These offer an analysis of how EU standards and templates travel to this neighbourhood by delving into their adoption and implementation and assessing the degree to which they fit with governmental priorities. The first case study considers transport and focuses on the implementation of the road safety directive (2009/40/EC) in just one country, Georgia, where implementation proved challenging. The second case study concerns Ukraine and Moldova, focusing on the role of environmental impact assessment regulations in discussions between the two countries on the possible construction of hydropower plants on the Dniester River. In the area of energy, the third case study focuses on unbundling in the electricity sector in all three associated countries. Our main finding is that transposition and implementation in these areas is patchy, but better than expected. This is due to the on-going informal adjustment of the Association Agreements, which has reduced the scope of the commitments taken. While this informal adjustment helps to lighten the burden of law harmonization and facilitate transfer of the EU *acquis*, it does not seem to follow any blueprint, and thus creates uncertainty among the different stakeholders over future regulation.

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1. Studying Law Harmonization in Associated EaP Countries

1.1 Introduction

This working paper looks into the rationale and dynamics of law harmonization as part of the implementation of the Association Agreement (AA) with the European Union (EU) in three associated countries of the Eastern Partnership (EaP): Georgia, Moldova, and Ukraine. The paper draws on the assessments of the European Commission, namely, the most recent association implementation reports[1] (European Commission 2017b, 2017d, 2018a), joint policy documents – such as association agendas – and other relevant sources, including the reports of governmental and non-governmental organizations. The paper studies law harmonization across three sectors of transport, energy and environment.

The sector specific analysis and the selection of case studies for this paper rely on literature on compliance and on a Europeanization framework. They also take into account key references in the law and development literature. Based on other EU-STRAT publications and previous research, it explores the EU's ability to both induce domestic change and foster economic and social development without a membership perspective.

The literature (Börzel and Schimmelfennig 2016) has consistently confirmed the importance of EU membership as a necessary, yet insufficient, condition for triggering substantial change on a polity level, i.e. in democracy and governance in particular. Research on policy level change is scarce, but offers a more optimistic prospect (Ademmer 2015; Delcour 2017; Langbein 2015). This was reinforced by the findings of the MAXCAP project[2] regarding compliance (Börzel and Sedelmeier 2016): Domestic change may take place if consistent compliance monitoring is applied, even when, in the absence of a membership perspective for EaP countries, the rewards for compliance from the EU are limited.

We offer a broader investigation of the conditions under which EU rule transfer may be successful by widening the scope of sectorial cases. We understand success as a transposition of laws into the legal system and their implementation. We seek to go beyond the examples of the Deep and Comprehensive Free Trade Agreement (DCFTA) and visa liberalization related reforms (Dimitrova and Dragneva 2013; Langbein 2013; Delcour and Wolzcuk 2015; Ademmer and Delcour 2016; Delcour 2017), as these were tied to clear rewards. In the case of visas, the lifting of Schengen visa obligations offered a tangible reward in exchange for massive reforms. In the case of trade, upgrading the contractual framework with the EU through AAs and DCFTAs[3] appeared to provide a major incentive to partner countries. Yet it is unclear whether the success of visa-free regimes and trade related conditions could be replicated in other sectors due to the absence of comparable rewards. Therefore, we ask what kind of incentives the EU could offer to promote successful law harmonization in those sectors. In particular, given that reforms in non-DCFTA sectors are also premised on the EU *acquis*, we further explore whether the EU *acquis* is a suitable template for modernization (Wolczuk et al. 2017).

[1] As released in March 2017 for Moldova and in November and December 2017 for Georgia and Ukraine respectively.
[2] 'Maxmizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond (MAXCAP)' was an EU-funded research consortium running from 2013-16. More information is available at http://maxcap-project.eu.
[3] DCFTAs are part of the AAs and cannot be concluded separately, but have their own conditions.

1.2 Law and Development

Over the past fifty years, a number of assistance programmes and policies, funded by multilateral organizations, have been based on the premise that a country's legal system plays a significant causal role in its development (or lack thereof). Such a vision of law as a key instrument of development is tightly entangled with theories of modernization as a series of successive stages countries go through in order to progress toward industrialization (Davis and Trebilcock 2008: 8). Hence, legal reforms are expected to bring about the changes a country needs to advance along the process of evolution experienced by developed countries (Ibid). According to development economists, this is because "The law is the most useful and deliberate instrument of change available to people" (de Soto 1989: 187). In this vein, the existence of a clear and comprehensive legal system is identified as the key difference between industrialized and non-industrialized countries (Ibid). Initially postulated for developing countries, the assumption of a strong correlation between law and development was extended to Eastern European and post-Soviet countries after the collapse of the communist bloc (Lee 2017: 421). This assumption entails identifying core rules needed for modernization and the creation of a toolkit of best practices, which could be replicated across countries (Mehra 2009: 166). Ultimately, this implies postulating the superiority of specific legal templates (primarily Western norms, given the historical precedence of Western countries on the pathway to industrialization and modernization) for triggering and sustaining development. Such views have been the core of assistance programmes designed for both developing and post-communist countries.

However, these approaches have struggled with the mixed (at best) outcomes of legal reforms in terms of economic growth and democratization. A key reason explaining why many of the laws and legal practices that were transplanted did not operate successfully in the host countries is a poor understanding of how law impacts development in different institutional, economic, social, and political contexts (Lee 2017: 418). Therefore, the causal mechanisms linking law and development have increasingly been debated. Research has demonstrated that the effectiveness of norms does not depend on whether they are supplied by a particular legal family, but on the norms being understood and adopted by the target society (Berkowitz et al. 2003). Policymakers (primarily multilateral institutions managing development cooperation programmes) have sought to introduce regulatory impact mechanisms with the intent to improve regulatory design and implementation (Lee 2017).

Nevertheless, despite these important findings and subsequent practical adjustments, the causation between law and development still requires clarification. As Pistor notes (2009: 168), little is known as to why

> "The correlation between legal development and economic growth holds across some countries, but breaks down in others […][or] why legal reforms frequently fail to deliver the expected results and, sometimes, correlate to events the opposite of those anticipated".

In fact, most advisers and multilateral institutions still regard legal rules as ends in and of themselves and fail to consider the broader social reforms goals behind these rules (Ibid). In other words, "What is viewed as political and social progress is a much broader question that lacks a cross-cultural consensus" (Lee 2017: 431). This raises key challenges in terms of defining clear and objective criteria for economic and (especially) social development.

In this paper, we theorize that the degree of contextualization in rule transfer (defined as the linking of rule transfer to a country's broader economic and social development goals) affects the degree to which EU rule transfer may be successful.

1.3 Political economy of law harmonization: What the acquis is all about

Created before the EU's enlargement to include Central and Eastern Europe (CEE), the EU *acquis*[4] was never intended to serve as a developmental framework. By nature, the *acquis* is primarily an internal EU instrument, the result of long years of negotiations among EU member states over the externalities of cross border cooperation, initially in trade, from shallow to deep integration (Egan 2001; Hix 2005; Majone 1996, 2014).

The successful accession of CEE countries into the EU has clearly contributed to an understanding of the *acquis* as a blueprint for reform. However, the *acquis* is usually part of a broader set of EU conditions for accession. The accession process was based on the Copenhagen criteria, comprised of targets for a functioning democracy, market, and state administrative capacity. The adoption and implementation of the *acquis* thus was just one of four membership criteria.

Moreover, the impact of the EU on reforms in CEE countries seems to be overstated (Mungiu-Pippidi 2014). The promise of EU membership only stabilized important reforms, it did not guide them. The EU accession successes in CEE are also ascribed to the quite peculiar circumstance of these countries during their transitions, including first of all, the existence of an overwhelming coalition for reform comprised of elite groups that enjoyed the support of the population at large (Dimitrova 2015).

What are the implications of the adoption of the EU *acquis*? The accession process in CEE made the meaning and sense of the entire *acquis* an issue, particularly within the framework of *ex-ante* and *ex-post* assessments of membership impact. It was argued that the adoption of the *acquis* resulted in an extension of the field of public policy, regulatory state and non-majoritarian institutions (Maniokas 2008). It also took away the possibility of protectionist trade policies or discriminatory state subsidies, while strengthening regulatory state functions and general administrative capacities. Moreover, it fostered market-friendly developmental interventions such as horizontal state aid schemes or investment projects financed with European structural funds (Bruszt and Vukov 2017).

Apart from market development rules and an increasing number of rules related to justice, freedom and security, one of the most substantial elements of the EU's *acquis* is its product and process standards developed at the

[4] While definitions of *acquis communautaire* differ, it usually refers to the body of the EU law and related practice. The Max Plank Encyclopedia of Public International Law defines it in the following way: „The acquis communautaire is the collective legal term for European Union law. It stands for the whole body of written and unwritten EU laws, the EU's political aims, and the obligations, rights, and remedies the Member States share and must adhere to with regard to the EU. It is thus not a source of law itself, but a heterogeneous and amorphous blend of politics and laws of different hierarchical order, setting the benchmark for the current state of European integration", available at http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1717 (accessed 30 January), and http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1717 (accessed 30 January 2019).

EU level in response to the need to tackle non-tariff barriers to trade (Egan 2001: 40-61). While at a certain point more emphasis was placed on mutual recognition and private standard bodies – so-called negative integration – mutual recognition was preceded by a harmonization of standards at the EU level (Ibid: 108). Driven by the desire to avoid a socially undesirable race to the bottom and the activism of the European Commission and European Court of Justice, the harmonization of standards at EU level has regained importance today (Majone 2014: 94).

What could be the general characteristics of these standards? Standards of the EU are usually discussed in procedural terms, in terms of how they are being established, and regarding which type of inter-institutional, member state, or set of interests dynamics are behind the standards (Egan 2001). Standards are understood as market-making tools, both in the United States (US) and in the EU (Majone 2014). The content of these standards at the EU level reflects a healthy balance between the concentrated interests of producers and the dispersed interests of consumers, workers, and environmentalist groups (Hix 2005). Positive integration, it is further argued, is shaped by special interests, while diffused interests are better served by negative integration means (Majone 2014: 92-95). In relation to international trade, standards are also presented as a means to facilitate global market domination and as barriers to entry to the market (Egan 2001: 236-60). They also reflect differences in risk assessment, health and safety objectives, and other societal values (Ibid: 58). Therefore, centralized harmonization might entail welfare losses for heterogeneous states in the EU, particularly for new EU member states (Majone 2014: 38-39).

1.4 Modernization through higher standards: AA content for EaP countries

It is difficult to define the common content of the EU standards, but a recurrent theme of many standards is the reduction of various risks posed by certain products and processes, such as food, cars, lifts, pressure vessels, and electric equipment. The tendency to multiply standards with a view to reducing risks reflects the preferences of wealthy societies with consumers who are willing to pay for protection from health, safety, environmental, and other risks. This protection is costly, and so are the environmental, consumer safety, and other standards contained in the AA.

The AAs with Ukraine, Georgia and Moldova are unique: they contain specific references to EU legislation. While a detailed analysis of all acquis in these agreements surely goes beyond the scope of is paper, we would like to draw attention to a substantial part of the *acquis* related to risk reduction and processing standards. If the AAs are supposed to be tools of modernization, then this is modernization by standards.

First and foremost, the AA is about the industrial product standards and food safety rules. The AA contains references to a number of technical regulations regarding industrial product safety, which include regulations on cableway installations, lifts, and low voltage equipment among other specifications. Another substantial element is food safety regulations. While specific lists of EU legal acts subject to harmonization in food safety had to be submitted and agreed on within six months upon entering the agreement, the major principles of the food safety control had to be introduced before negotiations on the DCFTA began (CEPS 2011; Delcour 2017).

Apart from product standards, AAs contain several references to process standards. In terms of process standards, environmental standards stand out as a major source of costly regulations, particularly regarding reducing pollution and its associated risks. Additionally, the part of the *acquis* referring to social and employment

issues contains a number of EU legal acts related to health and safety in the workplace. Consumer policy addresses risks to consumers. The content of rules in other sectors, such as transport, largely concerns reducing the risk of automobile, railway, air, and maritime accidents. Standards and rules designed to reduce the risk of fraudulent transactions and to protect consumers comprise a substantial part of the financial services, telecommunications, postal services, and energy requirements.

Despite the fact that such risk reducing standards can be costly, there was surprisingly little effort invested into estimating the costs and benefits of the adoption of these standards and rules in the associated countries (Wolczuk et al. 2017). One reason why a cost-and-benefit approach was not adopted were the macro-dynamics of the relationships between the EU and the EaP countries: a take-it-or-leave-it approach dominated the EU's DCFTA offer. This offer is a result of the very limited share of EaP countries engaged in EU trade, hence the EU did not bother to conduct cost and benefit analyses. Crucially, in contrast to its enlargement policy, the EU failed to offer sufficient compensatory mechanisms to counter the negative externalities of the changes induced by DCFTAs (Bruszt and Langbein 2017: 299).

The EU's approach towards EaP countries originates in the EU's ambition to project its regulatory regime worldwide, as outlined in the Global Europe strategy (European Commission 2006). This ambition was further legitimized by the results of trade feasibility studies — which for Ukraine, Moldova, and Georgia indicated that tariff reductions alone would not bring substantial benefits: only the elimination of non-tariff barriers through regulatory harmonization would produce a more substantial positive impact (ECORYS/CASE 2012). On top of that, unlike other third countries, which the EU had negotiated deals with, based on the Global Europe strategy — such as South Korea, Canada and Japan — EaP countries lacked the power, willingness, and time to resist the EU's offer. Some countries, especially Ukraine, were willing to take on as much as possible under very specific *acquis* terms to prove that they would be eligible for EU membership (Delcour 2017).

The results of the EU-Ukraine association negotiations served as a template for the EU's offers to Moldova and Georgia (Van der Loo 2017). However, as a result of the difficult negotiations with Ukraine, the EU introduced *ex-ante* conditionality prior to opening negotiations for a DCFTA with Moldova and Georgia (as well as Armenia). Only Georgia openly challenged the EU's approach. It also pointed to EU interests behind the DCFTA to promote its own regulatory norms and cited the irrelevance of many of these norms to developing countries such as Georgia (Messerlin et al. 2011). Georgia was the first and only EaP country to openly challenge the main presumption of the ENP policy, namely that the regulatory convergence with the EU *acquis* is a good development strategy for the neighbouring countries and should be the basis of domestic reform agendas (Wolczuk et al. 2017).

AAs in their current form were developed building by and large on the enlargement template without seriously considering how they could be implemented in the Eastern neighbourhood (Delcour 2017). Despite many calls and internal discussions within the European Commission after the big bang enlargement in 2004, EU institutions have not reviewed the *acquis* to establish its core body with a clear developmental value. EU institutions have not provided any advice on sequencing changes for aspirants who start approximation from significantly lower levels of development than EU member states either.

1.5 Beyond trade and visa-free regime related acquis: Transport, energy and the environment

We look into how EU rule transfers unfold in the broad and complex combined area of transport, energy, and the environment (TEE). This area also encompasses law harmonization implications pertaining to membership in the Energy Community and the Common Aviation Area, which is beyond the AA but is closely related to it as membership in these groups is an AA obligation.

There are at least two good reasons for choosing those sectors. First, as indicated above, the implementation of EU law in this area is under-researched compared to trade and visa-free regime related *acquis* transfers to EaP countries. Energy is possibly the biggest exception (Ademmer 2015; Balmaceda 2008, 2013; Wolczuk 2016).

Second, and most important, these sectors are quite different from DCFTA and visa-related ones because the EU does not offer specific comparable rewards here. Success of law harmonization in these sectors should thus depend more on the direct benefits these rules bring. Direct benefits are related to the rationale of the regulation per se and indirect benefits are tied with benefits other than those related to good rules, such as EU assistance, closer ties with the EU, and so on. Furthermore, there are many EU rules in these sectors, many to be transposed and implemented by the associated EaP countries, which makes them a good subject to study law harmonization.

Incentives for the transposition and implementation of the *acquis* in the area of TEE, and thus actual implementation, are expected to be different than in trade and visa-free regime related sectors. The direct benefits of *acquis* adoption in these sectors should be few as the relevance of the norms related to environment, transport safety, consumer's interests in energy would be low due to different developmental statuses of the associated EaP countries with regard to the EU member states. Indirect benefits offered by the EU in terms of external rewards are more limited compared to those related to trade and visas.

The reason for this is that the AAs, with the exception of Ukraine, do not foresee direct access to the EU's common market for services in the long-term (Van der Loo 2017). Moreover, trade in services, such as transport, is in principle only feasible for Ukraine and Moldova as they border the EU. For geographical reasons, it does not make sense for Georgia and other South Caucasus countries. The same applies to energy.

In the area of transport, for example, a concern with safety issues, such as reducing transportation accident-related deaths and injuries and reducing pollution produced by transportation should feature highly among the priorities of an EaP government in order for it to adopt and implement these rules.

The environment related *acquis* appears especially scarce of indirect benefits. Its implementation, unless there is a shared interest in obtaining a cleaner environment, could be particularly difficult.

Motivation for transposing energy related *acquis* objectives can be found in the possibility of access to the EU market and in security of supply benefits, but this would be conditioned by infrastructure links. Therefore, one could expect a rather difficult implementation of objectives of the *acquis*, such as the Third Energy Package (TEP).

Thus, we expect the adoption and implementation of EU *acquis* to be more selective in the areas of TEE than in the case of trade and visas.

The recent literature on *acquis* implementation in this area, in line with the Europeanization approach, underlines the importance of a 'fit' or resonance with domestic structure, which would include the preferences and interests of domestic actors (Langbein, 2015; Delcour 2017; Batory et al. 2018). Delcour (2017), for example, argues that domestic congruence was the main factor beyond Armenia's compliance with food safety and visa facilitation regulations. Yet in Georgia, a lack of domestic congruence inhibited Georgia's performance. Moldova and Ukraine, despite their domestic congruence, were unable to implement rules evenly, mostly due to opposing domestic interests, and the cost-benefit calculations of domestic actors.

However, we also note that the combined effects of strong policy-specific conditionality and encompassing capacity building targeting state and non-state actors can result in an encompassing adoption and implementation of EU rules, even if domestic incentives for law harmonization are low (Langbein 2015).Low domestic resonance and high costs, combined with limited EU rewards and weak EU conditionality are expected to translate into very selective adoption and implementation of the EU *acquis*. However, monitoring reports (especially those conducted by the European Commission) highlight significant progress in these areas (even if the progress varies across countries and sub-sectors).

In this paper, we seek to better understand this puzzle by looking into the factors driving law harmonization across TEE sectors: cost-benefit calculation around relevant *acquis*, affected by direct and indirect benefits, domestic resonance, EU conditionality and the capacity of actors involved. To do so, we developed a set of three case studies. Case studies are relevant for providing an in-depth review (altogether exploratory, descriptive, and explanatory) of new phenomena (Yin 2009). We do not seek to compare compliance patterns across sectors and countries; we seek, rather, to zoom in on specific cases. We focus on transport in Georgia, on the environment in Moldova and Ukraine, and in a third case study, we concentrate on energy regulation compliance in all three countries. We conducted these case studies with the intent to pinpoint drivers of, and obstacles to compliance. Each case study includes an introduction of the broader context of legal approximation in the countries concerned.

1.6 Research methods: Review of secondary sources, case studies, and interviews

Studying law harmonization is difficult due to the complexity and diversity of rules subject to harmonization and the highly technical nature of these rules. A review of secondary sources and semi-structured interviews was conducted to establish the general context of the adoptions and implementations of the EU *acquis* as part of AA obligations. This also includes anticipated additional obligations, which go beyond the AA such as membership in the Energy Community and Civil Aviation Area. The overview of the current state of play in law harmonization in all three associated EaP countries is based on a review of available secondary sources and an assessment of the compatibility of law harmonization provisions with a given domestic government's agenda. Reviews of the European Commission, international organizations, and NGOs' interviews with administrations, experts, and civil society activists (see List of Interviews in Appendix) have been used in particular. We also take into account assessments that are usually not covered in academic studies, such as available cost-benefit assessments

(particularly regulatory impact assessments) and the relevant studies and reports of numerous technical assistance projects.

After starting with a general overview of law harmonization, we focus on the TEE sectors. We analyse the specific link between the *acquis* and government priorities by looking into government programs. We ask: to what extent are TEE sectors' policies priorities in EaP countries? How are specific priorities formulated? Are risk reduction policies (such as reducing automobile accident-related deaths, promoting road safety, reducing road congestion in general) and addressing pollution in all forms government priorities?

This review of law harmonization in all three countries is complemented by three in-depth case studies in the three areas: transport, environment and energy. These case studies do not aim to provide a comparative analysis of EU rule transfers in Georgia, Moldova, and Ukraine. Rather, they offer an in-depth analysis of how EU standards and templates travel to this neighbourhood by delving into their adoption and implementation and assessing the degree to which they fit with governmental priorities.

The first case study considers transport and the implementation of road safety directives in just one country, Georgia, where this implementation proved challenging. While Georgia can hardly be compared to Ukraine and Moldova, the reintroduction of technical inspection for vehicles required by the transposition of a directive on roadworthiness (2009/40/EC) was particularly interesting in Georgia due to high costs and limited domestic policy resonance. Georgia is an extreme case due to the fact that, at some point, Georgia dismantled its entire system for ensuring a vehicle's roadworthiness.

Another case concerns just two countries and is related to a cross-border issue. This case focuses on the implementation of environment-related *acquis*, specifically on the role of an environmental impact assessment regulation in a discussion between Ukraine and Moldova regarding the possible construction of hydropower plants on the Dniester river. This case study delves into the domestic resonance of the environmental *acquis* and also looks at the roles of non-state actors and the ways in which the *acquis* empowers them. This case also tests the core role of the *acquis* as a solution to externalities of cross-border cooperation.

In the area of energy, we focus on unbundling in the electricity sector as part of the implementation of the TEP in all three countries. This continues previous EU-STRAT investigations of TEP implementation (Całus et al. 2018; Iwański et al. 2018). The latter addressed unbundling in the gas sector in Ukraine and the case of Naftogaz in particular. These publications and others (Balmaceda 2013; Ademmer 2015; Wolzcuk 2016) offered a good starting point. We are providing a comparative case involving all three associated countries. The application and function of the EU's sectorial conditionality strategy in the TEP case is a particular focus.

2. Case Study 1: Road Safety in Georgia

The first case study considers the implementation of a road safety directive in just one country, Georgia. This is the country where the implementation of a road safety directive could have been expected to be the most challenging. At some point Georgia dismantled its entire system for ensuring a vehicle's roadworthiness. The reintroduction of technical inspection for vehicles required by the transposition of a directive on roadworthiness

(2009/40/EC) thus was particularly costly. However, despite a seemingly unfavourable cost-benefit ratio of law harmonization in this area, Georgia made slower than promised, but still very considerable progress. We will investigate why and how it was possible below.

2.1 The context: Law harmonization in Georgia

The scope of law harmonization in the Georgian AA is similar to that of the AAs with Ukraine and Moldova. Georgia's and Moldova's agreements are based on Ukraine's, which was negotiated first. However, there are certain differences. Ukraine has had the most extensive and detailed commitments and is also the only country whose agreement contains a reference to internal market treatment for trade-in services. This justifies extensive law harmonization commitments in areas such as financial services and transport (Van der Loo 2017)[5]. Georgia's AA is different from the other two agreements in that it exhibits a certain degree of reluctance to law harmonization commitments: it includes long transitional periods, especially the TEE sectors and a narrower scope of law harmonization (Van der Loo 2017: 16). Georgia's AA reflects the rather critical attitude of Georgia's government towards harmonizing law with the EU, even after a change of government in 2012.[6]

The first attempts at law harmonization in Georgia, as in the two other associated countries, started with, and were based on, the Partnership and Cooperation Agreements (PCA) made with the majority of the post-Soviet countries in the 1990s.[7] Law harmonization provisions in these agreements, mostly concerning trade matters, were based on the best endeavour clause (Delcour 2017), which left the scope and timing of approximation to the PCA up to the countries themselves.

In Georgia they were dealt with rather formally and reluctantly, with a lack of serious commitment on the part of the government,[8] but in 2006, a separate law harmonization program was adopted.

A new democratic and liberal Georgian government took power after the 2004 Rose Revolution. After the death of moderate Prime Minister Zurab Zhvania in 2005, a very critical view of harmonization with EU norms as a source of over-regulation that was unnecessarily stifling the economy and promoting corruption gradually developed. Law harmonization, even as a concept, was almost banned from the policy-making discourse until 2008.[9] Georgia's relations with the EU at that time were based on the EU as a counter-balance to Russia, not on

[5] This can also provide the basis for the creation of an economic area, which can provide an additional rationale for extensive law harmonization programs in those countries. See Emerson 2018 on the Wider Europe Economic Area.

[6] In the progress reports of the European Commission (European Commission, 2017b) the critical attitude of the government tends to be regarded as a credibility in honouring law harmonization commitments.

[7] The Baltic states are important exceptions, they concluded their association agreements with the EU in 1995 and thus joined the Visegrad countries in their status.

[8] Authors' interviews with the law harmonization experts and government officials, Tbilisi, March 2017.

[9] This is also based on the personal experience of one of the authors, who from 2005 to 2010 served as a policy advisor for the EU-funded Georgian Policy and Legal Advice Center (GEPLAC). This centre and other EU-funded centres in other PCA and Western Balkan countries were designed to promote and facilitate law and policy harmonization. However, their efforts lacked the legal bases, which the AA provided only later. These projects produced a number of methodological guidelines, sectorial guides to law harmonization, and progress assessments, but their work was not coordinated, and outputs have not been assembled and stored; so most of them have been lost along with the intellectual legacy of GEPLAC.

the attractiveness of EU norms. The EU's calls for institution building also fell on deaf ears as the Georgian authorities regarded institutions as a source of regulation evils and corruption.[10] After the short Russia-Georgia war though, this attitude has changed: Georgia badly needs an EU presence. The promise of an Association Agreement led to the EU conditionalities, comprising a substantial package of EU law in the areas of food-safety, competition, and industrial standards[11] (Wolczuk et al. 2017).

Commitments with respect to harmonization in energy, transport, and the environment—the focus of our research—are very comprehensive. In the energy sector, the scope of harmonization is determined by the scope of the Energy Community, which comprises a substantial part of the EU's energy legislation and an important part of the environmental *acquis* as well.[12] In the area of transport, it covers most road, maritime, and railway transport legislation and is particularly comprehensive regarding air transportation—it even makes specific reference to the Civil Aviation Area Agreement. Upon its signing, the scope of harmonization in the EU-Georgia Common Aviation Area Agreement in 2010 (Council 2006) included 54 EU regulations and directives in the Annex to the Agreement. It was regularly amended as the body of the EU law in this area grew and comprised 81 regulations and directives in 2015. Sections pertaining to the environment also cover the majority of EU legislation in this area, including horizontal legislation, air and water quality, waste management, and the handling of chemicals.

The Association Agenda was intended to focus on AA implementation efforts. However, instead of making the AA implementation more focused, it complements and specifies AA commitments (Wolczuk et al. 2017). It covers energy, transport, and the environment in a single chapter (European Commission 2017a).[13] In the section pertaining to transport, it directly refers to increasing the safety of different modes of transport as a mid-level priority. It also assigns ambitious targets for law harmonization, referring to separate agreements with substantial law harmonization agendas, namely the EU-Georgia Common Aviation Area Agreement in the area of transport and the Energy Community.[14] The environment section also mentions major legislative acts in the areas of environmental impact assessment, liability, and stakeholders' involvement as short-term priorities and then refers to a special Environmental Action Program and its implementation in the medium-term perspective.

While the scope of harmonization is wide and impact may be substantial, there were very few attempts to systematically investigate the possible impact (Wolczuk et al. 2017). In Georgia, one such attempt introduced a new type of policy planning document, the policy papers. Introduced in Georgia in 2015, the policy papers were created to compensate for the lack of long-term planning for the implementation of the AA.[15] In 2016, there was a plan to develop 18 long-term policy documents outlining plans for the implementation of the EU-Georgia AA on the basis of impact assessments.[16] Fewer policy papers were developed in reality. The ministries' and other

[10] Authors' interview with the EU technical assistance expert, Tbilisi, March 2017.
[11] Other areas comprised protection of intellectual property, statistics and some other minor areas. See Delcour 2017; Maniokas 2009; Wolczuk et al. 2017.
[12] The EEC *acquis* comprises 40 legal acts and two recommendations in the area of climate change (Energy Community 2018a).
[13] Chapter 2.7 Connectivity, Energy Efficiency, Environment, Climate Action and Civil Protection.
[14] To which Georgia acceded in 2017.
[15] It was implemented based on one-year implementation plans. The DCFTA implementation plan, a separate document, had a three-year planning horizon.
[16] Authors' interviews with a Georgian official and an EU technical assistance expert, Tbilisi, March 2017.

public agencies' interests and abilities in developing longer term plans for legislative harmonization were weak,[17] and the impact assessments were usually either missing or very patchy[18].

Georgia's progress was constantly praised by the EU. The EU called Georgia a frontrunner of the association among EaP countries (European Commission 2017b). A 2017 report was also positive, stating that in implementing the AA, Georgia had kept to agreed timelines (European Commission 2017b).

However, progress is usually reported in areas in which implementation is not related to high material and political costs (European Commission 2017b). In sectors in which this was the case, progress was slow and uneven at best. The issues of concern were unofficially reported for the first time by the EU Delegation in Georgia at the beginning of 2017.[19] The Georgian authorities issued a response on May 15, 2017. One area of concern was public administration reform. There were delays in the entering into full force of the agreement and a slow development of secondary legislation against a backdrop of anecdotal evidence of growing nepotism in the public service sector. Another area of concern was road safety; reforms such as the introduction of compulsory third-party automobile liability insurance, which had already been planned for introduction in 2015, were postponed. The obligatory technical inspection of cars was also postponed.

Rules contained in the AA, especially in areas that are not trade and visa-related matters, such as energy, transport and the environment, enjoy rather low domestic salience. Georgia's government program does emphasize energy and transport but focuses on expanding capacities and network, which is a development issue (Government of Georgia 2016b). References to the AA are numerous in the program, but unbundling and the third package are not mentioned in the energy part of the program, nor does road safety feature among transportation priorities. The chapter on the environment is extensive and based mostly on AA obligations. However, these issues are secondary and did not make it into the core four-point plan aimed at rapid economic development through strengthening the private sector via tax incentives, market oriented education reform, efficiency oriented public governance reform, and, interestingly, an emphasis on special planning. All, except the latter point, makes for a rather orthodox liberal developmental path: a continuation rather than a disruption of Saakashvili government policy. Risk reduction and quality-of-life related reforms, such as establishing rules to achieve a cleaner environment, safer roads or more transparent rules for economic development appear to be secondary concerns.

An indication of quality-of-life related concerns is a reference to the concept of special planning, which is understood as 'the goal to put an end to spontaneous development'. There is also an increasing call to take quality-of-life issues seriously, in Tbilisi in particular, where levels of pollution reached serious levels,[20] as the case study on the roadworthiness directive confirms.

The rather low salience of life-quality related issues is demonstrated by a number of regulatory impact assessments (RIA) conducted for some environmental laws, such as a law regarding water quality and a law regarding biodiversity (PMCG 2018; USAID Georgia 2017;). The legislation regarding water transposes the water

[17] Authors' interview with a Georgian Government official, Tbilisi, April 2018.
[18] Based on the authors' analysis of policy papers.
[19] Authors' interview with a Georgian Government official, Tbilisi, April 2018.
[20] Authors' interviews with representatives of the Government and NGOs, Tbilisi, April 2018.

framework directive and the principle of river basin management. The law on biodiversity takes on directives pertaining to birds and habitats in general. Both RIAs converge at a point of low salience of quality-of-life and sustainability issues. As the RIA on water states, "The importance of having a proper water management system in place is not yet felt as a burning issue" (USAID 2017:8). It also points to the problem, which seems to be an essential feature of the post-soviet state, namely, of payments for water and its treatment, which are below cost recovery levels[21]. And this results in a situation in which "only 26% of the waste water is currently treated" (USAID 2017: 18).

As for biodiversity regulation, which is mostly concerned with increasing the coverage of protected areas and changing the nature of protection, the problem, again, is the "low level of awareness on the importance of biodiversity among the population in Georgia" (PMCG 2018: 54). The situation is also characterized by "a relatively high number of illegal activities" and "poor law enforcement" (Ibid: 46). It is also interesting to note that a repartition of costs among private and public actors is disproportional as private actors bear the biggest share[22].

2.2 Adoption and implementation of vehicle roadworthiness directives

The reintroduction of the required technical inspection of vehicles by the transposition of a directive on roadworthiness for Georgia is particularly interesting due to its high implementation costs and rather limited domestic policy resonance. Georgia's case is extreme due to the fact that in 2004 the Saakashvili government, during an anti-corruption campaign, dismantled the system in place for the mandatory technical inspection of vehicles. Given that most vehicle owners simply paid bribes to pass the inspection, many regarded the abolishment of the system as a real achievement; nothing changed in terms of road safety, but an important source of corruption was eradicated.

However, to meet AA obligations, Georgia needed to reinstate vehicle inspections. The AA and its annexes specifically refer to the EU directive on roadworthiness, namely Directive 2009/40/EC of the European Parliament and of the Council of 6 May 2009 on roadworthiness tests for motor vehicles and their trailers. Requirements of the directive include technical parameters for motor vehicles (including guidelines regarding motor vehicle identification, brake systems, steering systems, visibility, electrical equipment, vehicle body and elements thereof, cab, tires, wheels, axles, suspension, exhaust, noise, additional equipment, tool pack, etc.) and the methods for testing (instrumental and organoleptic) these parameters. This presupposes the existence of mandatory motor vehicle inspections.
The requirements of the Directive on roadworthiness had to be implemented within two years after the AA entering into force on July 1, 2016 for buses and trucks and within four years for other categories of vehicles.

[21] This, in other post-soviet countries, might extend to electricity and gas, which were subsidized under Soviet rule and had been considered a public service obligation. The payment of full prices for electricity and gas still seems to be a particularly acute problem in Ukraine. This leads to the phenomenon of a shallow post-Soviet state, characterized by numerous commitments to wide public services and few resources for delivering these services, as explored by Dimitrova et al. (2018).
[22] It is calculated as 290 against 85 million lari over 12 years (2017-2028); one should also note the high discount rate of nine per cent used in this particular RIA, but it is correctly based on ten-year government bonds yields (Ibid: 54).

Georgia's government had announced, though, that vehicle inspections would start much sooner than required, in March 2015, as part of a campaign to demonstrate Georgia's EU aspirations. However, this proved rather difficult due to the directive's considerable economic and social implications. An examination of the issue by state authorities revealed that

> "in order to start testing the entire motor vehicle fleet (more than 1.1 million motor vehicles) existing in Georgia […], it is also important to mobilize testing centres implementing such works" (Land Transport Agency 2016).

The Directive's requirements had been applied to a very limited number of vehicles beforehand, due to international convention obligations. These vehicles included those used in international shipping or transport, in the transport of dangerous goods, and all motor vehicles with a load-bearing capacity of over three tons. The policy paper also stated that this Directive will be a major challenge due to high and wide impact on the owners of different cars and that it is clear that a substantial part of cars is older than 20 years (Land Transport Agency 2016).

However, these considerations did not lead to longer transition periods in this sector, despite the fact that Georgia's stance towards harmonization has been more critical than Ukraine's and Moldova's and that transitional periods in the Georgian AAs are longer.

While it was difficult to generate a precise cost assessment, the Land Transport Agency estimated that around 80 % of cars would not comply with the Directive's requirements, and that the average investment needed to achieve compliance would be approximately 1000 USD per car. This would establish the one-off costs of the Directive at a whooping sum of USD 800 million. Furthermore, this cost assessment did not take into account the expense of establishing a testing infrastructure – which will be mostly privately owned, hence those costs will be passed on to car owners – or the cost of the police enforcement of inspection requirements.

The issue also caught the public's attention. Public media reported that more than 90 % of the automobiles in Georgia were more than ten years old and that it could be assumed that most of these cars were faulty. The media also reported that the plans were causing discontent among car owners, and owners of taxis, as passing the inspection would require costly repairs while it would of course be impossible for these people to afford new cars (Messenger Online 2014).

The major benefit of implementing this legislation is improved road safety, an issue that is on the government's agenda, as demonstrated by the adoption of a road safety strategy in 2016. This strategy explicitly mentions the roadworthiness directive as a tool for ensuring improvements in vehicle safety. The policy paper on the implementation of the AA in land transport, using an *ex-ante* impact assessment of the implementation of the EU *acquis* in the road haulage sector in Ukraine, estimated it can reduce traffic accidents and associated deaths up to 40 % and assumed it would have a similar effect in Georgia. The paper states that the implementation of the association package in road transport can save up to 200 human lives each year (Land Transport Agency 2016).

The road safety strategy, adopted in 2016, states that "In 2013, Georgia's road death rate (11.5 deaths per 100,000 of population) was 4 times higher than that of the best global performer (2.8) and more than twice the average road death rate across all EU countries. In 2013, 514 people died on Georgia's roads (511 deaths in 2014)" (Government of Georgia 2016a). The number of road deaths has rapidly declined since 2008, when the number was 867, and the need for a road safety strategy was justified by a growing number of vehicles.

Another important benefit of implementing the directive will be better air quality, especially in larger towns and cities, Tbilisi in particular. Finally, the policy paper stated that the renovation of the current vehicle fleet could provide an important stimulus to the Georgian economy.

The government's perception of the benefits of the directive, though, should not be overestimated. The Government programme of 2016 to 2020 does not mention road safety or the reintroduction of vehicle inspections as a priority (Government of Georgia 2016b). The road safety strategy and the policy paper on the implementation of the AA in land transport were partly products of international assistance projects, which advised on measures to take and calculated costs and benefits.

However, despite some government reluctance, and after significant delays to the initial timeline for the transposition of this directive, it was finally transposed at the end of 2017. The transposing act assigned different implementation timetables to different groups of vehicles. The government also created a special coordination body, comprised of representatives from six governmental agencies at the level of deputy ministers in one format and at the level of experts in another. They meet quarterly and monthly respectively. It launched a special information campaign. The government also took precautions against possible corruption by only allowing vehicle inspections to be paid for electronically. And, most importantly, the government altered the cost-benefit ratio of the Directive's implementation by removing its most expensive requirement: catalytic convertors. The removal was based on the estimate that around 60 % of passenger vehicles would require a catalytic converter, the installation of which would be the costliest inspection standard to comply with. The government also provided owners of vehicles that did not pass inspection a generous transitional period to bring their vehicle into compliance. The narrowing of the scope of the requirements for technical inspection was not previously agreed to by the European Commission however, and may be the subject of discussions in the association institutions.

There is some evidence that the interest of private companies to supply testing equipment and provide testing services accelerated the process of transposition and implementation. The government hired a private consultancy, which provided technical assistance with the implementation of the directive. Interest expressed by international private companies in providing testing equipment was mentioned as important as early as in 2016[23]. A private market approach was chosen for the testing infrastructure and the considerable interest of private operators was reported in April 2018[24].

Finally, a genuine and growing concern over worsening congestion and air pollution in the country, and in Tbilisi in particular, was reflected in the media. The EU's environmental norms, contained in the AA, particularly norms related to public consultation via an environmental impact assessments requirement, provide additional channels for environment protection interest groups. However, there is no evidence that these groups exerted

[23] Author's interview with a Ministry of Economy official, Tbilisi, April 2018.
[24] Ibid.

any pressure in this case or others related to the environment. It appears that unlike in the case study of the hydropower plant on the Dniester River, high-profile environmental lobbying did not play a role.

In summary, this case demonstrates that it is difficult to implement costly EU norms. Such implementations tend to be postponed when the government perceives their costs to exceed their benefits. Yet, at the end the implementation was better than could have been expected due to altering the cost-benefit ratio, the private sector constituency support, and a lack of important veto players. Growing concerns for air quality also contributed to a smoother implementation. A broader policy related implication might be that the implementation of TEE norms related to risk reduction that have limited domestic resonance could be facilitated by limiting the technical scope of harmonization, which is possible through the association institutions.

3. Case Study 2: Environmental Impact Assessment in Ukraine and Moldova

This case concerns a cross-border issue between Ukraine and Moldova. It focuses on the implementation of environment-related issues of the *acquis*, specifically on environmental impact assessment regulations in a discussion between Ukraine and Moldova regarding the possible construction of hydropower plants on the Dniester River. This case study delves into the domestic resonance of the environmental *acquis* and also looks at the roles of non-state actors and the ways in which the *acquis* empowers them. This case also tests the core role of the *acquis* as a solution to externalities of cross-border cooperation.

3.1 The context

This section introduces the state of play in the transfer of EU environmental requirements set in the *acquis* and seeks to provide an overall picture of the domestic resonance of EU rules in this sector in Ukraine and Moldova.

3.1.1 Law harmonization in Ukraine

Ukraine's progress in transposing the EU *acquis* into its legislation since the Association Agreement came into force in September 2017 has been mixed. According to the government's annual implementation report, the overall level of transposition in 2017 has been 41 per cent of the target. Experts were more critical, with assessments as low as 15 per cent.[25]

Ukraine demonstrates varying degrees of success in harmonizing its legislation in the transport, energy and environment chapters (TEE) of the AA. According to the government's annual report (Cabinet of Ministers of Ukraine 2018) and a civil society review of 2017 developments (UCEPS 2017), the greatest progress was achieved in the energy sector, with the approval of basic laws (regarding gas, electricity market, energy efficiency and metering). This progress was largely due to Ukraine's membership in the European Energy Community and pressure exerted by the EU and Energy Community Secretariat on Ukraine to implement the EU *acquis* in this

[25] The report by the EU External Access Service does not provide an assessment on the level of implementation (see European Commission 2018b).

area[26]. Legal harmonization concerning environmental laws has been only partially successful, although laws on environmental impact assessment and water management were adopted; there has been little progress in other areas, such as emissions. Finally, the lowest degree of approximation was observed in the transport sector, where basic laws regarding maritime, road, and rail transportation are pending parliamentary approval or have not even been drafted by the government.

While Ukraine's parliament has recently acted as a barrier to advancing legal harmonization, the EU implementation report recognizes the strong vested interests of other institutions and authorities, with civil society clearly promoting European integration (European Commission 2017d).[27]

Although the Association Agreement implementation guides government reform priorities, fiscal and financial stabilization have been more important short-term targets, especially in the aftermath of Ukraine's 2014 crisis. These policy targets have been negotiated with and supported by the International Monetary Fund and backed by the EU. Given the need to improve the efficiency and quality of public expenditures, Ukraine's government focused on reforms in the areas of energy, pensions, the privatization of state assets, healthcare, land, and education in its strategic documents.[28] Therefore, the conditionality framework (assistance and loans provided based on reform progress) initiated by the international community was a decisive factor in the government's process of developing and delivering on the reform agenda.[29]

The technical assistance the EU provided to Ukraine included advisory services to determine feasible and effective ways to transpose the EU *acquis*. At the same time, and perhaps also because of external pressure to expedite reforms, public policy-making instruments as cost-benefit assessments or nationwide public consultations (in the spirit of issuing Green and White papers) on reform options have not been widely used in Ukraine. The government continues to lack the resources and time to properly address two large and important groups of stakeholders: households and businesses.

The implications of risk reduction policies such as policies to reduce pollution and decrease vehicular accidents tend to remain unknown to the general public.[30]

The government's consultation process with the business community, another key stakeholder, is fragmented and lacks transparency and inclusivity. Despite a number of dialogue platforms and the government's willingness to consult with the business sector, the public dialogue is usually too general and does not cover topics related to TEE areas.[31] In the area of environmental protection, the government delayed the implementation of many regulations, citing their high cost for businesses and the government. In the energy sector, on the other hand,

[26] See the case study on unbundling and electricity below.
[27] Civil society representatives also play a positive communication and advocacy role within the Eastern Partnership (See European Commission 2017e, a joint staff working document of the Eastern Partnership, 20 Deliverables for 2020, which focuses on key priorities and tangible results).
[28] Specifically, the government's action plan for 2017 to 2020 for the implementation of the AA/DCFTA. Justice sector reform, anti-corruption measures, and public administration reforms have also been horizontal priorities, supported by the international community, and viewed as prerequisites for improving government effectiveness overall. See European Commission 2014.
[29] See Iwański et al. (2018) for the factors influencing the success of reforms in Ukraine.
[30] Based on an interview with the Ukrainian expert on the EU-Ukraine Association Agreement, Kyiv, April 2018.
[31] Ibid.

one can argue that the government has taken businesses' interests into account[32] and altered the rules to ensure that legal approximation and implementation is not blocked.

3.1.2 Law harmonization in Moldova

In 2016, Moldova's Government approved a national action plan for the implementation of the Association Agreement for 2017 to 2019. A 2017 evaluation report indicated that Moldova had implemented 66 per cent of 587 actions (Ministry of Foreign and European Affairs 2017). The EU noted some progress in implementing the AA, particularly in reforming bank supervision.[33] The Moldova-EU agenda, however, is hardly dominated by law harmonization (European Commission 2017c). The EU's focus is on fighting corruption, and, more specifically, addressing a massive banking fraud problem (Wolzcuk et al. 2017).

Adapting to EU norms and the *acquis* is becoming a dominant policy-making topic in Moldova, as the government claims it is striving to internalize Europeanization in Moldova's law-making practices. For instance, a law on regulatory documents[34] adopted in December 2017 requires new laws and government decisions to comply with the general provisions of the Moldovan constitution, international treaties, and EU law. In 2017, Moldova's parliament passed 56 laws related to the Association Agreement, significantly less than the planned 132 laws.[35] Thus, Moldova's government, at least formally, appears to be fully embracing an initial EU programme of modernization through association.

The energy dialogue between Moldova and the EU follows the Energy Community and AA/DCFTA frameworks. Both aim to enable Moldova to access more diverse and efficient energy supplies and to build a robust market-driven energy sector. This demands substantial harmonization with the EU *acquis* in almost all relevant areas of the energy sector. Chapter 14 includes a list of the EU energy *acquis* (50 regulations and directives) that should be transposed into national legislation by the deadlines listed in Annex VIII[36].

The Energy Community Treaty (ECT) outlines an even more comprehensive approach, including clear provisions on energy accessibility for citizens.[37] Membership in the ECC in principle enables Moldova to be part of the European energy market and locates it as a sub-system of the regional energy map of Europe (Cenusa 2016). This, however, requires a physical connection to the EU's energy networks.

With regard to transport, transportation makes up around 10 to 12 per cent of Moldova's GDP. However, transportation does not seem to feature among the government's priorities, which explains the unsettled issues

[32] See the case study on unbundling below, its section on Ukraine in particular.
[33] This was supported by the interviews indicating good cooperation between the EU advisors and Moldovan authorities, in the central bank in particular, and a progress in cleaning the banking sector. Interview with an EU expert, June 2018.
[34] The Law of Moldova on Normative Acts No. 100 of 22 December 2017 (article 3, paragraph 3) available at http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=373698 (accessed 20 April 2018).
[35] Author's interview with a Moldovan government official, Chișinău, May 2018.
[36] Other directives included in the Annex VIII are foreseen to be in place up to three years after the AA comes into force.
[37] Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC.

of border gaps (delays in freight), poor financing, the maintenance of the national and local roads, and the absence of a special ministerial body responsible for transportation, communications, or infrastructure.[38] The European Commission also noted a lack of capacity to rehabilitate roads (European Commission 2018a).

In February 2018, the government of Moldova launched its Good Roads Program, which aims to restore or build 1200 kilometres of local roads in 1200 settlements. The number of vehicle-related deaths is still extremely high but decreasing (Ministry of Transport and Road Infrastructure 2016). The adoption of road-safety strategies, however, seems to be driven by international actors, especially the UN.

As for the environment, Moldova's approximation of the EU's environmental norms is conditioned by ongoing reforms of the central government, where environmental concerns are subordinated to developmental needs, particularly of agriculture as evidenced by the recent merger of ministries and assessment of the policy change described below.

From 2015 to 2017, the transposition of EU directives related to the environment was achieved quickly. In 2018, progress, if any can be noted at all, was slow largely due to the dissolution of the former Ministry of Environment and its incorporation into MARDE (Ministry of Agriculture and Regional Development). According to local environmental experts,[39] this change reduced Moldova's focus on environmental priorities and diminished institutional memory due to a loss of well-trained staff. Thus, Moldova faces delays in adopting and properly implementing secondary legislation.

Environmental experts claim that there are frequent cases of building hydro stations (Branzenii Noi and Telenesti) prior to evaluating their impact on the environment.

3.2 Dealing with the environmental impact assessment: Hydropower on the Dniester River

This case study deals with the implementation of EU rules regarding the environment, namely rules on conducting environmental impact assessments, consulting with stakeholders, and managing river basins in Ukraine and Moldova.

In July 2016, Ukraine's cabinet of ministers approved the state's program for hydropower development through 2026. The program foresees building six hydropower plants on the Dniester River. The official purpose of the program is to ensure Ukraine's energy security by effectively developing hydropower with the maximum use of economically efficient hydropower potential (Cabinet of Ministers of Ukraine 2016). In reality, Ukraine's stakeholders in the energy sector - the line ministry as well as energy companies - view the Dniester hydropower complex as crucial to meet Ukraine's peak electricity demand and to improve existing baseload capacities.[40] For a long time, there has been a deficit in flexible generation capacity in Ukraine's electricity market, where most of the capacity is baseload in nature (nuclear and coal-based thermal generation). The project was designed and launched during Ukraine's Soviet era, so, from the point of view of Ukraine's energy sector, the project's

[38] Authors' interview with a transport expert, Chișinău, June 2018.
[39] Authors' interview with Moldovan environmental experts from the civil society, Chișinău, June 2018.
[40] Authors' interview with a Ukrainian environment expert, Chișinău (via Skype), May, 2018.

environmental impacts have already been analysed and do not require further review. Energy security considerations, specifically decreasing the country's dependence on fossil fuel imports does not seem to be a main factor.[41]

There already are facilities on the Dniester River that have considerably damaged its ecology, such as the Dubasari hydropower plant (located within the Republic of Moldova) and the Dniestrean hydropower complex (almost entirely within Ukraine). The river's water flow has decreased, the chemical and biological characteristics of the river have changed, and the intensity of the self-purification processes in the river has diminished (Government of Republic of Moldova 2017). Environmentalists in Ukraine are concerned about these changes and further environmental damage to the site. According to NGOs' estimates, building six more hydropower plants on the Dniester river will cause considerable environmental damage. This project could be a major problem for the ecological situation of the river and constitutes a considerable risk to the water supply for the inhabitants of the river basin (National Ecological Center of Ukraine/CEE Bankwatch Network 2006).

The Dniester river is the main water supply for approximately 2.9 million people, including localities along the river's left bank, which constitute 75.6 per cent of Moldova's population. The river also plays an important economic role in the Republic of Moldova and serves as the main source of water for the cities of Chișinău in Moldova and Odessa in Ukraine. The Dniester is a cross-border river between the Republic of Moldova and Ukraine: cooperation between the two states is evidently necessary for the elaboration and implementation of joint plans to manage the river's water resources and diminish the negative impact of human activity on the river.

When Moldova and Ukraine signed their respective Association Agreements with the EU, both countries committed to harmonizing domestic law with EU law. Moldova has transposed all four EU directives related to environmental impact assessment and public consultation.[42] Moldova has also transposed all of the relevant requirements of the EU *acquis* regarding water quality and water resource management, except for the Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption[43].

As part of the implementation of the transposed water quality directives, the Basin Council of the Hydrographic District of Dniester was established; it then adopted the Management Plan of the Hydrographic District of Dniester. Both the council and its management plan have served as important instruments in the management

[41] Authors' interview with a Ukrainian environment expert, Chișinău (via Skype), May, 2018.

[42] The Directive 2011/92/EU was transposed in Moldova on 29 May 2014 in Law nr. 86 of 2016. All necessary procedures for implementing this law have been adopted. Several projects have already passed the procedure for assessing their environmental effects. The Directive 2001/42/EC was transposed in Moldova in Law nr. 11 of 2017. Regarding the Directive 2003/4/CE, it was transposed with the approval of the Government Decision nr. 1467 of 30.12.2016 and partially in Law nr. 11 of 2017. The Directive 2003/35/CE was also transposed in Law 11 of 2017.

[43] The Directive 2000/60/CE was transposed in Law nr. 272 of 2013, which includes over 20 regulations, instructions and methodologies. Law 272 has also partially transposed other directives (nr. 91/271/CEE; 91/676 CEE; 2006/7/CE; 2007/60/CE; and 2008/105/CE). Directive 2007/60/CE was transposed in Decision Nr. 887 of 2013 of the Government of Moldova. Directive 91/271/CEE was partially transposed in Decision Nr. 950 of 2013 of the Government of Moldova. Directive 91/676/CEE was transposed in Decision Nr. 814 of 2017 of the Government of Moldova.

of the Dniester. Regarding the protection of nature, relevant parts of the EU *acquis* have been transposed as well.[44]

Ukraine's national hydropower development program was adopted before the country harmonized its law with the most important European directives in the field of environment. Directive 2011/92/EU mandates the assessment of the environmental effects of public and private projects that are likely to have significant environmental impacts and includes procedures for the development of projects likely to have significant environmental effects in another state. Article 7 of Directive 2001/42/EC outlines the procedure for trans-boundary consultations for projects likely to have significant environmental effects in another state. Directive 2000/60/EC regulates principles of the control of trans-boundary water problems, protecting aquatic ecosystems, terrestrial ecosystems and wetlands. These directives were transposed by Ukraine's Verkhovna Rada between 2016 and 2018.[45] The last directive requires the establishment of the Basin Council as coordinating and consultative body of the river basin district as well as the approval of a management plan for the Hydrographic district of Dniester in Ukraine and Moldova. The Basin Council is not yet functioning in Ukraine and the management plan is far from adoption[46].

Ukraine's intention to build six hydropower plants on the Dniester River is far from reaching consensus of all Ukrainian authorities. When the program for the development of the electric power industry was adopted in 2016, the Ministry of Ecology and Natural Resources (MENR) of Ukraine announced that this decision did not conform to neither national legislation nor Ukraine's international obligations.[47] According to MENR, the hydropower plant project contradicts state policy aimed at furthering European integration and disregards Ukraine's commitments under the Association Agreement with the EU in the harmonization of the Ukrainian legislation with energy and environmental legislation of the European Union (Ministry of Environment and Natural Resources of Ukraine 2016). Nevertheless, the government adopted the program. This is partly due to MENR's weak position relative to other ministries, a position that has been further undermined by the frequent leadership turnover within MENR. Furthermore, the issue of the Dniester hydropower plants has not been a priority in the ministry's policy agenda.[48]

MENR's position on the power plants has not changed and inter-ministerial conflict regarding the project continues. On April 18, 2018, Ukrainian members of parliament held a round table discussion on the "Environmental aspects of hydropower development in Ukraine" during which MENR's representative voiced some concerns. The representative stated the need for a systematic analysis of the feasibility of each project that would take into account potential socioeconomic, environmental, and political impacts among other consequences; he also called for an environmental impact assessment (Verkhovna Rada of Ukraine 2018). The

[44] Directive 2009/147/CE was transposed in Law nr. 237 of 17.11.2017 of the Parliament of Moldova and Directive 92/43/CEE was transposed in Law nr. 162 of 20.07.2017 of the Parliament of Moldova.
[45] Directive 2011/92/EU was transposed in Law nr. 2059-VIII of 23.05.2017 of the Verkhovna Rada of Ukraine, Directive 2001/42/EC was transposed in Law nr. 2354-VIII of 20.03.2018 of the Verkhovna Rada of Ukraine and Directive 2000/60/EC was transposed in Law nr. 1641-VIII of the 04.10.2016 of the Verkhovna Rada of Ukraine.
[46] Authors' interview with a Ukrainian environment expert, Chișinău (via Skype), May 2018.
[47] The Ministry of Environment and Natural Resources sent comments to the Ministry of Energy and Coal Industry of Ukraine disagreeing with the provision regarding the construction of six hydropower stations along the Dniester river.
[48] The authors' interview with a Ukrainian environment expert, Chișinău (via Skype), May 2018.

MENR representative offered detailed reasons for the ministry's objections to the program, noting that the program did not meet the strategic environmental assessment procedures and that there were no cross-border consultations with the Republic of Moldova nor consultations with the public (National Ecological Centre of Ukraine 2016).

Ukraine's intention to build six hydropower plants along the Dniester River prompted protest from environmental NGOs in Moldova and Ukraine. Moldova's civil society groups publicly expressed concern over the project.[49] Civil society organizations in Ukraine also actively criticized governmental hydropower policy. Working Group 3 of Ukraine's National Platform of the Eastern Partnership Civil Society Forum (WG-3 UNP EaP CSF) and Working Group 5 of the EU-UA Civil Society Platform (WG-5 EU-UA CSP) made a joint appeal for the revision of the governmental policy in the hydropower sector to Volodymyr Groysman, Ukraine's prime minister.[50]

There have been allegations in the press[51] that the investment project carries a high risk of being mismanaged by the state hydroenergy company (which would result in inflated costs and intransparent procurement). A somewhat similar concern was voiced by Ukrainian energy experts,[52] who pointed out that economic justifications for the project had overall not been fully scrutinized, especially given that funding was extended and disbursed over a long period of time.

The project captured the attention of Moldova's parliament as well. In March 2017, the minister of the environment presented information to the parliament on measures the Ministry of the Environment took to protect the Dniester River's ecosystem. Also, members of parliament adopted a declaration expressing deep concern over the intent to build six hydropower plants along the Dniester that could affect water quality and the ecosystems of the lower Dniester and the Dniester delta and would also create significant water supply difficulties in the Republic of Moldova (Parliament of the Republic of Moldova 2017).

Moldova also informed Ukraine of the need to comply with the provisions of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), ratified by both countries. According to this convention, a country is obliged to officially notify neighbouring countries that will potentially be affected by projects and to organize consultations on the environmental impact of planned activities. In 2016, a letter on this

[49] Representatives of civil society sent a position paper on the negotiation of an agreement concerning the functioning of the Dniester hydropower complex and its impact on the Dniester river basin to the Government of the Republic of Moldova and to the Cabinet of Ministers of Ukraine in November 2017 to express their concern that the drafted agreement between Moldova and Ukraine concerning the functioning of the Dniester hydropower complex deliberately disregards the environmental provisions of the EU-Moldova and EU-Ukraine Association Agreements.

[50] The appeal requests a national public hearing on the feasibility of this program in compliance with Ukrainian legislation. The appeal argues that this program has not been subject to strategic environmental assessments or consultations with environmental authorities and that there has not been adequate exchange of information regarding the project with neighbouring countries regarding river basin conditions. The appeal also states that the basin water management principles have not been taken into account.

[51] Ukrainian journalists noted that building six new hydroelectric power stations on the Dniester River will result in millions of citizens in Ukraine and Moldova living near the river losing their homes and land due to changing water levels as it appears the governments of Ukraine and Moldova may neglect the interests of their citizens.

[52] Authors' interview with a Ukrainian environment expert, Chișinău (via Skype), May 2018.

topic was sent through diplomatic channels to the joint-stock company responsible for the project, Ukrhydroenergo.

The first stage of the environmental impact assessment procedure requires filing a notice on MENR's website. Such a notification as of May 2018 has not yet been filed. An environmental impact assessment of the Dniester projects can start only after such notification.

Basin councils within the framework of the EU water directive should be instrumental in solving disputes and coordinating the interests of various stakeholders. As the principles of water management prescribed by EU legislation on the Dniester Basin of Ukraine are not yet operational (National Ecological Centre of Ukraine), councils have not been established in Ukraine, and legislation remains largely unimplemented. Ukraine's hydroenergy sector appears to operate under its own rules.[53]

Ukraine's government may address Chișinău's concerns by providing electricity exports at discounted prices, as it allegedly did some time ago.[54]

Moldova has attempted to make the dispute an international issue. Moldova's Ministry of Agriculture, Ministry of Regional Development, and Ministry of the Environment presented a request to fund a study of the social and environmental impacts of the hydropower complex and the construction of six additional hydropower plants to the Swedish Embassy. Subsequently, Sweden funded the requested study through the United Nations Development Program.

Moldova's and Ukraine's Prime Ministers sent a joint letter to the European Commission requesting support to evaluate the current ecological status of the Dniester river.[55] The EU responded on May 25, 2018. In their reply, the European Commission reiterated the obligation to transpose and implement EU rules in this area and requested additional information. The reply also included the promise of relevant instruments of support. It seems that the European Commission considered the matter sensitive enough for interstate relations.[56] There has been no visible pressure exerted by EU institutions on Ukraine to comply with its own commitments in transposing the environmental requirements of the *acquis* (unlike with the energy directive implementations, which were closely monitored by the Energy Community Secretariat).[57]

There is also no coordination between the EU delegations in Moldova and Ukraine, while this matter can easily be made the subject of monitoring of the association obligations.

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[53] Authors' interview with a Ukrainian environment expert, Chișinău (via Skype), May 2018.
[54] According to a journalist's investigation, on May 20, 2008 it was agreed that Ukraine would sell Moldova electricity at a price of $ 0.04 per kWh, which resulted in consumers from Moldova paying less for imported electricity than Ukrainians, who at that time paid $ 0.062 per kWh. At the same time, Moldova agreed with Kyiv's demands for a gradual increase in prices until July 2009. The date was not chosen arbitrarily—in April 2009, parliamentary elections were scheduled in Moldova.
[55] It was sent on March 29, 2018 and stated that both countries have accepted an obligation to transpose the EU legal framework in this area, which calls for transparency in decision-making and has managed to establish a joint commission to deal with the Dniester river basin issue. The Prime Ministers asked the Commission to support the assessment of the situation and to support the joint commission.
[56] Authors' interview with an EU official, Chișinău, May 2015.
[57] Authors' interview with a Ukrainian environment expert, Chișinău, July 2018.

There are several observations to be drawn from this case. First, comparing it with the case of unbundling in energy explored below, there is less interest on the part of the EU to engage. The rent-seeking interests are not as obvious as in either gas or electricity unbundling, but the case demonstrates the weakness of the stakeholders of environment *vis-à-vis* energy interests in Ukraine, particularly at the governmental level. In line with the literature on Europeanization in the area of the environment (Hix 2005), the EU *acquis* does empower local environmental groups, which strategically use it to demonstrate direct benefits of adopting the *acquis*. Moreover, the balance of interests between the industry and the environment is changing. There is also a rising domestic environmental awareness, which is gradually increasing domestic resonance of the EU's environmental legislation, as in the case of the vehicle inspections in Georgia. However, this has not resulted in a smooth implementation of the EU norms so far, confirming the findings of Buzogány (2016). In the case of associated EaP countries, contrary to its stance in the EU, the European Commission is hesitant to decisively support environmental cases.

4. Case Study 3: Harmonization with the Third Energy Package in the Electricity Sector

As part of the Association Agreements, Georgia, Moldova and Ukraine committed to harmonizing their legal framework with the EU's energy *acquis*, primarily the Third Energy Package. In addition to prompting deeper integration with the EU, approximation with EU energy rules is expected to bring about the creation of competitive and transparent energy markets, thereby boosting investments in the sector. Approximation is also expected to strengthen the efficiency and sustainability of energy systems, and therefore contributing to improved supply of energy security in the three associated countries.

However, approximation with the Third Energy Package entails implementing massive reforms to ensure the full opening of energy markets and the promotion of market-based prices. Despite their technocratic nature, these reforms are particularly costly to the elite. This is primarily because they can go to the heart of the functioning of political regimes (Balmaceda 2008, 2013; Wolczuk 2016), given the monopolistic and rent-seeking practices associated with the energy sector. These practices are tightly connected to, and in fact sustained by, strong interdependencies with Russia (Balmaceda 2008, 2013; Wolczuk 2016). In addition, the reforms the EU demands entail substantial costs for the citizens of the Eastern Partnership countries, too. This is due to the fact that the introduction of market prices is expected to translate into (albeit moderate) tariff increases, especially as gas and electricity prices have been heavily subsidized in post-Soviet countries.

While the nature of the challenges the three associated countries face as they reform their energy sector is to a large extent similar, the countries differ significantly in terms of their energy mix, regional energy interdependencies, and interests vested in the sector (Dusciac et al. 2016). Therefore, both the processes and outcomes of the reforms the EU demands are expected to vary by country. This section presents the state of play of reforms in the electricity sector—a sector that has often been overlooked in the literature compared to gas, yet which raises similar reform challenges (in nature, if not in scope). This section delves into obstacles to EU-demanded changes faced by Georgia, Moldova, and Ukraine, respectively. It draws on an analysis of EU and

Energy Community reports, and on interviews conducted in each country with government officials, energy companies, and experts.[58]

4.1 Georgia

Georgia eschewed early invitations to join the Energy Community[59] and undertook only limited steps to reform its electricity sector. The government also halted negotiations for accession to the EC in late 2014, without providing any official explanation for the suspension (Kochladze et al. 2015: 6). These actions were made despite Georgia's commitment to adopt the EU's energy-related *acquis*. Admittedly, Georgia's commitments, made as part of an ENP Action Plan agreed to in 2006, lacked both specificity and were not legally binding (European External Action Service 2006). However, as part of the Association Agreement signed in June 2014, Georgia made specific commitments in terms of regulatory authority (art. 215, EU-Georgia Association Agreement), its organization of the market (art. 216), and its relationship with the Energy Community (art. 218). Yet in late 2014, the government of Georgia put an end to negotiations to join the Energy Community. Ultimately, Georgia became a member of the Energy Community in July 2017, much later than Moldova and Ukraine. [60]

Georgia delayed accession to the Energy Community despite the fact that the country was seemingly more immune to the "vicious circle of energy dependence, inefficiency and corruption" (Wolczuk 2016: 133) than the two other associated countries. Georgia broke free from dependence *vis-à-vis* Russian energy in the second half of the 2000s for electricity and gas in the early 2010s (Kapanadze 2014), i.e. earlier than Ukraine and Moldova. Currently, it imports almost 100 per cent of its gas from Azerbaijan (Georgia Today 2018). In the electricity sector, Russian companies are present in generation, transmission, and distribution (Doggart 2009). Nevertheless, Georgia has a net independence from Russia in terms of electricity supply, though it still relies on Russian electricity during winter (Kapanadze 2014: 3). This means that Russia's leverage on Georgia's energy security is expected to be more limited than in Ukraine and especially in Moldova, even though Russia may exert influence via investments and ownership in Georgia's electricity sector. While Ukraine and Moldova are still plagued with pervasive corruption (not least in the energy sector), in the mid-2000s Georgia embarked on massive anti-corruption reforms. This is not to say that the Georgian energy sector is exempt from corrupt practices. In fact, despite the country's overall success in fighting corruption, specific institutional factors (such as legal loopholes) may create conditions for the development of corruption in this sector (Gujaraidze 2013; OECD 2016). However, the scope of corruption is expected to be more restricted than in Moldova and Ukraine and circumscribed to large-scale investments, such as hydropower plants. Therefore, Georgia's lower dependence on Russia and (relatively) weaker sensitivity to corruption as compared to Moldova and Ukraine are expected to create more favourable conditions for harmonization with the EU's energy *acquis*. This is also because in the EU's narrative, EU-demanded reforms are expected to bring clear benefits to Georgia by attracting investments, thereby helping the country tap its unused potential in solar energy and hydropower. Yet, perhaps surprisingly, Georgia's path to

[58] See the reference section for the interview list.
[59] Georgia was invited to join the Energy Community in 2006, yet did not respond until 2013. The subject was not much discussed either within the government or among the general public (Kochladze et al. 2015: 3).
[60] Georgia's belated accession to the Energy Community can be explained by its role in the transit of Caspian gas (and related transit fees). Ultimately, the EU agreed to exempt Georgia from applying Directive 2009/73/EC and Regulation (EC) No 715/2009 for the South Caucasus and the North-South pipelines until 2026 (Energy Community 2016).

the adoption and its implementation of the EU energy *acquis* appears to be tortuous, as evidenced by the country's belated membership in the Energy Community.

This case study seeks to identify obstacles to EU-demanded reforms and to explore links between the elites' interests, EU offers and demands, and regional interdependencies.

According to the Accession Protocol signed on October 14, 2016 (ratified by Georgia's Parliament on April 21, 2017), Georgia has to transpose and implement Directive 2009/72/EC concerning common rules for the internal market in electricity and Regulation (EC) No 714/2009 on conditions for access to the network for cross-border exchanges in electricity by December 31, 2018.[61]

To that purpose, a new energy law in line with EU standards was drafted in cooperation with the Energy Community Secretariat. Part of Georgia's government favoured the quick adoption of the law and EU-demanded changes, in the name of the country's overarching EU integration priority. However, other stakeholders within the government opposed the increased transparency that would result from the adoption of EU standards. This is primarily because compliance with the EU energy *acquis* would put an end to long-standing opaque practices of Georgia's authorities, i.e. the conclusion of confidential agreements with energy companies guaranteeing fixed purchase prices and market shares.[62] In addition, enacting EU-demanded changes would substantially restrict the possibility of rent-seeking practices. For instance, former Energy Minister Kakha Kaladze's (2012 to 2017) shares in the Georgia Hydropower Construction Company (even if sold in late 2012) had sparked concern over vested interests in the energy sector. As a consequence of these power struggles within the government, the preparation of the law was delayed for eight months. While the departure of Kakha Kaladze facilitated compliance with EU standards, the lack of political leadership and the absence of a clear strategy for reforming the sector translated into persisting hesitations on the model to be followed by the law (e.g., options for unbundling), thereby resulting in additional delays.[63]

Importantly, the reform of the energy sector also denotes a lack of transparency *vis-à-vis* stakeholders and the general public. Upon initiating the preparation of a new law, the government did not seek to engage with energy companies by launching a consultation procedure. As a consequence, energy stakeholders had only a belated awareness of the changes. This, in turn, may impede implementation once the law is adopted.[64] The Third Energy Package requires the establishment of a single regulatory authority for gas and electricity. This authority should be legally distinct and functionally independent from any other public or private enterprise, market participant, or operator. Even though Georgia generally complies with these requirements, there are loopholes both in the power and in the degree of independence granted to the regulatory authority.

Georgia's National Energy and Water Supply Regulatory Commission (GNERC) was created in 1997, with initial competences for electricity. Its competences were subsequently extended to gas (1999) and water (2007). For these sectors, GNERC sets licensing rules, regulates the activities of the licensees and mediates disputes among

[61] Georgia should also transpose Directive 2005/89/EC concerning measures to safeguard the security of electricity supply and infrastructure investment by the end of 2019.
[62] Authors' interview with an EU energy expert, Tbilisi, April 18, 2018.
[63] Authors' interview with an EU officer, Delegation of the EU to Georgia, Tbilisi, April 2018.
[64] Authors' interview, Energo Pro, Tbilisi, April 2018.

them; it sets and regulates the tariffs and organizes certification processes in the energy sector (GNERC 2014). Thus, Georgia is broadly in line with the Third Energy Package. GNERC has steered and led major reforms in the energy sector, as envisaged by the Association Agreement and the protocol of accession to the Energy Community. This was also made possible by its strong administrative capacity.[65] Recently, GNERC has changed electricity and gas tariffs with the intent to comply with commitments made by Georgia. These changes override some of the provisions included in the confidential agreements signed between the government and energy companies. Some of these companies, such as Inter RAO, brought their case before the court.

However, GNERC's competences have major limitations, which are primarily connected to power struggles within Georgia's government. In 2005, GNERC lost the power to approve the key documents regulating electricity and gas markets (the Electricity Market Rules and Gas Market Rules). This role was shifted to the Ministry of Energy (Energy Community 2018). In addition, the power to prepare long-term agreements is still with the Ministry of Energy and GNERC also depends on the government for information and data.[66] Another caveat relates to the insufficient nature of penalties GNERC is allowed to impose on energy companies in breach of their obligations.

The independence of GNERC is guaranteed by the Law on National Regulatory Authority and the Law on Electricity and Gas. These laws prohibit state authorities from interfering in GNERC's activities and guarantee GNERC financial independence. GNERC's budget is funded from regulatory fees paid by energy operators. However, the procedures for appointing GNERC's commissioners lack clarity (e.g., in defining selection criteria) and transparency (e.g., regarding announcing position vacancies). Crucially, contrary to the requirements of Directive 2009/72/EC and Directive 2009/73/EC, there is no limit to the number of times a commissioner's term may be renewed (Energy Community 2018). Ultimately, in order to comply with the *acquis*, commissioners should be selected by a committee composed of neutral, high-level experts in the field of energy, regulation, and administration (Ibid). Currently, the members of the commission are appointed and dismissed by the president of Georgia.

Thus, currently GNERC does not have the power to fully operate as a regulator[67] and its ability to function independently may be at stake. This is primarily because of the strong power centralization in Georgia. While the highly centralized nature of Georgia's government has facilitated major reforms in the country (e.g., the fight against corruption, see Nasuti 2016), it can also be an obstacle to initiating EU-demanded domestic changes that involve devolving responsibilities to new agencies. In particular, the Ministry of Energy regarded the Commission as a subordinated body and sought to retain as much power as possible. In this context, institutional restructuring within the Cabinet of Ministers in late 2017 (especially the merging of the Ministry of Energy with the Ministry of Economy and Sustainable Development, Civil.ge 2017) is expected to create more favourable conditions for implementing EU-demanded reforms in the energy sector.

[65] Authors' interview with EU energy experts, Tbilisi, April 2018.
[66] Authors' interview with an EU officer, Delegation of the EU to Georgia, Tbilisi, April 2018.
[67] "GNERC does not currently regulate the market, it only monitors". Authors' interview with an energy expert, Tbilisi, April 2018.

Georgia has not yet transposed the requirements for the unbundling of transmission and distribution system operators as foreseen in Directive 2009/72/EC (Energy Community Secretariat 2017: 15).[68] This is despite the fact that in the late 1990s, Georgia's authorities sought to create a competitive energy market. Decree No. 437 on the Restructuring of the Power Sector, adopted in 1996, and the 1997 Law on Electricity and Natural Gas resulted in major restructuring (e.g., the unbundling of Sakenergo, a state-owned, vertically integrated monopoly, into three autonomous entities) and the emergence of several electricity distribution and generation companies (Ibid: 10). However, the provision prohibiting licensees to hold more than one license or own shares of another licensee without GNERC's prior consent was subsequently removed (Ibid: 15).

In the electricity sector, the state is still a major actor in generation (through ownership of the two largest hydropower plants, Enguri HPP and Vardnili HPP Cascade, and ultimate ownership of Gardabani TPP, Kartli Wind Power Plant, and ESCO), transmission, and, to a much lesser extent, distribution (in which it owns shares). Contrary to the requirements for unbundling, the right to manage the state-owned companies in the energy sector lies with one single entity—the Ministry of Energy (Ibid). In the gas sector, most distribution operators are also involved in supply (with 24 licensees of 27 in 2016, Ibid: 24). The Ministry of Energy manages both the state-owned Georgian Oil and Gas Corporation and Georgian Gas Transportation Company.

The draft law on energy includes provisions for unbundling in line with the provisions of the Third Energy Package, including a strict certification process for transmission. In expectation of the new law, most operators have done due diligence and conducted a gap analysis to anticipate the requirements of the future law. For instance, Energo Pro (a Czech company and the biggest electricity distributor in Georgia by network and consumption) keeps carrying out activities in electricity generation, distribution, and supply sectors, through two separate legal entities. In their case, unbundling was facilitated by both prior experience in EU member states (e.g., Bulgaria) and participation in meetings organized by the Energy Community Secretariat, during which recommendations were delivered.[69] While Energo Pro supports the changes, which are expected to foster investments, some other companies are reluctant to proceed with unbundling, including the Russian Inter RAO that owns a 75 per cent stake in the electricity distribution company Telasi and a 50 per cent stake in JSC Sakrusenergo (which owns part of the transmission network, ADB, 2015:12). However, resistance in the electricity sector is weaker than in the gas sector, where the Azerbaijani company SOCAR is heavily involved and opposes the changes[70].

Therefore, developments in the energy sector over the past few years highlight a power struggle between actors in favour of EU-demanded reforms and stakeholders resisting change. Interestingly, both groups include governmental institutions, agencies, and officials, as well as businesses (Energo-Pro in the former group, SOCAR and Inter RAO in the latter). Georgia's prioritization of EU integration carries substantial weight in explaining recent moves toward implementing EU-demanded change. However, while membership in the Energy Community has empowered those actors to support change (as evidenced by the disappearance of the Ministry of Energy), persisting vested interests and rent-seeking practices may substantially hinder the implementation of EU-demanded reforms. This is also because Georgia's remoteness from the EU *de facto* limits the benefits it can expect from adopting and implementing the *acquis.*

[68] Georgia should transpose Directive 2009/73/EC concerning the common rules for the internal market in natural gas by 31 December 2020 (Energy Community 2016).
[69] Authors' interview, Energo Pro, Tbilisi, April 2018.
[70] Authors' interview with an energy expert, Tbilisi, April 2018.

4.2 Ukraine

While Ukraine joined the Energy Community in early 2011, i.e. much earlier than Georgia, adoption and implementation of the energy *acquis* remain patchy across sectors.

According to the 2017 Energy Community annual review (Energy Community Secretariat 2017), Ukraine performed well in transposing norms in the electricity sector (reaching 80% of the target) and poorly in implementing these norms (20% respectively). In fact, implementation of the electricity norms became one of the worst performing indicators for the country among all other targets monitored by the Energy Community Secretariat. The implementation gap in this specific sector is due to pricing distortions on the market, which prevented further progress toward compliance. Ukraine has also poorly performed in terms of transparency (publications related to energy market functioning), balancing markets, market opening and price regulation, and third-party access. As a result of implementation gaps, in May 2017 the Energy Community initiated two cases against Ukraine, the first one being connected to the electricity interconnector capacity allocation and the second one on non-compliance with capacity allocation rules for the purpose of transit of electricity.

Ukraine has progressed since then by endorsing a law on the Electricity Market transposing the Third Energy Package provisions in its secondary legislation, as well as implementation (Energy Reform Coalition 2018). Over the first quarter of 2018, a number of key steps have been taken to comply with the requirements of the Energy Community. For instance, the national regulator (NEURC) adopted a number of regulatory acts necessary for the market set up (Ibid).[71] The Ministry of Energy also launched the corporatization of the state-owned systems operator UkrEnergo and the restructuring of the state-owned company EnergoRynok. Ukraine also addressed the two above-mentioned cases on capacity allocation by launching transit auctions in early 2018 and preparing for import auctions after a new market model is set in 2019 (Ibid). About 40-60% of the targets stipulated in the law on Electricity Market have been implemented, according to independent and government assessments respectively.[72] Such a selective implementation can be explained by the resistance of a large number of influential incumbents on the market. In addition, the general public has not prioritized reforms in the electricity market to the same extent as it did for the gas market reforms. This is because dependence on Russia in the electricity sector was not as sensitive and there was no easy alternative to replace Russian nuclear fuel.

The implementation of the Electricity Market law further slowed down during the second quarter of 2018 due to the stalemate in electing new members of the national regulator. The decision to delay the election (made by the Presidential Administration as well as other stakeholders[73]) negatively affected the electricity market reform.

[71] Namely, drafts of the Market Rule, the Day-Ahead and Intraday Market Rules; Retail Electricity Market Rules, the Codes of the Transmission and Distribution System. In addition, NEURC issued regulations regarding the licensing of market participants, activities on electricity production; activities on resale of electricity (trader activity); activities on electricity supply to the consumer; electricity distribution activities; activities on fulfilling functions of a guaranteed buyer; and activities on wholesale supply of electricity.

[72] The interviewees were confident that most of the key targets will be implemented by the end of 2018. Authors' interview with the representatives of Dixi Group and NEURC, Kyiv, May 2018.

[73] The term of the current head of the regulator (who is linked to the President's orbit) ran out in May 2018 and the person was not deemed eligible to apply for a second term by the independent election commission. After the election of the regulatory authority's members was delayed, the five commissioners have been finally appointed by the President on May 29. Prior to that, the short-list of candidates has been contested before the court by two candidates (including by the current regulator's head).

According to the Energy Community Secretariat, this delay is in clear breach of NEURC's independence (Energy Community Secretariat 2018). In fact, during 2014-2017 the national regulator's activity has been under the heavy influence of the private sector, as evidenced by the fact that regulatory decisions specifically benefitted private companies. Importantly, the energy coal pricing formula set by the regulator (the so-called Rotterdam+) is creating rents for coal-producing companies (Całus et al. 2018), many of which are also part of electricity generation companies. At the same time, the so-called regulatory asset-based (RAB) pricing for electricity transmission and distribution is a step in a right direction; however, the way in which it was designed by the regulator would serve primarily the interests of private energy distribution companies.[74]

Importantly, Ukraine's steps towards electricity market reform were not backed by any comprehensive cost-benefit analyses.[75] When deciding to join the Energy Community Treaty, the Ukrainian government expected an increase in exports of surplus electricity. However, over the past few years, wholesale prices on the domestic market have already increased to such a degree that the competitiveness of Ukraine's electricity deteriorated. This was largely due to soaring imported gas prices, but also inefficient power generation capacity.[76] Besides, there was little investment appetite for the electricity network infrastructure (with some notable exceptions).[77] All of this made the integration of the domestic energy market with the EU financially unattractive. Ukraine's energy market remains largely isolated from the markets of the European Energy Community members (except for the so-called Burshtyn energy island), despite the fact that it could be integrated with the neighbouring system operators in the ENTSO-E zone via joint auctions (to be made possible in 2019). In addition, security considerations – both technical[78] and geopolitical (dependence on imports of energy inputs from Russia) – were not fully factored in until 2014. However, in 2017 Ukrainian authorities announced their decision to synchronize with ENTSO-E (with Moldova as a key partner) by 2025.[79]

The EU's conditionality, combined with international assistance, has given a push to Ukraine's attempts to comply with the implementation schedule of the Association Agreement. However, Ukraine's rapid progress in implementing key laws in 2017 and early 2018 is best explained by the fact that much of the secondary legislation

[74] According to a representative of NEURC, the developed RAB methodology leads to a dramatic increase of energy assets value (significantly surpassing the value of actual investments made), thus creating substantial rents for the assets' owners. Author's interview with a representative of NEURC, Kyiv, May 2018.

[75] There was a number of technical assistance projects supported by the World Bank, the US, and the EU (for example, the EU4Energy Initiative - 2018) - with beneficiaries in the ministry, as well as the national regulator -, which did provide advice on the implications of the electricity market reform.

[76] Most of Ukraine's thermal generation is also heavily polluting. While there is no carbon tax on energy imports, the EU indirectly links energy reforms and market integration to Ukraine (and other Energy Community members) meeting environmental standards by requiring the reduction of emissions (and the phasing out of power blocks that fail to meet pollutions standards) and reaching energy efficiency and renewable energy targets.

[77] Specifically, the European Bank for Reconstruction and Development (EBRD) has had a long-standing cooperation with the Government of Ukraine for linking spare capacities in nuclear generation in order to ensure greater balance in the internal market. From 2015 to 2018, more projects have been supported or initiated by international and bilateral financial organizations.

[78] The issue with meeting the peak load demand has been partially dealt with in Ukraine by operationalizing additional generation capacity.

[79] Such plans would require about USD 400mn of investments into generation and transmission capacities and also separation from the Russian energy market. According to a representative of the Dixi Group, the decision is driven by security considerations, given the conflict with Russia and the associated hacking attack on Ukraine's system operator. Author's interview with a representative of Dixi Group, Kyiv, May 2018.

had been discussed and drafted well in advance, in cooperation with, and under the supervision of the Energy Community Secretariat. More specifically, the latter insisted on reducing the transition period for the key provisions of the law from five years (as intended by the Ukrainian side) to two years. However, according to an interviewee the two-year transition schedule is "unrealistic" and "few believe that it is feasible", given the scale of expected changes and the need to balance the interests of many stakeholders[80].

According to a statement from a representative of the national system's operator (Kovalchuk 2018), the initial results of market opening are likely to be modest. According to calculations, less than 15 per cent of the market can be open to competition. This is because a large share of generation will continue to be regulated by the state (nuclear power stations, which account for about 50 per cent of the total electricity production[81], as well as renewables, which are granted feed-in prices); in addition, thermal generation is dominated by one player, DTEC holding.[82]

The resulting reform may lead to a redistribution of profits and rents between different generating companies (or rather types thereof), particularly between nuclear and thermal generation. Currently, the nuclear generation prices are about half of those for thermal generation. When "low cost" nuclear generation is averaged in the wholesale energy price, the rent is passed to electricity consumers. In fact, nuclear prices do not properly account for capital costs given that investments tend to be co-funded by the state's budget.[83] Given the new market design, the EnergoAtom company would become one of the key beneficiaries of the reform (along with some efficient thermal generators).[84] Gains realized by thermal generation (the second largest group of energy producers, which is largely privatized) will depend on access to, and pricing of coal and (to a lesser extent, gas) as fuel prices currently account for more than 70 per cent of thermal generation costs. Second, the electricity prices for households and industrial consumers will have to go up to reflective costs.[85]

All of this implies that Ukraine's authorities will face some difficult choices. Reforms will affect major stakeholders in thermal and nuclear generation, coal production, and, most importantly, households, which have already faced a series of painful price hikes for gas and electricity since 2014. Despite these increases (electricity prices more than doubled from 2014 to 2017), the prices for household consumers still do not cover costs and they continue to be subsidized by industrial consumers. According to recommendations of the international community (including the Energy Community Secretariat), price increases for consumers need to be

[80] Authors' interview with a representative of Dixi Group, Kyiv, May 2018.
[81] With the opening of the national electricity market (in a year), the nuclear energy price will no longer be directly regulated. The company EnergoAtom will be engaged in all segments of the reformed electricity market. Since the market reference (day-ahead) price will be largely determined by the thermal generation, nuclear energy will be competing with it and will get a surplus given its much lower (present) costs. It is envisioned that part of that surplus (rent) will be channelled to subsidize the renewable energy over the one-year transition period.
[82] Imports remain restricted. Besides, a number of generating companies are obliged (or designed in such a way as) to supply energy to certain large industrial consumers or markets.
[83] Nuclear prices in Ukraine do not fully account for the return on investment, decommissioning costs and other charges. Once and if fully covered, nuclear energy will probably still be competitive, but a part of the EnergoAtom profits will end up in the state budget.
[84] The capture of state-owned companies in the energy sector by vested interests remains a problem and a risk: e.g., current corruption allegations against the former head of the Parliamentary committee on energy are based on alleged corrupt practices of the EnergoAtom management.
[85] So that cross-subsidies between residential and industrial consumers are phased out.

compensated by targeted (and, ideally, monetized) social assistance. Political and financial barriers to reform social policy are significant: the risks of energy poverty are real given high levels of energy inefficiency in the housing sector.

Therefore, in Ukraine the benefits to be expected from the adoption and implementation of the energy *acquis* (i.e. security of supply and enhanced integration with the EU's market stumble against the resistance of various groups of domestic actors, for whom reforms in the electricity sector entail major direct costs which outweigh the less tangible benefits offered by the EU.

4.3 Moldova

Among the three associated countries, Moldova was the first to join the Energy Community in 2010. As part of the Association Agreement, the Republic of Moldova committed itself to transposing 43 directives and regulations relevant to electricity, gas, oil, energy infrastructure, energy efficiency and renewable energy sectors within three years of the provisional application of the agreement (1 September 2017). As with Ukraine, participation in the Energy Community Treaty and the AA provided the Republic of Moldova with the possibility of connecting to the regional energy market, thus facilitating the achievement of its main strategic energy security objective (Government of Republic of Moldova 2013).

The provisions of the Third Energy Package on electricity have been transposed into the primary legislation (Directive 2009/72/EU and Regulation 714/2009/EC). As a result, two related laws, Law No. 107/2016 on electricity and Law No. 174/2017 on energy were adopted in 2017. The latter addresses requirements to increase the powers and promote the independence of the National Energy Regulatory Agency (ANRE). Both laws were drafted with the support of external experts and under the close supervision of the Energy Community Secretariat. Moldova also adopted a regulation on the conditions of access to the transmission of electricity networks for cross-border exchanges and congestion management which transposes Regulation CE 714/2009.

To implement laws related to electricity, the government of the Republic of Moldova adopted the National Action Plan for the implementation of the Moldova-EU Association Agreement for 2017-2019. This document includes priority actions to be completed by the end of 2019.

Provisions regarding ANRE's independence and power, in addition to many of the provisions of the Electricity Law, have been implemented. These provisions were meant to address Moldova's poor performance in terms of vesting the regulator with the required competences to ensure a full and transparent functioning of the market. For instance, the Energy Community Secretariat opened a settlement procedure against Moldova in April 2015, as the regulator had failed to adopt electricity distribution tariffs in line with the EU *acquis*. This obligation derives from Directive 2009/72 / EC on common rules for the internal market in electricity, which the Republic of Moldova had agreed to implement. The provisional distribution tariffs adopted by ANRE in January 2015 were not applicable to all eligible customers, as required by Article 32 of Directive 2009/72/EC, but only to eligible customers seeking access to the distribution network operated by RED Union Fenosa and not to the distribution networks operated by the other two distribution system operators, RED Nord and RED Nord Vest. As a result, system users could not get access to the networks operated by these two system operators. This situation also created a barrier, on the one hand, for supplier switching and, on the other hand, for independent suppliers who

may have wanted to enter the market. Given this situation, the Energy Community Secretariat concluded that Articles 32(1), 33(1) and 37(1) (a) of Directive 2009/72/EC were violated by the non-adoption of distribution tariffs as of 1 January 2015. Later, on July 18, 2015, new distribution tariffs were adopted by ANRE and came into force on November 9, 2015 (Energy Community Secretariat 2018b).

Another shortcoming relates to the financial deviations accrued by the electricity sector and their recovery. System operators accumulated significant financial deviations, mainly because of the significant depreciation of the national currency as a result of the banking crisis in Moldova. As a consequence of the depreciation, a significant gap developed between the three suppliers' contracts with electricity generators set in USD and the retail tariffs set in Moldovan Lei. This led to a huge tariff deficit (equivalent to circa 1.7 per cent of Moldova's GDP), thereby increasing debts in the sector and the risk of massive power interruptions. In addition, as costs had constantly increased since 2012, tariffs were unable to cover costs. At the same time, suppliers were unable to pay the bills for the electricity procured, which put the security of Moldova's supply at risk. Gas Natural Fenosa commenced arbitration proceedings against the Republic of Moldova, but the parties decided to pursue settlement negotiations instead. The negotiations lasted a few months and an agreement was reached on June 3, 2016, in Chișinău. Later on, on July 15, 2016, a mechanism for the recovery of the tariff deviations for the energy suppliers and the energy distribution network operators was agreed upon. In line with this agreement, the tariff deviations had to be recovered from January 1, 2017, up until the end of 2020 (Energy Community Secretariat 2018b). Nevertheless, the recovery of tariff deviations has not started yet.

Provisions requiring secondary legislation have gradually been implemented. Regulators were given a two-year timeframe to adapt to existing regulations and methodologies or to issue new ones in line with the new law, until mid-2018. Regarding market organization and the creation of a competitive electricity market, one of the key obstacles is the limited number of participants in the Moldovan wholesale electricity market. In order to increase the number of market participants, new connections are needed with the EU ENTSOE network. Institutional reforms are also needed, for instance the establishment of a market operator and the development of centralized ancillary services and balancing markets.[86] These changes need to be buttressed by efforts to be made by the Moldovan authorities with a view to interrupting electricity purchases from the Moldoveneasca power plant based in the separatist region of Transnistria. In this regard, in early 2017 the Energy Community Secretariat developed a procedure for organizing tenders for electricity purchase. As a result, in spring 2017, a contract with a Ukrainian company was signed and for almost two months Moldova did not purchase electricity from the Moldoveneasca power plant. However, two months later, procurement from this plant resumed for unclear reasons.

In order to establish a competitive market, ANRE needs to approve the adoption of secondary legislation, which will create the base for setting rules for the wholesale market. The development of new interconnections with the EU electricity network is important, not only for increasing the number of participants in the wholesale market, but also to improve the security of energy supplies.

[86] Authors' interview, EU high-level adviser on energy policy, Ministry of Economy and Infrastructure, Chișinău, May 2018.

In an effort to build connections with the EU's electricity network (through Romania), a feasibility study was launched and related funding negotiations started with the European Bank for Reconstruction and Development (EBRD), the European Investment Bank (EIB), and the World Bank. At the same time, Moldova started preparatory work with Ukraine for a synchronous connection to ENSTO-E, with the intent to integrate the electricity systems between the two countries in 2025. On July 7, 2017, the agreement on conditions for integrating the electricity transmission systems of the Republic of Moldova and Ukraine with ENTSO-E came into force. Yet the Government of Moldova used the synchronization project as a pretext to abandon the project of establishing an interconnector with Romania, despite the fact that the two measures seem compatible.[87] This threatens Moldova's credibility as a reliable partner, given that the EU already committed assistance (€ 40 million) to an interconnection with the EU's electricity network.

Furthermore, in order to have a fully functional liberalized electricity market, electricity purchases from the thermoelectric plant Moldovenească should be stopped. This thermal power station lies outside the control of the regulatory system of the Republic of Moldova. Given that it is supplied with natural gas at a very low price, it can drop prices to prevent other suppliers from entering the market. Crucially, the difference in price for the gas to be paid and the real costs is calculated as debt to be repaid to Moldovagaz JSC, the only gas supplier in Moldova, located in the separatist region. The Moldovan elites' acceptance of this ever-accumulating debt — instead of shifting it to Tiraspoltransgaz, the subsidiary company of Moldovagaz JSC operating in Transnistria, — could be related to the rent-seeking practices of actors linked to the authorities and to pressure exerted by Russia to continue purchasing energy from Transnistria, a source of financing for the separatist region (Całus et al. 2018).

Therefore, the case of Moldova highlights patchy efforts to adopt and implement the energy *acquis*, despite the benefits to be expected from interconnections with the EU market. Opaque deals involving the breakaway region of Transnistria and limitations to the powers and independence of the regulator appear as the major breaches of Moldova's commitments in the energy area. Both derive from state capture by political and economic actors, who reap benefits from existing gaps in compliance with the *acquis*, yet would have to bear the costs should the *acquis* be implemented.

In summary, all three countries face major challenges (varying in scope) in transposing and implementing EU-demanded changes in their electricity sectors. The first of these challenges relates to the transparency of energy markets. In all three countries, vested interests in the energy sectors and rent-seeking practices have emerged as powerful obstacles to reforms. In addition, in Georgia, Moldova, and Ukraine, interdependencies with Russia (and, for Georgia, with Azerbaijan) have contributed to both consolidating vested interests and to perpetuating opaque deals. Whereas EU demands for greater transparency entail costs for rent-seeking companies and elites, tariff reforms are painful for citizens in countries with a decades-long tradition of heavily subsidizing energy costs. The connection between prices and costs, which derives from the EU's demands for change, has important social implications and therefore touches upon public policies other than energy reform.

[87] Authors' interview with EU experts, Chișinău, May 2018.

5. Conclusions

In this paper we looked at the conditions for a successful transfer of the EU rules in the areas of transport, environment and energy (TEE). We assumed that in these areas there are fewer direct external benefits of implementing EU rules and that the adoption of these rules should depend more on their fit with government priorities. In line with our previous paper (Wolczuk et al. 2017), we questioned the validity of TEE norms in the domestic context of the associated EaP countries and asked whether such a comprehensive and not entirely relevant agreement could be implemented at all.

Our main finding is that transposition and implementation in these areas is patchy, but better than expected. It is mainly because there is an on-going informal adjustment of the AA, reducing the scope of the commitments taken, as in the case of vehicle inspections in Georgia, electricity unbundling in Ukraine and Moldova, and transport and the environment in Ukraine, even at the level of transposition. It affects the cost-benefit ratio. The EU, it seems, tacitly supports and agrees with such an adjustment in general. This adjustment is, so far, the main condition for the successful transfer of TEE rules, in line with the rational approach to rule taking.

Rules related to the *acquis* in TEE sectors, as a further proof of our previous conclusions (Wolczuk et al. 2017), are not at the core of government policy, so their domestic resonance is limited. While AA commitments are mentioned in government programs, the development policy of these countries is centred on the basic market and rule-of-law reforms — as in Ukraine — or on liberal development policies, such as in Georgia. Moldova seems formally to be the most enthusiastic about embracing EU norms as a blueprint for modernization, but in reality, rent-seeking practices seem to be at the core of politics there.

While this informal adjustment helps to lighten the burden of law harmonization and facilitates transfer of the EU *acquis*, at least in some cases, there are certain risks involved. As this adjustment is discretionary and does not seem to follow any blueprint, it creates uncertainty over future regulation among different stakeholders such as civil society and investors.

The societies in these countries, as witnessed also with regard to the specific issues such as biodiversity, water quality and others, remain rather oblivious towards the reduction of risks, be it reducing road accidents or reducing environmental damage. Yet, these issues are entering the public agenda, albeit slowly, as the cases of the Dniester river hydropower and vehicle inspections attest. In line with the previous research, we can also confirm that the EU's *acquis* empowers previously weak environmental interest groups and encourages civil society engagement to take action against those with rent-seeking interests. This increases the domestic resonance of the *acquis*. However, it will be a long process.

As for transposition and implementation, Ukraine seems to have most problems with transposition, as the government does not have clear support of the parliament. The transposition and implementation of EU rules requires a window of opportunity. Unbundling in electricity has not found such a window.

In Georgia we see instances of conscious non-implementation based on the calculations of costs and benefits and modifications of the parameters of Georgia's AA obligations in a context where there is a capacity to implement rules. A liberal developmental outlook limits the scope of transposition and implementation, but it is

on-going, despite weaker indirect benefits due to the lack of physical connections to the EU's market. It seems this is mostly due to a political interest in the EU's presence and to a rather high administrative capacity.

In Moldova, the amount of transposition to undertake is massive, and problems appear at the level of secondary legal acts and implementation due to weak administrative capacities and rent-seeking interests helping each other. Our unbundling case suggests that Moldova has not addressed the key problem of its electricity market, which seems related to rent-seeking. However, the area protected by the rent-seeking practices is shrinking, as Moldova's progress in banking regulation demonstrates.

Our analysis also confirms previous findings (Delcour 2017), that the EU's assistance is relevant when non-implementation is caused by a lack of administrative capacities. Thus, the role of the Energy Community secretariat should be noted in advancing the transposition of unbundling rules and its partial implementation.

What about the EU conditionality? It seems to be working in Ukraine for a limited number of reforms, which directly relate to Ukraine's existential interests, such as in the reform of the gas sector and reducing dependence on Russia; and this is all occurring within a context of high vulnerability and pressure exerted not only by the EU, but also by US, IMF, and other actors, in line with previous EU-STRAT research. Naturally, and perhaps wisely, the EU is reluctant to exert more pressure. The EU's pressure on Moldova is growing, and this has led to a reduction in rent-seeking, but it seems that this pressure threatens the core interests of the dominant coalition, and is thus resisted. In Georgia, the EU's interest in the implementation of the AA rules does not seem high, as the EU needs Georgia as a positive role model, which is why it tends to turn a blind eye on patchy implementation.

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List of interviews

General

1. Member of the European Parliament, rapporteur for Moldova, Vilnius, June 21, 2018
2. Expert, Secretariat of the Energy Community, (via Skype), April 18, 2018
3. EU technical assistance expert (regional, energy), (via Skype), April 10, 2018

Georgia

4. Official, Ministry of Economy, Tbilisi, April 4, 2018
5. Official, Ministry of Environment and Agriculture, Tbilisi, April 4, 2018
6. Official, Ministry of Foreign Affairs, Tbilisi, April 4, 2018
7. Official, Ministry of Energy, Tbilisi, April 5, 2018
8. Official, Ministry of Justice, Tbilisi, April 5, 2018
9. Expert on EU, civil society organization, April 6, 2018
10. Official, EU delegation, Tbilisi, April 25, 2018.
11. Former official, Ministry of Energy, (phone call), Tbilisi, April 25, 2018
12. Expert on energy, think tank, Tbilisi, April 26, 2018.
13. Deputy Director, energy company, Tbilisi, April, 26, 2018.

Moldova

14. Expert on environment, civil society organization, Chișinău, May 4, 2018
15. Expert on environment, civil society organization, Chișinău, May 10, 2018
16. Former official, Ministry of Environment, Chișinău, May 15, 2018
17. Official, Ministry of Agriculture, Regional Development and Environment, Chișinău, May 17, 2018
18. Expert on environment, think tank in Ukraine (via Skype), May 18, 2018
19. Official of the EU delegation dealing with energy, Chișinău, May 30, 2018
20. Official of the EU delegation dealing with environment, Chișinău, May 30, 2018
21. Official of the Ministry of Foreign and European Affairs of Moldova, Chișinău, May 30, 2018
22. Advisor, the EU High Level Policy Advice Mission (EUHLPAM) (banking sector) Chișinău, June 1, 2018
23. Advisor, the EU High Level Policy Advice Mission (EUHLPAM) (energy) Chișinău, May 29, 2018
24. EU member-state diplomat residing in Moldova, Chișinău, May 28
25. Official, Ministry of Agriculture, Regional Development and Environment, Chișinău, June 13, 2018
26. Official, Ministry of Agriculture, Regional Development and Environment, Chișinău, July 25, 2018

Ukraine

27. EU technical assistance expert (energy), Kyiv, April 12, 2018
28. Representative of National Energy and Utilities Regulatory Commission (NEURC), May 17, 2018
29. Representative of Dixi Group NGO, May 18, 2018
30. Head of European Union Advisory Mission, Kyiv, June 6, 2018

31. Journalist, editor of European Pravda, Kyiv, June 6, 2018
32. EU technical assistance expert (rule of law), Kyiv, June 6, 2018
33. Ukrainian EU expert, Kyiv, June 7, 2018
34. Official, EU delegation, June 7, 2018
35. Official, EU delegation, Kyiv, June 8,2018
36. Environmental expert, June 12, 2018
37. Energy expert, Ukrainian Institute for Energy Modelling, June 13, 2018
38. Expert on EU-Ukraine Association Agreement, former government official on European Integration, July 14, 2018
39. Expert on EU-Ukraine Association Agreement, Civil Society Organization, July 12, 2018

The EU and Eastern Partnership Countries
An Inside-Out Analysis and Strategic Assessment

Against the background of the war in Ukraine and the rising tensions with Russia, a reassessment of the European Neighborhood Policy has become both more urgent and more challenging. Adopting an inside-out perspective on the challenges of transformation the Eastern Partnership (EaP) countries and the European Union face, the research project EU-STRAT seeks to understand varieties of social orders in EaP countries and to explain the propensity of domestic actors to engage in change. EU-STRAT also investigates how bilateral, regional and global interdependencies shape domestic actors' preferences and scope of action. Featuring an eleven-partner consortium of academic, policy, and management excellence, EU-STRAT creates new and strengthens existing links within and between the academic and the policy world on matters relating to current and future relations with EaP countries.