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EU external governance: successful good governance promotion in Moldova and Ukraine?

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Introduction

The Eastern enlargement of the European Union has profoundly redrawn the map of Europe. The EU acquired not only 12 new members, but it also faced new neighbours on its Eastern frontier. The Republic of Moldova (Moldova) and Ukraine, EU's new Eastern neighbours became participants of the new European policy – that of a New Neighborhood and currently of its new eastern dimension - the Eastern Partnership (EaP). Both policies outline the EU's intent to work “more closely” (European Commission European Neighborhood Policy [EC ENP], 2009) with its neighbors. In other words, the Union strives to involve selected countries into a number of policy areas with a long-term aim of integrating them into the broader framework of European cooperation. In the case of European Neighbourhood Policy (ENP) countries, Moldova and Ukraine in particular, it seems that the EU has the power to trigger democratic reforms in different policy areas. The interesting aspect in this respect is that rule-adoption in policy areas in these countries take place without being promised the reward of becoming a member of the EU. On the other hand, the internal developments in neighboring countries (e.g. political instability after parliamentary elections in Moldova, power shift as a result of presidential elections in Ukraine) often demonstrate the power to hinder the transfer of EU rules to these countries. This research positions itself in the discussion centered on the EU's impact beyond its borders. It presents an analysis of conditions that influence the commitment of the neighbouring countries to implement EU-induced reforms.

The most recent research on external governance in relation to the ENP countries discusses the influence that the EU has on third countries, the effectiveness of democracy promotion in these countries and outlines that ENP countries adopt legislation without having the benefit of political conditionality (Freyburg et al, 2009; Lavenex & Schimmelfenning, 2009). This research introduced the model of good governance promotion as one of the possible patterns of the relationship between the EU and its neighbouring countries. The question that concluded the study was whether the model of good governance promotion is a viable alternative to the enlargement model based on political conditionality. This puzzle opens room for further investigation; therefore, the research question central to this paper is whether good governance promotion is indeed successful without the promise of EU membership. The scope of the research will be limited to the analysis of the EU rule transfer in the energy and trade policy of the two Eastern European neighbours – Moldova and Ukraine. As will be shown in the paper, the successful rule transfer largely depends on the strength of the EU incentives. However, the commitment of neighbouring countries to enforce EU-induced reforms may be diminished due to the impact of domestic and external factors. This allows drawing broader conclusions that highlight the necessity for the scholars to pay more attention to the context in which the EU rule transfer takes place.

In order to do so, the paper was structured as follows. The first section of the paper, the analytical framework, will define the EU external governance and will pinpoint its main characteristics, in particular the model of good governance promotion. This section will be followed by the discussion of the research design of the paper, where the choice of hypothesis, operationalization of variables as well as the case selection will be explained. The hypothesis of the research will be tested in the

subsequent part of the paper via the empirical analysis of the EU rule transfer in the trade and energy policy areas in Moldova and Ukraine. Afterward, the discussion section of the paper will revise the findings of the paper, focusing on the two intervening variables and the explanatory power they have. The final section will provide some concluding remarks on the EU's success in triggering reforms in the Eastern neighbouring countries.

Analytical Framework

After the fall of the Berlin wall, when the world was no longer divided between two poles, different studies were discussing whether Western Europe will have a place and play a role in world affairs. Today, 19 years later, researchers no longer refer to Western Europe but to the EU that has grown in terms of size and power and constantly shows its presence on the international arena. Moreover, in relation to third countries EU has proved to have a strong impact, especially in its direct neighborhood. Hence, researchers have been particularly interested in how, why and what is the impact of “the EU gradually expanding its governance beyond the circle of member states” (Lavenex, 2004, p. 681). The way the EU governs outside its geographic borders, the way in which the EU system of rules and norms cross EU borders and the link between EU's internal mode of governance that determine the external mode of governance in relation to its neighbours are incorporated in the concept of EU external governance. As Lavenex and Schimmelfenning (2009) explain, the EU's actions beyond its borders can be understood through the lens of foreign policy or through the lens of governance. The foreign policy understanding of the EU external relations focuses mainly on an intergovernmentalist approach and is concerned with the study of EU integration process from the unitary actor perspective. In contrast, the external governance approach emphasizes how effective or legitimate the EU is outside its borders, and what is the impact of EU policies on national governments. Some researchers called attention to the fact that given the outcome of EU external relations of “generating transformative effects [... and ‘Europeanizing’ ...] non-member states” (Schimmelfenning & Wagner, 2004, p. 658) makes it more appropriate to use the concept of EU external governance rather than EU foreign policy as the latter focuses on countries or regions as unit of analysis. EU's external policy understood through the governance perspective, thus, explains that EU's policies and rules are transferred, adopted and implemented in the hierarchical or network modes beyond formal EU membership (Lavenex & Schimmelfenning, 2009). The last argument represents the major breakthrough from the foreign policy approach to understanding EU actions beyond its borders.

In this research the concept of EU external governance is to be understood as “expansion of EU rules beyond EU borders” (ibidem, 2009, p. 807). For the analytical purpose of this research we distinguish two models of EU external governance in relation to its Eastern neighborhood - the good governance promotion model and the enlargement model. Both of these models are related to the models previously developed in the research of Smith (1996) and Lavenex & Schimmelfenning (2009). The EU has made use of the enlargement model in the two last waves of accession. Since then, EU is constantly employing the good governance promotion model in relation to its neighbours.

The enlargement model presumes the EU-driven rule adoption and implementation and refers to ‘governance by conditionality’ (Schimmelfenning & Sedel-

meier, 2004). The model of enlargement based on political conditionality was applied to the candidate countries of the EU where reforms were driven by the promise of EU membership. The use of EU political conditionality can be traced back to the times after the fall of the Berlin Wall when Central and East European countries have declared their interest to join the EU. According to Smith (1998) EU started to apply conditionality in 1988-1989 in relation to these countries in order to stimulate implementation of reforms; the more ahead the countries were in the process of reform implementation the more benefits they were offered from the EU. The reason behind applying political conditionality was to establish democracy and promote human rights; thus if countries did not comply to set-out standards, sanctions could be applied by the EU (Smith, 1998; Schimmelfenning & Sedelmeier, 2004). Furthermore, in the case of the candidate countries from the last two waves of enlargement in 2004 and 2007, the model of enlargement presumed transformation of policies and institutions in these states, triggered by the transfer of EU rules (Schimmelfenning & Wagner, 2004). Scholars distinguish between two types of conditionality within the model of enlargement – ‘democratic conditionality’ and ‘acquis conditionality’ (Schimmelfenning & Sedelmeier, 2004). Democratic conditionality refers to EU promotion of norms of human rights and liberal democracy; a similar pattern can be traced in the model of good governance promotion. The findings of the research done by Schimmelfenning & Sedelmeier (2004) showed that democratic conditionality depends on the size of adoption costs: “given a credible membership perspective, it was the size of domestic political costs of incumbent governments that shaped their response to EU demands” (p.678) Acquis conditionality refers to the transposition of EU legislation into domestic one (ibidem); a similar trend takes place in the model of good governance promotion in regards to the ENP countries. In this case, the findings of the research (ibidem) showed that domestic obstacles were easier to overcome as the benefits of EU membership weighted more: “a credible membership perspective and the setting of rules as conditions for membership appear the most important conditions for successful rule transfer” (p.681).

The model of good governance promotion refers to the promotion of democracy and rule of law by the EU externally without a promise of membership reward. In the case of Moldova and Ukraine this model can be traced through the Individual Action Plans signed between the ENP countries and the EU or the prospective Association Agreements. As the latter ones are in the process of negotiation, this research will focus on the initial Action Plans that have been implemented. The Action Plan themselves represent “an agenda of political and economic reforms with short and medium-term priorities” (European Commission European Neighborhood Policy [EC ENP], 2009) in seven priority areas. The Action Plans have been formulated in the framework of the ENP through which EU is offering ‘everything but institutions’ (Prodi, 2002); aiming to support “social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights” (European Commission [EC], 2003, p. 10). A particular characteristic of this model is that the EU “[extends] parts of the Union’s *aquis communautaire* beyond the circle of member states towards its immediate neighbours” (ibidem, p.681). Given the lack of strong incentives and clear enforcement structures the transfer of EU rules into national political systems heavily depends on the ‘soft’ mechanisms of the rule transfer to the neighboring countries. For instance, a number of scholars point out to ‘conditionality-lite’ or soft form of conditionality (Sasse, 2008; Bobitski, 2008) that is linked to the model of good governance promotion. The study by Sasse (2008) underlines a large amount of procedural similarities between the style of the EU relations with accession countries and ENP partners: “[...] bilateral Action Plans between the EU and

each ENP country resemble the Accession Partnerships with the candidate countries; the Commission's ENP Country Reports are similar to the Commission's Opinions on potential candidate countries; and the ENP Progress Report echo the Commission's Regular Reports on the candidates [...]” (p. 297). Moreover, the model of good governance promotion suggests that the EU should primarily make use of ‘democratic conditionality’. However, as empirical evidence shows the EU is mixing both ‘democratic conditionality’ and ‘acquis conditionality’ in the model of good governance promotion in relation to ENP countries, but without offering the highest reward - the promise of membership. Even though the EU is labeling its actions under the good governance promotion model, in essence it approaches ENP countries under the mechanisms of the enlargement model.

Research Design

Therefore, in order to give an assessment whether the model of good governance promotion for the ENP countries is successful without the promise of EU membership a specific hypothesis from the enlargement model is needed to be tested. The concept of the external governance presumes the projection of the EU's internal order to its neighborhood. In our research we are interested in the relation between the extent to which EU norms and rules are grounded in the ENP countries and the incentives the EU is offering to these countries. Thus, the hypothesis of this research claims that the higher the incentives from the EU, the higher the commitment of the ENP states to enforce reforms. Our dependent variable - the commitment of the ENP countries to enforce reforms – is explained through the independent/explanatory one - the incentives that EU provides in order to achieve these goals.

The operationalization of both explanatory and dependent variables is displayed in Table 1. The values ascribed to them vary on a scale from weak to medium and strong. Commitment of neighborhood countries is considered weak when the EU's rules and norms are merely subject of political discussions and deliberations among domestic actors. In this case, rules are neither formally adopted nor consistently realized. The level of commitment of partner countries is labeled medium when rules and norms promoted by the EU are being adopted and integrated into national legislation. Finally, commitment is strong when rule implementation takes place. This means that rule adoption is not only formal but has behavioral implications – EU rules and norms are consistently applied (Lavenex & Schimmelfenning, 2009, Schimmelfenning & Sedelmeier, 2005). The explanatory variable is measured in accordance with the size of the EU incentive. We labeled the incentive strong in the case when EU offers membership perspective to the targeted countries. The incentive is medium if the neighborhood countries are rewarded with the promise of access to the EU (sectoral) market without becoming a full-member of the Union. Usually, this provision is enclosed in Association Agreements of the EU. Finally, the incentive is assessed as weak if the EU offers neither membership, nor access to the common market, but only sectoral cooperation. Typically this is the case of the Partnership agreements with third countries (Schimmelfenning & Scholtz, 2008).

Table 1: Operationalization of variables

Dependent/Independent variable		Measurement	
DV	commitment of ENP states	<i>weak</i>	Rule-deliberation
		<i>medium</i>	Rule-adoption
		<i>strong</i>	Rule implementation
IV	EU incentive	<i>weak</i>	Sectoral cooperation
		<i>medium</i>	Access to EU market
		<i>strong</i>	Full membership

In order to reveal the direction and the strength of the correlation between the dependent and independent variable we test it under the *ceteris paribus*¹ clause, i.e. not taking into account the possible causal impact of other independent variables. Hence, after testing the main explanatory variable across chosen cases, we will control for other variables which could influence the commitment of ENP countries to implement reforms. These intervening variables are domestic costs and external actor. Moreover, the issue of concern is not only whether they exercise influence over the dependent variable but also the level of this influence in comparison to the strength of the EU incentive.

With the purpose of testing the hypothesis, two ENP countries – Moldova and Ukraine – have been selected that are similar in the wide range of characteristics – both are former Soviet republics, both share geographic proximity to the Russian Federation, both are “the most active and liberal participants in the ENP” (Freyburg et al., p. 919). In the most similar system design that we chose – Moldova and Ukraine - it is less likely that third, unpredicted variables outside the model would explain observable outcome due to shared scope conditions (Levy, 2008). At the same time, Moldova and Ukraine constitute the most-likely case scenario for successful good governance promotion since they are considered to be front-runners in the relationship between the EU and its neighbourhood. The logic of most-likely case designs is based on the inverse Sinatra inference (Levy, 2008, p. 12) which allows making a negative generalization. This means that if the model of good governance promotion is not effective in Ukraine and Moldova, it is most likely that the same assumption would be valid for the remaining ENP countries. In this study, the research design is not only focused on cross-country unit of analysis, but also on the cross-sectional one. Two policy areas from the Action Plans within each country have been chosen: “Trade-related issues, market and regulatory reform” (trade policy) and “Transport, energy, telecommunications, environment, and Research, development and innovation” (energy policy). The study of these policy areas complies with the most similar case design. They have been chosen according to the relevance they play to both actors – the EU on one side and Moldova and Ukraine on the other side. Besides the fact that these policies are strategically important, both Moldova and Ukraine have been more exposed to the EU *acquis* in particular in these two policies.

¹ From Latin „other things being equal“

Energy policy in Moldova and Ukraine: adopting and transposing EU rules

In 2005 the EU has signed the Treaty that establishes the Energy Community. The Treaty that creates conditions for the extension of the single European energy market in the South-Eastern continent has been signed by the EU and seven countries from South Eastern Europe (Energy Community [EnC], 2010). The first and second title of the Treaty foresees that the South-Eastern European countries adapt their energy sectors to EU standards through the implementation of the specific part from the *acquis* (EnC, 2005). The Treaty also requires that the parties conclude the gas and electricity market liberalization – till 2008 for companies and till 2015 for consumers (*ibidem*).

In 2006 Moldova became an observer to the Treaty and several months later it applied for becoming a full member of the Treaty. The 7th Energy Community Ministerial Council in December 2009 approved the accession of Moldova and Ukraine to the Community (EnC, 2009a). For Moldova this is highly beneficial especially that the EU is offering a medium-size incentive - access and integration into the EU energy market. According to our hypothesis and measurement of variables this implies that Moldova's commitment to adopt and to implement the rules should be medium. In the case of Moldova receiving these benefits is only possible "when and if these countries solve the remaining gaps and make their gas laws comply with the EU *acquis* requirements and complete their respective ratification procedures" (*ibidem*). Furthermore, analyzing the implemented Action Plan (Association for Participatory Democracy [ADEPT], 2008) agreed between Moldova and the EU in the framework of the ENP one can already assess that it will be difficult to meet the expected outcomes set in the "Protocol concerning the accession of Republic of Moldova to the Treaty establishing the Energy Community" (EnC, 2009b).

According to several reports of monitoring of the implementation of the Action-Plan done by Moldovan NGOs, Moldova achieved some progress in the energy security sector. Moldova has taken measures of increasing energy efficiency and the use of renewable energy; has adopted the Law regarding energy efficiency; has elaborated the new Regulation of the Agency of Energy Efficiency; has launched a program of privatization of energy sector; has adopted the Energy Strategy till 2020 that foresees mechanisms of approximation to the EU *aquis* etc. (ADEPT, 2008; ADEPT & Expert-Grup, 2008; Baltag & Baltag, 2009; National Commission for European Integration, 2009; Prohnitchi et al., 2008). However, some of the major concerns of these reports is that Moldova still needs to liberalize and de-monopolize the energy market, to assure an efficient and transparent functioning of the National Agency for Protection of Competition, to pay the external debt it has for electricity, to implement a plan of entry/exit registration of the roadmap of gas pipelines and to enforce Action Plans and/or mechanisms of implementation of laws in the sector of energy security (ADEPT, 2008; ADEPT & Expert-Grup, 2008; Baltag & Baltag, 2009; Prohnitchi et al., 2008). The main emphasis is that in the area of electricity, gas, environment or renewable energy, Republic of Moldova did not implement several main EU Directives which were planned to be realized in 2008 (Baltag & Baltag, 2009, Prohnitchi et al., 2009).

The findings presented in Table 2 outline that the incentive from the EU is medium according to our measurement level and so is the commitment on behalf of

Moldova. EU is offering Moldova the advantage of accessing the Energy Community without a promise of membership and Moldova, according to the empirical data studied, is in the phase of adopting EU rules and transposing them into national legislation. Thus, the EU is offering the reward of access to its integrated energy market in return for not only establishing a legal framework compatible with the *acquis* but also for enforcing the mechanism of implementation.

Table 2. Hypothesis testing, Case-study on Moldova: energy policy

Dependent/Independent variable		Measurement	Description
IV	EU incentive	medium	EU is offering accession to the Treaty on Energy Community with the condition that Moldovan laws in the energy sector complies with the <i>acquis</i>
DV	Commitment of Moldova	medium	Rule-adoption: Action-Plan adoption, low implementation

Ukraine, on the other hand, enjoys a special place in the external energy governance of the EU. Nearly 80% of Russian Western gas import, which is destined for 12 EU member states, countries in Western Balkans and Turkey goes through Ukrainian pipelines (Piebalgs, 2009; Razumkov Center, 2008). Taking into account the notion of “a single most important transit country of gas supplies to the EU” (Council, 2009, p. 3) on the one hand, and a considerable need of modernization and diversification of Ukrainian energy market on the other, both sides established dense and rigorous dialogue in the energy policy field. The EU-Ukraine Action Plan adopted in February 2005 envisages seven energy-related objectives “aimed at the gradual convergence of the EU and Ukraine's energy legislation and integration of their respective energy markets” (Memorandum of Understanding, 2005). In order to progress on this aim in December 2005 the Memorandum of Understanding on co-operation in the field of energy between the European Union and Ukraine (MoU) was signed. The document provides roadmaps for four specific areas (nuclear safety, the integration of electricity and gas markets, security of energy supplies and the transit of hydrocarbons, the coal sector, and energy efficiency) and a mechanism of annual evaluation of its implementation. Finally, after three years of maintaining observer status to the Energy Community Treaty the country acceded to the Energy Community on the condition of alignment of considerable part of national legislation with the EU energy *acquis* until 2018 (EnC, 2009a).

One of the major conditions for the Ukraine's accession to the Energy Community as envisaged in the MoU was a satisfactory assessment of the safety level of the Ukrainian nuclear plants. The Fourth Joint EU-Ukraine Report on implementation of the MoU reveals that “the safety evaluations found full compliance with most of the of the IAEA's [international nuclear safety standards] nuclear safety standards requirements” (Fourth Joint EU-Ukraine Report, 2009, p. 2). Indeed, the last Commission's Progress report on Ukraine in implementing the Action Plan supports this assessment while pointing out some specific legislative changes in the area of radioactive waste treatment (Commission, 2009, p. 16). In addition, significant progress was admitted in drafting the Law on Gas Market Operations that aims to align national legislative norms with the EU Gas Directive (2003/55/EC). Furthermore, draft laws

“On National Energy Regulating Commission” and “On State Regulation in the Energy Sector of Ukraine” are on the way to be adopted by the Parliament; initial steps towards joining UCTE (Interconnected Electricity Networks of Continental Europe) were undertaken (Fourth Joint EU-Ukraine Report, 2009).

At the same time the Commission’s, Joint EU-Ukraine reports together with civil society assessments reveal poor performance of the government in the coal sector and the energy efficiency area. Specifically, there were no registered projects concerning energy efficiency and renewable sources in the recent years (Fourth Joint EU-Ukraine Report, 2009; Razumkov Center, 2008). As in the case of Moldova, modernization of the Ukraine energy sector requires considerable financial investment. During the Joint EU-Ukraine International Investment Conference on the Modernization of the Gas Transit System which took place on 23 March 2009 the needed investment was estimated around 2,5 billions of euro (Europa, 2009). Furthermore, concerns about nontransparency and monopolization of Ukrainian energy market are continuously being reflected in the reports of NGO’s (Razumkov Center, 2008; Razumkov Center, 2009).

Given variation in the level of progress and achievements in the different energy-related sub-fields, we evaluate the commitment of Ukraine to conduct the reform process in the energy sector as medium. The strength of the EU incentive, as in the case of Moldova, is marked by medium indicator too, since the EU offers Ukraine the access to its energy market (see Table 3).

Table 3. Hypothesis testing, Case-study on Ukraine: energy policy

Dependent/Independent variable		Measurement	Description
IV	EU incentive	medium	EU offers right of entry to the Treaty on Energy Community with a highly institutionalized set-up and access to the single European gas and electricity market.
DV	Commitment of Ukraine	medium	Rule-adoption: Action-Plan, Memorandum of Understanding, low implementation

Trade policy in Moldova and Ukraine: paving the way to the negotiation of the Free Trade Area Agreement

The economic relations between Moldova and the EU have been initially established in the EU-Moldova Action Plan. For the period of implementation of the Plan 2005-2008 this implied that Moldova has to undertake a series of actions that would bring Moldova closer to EU standards in this case - to the EU market acquis. This meant a big effort on behalf of Moldova and little effort on behalf of the EU. The EU contribution was low and no reward in the form of access to the EU internal market was promised. The Action Plans represented just a first step of ‘deeper economic integration’; the next one would represent ‘deep and comprehensive free trade agreements’ (EC ENP, 2006). According to some researchers, “EU has been excessively conservative with Georgia and Moldova on free trade” (Emerson, Noutcheva & Popescu, 2007, p.16); this indicated that EU was reluctant to deepen economic relations with Moldova in that period. In the case of Moldova, this was related to the fact that “a

recent feasibility study found that Moldova was not yet in a position to establish a free trade area with the EU” (EC ENP, 2006).

When the Action Plan expired, the EU announced its proposal for an Eastern Partnership under which Moldova is offered an Association Agreement currently under negotiation. The Association Agreement does not entail political conditionality, but “would provide for the creation of individual deep and comprehensive free trade areas (DCFTA) with each partnership country” (Whitman & Juncos, 2009, p. 203). Moreover, scholars highlight that “the EU’s economic policies are having an effect: all the neighbourhood countries other than Belarus trade more with the EU than with Russia, and the EU enjoys a trade surplus with five of the six [EaP countries]” (Popescu & Wilson, 2009, p. 3). At present moment, according to the Council Regulation (EC) No 55/2008 of 21 January 2008, Moldova was granted by the EU Autonomous Trade Preferences (ATPs) which is a step further from the Generalized System of Preferences (GSP+) that other ENP countries are benefitting from at this moment. This reward came as a result of some success that Moldova has achieved in the implementation of the provisions of the Action-Plan in the area of trade – such as the realization of the reform of custom legislation and “a satisfactory level of implementation of the new legislation was reached at the beginning of 2007; [... and under-] ratifying and effectively implementing core international conventions on human and labour rights, environmental protection and good governance” (EC 2008, pp. 0001 - 0002).

Table 4 provides an outline of the relation between the incentive from the EU and the commitment of Moldova. According to the established measurement of the dependent and independent variables, the level of EU incentives are medium – EU offered Moldova ATPs and under the EaP negotiation of FTA will be possible. The condition for this is that Moldova demonstrates further progress especially in implementation of reforms. In the area of trade policy as well as in that of energy, Moldova’s commitment is medium – according to the empirical data analyzed, Moldova is adopting and transferring EU rules into national legislation. However, monitoring report of NGOs put an emphasis on the fact that “practical application of legal provisions is delayed, while the legislation adopted at the end of the EURMAP implementation does not produce measurable impact” (ADEPT & Expert-Grup, 2008, p. 12). Other concerns related to trade policy pertain to the non-compliance or partial implementation of some WTO agreements in the area of sanitary and phytosanitary issues; there are gaps that needed to be filled in respect to “customs valuation methods, safeguard measures or ad-hoc tax exemptions” (ibidem, p.11); obstacles that need to be overcome in the area of cross-border services; state-aid adoption and application is ‘weak’ etc. (Freyburg et al. 2009).

Table 4. Hypothesis testing, Case-study on Moldova: trade policy

Dependent/Independent variable		Measurement	Description
IV	EU incentive	medium	Autonomous Trade Preferences; Promise of the Free Trade Area under EaP
DV	Commitment of Moldova	medium	Rule-adoption: Action-Plan adoption, low implementation in certain areas

As is the case for Moldova, the trade policy is one of the most dynamic areas of the relationship between the EU and Ukraine. Throughout the last years the EU has become a main trade partner for Ukraine. Indeed, statistical data from International

Monetary Fund outlines that the EU share in total imports of goods and products to Ukraine in the year of 2008 was about 41%, which is more than that of Russia (the EU share of total Ukrainian export – 29%) (IMF, 2009). The preconditions for such successful commercial policy were established in the early 90s through granting Ukraine an access to GSP system, and later on – through adoption of Partnership and Cooperation Agreement (1998) and EU-Ukraine Action Plan (Commission, 2009). As a next step on the way to deeper economic integration in 2008 the EU and Ukraine launched negotiations about deep and comprehensive free trade area (DCFTA) which must be incorporated into the new Association Agreement.

DCFTA presupposes free access of Ukrainian goods and products to the EU single market with abolition of not only customs duties and quotas, but also of non-tariff barriers. According to the research done in the field, free trade area “could have a profound impact on Ukraine’s economy” (Valasek, 2008, p. 32; Emerson et al., 2006; Shumylo, 2006). Hence, the EU uses the promise of access to its internal market as the main ‘carrot’ to trigger economic reforms in Ukraine. It made the start of free trade negotiations ultimately conditional on Ukraine’s accession to WTO. This provision was outlined in the EU-Ukraine Action Plan and later during bilateral talks on New Enhanced Agreement (Association Agreement). Ukraine joined WTO in February 2008 after more than 13 years of negotiations. However, as the European Commission underlined in the Progress report “along with the Accession Protocol, Ukraine committed to pass 10 WTO-related pieces of legislation, of which only six were adopted [...]” (Commission, 2009, p. 8). On top of that, the prospect of sanctions against Ukraine was putting forward by WTO after Ukraine temporarily introduced extra 13% import duty on certain kind of products violating its obligations (Flex-News, 2009).

Ukraine’s accession to the WTO significantly upgraded bilateral trade relations between the EU and Ukraine. It allows for removal of tariffs and quotas for Ukrainian main export goods – steel products which were frequently a subject of anti-dumping measures in the past. The provision of liberalization of steel products trade was already included in the EU-Ukraine Action Plan (EC ENP, 2004). Some progress was achieved in the area of customs, in particular through adoption of amendments to the Law “On the customs tariff of Ukraine”. As stated by Razumkov Center, “it brought national nomenclature into compliance with the standards of the modern Harmonized System” (Razumkov Center, 2008, p. 12). Much less compliance was observed in the field of free movement of goods and sanitary and phytosanitary standards, although some new legislative provisions on veterinary medicine entered into force in 2008. On the whole, as it was elaborated in one of the researches, “[...] the country has relatively modern laws, but they are not sufficiently implemented or complied with” (Emerson et al., 2006, p. 55).

Taking into account the evidence revealed by the case study we assess the commitment of Ukraine for rule transfer in the area of trade policy as medium. Since the EU offers an access to its internal market for Ukrainian goods and products via free trade arrangement, the strength of the EU incentive is evaluated as medium too. The findings are outlined in Table 5.

Table 5. Hypothesis testing, Case-study on Ukraine: trade policy

Dependent/Independent variable		Measurement	Description
IV	EU incentive	medium	General System of Preferences; Deep and comprehensive free trade area as a part of negotiated Association Agreement
DV	Commitment of Ukraine	medium	Rule-adoption: Action-Plan, WTO requirements, low implementation

Discussion of findings

The evidence presented in our case studies suggests that there is a strong positive correlation between the strength of the EU incentive in relation to neighbouring countries and their commitment to enforce reforms. This implies that if the value for the EU incentive increases on the scale of its strength by a point, the commitment of ENP state increases on equal share and vice versa (under the *ceteris paribus* clause). In the analyzed case studies we have tested only one explanatory variable (the EU incentive). The question that arises, though, is that whether there are other causal factors that in combination with our explanatory variable could lead to the same result (medium commitment) or shape it otherwise. Some literature on conditionality (Vachudova, 2001; Pridham, 2005; 2007) particularly emphasizes the importance of intervening variables. For a better interpretation of the ‘mediumness’ in our findings we introduce two intervening variables – domestic costs and external actor – in order to trace their influence (if any) on the dependent variable.

Domestic costs

The concept of domestic costs refers to the internal pitfalls that could undermine the commitment of the ENP countries to enforce reforms. Schimmelfennig and Sedelmeier (2005) describe the domestic costs of the EU rule adoption as opportunity losses from alternative rewards offered by other international actors, as welfare and as power costs of governmental and non-governmental actors (p. 16). Pridham (2007) undertook broader approach to the definition of domestic factors. He refers to country’s regime legacy, institutional and political constraints, such as veto players. This study, however, proposes slightly different conceptualization of the domestic costs. Based on the sequence criteria, we distinguish between *ex ante* and *ex post* domestic costs. *Ex ante* costs reflect concerns of domestic actors about the loss of sovereignty over decision-making. These are costs that are incorporated into the EU reward prior to being offered to third country. Since both Ukraine and Moldova consistently declare their membership aspirations, concerns about sovereignty losses are considered to be marginal and irrelevant for our research. More important are *ex post* domestic costs which emerge after the proposed EU incentive in exchange for compliance with its rules. These include administrative (in)capacity of the neighbouring states to implement reforms, financial costs of compliance with EU rules, and the number of veto players within the country. It is this type of *ex post* domestic costs that is relevant for our study.

In the area of energy policy the value of domestic costs is high, so it seems that the influence of this intervening variable on the commitment of Ukraine and Moldova to adopt and implement EU energy acquis is also high. Firstly, the EU demands full compliance with its legislation in the areas of energy transit, renewable energy, and environmental standards being achieved during relatively limited scope of time (cf. Prange-Gstöhl, 2009). Indeed, the conditions for accession to the ECT for Ukraine and Moldova specified in the annexes of Accession treaties are the implementation of 13 EU directives respectively until the 2017/2018 (ibidem). Given the internal instability, lasting process of constitutional change, the lack of administrative reform of central and local governments in both countries, it is unlikely that governments will be able to comply fully with such a number of legislative documents during the period of 7-8 years. Secondly, many of the required provisions come with financial costs, especially environmental norms. Some scholars argue that high environmental standards are hardly achievable even among member states (Voogt & Uytterlinde, 2006; Owen, 2006). Moreover, as it was pointed out earlier the modernization of Ukrainian gas transit system requires € 2,5 billion for the period of 2009-2015 which exceeds several times the amount of aid Ukraine receives under ENPI. Thirdly, there are powerful veto players (interest groups which protest against higher prices on electricity, local energy monopolists) in the energy market of Ukraine and Moldova that are not interested to play on the Ukrainian and Moldovan energy market according to the EU rules. Thus, as the domestic costs of complying with EU energy rules are high; they decrease the level of Moldova's and Ukraine's commitment to implement energy acquis. Therefore the empirical data analyzed questions the causal relationship between the dependent and explanatory variable of the research hypothesis, thus falsifying it.

Nevertheless, we argue that it is the EU strongest incentive – full membership – that can overcome the negative influence of domestic costs. As it was outlined by previous research (Schimmelfennig & Scholtz, 2008), the rule transfer from the EU beyond its borders is heavily driven by the offer of political conditionality. In the cases of countries like Romania and Bulgaria and afterwards some countries from the Western Balkans EU offered strongest incentive to these countries that triggered the strongest commitment on their part despite the high level of domestic costs. Indeed, as Schimmelfennig and Sedelmeier (2005) pointed out in their study of europeanization of central and Eastern Europe, “adoption costs are balanced by the benefits of EU rewards” (p. 16). Moreover, the study by Schimmelfennig and Scholtz (2008) refer to the findings of existing research on democracy promotion (Kelley, 2004; Schimmelfennig & Sedelmeier, 2005; Schimmelfennig et al., 2006) that showed the cases when other international organizations that also aimed achieving democratic change in third countries did not succeed due to a lack of political incentives such as EU membership. Additionally, the panel regression ran by Schimmelfennig and Scholtz (2008) in their study on 36 neighboring EU states, including former Soviet Union countries like Moldova and Ukraine, “[revealed] that the offer of membership is the only reliable EU incentive for promoting democracy in European neighbourhood” (p. 206).

In contrast to the energy policy area the domestic costs for rule compliance in the area of trade seem to be relatively low. Firstly, although administrative incapacity will be still persistent, the number of legislative documents to be aligned with EU law prior to finalization of DCFTA is not critically high. This is due to the process of cross-conditionality (Schimmelfennig & Sedelmeier, 2005, p. 15): in order to become a member of WTO Ukraine and Moldova have fulfilled its accession requirements which to some extent overlap with EU trade acquis. Secondly, the financial costs of

compliance are not significant. In contrast to the many subfields of energy policy where the financial resources are sometimes not even foreseen in the budget of the countries (for instance, renewable energy projects), the funding of customs reform, consumer protection standards etc are part of annual budget provisions. Thirdly, the number of veto-player in Ukraine and Moldova in the trade policy area is low. The main industries and business sector are united with the governments with the aim of getting access to the EU internal market. Thus, the domestic costs in the trade policy area are low, so their influence on dependent variable is not sufficient to alter the medium-sized commitment of the countries to implement EU rules.

External Actor

For the purpose of our research it is important to take into consideration the involvement of external players in Moldova and Ukraine and their influence the commitment of these countries to enforce reforms. Moldova and Ukraine are both former Soviet Union countries and fall under the sphere of interest of the Russian Federation (Trenin, 2009). The current policy report “The Limits of Enlargement-lite: European and Russian Power in the Troubled Neighbourhood” (2009) highlights how for each initiative EU has initiated in the EaP countries, the Russian Federation has always offered an alternative. What is important to our research is to investigate whether the alternatives offered by Russia to the EU incentive have a bigger impact than the latter.

According to the empirical data analyzed, in the trade policy area, the influence of external actor is weak and it does not alter the strength of the commitment of Moldova or Ukraine to enforce reforms in this field. On the one hand, Russian efforts of economic integration in the form of tying down CIS countries, in particular in Ukraine, failed after the color revolution of 2003-2005 in the Commonwealth of Independent States (CIS) (Trenin, 2009). As outlined in Trenin’s study on Russia’s spheres of interest, “Russian economic sanctions (e.g., stopping wine imports from Georgia and Moldova; [...], [meat and milk imports from Ukraine] etc.) were only partially successful” (p.15) especially because in it was Russian businesses established in the mentioned countries that were also suffering. According to Trenin (2009) starting with 2005, Russia has changed its strategy in the trade relations with these countries because in order “to gain leverage, Russia needs bridges rather than barriers” (ibidem). This is why Russia has launched the Eurasian Economic Community and offered “a \$7,5 billion contribution to an anti-crisis fund to help stabilize the economies of its ‘allies’” (Popescu & Wilson, 2009, pp. 30-31). Even though Moldova and Ukraine are not among the ‘allies’, Russia was willing to offer these countries “bailouts and credits” (ibidem). On the other hand, in the area of trade, Russia is no longer the main economic partner with Moldova and Ukraine but the EU is the leader among the economic partners of these two countries (EC, 2009b). Moreover, NGO reports of monitoring the implementation of Action Plans in 2009 underline that trade relation with EU are developing dynamically and Moldovan exporters, for example, for some products used integrally the quota offered by the EU in the first months of 2009 already (ADEPT & Expert-Grup, 2009; Prohnitchi et al., 2009). The perspective of a DFTA with the EU is more powerful at present moment in committing Moldova and Ukraine to follow on the road of rule-transfer due to the positive effects it brings for the market economies of these countries. So far, no alternative offered from the side of Russia had a bigger impact than the medium-sized incentive from the part of the EU.

Consequently, Russia has several mechanisms to keep these countries under its sphere of influence. However, none of these mechanism or alternative projects it offered to the EU projects in the region managed to change the commitment of these countries to implement trade policy reforms. Nonetheless, we may not conclude likewise in the energy policy area. Russia invested in strategic areas of economic importance for these countries – infrastructure and energy. Moreover, both Moldova and Ukraine are dependent on energy supplies from Russian territory. The monopolist on the Russian energy market, Gazprom, is not interested that Moldova and Ukraine be a part of the Energy Community, since this implies higher prices for transit and excludes the possibility of ‘gulping’ their gas transport systems. As Trenin (2009) has outlined “as a leading energy exporter, Russia’s main economic interest in the CIS area is to ensure unimpeded transit for its gas and oil across the territories of the new states, and to gain access to their own energy and other important resources” (p. 15). The same argument is emphasized by Dimitrova and Dragneva (2009) pointing further to the fact that “[...] the existing infrastructural interdependence and Russia’s use of energy policy as geopolitical tool clearly limit the scope for EU rule transfer” (p. 868). Furthermore, as some research pointed out, most of the CIS countries are dependent in their energy security on Russia, for instance “in 2004, Moldova imported 100% of its gas from Russia, Azerbaijan 89%, Belarus 52% and Ukraine 50%” (Prange-Gstöhl, 2009, p. 5300). Dimitrova and Dragneva (2009) argue that “the current restrictions to the EU’s effective governance posed by Russia’s power might be diminished if the EU were to offer the Ukraine a genuine prospect for membership, as enlargement might change the cost/benefit calculation of domestic actors and increase the EU’s hierarchical power” (p. 869). Although, this research was done on Ukraine, there are good reasons to believe that such argumentation is plausible for both countries under study. Prange-Gstohl (2009), for instance, argues that there are several reasons why ENP countries are eager to join the Energy Community – one of the reasons being is an alienation of the energy hegemon – Russia.

Overall, our findings point to the fact that the external actor influences over Moldova and Ukraine in enforcing energy reforms goes two-ways. Empirical data points to the fact that on the one hand, the external factor pushes Moldova and Ukraine closer to the EU as they want to get liberated from the Russian influence; while proximity to the EU implies committing to EU rule-transfer. In this sense we may argue that there is a positive (indirect) influence of the intervening variable on the dependent variable. On the other hand, by interfering in Moldova’s and Ukraine’s internal affairs, external actor lowers the chances for successful rule adoption, thus exerts a negative influence on our dependent variable. This happens mainly because vital interests of Gazprom are at stake and also because Gazprom can also have an impact on veto-players in these countries. This negative influence indicates that the intervening variable - external actor - has the power to diminish the strength of the Ukraine’s and Moldova’s commitment to implement reforms in the energy field.

Conclusions

The EU transfer of its norms and rules beyond own borders represent a viable post-modernist tool in dealing with external world. Successfully tested through enlargement with the principle of political conditionality and proved to be a backbone of the EU external governance approach, the model faces a number of challenges

that come from new neighborhood. In relation to neighboring countries the EU decided not to grant them with a membership perspective, thus, replacing the 'hard' enlargement model of the rule transfer by the 'soft' approach of good governance promotion which incorporates both 'democratic' and 'acquis' conditionality but without membership perspective.

While appealing to prevailing academic view and to political declarations, the central argument of this paper is that the model of good governance promotion with vague or even no membership perspective is not successful. As it is suggested by empirical evidence under the condition of having no membership perspective the successful transfer of the EU rules in neighbourhood countries is unlikely. The two case studies of Ukraine and Moldova in the area of energy and trade policies indicate the low level of implementation of *acquis communautaire* in respective areas. Thus, for a higher level of rule implementation a higher level of incentive is needed. The inverse logic of Sinatra inference used in this research presupposes negative type of generalization: if the EU's model of democratic governance promotion is not a successful model for development of democratic changes in the case of the ENP forerunners - Moldova and Ukraine, the model may not to be successful in the remaining ENP countries. The findings of this paper call for 'hard', rationalist instruments of political conditionality in relation to neighboring countries with a cost-benefit calculation of actors in its focus.

However, careful examination of the case studies suggests also a limitation of such an assumption. It derives from the constraints which the structure of domestic political systems and Russian presence in the region may impose on the commitment of Eastern neighbours to implement EU-induced reforms. It was also shown that the power of such impediments varies depending on the area of the relations between the EU and its neighbouring countries. They are more salient in the area of the energy policy, thus, undermining the transformation and modernization processes in the market of hydrocarbons. By contrast, in the trade policy domain the domestic costs and the external actor pressure appeared to be overruled by the benefits of the access to the EU market.

To sum up, in this research we have tested our hypothesis and also controlled it against two intervening variables. Given our empirical findings in trade policy area we were able to verify our hypothesis. Quite the opposite, in the area of energy policy, our findings facilitated the falsification of our hypothesis. However, subsequent research is needed regarding the two intervening variables with generation of new hypotheses. The paper points to the necessity for scholars to pay more detailed look at the context in which the EU rule transfer takes place in the neighbouring countries. The scholars of EU external governance might find it useful to consult the literature on post-communist (transitional) studies as well as research on geopolitics of the Central and Eastern Europe in order to bring additional insights in their studies.² Finally, in order to test the validity and reliability of our findings, our explanations may be tested against alternative explanations provided by the non-rationalist models of social learning and lesson-drawing (Schimmelfennig & Sedelmeier, 2005).

² See Rose & Chin, 2001; Marcu, 2009; Scott, 2005; Pardo, 2004; Tsygankov, 2007; Way, 2005; Zimmer & Haran, 2008; Litvak, 1996; Møller & Skaaning, 2010

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