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Externally induced institutional change
in the EU's Eastern neighbourhood:
migration and environment reforms in
Ukraine and Moldova in 2010–2015



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Dissertation has been accepted for the commencement of the degree of doctor of Philosophy (in Political Science) on 15.12.2016 by the Council of the Johan Skytte Institute of Political Studies, University of Tartu.

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Commencement: February 15, 2017, at 16:00

ISSN 1736-4205
ISBN 978-9949-77-338-1 (print)
ISBN 978-9949-77-339-8 (pdf)

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University of Tartu Press
www.tyk.ee

To my mother

ABSTRACT

This thesis explores the role of the EU in advancing reforms in Ukraine and Moldova since the establishment of the Eastern Partnership. It aims to explain the different outcomes of institutional change in the migration and environmental protection sectors in both countries. It argues that external agency can facilitate reforms by empowering the pro-change stakeholders to overcome domestic structural constraints. To achieve that goal, however, the EU needs to embrace a process-oriented, rather than an outcome-oriented, strategy, aiming at the flexible adaptation of rules to local needs and assisting a variety of domestic actors to grow their capacity to actively participate in rulemaking and monitoring.

To explain the observed outcomes, I draw on the literature on Europeanisation, international development and transnationalisation. I look at the reaction of domestic players to the external strategies, and evaluate the capacity of domestic players to monitor and co-sponsor institutional change with the help of assistance and monitoring capacities. The main aim of this thesis is to add to our understanding of institutional transformation, and in particular, of how differences in empowerment and rulemaking can lead either to persistence of old rules or to institutional change.

In particular, this work addresses the ‘political economy problem’ of externally induced institutional change, which is largely neglected by the EU Studies literature. The core issue is the predatory behaviour of the domestic elites and their subversion of incentives and diversion of resources. In this regard, this paper argues that the EU and non-state stakeholders need to combine their efforts to create checks on the predatory behaviour of the incumbent elites. However, as this study shows, the effect depends on the mode of rulemaking and policies of empowerment. If the EU requires the participation of non-state actors and builds up their capacities alongside state actors, it helps to create deliberative institutions, institutionalise open competition, discussion and joint decision making, and increase the transparency and accountability of the state bureaucracy and elites. Yet, in cases where either of the components is missing, without the participation in rulemaking or empowerment, the elites are able to either co-opt non-state stakeholders or re-write formal rules under external pressure while keeping the underlying norms and practices unchanged.

My empirical findings confirm that the more profound institutional changes in the environmental protection sector in both countries can be explained by the strengthened capacities of non-state actors and an inclusive decision-making process on the part of the EU. In both Ukraine and Moldova, environment actors were capable of promoting their reform agendas and achieving a better control of the state bureaucracy. The EU’s process-oriented strategy, which focuses on the empowerment of a variety of local actors, allowed them to broaden political opportunity structures, achieve greater transparency, openness and accountability of the sectoral agencies.

In the migration sector, the EU followed the outcome-oriented strategy, focusing mainly on formal adoption of the EU rules and building up the capaci-

ties of the state actors responsible for their implementation. The unilateral selection of rules by the EU, which excluded domestic actors (especially non-state stakeholders) from the processes of rulemaking, led to institutional monocropping. As a result, the EU efforts were counterbalanced by the behaviour of the local elites, which resisted deeper institutional change and were able to secure the institutional status quo.

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LIST OF ABBREVIATIONS

AA	Association Agreement
AP	Action Plan
CCECC	Centre for Combating Economic Crimes and Corruption
CEE	Central and Eastern Europe
CIB	Comprehensive Institution-Building (Programme)
CIS	Commonwealth of Independent States
CNI	National Commission of Integrity
CSO	Civil Society Organization
DANCEE	Danish Cooperation for Environment in Eastern Europe
DCFTA	Deep and Comprehensive Free Trade Area
EaP	Eastern Partnership
EBRD	European Bank for Reconstruction and Development
EC	European Commission
EEAS	European External Action Service
EIA	Environmental Impact Assessment
ENI	European Neighbourhood Instrument
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood and Partnership Instrument
EPA	United States Environmental Protection Agency
EU	European Union
EUMAP	EU-Moldova Action Plan
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
GEF	Global Environment Facility
GRECO	Council of Europe's Group of States against Corruption
ICTCC	Information and Communications Technologies Competence Centre
IMF	International Monetary Fund
IO	International Organisation
JMG	Joint Monitoring Group
MSDO	Most Similar Different Outcome
NAFTA	North American Free Trade Agreement
NAS	National Anticorruption Strategy
NAEP	National Action Plan on Environment Protection
NGO	Non-Governmental Organisation
NIC	National Integrity Commission
PCA	Partnership and Cooperation Agreement
REC	Regional Environmental Centre
SBS	Sector Budget Support
SEA	Strategic Environmental Assessment
SEI	State Ecological Inspection
SIDA	Swedish International Development Agency

TACIS	Technical Assistance to the Commonwealth of Independent States
TAIEX	Technical Assistance and Information Exchange instrument
U.S.	United States
UEPLAC	Ukrainian-European Policy and Legal Advice Centre
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
VLAP	Visa Liberalisation Action Plan
WB	World Bank
WTO	World Trade Organization

ACKNOWLEDGEMENTS

When good Soldier Svejik embarked on his famous anabasis to confirm that all roads lead to Ceske Budejovice, he approached this task quite boldly though constantly going in the wrong direction. To succeed, he needed assistance and support that he received at every leg of his long journey.

Like that endeavor of Svejik's, this work would also not be possible without a generous and kind support from my colleagues and friends, who helped me along the whole way. First of all, I would like to thank my supervisor, Viacheslav Morozov, who provided me with his guidance and assistance along the way. I am grateful for his meticulous effort, input and advice, which helped to advance this work.

I was also very fortunate to have an opportunity in Tartu to grow intellectually in a stimulating research environment. Eva-Clarita Pettai was always supportive providing advice and insights. It was pleasure to work with Piret Ehin at the Centre for EU-Russia Studies and learn from her and other colleagues. I am very grateful to Olga Bogdanova for providing me with opportunities to teach in Tartu, Tallinn and Tbilisi. And I was really lucky to meet Maili, Thomas, Stefano, Liisa, Urmas, Hector, Eoin and Raul. I value my time in your company and all your support. Not least, it was a pleasure to be a part of the legendary FC Illegaard team – its substitution bench was one of the places I really fitted well in my career.

I would not succeed without help from my friends and colleagues at Uppsala Centre of Russian and Eurasian Studies, who always make me feel at home in Uppsala. I am extremely indebted to Stefan Hedlund, whose kind advice and help continuously advances my knowledge from my first days in Uppsala as a master student in 2009. Without Stefan's enormous contribution this work would have not succeeded. I am also very grateful to Leonid Polishchuk for all his kind help and advice and a wonderful opportunity to learn from him. Sofie Bedford, Elena Namli and Ausra Pads kocimaite – thank you for your kind friendship and inspiration and for making me a better person.

As in Svejik's case, my road brought me to beautiful places and helped me to meet wonderful people. I am very grateful to Milada Vachudova for her encouragement. I value my visits to Tbilisi and all the help from my kind friend Amiran Kavazde and his family. I appreciate all the help and advice from Dimitry Kochenov, Pal Dunay and my colleagues at the OSCE Academy in Bishkek. Finally, I am very grateful to Tom Casier for his insightful comments, which helped to improve this work.

Finally, and most importantly, I would like to express my greatest gratitude to my mother and my sister, who made me who I am. Without your belief and empowerment, I would have never achieved anything. Thank you!

1. INTRODUCTION

The story of EU-induced institutional change in Ukraine and Moldova is one of both successes and failures. Both the EU Studies literature and European Commission reports suggest that Ukraine and Moldova are the most active reformers, being the main recipients of external support. In both countries, the EU, alongside the other Western donor institutions, attempts to induce change by designing the rules and helping to implement reforms. Donors backed up their attempts by a set of economic, financial, expert and knowledge assistance, which became a cornerstone of the external ‘carrot and stick’ approach, promoting reforms by promising significant economic benefits. At the same time both Ukraine and Moldova have similar institutions, legacies and culture and face similar domestic and external challenges. However, despite profound attempts to induce institutional change in Moldova and Ukraine, the EU arrives at contradictory reform outcomes even in sectors, which are the most susceptible to the EU-induced reform – those of migration and environmental protection. How the EU policies account for this variation in outcomes is one of the main interests of this study.

This work begins with a puzzle. In similar conditions, and most favourable for the EU rule transfer, there is a variation in institutional outcomes at the sectoral level in Ukraine and Moldova. It is evident that any external policies that endanger the status quo of the entrenched elites are expected to be counter balanced by the behaviour of domestic actors, which resist deeper changes. However, the puzzle is that in the EU-oriented Ukraine and Moldova in the sectors, which do not represent any threat to the interests of the entrenched elites, which are irrelevant or even suit the interests of rent seekers, it is expected that the EU (Western-led) reforms should lead to successful reform outcomes, especially when they are accompanied by the profound reforms’ popularity, significant EU support and domestic political benefits. So, looking at this research’s case studies, the external support and the domestic demand for change brought equivalent pressures to both the environmental protection and the migration sectors in both Moldova and Ukraine. However, the rules have been implemented to a greater extent in the environmental protection sector than in the migration sector. Given the similarity in initial conditions and pressures, what explains the variation in institutional outcomes?

The main aim of this thesis is to add to our understanding of the externally promoted institutional transformations, in particular, how differences in the EU strategies influence efficiency of institutional change; this will be arrived at by studying the process of EU-led reforms in Ukraine and Moldova and tracing the role of the external forces therein. The thesis looks at why in favourable conditions and in the absence of any blockage by elites, the change in formal rules does not lead to a change in practices and why rule implementation is undermined by rule evasion and rule manipulation.

This study is built on the idea that the key to understanding and solving the problem of unsuccessful and contradictory outcomes is to understand why

interventions of international actors (EU, US or IMF) often do not facilitate institutional change. Thus, in the first place, it tries to understand how it occurred that, despite numerous efforts, a central feature of externally induced institutional change in developing countries (like Moldova and Ukraine) remains the lack of political and economic rights of domestic actors, an unaccountable government and subdued and manipulated institutions. The external actors provide numerous incentives, often set clear lists of reform criteria, to which local elites willingly express their utmost commitment (and create their own sub-lists and Action Plans), and yet political and economic reforms result only in mere illusions of free and fair elections, effective state agencies, protected property rights, existing and functioning market economy and independent judiciary.

As a consequence, this work is primarily about the EU policies of interventions, which uses Ukraine and Moldova as examples. It will be argued that the EU policies of inducing institutional change in the third countries – alongside the decades of Western attempts to promote development in the developing countries – are in need of reassessment with regard to their design and the effect of EU policies on the domestic actors and institutions. In light of quite puzzling outcomes observed at the sectoral level, this study highlights the necessity to review the dominant theoretical and practical mechanisms and approaches that have been available to the external actors and which guided the policies of institutional change in the third countries.

The rest of the introduction introduces the main premises of the EU's policies of interventions and their paradoxes, discusses the institutions and institutional change and briefly presents the argument.

1.1.1 The paradox of EU external interventions

When the EU's European Neighbourhood Policy (ENP) and the Eastern Partnership (EaP) were launched, in 2004 and 2009 respectively, both aimed to transform the neighbourhood and build a 'ring of friends' on the EU's borders and beyond. As the EU's European Security Strategy (2003: 10) argues, the aim of the EU neighbourhood policies is the creation of 'well-governed democratic states' around the world by 'spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing rule of law and protecting human rights [, which] are the best means of strengthening the international order' (European Council 2003: 10). For the EU's neighbouring countries, the European Neighbourhood Policy was offered as an external solution for existing domestic political, social-economic and security problems, as a tool to facilitate and speed up domestic reforms and to make them more 'European'.

To achieve that we have seen since the 1990s increasing involvement of Western actors, including the EU, which have provided their reform guidance to a variety of governments in its neighbourhood and beyond. Since the mid-

1990s, but especially in the 2000s, the EU intensified its presence and became the key external actor in the post-soviet region as well, and attempted its rule transfer into countries like Belarus, Russia, Moldova and Ukraine within a variety of frameworks. For instance, the EU promoted change in Russia through the Partnership for Cooperation Agreement (PCA), the Four Common Spaces and the Partnership for Modernization. Ukraine has been provided with Action Plans and numerous incentives and solutions under the presidencies of Leonid Kuchma, Victor Yushchenko, Victor Yanukovich and now Petro Poroshenko. Similarly, the support given to Moldova has significantly increased first since 2005 and especially after the end of Vladimir Voronin's rule in 2009.

On a practical level, only the shortlist of the most recent EU-induced transformations includes the reforms launched after the Orange Revolution in Ukraine and after the Euromaidan in 2014, the 'White paper' – the reform plan for Belarus, the reform support given to the pro-European coalitions in Moldova, the 'Füle plan' and a number of sectoral reform initiatives outlined and vigorously promoted by the European Commission in the EaP countries. The International Monetary Fund (IMF) and World Bank (WB) also remain active in the region in particular in the wake of the global financial crisis in the region, writing reform plans for the governments of Belarus, Moldova and Ukraine. During this time Ukraine, Moldova and Georgia signed the Association Agreements and Deep and Comprehensive Free Trade Agreements with the EU.

However, in reality, despite significant amount of external support, resources and knowledge invested by various transnational regimes in the development and transformation of the post-soviet countries, after more than ten years of active EU involvement in building peace and prosperity at its borders, its induced economic and political reforms resulted in more conflicts and less economic and political stability. Against the background of the 'biggest foreign policy success ever' – the Enlargement of the European Union to Central and Eastern Europe in 2004, and the amount of resources and knowledge invested, this fact seems quite disturbing.

Looking beyond just the EU's outcomes in its neighbourhood, the EU policies are a part of larger trend of inducing reforms in developing or underdeveloped countries around the world, which includes for instance the policies of foreign aid and democracy promotion assistance, 'the Washington Consensus' and IMF reforms. To little surprise these policies also fared badly. What these for the most part unsuccessful outcomes point to is that external interventions have a general problem – that the Western institutions fail to achieve their transformative goals in the third countries. While there is a plethora of international organisations (IOs) that provide assistance and advice to different regions, apply leverage and try to develop linkages with the target states, it is still debated why they fail, what the most efficient way to promote institutional rules and models is and what their limitations are. These questions are especially important taking into account a few critical junctures that the target states have faced since the early 1990s.

The EU Studies literature claims to have found an answer after the 2004 enlargement. The literature emphasises that the involvement of international

actors can become a crucial tool for development and domestic change. It argues that the role of international organisations (for example, Checkel 2005), pre-existing linkage to the West (Levitsky and Way 2006, 2010) and pressures from transnational regimes such as the EU or NAFTA (Aspinwall 2009, 2013; Bruszt and Holzhaecker 2014; Vachudova 2005) can be important sources of domestic change.

In EU Studies, the role of the EU policies and the institutional outcomes are often analysed through the provided incentives and constraints – the external incentive model (Schimmelfennig and Sedelmeier 2004a & 2004b; Vachudova 2005), on the one hand, and the perceptions and interests of the elites (Checkel 2002; Schimmelfennig and Sedelmeier 2004a & 2004b; Schimmelfennig et al. 2004) on the other, with a particular focus on how the former alters the latter. In this regard, to measure the effectiveness of external involvement, one must look at the existing elites' domestic priorities and preferences and the credibility of offered incentives (positive and negative), i.e. how the offered incentives or external actor's power of attraction affect the strategies and preferences of the domestic elites (Börzel 2010; Schimmelfennig and Sedelmeier 2004ab; Schimmelfennig 2005; Sasse 2008; Lavenex 2009; Vachudova 2005).

Therefore, the debate on the inefficiency of the EU policies centred on the discussion of the EU as international actor, the role of conditionality and socialisation for change and the best way to transfer the EU rules and knowledge. It particularly highlights how the EU in its enlargement policies has succeeded in helping the Central and Eastern European (CEE) countries in their reform efforts. Thus, the success of the CEE enlargement and the outcomes of the EU policies in the post-soviet space are often explained by the lack of provided incentives or lack of partnership with the domestic elites. As a result, the European Commission and the major bulk of the literature presume that incentives and/or joint ownership with local elites are the best possible way to promote change. Yet, this literature cannot fully explain why the EU's transformative impact beyond the CEE enlargement has brought a variety of outcomes in cases with similar conditions.

This work aims to look beyond these debates. Instead of arguing in favour of more incentives or more partnership it searches for causes for the success and failure that are rooted in the set of arrangements that constitute the core of the EU strategies of inducing institutional change. The starting point of the theoretical argument that guides this research can be depicted by a statement by William Easterly, who, while talking about the decades long external interventions to promote institutional change, development and fight poverty and reform institutions, argued that lack of change is not a result of lack of knowledge, resources or conditionality. As he pointed out, while talking about one of exemplary targets of external intervention, 'the technocratic illusion is that poverty results from a shortage of expertise, whereas poverty is really about a shortage of rights', thus making the exclusion of societal actors by the external agenda as the core problem of international development policies and its 'moral tragedy' (Easterly 2014). From this perspective, the dominant external agenda can be

counterproductive, as just the provision of incentives or socialising with the elites by the external actors does not change the structures of the domestic opportunity and incentive system and hence does not liberate domestic actors from a ‘system which saps their opportunities and incentives’ (Acemoglu and Robinson 2014).

In this regard, the scope of the investigation will thus be broader than simply a study of the EU mechanisms of change and a calculation of the effective dosage to correct the institutions of the ‘ill-governed’ countries. This work highlights the importance of investigating how the policies of external intervention interact with and affect the domestic institutional context. The impact of the EU policies on the established domestic opportunity structures, rules and practices is crucial since the latter can mitigate these external attempts to protect the status quo and obstruct reforms even if the incumbent rulers see their necessity. Following this note, it is particularly important to carefully study what exactly the EU policies promote and how these policies interact with the specific domestic institutional and cultural context.

The main argument of this study is rather simple: the diverging institutional outcomes in post-soviet countries such as Moldova and Ukraine rest on the differences in the EU strategies. This work argues that the EU policies, which as this research shows pursue institutional change via an outcome-oriented strategy, are genuinely flawed as they promote adoption of formal rules at the expense of substantive policies that would contribute to the creation of deliberative institutions. Institutional change requires a process-oriented strategy that by empowering non-state stakeholders to defend and acquire political rights would aim at the flexible rulemaking and building of the participatory and controlling capacities of the society. In this regard, admitting that part of the explanation surely refers to structural constraints of domestic politics and the diverse vested interests that are the primary obstacle to Ukraine and Moldova’s ability to reform, it nevertheless shows that the EU’s policies often do not facilitate institutional change in a manner most favourable for its environment.

In this undertaking, to better understand the external role in inducing institutional change, this work applies new institutionalism, with its focus on the importance of formal and informal rules and institutions and, as already evident, uses the cases of Moldova and Ukraine as empirical illustrations. New institutionalism is instrumental for reassessing the EU policies and for offering a more nuanced understanding of how systemic change occurs and how EU policies can facilitate the same. In this theoretical framework, to explain the observed institutional outcomes, I bring to the conventional literature on the EU impact insights from the literature on international development and transnationalisation. In doing so, I highlight in particular the problem of institutional monocropping, which has been well established in the literature on international development and international political economy, but is less developed in EU Studies, and in particular in the study of the effects of the EU on the third countries. These choices and the main argument will be further explained in the next sections.

1.1.2 Institutional change

The key to addressing the problem of puzzling outcomes of the EU policies is to recognise that the external interventions do not bring institutional change by themselves. The outcome of institutional change largely depends on how the policies of international actors engage with the domestic factors. In this regard, before turning to the issue of external interventions it is necessary to clarify why institutions are at the centre of this study, what institutional change is actually about and thus how and first of all what the EU *shall be* trying to achieve in its policies.

As much of the literature today states that ‘institutions matter’ (Acemoglu and Robinson 2009; North 1990; Hedlund 2011; Fukuyama 2011), it is transformation of domestic institutions that is at the centre of the EU policies in the Eastern neighbourhood. The EU aims to re-create, re-build and transform the domestic institutions primarily by transferring its own rules to the target states. Such importance is given to institutions to underline the impact of societal institutional structures – rules – on the behaviour of actors, their interactions and the kinds of organisations that can be created and sustained (North, Wallis and Weingast 2009). Indeed, studies show how institutions shape economic, political, and religious amongst other interactions within the society, helping to explain observed differences in political and economic outcomes across countries and over time (North 1990; Acemoglu, Johnson and Robinson 2002; Hedlund 2013; Greif 2005; North, Wallis and Weingast 2009).

This study departs from a well-known definition of institutions as ‘the rules of the game in a society or, more formally, [...] the humanly devised constraints that shape human interactions’ (North 1990: 3). As the EU is attempting to import its institutions into third countries that suffer from inefficient institutions, this study specifically adheres to the view of institutions as being an outcome of the social conflict (the social conflict view of institutions). From this perspective, the institutions are the result of a negotiation between individuals and groups. Furthermore, and this point is of great relevance to this study, North (1990: 16) states that ‘institutions are not necessarily or even usually created to be socially efficient; rather they or at least the formal rules are created to serve the interests of those with the bargaining power to devise new rules’.

Thus, the core feature of institutional change is to increase the social efficiency through the provision of the ability to access and participate in the (re-)making of institutions. Otherwise, when ‘access’ to the creation of institutions and rules is restricted, institutions may be chosen by the incumbent entrenched groups that control political power to maximise their benefits and rent extraction, and thus will not be used to the benefit of the whole of society (North 1990; Acemoglu and Robinson 2005, 2009).

A distinction can be drawn between formal and informal institutions, where the latter determine how the former function in practice and show the distribution of power in the society (see Gel’man 2015; Acemoglu and Robinson 2009). In this regard, without broadening the support base for the new rules via a

redistribution of power, the formal rules will be most likely undermined and new institutions will be manipulated or subdued (Polishchuk 2012).

The issue of importance of access to the creation of institutions has been investigated by a number of studies. For example, North, Wallis and Weingast (2009), focusing on the importance of the participation and the access to valuable political and economic functions for the quality of institutions, differentiate between the limited access order, when the degree of access is low, and open access order. In the former, rents are created both by limits on access to resources and functions and to forms of social organisation and the open access order, which relies on competition, open access to organisations, and the rule of law to hold the society together. This distinction emphasises the importance of broad participation and deliberation among a variety of actors for institutional change.

The ability to access institutions and participate in rulemaking, and acquiring rights and tools to defend them directly impacts the distribution of power within the society. Haggard (2004: 75) argues that a theory of institutional change must address distribution of political power within the society. Redistribution of power within the system leads to improved accountability, and improves the allocation of resources and access to societal organisations, competition and participation (North, Wallis, Weingast 2009; Polishchuk 2012: 42; Hoff and Stiglitz 2001). In total the system will better address the interests of the broader society through the creation of a deliberative process that will positively impact developmental trajectories (Evans 2004: 37). In this regard, lack of institutional change or persistence of old rules exemplifies the continued restriction on the access to resources and power, allowing the elites to maintain the status quo (Acemoglu, Johnson and Robinson 2002).

Consequently, institutional change requires the creation of deliberative institutions – the transition from limited to open access societies – which is understood as a process of ‘joint planning, problem-solving’ involving both state and non-state stakeholders, and in which ‘strategies and solutions will be articulated and forged through deliberation and planning with other participants’ (Fung and Wright 2003: 20). Thus, at the heart of deliberative institutions or ‘empowered participatory governance’ lies flexible rulemaking, which is primarily based on ‘public discussion and exchange’ (Sen 1999, cf. Evans 2004: 30).

If we return to the EU policies, this understanding of institutional change opposes the view of institutional change as the EU primarily promotes it, with its focus on the adoption of pre-selected formal rules and building state capacities – policies that are expected to lead to institutional monocropping. Institutional monocropping (‘one size fits all’), described in the international development literature as the imposition of blueprints based on highly stylised and idealised institutions or models (EU or Anglo-Saxon), which are presumed to be universally transferrable and to transcend different local contexts and cultures (Evans 2004), is one of the main causes of rule persistence.

The EU primarily aims at transferring its formal rules but even when they are successfully adopted, they may not be implemented. Hoff and Stiglitz (2001: 418–420) point out that rewriting of the formal rules should be followed by a simultaneous redistribution of the power that underlies prior institutional arrangements. While this question, alongside the issue of how EU Studies adheres to it, is discussed in detail in the next chapter, the core problem lies in the political complexities of institutional change and how the opposition from the incumbent power holders, the latter of which have vested interests in the existing decision-making structures and preservation of the status quo, obstructs the process of institutional change. Thus, the necessity to look beyond formal rules and understand how the formal changes address the informal functioning within the organisational realms arises (Evans 2004: 33).

For these reasons, this study pays particular attention to the issue of creating deliberative institutions and its place in the EU's policies of institutional change. As this study argues below, the external actor can address the problems of 'access' and redistribution of power within a given society by supporting deliberative institutions, the core feature of which is inclusive participation in 'joint planning [and] problem-solving', which external policies support through empowerment and flexible and inclusive rule making. .

Flexibility – the ability to participate in rulemaking and the (re-)designing of domestic institutions – allows for a (re-)negotiating of the rules between the relevant state and non-state stakeholders, and between the externally imposed rules and models and the local context, to be able to find an optimal solution. Empowerment is the creation of the capacities of state and non-state actors to generate and utilise their participatory rights, to participate in rulemaking and allow effective social choice (Rodrik 1999: 19). Empowerment facilitates re-designing of institutions to make them more inclusive and facilitates flexible rulemaking. It can contribute to greater transparency, legal clarity and accountability of bureaucratic apparatuses and political actors, and thus prevent direct and indirect state capture as well as limit corruption and the opportunities of the entrenched elites to exploit state institutions.

Empowerment also entails the creation of mechanisms for the existing policies and institutions such as enabling domestic actors to lobby and participate in rulemaking. Empowerment is important. By building up the capacities of broader societal actors it contributes to the creation of deliberative institutions, providing a possibility for the empowered non-state stakeholders, to effectively participate in rulemaking and monitoring. Consequently, empowerment improves the transparency and accountability of the bureaucracy. Empowerment of non-state actors diversifies demand for change and enables non-state stakeholders to better promote their interests. In this regard, this study also looks at EU assistance, in particular capacity building measures, that would allow state and non-state actors to implement and follow the adopted rules (see, for example, Langbein 2015: 27).

The rest of the chapter outlines briefly the key argument, presents the EU strategies and discusses the methodology of the study.

1.2 Explaining the variation through empowerment and rule-making: argument in brief

Institutional change in the countries of EU's Eastern neighbourhood is diverse and puzzling. Rule implementation sometimes fails even in favourable conditions, but it also often takes place despite the presence of domestic veto players, the lack of incentives and/or absence of EU membership perspective – contrary to the expectations of the Europeanisation literature (Jacoby 2001; Langbein 2015; Börzel 2014). The question is therefore how this paradox can be explained and consequently how to reassess the policies of the EU and its role in these institutional outcomes.

To do that this study uses new institutionalism in the analysis of the EU impact and various outcomes (Schimmelfennig 2005; Schimmelfennig et al. 2004; Vachudova 2005; Jacoby 2004; Langbein 2015; Elster et al. 1998; Bruszt and Holzhaecker 2014). To explain the variation in institutional outcomes at the sectoral level, it combines the insights and findings of the Europeanisation, external governance, transnationalisation and international development literatures to emphasise the role of institutions and to study the interplay of external and domestic factors and specifically different patterns of interdependence between external and domestic factors, state and non-state actors. Such a combination underlines the complexity of the problem of institutional change in the post-soviet space, which necessitates the departure from more conventional approaches in the literature on EU transformative impact in the third countries.

This study specifically looks into why the outcome of rule transfer varies across different policy sectors within the Eastern neighbourhood countries, using Ukraine and Moldova as case studies. In this regard, the major intention of this work is to contribute to the better understanding of external interventions and their effect on institutional change and the creation of domestic deliberative institutions. By placing the focus on the EU and its strategies, this study in particular contributes to a more nuanced understanding of the role of the EU in inducing domestic institutional change in the third countries and explains the conditions under which the EU mechanisms become more efficient.

The issues of variation in outcomes and more broadly externally induced change are important for EU Studies. The EU uses its resources and brings significant efforts to transfer its rules and norms beyond its borders and in particular to its Eastern neighbourhood. It applies conditionality and socialisation mechanisms, offering trade and association agreements to formalise its economic and political pressures. Yet, the existing studies show that the states have difficulties complying with these external pressures. Similarly, understanding how best to overcome these domestic difficulties and how to empower the pro-change groups has practical significance for development and democratisation of the EaP region.

By drawing upon in particular, Jacoby (2000, 2004), Sablin and Zeitlin (2010), Vachudova (2005), Langbein (2014) and Bruszt and McDermott (2009, 2012, 2014), this research argues that institutional change depends on the exter-

nal strategies of empowerment of a variety of domestic actors and flexibility in rulemaking that allows for the acquisition of rights by a wider circle of actors and the finding of optimal solutions. It exemplifies that the source of change is dependent not on the mechanisms applied by the EU, policies of diffusion by the benevolent external actors or simple borrowing by the enlightened elites, but whether and how they contribute to the creation of deliberative institutions or 'empowered participatory governance' (Fung and Wright 2003).

By focusing on the variation of the EU strategies on two mutually reinforcing dimensions – modes of empowerment and rulemaking, this study highlights two types of EU strategies for promoting institutional change, referred to as process-oriented and outcome-oriented. Primarily, it looks at whether and how the EU involves domestic actors in the rulemaking, how it builds their capacities and what are the type of actors who are the targets of the EU policies of capacity building. First, the process-oriented strategy is characterised by empowerment of both state and non-state stakeholders and flexible rulemaking – the ability to participate in the creation of rules and institutions. Second, the outcomes-oriented strategy mainly follows normative rulemaking by promoting the adoption of rules pre-selected by the EU and focuses on building the capacities of the state agencies to facilitate the implementation of these rules.

This work argues that the ability to participate in rulemaking is crucial for institutional change, facilitating the modification of creation of more effective innovative outcomes than mere transfer of pre-selected rules. Flexibility in rule-making allows domestic actors to adapt external knowledge to local conditions, providing them with an ability to modify the EU rules and models to find optimal solutions for the society. Moreover, flexibility in the rulemaking process can provide an opportunity for their consequent re-negotiating or hybridisation to change the adopted rules in the future when necessary.

Rules that are adapted to local conditions build a local power base and supply the process of designing of the new rules with local knowledge and legitimacy from local stakeholders. In exchange for the possibility to participate in rulemaking, these groups support the institution with local knowledge, their information-gathering capacity, political legitimacy and material resources (Jacoby 2001).

Without the inclusive institutional change process, institutions become dependent on the entrenched elites, which become the only domestic stakeholder involved, turning them into single gatekeepers. In such cases, institutional reforms often remain mere words on paper. The involvement in monitoring and rule-making of a wider variety of actors, including non-state stakeholders, thus helps to prevent the reform process and its outcome becoming dependent on the state elites.

Flexible rulemaking shall be accompanied by the policies of empowerment to enable a wider range of domestic actors to effectively engage in rulemaking. Empowerment presupposes a provision of necessary technical, expert and knowledge assistance to build their capacities. Though capacity building is as an important component of the EU policies in the region, it is usually under-

stood in a narrow sense – as mostly state-oriented, and the contradictions between the strategies of the empowerment of non-state actors and/or entrenched gatekeepers are not well developed.

Domestic elites know what changes and measures are expected to be taken by them, and when they do not act it is not due to their ignorance. In my examples, the government and both environmental protection and migration bureaucrats had sufficient information and understood the requirements set by the EU and the international standards in their sectors. However, their behaviour rarely reflected this knowledge and usually aimed at maintaining the status quo. Therefore, the EU should focus on empowering a broader variety of stakeholders to avoid the emergence of single gatekeepers at the sectoral level and should facilitate local input in the rulemaking process.

In summary, this study claims that effective institutional change results from flexible rulemaking strategies and institutionalised involvement and empowerment of the state and non-state stakeholders. It emphasises the core role of the EU and the pro-change state and non-state stakeholders, who combine their efforts to create deliberative institutions as the best means to make the political and economic rights available to broader societal actors and groups and establish checks on the predatory behaviour of the domestic elites. The effect depends on the modes of rulemaking and policies of empowerment, which are interdependent. To use their newly acquired capacities, domestic actors should be allowed to take part in rulemaking. Moreover, without inclusion in the rulemaking, empowerment may only have a limited, ephemeral effect.

Furthermore, this study points at a lack of discussion on the necessity of the empowerment of non-state actors beyond highlighting the importance of NGOs and civil society. The issue of rulemaking, and which actors are able to participate in the creation of the rules, is equally crucial. Understanding how the policies of the designing new institutions are framed have important consequences for subsequent reform trajectories. Yet, this research shows how the EU mainly promotes change through institutional monocropping, thus mainly excluding the broader societal forces from the decision-making and monitoring processes and thus preventing the creation of the deliberative institutions and more accountable government.

1.2.1 Mapping the EU policies

The EU policies can make a difference, especially in those post-soviet countries where the popular demand for reforms and the EU integration (has) started to dominate the political and societal agenda. Alongside the supply of the external knowledge and resources by the external actors as such, the search for external institutional solutions for post-soviet and developing countries is a popular theme in both the academic literature and policy-making circles. In the target states frequently foreign solutions are seen as a panacea against domestic problems, which makes their emergence in local media and policy circles (see, for

example, Nyberg 2009; Cemnolinkis 2014; Merilo 2014) and resonance in ill-functioning societies understandable. Thus, under the guidance of the EU and other international actors and organisations, states and interest groups with close ties to the state often work on re-writing the formal rules and reforming key institutions.

Yet, the EU mainly promotes change through an outcome-oriented strategy, as opposed to a process-oriented one. The EU's policies promote institutional change by providing incentives to elites and necessary knowledge and building the capacities of the state, enabling the domestic state actors to implement the best available institutional solutions.

The EU emphasises the primacy of changing the preferences and/or interests of the domestic actors, mainly elites, and supplying them with the right knowledge to solve institutional problems. The core assumption of the first approach is that the elites are capable of and willing to induce domestic change, if they are provided with the right policies and institutional models. This approach underlines that if the elites have no interest or will, they still remain rational actors and the benefits of implementing reforms can be explained to them through the policies of socialisation and/or conditionality.

Second, the EU sees the major problem as being the weakness of institutions and the inability of the state to perform its functions, which means that if the elites are willing to pursue the reform agenda but reforms fail, it is due to lack of state capacity. The emphasis on the lack of capacity of the state institutions and elites to implement reforms presupposes the solving of institutional malfunctions by building institutional capacities of the state with technical, expert and financial assistance.

These approaches to inducing change are well illustrated in the latest European Neighbourhood Policy Review by the European Commission. The European Commission accepted that the new governments, which arose as pro-EU and under the support of the EU, need significant European support and require the EU's assistance to continue reforms. To do so, the EU emphasised the importance of 'more for more' and shared ownership as the cornerstone of its policies. The 'more for more' approach is the main tool to induce reforms, which works by changing the interests of the elites. As stressed by Commissioner Johannes Hahn (2015), 'the original offer was based on the idea that those who undertook greater reforms towards democracy, human rights and rule of law would be rewarded with more access to Europe – more funding, but also easier access to visa and more trade liberalisation. This "more for more" was deeply engrained'.

Yet, the ENP review also sees the importance of the elite socialisation for reform outcomes. For the EU, at the core of success lies the ability to change the interests and preferences as well as shared ownership with partners, which in combination can help its transformative policies to achieve its full potential and increase the efficiency of its main mechanisms of external governance. As Commissioner for European Neighbourhood Policy Johannes Hahn put it, '[i]t's in the EU's own interests to develop peace, stability and prosperity on its bor-

ders. [...] I want to see a more equal partnership and one that brings results' (ENP Consultation 2015: 7, 9).

Both of these approaches have been well portrayed and explained by the literature on Europeanisation and that on external governance, which forcefully describe the importance of the EU linkage and leverage for institutional change, and present a well-developed understanding of the mechanisms and tools at the EU's disposal. However, EU Studies does not provide sufficient explanation of the reform outcomes in the Eastern Partnership countries. Moreover, EU Studies does not look into *how* the EU policies are applied, which is equally important for understanding the trajectories of rule implementation at the domestic level. Hence better understanding of the effect of the EU strategies on domestic actors, institutions, constellations of rights, its impact on opportunities and preferences will help to better assess and design the EU policies of institutional change.

In particular EU Studies is not fully engaged with the domestic side of institutional change. That is why this work pays particular attention to distinguishing between the EU strategies and its rulemaking and empowerment components to trace the effect of EU policies on the domestic institutions. The sole focus on the EU-level factors and top-down mechanisms of domestic change, which neglect bottom up solutions, cannot explain why EU policies may lead to rule persistence instead of institutional change (Langbein and Wolczuk 2011). This study addresses this gap and tries to combine EU Studies with the international development literature to improve the analysis of EU impact and its transformative capacities in the third countries.

This work's focus on the effect of external interventions on the domestic institutional structures, in particular, emphasises the importance of addressing the 'political economy problem', which is studied in the political economy and international development literature (see for example, Rodrik 2004; Evans 2004; Easterly 2001; Jacoby 2001; Bruszt 2002; Polishchuk 2008), but has largely thus far escaped the attention of EU Studies. In this regard, the core issue and challenge to institutional change is considered not to be a lack of incentives or partnership, but the predatory behaviour of the domestic elites, their subversion of incentives and the diversion of available resources and lack of rights and opportunities by societal actors. The question is how the EU policies can efficiently address these problems.

To study this question, this work uses the cases of the EU-induced reforms in the migration and environmental protection sectors in Ukraine and Moldova. These sectors are selected on the basis of having the most favourable conditions for externally induced institutional change, which is discussed in more detail below. The EU policies towards Moldova and Ukraine are explained by the favourable pre-conditions for externally induced change. According to the Europeanisation literature, the EU undertook the reforms in the 'right' fashion. In its policies, the EU followed conditionality-based approach, offering various benefits to promote institutional change in Moldova and Ukraine. From 2009 onwards, the benefits were increased substantially, seemingly enough to provide

the EU with sufficient leverage with regards to domestic policy making. In the migration sector, reforms were linked with free visa-free travel in the EU for citizens of both Moldova and Ukraine and extensive sectoral assistance under the 'more for more' principle. In the environmental protection sector, the reforms were linked with the DCFTA agreements and access to the EU market. Provisions for shared ownership were also included. Both Ukraine and Moldova regarded these conditions as being beneficial to them and also seemingly saw this process as a step towards their declared goal of accession to the EU, voluntarily agreeing to meet the EU requirement, adopt necessary legislation and implement the same.

The relevance of looking at the EU in this study is explained by a number of reasons. The EU represents the most ambitious project of inducing external institutional change aimed at fostering peace, stable democracy and prosperous economic development. First, as it has noted before, the European Union is most actively involved in institutional transformation of the neighbourhood, having the power to recast political opportunity structures. Since 2004, transforming and building liberal democracies and market economies in its Eastern neighbourhood became a paramount feature of the EU's foreign policies. The way in which the effectiveness of such interventions is dependent on whether they institutionalise the participation of the pro-change actors, which are capable of setting agendas, monitoring state bureaucracy and politicians, is discussed in subsequent chapters.

Second, as it was earlier noted, in these instances of attempted EU induced institutional change we observe the puzzling outcomes, which dominant approaches in EU Studies do not explain. Despite the similarities between the migration and environmental protection sectors, the reform outcomes vary. The difference that the European Union may bring is evident in reform results in the two sectors in both Ukraine and Moldova.

Moreover, these empirical findings do not only contradict the top-down understanding of institutional change, they also reject historical determinist accounts, as disregarding the overall dismal outcomes of the EU policies in the eastern neighbourhood, institutional change does occur, even when the reform environment is not favourable, such as anti-corruption reforms in the environmental protection sector. Finally, the EU policies in the post-soviet space help to illustrate how the new institutionalism can contribute to understanding and explaining the outcomes of external interventions.

Institutional change in this study as a concept and empirical result is looked at as the result of interaction between external pressures and domestic context. This understanding is based on the argument of Levitsky and Way (2006; 2012), who argue that institutional change is shaped by the combined effects of countries' economic, social and political linkages to the West and the exposure to and strength of external leverage that the external actors can apply to induce change. In the next chapter, following the criticism of the EU top-down approach to institutional change, I present my framework, which aims to combine top-down (Europeanisation) and bottom-up factors (as identified in the

international development literature and transnationalism literature). This approach helps to explain the outcomes of the EU policies through its strategies of institutional change – process-oriented and outcome-oriented – to highlight the importance of creating the empowered participatory governance. This approach to the problem of institutional change helps to combine the external policies of promoting reforms with the peculiarities of local context to explain the puzzling outcomes observed at the sectoral level.

This study tailors the EU-focused solutions to take account of the existing domestic institutional peculiarities and tries to find more comprehensive and sustainable solutions to domestic problems by supporting institutional diversity and deliberative institutions to induce institutional change. In this regard, it contributes to the literature on the EU impact by specifying how the impact of the EU on domestic change in institutions or policies and efficiency of its mechanisms differs from the application of the EU outcome-oriented or process-oriented strategies.

By requiring and promoting the participation of non-state actors and building up their capacities, a process-oriented strategy facilitates the creation of the deliberative institutions, institutionalises open competition, discussion and joint decision making, and increases the transparency and accountability of the state bureaucracy and elites. Yet, in the instances when either of the components is missing, without the inclusive participation in the rulemaking or the empowerment of the broader societal actors, the elites are able to either co-opt non-state stakeholders and/or manipulate and subdue the formal rules adopted under external pressure to maintain the underlying norms and institutional practices.

1.3 Methodology

In this section, I discuss methodological issues, in particular case and country selection and chosen methods and the time frame of the study (2009–2015). It explains the selection of the cases – the migration and environmental sectors – and provides the operationalisation of the dependent variable – institutional change and its puzzling variation of outcomes. It also briefly outlines the independent variables – flexibility in rulemaking and empowerment, which are further discussed in the theoretical part of the second chapter.

1.3.1 Case and country selection

This research is structured as a cross-country, cross-sector comparison. It analyses institutional reforms and explains their outcomes in the migration and environmental protection sectors in Ukraine and Moldova. These cases are selected due to their importance for both countries and favourable reform conditions as presented by the EU Studies literature. Both sectors in these countries also face similar institutional challenges and problems representing the ‘evils’ of their respective domestic institutional systems. The migration and the

environmental protection sectors were selected as case studies because: a) they are less politicised sectors, with less ‘special interest’ involved; and b) they have favourable conditions for rule transfer and in particular adequate sectoral incentives.

Both sectors are selected on the basis of their less politicised nature. Entrenched interests in both sectors are present, yet they are not crucial for political and economic interests for domestic elites. They represent a low priority for domestic elites, as reforms in both sectors do not pose any threat for control of political and economic power. Thus, the regimes in Moldova and Ukraine are more likely to allow change in these sectors compared to reforms in more politicised sectors, from which the political and economic power of the incumbent elites derive.

Reforms in environmental protection sector entailed reform in state agencies, laws and regulations. VLAP reforms were trickier as one of the key reforms they included was anti-corruption measures. These measures bared high costs primarily for low-level and some mid-level corruption, while top officials in Ukraine and Moldova would not be directly targeted, and would maintain their political and economic influence. Moreover, the ruling elites were provided by extremely favourable terms for compliance with VLAP – visa-free regime and multi-billion assistance package.

Thus, unlike the judicial or law enforcement sectors, changes in migration and environmental protection do not immediately threaten incumbent’s hold on political power. Even EU-promoted anti-corruption measures, as later discussion shows, primarily were useful for incumbents’ hold on power. Similarly, compared to Naftogaz, in charge of the once lucrative energy sector in Ukraine, or the Ministry of the Economy of both countries, which administers the state-controlled enterprises, the selected sectors are just a minor source of rents and economic benefits for the elites. In this regard, both governments showed more willingness to allow EU-induced reforms in both sectors, especially in exchange for significant economic and financial assistance.

Both sectors in Ukraine and Moldova share similar favourable conditions for reforms. First, in both Ukraine and Moldova the EU acts as a proactive force promoting domestic reforms by setting agenda, benchmarks and providing technical and financial assistance. Moreover, they have similar institutional conditions, shared legacies and external pressures, which allows controlling for country specific factors. Both are hybrid regimes with weak state capacity and rent-seeking elites, similar levels of economic development, political systems and level of democracy and competition and state structures.

They come from the same geographical region and share similar institutional problems of predatory corruption and bad governance. Ukraine and Moldova are ‘neighbours’ in the main international ratings on governance, corruption, economic and political freedoms showing similar results (see, for example, Transparency International CPI Index, World Bank’s Quality of Governance, Doing Business, Heritage Foundation’s Index of Economic Freedom, Freedom House and Bertelsmann Foundation Transformation Index). Neither Ukraine

nor Moldova completed their nation building processes. They have divided societies in their ideologies, identities, language, ethnic and religious lines. They have similar Constitutional arrangements, Parliamentary-Presidential systems and unlike Belarus, provide for major role of political parties in their political systems. Yet, in both cases political parties merely serve as vehicles to promote the interests of their oligarchic sponsors. Oligarchs share a privileged position in both countries. Besides having strong influence on political institutions, oligarchs control a significant part of the economies. Both in Moldova and Ukraine total size of oligarchs' assets were estimated at around a one-third of the economy. The economies are export-oriented, and mired with vested interests. Ukraine and Moldova have also similar levels of socio-economic development and poverty, being classified by the World Bank as lower-middle-income economies (World Bank 2015).

Importantly, civil society and non-state actors are more active in Ukraine and Moldova than in any other post-socialist country. Though a weakness of civil society in post-communist Europe is a regretful fact (Howard 2003), in the studied cases civil society has grown in its maturity and presence and become more vibrant. In Moldova and Ukraine civil society played a key role in monitoring and mobilizing people (Lutsevich 2013; Kuzio 2010: 286; Raik 2006), spreading information and knowledge and even performing certain state functions.

The developments in Ukrainian civil society included not only more active NGOs but also the ongoing transformation of personal identity (see, for example, Stepanenko 2006) with a growing trend within the society toward less traditionalist and the more individualistic self-reliable identity, less paternalistic attitudes towards the state, increasing levels of civic engagement, trust, and tolerance (see, Razumkov Centre's opinion polls). Similar trends were observed in Moldova (Bădescu, Sum, and Uslaner 2004). After the Euromaidan Revolution in 2014 and Twitter protests in 2009 the role and impact of civil society became even bigger. Still legacies of the past have an impact (Bernhard and Karakoç 2007; Pop Eleches and Tucker 2012, 2013) and civil society continue to remain rather weak and dependent in both countries.

Both countries are equally prone to external influences. In Ukraine and Moldova Russia plays a significant role and have close political and economic connections with domestic elites. The major difference lies in the size of the countries and the amount of oligarchs in the system. In Ukraine due to size of the country there is a set of powerful players within the system. Moldova have only few power players until very recently, when one of the oligarchs managed to take the political system under his control.

Second, conditions conducive for change were present in both cases. As it is described below in more detail the adequate conditionality, strong capacity building measures, elements of partnership between the EU and target states, clear rules and benchmarks as well as lower level of potential domestic opposition from veto groups and entrenched elites were present in the sectors under study. The election in Moldova of pro-European coalition in 2009 and especially the Euromaidan Revolution in 2014, led to removal of significant part of

old elites from the government and created an opening for transformative change.

Third, the conditions in the migration and environmental protection sectors in Ukraine and Moldova are similar. They have been equally under prioritised and underfunded. Relevant agencies had low capacities and lacked responsibilities. Ministries were particularly underfunded and lacked professional staff and resources. Furthermore, in both countries migration and environmental protection sectors were not a priority for the government, hence were often subdued to other interests. At the same time both sectors were equally captured by vested interest groups and were turned into a source of rents for various groups. Border and custom controls were particularly lucrative sources of additional income in both countries, partially due to sharing a customs grey zone in Transnistria. In the environmental protection sectors, agencies that were in charge of licencing extraction of natural resources and control over the compliance to the environment regulation by major businesses were not independent.

The comparability of these cases is based on the outlined similarities in external and domestic conditions. As a result, a focus on these two countries and two sectors allows studying the applicability of the findings and better control for variables.

Fourth, the variation across the sectors within one country is studied and a comparison with the other country case is made. That allows for a more in-depth study of the impact of the independent variables at the policy level. A cross-case comparison provides a better check for applicability of the independent variables, while a cross-country cross-sectoral comparison offers the possibility to review their broader applicability in the region.

The diverging outcomes in the EU's Eastern neighbourhood are an interesting subject to study in order to get an understanding of better ways to promote institutional change and the conditions necessary for the same. Compared to the experience of Western Europe after World War II or Central and Eastern Europe (CEE) in 1990s, the reforms take place in different domestic settings with no previous long-term experience of institutional learning and favourable conditions. Unlike CEE, post-soviet states have deeper legacies and features of a different international society (Elster, Claus and Offe 1998).

This study develops its argument by studying the policies of rule transfer and both successful and unsuccessful instances. Ukraine and Moldova seemingly represent cases in which elites and citizens reached a consensus to integrate with the EU and undertake reforms to pursue this goal. These EU-oriented policies were initiated under the Presidency of Leonid Kuchma in 1998 in Ukraine (Trjuhan 2014) and under President Vladimir Voronin in Moldova since 2003 and continued and intensified under their successors – Presidents Yushchenko, Yanukovych and Poroshenko in Ukraine and respectively the Alliance for European Integration, Pro-European Coalition and Political Alliance for a European Moldova in Moldova. The transformation in the less politicised sectors of migration and environmental protection has been attempted in both countries to

various degrees of success. This makes these sectors useful targets for analysis, aiming at better understanding the role of external actors in institutional change.

This work uses the most similar case, different outcome (MSDO) design, which is the most useful method for exploratory studies that involving a small number of cases as it helps to narrow down the range of conditions under which the observed outcomes may occur (Berg-Schlosser and de Meur 2009). MSDO is combined with in-depth process tracing to identify causal paths of differences in rule implementation outcomes. It allows for the testing of potential causes and their interaction effects (George and Bennett 2005). I compare the implementation effect of the policies the EU applied in the given period of time, look at what are the EU strategies that are applied towards the target states, how they are applied and analyse their outcomes.

The EU policies towards the Eastern Partnership countries are driven by the goal of bringing prosperity and stability through rule transfer and institutional convergence. It combines its pressures to enforce the adoption of the *acquis communautaire* by the target states and ensure democratic and human rights standards with the provision of material and technical assistance and access to its market. In this regard, it links environmental protection sector reforms with access to its market (Association Agenda 2010) and the migration sector reforms with access to visa free travel (VLAP 2010; European Commission 2015d).

The focus on policy sectors as the unit of analysis allows us to draw more in-depth and nuanced conclusions. The similarities between the migration and environmental protection sectors allows us to control for a number of important variables and better trace the causes behind institutional changes and better understand the role of external actors in inducing them. The comparison of Moldova and Ukraine as country cases can broaden the applicability of the findings and potentially generalise them to explain the role of the EU in institutional outcomes in other countries in the region.

The main puzzle with these outcomes relates to the fact that Moldova and Ukraine represent the most similar cases where the conditions necessary for rule transfer in these sectors outlined in the Europeanisation literature (which will be discussed in detail in the next chapter) are in place. Moldova as a case study presents the most favourable domestic and external environment, at least before the 2015 political crisis. It is exemplified by the existing domestic consensus over EU integration among the elites and presence of strong public support and significant effort made and assistance given by the EU as concerning the domestic reform agenda. Ukraine is a more complicated case; however, it has been a leading example in the neighbourhood for a long time before been overtaken by Moldova and has had the necessary conditions for at least a successful rule transfer at the sectoral level. Yet, despite the similar favourable condition in both the migration and environmental protection sectors in Ukraine and Moldova, the outcomes vary at the sectoral level in both countries.

While the conditions and EU policies are similar, the EU strategies to implement these policies at the sectoral level differ. The case of environmental policy

provides an interesting example of a flexible approach to institutional design and implementation on the part of the EU. The misfit between the EU rules and domestic institutions is similar, as well as level of adaptation costs for domestic players. The initial conditions make these cases more likely for successful rule transfer. At the same time, the case of migration has stronger policy conditionality and EU support, which make it even a better candidate for institutional change. The EU provides the clear rules, strong incentives and capacity building assistance while the Visa Liberalisation Action Plan (VLAP) has strong political appeal for the rule target governments.

Yet, the outcomes in these sectors differ. This thesis argues that the EU process-oriented strategy helps to induce more sustainable and efficient institutional change, facilitating the creation of deliberative institutions, institutionalising open competition, discussion and joint decision making, and increasing the transparency and accountability of the state bureaucracy and elites. As it earlier noted, the process-oriented strategy helps to combine the EU and non-state stakeholders' efforts to create checks on predatory behaviour of the incumbent elites and prevent institutional monocropping. The strategy itself is defined by modes of rulemaking and empowerment and identifying to what extent the EU requires the participation of non-state actors in rulemaking and builds up their corresponding capacities alongside state actors.

The institutional framework for the EU rule transfer – the European Neighbourhood Policy (ENP) and the Eastern Partnership (EaP) – were explicitly designed to provide an alternative to EU membership. The EU offers deeper cooperation, more aid and deeper political and economic integration in exchange for political and economic reforms. The relations may be defined as asymmetric with overall dependence of the target states on the EU and access to its market. In this regard, while many describe the EU incentives in the European neighbourhood as often insufficient (Schimmelfennig and Sedermeier 2004a & 2004b; Schimmelfennig et al 2004; Börzel 2012), the EU can reward the progress by upgrading bilateral relations through association agreements, trade benefits, simplifying visa regimes or increasing assistance.

Theoretically, it may also suspend bilateral agreements, withhold assistance and impose political and economic sanctions on violators. Except for the case of Belarus, negative conditionality is not used in practice (Youngs 2009). At the same time, EU Studies has noted that the strategy of promoting reforms through positive conditionality has not only been usually hampered by vaguely defined reform goals and the absence of any benchmarks for measuring progress in certain areas, but also by extremely high adaptation costs and the willingness of political elites to maintain control over substantial resources or close relations with Russia (Börzel and Risse 2012).

Still in certain sectors, rules and benchmarks are present and clear, and the proposed incentives for compliance are regarded as of great interest and importance to Ukraine and Moldova (Kratochvil 2011). Free trade and visa liberalisation have been always considered as adequate incentives to trigger compliance in sectors of trade, environmental protection and migration.

1.3.2 Conceptualisation and operationalisation

This section discusses the key concepts of this study and their operationalisation. Institutional change – improved institutional performance – is the key dependent variable of this study. The key independent variables are the outcome-oriented and process-oriented strategies, which are defined by the type of rulemaking and empowerment. As I argue, they have decisive impact on institutional performance and effectiveness of institutional change. Consequently, this thesis focuses on how rule implementation proceeds after a formal rule change has occurred (rule adoption) in the presence of conditionality and financial support. As presented below in Table 1 below, the objective is to understand the difference in outcomes, i.e. why we observe improved institutional performance or continued rule avoidance and persistence of old practices in sectors with similar conditions.

The key concepts include institutions, institutional change, empowerment and rulemaking. I present and elaborate on the importance and necessity of focusing on the outlined independent variables – the outcome-oriented and process-oriented strategies, which are measured by the type of rulemaking and its flexibility (and inclusiveness) and the mode of empowerment of domestic actors as necessary pre-conditions for creating deliberative institutions and inducing institutional change.

As it was noted earlier, the outcome-oriented (or normative) pursues the adoption and the implementation of the pre-selected rules by incentivising or altering the preferences of the government and by building state capacities. The process-oriented (or functional) supports flexibility and inclusion in rulemaking and implementation of policies and empowers state and non-state stakeholders, paying specific attention to societal actors to enable them to participate in the making of rules and the monitoring of their implementation.

Both empowerment and the policies of flexible rulemaking matter because they form the basis of deliberative institutions and empowered participatory governance, ‘inspire’ the bottom-up push for the reforms, combine it with top-down efforts and make domestic politics more prone to resisting state capture and such systemic features as the endemic corruption, which is crucial for developing states in general, and post-soviet states in particular. Eroding the power basis for entrenched groups levels the playing field and makes politics more transparent and accountable, thereby creating less opportunities for arbitrary decisions and the use of institutions for personal gains.

This research, with its interest in the role of the EU, takes after studies that demonstrate the EU’s growing role, which is played out by the diverse forms of interactions between domestic and external actors in defining the direction and the content of the evolution of domestic institutions. The final outcome – improved institutional performance – means that the rule has been transferred (both adopted and implemented) and internalised by the third country (Aspinwall 2013). To understand the degree of institutional change, first, this study distinguishes between rule *adoption*, when the selected rules are formally

adopted and transposed into domestic laws, and rule *implementation*, when the rules are implemented by relevant state and non-state actors (Langbein and Wolczuk 2011) as stages of rule transfer. Both stages also help to identify the progress and help to measure types of rulemaking and empowerment during these stages. The key is the voluntary obedience to the new rules and change in practices according to these rules.

Rule adoption and rule implementation together comprise rule transfer – the voluntary domestic enactment of the rules (Schimmelfennig and Sedelmeier 2004b: 670). Rule adoption looks at how and by whom the rule is selected and whether and how it is transposed into the national legislation. Rule adoption is indicated by the ratification of agreements with the EU or the adoption of necessary laws and other legal documents to incorporate EU and joint rules to align them with the EU legislation (Freyburg et al. 2009). First, it identifies whether the rules contradict any existing national legislation and how fully the rules are transposed into national law (Risse and Börzel 2002). Moreover, rule adoption looks at whether and to what degree the law meets the requirements of the EU if it was not unilaterally pre-selected by the European Commission.

Rule implementation is the implementation of adopted rules by relevant state and non-state actors. It indicates that the adopted rules are followed by actors and translated into institutional practices. It focuses on whether and to what extent the EU selected or jointly made rules are ‘not only incorporated into domestic legislation but also acted upon in political and administrative practice’ (Lavenex and Schimmelfennig 2009). Rule implementation points at the extent to which the domestic state and non-state actors comply with the new rules and are sanctioned for non-compliance. Since this study focuses on EU impact, compliance by domestic actors is combined with an analysis of the level to which harmonisation with the EU standards, as identified in the EU agreements with the third countries, occurred (Langbein and Wolczuk 2011; Delcour 2014).

The obedience to new rules and their implementation require sustainability for their internalisation. Rule internalisation is the outcome of the transformation of norms and the support of enacted changes in rules by indirect change in values, thus signalling the achieved long-term sustainability of institutional change.

Additionally, this study looks at the type of institutional goals favoured by the EU. It helps to identify the way in which the EU projects its power. Institutional goals vary according to whether the emphasis is on adopting rules or on creating domestic potential to monitor and adapt transnational rules (Bruszt and McDermott 2011: 3). In the first case, as a part of an outcome-oriented strategy, the EU favours the state to adopt and implement its unilaterally pre-selected rules, identified here as narrow institutional goals, which prioritise the precision of rules and their implementation (Aligica 2013; Bosse 2009). In the second case, it promotes the adaptation of its rules into the domestic context, creating more efficient, hybrid rules, which look at the performance and select the rules through joint decision-making of the domestic actors with the EU participation. Such a type of institutional goals is identified in this study as ‘deep’. Institu-

tional goals thus help to identify the degree of flexibility of rulemaking specifying the degree of access (inclusion) of domestic actors to the process of creation and re-creation of rules.

The selection of rules during the rule adoption process as well as the degree to which they are adopted and implemented differs between sectors and between countries. As Langbein and Wolczuk (2011) outline, rule transfer could be particularly driven by membership aspirations. Yet, the adoption of the rules and implementation also necessitates the creation and building up of institutional capacity – remaking the administrative structures and the existing regulatory system for the successful implementation of the adopted rules (Bruszt 2002; Langbein 2015). It depends on whether the EU policies are inclusive and empower – build capacities – a variety of public and private actors. The empowerment is analysed through the modes of assistance and monitoring. The policies of the empowerment of non-state actors are an integral part of the capacity building strategies pursued by the rule provider, which is discussed below.

As a crucial part of the empowerment, capacity building is the creation, development and maintenance of a range of skills of both state bureaucracy and non-state actors, such as civil society and sectoral stakeholders through the provision of knowledge, resources and technologies. Capacity building is one of the primary components of empowerment. Successful participation in the rule-making necessitates the presence of corresponding capacities of both state and non-state stakeholders, which are created through the empowerment process. Its goals include the increase of actors' problem-solving capacities, teaching of new techniques, and creation of better communication channels between state and non-state actors.

For these reasons, empowerment understands the concept of capacity building in a broad sense in opposition to the narrow understanding promoted by neo-liberalism (Kenny and Clarke 2010), and thus opposes a mere focus on output and outcomes; rather it emphasises process and traditional top-down social engineering (Kenny and Clarke 2010: 4). Empowerment is primarily about broad capacity building of individuals and social groups, providing financial, technical assistance, skills and knowledge to the stakeholders, which were previously neglected and excluded from participation in rulemaking and society (Kenny and Clarke 2010: 3).

Empowerment strengthens and enables the institutionalisation of open discussion, negotiation and competition between the state and non-state stakeholders during the process of rulemaking. As a result, empowerment becomes a central part of deliberative institutions, facilitating efficient political decision making and monitoring, thus creating checks on predatory elites.

This work mainly studies the EU's empowerment measures, but also pays attention to complementary activities of the EU member-states and their national donor organisations and international financial institutions, such as the World Bank or the European Bank of Reconstruction and Development. In the literature, many scholars see capacity building as a part of conditionality

(Vachudova 2005; Sasse 2005; Schimmelfennig and Sedelmeier 2004), financial and technical support, which can be withheld or awarded in accordance with the principle of conditionality, depending on the outcome of compliance, or as a separate EU mechanism of promoting change (Börzel and Risse 2012). However, in this study I follow Bruszt and McDermott (2009; 2012) and consider capacity building as ‘a reiterative process’ through which the EU and the target state adapt to each other to find the best way to foster institutional change.

To understand how the strategies of the EU empower domestic actors and so create necessary institutional capacity, this research work analyses the modes of assistance – through the EU’s capacity building efforts, and monitoring, which are pursued by the rule provider. To understand the scope and strength of empowerment, this study identifies the type of actors that benefit from the EU capacity building efforts (state and/or non-state) and the policy domains in which capacity building measures are undertaken. Depth helps to identify the quality of change, whether the emphasis is on mere adoption of new rules or on rulemaking and the ability of domestic actors to use their newly acquired capacities to create and implement new rules.

By focusing on training and practical skills, capacity building should facilitate empowerment, which requires changes to the capacities of those stakeholders who were previously excluded from promoting their interests (Kenny and Clarke 2010: 9-10) and thus redistribution of power over resources, relationships, information, knowledge and decision-making (Abdullah and Young 2010). The primary indicators are the type of assistance and to which type of actors this financial, information or technical assistance is allocated.

Table 1. The EU’s policies of institutional change: Explaining the outcomes.

Independent variable		Dependent variable
EU strategy		Outcome
Process-oriented strategy	Flexible and inclusive rulemaking	Rule compliance
	Broad empowerment	Rule is adopted and implemented in transparent and competitive way
Outcome-oriented strategy	Normative (inflexible and exclusive) rulemaking	Rule persistence
	Narrow empowerment	Lack of transparency and accountability Even when rule is formally adopted, it not implemented in practice.

Following Bruszt and McDermott (2012), assistance identifies the amount and type of resources which are provided to the domestic actors, while monitoring looks at how information about the process of adoption and implementation of the rules is obtained and analysed. In this regard, both assistance and monitoring can be multiplex or single depending on whether and how the rule provider includes a diverse number of state and non-state stakeholders within its assistance and monitoring policies (Bruszt and McDermott 2012). Single ties would mean that the EU builds its policies exclusively on developing intergovernmental channels of communication, which would overwhelmingly benefit the state actors. In turn, a process-oriented strategy aims at creating multiplex ties that would support a wide variety of domestic actors (Bruszt and Holzhaecker 2009; Langbein 2012).

Furthermore, a policy of empowerment can differ depending on the provisions for monitoring and the feedback mechanism. The latter shows how actors spread and process information, either by checklist compliance (outcome-oriented), which identifies failures in formal adoption and implementation rules to correct them or joint problem solving (process-oriented), which emphasises the search for mutually-beneficial solutions to the domestic institutional challenges (Bruszt and McDermott 2012, 2014).

The key indicator is how and which actors are allowed to participate in the monitoring of rule implementation and collect, process and report monitoring information. In this regard, the emphasis can be put on: either the feedback mechanism via checklist compliance, when the rule provider is solely reliant on its own efforts to collect information through its evaluation mission as well as on reports supplied by the target state's government agencies; or joint problem solving, when monitoring is organised by a variety of domestic actors including non-state stakeholders (Bruszt and McDermott 2011: 9) capable of collecting and processing relevant information. The latter mechanism increases the involvement and participation of state and non-state stakeholders in decision-making and allows them to correct the rules depending on their changing preferences. It also limits an ability of the state to collude and manipulate data to supply only partial or insufficient information.

The focus on empowerment as a policy is crucial in a situation of lack of pro-reform actors in the post-soviet countries; when state regulatory institutions cannot perform their regulatory duties state institutions do not adequately execute their functions (Hellman 1998; Bruszt 2002). As underlined by Langbein (2015), the diverse groups of actors, interest groups and professional associations lack capacity to advance and pursue their interests and goals and lack capacity to search for solutions to their problems, which makes capacity building not a mere instrument to incentivise compliance, but a necessary element of building regulatory capacities and empowering non-state actors, facilitating the formation of a viable pro-reform coalition.

As a result, both flexible rulemaking and empowerment create the basis for deliberative institutions, while the more inclusive policies change the distribution of power and allow for the building of broader a coalition of domestic (and

external) reformers and the creating of additional capacity building channels through socio-economic linkages (Aspinwall 2009; Jacoby 2008; Vachudova 2005). Re-allocation of power through increased participation in political institutions, which is at the centre of the transformation of a governance system, diminishes the power of incumbent elites, engages non-elites, and raises their political expectations (Rodrik 1999; Evans 2004).

This focus will help to define the purpose of the EU strategy, highlight the type of rulemaking and institutional goals it pursues and the degree of empowerment by the EU policies and identify to what outcomes these policies lead at the sectoral level – how the new rules are implemented on the ground.

1.3.3 Alternative explanations

Besides Europeanisation and external governance, there are a few alternative explanations to the observed outcomes that are to be briefly discussed – primarily Russian and domestic veto actors. First, for majority of authors (see, for instance, Delcour 2014, Langbein 2015, Dragneva and Wolczuk 2016), Russia remains a key actor in the region and its policies often serve as a counterweight to the EU's involvement. In their research of the limits of EU rule transfer in Ukraine, Dimitrova and Dragneva (2009) argue that reform outcomes are a result of the interdependence of Ukraine with Russia and EU-Russia competition for rule export to Ukraine. They identify that interdependence in the energy sector is high, low in trade and medium in foreign policy, thus explaining different patterns of efficiency.

Korosteleva (2012) pointed at the importance of geopolitics in the progress of EU reforms in Belarus, Moldova and Ukraine. Equally, Dimitrova and Dragneva (2009: 868–869) emphasised Russia's critical role in determining the effectiveness of EU governance in the shared neighbourhood: 'Russia's strongly defined ... concept of sovereignty not only clashes with EU norms in this area but leads to Russian actions which the EU is clearly powerless to counteract with external governance tools'.

Casier (2013) points at a normative gap in EU-Russia relations as a key source of tensions between the two competing projects in the shared neighbourhood, and describes how it affects the shared neighbourhood and hierarchy of identities in the region. In turn, Haukkala (2015) studies the EU's evolving hegemonic ordering and how it led to a development of the deep crisis in EU-Russia relations, which culminated in the crisis in Ukraine.

Additionally, some authors indicate the strength of the Russia-led regional integration projects such as the Eurasian Economic Union (EaU) and its predecessor the Customs Union, which Russia promotes in its near abroad and in its bilateral relations with Ukraine. Dragneva and Wolczuk (2012) state that Russian regional initiatives have turned Ukraine into a normative backyard and have put into question the viability of the EU's strategy in the Eastern neighbourhood. Delcour and Kostanyan (2014) extend this argument, highlight-

ing the incompatibility of the EU's and Russia's integration projects and their policies towards Ukraine, thus leading to their normative competition in the post-soviet space. However, in their analysis, Moshes and Roberts (2016) indicate that despite some early achievements Eurasian Economic Union has been fraught with difficulties from the very beginning and achieved much less than expected.

Smith (2015) explains how Ukraine (and Moldova) is wedged between the EU and Russia, making it vulnerable for rule promotion from both sides. Russia's relations with the European Union became increasingly hostile in the context of the Eastern Partnership and the signing of the Association Agreements with Ukraine and Moldova. In response to the EU's policies in post-soviet space, Russia has reacted with increasingly aggressive policies, the goal of which is to establish a loyal regime in Ukraine, but also in Moldova, and keep both neighbours in Russia's sphere of influence (Sakwa 2015). Russia-EU geopolitical competition has been primarily described in light of the annexation of Crimea and Russia's involvement in the conflict in Eastern Ukraine, yet it affects Moldova as well, which is going through a period of instability fuelled by the support provided by Russia to their political allies and economic and financial sanctions imposed on Chisinau.

Yet, this study follows Langbein (2015) in the assumption that Russia's impact on domestic changes is overall overemphasised in the literature and differs between sectors. As Babayan (2015) notes, even though Russia has contributed to the stagnation of democratisation and the ineffectiveness of democracy promotion in its neighbourhood, its actions do not constitute autocracy promotion and it acts through economic and military threats only when it considers its strategic interests undermined. Moreover, the sectors selected for analysis do not present a strategic interest for Russia as compared to the energy sector, for instance (Dimitrova and Dragneva 2009; Delcour 2014; Delcour and Wolczuk 2015). Because of low politicisation of the environmental and migration sectors, this study does not consider the impact of Russia as the alternative governance provider as the key explanatory factor for the outcome of institutional change in Ukraine and Moldova.

Besides Russian factor, which can play a major role and impede reforms, core domestic obstacle – major veto players are to be mentioned. Though EU Studies largely dismiss domestic factors arguing that disregarding the domestic balance of power the EU is capable to induce its reforms when the offered incentives are larger than adoption costs (Schimmelfennig and Sedelmeier 2004), oligarchs have a significant impact in a number of areas and on governance in general. Relevant chapters discuss the impact of oligarch on government, economy and society in Ukraine and Moldova (see, for instance, Wilson 2016, Pleines 2016, Balmaceda 2013).

The environmental protection and migration sectors represent the least likely cases for Russia's interventions at least before the outbreak of the open conflict between Ukraine and Russia in 2014. Moldova also received a visa-free regime in 2013 before the EU-Russia conflict escalated. At the same time, since the

outbreak of the open conflict coincided with the almost immediate signature of the Association Agreement between Ukraine and the EU, there is no evident importance of counteracting the visa-free reforms to stop the EU integration after the signing of the key integration document. The evidence of the similarly sluggish implementation of VLAP before and after the crisis in Ukraine erupted, points at rather little impact of Russia on the pace of migration reform process. In Moldova, Russia's sanctions against Moldova's economy, labour force and trade only facilitated the pro-European policies and minimised Russia's leverage on the government and its selection of policies in 2009-2015.

In a similar way, oligarchs like Petro Poroshenko and Vladimir Plahotniuc do play a key role in both countries, yet both sectors in Moldova and Ukraine represented a minor political and economic interest and little threat for political and economic power of key oligarchic groups and were an easy choice for political and economic 'sacrifice' of the main interests groups in both countries for sake of pro-European reforms and in return for substantial assistance package. Moreover, in principle a realignment of the countries' legislation in both sectors met the interests of export-oriented oligarchs in both countries, which would significantly benefit from getting access to the EU market.

In sum, the selection of the policy sectors as cases is based on the idea of choosing the MSDO design to both better understand the influence of the analysed factors and explain the observed variations in outcomes.

1.3.4 Sources

This thesis is for the most part based on secondary sources of information. However, use is also made of primary sources, such the official EU, Ukrainian and Moldovan documents and statements of bilateral EU-Ukrainian and EU-Moldovan relations, which address the issues of reforms in the countries in question and at the sectoral level. These documents include EU official documents, such as the Association Agreement and the Association Agenda and the reports on the implementation of Action Plans and sectoral initiatives. The official documents and reports from the European Commission, the EU-Moldova and EU-Ukraine meetings and summits and the reports on project implementation are also used in this study. Furthermore, this work's sources include target states' official documents, such as the Ukrainian and Moldovan governments' reform proposals and plans and domestic legislation aimed at meeting the EU requirements.

Most of these documents are available online. In general, these documents show the reform priorities of the bilateral EU-Ukrainian and EU-Moldovan relations, the role of the EU in driving the process and how these priorities were addressed by the Ukrainian and Moldovan governments respectively, which assists in identifying the EU strategy at the sectoral level. I also use official documents to identify the strategy and I measure the degree of involvement by the allocation of support and information from the EU to domestic actors

(including non-state stakeholders) and by the degree of inclusion of domestic actors in rulemaking (or whether the EU simply *imposes* the rules). Official documents help to identify the policies and strategies of the EU, the reaction of the target states' governments and their adoption and implementation, or lack thereof. Official documents are combined with reports and analysis from non-state and state agencies and groups in the migration and environmental protection sectors.

Second, this study makes use of general and specific information on the case studies in both countries from books, peer-reviewed journals, policy-papers, working papers, newspaper articles, and think tank reports and analysis by different international organisations and foundations. There is a vast literature in English, Russian and Ukrainian on domestic political conditions, in particular corruption, nation and state-building and democratisation. There are numerous reports on the visa liberalisation, implementation of the Association Agenda and DCFTA reforms and their effects on Ukraine and Moldova. The reports on environmental sector reforms are less frequent. The reports, studies and statements from non-state actors help to identify how they use these resources and how exactly they participate in rulemaking if they are involved and help to trace the developments at the sectoral level. They are primarily used to identify the outcomes of the EU policies to induce institutional change.

The sources were selected on the basis of their applicability to the task of retrieving information on the EU policies and their effect on the ground. The reports by the donor agencies, evaluation studies commissioned by European institutions and relevant international agencies were combined with the media articles and data published by non-state actors and NGOs in order to provide more balanced and also a more diverse account of the reform progress. The sources include the major indices such as Visa Liberalisation Action Plan Index and Eastern Partnership Index.

The documents from other international organisations and EU member-states were used as well. Since some of these institutions played a supportive role to the EU's policies and provided extra funding, their findings and analysis were taken into account, even though their role in the studied reforms was complimentary to EU's mission. These international and national organisations, which were used in the analysis, include SIDA, MATRA, IMF and USAID to name a few.

The reports of those non-state actors were analysed, which were continuously active during rule making or participated in monitoring or collecting information. Also, only transparent non-state organizations, which disclosed their sources of funding, and also routinely took part in the discussed issues, were selected. Secondary sources, media article and reports are a significant part of the evidence basis. As for media reports, the study combined both quality broadsheets of public record and well-reputed online media such as *Ukrainska Pravda*, *Kyiv Post*, *Cencor.net* and *Newsmaker*, which represent also diverse political affiliations. Finally, the reports from non-state organizations, which consistently pronounced their focus on promoting reforms, were selected.

These sources were analysed systematically using the same procedure in the same manner from outlining the process and way of constructing the reform agenda and analysing the process of its realisation in the same way using similar type of secondary sources by looking at mechanisms of the creation, adoption and implementation of relevant reforms. A particular attention was paid to identifying main drivers and obstacles to the reform process domestically and abroad.

Interviews were not chosen due to the unavailability of necessary resources. There was no opportunity to travel and systematically collect necessary amount of information from relevant stakeholders in both countries. At the same time, since Ukraine and Moldova have a vibrant media sphere with thriving field of investigative journalism and active civil society, focus on secondary sources allowed collecting a rich collection of relevant data without interviewing relevant state and non-state stakeholders.

The period of time that I look at is 2009–2015, from the inauguration of Eastern Partnership, when the EU started to actively promote changes in the migration and environmental sectors and provided significant incentives to make the reforms attractive to the Ukrainian and Moldovan elites. The offer of the Eastern Partnership was not limited to the Association Agreements, which were signed by both Ukraine and Moldova in 2013–2014. In the migration sector, the EU put forward the Visa Liberalisation Action Plans to both Moldovan and Ukrainian governments, upon implementation of which the visa free regime would apply to the people of Moldova and Ukraine. In the environmental protection sectors, the EU linked the reforms to implementation of the provisions of the Deep and Comprehensive Free Trade Area (DCFTA), which is a part of the Association Agreement. The implementation timeline of DCFTA for Moldova was September 1, 2014, while for Ukraine it was extended to January 1, 2016.

1.4 Structure

This study is divided into five chapters. In chapter 2, theoretical arguments identified in the literature on externally induced change are outlined, highlighting the assumptions underlying different perspectives. In particular, the limitations of EU Studies in explaining change in post-soviet states are provided and the insights from the international development literature and the transnationalisation literature are analysed, in particular the ways in which they can address the aforementioned limitations of the literatures on Europeanisation and external governance and how they can contribute to EU Studies. Overall, it is argued that studies on institutional change share the belief in the West's possession of the best knowledge and high degree of transferability of its rules, thus identifying the key aim of institutional change in creating necessary conditions and mechanisms to induce change.

The rest of the chapter provides the theoretical framework of the study, which brings external and domestic sides together in the analysis, accounting for the local context. At the same time, it focuses on three unintended contradictions of the EU policies in the Eastern Partnership countries, between homogenisation and heterogeneity, market building and state making, and elite support and broad empowerment.

The third chapter investigates the process of institutional change in Ukraine. It is divided into two parts, which cover the migration and environmental sectors. The analysis of the migration sector analyses the creation and implementation of the Visa Liberalisation Action Plan, which offered free travel, capacity building and assistance in return for reforms. The EU bases its policies on transferring its rules and building the capacities of the elites. The EU offers considerable incentives to alter the interests and preferences of the government to encourage it to adopt and implement selected rules, but they exclude non-state actors from the process of selecting the rules and monitoring their implementation, forbidding their participation via exclusive assistance policies and normative aims.

The case of environmental protection is interesting as conditionality and more for more is also the major drive for reforms, but it also shows that external incentives are not the key and are overall more effective in supporting institutional change if the EU strategy is inclusive and promotes multiplex ties in assistance and monitoring, which gives non-state actors the opportunity to participate and have an influence in the decision-making process.

Chapter four covers the experience in institutional change in the migration and environmental protection sectors in Moldova. It follows the design of the chapter on Ukraine and compares institutional change and the role of the EU in the sectors on migration and environmental protection. The focus of the section is on explaining the divergent outcomes which are observed in the sectors in question and the chapter explains the similarities with the outcomes in the previous chapter on Ukraine.

Finally, in the conclusion the empirical findings are summarised and analysed in light of the theoretical arguments. Moreover, the findings discussed in the Ukraine and Moldova chapters are compared and put into perspective in the context of the EU external policies of inducing change in the Eastern Partnership region. I conclude with the implication of this study for the EU policies and strategies in the Eastern Partnership countries in general, and in particular for theoretical debates on rule transfer and the diffusion of foreign models, underlining negative expectations about the likelihood of international convergence around the externally promoted 'best practices' and 'best knowledge' without the strategies that would support the broad empowerment of domestic actors and their inclusion in rulemaking. The work emphasises the importance of creating deliberative institutions and how external actors can facilitate the same.

2. THEORISING INSTITUTIONAL CHANGE IN THE EASTERN NEIGHBOURHOOD

This chapter discusses the EU Studies literature and its major debates, presenting the theoretical framework of this thesis. While an analysis of the EU's role in inducing institutional change in the third countries is necessarily EU-centred and focuses on the uniqueness of the European Union as an international entity and its mechanisms of change, the goal that the EU pursues in its relations with its Eastern neighbours is neither new nor new. This chapter highlights the limitation of EU Studies and its main approaches, which do a good job presenting the mechanisms and studying the EU's logic of action, but only offer a limited explanation of the EU's impact on domestic institutional change.

To illustrate the role of the external interventions and the importance of their interaction with the domestic context in which the reforms are to take place and in explaining the outcome of externally induced changes, first, the theories on the EU policies of inducing institutional change in the third countries are discussed; this is followed by a critical review, embedded in new institutionalism theory – a combination of historical institutionalism and rational choice institutionalism approaches. Such an approach is particularly useful in understanding why rules change or persist over time. Historical institutionalism highlights the importance of legacies and culture and helps to avoid seeing institutional change as a binary process. Rational choice institutionalism complements historical institutionalism and helps to better understand the role of the information and strategic interactions between actors. The central part of the chapter returns to the discussion of the main argument and discusses how the EU strategies can affect institutional outcomes.

2.1 Top-down change in the EU neighbourhood: Europeanisation, external governance and their limitations

The EU Enlargement in Central and Eastern Europe (CEE) is one of the key examples of successful externally-induced transformations, one which is frequently mentioned in the literature on the EU impact abroad. In the literature on EU Enlargement, the role of the EU in promoting change – Europeanisation – is at the centre of the research focus. Europeanisation is described as a process of rule and norm convergence via transfer of EU practices and of the *acquis communautaire* that brings the target state closer to EU regulations and European values and principles, such as the rule of law, democracy, market (economic) reforms and good governance (Vachudova 2005; Börzel 2010).

In this regard, the Europeanisation literature focuses on the systematic impact of the European Union, of its policies and decisions on domestic structures and processes of member-states, candidate states and third countries (Gawrich, Melnykovska and Schweickert 2010) and analyses the extent to which politics and public policies of the EU member states, candidate or

neighbourhood countries converge with the European norms as a result of rule transfer (see, for example, Grabbe 2001; Schimmelfennig and Sedermeier 2004a & 2004b; Börzel 2010, 2012).

One of the main questions within the literature is whether and how Europeanisation affects the EU member-states, candidate states and the third countries, which do not have a candidate status and will not join the EU in the nearest future. The latter countries form the group of states which are included in the EU's European Neighbourhood Policy. The Europeanisation literature argues that international influence played a major role in the post-communist reforms in the CEE countries, promoting reforms from good governance to constitutional reforms (Schimmelfennig 2009: 6) and it aims to repeat its success in the ENP (European Commission 2015c).

In this regard, a number of ways have been identified by which to analyse and explain the nature of influence of the EU, donor institutions and other international organisations on domestic policies, institutions, and political processes, not only of the member states and the candidate states, particularly with regard to its the Eastern enlargement, but also of the third countries (Börzel and Risse 2007; Sedelmeier 2011). As Börzel and Risse (2012) note, Europeanisation research can be regarded as 'a special instance of policy and institutional diffusion', where 'diffusion' is understood as the 'spread of normative standards and therefore policies and institutions highlighting different norm-promotion mechanisms in particular, conditionality based upon cost-benefit calculation, socialization and persuasion through mutual reason-giving and challenging' (Börzel and Risse 2012: 5).

These outlined mechanisms represent the major logics of action that rest on different understanding of key actors, their interests and attitudes and their relations to social structures and institutions.

2.1.1 From enlargement to the Eastern partnership

As has already been noted, the EU Enlargement significantly influences the studies of the EU's impact beyond its borders and on neighbouring states – especially the Europeanisation and external governance literatures. Both literatures look beyond the EU's impact on the EU member-states, instead extending its focus to cover the influence of the EU on the third countries. Both Europeanisation and external governance focus on how the mechanisms that were identified behind diffusion of rules and convergence in the third countries are applied. In particular, EU Studies focuses on the emergence and diffusion through external mechanisms of rule transfer and transfer of policies to less developed countries and evolving market economies and democracies (Langbein 2014; Vachudova 2005; Schimmelfennig 2011).

There are a number of approaches to the EU policies towards the third countries identified in the literature. The first approach looks at the normative nature of the EU as the rule provider, and presents the EU either as a normative power

(Manners 2002) or as a market power (Damro 2015). In this regard, the EU, by defining what is ‘normal’, uses its political or economic (market) norms as its instruments to project power beyond its borders and to induce domestic political and economic reforms. In the context of the CEE Enlargement, this external impact was observed in the form of political rules (such as electoral and constitutional designs) and regulatory economic reforms, which aimed at liberalisation (for example, privatisation, taxation and monetary policies) and improvement of state regulatory capacities and in particular capacity to uphold political rights, the rule of law, market competitiveness and economic rights.

The second approach looks at the EU and its influence as an exporter of governance, analysing how the EU projects its internal governance onto third countries. According to Lavenex and Schimmelfennig (2009: 795), governance is ‘particularly suitable to grasp this process of rule expansion beyond formal membership in the EU polity’ and it occurs when the *acquis* is transferred to the third states (Lavenex 2004: 683). In particular, the external governance approach looks at the influence of the EU’s institutional factors and ‘power-based’ explanations of interdependence to understand how the influence of external ‘governance providers’ extends to the selection, adoption and implementation of rules by the target states. In this relationship, the EU neighbouring states are the targets of top-down rule transfer, whose implementation is regarded as the main outcome and ‘the deepest impact of external governance’ (Lavenex and Schimmelfennig 2009: 801).

However, as it is argued in the literature, except for the issue of asymmetry, external governance approach does not fully consider the elements of power, in particular beyond the EU level. Rationalist models focus on relative bargaining power of the EU, which enables it to upset the domestic equilibrium, while logic of appropriateness identifies the power of persuasion – legitimacy, identity and resonance – as a key mechanism of change (Schimmelfennig and Sedelmeier 2011: 665–668; Vachudova 2001; Youngs 2009). Yet, external governance approach fails to look beyond domestic equilibrium and veto players, excludes the domestic power dynamics, state-society relations and neglects the issues of power of domestic rules and institutions. Finally, the depth of the normative gap between the EU’s ‘self’ and the target states’ ‘other’ is not fully considered, thus requiring a re-thinking of the representation of the EU as a normative power (see, for instance, Diez 2005).

As a result, the external governance approach highlights that the EU projects its power and purpose beyond its normative agency. That is why it explains the expansion of the EU ‘boundaries’ through functional cooperation and a technocratic approach to rule and policy-making (Bosse 2011). Due to the observed variation in scope of differences, interests and institutional barriers, the external governance literature distinguishes primarily between hard (hierarchical) and soft (non-hierarchical) modes of governance, depending on the level of symmetry of relations and modes of assistance and monitoring (Lavenex and Schimmelfennig 2009: 801). Moreover, depending on the type of the driving

force behind institutional change, the EU Studies literature distinguishes between direct and indirect mechanisms.

Hierarchical governance is characterised by asymmetry of relations between the rule provider and the rule taker. It is in a form of ‘authoritative decision made by the rule provider, which implementation is mandatory and non-negotiable for the target state’ (Scharpf 1999, in Korosteleva 2012). Hierarchical governance takes place in a formalised relationship of domination and subordination and its aim is the production of a set of binding prescriptions and sanctions. The existence of precise rules, formal procedures, monitoring and sanctioning, which are integral parts of the hierarchical governance, is the main condition for the effective application of conditionality – the main mechanism of rule transfer. Its active application highlights the predominance of a top-down rule transfer on the basis of the external incentives model (Lavenex and Schimmelfennig 2009).

Non-hierarchical governance is characterised by a more symmetrical relation between the parties, which is based on joint decision-making and joint problem solving (Schimmelfennig and Sedelmeier 2004a). In this regard, the emerging conflicts of interest are solved primarily by negotiation. Primarily, the goal of non-hierarchical governance is to achieve institutional change through a development of common interests and alteration of the target states’ preferences through bargaining, persuasion and mutual concessions (Lavenex and Schimmelfennig 2009; Börzel 2010).

Although rule transfer in the external governance can take place through non-hierarchical mechanisms, based on ‘more horizontal forms of network governance and communication in which rule expansion progresses in a more participatory manner’ (Lavenex and Schimmelfennig 2009, 796), the literature argues that EU policies towards the third countries are mostly based on hierarchical mechanisms, which are characterised by a ‘highly asymmetrical relationship between insiders and outsiders; the imposition of predetermined formal rules, the exclusive participation of bureaucratic actors; and top-down communication structures’ (Lavenex 2004: 682).

The partnership approach, though built on some of the premises of non-hierarchical governance, is positioned as an alternative approach to the external governance. The partnership approach echoes the non-hierarchical governance as it is based on the search of mutual benefits and preferences, thus extending the analysis to the interests and preferences of the third state (Bosse 2012; Korosteleva 2012). It emphasises the process of a mutual convergence of both parties’ preferences, which can take the form of either ‘specific reciprocity’ or ‘diffuse reciprocity’ and may result in a mutually beneficial outcome (Keohane 1986; Bosse 2012).

In this regard, the partnership approach, as Korosteleva (2012: 15) points, is ‘an act of negotiated compliance’, which is to be tailor-made for the EU’s neighbouring countries, thus creating a special platform for discussion aspiring ‘to bring “the others” into the process of the EU’s construction of “self” on the international stage’. To achieve these ends, partnership highlights the mutual

reciprocity of interests, norms, values and achievements (Sasse 2008), in particular emphasising ‘the privileged relationship with neighbours, built on mutual commitment to common values’ (European Commission 2004: 3). The partnership, hence, is a soft tool of the EU policies under the ENP, which is comprised of two constitutive elements upon which the EU relations with the third countries are built: ‘shared values’ and ‘joint ownership’ (Korosteleva 2012).

Finally, the EU can be analysed and understood as an organisational entity, which is guided in its neighbourhood policies by a combination of its previous experience and innovation. In this regard, the experience of the EU Enlargement policy is seen as the basis for the EU’s policies towards the EU’s Eastern neighbours (Sasse 2005; Delcour and Tulmets 2009), aiming at repeating the previously developed procedures and approaches in its policies towards the new neighbourhood. Following this logic, the EU policies adopt a technocratic approach, which puts to one side the importance of local domestic institutional and cultural specificities.

Overall, these literatures on the EU impact in the third countries show that the EU is mainly concerned with the top-down transfer of its rules to the third countries, which is characterised by an asymmetry of relationship. The EU draws heavily on its superior bargaining powers in order to enforce implementation of its rules in the target states (Börzel 2010). The literatures highlight the limited ability of the outsiders to influence the content of rules as the EU selects the rules and explains what needs to be done to adopt and implement the same (Schimmelfennig and Sedelmeier 2004b: 675). Moreover, although it is hard to wholly capture the nature of the EU policies with any one particular type of governance or mechanism, partnership and/or non-hierarchical external governance, if present, are undermined by hierarchical approaches (Korosteleva 2012). As Börzel (2010, 191–2, 197) notes, the EU heavily relies on hierarchy and conditionality when drafting its policies, while the other modes are either difficult to find or exist and function in the ‘shadow of hierarchy’. Therefore, as regards the EU policies towards the EaP countries, it is difficult to alter hierarchical governance or substitute it with more balanced, less formal and more participatory approaches and channels due to the necessity to have a system of order and coordination, which makes the EU external relationships more predisposed to hierarchical approaches (Korosteleva 2012: 43).

As a result, a derivative of the EU conditionality approach – a ‘more for more’ principle was inaugurated in 2011 under the revised ENP and the Eastern Partnership and became the key instrument of the EU. It is primarily based on the simple imperative: the more you reform, the more support you get from the EU. In its ENP review, the European Commission outlined ‘more for more’ as a key instrument in its relations with the neighbouring countries (ENP Review 2015).

2.1.2 The EU's policies towards its neighbours

On a practical level, the ENP has provided a framework for the EU's relations and greater engagement with its neighbours, both in the East (the Eastern Partnership) and the South (the Union for the Mediterranean). The EU has used the ENP and the Eastern Partnership to foster and evaluate reform efforts in each of the Eastern Partnership countries, in particular on governance issues, on the basis of the Action Plans, which are agreed with each individual partner (ENP Review 2015: 9). Since the ENP was designed to emulate the EU Enlargement, since its inauguration the EU's relations with neighbourhood countries have significantly intensified through the European Neighbourhood Policy, as a result of clear commitments spelled out by both sides in the ENP framework through bilateral Action Plans, Associate Agendas, Association Agreements and multi-track platforms.

Overall, since 2004, the EU has been developing and expanding its instruments and fostering relationship with the ENP countries, which are currently based on the following central elements. First, the relations between the EU and the majority of ENP partner states are built on the legal framework provided by Association Agreements (AAs) or Partnership and Cooperation Agreements (PCAs). Second, the Action Plans or the Association Agendas have been agreed with twelve ENP partner countries and form the reform agendas for the countries. For each of these countries, there is an annual report on implementation of Action Plan priorities. In addition to the annual progress reports, the Annual Neighbourhood Package includes a strategic communication and two reports on implementation of regional cooperation priorities, such as the Partnership for Democracy and Shared Prosperity with Southern partners and the Partnership for Democracy with the Eastern Partnership's countries.

The bilateral cooperation includes bilateral dialogues between the EU and the majority of the ENP partner countries in different formats on a regular basis. This includes formal exchanges foreseen in the AAs or PCAs, such as Association Councils, Association Committees and different sectoral subcommittees. There are also numerous other multilateral platforms, such as Human Rights Dialogues and other sector-specific dialogues in particular under the Eastern Partnership multilateral platforms. These ENP policies are supported by substantial targeted financial support, which is provided to ENP partner countries. Only for the period of 2014–2020 a further EUR 15 billion is allocated from the European Neighbourhood Instrument (ENP Review 2015: 9).

However, despite much greater involvement of the EU in inducing institutional change in the ENP countries, bad performance continues to persist. These outcomes resulting in little effect of EU policies on institutional change dominate despite the existence of adequate incentives, clear rules, which are attached to the provision of EU financial assistance. This outcome and the persistence of rules in ENP countries despite the EU's efforts created a ground for re-assessment of the EU policies in the literature (Korosteleva 2012; Börzel 2013) and the policy-making (ENP Review 2015).

A number of limitations of the EU policies have been identified in the literature. First, the efficiency of the application of conditionality was questioned. The scholarly debate has largely focused on two reasons of the failure of rule transfer. The first explanation focused on the incentive side and the inefficiency of the conditionality approach, as rule transfer through conditionality was considered to be less suitable and efficient in the absence of membership possibility, than the less hierarchical and partnership building approaches. The second approach analysed the constitutive elements of the EU-third states cooperation framework, values and ownership (Korosteleva 2012: 9).

Some scholars also highlighted the role of Russia, its policies and its regional integration projects in the neighbourhood as an obstacle to the effectiveness of EU governance in the Eastern Partnership countries, and in particular Ukraine (for example, see Dimitrova and Dragneva 2009; Langbein and Wolzcuk 2011; Langbein 2015). In particular, the domestic preferences of major state and economic stakeholders were highlighted as potential roadblocks by Langbein and Wolzcuk (2011: 3), who also note that close ties between state and economic actors characterise all Eastern neighbourhood countries. Thus, rule transfer in these countries depends on the interests of domestic actors, in particular policy fields, rather than on EU mechanisms, target states' membership aspirations and types of political regimes in the third countries.

However, more substantially, the core explanations for why EU Studies fails to explain the observed outcomes are as follows. First, the conditionality approach as such does not explain selective convergence if adequate incentives are in place. Moreover, convergence may occur even when compliance is very costly and incentives are insufficient (Buzogany 2013). There is the question of whether, even in a favourable environment, with the adequate incentives, clear rules and strict monitoring the EU could induce change. Vachudova (2001) notes that incentives can explain why a particular rule has been selected, but it is not capable of explaining the progress and outcomes of rule implementation. Furthermore, the focus on the spread of institutions neglects the issues of further institutional modifications (Jacoby 2001) and that the transferred institutions can perform a different function than originally intended because of manipulation (Polishchuk 2008).

Second, the partnership approach does not explain why the governments make bargain deals with the EU on terms favourable to the former, but decide not implement the reforms. For example, as Casier (2011) argues, goals jointly selected by the EU and the target state government as well as shared ownership could reduce the potential of rule transfer and institutional change as the entrenched domestic actors may use the concluded bargains and package deals with the EU at the expense of promoting and implementing institutional change in their countries.

Moreover, external actors, as the 'principals' in rule transfer, are assumed to have the right incentives and the necessary knowledge in order to transfer rules and institutions that serve the recipients' best interests (see Easterly 2006 for a critique). Consequently, the existing research overemphasises the role of exter-

nal rule providers in the diffusion of the rules (see, for example, Börzel and Risse 2012) and considers domestic societies to be largely ‘exogenous’ factors. The role of the domestic actors are relegated to their presentation as potential ‘veto points’ that can realise their real interests only with the assistance of external actors in perfected external hierarchies (see, for example, Kelley 2006).

Due to its ‘externalist bias’, the literature avoids broader questions of domestic institutional change and how rulemaking can reshape relations among domestic actors, reallocating power domestically. In this regard, the top-down technocratic view on institutional change tends to overemphasise the dominant role of the EU policies ‘screen[ing] out other domestic causes’ (Bulmer and Burch 2005: 864). The search incentives or than external ones and conditions and explanations that would allow for the reaching of sustainable domestic institutional outcomes is given less focus (see, for example, Bruszt and Holzacker 2009: 8-9; Sedelmeier and Epstein 2008).

In this regard, the EU literature describes the top-down tools at the disposal of the EU, but neglect the bottom-up factors of institutional change. In its EU-centricity, the literature assumes that the EU neighbourhood policies or rules to be transferred represent the long-term interests of their recipients, thus disregarding the question of the interaction between domestic and external factors (Jacoby 2008; Bruszt and Langbein 2014). In turn, this research argues that by focusing on top-down interventions, the literature either neglects or does not sufficiently analyse the importance of domestic institutions, norms and informal rules. In this regard, Europeanisation and external governance cannot fully explain the varying patterns of compliance with the EU rules and policies in the region and provides only a limited understanding of the conditions under which the EU’s influence leads to efficient and sustainable institutional change.

2.2 Theoretical framework

As it was shown in the previous section, EU Studies mostly explains change via the top-down approach, with its focus on rationally-driven agency. In this regard, the EU literature regards institutions as the creations of formal rules and laws written by political leaders and the outcome of their practices, hence emphasising the special role of agency in inducing institutional change. This argument is based on the rational choice assumption that all actors behave strategically and seek to maximise their benefits (Aspinwall and Schneider 2001: 7). The Europeanisation and external governance literatures with their focus on top-down change follow the assumption that agency may purposefully lead to rapid institutional change if it coincides with the elites’ interests and preferences and supplies them with the right knowledge and assistance. When the domestic elites’ preferences change, they will transform institutions by rewriting old rules and re-making new laws at their convenience. Thus, the EU sees itself as playing a key role as a resource, knowledge and role-model hub to guide the reformers’ actions.

Overall, the EU transformative power relies mostly on its capacity to promote institutional change in the third countries on the basis of the rightfulness of its provided solutions, superiority of its knowledge and on its capacity to attract and persuade the domestic elites. However, the limitations of EU Studies and its inability to explain the varying outcomes of institutional change in the third countries require the reassessment of the dominant approaches. In particular, in order to better understand why the external interventions often fail to induce change, it is necessary to address the issue of the norm-driven behaviour and contradiction between formal and informal rules, and review the problem of culture and changing of the informal rules.

To better understand how institutions evolve over time and how the external actors can induce institutional change, this work adopts a combination of historical institutionalism and rational choice approaches to analyse the diverging cross-sectoral outcomes in Moldova and Ukraine. To look beyond formal change is crucial for understanding institutional change. Highlighting the issue of the deeper change and the role of norms and culture, Nunn (2012: 122–123), points to the important interplay between culture and domestic institutions in an effort to explain the historical persistence of rules. In the post-Soviet context, it is important to emphasise that the EU's Eastern neighbours were not only long affected by the Soviet rule. Having been a part of the Russian Empire these countries were affected by a different institutional tradition, known as the 'Muscovite matrix' (Hedlund 2007; 2011; Sakwa 2010). Ukraine (west of Dnieper) became part of Russia after the partitions of Rzeczpospolita between Russia, Austria-Hungary and Poland at the end of 18th century. Moldova was included shortly afterwards in 1812 after the Russo-Turkish War. This institutional model is characterised at its core by unaccountable government, conditional property rights and consequently a lack of rule of law (Hedlund 2007: 20–21).

The Muscovy rules were modernised in the Russian Empire and later in the Soviet Union through the addition of professional bureaucracy, images of order and due process; however, as Hedlund (2007) notes, despite the modernisation, its main features were persevered. Subsequently, the period of the Soviet rule might be seen 'as the apogee of the long-term process providing formal constitutional guarantees for rights and freedoms that in reality were mere decorations' (Hedlund 2007: 21). Besides the Muscovite institutional matrix, the Soviet legacies (Olson 1995) still dominate the Ukraine and Moldova societies and are reflected by the high level of corruption, paternalism, administrative management, dubious property rights and legal regulations (Korostelina 2013), the merging of the political and economic spheres, and state capture (Tudoroiu 2015).

Like the studies on the Muscovite matrix (see Hedlund 2007; Rosefield and Hedlund 2009) and the dual state (Sakwa 2010), different studies such as that on the role of colonialism on institutions in Africa, Asia and Americas (Acemoglu and Robinson 2011; Acemoglu, Johnson and Robinson 2001) show the crucial role of culture in explaining the persistence of domestic institutions.

In a similar fashion, historical choices are used to explain the observed divergence in rules in different parts of the world in a number of studies (see, for example, Greif 1994; Putnam 1993) or particular cases (for example, in the countries that were divided between the Russian Empire and Austria-Hungary) in order to understand how these choices resulted in different cultural trajectories and subsequent institutional outcomes (Nunn 2012: 120–121).

Overall, institutions reduce uncertainty and structure behaviour and interactions (North 2005), shaping in converging ways the habits and expectations of individuals and society, which derive from cultural and material legacies. Consequently, the course of transformation is dependent not only on ‘the introduction and enforcement of procedural rules that legitimise and guide the actions of the actors but also their conformity with dominant social norms’ (Finnemore 1996).

Historical institutionalism focuses on how institutions develop over time, trying to understand the importance of history and in particular the history of specific policy sectors or sectoral policies (Skocpol and Pierson 2002). As Thelen (2003) notes, approaches associated with ‘historical institutionalism’ pay greater attention to the problems of institutional change and the question of why a certain set of rules and institutions persists over time. Historical institutionalism argues that the creation of new institutions is impacted by history and in this way it underlines that societies develop different institutions in the long run (Hall 2010; Hall and Taylor 1996).

Historical institutionalism helps to account for legacies and institutions, of which informal norms are an integral part, analysing how both formal and informal institutions create constraints and opportunities of action and gradually evolve (North 1990; Easterly et al. 2003). Such a perspective sees rules and institutions as emerging spontaneously from the social norms, beliefs and values which are dominant within a particular society (Easterly et al. 2003). By taking that perspective into account, historical institutionalism helps to broaden the understanding of externally induced institutional change, its primary mechanisms, necessary conditions and underlying factors.

According to Hall and Taylor (1996), historical institutionalism looks at how the conditions and values of the previous regimes affect the distribution of resources and organisation in the new institutions. In particular, how ‘the fixity of inherited constraints’ impacts the ‘inner environment of mental residues’, including culture, habits, social and political aspirations, collective identities, paying particular attention to their potential for social conflict and how institutional legacies affects the formal and informal power resources of the existing elites to understand the extent of their resourcefulness and project the extent of their influence (Elster et al 1998: 18–19).

Following the assumption that rationality is bounded (Schmidt 2002) and that the future choices may be determined by ‘increasing returns’ (Pierson 1996), the choices of the domestic actors become dependent on institutional constellations at a given period of time, thus pointing at the possibility that the old institutions can persevere despite the adoption of new formal rules (Pierson

2000). Actors invest in the ability to work within the rules and procedures of already given structures, which may lead to domestic resistance to promoted changes and newly created institutions.

The focus on culture and historic processes is linked with the issue of path dependence as cultural preferences and beliefs exercise influence over individual outcomes (Fernández 2011). In the analysis of the sources of historical persistence, culture plays a potentially important role because it is an incrementally changing variable whose evolution is affected by historical events and previous choices, showing how historical shocks at critical junctures have made a long-term impact on the distribution of cultural features (Nunn 2009, 2012).

Path dependency studies the dynamics of self-reinforcing or positive feedback processes in a political system – ‘increasing returns’ processes (Pierson 2000) that reinforce the recurrence of a particular pattern into the future. As Pierson and Skocpol (2002) argue, once established, these patterns of political mobilisation, institutional ‘rules of the game’, and even citizens’ basic ways of thinking will often generate self-reinforcing dynamics. In addition to drawing our attention towards ‘critical junctures’ or formative moments, arguments about path dependence can help us to understand the powerful inertial ‘stickiness’ that characterises many aspects of political development (Pierson and Skocpol 2002; Pierson 2000).

In his explanation of the impact of past choices, Pierson (1996, 2000) emphasises the role of ‘increasing returns’ and network externalities to exemplify the processes of path dependence (see also Thelen 1999). Past experiences are known, hence it is more rational for domestic actors if continuity prevails, once particular decisions have been taken at some critical junctures. Policy continuity can provide optimum returns in the long term, while path dependence in politics is further increased by a weakness or a lack of the forces of learning and competition that could otherwise correct the preformed incentives, behaviour and attitudes (Pierson 1996, 2000).

Previous choices influence future decisions and choices (Stark and Bruszt 1998; Hedlund 2011). This presence of institutional stickiness and path dependency necessitates the exploration of how they shape transaction rules, values, attitudes and norms and how it influences the distribution of the resources among the elites. In this regard, the elite’s investments in preserving a status quo represent one of the key challenges to the implementation of the adopted reforms. As Jacoby (2004: 24) notes, history is important ‘insofar as simply agreeing to a set of institutional changes is hardly a sufficient basis for the ability to implement those changes’.

Historical institutionalism centres its research on the meso- and macro levels, studying in-depth the rise and decline of institutions over time, probing ‘the origins, impact and stability or instability of entire institutional configurations’ or specific institutions (Skocpol and Pierson 2002: 704). Sectors are main units of analysis as decisions set sectors on a particular trajectory or path, which is extremely costly to change due to pre-existing investments. However, as the historical institutionalism model of institutional change notes, because of the

existing potential for a mismatch between prevailing institutions and a rising problems at a certain point of time, it opens up an opportunity for this mismatch to become a driving force for institutional change. Thus, as Jacoby (2004: 24) notes, history is not only a constraint but is also potentially an untapped capacity for future changes, because in a similar way to how ineffective institutions have their antecedents, the effective institutions may equally have their own antecedents in the past.

In this study, historical institutionalism is complemented by rational choice institutionalism as the combination of both can provide a more comprehensive explanation. While rational institutionalism is less powerful on its own in explaining institutional change, it complements well historical institutionalism by providing the latter with some powerful insights into the functioning of institutions (Hall 2010). At the same time, historical institutionalism is based on soft rationalism, which makes both theoretical approaches potentially mutually reinforcing. Rationality is bounded due to incomplete information (Hall and Taylor 1996; Skocpol and Pierson 2002), hence, the choices that are made may not lead to optimal institutional solutions.

However, it does not necessarily make these choices irrational at the point of time when the decisions were made. Yet, both historical institutionalism and rational choice institutionalism are united by their understanding of institutions, which is aimed at creating a set of preferences and constraints. In this regard, institutions have to provide the connecting points between time periods and levels of analysis (Katznelson 1997; Pierson and Skocpol 2002; Thelen 1999).

Rational choice institutionalism complements historical institutionalism in specifying the relationship between institutions and individual behaviour, in particular highlighting the key aspects of politics and the management of uncertainty (Hall and Taylor 1996: 950–51). Specifically, for this work, it emphasises the role of the information and its flow and strategic interactions between actors for the distribution of power and political outcomes (Hall and Taylor 1996: 951).

Attention to informal institutions – ‘socially shared rules, usually unwritten, that are created, communicated and enforced outside of officially sanctioned channels’ (Helmke and Levitsky 2004) – is crucial to the studies on institutional change. Studies increasingly point at how actors’ expectations and incentives, as well as the performance of formal institutions, are shaped by informal institutions (Helmke and Levitsky 2004); careful attention, therefore, to how informal institutions affect expectations and behaviour of domestic actors is a necessity for understanding institutional outcomes (Helmke and Levitsky 2004: 726).

To illustrate the importance of informal rules for institutional outcomes at empirical level, the issue of corruption and rent seeking serves as a good example. As it has been already observed on a number of occasions, corruption in Ukraine and Moldova is rampant; it destroys the investment climate and sabotages political and economic reforms. Fighting corruption has become the central issue of current reform plans in Ukraine and Moldova and is a typical external pre-condition for receiving external financial support. The externally-pro-

vided solution is the creation of set of independent agencies (Anti-corruption Bureau, Special Anti-Corruption Prosecutor), recruiting new people and provision of resources and knowledge by the EU. It is the central part of the EU's Visa Liberalisation Action Plan (VLAP) provided to Moldova and Ukraine (and also Georgia).

However, if we assume that corruption is not simply a criminal activity, which is limited to government officials, but is rather a norm, then the solution might not be as simple as creating a number of new agencies and increasing the wages of the new staff members. Norm-driven behaviour does not necessarily concur with rational cost-benefit calculations. Consequently, corruption and rent seeking may not only be the outcome of predatory behaviour driven by narrow interests in the absence of formal rules (or in the presence of weak institutions and law enforcement), but instead be part of the state's institutional matrix (Hedlund 2011). If so it can become the core feature of the country's institutional system and represent more than a criminal activity, which is to be eradicated by strengthening the capacities of the state. It rather requires policies that would be supported by a bottom-up transformation of deeply engrained social norms.

On a practical level, it means that when the recipient government formally adopts institutional reforms proposed by the foreign donor or emulates a particular foreign 'success story', rule implementation may nevertheless fail, due to the divergent interests and incompatibility with the dominant informal norms, which guide the choices of public agencies in charge of implementing and enforcing these rules (Martens et al. 2002). Individuals that are entitled to follow the new adopted rules may be similarly reluctant to comply with them. This separation between formal and informal rules and institutions only highlights that 'rules exist and are applied in a certain context and are not developed or cannot function separately from the dominant social norms, values and habits' (North 2005: 11).

Similarly, without the understanding of the normative underpinnings, the fight against corruption by the top-down 'Western' methods is less efficient. Corruption in post-Soviet countries is more than just embezzlement or looting; it is about (direct or indirect) state capture and a granting of the possibility to extract rent in return for (political) loyalty (Acemoglu et al 2011). It is even at times described as a 'market-based' mechanism that solves the problem of lack of rights and creates predictable rules within the economic and political system. In this regard, the usual results of the promoted reforms, such as the fight against corruption within the post-Soviet systems, which do not aim to change the underlying norms alongside the formal rules of the game, is the increased amounts of bribes as the risk from corruption increases (Movchan 2015). Moreover, the typical outcome of the main externally-induced method of fighting corruption by capacity building reforms is the improved capacity of the entrenched groups to extract rents and/or the movement of the corruption schemes higher up the government ladder as the case of the migration management reform in Ukraine shows.

This leads to a paradox in a post-Soviet space, whereby a government official or an elected representative can be both the effective manager/ruler and a corrupt rent granter, and be re-elected, not in spite of the latter, but probably because of it. It is not surprising therefore that this leads to situations whereby one of the most corrupt politicians in Ukraine, the mayor of Kharkiv, Gennadii Kernes, a long-time ally of Victor Yanukovych and one of the engineers of the unrest in the east of the country, is yet considered to be the most effective mayor in Ukraine, including by his own political opponents (Inforesist 2015).

In this regard, looking at how domestic institutions are shaped, new institutionalism highlights two core contradictions of the EU policies: diversity versus institutional monocropping, and state capacity building versus empowerment, which arise from a lack of understanding of local institutions and the process of their (re-)creation and evolution.

2.3 Preventing institutional monocropping: taking diversity into account

New institutionalism identifies two important influences on institutional change that guide this study: the prevalence of the poor institutions in the observed cases and misconstrued incentives by the EU due to an inadequate understanding of the reform environment and a misplaced focus on elites. By looking at the issues of diversity, participation and resilience, I show how insights from new institutionalism can help to reassess the EU policies of institutional change.

Based on a more nuanced understanding of how institutions evolve, new institutionalism argues that institutions seldom result from a simple borrowing of existing institutional rules and models. As Jacoby (2004: 24) highlights, ‘simply agreeing to a set of institutional changes is hardly a sufficient basis for the ability to implement those changes’. In this regard, the modifications and active adaptation of external rules and models, in which the (Western) rule providers do not fully control the process, are at the core of the creation of efficient and sustainable institutions (Jacoby 2001, 173; Bruszt and Holzhacker 2009; Herrigel 2010).

In the first place, historical institutionalism is particularly helpful in identifying how domestic actors ‘adapt to institutions and invest in the ability to work within the rules and procedures of given structures’ (Jacoby 2004: 24). Institutional change depends on broad participation and local knowledge. The ability to design and modify the institutions, where external actors merely give general guidelines, rather than provide specific models for implementations and follow strict checklist compliance of domestic actors, becomes a crucial part of institutional change (Zeitlin and Herrigel 2000). Participation in rulemaking and designing the institutions prevents the imposition of pre-selected blueprints the applicability of which is presumed ‘to transcend national circumstances and cultures’ (Evans 2004: 30).

However, external policies of inducing institutional change are mostly based on the experience and knowledge of the rule provider (Easterly 2001; Rodrik 1999). As a result, returning to our previous discussion, the outcome of such policies is institutional monocropping – the ‘one size fits all solution’ (Evans 2004; Korosteleva 2012; Aligica 2013) – and less compliance with the transferred rules, which creates potentially inefficient institutions. A typical outcome of external interventions, instead of the facilitation of domestic innovation through the empowerment of state and non-state actors and their inclusion in rulemaking, is the promotion of end-state institutional blueprints (Acemoglu and Robinson 2011; Bruszt and McDermott 2012, 3–4). Such an approach ignores the peculiarities of domestic institutions and can hardly address the challenges that are posed by informal rules, which support the existing institutional arrangements.

Top-down policies are particularly detrimental for successful institutional change since, as new institutionalism highlights, the state institutions, which are the target of external intervention, are embedded in a larger set of societally-structured power relations. Institutional change should focus on creating deliberative institutions, which, by including a variety of domestic actors in rulemaking, rely on the unique knowledge and institutional experience of domestic actors and facilitate coordination, contestation and experimentation between the actors to find better institutional solutions. In its absence, the attempts of the external rule provider to impose its idealised blueprints furthermore leads to the potential disjunction between formal and informal structures of power and practice, making the former ineffectual and potentially dysfunctional (Evans 2004: 34). Thus, when the rule provider unilaterally chooses the rules for the target state to adopt and implement, it fails to construct the mechanisms necessary for successful institutional change.

Another important aspect, which is underlined by historical institutionalism, is that the focus on the top-down interventions can lead to the problem of tight institutional coupling – mutually reinforcing institutional arrangements (Thelen 2004). Historical decision and events influence future institutional choices (Stark and Bruszt 1998, 2001). Institutional environments are highly path dependent, thus creating obstacles to the adoption of new rules and institutional blueprints. Different institutional traditions, the development of different institutions and values create a problem of deep heterogeneity – lack of consensus and correspondence of capabilities, preferences and beliefs (Aligica 2010). Cultural differences means that target states can void transferred rules and institutions and mitigate their intended purposes.

Indeed, studies have indeed shown ‘bad fit’ of transferred institutions and their inefficiency in a different context, which may lead to their manipulation based on the exploitation of existing asymmetries and consequent subduing of these institutions (Polishchuk 2008: 28). Institutional monocropping may result in manipulation or misfit of transferred institutions (Hellman 1998; Polishchuk 2008).

New institutionalism acknowledges the importance of institutional diversity. Ostrom (1990; 2005) departs from the literature with the latter's assumption of growing homogeneity through diffusion, emulation and focus on idealised models (such as hierarchies, markets and networks promoted by external governance), instead highlighting the variety of cultures, institutions and norms and makes the issues of diversity, resilience or collective action particularly important as an area of study.

The role of diversity of values and institutions, and deeper 'informal' transformation is paramount in reconstructing the existing institutions and achieving sustainable institutional change. As the empirical studies show, the understanding of successful externally-induced change can only be partial without one accounting for prevalent values and beliefs. As Acemoglu, Johnson and Robinson (2001) show, cultural beliefs form institutional foundations, which (as in the studied case of the United States) led to long-term economic development and formed democratic institutions.

To solve these problems of deep heterogeneity, new institutionalism highlights that potential solutions require a broader and more complex process than pre-selected formal rules – flexible institutional arrangements, relying on local knowledge and broader participation (Aligica 2010; Ostrom 2005). Diversity requires broad participation. Institutional change is a complex and embedded process, which requires local resources and knowledge in order to gain an 'understanding of complementarities between institutions and to ensure that the input matches the socio-economic environment' (Murell 2002: 86).

Local knowledge and participation facilitate institutional adaption and sustainable institutional change. The bottom-up involvement in governance processes of a variety of state and non-state actors, who apply their 'local' knowledge in (re)-creating rules and institutional structures, are considered to be critical elements of the sustainable institutional solutions (Aligica 2013). Hence, political credibility of reforms and the coordination of reforms in different areas requires local input (Murell 2002: 86; Martens et al. 2002) to co-sponsor change by other societal actors and stakeholders and provide local knowledge, resource and legitimisation.

Flexible rulemaking also guarantees institutional resilience, which makes institutional change and performance more sustainable. Resilience – the adaptability and viability of institutional system – is a crucial element of change as it helps to facilitate institutional innovation (Ostrom 2005) and contributes to sustainability of the changes (Aligica 2013: 105). That is the transfer of overly detailed systems of rules, which attempt to transfer a precise and 'optimal' solution to every possible situation, leading to less sustainable institutional outcomes (Aligica 2013: 115–6). The trade-off lies in the tension in adaptive systems 'between the benefits of achieving precise behaviour and the cost of increased system fragility' (Miller and Page 2007, cf. Aligica 2013), as the former undermines the institutional system's robustness and ability to readjust to new challenges (Ostrom 2005).

The critical importance of flexibility is to secure the interests of diverse groups and stakeholders, in particular at the stage where implementation decisions are made to allow subsequent modification to satisfy the requirements of a broader number of interest groups (Murell 2002: 80). Resilience is more than just ‘absorptive capacity’ or ‘speed of recovery’, because it opens up institutional processes of innovation and creative socio-cultural adaptations (Aligica and Tarko 2014). The flexibility and provision of input from domestic stakeholders facilitate local implementation and include local resources, both to gain an understanding of complementarities between institutions as well as to ensure that the input matches the socio-economic environment (Murell 2002: 81).

Therefore, the efficiency of institutional change and the emergence of modified norms depends on the ability to participate in rulemaking as well as adapt and modify the rules. This finding was confirmed by a number of studies on institutional change. For example, studying the initial design, level of participation and professionalisation, Aspinwall (2009; 2013) shows with the example of the impact of NAFTA on institutional change in Mexico how the independence of the new institutions from national control and the extent to which citizens’ access to externally-supported capacity building of both state bureaucracy and agencies and non-state stakeholders (Aspinwall 2009, 2013) explained the difference in outcomes between the environment protection and labour sectors in the country (Aspinwall 2013: 12).

In a similar way, the processes of both CEE Enlargement and post-war Europe transformation (Americanisation) in 1940–1950s, which aimed at reshaping national institutions in CEE and post-war Europe, in fact resulted in significant deviation from external (the EU and the US) paradigms at a deeper level (see for example Djelic 1998; Zeitlin and Herrigel 2000; Bruszt and Holzacker 2011). In the case of US influence on post-war reconstruction of Europe, the transformation was exercised principally through varying combinations of negotiation, persuasion and voluntary emulation (Zeitlin and Herrigel 2000: 22–23; Herrigel 2010). The central role of institutional adaptations and modifications of the EU and US rules and practices in domestic transformations emphasises the necessity of the active adaptation of rules and institutions to national environments in order to achieve sustainable institutional change (Zeitlin and Herrigel 2000: 7).

Flexibility in rulemaking is a crucial factor emphasised in the new institutionalism literature and neglected by EU Studies. It helps to account for domestic institutional peculiarities and thus suggests that the process of institutional change should be embedded in different political, cultural, and institutional environments (Herrigel 2010; Djelic 1998). In its absence the external interventions would promote institutional monocropping, excluding local participation and input, preventing competition and marginalising the weakest domestic groups. By so doing, it prevents an active adaptation of institutional features to a given domestic or regional context through participation and interaction of interested stakeholders (Bruszt 2002; Bruszt and McDermott 2011).

2.4 The capacity building problem: importance of broad empowerment

To promote their interests and participate in rulemaking, domestic actors need to possess adequate capacities. The EU as an actor and EU Studies recognise the importance of capacity building, yet they often understand it in a narrow sense, aiming at supporting the domestic elites. Indeed, the second core part of the Europeanisation approach and policies of external interventions focuses on changing the perceptions and interests of elites and building their capacities to implement reforms. The prevailing explanations emphasise the role of elites in implementing change and thus the role of the external actors is to alter the interests and behaviour of elites (see, for example, Börzel 2005). As a result, many have considered domestic elites not as a problem but as a solution: that ‘enlightened oligarchs’ (Gromenko 2014) can facilitate institutional change but have not been supported sufficiently to implement reforms.

The key assumption is that the elites would seek further economic enrichment; however, the other side of the story is that the proposed institutional reforms may result in their loss of political power. Hence, elites’ fear of losing political power is highlighted as ‘the most important barrier to institutional change’ (Acemoglu and Robinson 2000, 2006). ‘Social conflict’ perspective is usually aggravated by the commitment problem, since, as Acemoglu and Robinson (2001) show, governments generally face the commitment problem – absence of a third party to enforce agreements between various groups in society, the entrenched elites would be inclined to maintain the existing status and allocation of power and resources. Thus, as Roland (2004: 10) points, entrenched elites have a vested interest in preserving inefficient institutions to maintain their power and ‘may not agree to give up that power because the winners of institutional change may not be able to commit to compensation schemes for the losers’.

Institutions tend to ‘gravitate toward inertia because the existing distribution of resources re-produces the kind of political decisions that reinforce them to support institutional continuity’ (Beckert 2010, 154); the more entrenched the interests represented in a specific institution are, therefore, the more difficult it becomes to dismantle them. Power stakeholders or elites influence institutions and their adaptability to change, but their influence is even stronger when the elite controls external assistance, resource and information flows. Elites monopolise ‘sources of information and contacts’ and distribution of resources, which allows them to build patron-client relationships (Das Gupta et al. 2000, 3–4).

Rational institutionalism explains institutional outcomes though incentives provided to the key actors among the target states’ elites to change the cost benefit analysis and preferences of interest groups and voters. Yet, it has already been shown that incentive-based explanations alone do not fully account for observed institutional outcomes. Moreover, the rent seeking behav-

jour of domestic elites places the elites not among the promoters of institutional change but rather as an obstacle.

A focus merely on elites disregards the demand side of institutional change and creates the grounds for potential resistance or only partial adaptation on the lower levels (Wegerich 2001: 19–20). The focus on elites neglects other stakeholders and may result in a lesser acceptance of institutional reforms, because its main benefits are not realised for the majority of private actors (Murell 2002: 115). Legitimacy gap is inevitable given that the key non-state stakeholders and civil society are left disconnected and are unlikely to become necessary co-sponsors of new institutions and rules. Thus, supporting the rent-seeking elites, instead of aiming at gradually changing the dominant norms and in particular promoting and cultivating the norms that will support rule-based domestic political and economic environments, facilitate and sometimes aid the entrenched elites to maintain the dominant institutional matrix.

The EU and other international actors requires the target states to almost immediately implement the adopted rules, which is supported by the external efforts to build capacities of state institutions. Capacity building – the creation of new governmental institutions and the strengthening of existing ones (Fukuyama 2004) – is recognised by the Europeanisation literature as an important factor in the promotion of institutional change in the Eastern Partnership countries (Langbein and Börzel 2013). As the state capacities in the CIS and Ukraine have been very low (Rice and Patrick 2008), the question of increasing capacities became crucial and indispensable to the Eastern Partnership. It is realised through the EU's capacity building programmes (such as European Neighbourhood Instrument), which are at the core of the European Neighbourhood Policy and the Eastern Partnership. The understanding of the impossibility of having order without the state and concerns about security prompted the EU to step up its policies of building up state capacities.

State capacity is important for reforms providing policy coordination, decentralised capacities for gathering information and pursuing policy goals (Rueschemeyer and Evans 2002: 42) and to free the state from entrenched interests (Bruszt 2002: 65–6). According to Bruszt (2002), '[i]f political forces are unable to accommodate diverse representations of public good in their decisions, nothing prevents decision-makers from advocating the wildest particularistic interests leading to dominance of powerful groups and misuse of power' leading to a state capture (pp. 65–6).

Yet, capacity building may benefit those using 'the machinery of the state for private rent seeking or other predatory purposes' (Hedlund 2001: 226). Strong states can equally create distortions in allocation of resources and information and thus impede institutional change. Strong states discourage investment and participation of society (Acemoglu 2005: 1202), while a government strong enough to protect property rights is also equally strong enough to confiscate the wealth of its own citizens (Weingast 1993: 287, in Hedlund 2001, 225).

In many countries which engaged in deregulation, states were not able to perform the key state functions, which included upholding the general political and

economic rights of domestic actors, preventing state capture by powerful groups, regulating relations among actors fairly (Bruszt 2002) and were incapable of establishing and preserving market order. In many countries, including Ukraine and Moldova, it led to purchase of policies and state capture by powerful actors (Hellman and Kaufmann 2000; Polishchuk 1997). Therefore, when the necessity to fix the problem of state weakness was realised, the increasing capacities of the institutions captured by powerful groups provided only new opportunities for the entrenched elites to continue their exploitation of the state more efficiently.

In this respect, Fukuyama (2004) points out that the creation of well-functioning state institutions requires more than simple capacity building of the state but more so their adaptation to certain local habits of mind; otherwise, transferred formal rules face resistance from domestic institutions. Furthermore, Rueschemeyer and Evans (1985) argue that state building aimed solely at short-term efforts of building of state agencies undermines their adaptability due to their inappropriateness and embeddedness in political relations, which makes them dysfunctional (Rueschemeyer and Evans 1985: 42–43).

This study follows the historical institutionalism assumption that capacity building should target not the functioning of the state at a high level but primarily state actors at a policy level and non-state actors, including civil society. As Jacoby (2004: 34) notes, historical institutionalism expects that institutional change occurs when ‘both state actors and civil society actors already possess some ability to do the tasks required by the new institution’.

Since in the post-Soviet space the regulatory state is weak or has been captured by the entrenched elites and state actors are often a problem, it makes the involvement of non-state stakeholders even more important. The sole focus on state capacity building weakens the coordinating action by domestic states and might promote rules that would not represent the interests of diverse domestic actors and prevent redistribution of power and accountability. In this regard, the central role of the creation of deliberative institutions and the search for solutions in the absence of a central decider is empowerment of domestic non-state stakeholders to facilitate redistribution of power and open possibilities for learning and setting goals for one another (Cohen and Sabel 2003; Sabel and Zeitlin 2007, 2010). Thus, external attempts to introduce formal rules and institutions into societies require the presence of bottom-up factors, whereby societal actors are actively or sufficiently involved and empowered to promote their interests and rights.

Easterly (2006, 2008) highlights that the effectiveness of institutional change does not depend either on reliance on top-down or bottom-up solutions, but ‘a combination of both – top down change in formal institutions and an evolution from the bottom up’ (Easterly 2008; see also, Jacoby 2000; Sabel and Zeitlin 2010) to provide both supply and demand sides of institutional change. Based on a combination of historical and rational choice institutionalism, this research highlights that legacies, institutions and agency as factors are interdependent and intertwined. The analysis of their constellation and roles in contemporary Moldova and Ukraine helps to understand better how to design, deepen and sustain institutional change.

2.5 Accounting for the variation

From these perspectives, the failures of the EU to induce change can be explained not merely by the absence of the right incentives or state capture, but by how the bottom-up factors of domestic institutional change can help to promote change, as well as to what extent they are supported by the EU's external policies (Jacoby 2000; Bruszt and McDermott 2009, 2012). As Bruszt and McDermott (2009: 24) explain, bottom-up change may be blocked because a variety of potential state and non-state, state and non-state stakeholders in different sectors 'lack the resources and voice in shaping existing or new institutional domains', while the supply side may be obstructed because domestic actors 'lack the resources, skills and knowledge needed for institutional upgrading'.

In this study, the above-mentioned pitfalls of Europeanisation and external governance are specifically addressed by a combination of the transnationalisation literature, which studies the proliferation of transnational rules and the transformation of domestic organisational fields and policy areas (Djelic and Sahlin-Andersson 2006; Della Porta and Tarrow 2005; Bruszt 2002), the making of the rules and spread of governance that is 'embedded in particular geopolitical structures' (Djelic and Sahlin-Anderson 2006; Sabel and Zeitlin 2007, 2010), and by the international development literature with its particular focus on the study of the political economy problem and the transfer of the rules in the developing countries (Easterly 2006, 2000; Jacoby 2000; Acemoglu and Robinson 2004; Evans 2004).

By looking at the multi-level architecture of the EU internal governance, both external governance and transnationalisation approaches analyse the deep changes in the nature of contemporary governance across multiple levels and locations. According to Sabel and Zeitlin (2010), '[t]hese approaches are united by the observed failures of hierarchical regulative systems in developed countries', where 'fixed rules become obsolete too fast to be effectively enforced on the ground', thus resulting in widening gap between rules and practice (pp. 7–8).

Transnationalisation looks at the variety of transnational governance patterns and their impact on domestic actors focusing on policy areas (Bruszt and Holzhaecker 2009). It emphasises the role of the external actors and transnational integration regimes and studies their interactions with domestic actors (Bohle and Greskovits 2007; Orenstein et al. 2008; Bruszt and McDermott 2014; Langbein 2015). It particularly focuses on proliferation of rules, transnational actors and activities (Djelic 1998; Djelic and Sahlin-Andersson 2006) and looks at the key mechanisms of rulemaking and what explains their content, scope and breadth and how it accommodates a larger diversity of interests.

Transnationalisation regards all potential institutional solutions as incomplete and necessitates an ongoing, flexible and mutual readjustment of interest, ends and means to promote common goals (Sabel 2005). Their major focus is the inclusion of a variety of actors in decision-making and monitoring and the

creation of the ‘empowered participatory governance’ or deliberative governance. In this regard, transnationalisation as well as experimentalist governance emphasise the necessity for creating revision mechanisms through recursive review of implementation experience in different local contexts (Sabel and Zeitlin 2008, 2010).

Consequently, these approaches require establishing broader framework goals, cooperation of the ‘central’ and ‘local’ units, and inclusion of the relevant civil society stakeholders. The combination of local capacity building and transnational multilevel monitoring allowed for learning of some of the local constraints and the potential negative consequences of rule transfer (Bruszt and Holzacker 2009). Both approaches advocate the creation of error detection and correction mechanisms by the local actors (Sabel 2005; Sabel and Zeitlin 2010). The role of external actors is thus seen in the provision of assistance and the setting of broader goals. Such mechanisms would help to dismantle the established practices, coordinate and use actors’ concrete experience of existing problems to find the best solutions (Sabel and Zeitlin (2008; 2010).

While the transnationalisation and experimental governance literatures primarily look at rulemaking in developed countries, the international development literature studies the case of developing countries. By so doing, it contributes to solving a political economy problem. While deliberation and participation in rulemaking are crucial elements of securing a representation of heterogeneous interests in regulatory institutions (Bruszt and Holzacker 2009: 6), in developing countries they are more than often absent. Most of the actors do not have access to the institutions and rulemaking. The international development literature criticises the one-sided external involvement by highlighting the problem of institutional monocropping. In particular, it points at how the external involvement could undermine deliberation and assist entrenched elites in preserving the institutional status quo (Evans 2004).

To achieve deliberation and prevent regulative states in these countries acting as agents of social and economic exclusion (Bruszt and Stark 2003), states should include and ‘encourage the active involvement of all interested parties’ in the rulemaking, their implementation and subsequent necessary modifications (Sabel and Zeitlin 2010). Thus, the international development literature argues that the creation of the open access societies or ‘empowered participatory governance’, represented by the increased access to resources, competition and participation forms the deliberative process that positively impacts developmental trajectories (Evans 2004: 37), which corresponds to the true interests of the broader society and institutional change (North, Wallis, Weingast, 2009; Polishchuk 2012: 42; Hoff and Stiglitz 2001).

In sum, these approaches are united by their emphasis on the deliberation, redefinition of relations between actors and the role of non-state stakeholders in putting pressure on regulative states to take diverse interests into account, create various coalitions among diverse groups to make and modify rules (Bruszt and Stark 2003), and control the state actors (Evans 2004).

To underline the importance of the flexibility and empowerment of broader societal groups, this work suggests distinguishing between outcome-oriented (normative) and process-oriented (functional) strategies of the EU external policies of promoting reforms. Following the literature on international development reviewed in the chapter one, outcome-oriented strategy is characterised by a top-down approach, which prioritises formal rule adoption and largely excludes domestic actors from the decision-making process and pursuing providing optimal end-state outcomes in cooperation with state actors (Aligica 2013: 28). It means that the EU selects rules, goals and cooperates with state actors providing them with necessary assistance to implement these reforms.

Opposite to that, the process-oriented strategy, which is characterised by flexibility in rulemaking, focuses on particular problems and diverse ways how those problems can be solved. It aims to create a more deliberative way to create new rules based on competition, negotiation and active adaptation of rules to diverse societal interests, which can eventually lead to innovative solutions better suited to the local context. In this setting, the EU identifies the problem, provides domestic actors with information and resources to solve the existing problem and fill an institutional void. It includes domestic state and non-state actors in the designing of rules and allows them to compete and negotiate for the best solution under the criteria of fairness and efficiency.

Overall, combined, rulemaking and empowerment demonstrate the extent of reallocation of power and responsibility within the political opportunity structures between state and non-state stakeholders, domestic and external actors. The empowered state and non-state stakeholders together or competing with other actors can use these newly available opportunities and capacities to find and address the existing problems, and create, change and enforce domestic rules.

2.6 Summary

This chapter theorises the EU's strategy and its limitations in the Eastern Partnership. Based on contradictions of external interventions policies, a distinction can be made in the EU's strategy between process-oriented and outcome-oriented strategies, depending on the degree of empowerment involved and the rulemaking. The process-oriented strategy, by empowering pro-reform actors and non-state stakeholders and allowing them to participate in rulemaking and monitoring state institutions, can facilitate the creation of deliberative institutions, and improve accountability and the enforcement of the rules, as well as the latter's subsequent modification in the future.

The problem of 'habits of the heart and mind' and rule persistence points to the importance of norms and culture for a large variety of political and economic outcomes. What is observed in cases of externally-induced change is not simply the rationally understood inability to implement rules because of a lack of incentives or wrongly calculated cost-benefit analysis, but the lack of EU

policies that take into account domestic institutional settings and aim at deeper changes than mere adoption of a set of formal rules.

In Chapter 3 and 4, which discuss institutional change in Moldova and Ukraine, the analysis will proceed with how the understanding of the external strategies can explain the variation in outcomes at the sectoral level in migration and environment protection in both Ukraine and Moldova.

3. REFORMING UKRAINE: INDUCING INSTITUTIONAL CHANGE IN THE ENVIRONMENTAL AND MIGRATION SECTORS

This chapter discusses the EU attempts to induce change in Ukraine in the years following the inauguration of the Eastern Partnership, focusing on the EU strategies in the migration and environmental protection sectors. For its aspirations and the support provided by the EU, Ukraine represents the most likely case of EU impact on regulatory convergence. Hence, in general, if the EU has an impact in the Eastern neighbourhood, Ukraine should be the most probable success story (Börzel, 2010; Langbein 2013).

Ukraine was a long-time frontrunner of the EU integration initiatives and a leading reformer of the Eastern Partnership in its early stages. It was the first country to finalise the negotiation of the EU-Ukraine Association Agreement, including the Deep and Comprehensive Free Trade Agreement. It was the first Eastern Partnership country to receive the Visa Liberalisation Action Plan and the first to form a pro-European government, which was elected on the basis of its promises of European integration. Alongside Moldova, it belongs to the group of the Eastern neighbours that announced their EU membership aspirations.

Such expectations were further reaffirmed by findings that highlighted that even during the semi-autocratic rule of both Victor Yanukovych and Leonid Kuchma, Ukraine's membership aspirations were emphasised, and some convergence with the EU rules did take place (Langbein and Wolczuk 2011). These positive evaluations of the EU's ability to induce change looked only stronger following the pro-European regime changes of the Euromaidan Revolution in 2014 or the Orange Revolution in 2004.

It is little wonder, given the proximity and importance of the country for the West, that it and particularly the EU provided significant support to Ukraine and assisted its government in fulfilling popular aspirations. Ukraine has been always described as a priority country for the European Union within both the European Neighbourhood Policy and the Eastern Partnership (EEAS 2015). The EU pledged its commitment to a close relationship that included close ties and political and economic integration with Ukraine to ensure the latter's stable, prosperous and democratic future on numerous occasions (Korosteleva 2012).

To induce reforms to bring its institutions in compliance with the EU standards, the EU offered significant benefits to Ukraine, such as closer political and economic integration through the Association Agreement, access to the former's market and visa-free travel. For the EU, the DCFTA and VLAP were considered to be a necessary tool to incentivise the reforms at the sectoral level in Ukraine. Clear reform plans, material and technical assistance and conditionality were considered to be sufficient to triggering reforms.

Two colour revolutions, which occurred in Ukraine in support of the EU integration, only strengthened the pre-conditions necessary for profound

reforms. As many external officials, policymakers and observers enthusiastically assumed, the colour revolutions exemplified the successful fight between the old post-Soviet regime and a new European one. Thus, during such events the most favourable conditions for externally induced institutional change emerged, which typically raised the external ambition of finally creating ‘a truly independent, democratic and just European country’ out of Ukraine, intensifying the external involvement in domestic reforms.

The Euromaidan revolution would supposedly improve the conditions for change even further. After the first months after the revolution, Ukraine formed a new pro-EU pro-reform government, which was actively supported by the West to carry on the deep and comprehensive reforms to transform Ukraine into a functioning liberal democracy and market economy. Moreover, despite ongoing economic troubles and war, the government has a wide, popular mandate, reaffirmed five months afterwards with the election of a pro-Western president in a widespread support for parties which had promised sweeping reforms, a pro-European foreign policy, and an end to corruption (Kirchick 2014). Polls consequently show that a majority of Ukrainians support the EU integration (Razumkov Centre 2015) and the EU provides clear incentives and targets. Meanwhile, some of the veto players left their offices or fled to Moscow, which should further facilitate the transformation process.

Overall, Ukraine shared a lot of similarities with Moldova including domestic systems of governance, pre-conditions for change, external support and major obstacles. One of peculiar differences is in the attitude of the West to both cases. While slight changes generated inexplicable enthusiasm towards Moldova, difficulties in reform paths in Ukraine tended to lead to fatigue and disillusionment.

However, as noted in this chapter, the EU policies did not bring the expected transformative change. As under its predecessor, institutional change under the Poroshenko regime remained mostly formal, with problematic implementation in key areas. Overall, the outcome of the attempted external transformations at the sectoral level did not differ significantly from the era of Yanukovych, which saw failure to implement a number of important commitments of the Visa Liberalisation Action Plan and the Association Agenda. The problems of manipulation of key legislations to exhaust their meaning (such as for instance an attempt to launch the e-declaration system without necessary certification), underfunding of new agencies, limitation of their capacities and political influence over key agencies remained a common practice.

To understand the role of the EU in institutional reforms this particular chapter looks at how the EU attempts to instigate changes in the environmental protection and migration sectors. This chapter analyses and compares the developments in two sectors in order to understand the impact of the EU reform strategies (process-oriented and outcome-oriented) on the varying institutional outcomes. First, it describes the domestic context in which the EU attempts to induce reforms; second, it follows with a presentation of the EU policies at the sectoral level and then with an analysis of the EU reform efforts with a particu-

lar focus on the EU strategies – the selection of institutional goals, which helps to understand the process of rulemaking, modes of assistance and monitoring to identify the extent of empowerment and the type of actors which benefit from it. In so doing, this chapter tries to shed light on the reasons behind the divergent outcomes in the migration and environmental protection sectors since 2009, during the implementation of VLAP and the preparation of the signing of the Association Agreement and its aftermath.

3.1 Domestic context

Before turning to the EU policies, let us briefly describe the institutional environment the EU attempted to reform. Ukraine has been described as a dysfunctional state (see, for example, Riabchuk 2002: 51–52; Kudelia 2012), in which unaccountability is at the heart of the system, characterised by the prevalence of short-term interests and subsequently the predatory behaviour of its elites. State institutions and agencies serve as a basis for rent extraction, while the state functions and prerogatives serve private interests (Ukrainska Pravda 2013). This predatory behaviour, partially in the form of political corruption, is considered to be ‘the main obstacle for the further development of Ukraine as a full blown democratic state’ (Razumkov Centre 2014). Entrenched groups regularly abuse power to acquire ‘money at all cost’ through economic and political engineering, misappropriations, and illegal actions. In studies of Ukraine, the purchase of policies and regulations at the different levels of government is a common practice (Slon.ru 2014; Hellman and Kaufmann 2000). Politicians ‘do not break the law, they use the law’ (Korostelina 2013).

Many noted Ukraine’s democratic development as ‘virtual’ (Wilson 2005) and its regime as ‘hybrid’ (Levitsky and Way 2002), directly questioning the application of democratic transitology literature to Ukraine (Wilson 2005: 273) and lack of meaningful change in building democratic institutions during its post-soviet history.

There is a dual system of governance in operation in Ukraine, in which formal institutions imitate democratic processes and are doubled with informal practices as major decisions made informally (Korostelina 2013). The state’s immobility and weakness are often emphasised (Kuzio 2012; Korostelina 2013; Torbakov 2010). Ukrainian elites are unaccountable and unconstrained and are largely guided by short-term interests (Kuzio 2012: 434). As both Kuzio (2012) and D’Anieri (2012) point out, this prevalence of short-term interests among Ukrainian elites presupposed Ukraine’s constant geopolitical re-orientations during 1990s and 2000s, which are well exemplified by Ukraine’s multi-vector foreign policy and Yanukovych’s decision not to sign the Association Agreement at the Vilnius Summit in a last moment.

Ukraine has been also shown to possess multiply divisions within the country (ethnic, religious, linguistic) as well as diverse histories and identities exemplified by different projects (for instance, Russian, Polish-Lithuanian or

Soviet) (Wilson 2002; Riabchuk 2012; Kudelia 2012) leading to different visions of Ukraine and identity-memory divide (Shevel 2016; Riabchuk 2012: 439–40, 443–4). Consequently, conflicting histories and persevering multiply identities presupposed Ukraine to be named as ‘an unexpected nation’ (Wilson 2002: 387), which ‘muddles through’ (see, for instance, Arel 1998; Kuzio 2012; Riabchuk 2012).

Despite the early positive appraisals after both Orange and Euromaidan Revolutions, Ukraine is referred to as a ‘groundhog day’, a country where ‘policy prescriptions from the past could be dusted off and re-submitted to deal with problems whose resolution is continually put off’ (Kuzio 2012: 430). Its political system is polycentric and fractured with no single centre of power (Moshes 2008), highly personalised as well as ideologically empty, providing a fertile ground for political populism and unaccountability (Korostelina 2013; Torbakov 2010). Polycentricity also leads to constant rivalries between not only regions and regional leaders but also institutions (Moshes 2008).

In such environment, oligarchs continually play a key role in politics and economy. Major business groups control key sectors of the economy, including rents from state-owned enterprises. Significantly, oligarchs control main media, including core TV channels, ‘own’ political parties and influence regulatory bodies. Each oligarch has a regional base, and a strong representation in the Verkhovna Rada. Importantly, despite political changes Heiko Pleines (2016) shows that oligarchs’ influence has persisted in 2000–2015 continuing to exert significant political influence. As an example, oligarch Kolomoiskii holds the balance of power in the Parliament, as his groups of MPs often provide key votes to the ruling coalition (Grytsenko et al 2016), which allows him to promote his business interests. In addition, an oligarch Petro Poroshenko was elected as a president in 2014.

No wonder that oligarchs are continuously mentioned as a key structural impediment to Ukraine’s economic and political development. Kuzio (2016: 131) lists oligarchs among unreformed and dependent political parties, bad governance and economic policy as a key structural constraint after the Euromaidan Revolution. These factors are clearly interdependent and mutually reinforcing. Pleines (2016) in turn describes how oligarchs may contribute to political pluralism, yet their influence and manipulations prevent advancing meaningful democratic reforms in Ukraine. Some oligarchs, related to energy sector, benefitted from their deals with Russia promoting the latter’s interests (see for example Balmaceda 2013). Aslund (see for instance, 2005, 2008, 2015) describes the negative effect of oligarchs on the economic development in a number of papers.

In this regard, as it will be seen later, Ukraine’s domestic context is very similar to Moldova’s, which also suffers significantly from corruption, state capture and inefficiency and inability of the state to perform its functions.

3.2 EU-Ukraine relations framework

Prior to the introduction of the Eastern Partnership, the EU had long been engaged in inducing reforms in Ukraine. Since 1994, Ukraine gradually drifted towards Euro-Atlantic choice (Moshes 2008) and has been recognised as the frontrunner of European integration in the post-Soviet area, though without any substance behind the title (Korosteleva 2013). It was Ukraine which was the first country in the region to sign the PCA in June 1994 and thus start building institutional relations with the EU; however, it has been struggling since then to achieve any substantial progress in its political and economic integration with the EU. After a lengthy period of ‘declaratory Europeanization’ under the presidency of Leonid Kuchma (Wolczuk 2009), which can be partially explained by lack of interest from the other side as well (Moshes 2008), there was hardly any improvement during the Yushchenko presidency, with internal power struggles between the institutions and within the Orange coalition itself, between President Victor Yushchenko and his key allies such as Yulia Tymoshenko, between their parties and the President and the Prime Minister (Korosteleva 2012: 82).

Its legal predecessor, the Partnership and Cooperation Agreement, was signed in 1994 and entered into force in 1998 for 10 years, after which it was automatically renewed by the relevant parties. In 2004, to reinvigorate the cooperation with its neighbours, the EU introduced the European Neighbourhood Policy, in which cooperation with Ukraine was one of the key targets. The ENP in Ukraine was introduced in 2005 in the form of the EU-Ukraine Action Plan, which was created and signed with the purpose of identifying the priority policy areas to reform.

The PCA provided a framework for political dialogue and set the principal objectives, which included improvement trade and investment ties, harmonisation of economic relations, support for sustainable development, intensification of economic, social, financial, technological and cultural cooperation (PCA 1994). Its political part had similarly ambitious plans and aimed at supporting Ukraine’s domestic reforms to consolidate democracy and re-build political and legal institutions.

The EU primarily aimed at the transfer of its rules. The PCA established an institutional framework to facilitate the pursuing of these political and economic goals, which included the provisions that introduced extensive, legally binding commitments with considerable implications for Ukraine’s domestic legislation (Solonenko 2011). The PCA (as well as the Association Agreement) was an important instrument for putting emphasis on Ukraine’s approximation efforts as regards the legal framework of the EU’s single market and bringing its regulations for governing goods, services, labour, and capital closer to that of the EU (PCA 1994).

From Ukraine’s perspective, since the 1990s integration with the European Union and the eventual membership were and remain the key priorities of its foreign policy. The ambition to integrate with the EU was supported by a number of political and legal instruments adopted by the government and the

Verkhovna Rada, including the Law of Ukraine ‘On Concept of the National Program of the Adaptation of the Legislation of Ukraine to the Legislation of the European Union’, the Program on the Integration of Ukraine to the European Union, the Strategy of the Integration of Ukraine to the European Union and finally, and most importantly, the laws on the adoption and implementation of different initiatives towards the EU integration. The ‘Programme on the Integration of Ukraine with the EU’, which was signed by Leonid Kuchma in 2000, served as a foundation for institutional reforms and legal approximation with the EU (Wolczuk 2004: 4).

Yet, while the PCA offered Ukraine a crucial trade opportunity and a possibility for economic convergence and deepening political dialogue with the EU, Ukraine was hardly committed to the implementation of these EU-driven reforms (Solonenko 2007). As the Europeanisation literature argues, European integration remained on the sidelines in the absence of clear goals, initiatives and actions from either the EU or Ukraine and reforms until 2004, when the European Neighbourhood Policy was launched (Wolczuk 2009: 195–197; Korosteleva 2013: 83–85). In line with Europeanisation literature, these conditions were not conducive to effective outcomes of the EU-driven reforms by 2004.

To speed up the reform process, the EU-Ukraine Action Plan was negotiated and agreed upon by the last Kuchma administration in 2004. It was signed in 2005, already after the Orange Revolution and provided a framework for reform and cooperation between the EU and Ukraine (Action Plan 2005). The Action Plan was seen as being at the core of relations as it provided a guideline for Ukraine in its reform process with outlined conditions and incentives for a further enhancement of relations (Youngs 2011). It envisioned clearer goals and more financial support to strengthen the integration reforms. It should be noted that although the PCA was *de jure* superior, the Action Plan overtook it as the primary legal instrument, and was a better developed and more suitable document for the bilateral cooperation (Korosteleva 2012).

The Action Plan included a number of specific agreements in a number of political and economic policy areas, such as democracy, the rule of law, trade, science, technology and energy within the framework (Action Plan 2005). The Action Plan offered, as additional to the core argument, a more focused and conditional ‘List of Additional Measures’. To support their implementation, the TACIS programme has been used for technical assistance since the early 1990s, supporting Ukrainian political and economic reforms before been replaced by the European Neighbourhood and Partnership Instrument (ENPI) in 2007 and later the European Neighbourhood Instrument (ENI).

The Action Plan seemingly worked better. Looking at Ukraine’s foreign policy orientation, Wolczuk (2009) and Korosteleva (2012) showed that the key Ukrainian Ministries operated in line with the EU-Ukraine Action Plan. For example, by 2006 the Ministry of Foreign Affairs managed to align itself with 549 out of 589 EU common foreign and security policy positions (Wolczuk 2009: 202), while the Ministry of Economy, in turn, made WTO accession its

key priority and consistently promoted the implementation of a number of sectoral reforms as the part of the Action Plan. Similarly, the Ministry of Justice formed the agency in charge of rule adoption and their implementation in order to coordinate the programmes of legislative approximation with the EU across the ministries and government agencies, making the state's policies of planning and monitoring more coherent and efficient (Korosteleva 2012: 85-90; Wolczuk 2009: 203-4).

For the implementation of the EU rules, the government of Ukraine specifically developed its own 'roadmaps' by the Regulation of the Cabinet of Ministers for 2005, 2006 and 2007 (Wolczuk 2009: 200) and adopted an annual list of Measures to Implement the EU-Ukraine Action Plan, which contained the detailed measures for implementation of the provisions of this Action Plan, schedule of its implementation and also responsible agencies in charge of their implementation. As Wolczuk (2009: 201) describes them, these Roadmaps were 'the first, lasting and transparent blueprints', which were composed of 177 measures, each consisted of detailed tasks.

The EU supported reforms through the TACIS assistance programme (predecessor to ENPI) to support implementation of the first PCA and then the EU-Ukraine Action Plan. The EU assistance was conditional upon Ukraine's compliance with the spirit and letter of the PCA and the implementation of the Action Plan's provisions and goals. It also was required that Ukraine transformed its administrative structures and practices, showed sufficient political will to reforms and created necessary administrative capacity to ensure implementation and enforcement of the required rules.

Despite all these efforts, as in the case of the PCA, studies show that the outcomes of the Action Plan did not meet the expectations. A number of researcher pointed at the very low level of the implementation of measures and to the fact that most of them were postponed to subsequent years. For example, according to the official progress report on the implementation of the EU-Ukraine Action Plan in 2006 (and the road map of the Cabinet of Ministers for 2016), only 2 out of 14 measures were implemented, while other targets were not met at all (Korosteleva 2012). Lack of implementation was explained by a lack of incentives, political will, a low level of interest from both sides and the weakness of domestic capacities (Solonenko 2010; 2012; Wolczuk 2009).

The EU then admitted the futility of its efforts; in 2008 the European Commission published the report on the Implementation of the ENP (European Commission 2008). The document highlighted the necessities for improvements in the legislative basis and sectoral legislation, as well as access to information and public participation. The legal approximation and monitoring of implementation of new rules was a particular concern. The EU-Ukraine Action Plan was not properly integrated into the Ukrainian (including environmental protection and migration) policies either and was characterised by the formalistic implementation of the EU-Ukraine Action Plan (RAC 2008). For example, the index of the Action Plan implementation in the field of environmental

protection decreased: in 2005 it was 0.74; in 2006 – 0.62; in 2007 – 0.65 (RAC 2008).

Overall, Wolczuk (2009: 207) summarises that ‘out of 73 priorities of the Action Plan over the three-year period (2005–7) only 11 were fully implemented’, while the overwhelming majority of the agreed goals required significant improvement in order for rule adoption to be completed and their implementation to be commenced.

Much analysis of the results focused on the incompatibility with the preconditions for change outlined in the Europeanisation literature: incentives, clarity of goals or partnership. Some studies pointed out that the funding was not sufficient enough and that the rules could be clearer in order to improve the prospects of rule transfer (Solonenko 2010; Gawrich et al. 2010). Others explained the problems in the implementation of the Action Plan as being a lack of partnership between the European Commission and the Ukrainian government and thus too little involvement on the part of the Ukrainian government itself (Korosteleva 2012).

In some areas, low overall interest by the EU and the weakness of the bureaucracy within the European Commission was seen as the key undermining factors (Buzogány and Costa 2009). That said, some policymakers and experts argued that in 2005–2007 the improvements in independent monitoring and assessment of the implementation of the Action Plan in different fields had positive effect on the implementation of the EU-Ukraine Action Plan by the government (Razumkov Center 2008).

Overall, despite significant regulatory activities and institutional cooperation between the EU and Ukraine in 1994–2010, the progress of legislative approximation was slow and controversial under PCA and ENP (Solonenko 2010; Gawrich et al. 2010), leading to weak implementation on the ground (Korosteleva 2013). Furthermore, the competence and governance capacity of the Ukrainian government were limited, making institutional arrangements incoherent and disjointed (Wolczuk 2009; Korosteleva 2013).

The Eastern Partnership was initiated in order to address these issues. The new framework was launched with the inauguration of the Eastern Partnership in 2009, which aimed at helping Ukraine ‘prepare for and facilitate the entry into force of the EU-Ukraine Association Agreement’ (European Commission 2010: 2). The EU repeatedly acknowledged Ukraine’s European aspirations and its European choice, its efforts at continuing policy convergence as part of the mutual agreements.

In particular, it launched the negotiations on the DCFTA and the Association Agreement, which would replace the PCA and re-assess and re-create the foundations of the EU-Ukraine deliberated and institutionalised cooperation (European Commission 2009: 2). Its new practical instruments, in particular the Association Agenda and VLAP, would fix the weaknesses and address the gaps, which were identified in the inefficient Action Plan and to prepare and facilitate the implementation of the Association Agreement (ENPI-INFO 2009).

Since the inauguration of the Eastern Partnership, PCA was substituted by an upgraded and more advanced agreement. The current legal framework of the EU-Ukrainian relations is the Association Agreement, signed in 2014. The EU-Ukraine Association Agreement replaced the EU-Ukraine Partnership and Cooperation Agreement as the legal basis and framework for EU-Ukraine relations (EEAS 2012). As both the European Commission and the Ukrainian government acknowledge, the Association Agreement presents a new stage in the development of EU-Ukraine relations, which aims at pursuing further political association and economic integration. As the European External Action Service points, it provides for ‘a shared commitment to a close and lasting relationship based on common values, in particular full respect for democratic principles, rule of law, good governance, human rights and fundamental freedoms’ (EEAS 2015).

In January 2010, it was agreed to narrow the Association Agreement to a number of priorities only per year to facilitate and speed up the domestic reforms. The plan for 2010 included 78 provisions to attend to, comprising an extensive list of measures related to constitutional and institutional reforms, the fight against corruption, the upholding of human rights and democracy standards, and continued cooperation on the issues of justice, freedom and security (Commission of the European Communities 2010: 1–4). Later, the EU offered other more targeted initiatives with specific priorities, such as the ‘Füle Plan’ and the ‘more for more’ principle.

The important incentive and the innovative part of the Association Agreement was its further promotion of the economic integration of Ukraine with the European Union. As it was noted, the EU-Ukraine Association Agreement was complemented by the Deep and Comprehensive Free Trade Agreement (DCFTA). DCFTA was presented as a framework for modernising the economy, enhancing EU-Ukraine trade relations and fostering economic development, primarily via the opening of the EU market and creating the conditions for aligning key sectors of the Ukrainian economy with the EU standards.

Therefore, unlike the Partnership and Cooperation Agreement, or the EU-Ukraine Action Plan, the Association Agreement seemingly corrected the identified weak spots and finally introduced clear goals, strong conditionality, monitoring provisions and a timeframe to strengthen rule transfer and deepen political and economic integration. Material incentives were linked with the possibility of economic integration with the EU, conditional on the approximation of the EU’s legislation. This process was supported by technical and financial assistance in the form of providing significant aid in the field of legal and regulatory reforms and capacity-building measures (EEAS 2015).

Overall, the EU’s policy towards Ukraine follows the general pattern of trying to induce change by providing incentives and socialising its elites, in which the economic integration in form of the DCFTA between Ukraine and the EU is considered to be the major trigger to induce rule transfer (Dimitrova and Dragneva 2009: 858). This new policy primarily aimed to address the key issues, which characterised the EU-Ukraine cooperation before 2010. At the

core of the problems was the weak implementation of the undertaken initiatives, which can be traced in the process of the designing and redesigning of the EU-Ukraine relations' framework from the Partnership and Cooperation Agreement to the Association Agreement (EEAS 2015).

Ukraine did not sign the Association Agreement until 2014, despite the EU's readiness. With the election of Victor Yanukovich in 2010, Ukraine sought to re-balance its foreign policy towards more pragmatic policies, which was well exemplified by the Kharkiv agreements signed between Russia and Ukraine in 2010. The new foreign policy eventually resulted in a last minute rejection by Victor Yanukovich of the Association Agreement at the Eastern Partnership Summit in Vilnius in November 2013. The rejection led to the decision to pursue a more intensified relation with Russia as well as the outbreak of popular protests.

The Euromaidan Revolution did not only remove the Yanukovich regime from power but also intensified the external policies of promoting institutional change. The EU, a number of the EU member-states and the U.S. government offered unequivocal support to the new pro-Western regime and the new government to carry out political and economic reforms in the country. In turn, Kiev declared anew its European aspirations and the EU announced its readiness to offer substantial financial aid and a clear European perspective (New York Times 2014a). The EU foreign minister went to Kiev to discuss the economy and reforms, the EU and the US Treasury officials and economic advisers travelled to Kiev to discuss financial support, while the new government 'implement[ed] the difficult steps necessary to reform' (New York Times 2014b).

To speed up changes and support its new regime institutionally, the EU quickly requested that Ukraine sign the Association Agreement and the Deep and Comprehensive Free Trade Agreement, which Ukraine did shortly afterwards. The European Commission approved the Ukraine's progress during the first stage of the Visa Liberalisation Action Plan (VLAP) and shortly initiated the second stage of VLAP.

However, the ousting of Victor Yanukovich did not only facilitate and speed up the integration process and result in the signing of the Association Agreement and the progress towards the visa free regime and eventual signing the Visa Liberalisation Action Plan. It also led to the creation of the Strategy 2020 to quicken the approximation of the EU legislation in Ukraine. In September 2014, under EU guidance, President Petro Poroshenko unveiled Ukraine's 'ambitious reforms ... to achieve European standards of life and prepare for the application for EU membership in 2020', which was well received and praised in both Ukraine and Brussels. The unveiled Strategy 2020 was presented as a systemic re-organisation of the political, economic and social institutions alongside the usually western provided templates, which included 60 reforms and special programs that were planned to be launched almost simultaneously (MFA 2014).

Prior to this, the political chapters of the EU-Ukraine Association Agreement were signed at the EU Summit on 21 March 2014, while the remaining sections of the AA were signed on 27 June 2014. The Association Agreement will enter into force once all EU Member States and Ukraine have ratified it. The implementation of the EU-Ukraine Association Agreement, including the Deep and Comprehensive Free Trade Area, while not constituting the final goal of EU-Ukraine cooperation, will bring opportunities for sustainable economic development and prosperity to all the regions of Ukraine, as well as to its neighbours (EEAS 2010). The next sections look at how the EU-induced institutional change went during the implementation of the Association Agreement. After the review of the implementation in the migration sector, it will proceed with the analysis of the environmental protection sector and the overall summary of the outcomes of the EU induced reforms in Ukraine.

To boost these reforms, the EU and other donors did not only help to write this plan. Besides providing the reform targets, they also provided material and expert assistance to incentivise the Ukrainian government and help to build its state capacities to implement the Strategy and other reform plans. Such involvement even inspired Ukrainian Minister of Foreign Affairs Pavlo Klimkin to request the Western countries to give as much assistance as possible, to present a modern version of the ‘Marshall Plan’ to Ukraine. The EU remained the key external rule provider and monitor through the Association Agreement and the Association Agenda. The EU played a leading role in writing reform plans and it was the EU that embarked on a special role to coordinate support and assist Ukraine to rapidly finalise its National Reform Strategy to set out the priorities and to help to attract international support for reform and recovery.

Ukraine’s government received additional financial support from the West, agreeing to a set of IMF reforms in exchange for a \$17 billion bailout (IMF 2014). The EU provided most of financial assistance. By February 2015, the Western creditors promised Ukraine to increase the bailout to around \$40 billion over four years (Norman and Shchetko 2015). For carrying out the planned reforms, Ukraine received \$17.5 billion from the IMF, and up to €11 billion from the European Union, including €1.36 billion in the framework of macro-financial assistance programmes and €1.4 billion of grants for 2014–2015 (European Commission 2015).

3.3 The EU’s impact on institutional change in Ukraine’s migration sector

This section analyses how the EU induced change in the migration sector and in particular identifies the EU strategy applied to promote change. I start by describing the conditions for change and the EU’s involvement in the reform process. The main puzzle, which weaves throughout this entire section, is why the reforms in the migration sector were sluggish, despite the presence of conditions necessary for the externally-induced institutional change.

Both the scholarly community and the European Commission expected the migration reforms to be the EU's success story. The EU's attempts to reform the migration sector in Ukraine were initiated in a favourable environment characterised by the presence of adequate sectoral incentives, strong public support for the visa free regime with the EU and the government's strong interest in promoting domestic reforms in the migration sector. Conditionality was strong due to the availability of significant financial assistance aimed at facilitating rule adoption and implementation in the migration sector. The EU policies and VLAP also aimed to strengthen the state capacity building efforts to facilitate the implementation of the selected and adopted rules.

The Visa Liberalisation Action Plan had elements of shared ownership between the EU and the Ukrainian government. The visa liberalisation process was designed as an indirect socialisation mechanism by expanding people-to-people contacts in the future. Greater mobility and person-to-person contacts was considered by the European Commission to be potentially an important catalyst for further integration with the EU and an additional support for democratic and market reforms in Ukraine.

The cooperation between the EU and Ukraine in the sector of migration was from the beginning one of the priorities for both sides. For the EU, the migration sector was extremely important for its transformative agenda in the Eastern neighbourhood and political and security reasons. Ukraine is at the crossroads of migration to the EU, including illegal migration from Central Asia to Europe and Ukrainians themselves to the EU. As highlighted by EU officials, EU security is in large part dependent on Ukraine's efforts and capacities to control these migration flows (Kostenko 2013).

Meanwhile, domestic actors in Ukraine were particularly interested in receiving the popular vote as well as the EU benefits, which were offered by the EU for compliance, in particular the visa free regime with the EU. Visa liberalisation quickly became the main interest for the Ukrainian elites and people (Jaroszewicz 2012). The creation of the visa free regime was immediately proclaimed one of the key priorities for all Ukrainian governments and was regarded as one of the strongest benefits that the EU could give to Ukraine besides the ultimate carrot – EU membership itself. As a result, the ex-minister of foreign affairs Konstantin Gryshchenko (2013) noted that '[t]he [former] president of Ukraine personally oversees the implementation of the action plan for visa liberalisation with the EU. He considers lifting of visa barriers [...] a key task for the authorities'.

Summing up, the pre-conditions for change in the migration sector were present. According to the EU studies, the EU should succeed in inducing change. There were clear rules, incentives and monitoring in place necessary to induce reform from the perspective of Europeanisation literature. At the same time, it shall be noted that other factors, which may contribute to obstructing the reform process were largely negligible in the sector except for block 4 and anti-corruption reforms. Yet, even the extent of opposition to anti-corruption reforms in the

migration sector were considered to be not important according to the literature since high costs were overcome by high incentives.

Furthermore, though anti-corruption efforts may potentially have a long-term consequence for incumbent's hold on power, the EU's induced reforms did not threaten their hold on power and mainly concerned creation of institutional capacities to prevent and combat corruption. Since the 'independent' agencies were allowed to be created with a preservation of an incumbent's influence, their functioning mainly concerned the mid-level officials and their *future* crimes. To further strengthen the comparability of sectors, environmental protection reforms also had a significant anti-corruption angle, which is studied in this work.

Regarding other alternative explanations, such as domestic veto groups like Ukraine's oligarchs, lack of coordination between agencies, political rivalries between political actors and institutions for power and assistance, as well the role of Russia, their influence was mainly low in both sectors. They could not overcome the well-observed decisions of the central authorities, President and the Cabinet of Ministers to pursue the reform agenda in both sectors and the adequate conditionality and good assistance package provided by the EU and later IMF to cover for compliance costs.

In particular, Russian influence is rather low. Neither migration nor environmental protection reforms were on Russia's priority list due to their low political and economic value to the Kremlin and Russian big businesses. Neither sectors present adequate rents or income (as energy or banking sector) or political leverage and influence on the government's decision and actions (as security block, judiciary or political parties do) or public opinion (as identity issues or media do). The only issue in which Russia was significantly involved in the migration sector reforms in both Ukraine and Moldova was the block on fundamental rights, which related to traditional values, and the pressure put regarding the issue of protecting sexual minorities rights. Yet, this particular issue is not pursued in this work and it was sidelined by other topics in Russia-Ukraine dialogue and in any case, this pressure was overcome.

As for the role of oligarchs, their role is higher, yet not sufficient to block a major change in policy in both sectors, which was pursued by the government, as it did not threaten their economic and political interests. Oligarchs, who made their fortunes in metallurgy, agricultural business and extraction of natural resources, had a direct interest in controlling or preserving their political influence, yet, their interests were not undermined by the EU-Ukraine agenda in the studied areas. Moreover, the direct benefits that these oligarchs would receive by abiding to the environmental rules from getting the access to the EU's market for agricultural and metallurgy sectors again trumped the costs of compliance. Some, like Pinchuk, son-in-law of ex-President Kuchma and an industrial oligarch, became major advocates for pro-European reforms, which suits his economic interests. For Russia-oriented oligarchs these areas were not a priority and did not threaten their political and economic bases of power.

Finally, VLAP reforms did not undermine oligarchs' major political and economic interests. Moreover, it was rather an advantage for them. Given their support to the European integration and understanding of the importance of visa free regime for their political projects, their obstruction to the reforms in the sector was not issue. When occurred, it was on a very targeted purpose with a limited effect. As in case of the Moldovan oligarchs, their Ukrainian counterparts overwhelmingly supported the process seeing the benefits stemming from VLAP reform to their political and economic interests.

The next section identifies the strategy that the EU used to induce change in the migration sector and analyses the reform process.

3.3.1 Institutional goals

The intended scope and depth of change was significant, as reflected in the Visa Liberalisation Action Plan (VLAP). In the migration sector, the EU primarily pursued the outcome-oriented strategy. The institutional goals were normative as the EU pre-selected rules for transfer and focused on their adoption and implementation by the state. The rules were precise and concrete, and supplemented by clear benchmarks and guidelines outlined in the Visa Liberalisation Action Plan, which provided Ukraine with a list of necessary requirements to fulfil in four different areas/blocks and criteria necessary to meet to be able to create a visa free regime with the EU. For the adoption and implementation of these rules, Ukraine was incentivised by sufficient benefits, including a visa free regime and capacity building assistance. Besides being in charge of rulemaking, the European Commission also primarily monitored the implementation of VLAP by checking whether or not the rules were adopted according to the EU requirements.

The Visa Liberalisation Action Plan was a main intergovernmental agreement used for rule transfer in the migration sector. VLAP was a reform plan prepared by the EU for the Ukrainian government to implement in return for the EU offer of a visa free regime for short-term travels (MFA 2012). It provided Ukraine with a list of requirements to fulfil and a set of criteria to meet to be able to create a visa free regime with the EU (VLAP 2010; Sushko et al. 2012).

The content of the Visa Liberalisation Action Plan was comprehensive in scope. VLAP identified the necessary measures that were to be adopted and implemented by the Ukrainian government, based mostly on the EU's vision and understanding of the existing gaps and challenges. In this regard, the EU put forward an ambitious reform agenda, which was based on an identified gap between rules and policies in Ukraine and the EU. VLAP benchmarks took into account the EU experts' analysis produced during the exploratory phase of the visa dialogue on all four blocks of issues (VLAP 2010: 2). It set up clear requirements to be achieved, which were tailor-made for Ukraine's needs and in line with the observed progress.

As in the case of Moldova, requirements were set by the EU in four areas (blocks) of the Visa Liberalisation Action Plan: document security including introduction of biometric passports, illegal migration with a particular focus on readmission, public order and security, and external relations and fundamental rights, which were divided into two groups (VLAP 2010; Jaroszewicz 2012) and were to be fulfilled in two stages: the adoption of the required rules and their implementation.

Accordingly, the Visa Liberalisation Action Plan contained two tiers of benchmarks: preliminary benchmarks concerning the policy framework (legislation and planning), which would pave the way for meeting more specific benchmarks – effective and sustainable implementation of relevant measures (VLAP 2010: 2). The reforms in these areas were expected to result in a high level of compliance with relevant European and international standards that would lead to the granting of visa free travel to Ukrainian citizens (VLAP 2010: 2).

As shown in the VLAP, the European Union also required the adopting and implementing of a number of rules and policies, including key international conventions that were related to migration, and necessitated the Ukrainian government to join certain international networks, such as the Council of Europe's Group of States against Corruption (GRECO) and implementing their recommendations in order to advance domestic institutional reforms. Ukraine was the first country to receive VLAP in November 2010 at the Ukraine-EU Summit.

To address the EU requirements, the first step was made in February 2011, when the Ukrainian government created the Centre on implementation and approved the National Plan on Implementation of VLAP. This National Plan was prepared by the Cabinet of Ministers and endorsed by the Presidential Decree in April 2011. It was designed to serve as a roadmap for implementation of reforms in migration, visa and some other policies of Ukraine that the EU requirement addressed. The National Plan contained a detailed list of measures on implementation of the Action Plan, and defined responsible agencies and deadlines for fulfilment of relevant tasks (MFA 2012).

The European Commission promoted the migration reforms by unilaterally deciding which rules were to be transferred. The Council of the European Union set the general policy guidelines on which basis the European Commission developed the plans for the target states such as Ukraine. The European Commission defined the goals, rules and necessary assistance and presented them in the Visa Liberalisation Action Plan and the Annual National Indicative Programmes, selecting the projects and actors for contracting (VLAP 2010; Wunderlich 2012: 1420–1421). Thus, the goals were mostly outcome-oriented prepared for the adoption and implementation of the Ukrainian government. The European Commission was also allowed to unilaterally propose a review and re-adaptation of the Visa Liberalisation Action Plan or any part of it in case of any changes (VLAP 2010: 2).

The outcome-oriented strategy was enhanced by some provisions for co-ownership and intergovernmental cooperation, which provided the Ukrainian

government and relevant state agencies the opportunity to discuss the provisions of VLAP and their implementation with the European Commission and in particular to participate in monitoring on the basis of the joint EU-Ukraine working groups (VLAP 2010). Yet, overall, despite the EU's declaration about co-ownership and partnership and joint decision-making on actions and institutional reforms in Ukraine's migration sector and certain provisions for it, the reform process is mostly under the control and enforcement of the EU (Jaroszewicz 2012) with limited input from the Ukrainian government in decision-making. Regarding non-state actors, as the next session shows, non-state actors were largely excluded from the process of rulemaking and monitoring (Jaroszewicz 2012).

The application of the outcome-oriented goals allowed the EU to select the rules and goals according to their knowledge and practices. The adoption and implementation of these rules were supported by the capacity building assistance.

3.3.2 Empowerment of stakeholders: assistance and monitoring

To adopt and implement its rules, the EU primarily focused on building the capacities of state actors. They were the primary target for assistance and support, while non-state stakeholders were minimally involved. For example, during the Yanukovich presidency, the Ukrainian government involved independent experts only at the initial stage of drafting the National Plan on the Implementation of VLAP. After the adoption of the National Plan in 2011, the involvement of non-state stakeholders further decreased.

The assistance and monitoring were based on single ties between the European Commission and the Ukrainian government. The principal relationship in the sector was between the European Commission and the Ukrainian government as well as relevant DGs and their counterparts – ministries and state institutions. In this regard, the EU assistance mainly targeted the state authorities and the key aspect of the EU support was capacity building of the government and its agencies (Wunderlich 2012: 1420–1). Monitoring was also mainly in the hands of the EU and EU-Ukraine intergovernmental instruments. The EU and Ukraine established working groups on relevant issues, which were particularly tasked with monitoring the adoption and implementation of the EU-selected rules.

The funding of the reforms in the migration sector went through the European Neighbourhood Instrument (ENI) and its predecessor (the European Neighbourhood Partnership Instrument) and targeted intervention measures, such as those under the 'Thematic Programme for the Co-operation with Third Countries in the Areas of Migration and Asylum' (Wunderlich 2012: 1420–1). Although the EU funding increased substantially, it mostly targeted state institutions and their capacity building to implement the reforms. Assistance totalling 470 million euro for 2011–2013 was directed to the state actors and agencies.

The EU also addresses migration and asylum through various cooperation instruments: national and regional programmes, such as MEDA and ENI (as well as their predecessors, ENPI and TACIS) or AENEAS (the EU targeted assistance in the field of migration). For Ukraine, the targeted assistance in 2011–2012 amounted to 18 million euro (ENPI 2011b). The EU bilateral assistance to Ukraine for the reforms amounted 596 million euro in 2011–2013 alone and was increased for the next period and reviewed and increased again after the Euromaidan Revolution (European Commission 2014). Besides bilateral assistance, the EU provided a plethora of programmes for the multilateral assistance through Flagship Initiatives – such as 44 million euro for the Integrated Border Management Flagship Initiative, alongside EUBAM, CIB and PRDP as well as targeted allocations for anti-corruption and data management support reforms.

In particular, in 2010–2015 the EU allocated over 35 million euro for block 2, targeting illegal migration (such as the READMIT project) and providing budget support for integrated border management (EUR 60 million). For block 4 the EU provided substantial support (approximately EUR 30 million) through technical assistance and additional budget support for the fight against corruption measures and the newly created agencies (EU Commission 2015: 11). Anti-corruption assistance was a part of the EUR 1.8 billion macro-financial assistance package to Ukraine allocated in 2015 (OECD 2015) and a main part of EUR 355 million State-Building Contract – a grant of untargeted budget assistance in 2014–2015 (EUukrainecoop 2014). Moreover, in 2014–2015 all the EU assistance was made conditional on the success of the implementation of the anti-corruption laws (Euukrainecoop 2015). State agencies in block 1 and 2 of VLAP were allocated EUR 28 million simply to upgrade their management systems.

At the core of the EU support efforts for the continuous implementation of the VLAP-related reforms was comprehensive capacity building of the state institutions – State Migration Service, the State Border Guards, the General Prosecutor’s Office, Anti-Corruption agencies and the judiciary system. Further initiatives supporting anticorruption and law enforcement were under preparation after the realisation of the first stage to improve their efficiency (EU Commission 2015: 12).

As with VLAP, the assistance was conditional and was based on the ‘more for more’ principle. For example, the State Building Contract was comprised of eight sets of conditionalities to receive a tranche (EEAS 2014). These requirements focused on the adoption and implementation of rules on the fight against corruption, transparency and increasing the integrity and accountability of public service and judiciary, which (as well as how to implement) were explained in detail in the contract (EUukrainecoop 2014).

These conditionalities confirmed the requirements of VLAP and included reform of verification of asset declarations of public officials, sound public financial management, improved access to information and public registers, civil service and administrative procedure reform, and public procurement

(EEAS 2014), aiming, as described by Tatiana Kovtun, sector manager at the EU Delegation to Ukraine, ‘at institutional and procedural state-building’, which meant among other things ‘stabilising the public service and human resource practices in line with EU best practices, and ensuring that systems of public procurement meet European norms’ (EUukrainecoop 2014).

In the sector a wide group of non-state stakeholders, including NGOs and civil society groups, including such organisations as the Transparency International Ukraine, the Anti-Corruption Action Centre, the Reanimation Package of Reforms coalition, the Anti-Corruption Council of Ukraine, the Ukrainian League of Lawyers for Combating Corruption, the Media Law Institute, the CenterUA and the Anti-Corruption Action Centre, business groups, research institutes, IT-groups and Maidan activists were active and did attempt to take part at least in monitoring, yet their efforts were not much supported by the external capacity building assistance.

Non-state stakeholders were not adequately targeted by the EU assistance efforts. In the migration sector, non-state stakeholders could apply for some financing; however, as shown above, the bulk of financial and technical assistance targeted the state institutions. Such one-sided support created a problem of allocation of resources and information, which unilaterally favoured the incumbent stakeholders in charge of state agencies, such as the General Prosecutor’s Office, the Judiciary and the State Migration Service. Taking control of resources and information allowed the entrenched elites to control institutional change and the access to power and resources. Limited financing and the EU’s focus on a support to the incumbent stakeholders hindered the creation of multiplex structure of assistance and engagement of a variety of domestic actors in joint problem solving with their European counterparts.

Similarly, while the EU originally encouraged communication between independent experts, public activists and EU representatives responsible for examination of the VLAP implementation, under the Yanukovich regime Ukraine did not include any non-state actors or representatives of civil society in the process of preparing the key legislation or responsible agencies such as the Coordination Centre to Implement the Visa Liberalisation Action Plan with the EU (Sushko et al. 2012: 9). The situation changed after 2014, but mostly due to the temporary elevation of the role of civil society in national politics after the fall of the Yanukovich government and their involvement in the activities of the provisional government. That said, even after the election of Poroshenko as the President of Ukraine, in some VLAP blocks the participation of the non-state stakeholders continue(d) to be restricted.

The monitoring of the implementation of VLAP was in the hands of the European Commission, which gathered data through its evaluation missions and from reports of the government, and presented its findings directly to the Council of the European Union. The monitoring was mostly provided by the European Commission on the basis of the checklist compliance – whether or not the Ukrainian government complied with the set requirements of the VLAP. The European Commission guided and supervised the Ukrainian government and its

reform efforts, monitored the projects on the ground and provided its feedback via the EU's Progress Reports.

The European Commission also provided a wider assessment of possible migratory and security impacts of future visa liberalisation for Ukrainian citizens travelling to the EU, before a decision was taken by the European Commission and the Council of the European Union to initiate the assessment of the second phase of benchmarks and afterwards to grant the visa free regime upon the completion of VLAP (EU-Ukraine Action Plan 2010). In order to provide a full impact assessment, the European Commission continuously monitored such components as the visa refusal rate; the number of Ukrainian citizens refused entry or apprehended illegally residing in the EU, the number of decisions on repatriation and the number of returnees to Ukraine during the implementation period of VLAP (EU-Ukraine Action Plan 2010).

Only when all criteria were fulfilled and aims met, did the European Commission make a proposal to the European Parliament and the Council of the European Union to introduce the modifications to Regulation 539/2001 to abolish short-term stay visas for the Ukrainian nationals (for holders of the required biometric passports).

In this regard, the EU strategy was primarily outcome-oriented, as the EU promoted reforms through normative institutional goals, capacity building of the government institutions and checklist compliance. The focus on single ties between the EU and the Ukrainian government and checklist compliance was the main form of assistance and monitoring in the migration sector. It limited the participation of state and non-state actors in rule making and monitoring and fully relied on the EU for selection of rules and domestic elites on their adoption and implementation. Through conditionality and 'more for more', the EU stimulates actors to change their rules and institutions.

The next section looks at the adoption and implementation of rules in the blocks of VLAP to look at the results brought about by the EU's outcome-oriented strategy. Based on the secondary literature, it analyses the application of the existing modes of assistance and monitoring and the promotion of the reforms through conditionality and the more for more policy as main rule transfer mechanisms and discusses observed outcomes. As shown below, these institutional goals, forms of assistance and monitoring induced mainly formal rule adoption and simulation of the implementation, which favoured the entrenched groups and offered few new resources or participatory channels for non-state groups, thus making institutional change very difficult.

3.3.3 Analysing institutional change in the migration sector

As indicated, the EU's reforms in the migration sector in Ukraine were initiated in a favourable reform environment characterised by the presence of adequate sectoral incentives, public support and the government's interest in pursuing VLAP. In 2010–2014, under the Yanukovich presidency, Ukraine partially

adhered to the Visa Liberalisation Action Plan, having adopted a number of important rules and policies. The EU developed strategies and action plans, and the Ukrainian government showed its willingness and commitment to the reforms, by forming special groups and councils to facilitate rule adoption and implementation (such as the Anti-Corruption Council). It was supported by credible incentives, significant financial assistance, clear and precise rules, and according to the Progress Reports, the reforms were seemingly further carried through the first and second stages after the 2014 Revolution, eventually leading to the decision of the European Commission to grant the visa free travel to Ukraine in 2016.

Nevertheless, after the early positive signs, both rule adoption and implementation became problematic. Despite the assurances in 2010 by the Ukrainian government that they were moving forward quickly with reforms, Ukraine met considerable obstacles already during the first stage. The core laws and agencies were either created with significant delays, at times dysfunctional or if created, were manipulated and undermined. For example, one of the key agencies, which was created to spearhead the adoption and implementation of the visa liberalisation reforms, the National Coordination Centre on VLAP implementation, did not function from 2012 onwards.

The National Coordination Centre was created in April 2011 to harmonise and coordinate activities on VLAP implementation among the government agencies and presupposed the participation of the independent experts in its work. Moreover, during its short period of functioning it prepared most of the legislative work necessary for the implementation of VLAP (Sushko and Benedyczak 2014: 2). It resumed its work only in April 2014, yet the Poroshenko government expressed little interest in granting the non-state actors and experts access and membership in order to participate in the work of the National Centre (Sushko and Benedyczak 2014: 3).

The outcomes of the EU efforts were quick initial adoption of the required laws, but their subsequent weak implementation. Major legal acts within the 1st phase of VLAP were adopted in May – October 2011; however, from November 2011 onwards the pace of the VLAP implementation slowed down until reforms restarted in 2014 after the Maidan Revolution. Having achieved considerable and notable progress in Block 2 (Illegal Immigration including Readmission) and a certain moderate success in Block 3 (Public Order and Security), Ukraine stumbled in Block 1 (Document Security including Biometrics) and Block 4 (External Relations and Fundamental Rights).

In addition, more than 10 relevant by-laws that would establish adequate working mechanisms for implementation of these and other, previously adopted, laws were left aside (Sushko et al. 2012). Afterwards, under the Yanukovich government the reform processes stagnated and only activated for a short period in summer 2013 (Sushko and Benedyczak 2014). The new government was more active in pursuing the reform agenda; however, the special interest groups constantly hijacked it and manipulated or undermined the new institutions or rules.

Even what was described in the EU progress reports in 2012–2014 as instances of successful adoption of the required legislation in 2010–2014, the implementation was in reality remained problematic. As an example, the migration management, which represents a successful case of the adoption of the VLAP requirements, remains troublesome. According to the EU evaluations, Ukraine had, in a very short time, adopted a legislative framework and established an institutional framework for migration management and for the implementation of migration policy, providing a good foundation for an effective migration management policy. The EU requirements within the Visa Liberalisation Action Plan for the ‘adoption of a legal framework for migration policy providing an effective institutional structure for migration management, rules for the entry and stay of foreigners, monitoring of migration flows and the fight against illegal migration’ (VLAP 2014) were realised as the Law on the legal status of foreigners and status of foreigners and stateless persons, which was successfully adopted on September 22, 2011.

Ukraine very quickly adopted the legislative framework and established the institutional framework for migration management. On May 30, 2011, a law establishing a National Migration Management Strategy was adopted by Presidential Decree No. 622/2011 (Duleba et al. 2012: 63). However, the migration management block lacked efficient implementation of the adopted legislation, unified database for the readmission process and modernised control mechanisms for readmission and asylum policy (Sushko and Benedyczak 2014: 4–5).

Similarly, in 2014, the European Commission Country Report stated that ‘the State Border Guard Service pursued border management reforms in line with the targets’ (European Commission 2014c). As stated in the most recent evaluation of the implementation of the VLAP, ‘in the area of border management, all the necessary laws are in place along with the institutional framework, including provision of training and ethical codes to fight corruption’ (EU Progress Report 2015).

However, in practice this ‘success’ reform in border control management was also used by the Yanukovych (and Poroshenko) governments to centralise control over rents. Migration services provide many opportunities for extracting rents as each customs office allows to creation of an import legalisation scheme for officials, businessmen and politicians, who controls border crossing points and issue customs documents and permits. Hence, each of the 46 Ukrainian customs offices (three on the border with Transnistria) controlled a part of a border and represented interests of a particular group (Butusov 2010), just as 12 deputies of the head of the State Custom Service did.

Under ex-Minister Kaletnik, in 2010–2011, in line with the EU capacity-building policies and VLAP requirements, the number of offices was reduced to 28. Two-hundred and eighty (280) customs officers were fired, including all high officials in the customs offices. Structural changes included the reorganisation of the system of management and customs clearance, whereby a particular office was given a specific group of customs goods for clearance. Additionally,

the government used the opportunity to centralise the customs dependent businesses, including logistics. This centralisation did not help to tackle corruption, but instead brought it higher up to the government level. Many noted that the migration management reform even invited criminal groups to take part in rent extractions from the sector (Butusov 2011).

In a similar way, under Poroshenko from 2015 new head of the State Fiscal Service of Ukraine in charge of customs service became Roman Nasirov, who represented interests of power interest group in the Verkhovna Rada and maintained a majority of corruption schemes in the customs according to journalist investigations by Censor.net and Kyiv Post. As his predecessors, he used any reforms to promote his narrow interests and preserve a status quo. For instance, the practice of ‘contaminated inspections’ persisted after the Euromaidan (Kyiv Post 2016). Calculation of customs duties is done selectively at different customs and bribing is a common practice. A persistent rampant corruption in the Customs Service led to newly appointed Prime Minister Volodymyr Groysman to publicly criticise its leadership, calling its activities looting and crime and stating directly to Nasirov that ‘you have three months to restore order within Ukrainian Customs. If you have a political will, I support you – if not, write the statement of resignation today or otherwise be swept away’ (Petrov 2016).

Yet, Nasirov who was continuously accused of mitigating reforms at the local level, which due to a highly centralised system gave a strong leverage to the State Fiscal Service, is still in charge. Nasirov cut funding to few reformers in the customs system and blocked the introduction of new procedures and operating systems (Apostrophe 2016). Moreover, the new people within the system appointed after the Euromaidan fell under pressure to force them to resign, while constant searches and checks from the central office blocked their work. Finally, the new appointees promoted by Nasirov were selected in violation of procedures on non-competitive basis (Petrov 2016). Some of these new appointees were openly linked to different ‘export’ mafias, such as an appointment of a cigarette smuggling representative as the head of Uzhgorod customs service (Interfax 2016).

Thus, unlike other areas shown below, where the policies of empowerment and rulemaking increased participation, transparency and accountability and led to ability of non-state actors to promote their interests, in which minimising corruption was one of the core priorities, and limit the malign impact of entrenched interests, the VLAP reforms in the customs and border areas only led to a preservation of a status quo. Despite EU’s support and capacity building measures, the change remained formal and new rules were quickly undermined by old practices.

As an outcome, the biggest problem – corruption on the Ukrainian border continues to thrive. Even though many measures have been adopted to address this problem, their implementation is weak. As it is evident, after 2014, no changes in this reform block were noted, leaving the migration sector and border control as one of the most corrupt in Ukraine. The high-level officials continue to extract rents from the sector as the events in Uzhhorod, when a smug-

gling tunnel to Slovakia operated by Ukrainian state officials was discovered, illustrates. Similarly, the reports on the situation on the border with Transnistria and Donbass show the involvement of the state officials in smuggling and illegal payments. Still many trucks that cross the border are uncontrollable, being 'sponsored' in Kyiv or by political parties. Despite the calls for accountability and transparency, the entrenched interests have prevailed, with special collection plans, only upon fulfilment of which can transparency emerge (Omelyan 2015).

In the migration sector, unlike in environmental protection sector, where some non-state stakeholders even became part of the Ministry after 2014 and non-state actors were able to take a better use of available mechanisms to promote their interests and increase transparency and accountability, for instance through the below-discussed Public Councils, which provided better access to information and allowed for more transparency to the activities of the state bodies, these opportunities were non-existent to non-state actors in the migration sector before and after the Euromaidan Revolution. Better inclusion could have provided more control of the state agencies and potentially limited their detrimental effect on the reforms.

Their participation in customs reforms could have been particularly crucial. The attempts to do that after the Revolution were mitigated by lack of empowerment and inclusion in rulemaking. A number of initiatives, which were developed bottom-up to fight massive corruption in the sector, were ignored by the state administration. For instance, even when the regional authorities pushed for change, they were neglected in Kyiv and ignored by the Western rule-makers.

An example of Odesa is a most illustrative. Odesa customs system and Odesa port in particular was a massive source of corruption for 8000 state officials, which administered the cargo, yet more than 100.000 were involved in bribery and money extraction from the port's commercial activities (Borys 2015). New customs and port administration and non-state actors developed a set of initiatives to curb corruption by minimizing person-to-person interactions and digitalizing its activities and preventing the representatives of the old system to take positions within. One of the core initiatives – 'Open Customs Space' developed by the non-state actors to minimise corruption and supported by President and Prime Minister, was soon drafted as a law in the Verkhovna Rada, but was neglected and pulled back from the early stage (Apostrophe 2016).

In this regard, an attention and support of the EU to local bottom-up initiatives, which were not originally a part of the EU set of reforms in the sector, but developed and even tested at a local and regional level could have played a decisive role in advancing reforms in customs area. Instead, the focus on the capacity building of state agencies and the advancing reforms, which preserved the interests of the entrenched elites, minimised the reforms' potential early on and led to persistence of same interests groups and 'schemes' in most of VLAP blocks. By the beginning of 2014, Ukraine was said to have made only 'limited

progress', insufficient to move on to the second stage, according to the third progress report on VLAP (EU Commission 2013). Only under the new government, in May 2014, did the EU recognise that progress had been made in its fourth report and granted the second stage (EU Commission 2014). However, the timing suggests that this decision was a political move, and not based on substantial achievements. The implementation problems in 2014–2015, in particular in block 4 of VLAP, which are illustrated below, show that even after the Maidan Revolution in 2014 and under the new government, rule implementation, and even rule adoption, remained incomplete despite the EU's approval of Ukraine's progress during the first stage and eventually the second stage of VLAP.

Problems at different degrees were identified in all four blocks, yet two of the most problematic areas were public order and security and fundamental rights. For example, after Victor Yanukovych's ousting, in the beginning of 2015, Ukraine still had not managed to create an adequate anti-corruption legislative basis, while the proposed draft was heavily criticised for lack of substance (Sushko 2014a). That is why, what is even more illustrative of the VLAP reform efforts is the state of reforms in document security area, which seems to be a mere technical issue (VLAP 2010) of creating a capacity to substitute the old passports (non-compliant with the International Civil Aviation Organization) with the new generation of biometric travel documents, for which the EU provided necessary resources.

From the EU's perspective, document security is one of the most important issues for the further development of more liberal arrangements in the area of mobility. As only biometric passport holders will be allowed to travel visa free, the introduction of biometric passports is a crucial element of the policies toward implementation of VLAP. However, the document security remains a challenge. The adoption of biometric passports is lucrative business, and the various domestic interest groups would not surrender their issuance to the state agency as required by the EU (Duleba et al. 2012: 63).

On November 20, 2011, the Ukrainian parliament adopted two laws on biometric documents and the protection of personal data, the lack of which had been an obstacle to concluding the first phase of the VLAP. The law 'On Unified State Register of Demographics and Documents Confirming the Citizenship of Ukraine, Proving Identity or Special Status' (the USRD law) – which introduced documents with an electronic chip containing biometric data – was finally signed by Ukrainian President Yanukovych at the end of November 2012 (Duleba et al. 2012).

However, the biometric law was seen as controversial in Ukraine and was criticised by non-governmental organisations, which claimed that it directly violated the EU requirements. The law, while providing for issuance of biometric passports, also allowed unrestricted data gathering, potential violation of privacy, insecurity and abuse of personal data. It authorised the creation of an unnecessary demographic registry at a cost of 960 million hryvnas (12 million euro) and its multi-year implementation.

The procedures for processing personal data were in violation of national, international and European standards. The civil society organisations feared that the government would be able to collect too much information about its citizens, without adequate supervision (Sadowski 2012), and that the registry system would be transformed into a huge mechanism of corruption and would become inoperable due to a lack of funds to implement it (Sushko and Benedyczak 2014: 3).

Yet, the new government ignored the criticism by the non-state stakeholders – civil society and independent experts such as civic initiative ‘Europe without barriers’, the Centre for Political and Legal Reforms, the Centre for Liberation Research and the Renaissance Foundation, among others, and it proposed and pushed forward the alternative legislation (law N 4751).

The European Commission requested Ukraine to complete the framework law (Law on Single Demographic Registry and Identity Documents), which regulates the issuance of biometric passports with explicit reference to fingerprints and to adopt regulations to ensure that the legislative framework is ready for the issuing of biometric passports. Ukraine struggled to adopt the necessary legislation until 2014, when the Ukrainian government finally adopted the required regulations. The government amended the registry law to finally make fingerprints an obligatory biometric feature (Ukrainska Pravda 2014).

Again, despite the adoption, the amended law was immediately and directly undermined by the special follow-up decrees of the Cabinet of Ministers via the transferring of the state functions of collecting fees and data to a private company (Timoshchuk 2014). The law took into account the insistence of the EU on the fingerprints, but totally ignored its public criticism (Tomak 2013). By 2015, while the issuing of biometric documents was partially adjusted, it is still under question the adequate level of organisation of reception and processing of applications by departments of the State Migration Service (Novisa 2015).

As indicated earlier, each EU reform effort was supported by a significant assistance to implement reforms. The EU invested 30 million euro in capacity building of the State Migration Service (SMS) to make the law on biometric passports work; however, Ukraine was unlikely to issue the needed amount of biometric passports. The SMS lacks sufficient infrastructure to collect data and issue passports. However, it spent the money allocated by the EU, using only a fraction of the allocated funds for their intended purpose. Instead of upgrading the existing facilities, the State Migration Service transferred the service provision to a commercial enterprise ‘Document’, which requires the building of facilities from scratch (Timoshchuk 2014).

By transferring this function, the State Migration Service not only overlooked the existing infrastructure, thereby delaying the implementation, but it also violated the EU-demanded law ‘On administrative services’, which forbade the transferring of state functions from state institutions to private enterprises (Timoshchuk 2014). On top of that, fee collection remains non-transparent and so in violation of the Supreme Court ruling on illegality of additional fee collec-

tion besides the obligatory state duty (170 hryvnas). By 2015, the fee collected by ‘Document’ was up to 4 times higher (Timoshchuk 2015).

The EU highlighted numerous problems in the Ukrainian reforms in its Progress Reports in 2011–2015, its additional documents and measures such as State Building Contract, and insisted on the Ukrainian government to adopt the EU pre-selected rules set out in VLAP. The particular concern was institutional independency between state agencies and authorities and the responsibilities held by the new agencies, in particular those which deal with high-level corruption.

3.3.4 The Anti-Corruption reforms under VLAP

Finally, the most illustrative block, that on public security and order is extremely problematic, in particular the policies concerning anti-corruption. Each reform initiative in Ukraine emphasised the fight against corruption. The EU focus on the issue of corruption was paramount. The EU’s reforms in the migration sector in Ukraine were initiated in a favourable environment characterised by the presence of adequate sectoral incentives, public support and the government’s interest in pursuing VLAP. The anti-corruption requirements were included in block 3 of VLAP (VLAP 2010). Under block 3 on public order and security of VLAP, the EU required Ukraine to adopt legislation on preventing and fighting corruption and establish a single and independent anti-corruption agency, strengthen coordination and information exchange between authorities and adopt a national strategy for the prevention of money laundering and financing of terrorism (VLAP 2010: 7).

Not only the EU requirements but also the ‘Maidan Revolution’ and subsequent elections have made anti-corruption efforts central to the new government’s agenda. The importance of the ‘Maidan Revolution’ was explained by Andriy Palianytsia, the World Bank expert on combating corruption, who acknowledged the failures of past reforms, but stated that ‘now we have a great public demand for change and it gives us a chance to break the old scheme’ (quoted in LVBS 2014). This demand has been taken up in the inaugural speech of President Poroshenko, who clearly stated that building a prosperous and successful Ukrainian state required eliminating corruption (President.gov.ua 2014).

However, the reform pattern under President Poroshenko followed that under his predecessor. Under Yanukovych, anti-corruption reforms faced numerous difficulties. In 2010 the National Anti-Corruption Committee (NAC) was established, which was placed under direct control of the President and the National Security and Defence Council. Furthermore, a presidential decree issued in 2012 allocated additional provisions to the National Committee (such as sanctioning the presence of NGOs’ representatives), which undermined its independence and abilities, transferring some of its functions to other agencies (Sushko and Bendynczuk 2014). Similarly, the National Anti-Corruption Strat-

egy, which was based on the State Program on Prevention and Combating Corruption for 2011–2015, and which was adopted by the Parliament in 2011, lacked the implementation strategy and consequently realisation.

The main set of institutions required under VLAP was not set up during Yanukovich presidency at all. After the regime change in 2014, the required agencies were finally created. According to the EU, a whole package of anti-corruption laws required by VLAP was introduced only in the second half of 2014. This package was also a part of laws necessary for fulfilling the process of following recommendations of the Group of States against Corruption (GRECO), as well as the recommendations and provisions of the UN Convention against corruption, which were required by the EU.

In the end, Ukraine's anti-corruption legislation package fulfilled 16 (out of the required 20) GRECO recommendations (Novisa 2015). The establishment of an operational and independent Anti-Corruption Prosecution Office (ACPO) and the National Anti-Corruption Bureau (NABU) were key conditions for a visa-free travel and the allocation of significant assistance – including a EUR 1.2 billion tranche of the EU macroeconomic assistance to Ukraine in 2015.

In May 2014 the EU Progress Report (European Commission 2014: 4) stated that a package of amendments was adopted, such as the law on public procurement, covering transparency rules, the award of public contracts, and the scope of procuring entities; furthermore whistle-blower protection had also been strengthened. It highlighted that several independent anti-corruption institutions were established, such as the National Agency for Prevention of Corruption (NAPC) and the National Anti-Corruption Bureau (NABU). The Parliament also adopted a new 'anti-corruption strategy', which outlined the work of the new agencies, a public information campaign, a system of monitoring officials' earnings and expenditure, further simplification of the procurement system, and tougher punishments for corrupt officials; despite this, it was criticised for lack of substance (Sushko 2014b).

However, despite the adoption of the package to establish well-financed and independent institutions to fight corruption, the implementation of the adopted rules was significantly impeded and the effects were negated by political interventions from the government and the Presidential Administration. In particular, their independence was constantly undermined by interventions from the General Prosecutor's Office, which tried to lessen the effectiveness of the work of NABU by taking control of the VLAP required Anti-Corruption Prosecution Office (Sidorenko 2015; Popadiuk 2016).

Thus the Anti-Corruption Prosecution Office was made politically dependent on the General Prosecutor. The Agency for Prevention of Corruption (NAPC) was equally problematic. The head of the Presidential fraction in the Parliament, Yuri Lutsenko, the author of law N 1606, removed the norms on asset management from the law, leaving the Agency with only the return function (Sidorenko and Sushko 2015; Sidorenko 2015), which was the part of Progress Reports in 2012–2013 and was guaranteed by the President and the Speaker of the Parliament.

The establishment of the National Anti-Corruption Bureau was equally problematic. NABU is supposed to investigate corruption offenses committed by senior officials and heads of large state-owned enterprises. The EU required that their independence, clear selection criteria for its staff and non-discretionary rules for the appointment and dismissal of its head be guaranteed. In the anti-corruption package of laws NABU was provided with investigative powers, which included strong guarantees of independence and focused on corruption crimes of the senior state officials.

The Law of Ukraine ‘On Grounds Of State Anti-Corruption Policy In Ukraine (The Anti-Corruption Strategy) for the years 2014–2017’, which outlines a road map for anti-corruption reforms needed in Ukraine, included a list of laws needed to be developed and adopted; the IMF-required laws around reporting information about their beneficial owners to the public state registry, opening public access to the state registry of owners of the immovable property and establishing a system of electronic filing of asset declarations (Sidorenko and Sushko 2015).

However, the draft on the creation of NABU was changed to undermine its independence and transparency and make it politically-dependent. The Amendments dismissed requirement for the candidates to posts of Agency officials to pass a polygraph check and not to have worked in the law enforcement bodies in the preceding 5 years. The Amendments also reduced financial and social guarantees for officials to make them politically-dependent (UP 2014a).

Under the public pressure, these changes were simultaneously addressed in two submitted drafts of amendments, N 1606 and N 1406. The former was sponsored by the presidential block, which aimed to secure political influence over the work of NABU and its head, making the latter answerable to the President, while the latter was the result of joint work by a broad coalition of stakeholders. Yet, the latter, while being approved by the committee on the fight against corruption and stakeholders and adhering to the provisions of the coalition agreement, it was delayed and subsequently blocked by Chairman of the Verkhovna Rada Volodymyr Groysman, clearing the way for Lutsenko’s amendments to be passed. Amendment 1606 provided that the Prime Minister and the President of Ukraine would control any possible investigations by NABU (ANTAC 2015).

As a result, the EU granted Ukraine visa-free regime under the assumption that Ukraine would in 2016 ensure the independence and integrity of the Anti-Corruption Prosecution Office and the National Agency for Prevention of Corruption (European Commission 2015d). The EU’s sixth Progress Report emphasised that shortcomings in the selection process, such as the lack of objective track-record criteria for the nomination of the members of the selection committee and the candidates were to be fixed, alongside the improvement of the relevant legal and institutional framework in order to fully ensure the office’s independence and integrity (European Commission 2015d).

As earlier noted, only after the Maidan Revolution did Ukraine complete the first stage of VLAP, following the Commission’s fourth report (European

Commission 2014) and expected to get a visa free regime in 2016. The fifth progress report on Ukraine's implementation of the VLAP on 8 May 2015 stated that progress had been achieved by the Ukrainian authorities in the implementation of the second phase of the Visa Liberalisation Action Plan, particularly the legislative and institutional progress (European Commission 2015b).

The sixth report approved Ukraine's progress and finally recommended the granting of the visa-free regime to Ukraine in 2016 (European Commission 2015d). Yet, despite the 'realisation' of VLAP by 2016, Ukraine made only partial progress; the key problems identified during Yanukovich's presidency remained and institutional change remained sluggish (Haring 2015).

This section investigated the effect of the outcome-oriented strategy on rule transfer. First, it identified the EU strategy, showing how the EU promoted institutional change in the migration sector by analysing modes of rulemaking and empowerment. It showed that the EU pre-selected the rules and mostly pursued checklist compliance as its mode of monitoring and state-targeted capacity building as its mode of assistance. This led to rule persistence and problems with the VLAP implementation, despite the EU's state capacity building efforts, adequate incentives, clear rules and monitoring. The EU's strategy mainly reinforced the entrenched elites in the migration sector by building up their capacities and allowing them to form and take under their direct and indirect political control new institutions, thus making newly created institutions and rules subjects to manipulation and subduction. If not, they were made outright dysfunctional by limiting their funding and delaying the adoption of support legal acts.

3.4 The EU-induced institutional change in Ukraine's environmental protection sector

This chapter looks at the EU-induced reforms in the environmental protection sector. It primarily looks at the EU strategy of inducing change and its effects on the reforms in the environment protection sector in 2010–2015. It starts with the situation in the sector before the launch of the talks on the Association Agreement, followed by a discussion of the strategy and its outcomes.

Environmental protection became a significant part of the EU policies towards Ukraine only during the Eastern Partnership and the preparation of the DCFTA. For most of the 1990s and 2000s, the environmental protection was neither a priority of the Ukrainian government nor of the EU. It was neither an integral part of the EU policies towards Ukraine nor of the Ukrainian state policies until the inauguration of the DCFTA and the preparation of the EU-Ukraine Association Agreement. In Ukraine, environmental protection and the preferences of environment groups were frequently overlooked to the benefit of economic, industrial and financial interests, and those of entrenched groups.

As for the EU, despite been described as one of the most active actors in environmental protection and having a well-developed and far-reaching legisla-

tion on environmental protection and progressive sectoral initiatives and policies, it also did not originally prioritise environmental protection in its relations with Ukraine. Originally, under the ENP it took a form similar to the CEE enlargement's accession policy, aimed at imitating the EU's successful export of its full environmental acquis to the Central and Eastern European states, but was not at the top of the EU agenda.

Yet, the environmental protection was an extremely important sector for both the EU and Ukraine. Regarded as a granary of the Soviet Union, Ukraine's richness has long been considered as one of its major advantages, one that would support the country's development. Yet, the environmental sector has been more of a source of trouble than an advantage for the country. Ukraine faces a considerable amount of environmental risks with numerous environmental problems accumulated over years. The gravity is well illustrated by the amount of accumulated waste – 30 million tons (of which 5 million are toxic) estimated by 2009 (Pasechnik 2009), which is a potential cause of ecological, socio-economic and domestic political problems (RFERL 2016). These problems have only been aggravated by the conflict in the Eastern part of Ukraine and the demise of any environmental control and monitoring in the Donbass region.

Environment problems have a strong impact on social and demographic issues, especially taking into account the disproportional concentration of industrial companies within populated areas. The Ukrainian economy is resource-intensive, dominated by environmentally 'dirty' industries (metallurgy, chemical industry, mining, and energy) and low level of environmental protection management. Some Ukrainian regions are characterised by complex (unstable) natural conditions and potential natural and technogenic risks. According to international index of ecological measuring Environmental Performance Index (EPI) (Environmental Performance Index 2007; 2013), Ukraine ranked 102nd place among 163 countries of the world in 2012, a drop from 75th out of 149 countries in 2008, and 52nd among 133 countries in 2006.

As Heorhii Philipchuk, the Ukrainian ex-minister of environmental protection, said, 'Ukrainians live in the dark ages and don't know what they drink or eat, what they breathe, and what dangers come from the enterprises located next to their homes'. Continuing this line, he claims that 'for example, in the city of Dneprodzerzhinsk, the average lifespan of the residents is only 47 years because of the terrible environment', while due to ecological situation, the lifespan has decreased by 11 years compared with other Europeans. 'Ukraine desperately needs a better ecological code' because 'until recently has lived by Soviet standards' (Pasechnik 2009).

It is further worsened by the state of the current system of governance and resource management, the lack of clear division of environmental and economic functions and a lack of understanding of the priorities for preservation of the environment and the benefits of sustainable development in society. The main problems of Ukraine's environmental protection system are its under-reformed management system and lack of law enforcement (Petkova et al. 2011). The

structures and responsibilities for dealing with environmental policy in Ukraine have been constantly changing; the ministry of the environment has been reorganised on numerous occasions.

There was no comprehensive strategy for environmental protection and little involvement of the civil society and media attention. Civil society, which could have been playing a much bigger role in advocating better legislation and enforcement, has been marginalised and largely ignored. The present environmental situation in Ukraine is critical because of the neglect of the laws of development and reproduction of the natural resource system of state (Stepanenko 2013). The media pay attention only to the most egregious cases and seldom go after politicians for ignoring the situation. As Alina Horina (2011), a journalist on environmental issues, notes, ‘there are always other things newspapers deem more important. Topics on the environmental are only covered when some great disaster has occurred—no one will write about the environment for its own sake’.

These conditions are combined with low level of ecological awareness, which led to significant degradation of the environment in Ukraine, excessive pollution of water, air and land, the accumulation, in very large quantities, of hazardous, and high toxic waste. This is the reason for the sharp deterioration in the health of the population, decrease in fertility and increase in mortality, which could result in extinction and biogenetic degradation of the population of Ukraine.

Regarding other factors that could impact the reform process, Russia’s role in environmental protection sector was equally minimal. Russian economic actors did not have a major interest in Ukraine’s environment or a crucial stake in issues analysed in this study to obstruct or promote them. Environmental protection and relevant regulation, being partially based on the international law and conventions, did not provide any ground for EU-Russia competition in Ukraine or Moldova.

Environmental protection was a part of the EU reform efforts before the Association Agreement. As such, the framework of the EU-Ukraine cooperation in the environment sector was a part of a broad EU-Ukraine institutional framework. The environmental cooperation between the EU and Ukraine started with the inauguration of the PCA and only intensified with the signing of the Action Plan, which provided a more precise goals and targets. Overall, since 1998 cooperation between Ukraine and EU in the environmental protection sphere aimed to fight the deterioration of environmental conditions, and embraced a variety of issues.

The PCA included, for instance, such issues as the effective monitoring of the pollution levels and the assessment of the environmental conditions; an information system about environmental conditions; prevention of local, regional and transboundary air and water pollution; recreation of the natural state of the environment; sustainable, effective and environmentally secure energy production and its use; environmental security of industrial enterprises; water quality; reduction of volumes and secure utilisation of industrial waste;

impact of agriculture on the environment; soil erosion and chemical pollution; forests protection; protection of biological diversity and territories, which are under state protection, efficient use of biological resources and their management; global climate changes; environmental education and training and the fulfilment of the UN Convention on Environmental Impact in a Transboundary Context (Espoo Convention) (MFA 2015; PCA 1994).

The EU-Ukraine Action Plan for 2005–2007, adopted in 2005 and later prolonged until 2009, also included a separate chapter on the environment. In this chapter, three groups of measures to be implemented in the field of environmental protection were indicated, namely: a) to ensure that conditions for good environmental governance are set and that implementing of these begins; b) to prevent deterioration of the environment, protect human health, and achieve sustainability in using natural resources; c) to enhance co-operation on environmental issues (the Kyoto Protocol and the UN Framework Convention on Climate Change, the Danube-Black Sea Task Force, selected European Environment Agency activities, the Joint Ukraine-EU Working Group on Climate Change) (European Commission 2005).

The EU-Ukraine Action Plan also provided for measures to promote the sustainable development, namely completion of administrative structures and procedures to ensure strategic planning of sustainable development and co-ordination between relevant actors, adoption of a national strategy on sustainable development, integration of environmental considerations into other policy sectors, particularly industry, energy, transport, regional development and agriculture (European Commission 2005).

Under the ENP, environmental and energy-related issues were given particular attention under the different components of the National Indicative Plan. These issues, together with transport and justice and home affairs, were also among the priorities of separate regional and horizontal programmes (EEAS 2006). It was intended to develop the joint approaches to tackling crucial issues, yet, environment, although present in all major agreements, was never prioritised by the parties and was even neglected.

While the EU-Ukraine Action Plan had a number of provisions on the environmental sector, it was mostly subordinate to other priority areas, in particular energy. Underfunded and under prioritised, in 2004–2009 rule transfer and the ‘export’ of EU environmental laws and policies were extremely problematic to the Eastern neighbourhood countries and Ukraine in particular.

As a result, the core problems of the environmental sector persisted. The environmental governance in Ukraine was created in 1990s as new laws, structures and programmes were actively adopted. Yet, most of them remained declaratory (OECD 2006), which led to a peculiar environmental protection system, which oddly combined the practices of the half-dismantled Soviet system and a half-devised new regulation framework. There was no effective management that would overcome the short-term support to half-measures and persisting ineffective solutions.

The main problem of Ukraine's environmental protection system was considered to be its under-reformed management system and lack of law enforcement (Petkova et al. 2011). Ukraine's environment legislation was one of the most progressive in Europe in the 1990s but was not thoroughly implemented then and has never been since. At the same time, the structures and responsibilities for dealing with environmental policy in Ukraine have been constantly changing. The Ministry of Environmental Protection was reorganised and renamed on numerous occasions (for example, in 2000, 2002, 2006, 2007, 2008 and 2011), but lacked any comprehensive strategy or reform blueprint for the environmental sector. The existing regulatory measures were ambiguous and based on antiquated norms. According to Professor Alexander Belyakov from Kyiv National University, 'for successful development to occur on environmental issues, changes in state legislation are necessary' as many Ukrainian laws on environmental information and environmental protection had no precise definitions of violations and punishments (Pasechnik 2009).

As an example, the system of environmental impact assessment (EIA), which is a key preventive tool and a pillar of an environmental protection system, was never effectively implemented until the 2010s. In 2011, the EIA, which is an important part of the EU regulations (such as Directives 85/337/EEA and 2001/42/EU), became a required part under the DCFTA. Until 2011, when the EIA reform was launched by the adoption of National Action Plan and National Strategy on Environmental Policy until 2020, the inherited Soviet two-stage system was a corrupted, somehow-functioning mechanism of the EIA. Yet, with the adoption of the law on urban planning, which changed the basic laws 'On the protection of the environment' (1991) and 'On environmental expertise' (1995), the whole reason of the EIA was nullified by making the expertise and control non-mandatory, while the corrupt component remained. Since that time, the ecological expertise, which is a cornerstone of the EIA, has not been utilised in Ukraine (Andrusevich 2014).

The legislation on environmental protection was equally problematic. By 2010 the Ukrainian laws were general only and their enforcement limited, which is applicable to the governing system of Ukraine in general. According to the numerous civil society assessments undertaken during the 2000s, the new environmental system was necessary to build in order to create the institutional capacity to implement the new policies. The necessary steps included the simplification of the environmental permitting system, modernisation of the environmental monitoring systems, opening the access to environmental information. The government had limited provisions to public participation in the environmental issues and decision-making.

In this regard, the improvement of the model of cooperation between government authorities, particularly those whose decisions impact the environment, the establishment of the clear governing system in the field of environmental protection and natural resources and the separation of economic and control functions was particularly highlighted. The demands also focused on the necessity of strengthening the role of non-state actors, including private

businesses within the system of environmental governance, and the inclusion of the social and economic aspects in the development of environmental governance mechanisms. These changes were to be supported by the system of economic incentives and the inclusion and close cooperation with NGOs, environmental experts and scientists and stakeholders at all levels of environmental governance (Mama-86 2003).

Many of these demands were later supported by the EU environmental policies towards Ukraine under the Eastern Partnership. For that reason, the creation of the National Strategy on environmental protection was one of the first necessary steps outlined by the EU for increasing the capacity of the domestic actors and creating of a framework for further reforms. The adoption of the Strategy was clearly stated to be a priority of the EU under the Association Agreement and was mentioned in the 'Füle Matrix' as one of the priority reforms.

Given this deteriorating situation, the EU used provisions for environment protection to transfer its *acquis* and change the environment situation and politics differently from those of the migration sector. Under the Association Agreement, the EU has provided incentives for the variety of stakeholders to participate in rulemaking to improve the environmental situation and has invested the its own resources in their empowerment. It created the mechanisms for non-state actors to monitor and participate in rulemaking, facilitated the training and encouraged public participation. At the same time, the building of the capacities of both state and non-state actors was an integral part of the EU policies.

The EU strategy and its effects on the reforms in the environment protection sector in 2010–2015 are discussed in the next subchapter.

3.4.1 Institutional change in the environmental sector under the Association Agreement

Until the Association Agreement and DCFTA, the environment was a secondary priority – less important than the issues of energy or transport, but with their inauguration its importance was elevated as it became an indispensable part of the EU-Ukraine Association Agreement and Free Trade Agreement with the EU, and the Association Agenda. Yet, soon after its preparation President Victor Yanukovich expressed his concern over the environmental situation in Ukraine and demanded from then Prime Minister Mykola Azarov that monitoring in the sector be strengthened and kept 'under [the] state's permanent control' (Ekonomicheskaiia Pravda 2013). Moreover, Victor Yanukovich ordered the introduction of 'European standards' in the environment sector as soon as possible (LB.ua 2012).

As indicated earlier, before the introduction of the DCFTA, the state of the environmental sector was dismal. Nikolai Kostrov, then chief of the Ukrainian State Ecological Inspection Agency, claimed in 2009 that 'the ecological problems of Ukraine are actively ignored in the parliament', while the necessary

‘laws and measures for the preservation and protection of the environment and natural resources are not examined’ (Pasechnik 2009).

Domestic special interest groups from the industry and energy sectors and the government agencies, which were ‘captured’ by these interest groups, had no interest in the adoption and realisation of the environmental protection program. A lack of interest and prevalence of narrow interests was supplemented by the weakness of the environmental management (Buzogány and Costa 2009) and the overall lack of power held by the environment agencies in the state’s power system (EU-Ukraine Monitoring 2013). This meant that the decisions made by the government or other Ministries against the interests of environmental protection would be rarely opposed by the Ministry of Environment Protection itself.

Additionally, the environmental sector and environmental governance were seriously affected by the economic crisis. Even before the global financial and economic crisis, economic growth was prioritised over environment protection in Ukraine (UN 2007). The economic crisis of 2008–2009, which led to the significant economic downturn, added to environmental negligence. According to a representative of the NGO *Chistaya Zhizn* (Ukr. ‘Clean Life’) Vladimir Kruglov, ‘they [the government] have never focused on the environment, and now, during this financial crisis, even less so’. Before the launch of the negotiations on the Association Agreement and DCFTA, Ukrainian budgetary support for ecological programs was steadily decreasing. Meanwhile, lack of state regulation and monitoring led a situation where industries in Ukraine continued to break environment laws such as those on waste disposal and management. The preferences of powerful local business groups and the merge of political and economic interests were enough to discourage any pressure from the authorities.

As a result, the monitoring and control agencies were later described to be 100% corrupt. Additionally, natural resources were unevenly distributed and exploited, adding to social and economic inequality and the diminishing ecological situation. Altogether this made the problem of environment degradation widespread and alarming in Ukraine due to its negative influence on the quality of life.

In the Association Agenda, the EU required the convergence with the EU environmental policies and the realisation of the bilateral agenda by the Ukrainian government, which was made conditional for receiving the sectoral budget support from the European Union and its member-states (such as, for example, Sweden). In order to use this opportunity, besides ratification by the Parliament, Ukraine was required to adopt and implement a number of regulations, including environmental protection standards (Panchenko 2013).

Under the Association Agenda, environmental protection is addressed in two major ways. First, it incentivises Ukraine to address the existing institutional and monitoring shortcomings in order to receive benefits, but emphasises flexibility in rulemaking. Secondly, the EU invests in the capacity building programme to train both state and non-state stakeholders, the professionals and civil society groups.

3.4.2 Institutional goals

In the environmental protection sector under the Eastern Partnership, the EU pursued the process-oriented strategy. The EU provided a general blueprint for the reform, which served more as a general guideline. It had provisions for joint decision making, allowing domestic actors to participate in rulemaking and make input in the reform process. It also focused on the capacity building of both state and non-state actors and created opportunities for non-state actors to monitor the implementation of the adopted rules. The feedback mechanism was built on problem solving, thus allowing domestic actors to potentially address and amend when it would be necessary.

The EU promoted policy change in the sector through its templates based on sectoral framework directives, which provided substantial freedom in domestic implementation (EEAS 2013: 26). The main focus included the joint decision-making and flexible rulemaking, which necessitated the participation of a wide variety of actors in identifying general and targeted measures and initiatives. The EU encouraged focusing on certain measures, such as the completion of administrative setup for sustainable development policies and the integration of environmental considerations into other policy areas.

The general measures as outlined in the EU-Ukraine Association Agreement's section on the environment protection prioritised in particular the establishment of the National Environmental Strategy as a reform guideline and a main condition for the EU financial support (European Commission 2010). These priorities included the advancement of environmental democracy – the creation of more participatory and deliberative governance institutions in the environmental protection sector, in particular, strengthening the environmental impact assessment procedures and the access to environmental information (EEAS 2010: 24–5).

The EU-Ukraine Association Agreement section on the environmental sector was further developed in the Association Agreement's practical instrument – the EU-Ukraine Association Agenda, which followed the goals established by the Association Agreement and aimed at preparing for and facilitating the entry into force of the EU-Ukraine Association Agreement.

In particular, the Association Agenda facilitated the implementation of the relevant EU acquis, which was mentioned in annexes of the Association Agreement including: a) development, adoption and implementation by Ukraine of the National Environment Strategy for the period till 2020 and the National Environment Action Plan for 2009–2012 in order to be able to take measures to implement budgetary support; b) strengthening of the administrative capacity at national, regional and local levels, including through development of effective inspection and enforcement capacities; c) further development and implementation of Ukrainian environmental legislation, strategies and plans, in particular on environmental impact assessment, strategic environmental assessment, access to environmental information, and public participation; d) development of national implementation instruments in line with multilateral environment

agreements signed and ratified by Ukraine and the European Community, as enlisted in the Annex (Association Agreement 2014; Association Agenda 2010: 25).

To pursue these goals and outline the key priority areas for reform, the National Environmental Action Plan for 2011–2015 was adopted. These priorities included special measures that would a) ensure implementation of the EU budgetary support programme; b) strengthen the administrative capacity at the national, regional, and local levels, including development of effective monitoring and enforcement; c) further elaborate and implement Ukrainian legislature, strategies and plans in the sphere of the natural environment, particularly on evaluation of the impact; d) make provisions to create a framework for a strategic assessment (MFA 2015). At the same time it prioritised the access to environmental information and public participation; development of the national implementation instruments in accordance with multilateral agreements and obligations in the sphere of environment signed and ratified both by Ukraine and the EU (MFA 2015).

Some of the priorities of the Association Agenda repeated the main issue areas of interest and focus on the environmental policy, which were highlighted by the EU-Ukraine Action Plan (2008: 24–5), yet their implementation was more efficient. The first area of interest for the EU and in particular the non-state actors in Ukraine concerned environmental governance. A number of environment groups, in particular ‘MAMA-86’ and the Civic Expert Council (CEC UPC), from the beginning of the rulemaking process pressured the EU to create provisions to improve environmental governance and create conditions for the public to be engaged in the debate over the environmental chapter of the Association Agreement and create a tripartite dialogue on the environmental and sustainable development established between the European Commission, the government and non-state actors (EaP-Cfs 2012). Also, the Association Agenda included provisions for strengthening regional and international cooperation on environmental matters, and implementation of multilateral environmental treaties, including the Kyoto Protocol or the Aarhus Convention, among others (Association Agenda 2010).

The key piece of domestic legislation which served as the roadmap for the implementation of the environmental reforms, was the law, ‘On Main Principles of National Environmental Policy until 2020’, which set the foundation for the initiation of the EU-Ukraine sector budget support programme, ‘Implementation of Ukraine’s National Environmental Policy Strategy’. As noted, the Strategy included concrete steps in institutional capacity-building, measures dealing with environmental reforms in line with the EU principles and the international conventions and agreements on environmental protection (MENR 2011).

The National Environmental Strategy was supplemented by the National Action Plan, which aimed to implement the Strategy and bring Ukraine closer to the EU’s environmental policy standards. The National Action Plan for Environmental Protection (NEAP) for 2011–2015 was adopted in May 2011.

The National Action Plan had a clear goal, a limited number of objectives, and prioritised directions of activities according to each objective (MENR 2011).

Moreover, both the National Environmental Strategy and the National Action Plan also had a defined timeframe, a mechanism for monitoring and reporting, and performance indicators. All these characteristics created a basis for regular reporting and assessment of the effectiveness of proposed measures, especially on how well environmental policy instruments were working. The first stage lasted until 2015 and was aimed at building up the capacity and stabilising the environmental situation.

Both key reform documents – the National Environmental Strategy and the National Action Plan – were developed with the participation of non-state stakeholders, which highlights the process-oriented character of the EU reforms. They were further strengthened by the broad empowerment of non-state stakeholders by the EU, which facilitated their effective participation in institutional reforms.

3.4.3 Empowerment of stakeholders: assistance and monitoring

Assistance and monitoring in the sector are multiple and inclusive: assistance and monitoring modes empower a variety of state and non-state stakeholders and the sectoral monitoring is based on joint problem solving feedback. Benchmarks are set mutually, non-state actors are given a role in decision-making and monitoring and their input is considered a key component (Gushuley 2013). The EU assistance particularly targeted the strengthening of the environmental impact assessment procedures and the monitoring provisions (EEAS 2010: 24–5). Overall, the EU efforts were directed to at one hand facilitate the constructive effort from below by targeting corruption at the top and on the other hand by providing direct assistance to pro-change non-state actors. The EU financial and expert assistance was allocated through the jointly-developed Programme of Sector Budget Support (SBS) of the ‘Implementation of the Strategy of National Environmental Policy of Ukraine’, aimed at supporting the implementation of the Strategy in line the priorities of the EU-Ukraine Association Agenda and improve policy performance. For this, SBS included a number of institutional capacity building provisions, enhanced role in monitoring, and environmental decision-making of the non-state stakeholders and public (SBS 2013).

SBS specifically targeted the following objectives: government ownership of the environment sector reform process and development of sustainable environment sector policy and strategy; institutional/administrative capacity, accountability and transparency in the environment sector; budgeting and financial management in the environment sector; dialogue between the government and all relevant civil society stakeholders and international partners (SBS 2013).

The EU process-oriented strategy allocated financial, technical and information support to both state and non-state actors to enhance their capacity. As

indicated earlier, the environment protection sector continued to be one of the sectors targeted by the EU assistance. The primary support allocated to Ukraine was worth €35 million, excluding complementary assistance and bilateral support. The financial resources were to be transferred after the benchmarks in environmental policy performance were jointly set. Overall, the deal signed by EuropeAid Development and Co-operation Director and the Ukrainian Trade Minister provisioned €116 million for transport, the environment, institutional capacity building and support of implementation under agreements with the Ukrainian government in 2011–2014 (ENPI 2011a). Furthermore, the adoption of the strategy would give a green light to the provision of an additional €150 million of assistance to Ukraine's budget under EU-Ukraine agreements.

SBS allocated the €35 million in three tranches, two of which are variable depending on performance, taken by the Joint Monitoring Group (JMG) based on the evaluation and the assessment of the general conditions. As it was indicated, it meant a primary focus on the progress in implementation of the Strategy and NEAP, the stable macroeconomic policy and the progress in the implementation of the programme to improve and reform public finance management (Association Agenda 2010). Special conditions were also applied to the decision-making process concerning the timing of the disbursement of the tranches, which were determined each year based on the fulfilment of the agreed indicators (SBS 2012). The EU also developed the Flagship initiative on good environmental governance, with a key focus on the development of the shared environmental information system (SEIS) (Canciani 2010).

Non-state actors were also a part of the external assistance. Financial, expert and information support were allocated to non-state actors, which received significant assistance from the EU and the Western donor agencies. In particular, an emphasis on the support of non-state actors in the EU's strategy was highlighted in a special Communication of the European Commission, where the EU has laid out a new vision for the role of civil society, and placed more focus on the EU's cooperation with non-state organisations in the sector. From 2011, the only direct aid allocated to Ukrainian NGOs has been worth €2 million and has been allocated on an annual basis (EU Delegation 2011). It aimed at financing the capacity building of the non-state actors and their training by the European Commission and other international organisations and national development agencies, such as the Swedish International Development Agency (SIDA) or Matra (Netherlands).

Besides the EU assistance, the Western donors also provided targeted financial and technical assistance. For example, the United States Agency for International Development (USAID) focused on greenhouses effects, the United Nations Development Programme (UNDP) on soil and waste management and ecotourism; the World Bank, the Swedish International Development Cooperation Agency and the European Bank for Reconstruction and Development (EBRD) assisted with other targeted initiatives (EEAS 2006).

These funding and more inclusive participatory channels opened up new opportunities for the underfunded Ukrainian environmental NGOs to become better and more efficiently involved in domestic rule making. Ukrainian environmental non-state groups were enabled through financial assistance to demand and receive more rights and participate in environmental policy-making. They were also enabled to monitor the state activities and rule implementation.

At the early stage the EU used the assessment of Ukraine by non-state experts in further preparation of the action plans. In particular, the EU and non-state actors advocated that the Ukrainian government prioritised the establishment of measures to would strengthen the implementation of action plans, including necessary capacity-building measures, such as the completion of administrative setup for sustainable development and the integration of environmental considerations into other policy areas (Association Agenda 2010).

As well as in case of Moldova, monitoring was based on multiplex ties and joint problem solving by the Ukrainian government, stakeholders and the EU – a tripartite structure. The Joint Monitoring Group (JMG) was mandated to monitor the progress and the compliance with undertaken commitments and it included representatives of Ukrainian ministries, and their counterparts from the European Commission, as well representatives of the diverse industry subsectors, and civil society groups. Moreover, it had a defined mechanism for monitoring and reporting, and performance indicators. Such a system aimed to facilitate regular reporting and assessment of the effectiveness of proposed measures and policy instruments.

Additionally, the EU facilitated the exchange of information between foreign experts and both state and non-state actors via the bilateral programmes, exchange or technical support programmes and under the aegis of the Eastern Partnership Platform; the ‘Economic Integration and Convergence with the EU Policies’ panel, which focused on the issues of environmental protection and climate change. It facilitated the exchange of information and good practices on development and the implementation of environmental and climate policies with the aim of promoting the approximation of Eastern Partnership countries to the EU legislature in these spheres. Such exchanges were also promoted between the EaP countries themselves, in particular civil societies, governments and respected agencies and ministries in order to share experience and practices.

The EU financed enhancement of NGOs’ monitoring capacity within the framework of the project ‘Enhancing participation of Ukrainian Environmental NGOs in developing EU-Ukraine relationships’. The purpose of the EU financing was to enhance the impact of Ukraine’s environmental NGOs on shaping and improvement of the EU instruments regarding reforming environmental policy in Ukraine (bringing Ukraine closer to the EU in terms of the environmental sphere) within the framework of the fulfilment of the Association Agenda (Nakonechna 2010).

Furthermore, the EU assisted Ukrainian non-state actors in the creation of a network of non-state actors to monitor the government activities and facilitate their coordination of actions. Such a network would serve as a comprehensive communication platform containing a database of all relevant legislative documents and information to allow for better monitoring of Ukrainian national environmental policy and to increase the input from the non-state stakeholders and NGOs, making said policy more open and accountable to society (Gushuley 2013).

Finally, based on the demands put forward by a groups of non-state actors, civil society and NGO members, the EU required the Ukrainian government to include in the National Environmental Policy Strategy a provision for public monitoring of Ukraine's policies in the area of environmental policy, which became an integral part of the environmental legislation and was later efficiently used by the non-state actors in their monitoring of state actions and the blocking harmful legislative initiatives and changes promoted by the government

The EU assistance gave NGOs and non-state actors the possibility to influence public policy by providing them necessary resources to advance their interests and collect information, draft legislation and lobby it in the Verkhovna Rada. Furthermore, the EU support allowed them to participate in rulemaking and effectively monitor the decision-making of the government as well as the implementation process overall.

3.4.4 Analysing change in the environment protection sector

To illustrate how the process-oriented strategy worked, this section looks at two important examples of reforms in the environmental protection sector: the preparation and adoption of the core reform documents – the above-mentioned National Environmental Strategy and National Environmental Action Plan and the anti-corruption initiatives. The process of the adoption of the NEAP and the Strategy serves as a good illustration of the role that non-state actors were allowed play in the environment protection sector with the support of the EU. Furthermore, while corruption is the core issue in contemporary Ukraine and Moldova, the adoption of the Strategy was clearly stated to be a priority of the EU and was mentioned in the 'Füle Matrix' as one of the priority reforms. Strategy and NEAP were key environmental commitments under the Association Agreement and the Association Agenda (European Commission 2010; Association Agenda 2010).

Although a significant number of problems remain unresolved, Ukraine has made notable progress in environmental protection in a limited time during the Yanukovich presidency. Unlike in the migration sector, Ukraine quickly brought its environmental legislation in line with the EU requirements (Gushuley 2013). The crucial institutional changes were made with the participation of and under pressure from the non-state actors, which were an

active part of the rulemaking process. In this regard, the adoption of the NEAP and the Strategy, which were the most important documents in the environment protection sector and the key reform guidelines for the government to follow, are important indicators for the rulemaking process in the sector and the role of its domestic actors.

As shown, the EU pursued the process-oriented strategy, which emphasised the flexible rulemaking. Non-state actors participated in the selection of rules. Moreover, non-state actors, and in particular the Public Council at the Ministry of Environment Protection, played a decisive role in the creation and adoption of the Strategy on Environmental Policy (Listopad 2012c).

The National Environmental Strategy was adopted by the Ukrainian Parliament in December 2010 and it entered into force in January 2011. The initial draft, which was prepared by the Ukrainian-European Policy and Legal Advice Centre (UEPLAC) after consultations with the parliament and government members, the environmental organisations and experts, was dismissed after the government made last-minute changes. A new attempt to pass the law was made by the Ministry of the Environment with assistance from the European Commission, but without any input from non-state organisations, which were informed of a new draft only two weeks before it was sent to the parliament.

The non-state actors insisted on being included in the process. The environment organisations referenced a requirement that made provision of financial assistance by the EU on the adaptation of the Strategy conditional on the mandatory inclusion of non-state stakeholders. The Ukrainian NGOs petitioned the European Commission, which in turn signalled to the Ukrainian government that no EU funds could be transferred to Ukraine unless the government opened up the process to the input from civil society (Peregón 2011). As a result, the government organised a second hearing of the draft, where most NGO comments concerning technical and practical details and participatory rights were included into the new draft, which was later passed by the Parliament (UCIPR 2011).

A similar procedure was followed in the adoption by the Ukrainian government of the National Action Plan on Environment Protection for 2011–2016 (NEAP). NEAP elaboration was characterised by the active involvement of NGOs in consultations and drafting. Non-state actors organised a number of regional and national meetings to discuss the content and prepare comments. The Ministry of the Environment Protection received about 1300 comments; it analysed them and responded with feedback to each public comment together with explanations. The interdepartmental body, Joint Monitoring Group on Sectoral Budget Support (JMG SBS) was established; indicators for SBS NGOs were discussed with NGOs and the latter became observers to the Joint Monitoring Group.

The legislation on access to environmental information was also improved following public demand. At least two steps were taken to improve the situation regarding access to environmental information: the adoption of the Law on

Access to Public Information and an approval of the Order on Public Disclosure of Information (UCIPR 2011: 95–6).

During these rulemaking processes the government was forced to consistently cooperate with many Ukrainian and international institutions and a variety of non-state actors that previously had not been included in rulemaking on environmental issues, such as environmental organisations, economists, analysts and experts working in different areas (EaP-Csf 2012).

In general, the organisations included such CSOs and movements as MAMA-86, the National Ecological Centre of Ukraine, the Ukrainian River Network, regional groups, the Ukrainian environmental NGOs Environment-People-Law, ‘Rosa Vetrov’, Ecological League, EcoPravo-Kyiv, the Centre For Preservation Of The Wild Nature, research centres such as Science Centre Of The Reservation, Kyiv Ecological And Cultural Centre, as well as a number of coalitions such as ‘For the Wild Nature’, ‘Alter-Eco’ and ‘Green Light’. They also included regional groups, media, government and activists such as ‘To Pure Springs’ and ‘Wind Rose’ in Donetsk or ‘Environment- People-Law’ and the ‘Bureau of Environmental Investigations’ in Lviv.

Despite the successful adoption of the law, its implementation was hindered by a delay to the sectoral assistance in 2012, which was caused by the non-environmental issues. A failure to reform the system of the management of state’s finances caused a freezing of the assistance, with the Ukrainian government, as a result, being unable to implement a number of measures listed in the Strategy and the NEAP (EU-Ukraine monitoring 2013). It was only in August 2013 that Ukraine approved the Strategy of the Development of the Public Finances Management System and made possible the restoration of the financial cooperation between the Government of Ukraine and the European Union in the frame of Financial Agreements on SBS Programmes of support to the State policy implementation in the energy, environmental protection, transport and border management sectors, with the overall amount being some 210 million euro in 2013–2015 (SBS 2013).

Even more important was the role the non-state actors played to prevent the government removing key functions from the Ministry of Environment. An initiative of the government – law N10-218 – originally aimed at significantly diminishing the capacities of environmental actors to monitor the activities in the sector. In this case, the non-state stakeholders were able to put enough pressure on Yanukovych’s administration to remove the harmful provisions from the law.

The adoption of law No. 10-218 was equally important for the environmental agenda as, being a part of the administrative reform, it empowered the non-state actors to monitor and counteract the violation of environmental protection legislation. However, the process was not straightforward. It took the active efforts of a coalition of environmental non-state stakeholders, which five times prepared and lobbied for a revision of the draft law in the Verkhovna Rada and the Presidential Administration (Boreyko 2012; Listopad 2012a). This was initiated and completed with an EU assistance grant from the Sectoral Budget

Support. Draft law N 10-218, as it went through the first hearing in the Verkhovna Rada, was heavily criticised and opposed by the non-state stakeholders for its abolition of ecological monitoring.

Additionally, draft law No.10-222 addressed the proposal to eliminate territorial bodies of the Ministry of Environment Protection (which gather information, inspect and monitor) and remove the right of non-state actors to monitor forests and counteract poaching (Boreyko 2012). Interestingly, the Ministry of Environment Protection (MENR), which was a target and ‘victim’ of the reform as the law planned to deprive the MENR of a number of its functions, was passive in the process and did not participate in preparation or discussions of the laws, leaving the environmental groups to defend its interests (Listopad 2012b). Finally, the draft law decreased the powers of the Ministry of Environment Protection by aiming at less legislative regulation of the sector in order to provide more power to the President’s office to govern through his decrees (Listopad 2012c).

The law was later significantly altered after a number of meetings and discussions between the deputies, project coordinators, and officials from the Ministry of Justice and Ministry of Environment Protection and non-state stakeholders (from academic and religious to civil society groups), who were able to suggest and push forward their amendments to the law. This broad coalition was able to get through their recommendations and amendments that would prevent the destruction of the state system of environmental governance by altering 19 other environmental laws.

After the passing of the first draft, the non-state actors organised a public campaign to point at the dangers of the draft law and organised a coalition of 80 organisations to impact rule adoption. They elaborated the amendments to the law to negate its negative effects and worked with the Presidential representative in the Verkhovna Rada to explain their position and promote their version of the law. The representative of the European Commission or relevant agency was present at the discussions and meetings supporting the contestation during the rule adoption stage.

During the years 2010–2013, the non-state actors actively participated in rulemaking, despite the opposition of the government, and with the assistance of the EU were able to have an input on the legislative process and defend their interests. The key legislative documents, the NEAP and Strategy, as well as new administrative law in their final versions reflected the interests of non-state actors and prevented the last minute changes to the draft laws designed to manipulate and promote special interests.

In this regard, under the Yanukovych administration the process of institutional change was initially different from the migration sector, where reforms, if undertaken were immediately subservient to the interests of the entrenched elites. This was a result of the insistence of the EU for more deliberative rulemaking and the empowerment of non-state actors to promote and defend their interests. Yet, due to problems with the EU financial assistance in 2012, which was frozen for most of the 2012–2013, and the ‘geopolitical turn’ in late

2013 and subsequent domestic unrest and government collapse, the realisation of the initiatives was postponed in the sector until 2014.

After the election of Petro Poroshenko as President in May 2014 and the formation of the new government coalition after the Parliamentary elections in October 2014, the non-state actors would continue to drive their sectoral initiatives forward and would make the government take a more pro-active position to progress with the reforms. In the next sub-chapter, the reforms in the sector and the role of non-state actors and the EU are discussed. In particular, the introduction of the reforms of the National Reserves, the State Ecological Inspection (SEI) and the fight against corruption in the sector especially through e-government, aimed at increasing transparency, accountability and public participation, is analysed.

3.4.5 After the 2014 revolution: The Fight against Corruption through increasing transparency and accountability

The reforms went further after the Euromaidan Revolution and in particular after the Parliamentary elections in October 2014. With the insistence of non-state actors and due to their developed capacities, which were combined with greater professionalisation of the Ministry and its pro-active reform position, the environment sector has witnessed the initiation of a number of reforms aimed at further developing the sector's transparency, accountability and public participation.

Among the reforms, the introduction of e-government, reform in principles of a formation of the Public Council, reform of the SEI and National Reserves management are to be highlighted. Importantly, these reforms initiated under the pressure of non-state stakeholders in the sector, show the ability of societal pressure to oppose vested interests and much more effectively fight corruption when compared to the EU-coordinated anti-corruption reforms in the migration sector. The changes occurred despite a lack of funding and under the initiative of the non-state stakeholders themselves, and show a drastic difference to the outcomes in the anti-corruption reforms promoted by the EU under Visa Liberalisation Action Plan.

Despite strong entrenched interests and widespread corruption, the environmental protection sector became one of the most dynamic sectors in anti-corruption reforms. As shown below, this case is to show the integral role of the non-state stakeholders in promoting the reforms. During the Yanukovich presidency, they were able not only to promote European Union's agenda but also perform a watchdog function and prevent the destruction of key environment monitoring and controlling functions, which was planned under the administrative reform.

These efforts were supported by the process-oriented strategy of the EU, which enabled the non-state stakeholders to take part in rulemaking and empowered them via financial and technical assistance. The non-state groups

actively participated not only in rulemaking but also in monitoring of the government actions. Moreover, after the Maidan Revolution the combination of pro-active ministry and empowered non-state stakeholders transformed environmental protection into one of the leading reform sectors. As this case shows, the key role in inducing institutional change in the environment sector has been played by the inclusive policies of the EU and the empowering of the non-state stakeholders to participate in decision-making and monitoring.

After the Euromaidan Revolution, with the insistence of non-state actors and due to their developed capacities, which were combined with greater professionalisation of the Ministry and insistence of donors, the environment sector initiated reforms to increase transparency, accountability and public participation. These changes followed the examples of e-government, State Ecological Inspection and National Reserves reforms, which are discussed below.

E-government became one of the key initiatives in Ukraine to fight corruption and increase transparency. Eight different governments promised the introduction of e-government in Ukraine, but it took a coalition of non-state actors and in particular ICT Competence Centre, E-Gov Agency, civil initiative groups and volunteers at the sectoral level to launch the reform in Ukraine. The President made the creation of e-government a priority; however, in the beginning, even the creation of the system of electronic documentation did not work as planned and was suspended already on November 2014 after its launch the preceding month (UP 2014b).

Traditionally identified as one of three types of anti-corruption approaches (Shim and Eom 2009), e-government has a consistently positive impact on reducing corruption. E-government is a part of a social change approach based on the idea of change through social empowerment of citizens and their participation in institutional reform movements (Johnson 1998). E-government can be an effective tool to reduce corruption by promoting good governance and strengthening reform-oriented actors. Specifically, e-government can reduce corrupt behaviours externally by enhancing relationships with citizens and internally by more effectively controlling and monitoring employees' behaviours. E-government and increased transparency allows for the creation of a system of complex monitoring for non-state stakeholders (SlovoDelo 2015).

The idea of the e-government in Ukraine is broader than merely reforms in the environmental protection sector, as such involving the administrative services like the issuance of biometric passports or the 24/7 online provision of the numerous assistance, including specialised help to businesses, which are a significant sources of corruption in Ukraine; that said, it was the environmental protection sector which was one the early benefactors of e-government. The initial phase of the e-reforms was funded by GIZ (Ehronika 2015) and was later accompanied by additional measures, including the project 'Open Budget' to provide access to the Ministry of Environment spending (budget.eco.gov.ua), mandatory use of the service 'Prozorro' for public purchases and restoration of

a 'single window' service to minimise contacts between bureaucracy and businesses. The transparency of the budgetary spending programme was co-developed by the non-state groups, including Transparency International, the Anti-Corruption Action Centre and Reanimation Package of Reforms.

ICT Competence Centre (ICTCC) in cooperation with the key private stakeholders (Softserve, ELEKS, KM Core and banks) initiated the implementation of e-services, creation of e-identity, BankID and MobileID, in cooperation with several Ukrainian Ministries and regional governments. The externally funded projects, already functioning in 2015, include also transparent budget, which is supported by UNDP. The Lviv government presented a pilot project, launched in June 2015, which alongside BankID created a number of services to be provided online. In cooperation with the government the portal igov.com.ua was launched to provide key administrative services.

In the environmental sector, this policy was translated into demands made of the Ministry of the Environment Protection to disclose its spending and provide information on the users of natural resources (Listopad 2015a). The non-state groups also pushed for the introduction of open competition for the position of the directors of the National Reserves (Listopad 2015c), which was lobbied and advocated for by the civil society groups. The non-state actors have long advocated for their inclusion in the work of the selection commissions to vet the candidates (Listopad 2014). With the support of civil society groups, their demands and external assistance from the EU and Germany, the Ministry of Environmental Protection amended the government's decree No. 777 to include a provision that allowed non-state actors and the media to participate in interviewing the candidates for key positions. The civil society groups went further and launched the first professional Ukrainian Government initiative (<http://igov.com.ua/>), which aims at the public discussion of each candidacy for a ministerial position and their interviewing.

The funding for the project was provided by the German government, which insisted on mandatory consultations with non-state stakeholders and the non-state grant administrator and chief consultant for the project (Listopad 2015b). The non-state consultant was to be selected in an open competition run by the German government and was also tasked with developing the sector-internal anti-corruption reform programme together with the ministry's officials and the assistance of German experts. IT experts from non-state environmental organisations and businesses have developed a range of free online services for socially responsible businesses, such as iC Compulsory Eco-insurance, iC Check Lawfulness Identifier, iC e-Audit and 'Environmental Protection Checks' to better monitor the state of the environment (USPP 2015).

Besides e-governance transparency was promoted through the reform of the principles of cooperation between the executive and non-state actors. The reform of Public Councils was a major priority to effectively provide for a systematic involvement of non-state actors in decision-making and monitoring. Public Councils were created by a special act No. 996 of the Cabinet of Ministers in November 2010 at each state executive agency to guarantee the participa-

tion of civil society in formation and realisation of state policies. Public Councils were granted a few powers such as a right to require information, yet, they largely existed on paper or were created with significant limitations (Zhukov 2011). These Councils or their parallel analogues created by the executive agencies themselves became a source of manipulation and corruption, approving decisions in the interests of the narrow groups and creating shadow schemes of allocating financial resources (as a comparative example, see for instance Churikov's (2016) description of how it functions in the Ministry of Culture of Ukraine).

Non-state stakeholders in the environmental protection sector made an open and transparent formation of the Public Council at the Ministry on a competitive basis as one of its goals. Public Councils with their untapped powers could potentially guarantee a systematic involvement in the work of the Ministry.

In cooperation with a public organization 'Electronic Democracy', the Ministry elaborated a transparent election to its Public Council (MENR 2016). This is a major step forward since closed selection of Council members allowed the executive to select convenient candidates and make shadow deals at the expense of pro-change actors and activists. Transparent elections allow the latter to participate in rulemaking and actively engage with state structures. As a culmination point, the non-state actors pushed forward a structural reorganisation of the sector and cleaning of its ranks. Besides reforming incompetent Public Councils, the problem of deeply-engrained corruption in the sector was addressed by the demands to disband the most corrupt and dysfunctional agency – the State Ecological Inspection (DEI 2015). SEI, which was central to ecological monitoring and had its own dysfunctional Public Council formed from a fake civil society groups through a machination by a deputy head of SEI. After pressure from the non-state groups, which pointed at the pervasive corruption at SEI (Listopad 2015d), it was disbanded in June 2015 and the new SEI officials were recruited through open competition according to the rules earlier established under the joint rulemaking of non-state actors and the Ministry of Environmental Protection.

The new head of the State Ecological Inspection of Ukraine, Andriy Zayika, pledge to involve and work together with public experts and non-state stakeholders, businesses, and civil society in order to build SEI anew from scratch. As a first step, SEI submitted for public discussion a draft concept of reform in the state supervision agency in the sphere of environmental conservation. Non-state organisations supported the new initiatives, in particular those proposed by SEI in partnership with the government, businesses, and public organisations, as a strategic priority in environmental protection (USPP 2015).

3.5 Summary

This chapter first presented the process of institutionalisation of the EU-Ukrainian political and economic relations and how the EU defined an agenda for intensification of political and economic cooperation with Ukraine. The EU promoted reforms by combining the reforms to incentives such as the access to the EU's market through the establishment of the Deep and Comprehensive Free Trade Agreements, increased trade and more investment that would follow, and the Visa Liberalisation Action Plan, which would enable Ukrainian citizens to travel visa free to Schengen countries. Its conditionality aimed at domestic adaptation of legislation, capacity building and regulatory approximation to the EU's rules.

Second, the conditions in the sectors of migration and environmental protection and the similarities between them were described. Both were the most likely cases for implementation of EU rules due to low politicisation, adequate incentives to overcome the domestic veto players and established political will. Third, the strategies of the EU in the environment and migration were closely studied. Then, an analysis of how the Ukrainian government responded to the EU strategies under both Yanukovich and Poroshenko followed.

The main finding of these cases was to show the difference in the EU strategies. As the case study of the migration sector shows, the EU has failed to induce change despite presence of adequate sectoral incentives, successful alteration of the Ukrainian government's preferences toward implementing the EU requirements to obtain the visa free regime, elements of shared ownership between the EU and the Ukrainian government and the availability of financial assistance aimed at facilitating rule adoption and state capacity building. In its attempts to induce institutional change in the migration sector the EU has followed the outcome-oriented strategy.

In the migration sector, the EU bases its policies on transferring its rules and building the capacities of the elites. The EU offers considerable incentives to alter interests and preferences of the government so that the latter would adopt and implement the selected rules. Monitoring was based on checklist compliance. In sum, while the EU policies led to formal rule adoption, they failed to overcome entrenched interests in the migration sector and induce sustainable institutional change.

In the environment sector, rulemaking was flexible, which allows a diverse set of stakeholders to participate in the decision making and monitoring process. The EU provides the target state with a set of incentives but focuses more on capacity building of both state and non-state actors as its institutional goal, multiplex ties with the government and other stakeholders and joint problem solving feedback. Assistance was distributed among a diverse set of stakeholders. State and non-state actors took part in monitoring, while participatory decision-making and problem solving provided domestic actors with some freedom in rulemaking and their implementation.

During Victor Yanukovich's presidency, with EU support civil society developed its capacity in the environment sector and was empowered to be able to participate in monitoring and decision-making; that resulted in generally good progress being made by the Ukraine in implementing its 2010 National Environment Strategy, for which the European Union provided sector budget support (ENP Progress Report 2015). However, the lack of interest and engagement on the part of the Ministry of Environmental Protection slowed the pace of reform. Only after 2014, after a sudden change in the role of the society and near collapse of the state, which also led to the emergence of pro-active ministry in a short while with civil society representatives taking their major roles, had reform in the environment sector significantly accelerated under the control of and with active participation by the non-state stakeholders.

The main implication of this chapter is that external interventions, which mainly rely on providing knowledge and resources to incumbent "pro-European" elites, in the end may fail due to a major resistance from the same elites. At the very best, the outcome of such external approach to induce change is a partial reform that does not challenge the status quo and hold on political and economic power. In this regard, to reform the system the focus should rest in assisting the constructive efforts from within, which mainly arise from the societal actors and pro-reform non-state stakeholders. To overcome the resistance of the system, the combined efforts of a wide coalition of domestic and international actors is necessary.

The next chapter serves as a vivid illustration that Ukraine's case is not unique and that the problems that the EU faced with promoting institutional change in environment protection and migration sectors in Ukraine are similar in Moldova. Next chapter looks how the EU strategies work in Moldova and whether there are similarities in outcomes and policies, which can share more light on the construction of the EU external policies and their efficiency and whether the empowerment and inclusive rule making can play in promoting change have similar impact on the outcome of the EU intervention in Moldova.

4. REFORMING MOLDOVA: THE ENVIRONMENTAL AND MIGRATION SECTORS

This chapter continues the discussion of the EU attempts to induce change in the post-Soviet space using the example of Moldova. The EU policies towards Moldova are of particular interest. It is a small country with strong societal support for EU integration, which was a subject of a targeted EU intervention to induce change, and was regarded as a best case for external intervention. Indeed, a few years after the launch of the Eastern Partnership, Moldova was referred to as a 'star pupil' of the EU-led reforms in the region. In her Government address to the Bundestag on the eve of the Eastern Partnership Summit in Vilnius, Angela Merkel, declared that 'in spite of some domestic turmoil, the Republic of Moldova has perhaps demonstrated the greatest political will of all the Eastern partners to adopt and implement reforms' (Merkel 2013).

Moldova was considered to be the leading reformer of the Eastern Partnership, heading the EaP indices on reform progress. For its preparation and early implementation, Moldova gained this status early on, which was recognised and welcomed by the EU. It was the first Eastern Partnership country to pass through the requirements of the Visa Liberalisation Action Plan and the first one to form a pro-European coalition after campaigning under the programme of the EU integration and have an opposition which advertises its previous pro-EU reform efforts. European integration was supported by some 60–70% of the population in the late 2000s, which was the highest rate among the Eastern partnership countries (PPI 2014).

Former Prime Minister Iurie Leancă highlighted that 'the EU welcomed the positive dynamic and quality of the actions carried out by Moldova's authorities, and described as exemplary the Moldovan authorities' domestic organisation while monitoring and implementing the scheduled actions'. Ștefan Füle commented on Moldova stating that it was 'amazing how much ha[d] been achieved' (Litra 2012). According to the EU officials, the coalition governments have demonstrated a willingness to implement reforms, including more eagerness to cooperate with civil society. On their side, Moldovan officials highlighted the importance of the exchange of experiences and best practices, as well as the capacity-building opportunities deriving from the cooperation with the EU.

Moldova should thus be an example of the success of EU policies to induce change. As generally suggested, the EU had everything at its disposal: the preconditions for the efficient rule transfer were in place; the incentives offered by the EU were right; clear EU benchmarks and goals provided the government with clear reform targets; the pro-reform domestic coalition had strong support from the EU and the Moldovan society.

As in case of Ukraine, to stipulate reforms and to change institutional environment in Moldova, the EU offered Chisinau access to its market and visa-free travel to Moldovan citizens, for which Moldova was supposed to undertake

a number of reforms to bring its institutions into compliance with the EU standards. For example, as discussed in detail below, the prospect of visa-free travel was appealing to both the political elite and ordinary citizens alike as being economically beneficial in the short-term perspective (Index 2013: 78). For the EU the visa-free incentive was considered to be a necessary catalyst for instigating reforms in the migration sector.

The EU envisaged that strong conditionality and the ‘more for more’ approach using the Visa Liberalisation Action Plan as a clear and focused reform plan and offering such an incentive as a visa free travel would stipulate genuine progress in the areas of migration, the rule of law and human rights and would induce reforms that would make state institutions more capable and efficient, transforming them into the civilian institutions with capacity for strategic planning and oversight of operational agencies.

In this respect, by offering VLAP and financial assistance to implement reforms, the EU pursued the goal of the creation of an area of security and prosperity in Moldova and the EaP region in general, while the Moldovan government declared its commitment to pursue established goals, including the fight against corruption, organised crime, illegal migration and human trafficking, promoting efficient law-enforcement and protecting fundamental human rights.

However, the EU policies did not live up to expectations. Moreover, the EU appraisals of Moldova’s reforms coincided with one of the largest instances of fraud initiated within state institutions. Despite being the proud holder of the title of ‘key reformer’ state in the post-Soviet space and the EU’s golden example, on September 6, 2015, Moldovans went out to protest against widespread corruption in the government and, in particular, against the stealing of \$1 billion from the country’s three main banks, which the state was forced to bail out in 2014. The final trigger was a leaked report, which said that a 28-year-old businessman, Ilan Shor, linked to the ruling coalition, was the main co-ordinator and beneficiary of what has been later described by Kroll as entering into a series of transactions which had ‘no sound economic rationale’, having emptied the banks of funds until ‘they were no longer viable’ (Whewell 2015). The missing money caused a rapid depreciation of the national currency, the leu, and consequently a decline in living standards (BBC 2015).

As discussed below, despite positive evaluations of Moldova’s progress and its proclaimed achievements, institutional change remains largely formal, while the implementation lags behind in some key areas. In this regard, like in Ukraine, which was offered visa free travel in 2016 despite a dismal record, Moldova received its visa free travel despite numerous problems with rule implementation in the migration sector. Even before the corruption scandals emerged in 2014, which deeply disappointed the European Commission and EEAS officials (European Council 2016; Tapiola 2016), Moldova failed to implement a number of important commitments of the EU-Moldova Association Agenda (European Council 2016).

At a later stage, the EU has sharply criticised the new regulations and the hasty manner in which they were adopted by the Eastern Partnership reform frontrunner (Oprunenco 2013). As Ștefan Füle stressed in one of his public addresses to the Moldovan government, ‘the urgency of strengthening political accountability and transparency; pushing for judicial and law enforcement reforms; and the overarching importance of combating corruption at all levels’ remained unresolved.

This chapter tries to understand, why the EU policies failed to bring about the expected institutional change in Moldova, why the reform progress differs from widespread expectations, and why the EU arrived at diverging outcomes at the sectoral level. As this case highlights, Moldova has been a problematic EU’s neighbour, whose systemic failures frequently overshadowed the widely publicised achievements of the government (Popescu 2015).

As in case of Ukraine, this chapter primarily addresses the EU strategies of institutional change. By analysing the impact of the EU policies on the key domestic obstacles to implementation of the adopted rules and institutional change, this chapter shows how the EU policies of institutional change reinforce or help to mitigate the existing domestic problems. It particularly focuses on how the EU interventions affect domestic institutions, as discussed in this chapter. The difference in the EU strategies serves as an explanation of the diverging outcomes of institutional reforms in Moldova. In this regard, this chapter analyses and compares the developments in two sectors with diverging outcomes to establish the impact of the EU reform strategies (process-oriented and outcome-oriented) on institutional outcomes. To do that: first, in this chapter it looks at the domestic context and key peculiarities of the Moldovan system of governance; second, it describes the framework of EU-Moldova relations; then comes the third part, the comparison of the EU-induced reforms in migration and environmental protection sectors to identify the differences in outcomes and the factors behind those differences.

4.1 The domestic context

The ‘domestic turmoil’, which German Chancellor Angela Merkel referred to, is primarily the consequence of the dysfunctional political and legal institutions, in particular a weakness in the judiciary and in law enforcement, which are widely regarded as an impediment to institutional reforms (Ghinea 2011). As in the case of Ukraine, a challenge is a state capture by ‘politically engaged’ oligarchs, which use their access to the government to promote their interests. Political oligarchs informally control state institutions, while political parties are considered to be the ‘personal fiefdoms’ of powerful individuals (Gamurari and Ghinea 2014).

The prevalence of entrenched interests predetermines political instability, which many characterise as the biggest reform challenge (Litra 2011: 27). Entrenched interests control sectors of the economy and state agencies and are

interested in maintaining their dominant positions. The incentive structure and constraints of existing institutions, presuppose the prevalence of the entrenched interests and corruption, and competition between the groups in power, which leads to government instability and low state capacity.

As in Ukraine oligarchs dominate economy and politics in Moldova. When in 2009 Plahotniuc and Filat formed a coalition government, they were extremely wealthy businessmen. Oligarch Plahotniuc controlled the second coalition partner – the Democratic Party of Moldova, while Filat then controlled the main coalition party – the Liberal-Democratic Party. The leaders of the third coalition partner – Liberal Party, were shown to have shared business interests with other members of the coalition and were keen to promote their own business projects. The son of former President Voronin, the head of the main opposition party at that time, was also a very ‘successful’ businessman, who after the collapse of the Communist government in 2009 continued to benefit from his connections to Plahotniuc.

The difference in Moldova is a number of influential oligarchs and nominal size of their wealth, though in proportion to the economy their impact is potentially even larger than in Ukraine. Finally, in 2015–2016, shadowy oligarch Plahotniuc managed to undermine his core political and economic rival Vlad Filat and monopolised his hold on power in Moldova (see, for instance, Nizhnikau 2016).

Way (2003: 455), as well as Tudoroiu (2011), show that Moldova’s weak state, tenuous elite networks, and polarised politics provided the key sources of pluralism in the post-Soviet period, yet its immediate source was not a robust civil society, strong democratic institutions, or democratic leadership, but rather incumbent incapacity. Since the 2000s, the policies of the governing Communists led to the formation of a semi-consolidate authoritarian system (Tudoroiu 2015: 658), which they failed to sustain in 2009. Yet, the new pro-European coalition similarly followed the intentions of the Communists to consolidate their power, which led to the political crises in 2013 and 2015. Moreover, due to the internal transformation of the system and the transition from indirect to direct state capture in the 2010s (Tudoroiu 2015), political competition increased between oligarchic groups and the government, whose business and political interests collided, which led to the temporary consolidation of power in the hands of Vladimir Plahotniuc in late 2015.

As in case of Ukraine, Moldova has a divided society with divisions along ethnic, linguistic and identity lines, which are often politicised and used by its political class for short-term gains (Prina 2015). As in case of Ukraine some note that an unfinished process of nation-building presents one of major impediments to Moldova’s development and long-term future (Prina 2015, Cash 2013, Knott 2015) thus only half-jokingly highlighting that the more Moldovan politicians steal, the more they are likely to talk about identity.

In this regard, the key obstacle to institutional change is the state capture and the control of state institutions by narrow interests (Tudoroiu 2015: 657). Limits on access to resources and to forms of social organisation exist, providing the

entrenched elites opportunities to create and distribute rents, thus forming, what has been described by North et al (2009), a limited access order.

As an example, taking a look at the case of the theft from the Moldovan banks, which amount to 1/8 of the Moldovan GDP, it calls into question almost the entire political elite of Moldova, including the five former prime ministers. It illustrates how the entrenched interests and the state capture prevail despite the external efforts and regime change in 2009. For Moldova's prosecutor-general, Corneliu Gurin, the main question is 'why Banca de Economii was defrauded when it was owned by the state, and why that continued after it came under private control' (BBC 2015). Vasile Șarco of Moldova's Office for the Prevention of Money-laundering points not only at the disappearance of the \$1bn from the three banks, but also at an earlier \$20bn operation which used Moldova to launder dirty money from Russia on the way through into the EU (Whewell 2015). Yet, the investigation has obvious problems when it comes to finding (and bringing to justice) the masterminds behind these crimes.

It is not surprising that there is not much political will, as it was hinted at earlier, when it comes to reform implementation. The instability of the ruling coalition is well identified in the political crises, when parliament was unable to elect a president or when the coalition government collapsed. Instability is endemic due to competition and feuding in the governing coalition and corruption. Continuous disagreements within the coalition are a result of clashing interests. In February 2013, the Alliance for European Integration was dissolved following allegations of corruption and tensions within the coalition parties. The Parliament removed the Prime Minister, Vladimir Filat, and the constitutional court ruled that a new Prime Minister had to be instated (Knott 2013). In September 2014, the parliamentary elections again led to inability in the ruling coalition and a failure to elect the Prime Minister in 2015, and the coalition was temporarily dysfunctional until early 2016 after the arrest of Vlad Filat in September 2015.

Besides the political costs and the lack of willingness of the former governments, the reforms were undermined by the low capacity of state institutions, the insufficient professional skills of the bureaucracy involved in the actual implementation of the laws and lack of resources (Hamermann 2012; Litra 2011: 27). State capacity in Moldova is widely recognised as weak and insufficient for a coherent coordination of the European Integration process, which is managed by separate structures within the relevant ministries but suffers from an absence of general policy coordination (Moldova.org 2010). Besides that, national bureaucracy is notorious for its complacency, inertia and unwillingness to change (Oprunenco 2010; EU-Moldova DCFTA 2014).

In this regard, the government's policies in 2010–2015 did not reform the country, but only reinforced domestic malaise and increased social injustice, contributed to growing impoverishment and consequently social unrest and widespread anti-government protests that demanded the elimination of corruption and punishment of the 'looters'. Yet, despite the damaging practices of the government (Kyvyrzhuk and Solov'ev 2016; TI 2014), the EU, though dissatis-

fied (European Council 2016; Tapiola 2016), continued to support the regime (European Commission 2015; UNDP 2016; UN in Moldova 2016; European Council 2016) and its policies, thus reinforcing the domestic problems.

4.2 The EU-Moldova relation framework

As in the case of Ukraine, the attempts to transform Moldova under the Eastern Partnership were not the first ambitious reform plan. Since the 1990s, the EU-Moldova relations have been built on the ambition of the European Union to enter into intensified political, security, economic and cultural relations with Moldova. As in the case of Ukraine, having concluded a Partnership and Cooperation Agreement in 1994 (it came into force in 1998) for an initial period of ten years, the EU established the institutional framework for bilateral relations, set the principal common objectives, prepared activities and intensified dialogue in a number of policy areas. By signing the Partnership and Cooperation Agreement, which covered policy areas from foreign and security policy, trade and economic cooperation, and environmental policy, the EU committed itself to supporting Moldova's efforts to consolidate democracy and finalise its transition to a market economy (Jakubiak 2006: 31).

The implementation of the PCA was supported by Moldova in 1999 by the adoption of the 'Concept of Integration in the EU', which stated Moldova's aspiration for pursuing the path of European integration with the ultimate goal of obtaining EU membership. Yet, as in the case of Ukraine, by 2004 the results of the PCA had not materialised the initial hopes and expectations. Four years after the Partnership and Cooperation Agreement came into force, cooperation in many areas decreased, which forced the EU to review and re-establish its key priorities. Such an outcome was explained by the passive attitude of the Moldovan authorities and the lack of a clear European Union's strategic thinking towards Moldova (Jakubiak 2006).

The first major attempt to reinvigorate and re-institutionalise EU-Moldova cooperation as well as to adapt to the changing international environment of the EU Enlargement was taken in 2004, when the EU-Moldova Action Plan (EUMAP) – a political document laying out the strategic objectives of the cooperation between Moldova and the EU – was adopted. Its implementation aimed at fulfilling the provisions of the Partnership and Cooperation Agreement. Its adoption re-stated the EU's support of Moldova's aspirations of further integration into the European economic and social structures.

The EU-Moldova Action Plan set up political and economic reform priorities with short and medium term focuses (EUMAP 2004). As in the case of the EU-Ukraine Action Plan, the implementation of the EU-Moldova Action Plan aimed at strengthening the approximation of Moldovan legislation, norms and standards with those of the European Union. In the EU's perspective, the Action Plan would prepare the fruitful and lasting foundations for further economic integration, based on the adoption and implementation of economic and trade-

related rules and regulations, with the potential to enhance trade, investment and growth. The EU sought to assist Chisinau in devising and implementing policies and measures to promote economic growth and social cohesion, to reduce poverty and to protect the environment, thereby contributing to the long-term objective of sustainable development. The new Moldovan Government has put it at the centre of Moldova's reform programme (European Commission 2015).

The EUMAP opened a perspective of moving beyond cooperation to achieve a significant degree of integration, including through a stake in the EU's Market, and the possibility for Moldova to participate progressively in key aspects of EU policies and programmes. It is an upgrade in the scope and intensity of political cooperation, through further development of mechanisms for political dialogue with increased financial support through ENPI and support including technical assistance and twinning to meet EU norms and standards, and targeted advice and support for legislative approximation through a mechanism such as TAIEX (EUMAP 2004: 1–3).

Under the European Neighbourhood Policy and the EU-Moldova Action Plan the environment and migration reforms were initiated in Moldova, which aimed at complying with EU standards and policies, strengthening state institutions dealing with migration policy and fighting illegal migration, including illegal transit migration (Moneaga 2011). This process was coordinated by the joint commission for the coordination of migration-related activities, established in August 2006 under the leadership of the Moldovan Minister of Foreign Affairs and European Integration and the relevant EU agencies.

In 2005, Moldova's core political forces showed their commitment to European integration, signing the 'European Strategy' and the 'Declaration on the Political Partnership to Achieve the Objective of European Integration', thereby showing their commitment to bring Moldova along the path of European reforms and European integration (Korosteleva 2012; Raik 2011). As its Ukrainian counterpart, the Moldovan government created the necessary structures to coordinate and facilitate the implementation of this strategic goal, such as the Department for Integration within the Ministry of Foreign Affairs and the National Commission for European Integration. The Prime Minister chaired the latter, while both agencies aimed to coordinate reforms efforts and the implementation of the EU-Moldova Action Plan.

By 2008 the Government had adopted a number of required laws that complied with EU and international standards, some pre-emptively according to the government officials. However, the country's poor implementation of the adopted laws plagued the reform process from the beginning (Adept 2008). The failure, as in case of Ukraine, was explained by the low attractiveness of EU incentives within the framework of the ENP and the EU-Moldova Action Plan, including the absence of the possibility of EU membership for Moldova (Barilov 2013).

The adoption and implementation of the Action Plan was therefore limited from the beginning. Moldova made limited to no progress in the effective implementation of a number of reforms, which constituted the key priorities

under the ENP Action Plan, in particular ensuring the fundamental freedoms of citizens, enforcing effectively national strategies in areas such as the fight against corruption. As noted in the very last European Commission's Progress report on the implementation of the EU-Moldova Action Plan, inadequate allocation of resources, delays with the adoption of secondary legislation and insufficient political backing constituted lasting impediments to the implementation of internal reforms (EU-Moldova Progress Report 2009).

The literature has contributed to the discussion of the inherent problems of the Action Plan's inefficiency. For example, Korosteleva (2012: 107) noted that the Action Plan was seen to considerably politicise the need for pro-EU reforms, including the settlement of the protracted Transnistrian conflict and the necessity for reforms within the area of the rule of law and democracy. Some commentators noted that the Action Plan 'reflected a considerable dose of EU self-interest, and had a strong sense of 'centre-periphery' relations, being quite thin on EU responsibilities' (Popescu 2005: 38) and 'more or less commanding' (Buscaneanu 2006: 26; cf. Korosteleva 2012: 107).

By 2009, the inefficiency of the EU-Moldova Action Plan coincided with growing domestic turbulence. In 2009 the protests against the government led to snap elections and the formation of the pro-European coalition – the Alliance for European Integration (AEI), which signed a declaration, which again committed Moldova to European values and emphasised the ambition of pursuing the European integration agenda. Shortly afterwards, in November 2009 during her visit to Moldova, then the EU Commissioner for External Relations and the ENP, Benita Ferrero-Waldner, announced the launch of the negotiations on the new institutional agreement that would guide the bilateral relations – the Association Agreement – on 12 January 2010. This announcement was accompanied by the promise of the European Commission in December 2009 to provide more financial support and a commitment to facilitate the support of global donors. In total, a pledge was made for Moldova to receive \$2.6 billion during the first months of the AEI coalition's rule (Belitser et al 2010; Lobjakas 2010).

In the meantime, the negotiations on the EU-Moldova Association Agreement were combined with the adoption of a set of special reform priorities identified by the EU for Moldova in May 2010 (the Association Agenda) aimed to strengthen close sectoral cooperation and capacity building measures of the EU (European Commission 2011; Raik 2011). Besides the official framework, unofficial and official political consultations between EU and Moldovan officials as well as Moldova and the group of the EU member states supporting Moldova's aspirations became regular within a set of international structures, such as the EU Political and Security Committee, the Visegrad Group Ministerial Councils, the Council Working Party on Eastern Europe and Central Asia, and the EU Political Directors as well as various transnational groups (Korosteleva 2012: 109).

In this regard, the negotiation on a new bilateral institutional framework (the Association Agreement) and the inauguration of the Eastern Partnership (as the

complimentary multilateral track) was designed to reinvigorate the dialogue and cooperation between the EU and Moldova and stimulate the reform process through the provision of clear goals, benchmarks, more assistance and adequate incentives and high-level contacts to increase the elite's socialisation.

We now turn our attention to analysing the EU relations with Moldova since 2010 in order to establish the extent of success and the potential limitations in furthering EU-Moldova partnership under the Eastern Partnership. The subsequent sections look at how the EU attempts institutional change under the Eastern Partnership in migration and environment protection sectors in more detail.

4.3 The EU's institutional change in Moldova's migration sector

One of the cornerstones of the EU-Moldova cooperation under the Eastern Partnership is the EU-Moldova Visa Liberalisation Action Plan (VLAP). The possibility of visa free travel, which was presented in VLAP, is a key incentive at the disposal of the EU in its relation with Moldova. As it was widely highlighted, the Visa Road Map to Moldova was an enormous incentive for democratic reforms and the EU articulated a clear message that visa free regime would be granted when Moldova implemented the necessary outlined conditions (Moldova.org 2010).

The core of the outlined conditions was presented in the VLAP. Moreover, the EU granted Moldova the visa free regime. The findings of the Commission monitoring the reforms suggested that the progress achieved by Moldova in 2011–2014 in all areas covered by the four blocks of the VLAP was steady and effective, which demonstrated that the Visa Liberalisation Action Plan has proved to be an important and particularly effective tool for advancing far-reaching and difficult reforms in the Justice and Home Affairs area and beyond, impacting areas such as the rule of law and justice reform, including sound party financing, the review of immunities, and administrative modernisation. Beyond VLAP benchmarks, the Republic of Moldova took further steps in the reform of Judiciary as well as the Prosecutor's Office (Progress Report 2014: 36).

For Moldova, the importance of the visa free regime stems from its popular support and prioritisation of its implementation in domestic politics. Prime Minister of Moldova Iurie Leancă promised that Moldovans would have visa-free travel to the EU by the end of 2012, while his predecessor, Vladimir Filat, guaranteed that Moldova would sign a new agreement with the EU at the Vilnius Summit in 2013. The prospect of visa free regime has a broad popular appeal in a country where half a million of its citizens work abroad and approximately 400,000 have Romanian citizenship (PPI 2014).

In fact, as Heintz (2007) noted, migration is considered to be the most important and visible feature of social life in the country and it is the hottest topic of daily debate. In this regard, the popular appeal of the visa-free regime became a vital political tool for the Government in light of the 2014 parliamen-

tary elections (Jaroszewicz and Calus 2013). It not only presupposed a wide consensus over the visa liberalisation process within the government, but also in the political system, as all political parties strongly supported the visa liberalisation. The main opposition party emphasised that the ruling coalition was reaping the benefits of the opposition's own policies.

Furthermore, for Moldova it was an important issue as it allowed the government to highlight its European aspirations and Moldova's European identity. As Moldova officials continually tend to stress, Moldova shares European values and is already a part of the united Europe. According to Vladimir Filat, 'Moldova is a European state with European citizens. And the visa regime's liberalisation will allow us to remove those artificial obstacles to the unity of European citizens, as our return to the European family is a natural and irreversible process' (Moldova.org 2010). Also, the visa-free travel was considered to be a policy instrument towards Transnistria as it appealed to its people due to the opportunity of sharing the benefits, thus increasing the value of holding a Moldovan passport (Jaroszewicz and Calus 2013).

Simultaneously, as in case of Ukraine, other factors, which may serve as alternative explanations did not have a strong impact on the reform process. Major Moldova oligarchs with strong vested interests were a part of the government, which initiated and advocated reforms in the sector. Few of them had strong Russian links or business interests in Russia. Pro-Russian politicians were not strongly positioned in Moldova until 2014 and remain out of governance and influence on the government.

Relevant agencies were ready to follow the EU plans and recommendations and base their policies on the EU goals creating an unprecedented enthusiasm in the EU over Moldova and trajectory of its pro-European reforms. Moldova-Russia relations were at their low point, leaving the latter with little leverage over Chisinau's decisions. While Moldova remained quite low on Russia's agenda until the 2014 parliamentary elections, neither migration nor environmental protection sectors represented a priority for Moscow. Romania's policy towards Moldova was synchronised with the EU. Thus, a geopolitical factor did not play a major role in a studied period. On the contrary, in a country dependent on agricultural export and remittances the sanctions put forward by the Kremlin against Moldovan labour force and export, only should have strengthened the ambition of the government to implement the EU integration agenda.

To show its readiness and willingness to reform, Moldova initially followed the strategy of pre-emptive implementation. As the Moldovan government put it, first of all, Chisinau 'is not a demander, but a serious and responsible partner' (Litra 2011). The Moldovan authorities, inspired by the experience of the Western Balkan countries adopted the strategy of implementing reforms early without any EU demand. As a result, before introduction of VLAP, Moldova tried to imitate the Western Balkans experience setting it on a similar path to Macedonia, Montenegro and Serbia (Moldova.org 2010).

At the same time, Moldova took great interest in participating in the EU flagship initiatives. In 2008, the EU Mobility Partnership – a pilot instrument designed to manage the migration flows – was launched in Moldova. Before VLAP Moldova implemented a number of initiatives through the Mobility Partnership, which created good preconditions for rapidly advancing on certain dimensions within the preparatory talks.

By 2010, Moldova had not only implemented the most common tools of the EU migration agenda towards the Eastern Partnership countries, consisting of the adoption of the readmission and visa facilitation agreements, but also had acted as a platform for the deployment of pilot EU initiatives in the migration sphere, such as Mobility Partnerships and the Common Visa Application Centre. The policies and implementation of the Mobility Partnership in Moldova helped the creation of the perception of Moldova as a willing EU partner. Echoing the position of the European Commission, one of its officials enthusiastically lauded Moldova's resolute approach: 'I am very impressed because there were indeed readiness and commitments at all levels. No doubt that Moldova qualifies for [the] visa liberalisation [action plan]' (National Convention 2011).

As in the case of Ukraine, the cornerstone of the migration reforms was the Visa Liberalisation Action Plan. VLAP was designed as the most coherent element of the EU-Moldova relations. It had clear demands, regular monitoring missions and visible rewards (passing from Phase I to Phase II and final recommendations). It included complex reforms and an institution-building process, which prepared Moldova for deeper European integration. As in the case of Ukraine, it focused on issues besides the narrow visa regime, including anti-corruption and anti-discrimination legislation. To stimulate reforms, VLAP presented a 'clear conditions – clear rewards' model (Ghinea et al. 2011).

In 2013, Brussels decided to decrease the period of the Visa Liberalisation Action Plan due to the promising progress that had been made. While originally it was planned that the visa free regime for Moldova would be launched no earlier than 2015, the positive decision to launch was moved forward to May 2014 (Kommersant 2014). On 15 November 2013, the European Commission issued the report on the implementation of the Visa Liberalisation Action Plans with Moldova, Ukraine and Georgia. It assessed the Moldova's progress in the most positive terms and recommended to the Council of the EU and the European Parliament to lift the visa requirement for Moldovan citizens holding a biometric passport, allowing them to enter the Schengen area for up to 90 days.

Soon, in May 2014, Moldova officially received the visa free regime. This decision alongside the implementation of VLAP requirements should indicate the success story in Moldova in implementing the reforms in the migration sector. However, as this case shows, despite the EU's decision to grant visa-free travel the extent of the reform implementation in Moldova was limited. In some key areas, despite showing good progress in terms of adoption of legislation, the implementation of recently adopted laws remained sluggish and overall problematic.

The most sensitive issues identified by the European Commission were similar to those of Ukraine and included such issues as the adoption of anti-discrimination legislation (in both countries as of the time of preparation of reports) and progress in carrying out anti-corruption reforms, including the GRECO recommendations on tackling corruption (in both states) (Ghinea et al. 2011). The EU has succeeded in improving state capacity in the area but not in reforming the institutional system. Moldova improved the work of its security agencies, streamlined the regulatory and legal framework and ensured better control on the Transnistrian segment of the eastern border of Moldova, but it failed to achieve sustainable institutional changes or build not only stronger but also more transparent and inclusive institutions.

In the following sub-chapters this paper analyses the EU's attempts to induce institutional change by looking at the modes of rulemaking and empowerment. By looking at the institutional goals it describes the degree of flexibility in rulemaking, while the section on assistance and monitoring discusses the focus of the EU capacity building policies and its primary benefactors. In sum, it helps to describe the EU strategy of promoting institutional change in the sector.

4.3.1 Institutional goals

The EU strategy in the migration sector was outcome-oriented. Institutional goals in the migration sector were dyadic and aimed at the adoption and implementation of the EU rules within the framework of the Association Agreement and the Visa Liberalisation Action Plan (VLAP). The rule selection was unilateral and decided by the European Commission, which was the rule provider deploying all measures necessary to ensuring that the relevant EU legal norms and standards were put in place and implemented (Ghinea et al. 2011). The assistance and monitoring were built on the dyadic ties between the Government and European Commission. The change was aimed at building state capacity to adopt the EU rules as VLAP required a fundamental realignment of state services and envisioned reforms, including remaking justice and home affairs sector. Thus, significant effort was directed at capacity building, coordination, and transnationalisation (PASOS 2011), with mostly state-aimed assistance, which excluded non-state stakeholders.

The VLAP was intended to be tailor-made to the Republic of Moldova's needs and progress in the visa dialogue based on the considerations and analysis made by the EU. It took into account the 'gap analysis' – the findings of the EU's exploratory mission on the state of affairs in the sector – produced during the preparatory phase of the visa dialogue and detailed information provided by Moldova covering the four blocks of issues within the dialogue. Hence, prior to presenting VLAP, the EU-Republic of Moldova Visa Dialogue was launched to examine the conditions for visa-free travel of citizens of Moldova to the EU and a series of consistent visits and meetings of Moldovan and EU officials and visits by Commissioner Štefan Füle and others to Moldova (Challenges 2011).

The 'gap analysis' allowed for the elaboration of a set of specific recommendations in order to develop necessary conditions for the visa-free travel. Using the findings of the exploratory phase of the dialogue, the Council pinpointed the necessary reforms upon which the Commission prepared a draft action plan setting out all the conditions to be met before the possible establishment of a visa-free travel regime (Council of the EU 2010). In case of substantial change of the situation, the Commission was entitled to propose a review and re-adaptation of the Action Plan.

Commissioner Malmström presented the Visa Liberalisation Action Plan to the Moldovan authorities on 24 January 2011 (European Commission 2011). The EU Member States were fully associated with the process, including being consulted on the draft action plan and setting benchmarks through the Council of the European Union. As in case of Ukraine, VLAP comprised of four sets of reforms that Moldova had to fulfil before the abolition of the visa regime. Its focus had two major parts, namely highlighting the institutional goals of rule adoption by legal approximation with the *acquis* to align administrative structures and processes, and the building up of institutional capacities (PASOS 2011; VLAP 2011).

The structure of VLAP was similar to that offered to Ukraine. The first phase of VLAP was focusing on rule adoption and adjustment of the legal framework to European standards. It included 41 legislative acts, which were mostly approved and adopted by the Parliament or by Government normative acts. The second phase focused on the implementation of the adopted rules. The established benchmarks dealt with the conditions and goals necessary to be implemented for visa liberalisation and included significant improvements in the level of document security, including biometrics; strengthening of border and migration management and asylum policy; reforms and cooperation in the area of public order and security (including the fight against human trafficking); addressing external relations issues (including human rights and fundamental freedoms) linked to the movement of persons (VLAP 2011).

Among numerous priorities, it, for example, emphasised the adoption of a new law on the state border allowing the Moldovan Border Guard Service to cooperate with all competent law enforcement, the Ministry of Interior, the General Prosecutor's Office, the Justice Sector, and also the passing and implementing of the Human Rights National Action Plan and the anti-discrimination law, including the international conventions to which Moldova was not a part yet. These reforms and improvements, as well as the reform of relevant authorities, including police forces, should have resulted in a high level of effectiveness corresponding to relevant European and international standards (VLAP 2011).

To transfer selected rules to the domestic context at a formal level, two governmental planning documents dedicated to implementing Visa Liberalisation Action Plan were enacted: The National Implementation Programme of the European Union-Republic of Moldova Visa Liberalisation Action Plan and the

Additional measures to implement the National Implementation Programme of the European Union-Republic of Moldova Visa Liberalisation Action Plan.

Upon the requirement of the EU, to coordinate the enforcement of the VLAP, a special coordination group was created at the level of ministers/deputy ministers, as was a special working group of experts immediately after receiving the Visa Liberalisation Action Plan. The National Annotated Agenda was drafted and adjusted by the Working Group on coordination of the visa liberalisation process. Additionally, the Visa Task Force was created as an inter-ministerial group to improve cooperation within the government. Thematic working groups were created to fulfil the specific tasks of the VLAP, like drafting the strategy on Integrated Border Management and its implementation plan.

After being consulted by the European Commission, the National Annotated Agenda was approved by the Government of the Republic of Moldova on the 16 February 2011. The National Annotated Agenda consisted of a set of actions to be undertaken in 2011–2012 to fulfil both tiers of benchmarks of the Visa Liberalisation Action Plan: consolidation of the legal framework (first phase), and effective and sustainable implementation of the relevant measures (second phase). Moreover, the priority reform actions were split into a set of concrete actions to be undertaken with clear mention of authorities responsible for implementation and deadlines.

Additionally, the government was required to adopt the National Strategy on Migration and Asylum, which would help to establish the necessary coordination mechanisms and put Moldova's legislation on migration and its undertaken obligations together (Gurin 2012). The National Strategy on Migration and Asylum (2011–2020) was approved by the Government on 6 July 2011. The Strategy was meant to facilitate short, medium and long term comprehensive planning and managing of migration and asylum policies. The draft was adopted on 9 November 2011 in order to provide concrete steps to smoothly put into practice the guidelines contained in the Strategy. The law aimed at meeting European standards and ensuring the implementation by the Moldovan authorities of the EU requirements (Siscan 2012: 85).

As this research aims to show, the Moldovan government was mainly following the EU guidelines and requirements in establishing necessary legislative and management structure. Yet, these efforts were mainly based on the dyadic ties and cooperation between the Moldovan Government and the European Commission, in which the former mainly followed the requirements of the latter.

This bilateral cooperation and visa dialogue also had provisions that supposed that the European Commission and the Moldovan authorities would jointly examine the technical preconditions for the establishment of a visa free regime and related progress (PASOS 2011). The indicators to be included in VLAP were also supposed to be based on jointly agreed and measurable progress indicators and it also presupposed the establishment of effective mechanisms for sharing information within the format of the negotiations. (PASOS

2011), including the creation of the relevant Joint Committee to meet and analyse development (AP 2010).

Despite the fact that the institutional goals did have provision for joint decision-making, they were of a symbolic nature and focused mainly on intergovernmental ties. Rules were selected by the EU to be implemented by the government. At the same time, other important stakeholders, even the Parliament, were excluded from the coordination process. The Parliament, for example, was not consulted on the key legislations, such as the National Annotated Agenda, or properly informed or included in any of the created mechanisms such as the Visa Task Force.

4.3.2 Empowerment of stakeholders: assistance and monitoring

The content of VLAP and further legislative activities of the government points at the focus of EU efforts on building the capacity of Moldovan state institutions (PASOS 2011). Assistance and monitoring in EU-Moldova dialogue in the migration sector are built on dyadic inter-governmental relationships and funded through the ENPI and targeted interventions under the ‘Thematic Programme for the Co-operation with Third Countries in the Areas of Migration and Asylum’ as in the case of Ukraine.

Moldova is one of the biggest per capita beneficiaries of EU funds as EU assistance supports projects ranging from the justice sector and healthcare reforms to energy efficiency, and vocational education and training (Index 2013: 86). While EU funding amounts to some 5% of GDP, since 2009, the money through assistance or direct budgetary support mainly went on institution building (Ghinea et al 2011), yet the EU funding in migration sector mostly targeted and supported state institutions and rule adoption and capacity building. The EU primarily followed a policy-driven strategy to support the national development priorities, in which funding and policy were tied together and the emphasis is on national ownership. It had provisions for non-state actors support and their monitoring but, as shown below, non-state stakeholders were mostly excluded.

Only for the period 2007–2010, Moldova was allocated financial assistance of €209.7 million. Moldova was the largest recipient of aid after Ukraine (€494 million) and received twice more than any other participant country per capita. For the period 2011–2013, Moldova was allocated annually €94 million besides significant additional targeted funding through EaPIC and thematic programmes, including additional financial support of EUR 28 million in 2012. Moldova also received a grant of EUR 30 million as macro-economic assistance in 2012 through direct budget support.

For VLAP, a national long-term, multi-year plan was established, to which the EU was the main contributor. For example, in the first year of VLAP the EU’s Annual Action Programme for 2012 for the Republic of Moldova provided EUR 60 million in the form of Sector Budget Support to for justice sector

reforms. The programme also granted EUR 21 million exclusively for support for the implementation of the Visa Liberalisation Action Plan. Moreover, VLAP reforms and in particular state institution building were also financed through the EU's Comprehensive Institution Building (CIB) Programme.

The key assistance was mainly targeting state institutions through the Comprehensive Institution Building programme. Capacity building is a primary aim of the European funding and state institutions are main recipients of aid in forms of trainings, technical assistance to strengthen their capacities. The assistance is distributed through direct budget support, different programmes and thematic projects by calls or following the request of the Moldovan authorities. Out of a 75% increase in funding for 2011–2013, 50% of the additional funds were devoted to Comprehensive Institution Building Programmes and 20% to regional development (Siscan 2012: 44). The CIB counterpart in Moldova was the General Secretariat of the Government (GSG), which was tasked with promoting institutional reforms in key areas such as the judiciary, public administration as well the preparation and implementation of the DCFTA (Siscan 2012: 58–9).

In this regard, the CIB funding as one of the major channels of assistance was specifically designed to strengthen the capacities of key institutions involved in preparing, negotiating and implementing the EU-Moldova Association Agreement. Comprehensive Institution Building Program was envisaged as a core instrument within the Eastern Partnership with significant funding at its hand. In 2011–2013 €41.16 million were allocated for the CIB out of €273.14 million provided by the European Commission through the National Indicative Programme financed under the European Neighbourhood and Partnership Instrument (NIP 2010: 12–4). This funding covered a number of issues, including training programs on anti-corruption ethical codes targeting border control and customs officials; provision of adequate infrastructure, technical equipment, management systems, financial, information and human resources. It particularly foresaw to further strengthen management and inter-agency cooperation at national, regional and international levels. In 2014, the new Programming of the European Neighbourhood Instrument (ENI) for 2014–2020, which succeeded ENPI and NIP, re-stated the priority areas, highlighting administration reform, police, border management and agriculture as priority sectors of intervention to be financed through the national envelope (ENI 2014). Financing also significantly increased to reach €131 million in 2014 alone. CIB remained its core component.

The EU support for CIB in Moldova for 2012 alone amounted to €17 million, 2.1 million of which went just for equipment required by the relevant agencies. In many instances, capacity building efforts targeted the increase in salaries of all officials, whose salaries have been substantially increased as a result, especially those working in the anti-corruption area, in the Ministry of Interior and the Justice Sector. In the following years, the European Commission only continued to increase allocated support.

Besides direct EU support, the government of Moldova tried to attract international donors, having adopted a wide-ranging structural reform programme ('Rethink Moldova'), which received the support of international donors at the Consultative Group meeting organised by the World Bank and the European Commission in March 2010. In line with the objectives of the Visa Liberalisation Action Plan, with external assistance from UNECE, IFIs, UNDP and the US to name a few donors which complemented the EU support, the government embarked on a mission aimed at reforming the civil service and the judiciary; combating corruption, reducing and streamlining business administration, providing greater support to small and medium-sized enterprises, and improving education and health. A total of EUR 1.9 billion (of which EUR 550 million came from the EU) were pledged by international donors in support of the programme for the period 2010–2013 alone (Siscan 2012: 45–6).

Although there were clear benchmarks provided by the Visa Liberalisation Action Plan for the provision of financial assistance, the format of aid redistribution was uneven. Assistance went mainly to the established institutions at the expense of new ones created under VLAP or the Association Agreement. For example, new institutions created in Moldova to implement EU demands (such as the Competition Council, the National Integrity Commission, and the Anti-Discrimination Council) lack proper resources, while old institutions, despite been criticised for poor performance, continue to receive substantial funding.

A significant portion of the EU assistance was allocated through training and knowledge transfer between the specialised agencies. As in case of Ukraine, the Ministry of Foreign Affairs of Moldova or the relevant agency reported the problems, outlined the necessary measures and costs for the implementation of the VLAP and sent their request as a bid to the Commission, which provided the necessary technical assistance. Transfer of experience, knowledge and contacts between civil servants was provided through TAIEX and Twinning projects. TAIEX provided targeted policy and legal advice, usually by sending EU experts to help a ministry or local government (Index 2013: 87). Twinning projects were longer-term peer-to-peer projects between the public administrations of EU member states and the Eastern Partnership countries. Moldova hosts high-level EU advisors who help individual ministers and high-ranking officials with sectoral reforms. In 2012 alone, the EU delegated 15 high-level advisors to Moldova. Its government requested EU advice with a specific reform task or the provision of short-term training on 113 occasions (EaP index 2014).

Furthermore, specialised European counterparts such as FRONTEX established institutionalised relationships with their Moldovan counterparts to coordinate co-operation between EU member-states in the field of border security. Joint activities and operations within Frontex intended to transfer knowledge and practices and build capacities (PASOS 2011). Following the signing of the Working Arrangement and Cooperation Plan for 2008–2011 and its extension for 2012–2014, the Moldova's Border Guard Service intensified their cooperating with FRONTEX in various activity fields, such as risk analysis, detection of

false and falsified travel documents to streamline them in accordance with the European standards. It also provided necessary personnel trainings in the field of integrated management (Siscan 2012: 89).

Besides the EU-Moldova inter-agency cooperation, Moldova was involved in the co-operation of border-related institutions with Romania and Ukraine within the Strategy on Integrated Border Management of the Moldova's Cooperation Plan, as well as relevant bilateral international agreements, which focused on strengthening Moldovan-Romanian cooperation at central and territorial levels. Furthermore, Moldova was a part of the EUBAM mission; with the EU assistance, the Galati Joint Contact Centre was established. EU financed joint patrolling mission on the Moldovan-Ukrainian border, and funded the organisation of an experiment on conducting joint control at the Border Crossing Point Briceni-Rososani (Action Plan 2010).

The European Commission and the government of Moldova developed provisions to jointly monitor the progress made by Moldova of the VLAP and address relevant issues, including through the Senior Officials Meeting of the EU-Republic of Moldova Visa Dialogue, the Joint Visa Facilitation Committee, the Joint Readmission Committee, the Senior Officials Meeting of the EU-Republic of Moldova Mobility Partnership, and the EU-Republic of Moldova Human Rights Dialogue and in other dialogue frameworks, such as the Cooperation Committee and the Cooperation Council (Action Plan 2010).

However, though the monitoring part had provisions for joint problem solving and decision-making, emphasising the importance of dialogue and joint ownership, it was the EU which decided upon the implementation of the Action Plan (Action Plan 2010). The progress in the fulfilment of each set of benchmarks was closely examined and decided upon by the Commission and the Council. The fulfilment of the benchmarks was verified by the Commission and the Council before a decision was taken to initiate the assessment of the second set of benchmarks and the eventual visa free travel.

Meanwhile, the Commission regularly reported on the Republic of Moldova's implementation of the Action Plan to the European Parliament and to the Council, for the first time in mid-2011. The Commission also provided a wider assessment of possible migratory and security impacts of future visa liberalisation for Moldovan citizens travelling to the EU, before a decision was taken by the Commission and the Council to initiate the assessment of the second phase of benchmarks. The European Commission's feedback was to be incorporated by the government into their national action plans recommendations (Ghinea 2011).

To conclude the first phase and enter the second, the EU requires periodic reporting and recommendations by the Commission addressed to the European Parliament and Council. The Commission was requested to report back regularly to the European Parliament and to the Council on the implementation of these Action Plans (Council of the EU 2010). Fulfilment of all benchmarks allowed the Commission to make a proposal to the European Parliament and to

the Council for the lifting of the short-stay visa obligation for Moldovan citizens (Action Plan 2010).

Since the launch of the EU-Republic of Moldova Visa Dialogue and the presentation to the Moldovan authorities of the VLAP, the European Commission regularly reported to the European Parliament and to the Council on the progress made by the Republic of Moldova in fulfilling the benchmarks identified under the four blocks of the first and second phases of the VLAP.

Until the EU decided to grant visa free regime to Moldova, five Progress Reports on the implementation of the VLAP had been presented (September 2011, February 2012, June 2012 and June 2013, November 2013). The Fourth Progress Report confirmed that the Republic of Moldova was broadly in line with all the benchmarks set in the four blocks of the VLAP and identified actions that, if taken, would complete its implementation of all benchmarks for the second phase of the VLAP. The Fifth Report recommended granting the visa free regime.

As designed, the EU progress reports were based on studies which the government of Moldova submitted on meeting the benchmarks of the VLAP to the European Commission and the EU expert evaluation missions sent to assess the progress through on-site evaluations. The Republic of Moldova was entitled to provide detailed information (including relevant statistical data and financial plans to support the implementation of the Action Plan in a sustainable way), allowing for an evaluation of concrete results on the ground, including with regard to the specific situation of the Transnistrian region to the Commission (Action Plan 2010).

According to the Fifth Report on the implementation of VLAP, which was issued in 2013, the evaluation missions involved experts from EU Member States, European Commission officials and EEAS officials. As in case of Ukraine, they assessed the legislative, policy and institutional framework and its compliance with European and international standards (European Commission 2013).

Yet, this framework limited the participation of the non-state stakeholders in the process. The main assistance instrument in hands of the European Commission – the European Neighbourhood Instrument and its predecessor, the European Neighbourhood Policy Instrument – was primarily government-based and aimed at enhancing the local ownership by delegating responsibility to national authorities in charge of soliciting and incorporating policy input from non-state stakeholders. However, the participation was limited and was unable to take the limited civil society involvement into account. In certain sectors the relevant civil society organisations and institutions were included in the preparation of particular EU-Moldova projects, especially those whereby the civil society members had been recognised for their expertise and experiences; overall their involvement was sporadic in the migration sector (Siscan 2012).

Assistance is a crucial part of the empowerment as it builds necessary capacities of actors to promote their interests, gather information and cooperate with each other and organise joint campaign including information dissemina-

tion and lobbying. It also makes non-state actors more independent from the state and its scarce resources, which are often allocated in exchange for loyalty.

ENPI had provisions for civil society involvement and monitoring; however, its support remained weak (Bankwatch 2012). ENPI programmes were supervised by the steering/joint monitoring committees, created for the purpose of monitoring and evaluating program implementation, are staffed with representatives of the ministries, organisations implementing current projects and representatives of the European Commission, which excludes NGOs from the elaboration of a monitoring system, the preparation of the semi-annual progress report and the mid-term review, and decisions on the variable tranches (ESCA 2012).

Representatives of civil organisations were not involved in the activities of the steering/joint monitoring committees that supervise the programs, or in elaboration of the performance indicators set up to assess how authorities implement the required conditions (CSDialogue 2013). As a result, assessment criteria were often focused on inputs and procedures (whether the requested structures was set up or not, whether the bylaws were adopted or not), but not on the actual impact and results (e.g. whether the prepared bylaw addresses local needs and/or conforms to development criteria) (ESCA 2012; Chiriac and Tugui 2014).

In general, NGOs monitoring and assessing the various programs on a country level encountered problems such as scant available information, delays in the submission of information, incompetence and frequent change of government officials, constant changes in the state budget law, difficulties in obtaining information from public legal corporate bodies, government disinterest regarding monitoring results, and so forth. The monitoring of this process by the non-governmental sector remained difficult since some information was not open and requesting the information was a time and resource consuming process (Samvelidze 2014).

The role of non-state actors has diminished in the process of monitoring, not only of the civil society but also other relevant institutions, including the parliament. Parliament as the main legislative body has to play an important role in the process of implementation of the Action Plan, being responsible for the consolidation, harmonisation and adoption of the legal framework (Ghinea 2011). Yet, the Moldovan government cooperated less with the national legislature, having established no system of regular updates, therefore delaying the adoption of several laws due to lack of cooperation and coordination.

4.3.3 Anti-Corruption reforms in VLAP

One of the key issues highlighted in VLAP was the fight against corruption. Combating corruption is one of the main challenges for Moldova. According to the Transparency International report, in 2014 Moldova was ranked 103rd (102nd in 2013) out of 175 countries (Transparency 2014). Ineffective checks on

power, the impunity of government officials and government interference in the justice system plagued the system of governance. The opinion polls showed a high perception of corruption within the governing system and the justice sector and a low level of satisfaction with the effectiveness of government in the fight against corruption.

In an effort to combat corruption in the country, Moldova decided to address this problem gradually with the EU assistance, guidance and pressure to re-train its existing human resources and implement the reforms at a slower pace (Gurin 2014). In particular, under VLAP the EU required Chisinau to reform its justice sector, and create and strengthen new anti-corruption bodies.

The Moldovan National Integrity System (the legal framework and actual performance of the national governance institutions which are responsible for preventing, detecting and fighting corruption in the country) is built on a relatively solid legal framework, a result of the recent introduction of important judicial and anti-corruption reforms (TI 2015: 22). The Moldovan judiciary has been re-organised under the Justice Sector Reform Strategy 2011–2016, which is designed as a complex reform package supported by the EU. The Strategy requires a particular concentration of human, technical and financial efforts and resources, and commitment and determination of all actors in achieving the established justice system imperatives and goals (Gurin 2014).

A comprehensive anti-corruption legal package was narrowly adopted by the Parliament in 2013. A number of anti-corruption laws and policies have been introduced, including a law on asset disclosure by public officials, successive national strategies for preventing and fighting corruption, a law on conflicts of interest, a code of conduct for civil servants, a law on transparency in the decision-making process, and stricter sanctions for corruption and illicit enrichment (Gamurari and Ghinea 2014). The National Anticorruption Center (NAC) was created from the Center for Anticorruption and Economic Crimes, redesigned to target corruption cases specifically. Also as a part of the visa liberalisation requirements, the National Integrity Commission (NIC) was established in order to deal with officials' conflicts of interests and to verify the income declarations.

The EU provided the Moldovan government with the assistance necessary to implement reforms. The direct assistance provided for reforming the justice sector was allocated under the 'more for more' principle, for ensuring adequate human and material resources of the subdivision to prevent and combat corruption at the Centre for Combating Economic Crimes and Corruption (CCECC), and the functioning of NAC and NIC, among other institutions.

At the same time, the empowerment of non-state stakeholders remained minimal. Moreover, due to the sensitivity of this sector for the government, civil society is weak and politically influenced by the government. Concerns about favouritism towards allegedly politically affiliated CSOs and the emergence of the government organised NGO (GONGO) have been raised as this affects the distribution of public funds to CSOs. At the same time, CSOs suffer from a lack of transparency as only 7 per cent of CSOs publish their financial and audit

reports, making it difficult to ascertain where their funding comes from, and hence what political connections they may have (TI 2015: 23).

This situation is aggravated by a lack of funding. Unlike in the case of the environmental sector, where the non-state stakeholders prefer to keep a distance from the government by being able to receive targeted assistance from the EU and other international donors, the support in the anti-corruption sector is limited. Seventy per cent (70%) of all assistance coming from the EU budget was aimed at state capacity building measures (Tarna 2015). Of the €60 million provided by the EU to Moldova for justice reform, €58 million went on budget support and increasing the salaries of judges (Ghinea 2011).

The EU policies were thus characterised as providing support to the entrenched groups, which particularly in the justice area did not carefully evaluate the situation and would not identify the pro-reform actors within the system before pushing for complex institutional designs. It led to the maintenance of single gatekeepers or the artificial creation of new veto players, which defended the institutional status quo, while the appeals and request to increase the role of the Parliament and civil society and non-state actors in general in monitoring the implementation of the Action Plan were overall neglected (Siscan 2012: 45–6; Hamermann 2011).

As a result, the implementation of the adopted legislation and the work of the newly established institutions was in many instances undermined despite its prioritisation, the ‘more for more’ conditionality principle introduced by the EU and properly placed goals, monitoring and incentives. Moldova managed to pass some major legislative amendments, but the impact of the reforms is not as of yet very noticeable. The implementation of the new regulations was postponed and delayed; more specific measures set out in the Action Plan were not carried out in due time, while certain processes remained poorly coordinated and did not result in the necessary efficiency (Gurin 2014). While the new institutions were created, there was no overall strategy, but rather incremental steps, which aimed at fulfilling specific EU requirements.

In this regard, when it comes to anti-corruption, Moldovan authorities tended to comply with EU recommendations in a minimal manner by establishing the new institutions, but downgrading them or endowing them with insufficient resources. For example, some important reforms were undermined from the very beginning by inadequate funding of newly established institutions. For example, NIC has been allocated only €200,000 annually to guarantee the functioning of 26 staff members to control assets and establish wrongdoing by Moldovan officials (Gamurari and Ghinea 2014). To briefly remind, Ukraine’s NABU was originally declined funding by the government until an intervention from the Western donors – the EU and IMF.

When reputable pro-change actors were selected to run the institutions, they were not clearly aware of their responsibilities as new legislations were made purposefully vague (Gamurari and Ghinea 2014). Some new laws were made incompatible with other legislation. For example, local and external experts have numerously pointed to the fact that the Penal Code does not correspond

with the tasks for which the NIC was created, so even when the NIC is able to investigate the case and file it with the court, the final punishment is usually weak (TI 2015).

Political interferences also undermine the CCECC reform, whose implementation deadlines have been frequently considerably delayed as the related laws and regulations were not examined by the Parliament or even prepared in due time (Gurin 2012: 2). Some of the new regulations were not applicable for more than half a year because of the late establishment of the National Commission of Integrity (CNI), while during the appointing of CNI members political interests were externalised. The contest for the position of the CNA director and the Contest Regulation provided opportunity for extensive discretion, interpretation and misuse, with the possibilities for some members of the Committee to favour specific individuals. The legislative regulations on the contest conditions were not sufficiently clear, leaving space for biased interpretations (TI 2015).

In both countries, VLAP reforms became hostages to a judicial reform. Delays were one of the basic problems of the judiciary reform and in particular the reform of the Prosecutor's Office. The reform process was very slow and mainly politically driven, with only just over half of the proposed measures to be implemented by the end of 2013 having been completed on time. Equally, the justice sector is still today perceived as being affected by political and administrative influences – there are dubious and biased court rulings, and some important political decisions are challenged by the system representatives. Since 2010, one third of the entire number of judges was replaced and one judge prosecuted. While, for the first time, several judges were convicted for receiving bribes in 2014, these cases are relatively minor, and the general perception is that the judiciary continues to protect its own members.

Moreover, numerous media reports have stated that the judiciary system is supposedly controlled by key Moldova oligarch, Vladimir Plahotniuc, whose people include Alexandru Tănase, the head of the Constitutional Court, Mihai Poalelungi, head of the Supreme Council of Justice since 2012, Victor Micu, head of Supreme Council of Magistrates, a key judicial body. To compound the problem, judicial self-regulatory bodies lack the capacity to effectively oversee the work of the judiciary. The Superior Council of Prosecutors, for example, does not have its own budget, auxiliary staff or premises (European Commission 2015), making it fully dependent on the government.

The implementation of the National Anticorruption Strategy (NAS) has a similar tendency. Despite the successful amendment of the legislative framework to implement the NAS, the effects of the institutional reforms are minimal and the implementation of commitments is considerably delayed. During the 2012 crisis in Moldova, the National Anticorruption Centre was transferred from the government to the parliament and then back to the executive (Gurin 2012; Ghinea et al. 2011). The National Anti-Corruption Council is not independent from the government and reforms have to be carried out in the Prosecutor's Office and the justice system, both of which are staffed by

representatives from the part of the coalition that was imported from the previous Communist government (Gurin 2014). Moreover, as Transparency International's report 'State of Corruption' (TI 2015) shows, the decision by the Constitutional Court has considerably limited the applicability of the Law on Professional Integrity Testing, which is another step backwards in Moldova's anti-corruption reforms.

The National Integrity Commission (NIC) is also affected by its institutional arrangements. It is a collective body, with four members and a President, all of whom are appointed by the Parliament, but the law makes no clear arrangements about sharing the responsibility and power between the members, leading to internal infighting. NIC members could be easily removed by the Parliament, even without a grounded reasonable motivation. The Parliament was called upon to step in and mediate the internal disputes, while the NIC is entitled to control the Parliament. Also, a legal buffer was necessary in order to ensure actual independence of this institution from the Parliament (Gamurari and Ghinea 2014).

For the EU, the empowerment of the technocrats in the Moldovan institutions who are genuinely interested in pursuing the EU trajectory and capacity building of the institutions is one of the key strategies of pursuing the reforms. Yet, despite the EU efforts and investments, the key reforms were hijacked by political interests and the functioning of key institutions was usually misguided, delayed and politicised. Most of the new regulations have remained largely ineffective, due to the lack of clear sanctions for non-compliance or because of limited political will to enforce them.

As earlier noted, after the 2014 Parliamentary election and the theft of 1 billion euro from the banks the EU recognised the depth of a problem. In its communiqués, it showed its concern about the politicisation of state institutions, systemic corruption, the lack of independence of the judiciary and law enforcement agencies (European Council 2016). However, besides a temporary freezing of funding, the EU response to Moldova's numerous political crises and reform problems has been the new roadmap for the government, mediation amongst local politicians, provision of conditional assistance to the government and their continuous 'education' through high level advisors' missions (European Council 2016). It is no wonder then that the government of Moldova's reaction to the EU 'harshest ever reaction' and the new roadmap was a statement by the prime minister of Moldova's that the EU's recommendations showed that 'the direction of the reforms, chosen by Moldova, [was] right' (Sholar' 2016).

The government continued to imitate reforms and ignore the EU requirements in anti-corruption and other VLAP areas (European Commission 2015). The Filip government rejected the de-monopolisation of the media law and appointed the associate of Vladimir Plahotniuc as the head of the Supreme Court Chamber, bypassing any competition process, which would have been required (Shupak 2016a; 2016b). The reform of the public procurement and the prosecution system only strengthened the existence of improper influence over

the prosecution office (UN in Moldova 2016). In this regard, the problems of Moldova were described as not the product of a poor legislation as such, but as the outcome of a culture of corruption tolerance and its inducement by the government (UNDP 2016), which was to be addressed by more assistance, such as additional ‘training of representatives of central and local public authorities with a view to a better management of the risks of corruption in public procurement’ (UN in Moldova 2016).

In the migration sector, as in Ukraine, the EU selected its rules and models for adoption and built the capacities of the state to implement them. The EU’s counterparts in the Ministry of Foreign Affairs of Moldova were willing partners in the process adopting necessary legislation; yet it did not lead to sustainable implementation of the newly adopted rules.

4.4 EU-induced institutional change in Moldova’s environmental protection sector

As in the case of Ukraine, the EU policies in the environmental protection sector aimed to transform the institutions in the sector. The Association Agenda provided for the comprehensive reform in the sector as a preparation for the Association Agreement and Deep and Comprehensive Free Trade Agreement. In more detail, the analysis of this case aims to uncover how the EU’s process oriented strategy impacts institutional change and contributes to reforms as it is particularly exemplified by the case of the implementation of the Aarhus Convention in Moldova. The case was selected due to its prioritisation by the non-state stakeholder in the environmental protection sector and its importance for the creation of more deliberative institutions and greater capacity to monitor state activities.

Environmental protection is particularly central in light of the importance of agriculture for the Moldovan economy. Soil degradation is an especially challenging issue as 57.7 per cent of its land area is in agricultural use. The condition of the soil is crucial for agriculture as a basis for the development of a productive, export-oriented agriculture and food processing industry. The intensive exploitation of agricultural land and the use of ecologically harmful technologies have led to a significant reduction in productivity and a destructive impact on soil, whose estimated annual production loss and damage costs to the national economy are calculated at some 3.1 billion lei (US\$ 251 million) (National Strategy 2008).

As for the EU, environmental protection is an integral part of its socio-economic modernisation agenda. In the Eastern Partnership Vilnius Declaration in November 2013, the environment was once again stressed as one of the priority areas for co-operation and regarded as being mutually beneficial from both an environmental and economic perspective (Council of the EU 2013). Its importance was indirectly highlighted by the new EU assistance instrument –

ENI, whose above-mentioned Programme for 2014–2020 emphasised agriculture as one of its three priority areas for Moldova.

The EU approach is based on the idea that further economic development can be undertaken to improve ecological outcomes (Baker 2007). It envisions that better environmental policies bring significant economic and social benefits to ENP countries (Brink et al. 2011). From this perspective, environment protection is made an integral part of DCFTA and was included in the EU's documents in 2006–2012, which suggested improving legal acts and public participation and awareness of environmental challenges as priorities, pointing at links between poverty and environmental factors (CSP 2006).

This sub-chapter flows as follows: after a discussion of rulemaking and empowerment, it continues with an analysis of the reforms undertaken in the sector.

4.4.1 Environment reforms under the Association Agreement

Environmental protection was made a part of the EU-Moldova Association Agreement and a crucial part of the Association Agenda. Alongside the Association Agreement, a flagship initiative focused on strengthening environmental governance was launched in Moldova (Canciani 2009) and allowed for the EU Shared Environmental Information System to be extended to the partner countries (CSP 2006). In general, the environmental sector has different types of laws to be implemented depending on the area of reform. In this regard, this work focuses on the 'flexible' reform goals in the environmental protection sector, which allow greater discretion as the regard of rule creation and implementation and thus allow the domestic actors to choose the priority focus of their interest.

However, the initial context in which the reforms were attempted was similar to the case of Ukraine and was not more favourable than in the migration sector. Moldova faced an obsolete environmental system inherited from the Soviet Union with a number of environmental challenges, which included low energy efficiency, the poor state of environmental infrastructure, and unsustainable development. Like the other countries in the region, many significant environmental problems were coupled with environmental degradation.

According to the 2004 State of Environment (SoE) report, the most urgent current environmental problems are protection of soil resources, improvement of the quality of drinking water, safe management of toxic waste, biodiversity conservation, minimisation of transboundary effects and diminution of the anthropogenic impact. The National Strategy adopted by the government in 2008 argued that the inefficient management system in the environment protection sector was leading to greater soil, air and water pollution; insufficient administration of forests and reserves and detrimental agricultural practices was resulting in soil degradation and loss of biodiversity (National Strategy 2008). It highlighted the heavy level of pollution of small rivers and wells and that indus-

trial activities and a large number of old cars caused significant air pollution in main urban areas, whereas the lack of renewable energy sources induces energy insecurity and contributes to climate change (National Strategy 2008).

As in the case of Ukraine, before the Eastern Partnership, environment protection was not prioritised, while the progress in the environmental sector was minimal despite the attempts of the government to address the issues by re-writing the rules and building up capacities with external assistance. To address environmental issues already in the early 1990s, Moldova developed an extensive environmental framework of laws, concepts, strategies, programmes and plans to cover all major environmental areas supported by international donors. Since the 2000s, a number of policy concepts and action plans called for new or adjusted environmental legislation with limited effect.

A three-year National Environmental Action Plan was adopted in 1996. In 2001, a new Environmental Policy Concept of Moldova was adopted, reflecting Moldova's key environment priorities and objectives. Strategies were specifically developed for certain areas of main focus, such as water resources, waste management, organic pollution and biodiversity. Environmental protection was made a part of the Government's Economic Growth and Poverty Reduction Strategy and of the Countryside Improvement Environment Programme (Environmental Policy Concept 2001: 27–8). Environmental, climate change and energy-related considerations were also made key elements of the sustainable development approach, which was developed by the Moldovan government in the National Development Strategy, adopted in 2008.

For the European Commission the low capacity level of state institutions was seen as a major obstacle. Its Country Strategy Paper specifically looked at how to enhance strategic planning, implementation and enforcement of environment legislation. The European Commission recognised the difficulties in meeting these targets and envisioned solutions how the EU could help to reinforce administrative capacity of state agencies at national, regional and local levels (CSP 2006).

The 2005 EU-Moldova Action Plan was designed to reinvigorate these efforts. The key areas identified in the environment section of the EU-Moldova Action Plan, established within the framework of the European Neighbourhood Policy, highlighted a set of priorities for action with regard to environmental governance, specific target activities as well as agreements regarding international and regional cooperation on environmental issues (CSP 2006). It envisaged the adoption of additional legal acts for key environmental sectors, based on the EU environmental acquis. Furthermore, the need to further improve and develop the jointly-developed approach across sub-sectors between environmental management and the management of other economic sectors was highlighted.

However, by 2010, the process for adopting necessary legislation was slow; necessary procedures and actions were still not fully developed and hardly applied. Moldova faced difficulties with implementation and enforcement of environment legislation due to very limited administrative capacities and finan-

cial resources. Although environmental legislation had been continuously updated, administrative capacity increased and enforcement improved, the environmental sector remained a problematic area. The concerns expressed by the domestic groups in Moldova included a lack of public awareness, transparency and funding, together with widespread governmental corruption (Samuelson 2013: 15).

4.4.2 Institutional goals

The process of the European integration in the environmental sector includes two main directions: harmonisation of national environmental legislation with the EU *acquis* and institutional reform, which implies the development of an institutional mechanism capable of enforcing the newly adopted legislation. These goals were supported by flexible rulemaking and the inclusion of non-state stakeholders in the process.

State and non-state actors jointly created institutional goals and re-wrote the rules in line with EU principles. The core EU agreement mainly provided the guidelines for the domestic actors to create the rule. The Environment Chapter of the Association Agreement provides for the concrete commitments and activities of the Government, focusing on elaboration of legislation, norms and standards to be harmonised with the EU directives, institutional capacity building measures and the establishment of new structures and in particular the elaboration of the National Environmental Strategy (EU-Moldova Association Agenda 2011).

The National Environmental Strategy was to include planned institutional reforms, within the established time frame, the implementation of the environmental legislation and compliance (EU-Moldova Association Agenda 2011). The chapters that comprised environmental protection measures were included in the national documents on strategic planning, such as the Government Activity Programme and Action Plan, National Security Strategy and National Action Plan on Human Rights. Moldova highlighted environmental protection as an important area of socio-economic development of the country in the National Development Strategy ‘Moldova 2020’.

These documents were prepared and drafted with active participation of the non-state stakeholders. As stressed by the EU, the issues of sectoral management and protection required not only ensuring that the institutional and legal frameworks were in place to address it efficiently by strengthening institutional and administrative capacity, it also necessitated strengthening the capacities of non-state stakeholders, and in particular civil society, to be the government’s equal partner in the development of environmental protection legislation (CSP 2006).

The implementation of the goals was defined in the National Indicative Programme, built on the general principle of partnership to achieve joint policy objectives. The priorities of this NIP were derived from the Association Agenda

and the Eastern Partnership priorities, and therefore ensured a strong link between joint policy objectives and assistance cooperation. As it stated, where relevant, stakeholders (including civil society organisations), were to be consulted on the design of the measures to be implemented under the programme and might be involved in the monitoring process (NIP 2010).

Accordingly, the Association Agenda stipulated that the parties work together to prepare for the implementation of EU law and international standards, in particular to ensure that the Republic of Moldova adopted a national environmental strategy and an action plan to implement the same. It required Moldova to adopt and implement national legislation and designate competent authorities in a number of areas, such as environmental impact assessment, strategic environmental assessment, waste and resource management, water quality and management, air quality, nature protection, industrial emissions and management of chemicals. The government undertook commitment to continue to implement multilateral environmental agreements, in particular the Espoo, Aarhus and Rotterdam Conventions, develop an action plan to provide a roadmap for the transposition, implementation and enforcement of the environmental directives set out in the Association Agreement, and carry out the necessary institutional reforms to implement new environmental laws and policy. (Association Agenda 2014)

On a national level, these goals and priorities were summarised in a background environmental policy document, being formulated in terms of requirements and needs – the Environmental Strategy for 2014–2023, which covered exactly the main identified challenges and aspires to be the key strategic planning document for the actions to be taken. The strategy highlighted the importance of strict and clear separation of competences between the environmental authorities at national, regional and local levels and the integration of the environment into other sectoral policies, development of the green economy and of environmental innovations (National Strategy 2013).

Among these issues, one of the key aspects, which is discussed in detail below in the section on the Aarhus Convention, was getting greater access to environmental information. This goal was supported through NIP with the objective of promoting environment protection through strengthened environmental governance. It supported promoting the availability of reliable environmental information, stakeholder awareness and involvement, environmental assessments and aimed to create mechanisms to avoid the unintentional negative impacts in other policy sectors.

Two main elements included the establishment and development of a Shared Environmental Information System (SEIS) and the strengthening of capacities to ensure stakeholder involvement, environmental assessments and reporting, based on EU experience and legislation, and in line with relevant Environment Agreements, such as the Aarhus and Espoo Conventions (EaP-CfS 2012). Implementation of the Flagship Initiative aimed to build upon the current state of affairs as well as previous experience of implementation in the partner countries.

Accordingly, public participation in environmental decision-making was significantly improved partly due to the political events of 2008/9, which strengthened the voice of CSOs, enabling them to be heard and acknowledged by the government and the Parliament and importantly, the greater access to the environmental information (ESCA 2012). As a result, the cooperation between the government and non-state stakeholders drastically increased. Many CSOs started to closely cooperate with the government, industry and communities in order to identify solutions to environmental issues. They were providing public assistance and identifying ways to involve the community in environmental protection activities. Under the new conditions, CSOs began to understand the role they could play in promoting environmental protection objectives (ESCA 2012: 6).

In 2010, the National Participation Council was established with the tasks of providing expert opinions on draft policies and contributing to monitoring the implementation of the Law on Transparency in Decision Making. The council included 30 members representing non-state stakeholders and the private sector in general. A similar structure, the NGO Consultative Council, was created in June 2011 by the Ministry of Environment, which included eleven representatives of environmental organisations and civil society (ESCA 2012: 5).

Moldovan NGOs were able to engage in lobbying, providing information to legislators and the public, appearing in court cases and commenting on legislative proposals. The Ministry of Environment used plans and programmes to invite the public to participate in decision-making on policies, being more open and consistent in carrying out legal reforms and contributing to an enabling environment for civil society organisations. The expertise of CSOs was often used in environmental decision-making processes by authorities at the regional and local levels, and in some cases, non-state stakeholders including CSOs became strategic partners for the local authority and participated in different capacities in local advisory councils on the matters of their expertise.

4.4.3 Assistance and monitoring

Assistance and monitoring are multiplex and aimed at supporting both state and non-state actors. The external support aimed at capacity building of state and non-state actors and empowering them to participate in decision-making and monitoring. The Country Evaluation for 2010 and experience on the ground since 2007 suggested that Moldova has not always been an easy partner when it comes to technical and financial cooperation. While European Commission assistance helped significantly advance policy formulation in key Action Plan areas – such as justice and home affairs, SME development, trade, attraction of the foreign direct investments and the environment protection – this progress was characterised by very few successful outcomes in the field of the environment, or, more importantly, the persistence of corruption (NIP 2010: 6).

The environment protection sector in mid-2000s was described by limited participation of non-state stakeholders in decision-making, passivity of the international institutions, limited funding and ignorance of the state. Yet they were supported through a variety of targeted programmes from international organisations, which helped to gradually build up their capacities. For example, in 2009-2010 alone the non-state stakeholders were supported by such projects as UNDP ‘Support for the Environment’, German-based GTZ ‘Dialogue – transparency and participation’, Dutch Matra ‘Strengthening civil society’, as well as the targeted grants from the EU such as to improve water quality or waste management.

Yet, by 2015, the overall assessment had changed to a more positive conclusion, especially in the environmental protection sector. The important part of the progress was the empowerment of non-state stakeholders through the assistance programme provided by the EU and international donors. The broad empowerment through assistance and training helped include the non-state actors in decision-making and monitoring and provided greater flexibility in rulemaking. Furthermore, the initial support of non-state actors through REC facilitated the building up of the capacities of non-state actors and created the basis for their more active participation in decision-making (REC 2013).

The support for environmental protection was provided for both state and non-state actors under the area of the ‘Environment and sustainable management of natural resources including energy’ addressed under the national, regional or CBC ENPI/ENI and additional thematic activities. The European Commission thus shifted from larger, program-based activities to smaller, project-based activities, which were more accessible for non-state actors (Samuelson 2013: 120).

The general aim of support was to build capacities to address environmental issues, primarily by increasing capacity of the Ministry of Environment and non-state stakeholders for good environmental governance, but also to empower local communities. For the period December 2007–December 2011 the main objective of the EU and others donors was to support the efforts of the Moldovan central public authorities to take action for environmental protection and the sustainable use of natural resources, and strengthen the Ministry of Environment’s institutional capacity to develop and implement policies and measures of main concern, including those related to the implementation of Moldova’s international environmental commitments.

At the same time, the EU and other donors provided support to non-state stakeholders through grant programmes or thematic activities. UNDP for example, provided support through an environmental Small Grants Scheme (SGS); the initiatives and projects of local communities, formulated by nongovernmental organisations (NGOs), aimed at strengthening the capacity of the civil society and enhancing communication, both top-down, that from the MENR to NGOs/local communities, and bottom-up, that from the local level/general public/NGOs to the central public authorities (UNDP 2012).

For 2007–2013, 100 million euro was allocated to trade and sustainable development in Moldova. There is no published specific allocation of funds for environmental protection, but the priority areas included, notably, water quality improvement, industrial pollution, waste management and the implementation of MEAs. Considerable additional funds (€50 million) were made available for the targeted aims. Moreover, the European Investment Bank provided loans for the upgrading of infrastructure.

Much of the funding available for environmental projects in Moldova, especially from the World Bank, the UNDP, and the GEF, went directly to the Ministry of Environment. Similarly, the European Commission was generally more prone to providing assistance to Moldovan state agencies, which then decided where the money would actually go (Samuelson 2013). At the same time, support for and development of civil society groups became a priority at both national and international level, as it was reflected in the donors' requirements and consequently State's official programme documents.

In 2008, the first civil society strategic development document, the Civil Society Development Strategy for 2009–2011, was adopted, and later improved upon by the Parliament in 2012, when the Civil Society Development Strategy for 2012–2015 as well as the Action Plan for implementing the Strategy were adopted. The Strategy provided for three general objectives, each containing their own specific goals, aiming at strengthening the framework for civil society participation in the preparation and monitoring of public policies implementation and promoting and strengthening civil society financial sustainability (Civil Society Development Strategy for 2011).

Non-state stakeholders started to be actively involved in the process from the 2000s, when Regional Environmental Centre (REC) was created to help the capacity building of non-state actors. REC was formed and proceeded to fund non-state stakeholders to participate in decision-making and monitoring, while civil society groups adopted the narrative of modernisation following the recommendations of the EU and other foreign or international organisations (Baker 2007), building up the primary capacities of non-state stakeholders to monitor and implement rules.

Many environmental non-state stakeholders and groups were supported by REC Moldova funded by the EU, which ran a grant programme, during which over 180 projects were implemented with the financial support of the European Commission, the United States Environmental Protection Agency (US EPA), the Danish Cooperation for Environment in Eastern Europe (DANCEE), and the United Nations Development Programme/Global Environment Facility, involving more than 160 CSOs from Moldova as well as from Romania and Ukraine.

As the report 'Environmental Civil Society Assessment: Moldova' (2012: 17–8) by the Regional Environmental Center for Central and Eastern Europe shows, the new grant support at the national level enabled non-state actors to promote inclusiveness and public participation in decision making on sustainable development and environmental protection at the national level, including the formulation of policies, programmes, plans and projects (environmental

impact assessment [EIA], strategic environmental assessment [SEA], permitting, licensing), as well as the drafting of laws and regulations, provide advice and free legal assistance on public access to information, public participation and access to justice, including an option to set up a public advocacy centre. Importantly, it strengthened cooperation and networking among non-state stakeholders and built up their platforms in order to be able to develop their position in dialogue with the authorities responsible for the environmental and sustainable development decision making at the national level. The assistance improved their ability to monitor and perform watchdog functions, lobby for improvements, and make the authorities accountable for their commitments and act collectively and cooperate with other non-state actors such businesses on different issues such as pollution or the consumer protection (ESCA 2012: 17–8).

Still, as mentioned earlier, the most important donors were foreign. In terms of domestic resources, although environmental actors received access to the National Environmental Fund managed by the Ministry of Environment, the fund had no special CSO support programme. Less than 5 percent of the fund was made available for non-state stakeholder grants, with an annual average of MDL 10 million (ESCA 2012: 14).

For the EU, the further development of civil society, information, monitoring and assessment was supported under various mechanisms (Joint Operational Programme Romania-Ukraine-Republic of Moldova, Joint Operational Programme Black Sea Basin, Eastern Partnership Initiative and others) for activities related to sustainable development, good governance and environmental protection priorities. Funds were provided for civil society development through the national Civil Society Forum and the Civil Society Facility, addressing the needs of non-state stakeholders at national and regional levels (ESCA 2012; UNECE 2014).

The Civil Society Facility, under its call for technical assistance, provided training and capacity building for non-state stakeholders at the regional level. In addition, a EUR 1.1 million call for proposals for non-state actors and local authorities was launched by the EC in March 2012 and grants were awarded in July 2012 to address sustainable development, good governance and environmental issues (CSF 2013; CSDialogue 2014).

With the external support, the Forum of environmental NGOs was created to coordinate and exchange information (UNECE 2014). The Forum organised the discussions of several important national and local programmes and plans and public examinations of various objects and disseminates information. It signed a memorandum of cooperation with the Ministry of Environment and participates in discussion of projects, development and discussion of LEAP and GIP (Garaba 2015). Since 2010 the annual fora of civil society organisations have been organised in order to improve cooperation between environmental NGOs and to support existing networks. The fora served as an arena in which civil society organisations could exchange their experiences, information and knowledge and participate in discussions on the decision-making process and

plan activities, taking into consideration national and global movements and their initiatives in the field of environmental protection (CSDialogue 2014).

As the European Commission (2013) noted, civil society in Moldova is still rather weak, but has grown in a favourable environment, which improved in the area of environmental protection, where the non-state environmental protection groups were active even before the dissolution of the Soviet Union. The support of non-state stakeholders provided by the EU and other donors assisted their activities and missions through capacity building and better access to information and participation in rulemaking, decision-making and monitoring.

The international donors, such as EU and UNDP, also placed special emphasis on strengthening the effective involvement of NGOs in the development, implementation and monitoring of environmental policies. For example, the UNDP Small Grants Scheme for environmental non-state actors and community-based organisations implemented from 2008–2012 resulted in a stronger NGO landscape throughout Moldova, which is better able to address environmental problems at the local level while at the same time contributing to the socio-economic wellbeing of communities. In 2012 the Global Environment Facility's Small Grants Scheme was initiated in Moldova (implemented by UNOPS), laying the basis for up-scaling civil society organisations' initiatives in environment protection and sustainable development at the community level.

Multiple sources of funding were available as NGOs became specifically targeted by Western donors wishing to contribute to the development of the country (Samuelson 2013). This helped them to remain independent from the state to a certain extent. The existing competition allowed the NGOs to apply for funding from the state or from other actors, such as other states, other NGOs, the European Union, or the business sector.

The partnership between public authorities and civil society organisations (CSOs) made continuous progress, which resulted in particular in a heightened role for civil society in decision-making (ENP Progress Report 2015). Importantly, it assisted non-state stakeholders' capacity building through the provision of grants and trainings for other CSOs and the establishment of several ad hoc coalitions to fight against decisions made by the authorities. It also enabled the establishment and maintenance of an ecological network and a communication platform.

The monitoring of the adoption and implementation was provided by the European Commission, but with participation of the government and the non-state stakeholders through national and international platforms (such as the Civil Society Forum). For monitoring the reform process including in the area of environment, the European Commission and the government of Moldova used a number of additional mechanisms within the Eastern Partnership's tracks, including special roadmaps, such as ones prepared to the Eastern Partnership Summits.

The important part of the monitoring was the presence of the transparency of enforcement tools and the provisions for public participation. As the EU noted (European Commission 2014b), the Republic of Moldova had already made

progress in terms of greater transparency in environmental assessment, though more emphasis needed to be put on the use of environmental assessment instruments, i.e., Environmental Impact Assessment (EIA), State Ecological Expertise (SEE) and Public Ecological Expertise (PEE), especially for those projects with a significant environmental impact.

Dialogue and cooperation between the Ministry of Environment and NGOs have increased over recent years. In part, it improved due to the active campaigning of the non-state stakeholders to force the implementation of the Aarhus Convention in Moldova, which is discussed in detail below. The representatives of civil society and private sector became members of the administration councils of the national and local environmental funds and they participate in working groups for the implementation of various MEAs (UNECE 2014).

4.4.4 The analysis of the reforms: the fight for non-state actors' rights through implementation of the Aarhus Convention

The implementation of the Aarhus Convention is a vivid illustration of the effect of process-oriented strategy – flexible rule making and empowerment – in inducing domestic reforms (Aarhus 2015). The Aarhus Convention of the United Nations Economic Commission for Europe (UNECE) establishes a number of rights of the public (individuals and their associations) with regard to the environment protection, which the government has to guarantee. The possibility to establish and focus their own priorities under the Eastern Partnership led to the focus on the implementation of the Aarhus Convention by the domestic actors in the environment protection sector in Moldova.

The Aarhus Convention is important for its provisions that call for public participation, better access to information and justice in environmental matters. The Republic of Moldova ratified the Aarhus Convention in 1999. The 2005 EU-Moldova Action Plan included requirements for the implementation of the Aarhus Convention. However, by 2009 the Republic of Moldova had still not launched further steps towards implementing the Aarhus Convention and had hardly taken any measures to provide the population with required rights by adopting necessary legislation and enforcing it in practice.

There are two facts in particular which caused the Moldovan government to focus more on this issue: the first was the meeting of the Parties of the Aarhus Convention held in Chisinau in 2011, which demanded that special attention be paid to the issue of special requests from Moldovan non-state actors and their appeals to the EU; the secondly was the active involvement of the (NGO) Eco-TIRAS, which was supported by international donors and which filed a complaint with the Compliance Committee, developed the action plan and monitored the implementation.

In January 2008, Eco-TIRAS – an NGO in the field of environmental protection – requested copies of leases of state forests for recreational and hunting

purposes to the Moldovan forest authority Moldsilva. Those requests were denied. In June 2008, a court order of the Court of Appeal ruled that these copies be handed-over, which was ignored. As a result, in November 2008, the NGO and its partners filed a complaint with the ACCC (Aarhus Convention Compliance Committee) to address this violation. In September 2009, it was concluded that Moldova had fully failed to comply with the Aarhus Convention and the ACCC called on the Republic of Moldova, first to enforce the court order, and second to take further steps in order to arrive at convention compliant legislation. In detail, the Committee proposed the development of an action plan to implement the Aarhus Convention.

To support the attempts to enforce the implementation of the Convention by 2011, a project of the Advisory Assistance Programme was launched. It helped elaborate an action plan to implement the core pillars of the Convention (information, participation, access to justice) as well as develop two legislative proposals on access to environmental information and participation rights. After the ruling of the ACCC in June 2011 the Moldovan government adopted the action plan (Umweltbundesamt 2013). The monitoring of the implementation was conducted on an annual basis. Since 2011, the Republic of Moldova has reported every year to the Aarhus Convention Compliance Committee on the implementation of the Action Plan (UNECE 2014).

The empowerment of non-state stakeholders played a crucial part in the successful implementation of the Aarhus Convention. The support was provided through the funding of the Federal Ministry of Environment and Nuclear Safety via the Independent Institute for Environmental Concerns and in partnership with the NGOs and the Ministry of Environment of Moldova. This project aimed at drafting the legislation to harmonise Moldovan law with the Aarhus Convention, and proposing the governmental Action Plan for implementation of the Aarhus Convention in Moldova. As a result, the working group, comprised of local experts and government, drafted the necessary legislation as well as realised an analysis of the national legal framework to determine the gaps and necessities. The public presentation and analysis of these drafts happened in September 2009.

The second project was dedicated to the implementation of the Concept of cooperation of the Parliament with Civil Society (2005) and the new law on Transparency of Decision Making Process (2008). This project was also supported by the Rosa Luxemburg Foundation (Berlin). It included publishing of the national environmental legislation as a tool for public participation in commenting of law drafts on two issues: implementation of the Law on Transparency of Decision making Process (2008) and implementation of the Concept of Cooperation of the Parliament with Civil Society.

The non-state stakeholders were supported in the fostering of participation and cooperation between the Parliament and non-state actors and the publishing of the national environmental legislation as a tool for public participation in commenting on law drafts (Eco-Tiras 2012). Similarly, the project 'Supporting Environmental Civil Society Organisations' (SECTOR) was aimed specifically

at strengthening the role of environmental CSOs by contributing to their development and improving their knowledge, skills, capacities and infrastructure, raising knowledge of the Aarhus Convention, and awarding grants to activities on topics relevant to the Convention at the local, national and regional levels (SECTOR 2014).

During the period 2011–2013 several projects launched by NGOs with external support contributed to implementation of the Aarhus Convention, including projects by REC Moldova, which provides training on Access to Information and Public participation on environmental decision matters, Eco-Tiras and SECTOR.

For example, NGOs sued the City Council of Orhei for the violation of the public participation requirement in the adoption of the decision on water recycling plant in contradiction with the Aarhus Convention. Similarly, in 2013 an NGO coalition led by Eco-TIRAS used the provisions and tools of the Aarhus Convention to amend the Internal Navigation Law prepared by the Ministry of Transports of Moldova, which would have created a '*krysha*' for illegal in-stream mining (Eco-Tiras 2014). The NGO coalition and the Environmental Committee started a campaign to inform members of the Parliament of Moldova about the deficiencies of the draft, raised the issue at the National Council for Participation under Prime Minister and prepared their draft 'On internal navigation'. They later participated in several sessions of the Committee on Environment and Committee on Economy of the Parliament, which initially accepted all proposals supported by a wide range of non-state stakeholders and rejected the first draft, but eventually voted for a compromised version (Eco-Tiras 2014).

The target groups of the project comprised the Moldovan state, which is responsible for the implementation and practical application of the Aarhus Convention, together with environmental NGOs in the Republic of Moldova. The activities of the planned project included: the finalisation of the legislative proposal on access to environmental information, including its discussion with non-governmental organisations and the public, updating and developing a more practical design for two statutory regulations on public participation in the process of decision-making in environmental matters, the revision, publication and dissemination of a handbook on public participation for the administration and the identification of participation methods suitable for the Republic of Moldova, the testing of a method in practice and the public presentation of the same.

Starting from 2011 the Ministry of Environment became more open than other authorities to cooperation with CSOs, a change which was made possible by the newly developed legal framework. The state agencies provided opportunities for CSOs and citizens to participate in decision-making, and the authorities were obliged to consider the results of this public participation. A significant number of non-state organisations participated in public hearings at the national and regional levels, but still some reported that their comments were not taken into account and that no feedback was provided to explain the reason for this. In recent years, two successful court cases, as well as a

communication to the Aarhus Compliance Committee, were initiated by CSOs, demonstrating that civil society organisations are using the Aarhus Convention to achieve practical improvements in various fields (ESCA 2012: 50).

Capacity building and grant opportunities are needed for CSO projects as to learning and understanding how the Aarhus Convention can be used in different concrete fields (not only EIA and SEA, but also climate change, water management, waste management, nature conservation, energy issues, and water and health, for example). Non-state actors that have recently started to exercise their rights under the Aarhus Convention, and that have become involved in its practical implementation and in public participation in decision-making, should be targeted in particular. Aarhus Convention trainings are still needed for officials, mainly at the local level and in the non-environmental sector.

This example serves as an illustration of open participatory processes to improve public participation and ensure transparency, including the involvement of non-state actors in this area (UFU 2013). The Ministry of Environment prepares a special section for information on the progress of the implementation of the Strategy, upon which civil society and the key environmental institutions have the possibility to provide suggestions and comments (National Strategy 2012).

The empowerment policies of the donors changed the domestic power distribution. The shift is seen in the change in cooperation between state and non-state actors. For example, while approaching the state prior to 2009 was futile for political reasons and the attitude of the Minister of Environment, today, due to the different position of NGOs in the sector, the government is more open to cooperation (Samuelson 2013: 120).

According to the non-state actors, information on the state of the environment is generally available and accessible; however, at times specific environmental information, such as information on sustainable development, is either unavailable or difficult to find and access (ESCA 2012: 33). With the arrival greater transparency and accountability, non-state actors today participate in setting priorities and in meetings and take part in various law and policy-drafting processes.

4.5 Summary

This chapter examined EU-Moldova relations and institutional change in the migration and environment sectors under the Eastern Partnership. While Moldova suffers from problems similar to those suffered by Ukraine, it has surpassed the latter to become the most successful reformer in the region, standing out since 2012 as the most willing EU partner, ready to comply with the EU rules, comply with the EU's demands and conditionality. That said, as in case of Ukraine, in Moldova the process of institutional change has been less straightforward and successful in the migration sector in comparison to the environmental protection sector.

This chapter first reviewed EU-Moldova relations in order to provide an adequate context for discussing various EU strategies applied in the country. Drawing on existing evidence, the chapter further examined the existing limitations for the EU in pursuing more advanced cooperation with the country, registering the importance of the EU strategies for explaining varying outcomes at the sectoral level.

I argued in this chapter that in order to understand Moldova's reform path, it is important to go beyond conventional governance frameworks, to also study efficiency of conditionality and socialisation. As in case of Ukraine, the EU promoted reforms in Moldova's migration and environment sectors using conditionality and socialisation, providing clear goals and a credible commitment to influence government and domestic groups. Despite the EU's growing support and engagement in both sectors, outcomes varied. Comparing the environmental and migration sectors, I explored how and why the reforms were implemented differently. The EU policies in general initiated reforms in both sectors, setting agendas and benchmarks. It created incentives for all major actors to follow the EU's guidance. Yet, as seen in the previous chapter, it concluded that the success in environmental protection was determined by the EU's synergy with domestic opposition groups to promote the reform agenda. In this chapter, we have also seen that an efficient state agency can promote the reform as the Ministry of Foreign Affairs has done, but it would not have been capable of making it sustainable or breaking entrenched interests.

As the migration sector reforms show, despite the MFA having done great work in adopting necessary legislation, institutional change does not correspond to EU aspirations. The presence of adequate incentives and clear goals does not presuppose successful implementation and sustainable institutional change. In VLAP, the EU directly linked its technocratic approach to reforms with financial support, which targeted state institutions, focusing on their capacity building. It set clear benchmarks and goals; despite this, the implementation of key reforms still lagged behind expectations.

In the environmental protection sector, as this chapter showed, the EU policies empowered the pro-reform groups, turning them into efficient partners in the reform process. This was also important, given that it provided for important alteration of the development models provided by the EU to adapt them to local needs. The exploration of a variety of environmental ideas, the diversity of viewpoints and strategies, which existed within the Moldovan environmental community, through the participation of the non-state stakeholders, helped to re-define the EU modernisation agenda to efficiently approach the existing environmental problems in Moldova.

Returning back to the case of Ukraine, empirical evidence points at a number of issues. First, the role of the EU only grew with time and "pro-European" governments in both Ukraine and Moldova became more and more dependent on the EU. This was particularly evident after 2014 in Ukraine and after the "Grand Theft" was publicly unveiled in Moldova. Such a crucial role of the EU for the survival of the governments in Moldova and Ukraine only supposedly

provided Brussels with additional leverage and opportunity to push the reform agenda.

Second, evidence shows that in both cases the major problem lies not with lack of incentives and resources on the external side, and not with lack of knowledge and capacity on the domestic side, but rather with inability to bypass the resistance of domestic elites. Furthermore, in many instances external assistance becomes a source of rents for corrupt elites in control of the reform at the sectoral level. In this regard, the reforms, which are based on the cooperation between the external actor and the incumbent regime, are only partially successful.

Similarly, the EU's policies, which are based on the exact implementation of the EU's pre-selected rules, become an easy target for subsequent manipulation for the domestic elites, which show a myriad of tools to undermine the newly adopted rules and newly created institutions. These EU rules quickly die out in the rules and norms of the old systems of governance.

At the same time, in both countries there are bottom-up efforts to reform the system and attempts to find solution to domestic problems on the ground. These grassroots attempts and tendencies are more visible in the environment protection sector due to the proliferation of the NGOs before the EU intervention started. At the same time these groups benefited from more horizontal and inclusive policies in the sector, EU's process-oriented approach to reforms and attempts of the EU to build their capacities and include in decision-making. Thus, both cases show that the EU has natural reform allies on the ground and that their knowledge and insights into the problems on the ground can play a decisive role in the reform process.

There are also differences, which particularly stem from the fact that in the observed period both countries were presented with different set of challenges and opportunities. If on one hand, Ukraine underwent through the 'Revolution of Dignity', which shook the system and opened it up for non-state stakeholders, who ended up performing some of state functions or running state Ministries and agencies, Moldova in 2015–2016 turned into a state supposedly run by a single person – Vlad Plahotniuc.

In this regard, while numerous sectors in Ukraine from energy to banking were presented with a unique window of opportunity to reform or dismantle the old system at all (and lay foundations for an emergence of new Ukraine), Moldova followed a nightmare scenario, in which a single oligarch – Vlad Plahotniuc – consolidated his power and tightened his personal grip on key state institutions – from Moldovan Parliament and its major political parties to National Bank and Central Election Committee. For the EU-promoted reforms in both sectors, it meant at least a major temporary delay in their adoption and implementation due to the 'freeze' of the EU budget support.

These findings raise a number of questions, which will be discussed in the concluding chapter. The conclusion will particularly focus on the role of theory, how can it explain these outcomes and what this evidence can tell us about the prospects for change and the role of external interventions in the region more generally.

5. EU-INDUCED CHANGE IN THE NEIGHBOURHOOD: LESSONS FROM UKRAINE AND MOLDOVA

In the introductory chapter of this work, it was argued that the EU policies of inducing institutional change present a research puzzle. The EU attempted to induce change in Moldova and Ukraine when pre-conditions and tools necessary to promote reforms were in place, yet the outcomes of these external efforts vary. As this study shows, unlike in the environmental protection sector in both Ukraine and Moldova, the EU met significant difficulties in promoting institutional change in the migration sector of both countries. In order to understand the puzzle that is EU policies, the work paid particular attention to the EU strategies and how the European Union addresses the problem of institutional change. To this end, the major theoretical approaches were described and discussed in Chapter 2, and this current, and final, chapter will connect that to the empirical studies presented in Chapters 3 and 4.

This chapter aims to explain the empirical evidence and understand why process-oriented strategy is more efficient in inducing institutional change. In a broader perspective, this work presents a re-assessment of the EU policies of institutional change through the theoretical lenses of new institutionalism.

Subsequently, this conclusion highlights two major points: the first is that external interventions depend on the external entity's understanding of the given domestic institutional diversity, the interplay of formal and informal rules and their impact on the same. The second is that, based on the insights from new institutionalism, the external attempts to induce institutional change require flexible and inclusive rulemaking and the empowerment of domestic non-state actors to facilitate institutional change. In this regard, this study criticises top-down approaches based on external knowledge and focuses on identifying the factors that explain variations in outcomes.

By returning to the discussion of the main findings, this chapter approaches the main topic of this research, which is to contribute to our understanding of the externally promoted institutional transformations and, in particular, *why* differences in the EU strategies can lead either to persistence of old rules or to institutional change.

The main challenge is to elucidate how the external intervention affects the prevailing incentive models of the domestic actors and their decision-making. As one might see, the ultimate ambition of the EU intervention is to create institutionalised constraints on the behaviour of domestic actors by re-writing rules of the game. To this end, this chapter puts emphasis on underlining the interaction of the EU strategies with existing legacies and bounded rationality that guides the actions of the domestic actors.

The discussion of the EU policies is based around how new institutionalism can shed light on the outcomes of the EU policies and linked to a broader theoretical debate – agency v structure – with the ambition to illustrate the limitations of the EU based on the continued dominance of ‘actor-centred

functionalism' or 'instrumental rationality' in a formulation of the EU's policies towards the third countries.

Finally, this chapter pays particular attention to studying the factors behind the observed success stories. Looking at the reoccurring failures to re-write rules and re-build institutions, their long-lasting poor performance, understanding factors behind more efficient outcomes is crucial.

Having the above in mind, this concluding chapter discusses the prospects of the EU as a transformative power and highlights its limitations. First, it summarises and explains the varying outcomes at the sectoral level. It analyses the impact of the EU strategies on the outcomes of institutional reforms. It shows the importance of distinguishing how the EU strategies involve domestic state and non-state actors in rule making and what kind of actors these EU strategies empower.

5.1 Variation in cases

This work looked at the variation in outcomes in the migration and environmental protection sectors in Moldova and Ukraine. The cases are united by the similarity of domestic contexts, initial conditions and the EU pre-condition for change. Both countries had pluralistic political systems, pro-European governments and necessary financial and expert assistance. In both cases, Russia played an important role, yet in studied sectors, it did not inhibit the reform efforts. Moreover, they had the necessary instruments outlined by the Europeanisation literature to induce institutional change, such as clear plans, adequate incentives in forms of visa free travel. Nevertheless, this study demonstrated the variation in institutional outcomes.

In other words, all alternative explanatory models seem to fail explaining outcomes due to the lack of variation across the studied cases. Neither Russia's involvement, nor domestic oligarchs and EU-level factors differ in the cases and their impact remain equally low in migration and environmental protection sectors in Ukraine and Moldova. The only explanation of subsequent outcomes that remains in the cases discussed is the divergence in EU strategies.

Both examples of promoting reforms in the migration sector resulted in failure, not only to implement actual change, but also at times to adopt the rules. While the EU equally provided Ukraine and Moldova with credible incentives, financial and expert assistance for implementation and clear and precise rules, the implementation of the Visa Liberalisation Action Plan has not been successful in both countries. Though by the end of 2016 Ukraine's implementation of the visa liberalisation action plan was approved by the European Commission (2016) and sufficient to get the visa free regime, Ukraine still only made limited progress. In both countries, capacities of relevant agencies were increased, but they remained to be politically dependent. Customs procedures and regulations remain corrupt and cumbersome; State Fiscal Service of Ukraine continues its

control over shadow traffic. Corruption remains a major issue at customs in both countries regardless of the changes on the top of the political hierarchies.

Major state institutions remain politically controlled despite the EU efforts. Key agencies, old or newly created, fell under formal or informal control of the vested interests. Among newly created agencies, only NABU, which was formed from scratch as an independent agency with a goal to prevent and investigate corruption, showed some independence and ability to act despite pressure. However, results are very modest, and any steps to induce change also meets a strong resistance from within the system, from new-old elites and persevering entrenched interests at the sectoral level, leading to numerous attempts to limit its competences and undermine its functioning (see for instance, Nizhnikau and Moshes 2016).

Overall, the main external and domestic priority after the Euromaidan – the anti-corruption efforts, even when funded by the IMF, EU and U.S. government under a rather strict conditionality hardly bring adequate results at any level as well. Though battling corruption at the top level is a difficult target anywhere, Ukrainian government's failure to address this issue is nevertheless spectacular and illustrative. While Ukrainian state officials at all levels have been widely engaged in widespread corruption accumulating thourought their state 'service' millions in property and monetary assets, *Nashi Groshi* reported that a state-led fight against corruption between July 2015 and July 2016 have resulted in only three cases against high-level officials, who were only chairmen of district administrations and a deputy head of State Agricultural Inspectorate (*Nashi Groshi* 2016).

In a meantime, same investigation shows that Ukrainian bureaucrats having roughly 200-euro salary per months declared more than one billion euro in monetary assets . Yet, only merely 952 court cases were brought by prosecution in courts, among which most were low level local officials caught on petty crimes. Out of 153 mid-level officials (prosecutors, judges and local level officials), who faced the courts, only 4 guilty verdicts came into force and majority was acquitted (*Nashi Groshi* 2016). Other key institutions such as newly created the Special Anti-Corruption Prosecutor's Office or National Agency of Anti-Corruption Prevention are already under strong influence of entrenched interests through General Prosecutor's Office, former prime minister Yatseniuk's People's Front Party or the Presidential Administration. Anti-Corruption Courts are yet to be created.

Equally, in Moldova, the government was granted with the visa liberalisation plan, but its implementation has been severely hindered. The decision was made despite the identified problems in implementation of the anti-corruption legislation in order to support the pro-European coalition in the wake of an important parliamentary election in 2014. As in case of Ukraine, the anti-corruption agencies are undermined by being controlled by the representatives of the system or by lack of funds and numerous veto points within the system of governance.

For instance, cases on corruption in Moldova are initiated either by the National Anti-Corruption Centre or the Ministry of the Internal Affairs, but in

many instances, the cases has to be overseen by a prosecutor from the Anticorruption Prosecutor Office – a special division under the General Prosecutor Office (Gamurari and Ghinea 2014), which is under the control of Vladimir Plahotniuc. In this regard, the agencies if not captured by a special interest group, are either manipulated or subordinate to the already captured state institution. As a result, 90% of those prosecuted by NAC were low-level officials who were found guilty, but eventually escaped punishment in most instances.

What unites these two sectoral examples is the strategy pursued by the European Union, which both in Ukraine and Moldova pursues outcome-oriented strategy in the migration sector, highlighting the adoption and implementation of the pre-selected rules. The EU puts emphasis on dyadic ties and checklist compliance forms of assistance and monitoring, which excludes non-state stakeholders from the process of institutional building in the migration sector. It fully relies on the pre-selected rules and norms by the European Commission.

The emphasis on dyadic ties and checklist compliance forms of assistance and monitoring excludes non-state stakeholders from new resources or participatory channels. It fully relies on the EU rules and norms. Unlike in the environment protection case, the policies and rules were elaborated with no input and participation from the non-state stakeholders. As in the case of the environmental sector, the non-state actors came up with criticism of and suggestions for improvement of proposed legislation. For example, independent experts in 2014 wrote draft law ‘The Identity Documents’, which addressed the shortcomings of the registry law; however, once again, it was ignored by the government (Sushko 2014b).

Interestingly enough, the second greatest reform challenge in the migration sector – anti-discrimination law reform – has achieved a different result compared to anti-corruption reform. While it spurred popular protests, driven by the Orthodox Church – which is the most trusted institution in Moldova – and the Communist Party, which caused some delays in its preparation, it also necessitated the government to broaden the law’s support by including non-state stakeholders in the consultation process on the draft of the law in order to mitigate the damaging impact of political opposition. The non-governmental sector’s support in this process was important to the government and it regularly asked the organisations working in this field to contribute and balance-out the discussion around this issue, as well as support the adoption of the law (Samvelidze 2014: 10).

The Moldovan government was forced to request the support of civil society in the process of the development of the anti-discrimination law. Experts worked closely with the government on the draft of the anti-discrimination law. However, due to the fact that the cooperation was not active in these spheres from the very beginning of the draft preparation process and the necessary information had often not been exchanged with the non-governmental sector in time, it was difficult for NGOs to study the relevant information and analyse it due to time constraints (SAC 2013).

Table 2. The EU strategies and the observed outcomes

		Case studies			
		Ukraine		Moldova	
		Migration sector	Environmental protection Sector	Migration sector	Environmental protection sector
The EU's impact	EU Strategy	Outcome-oriented	Process-oriented	Outcome-oriented	Process-oriented
		Narrow empowerment	Broad empowerment, but limited resources	Narrow empowerment	Broad empowerment
		Normative rule making	Flexible and inclusive rule making, especially after 2014	Normative rule making	Flexible and inclusive rule making
	Rule transfer	Limited	Efficient	Rule persistence in key areas	Efficient

Yet, upon consultation and re-consideration after the protests, which took the law away from the EU template, the anti-discrimination law came into force under the title ‘Law on the Provision of Equal Opportunities’, providing for the formation of the Anti-Discrimination Council, which was a better fit to meet local needs and was assigned with analysing complaints, collecting information on incidents of discrimination, supplying relevant agencies with comments, and developing relevant recommendations to improve the legislation (Samvelidze 2014: 11). However, upon its adoption by the Parliament and lack of subsequent interest from the political opposition, the government’s priorities have similarly shifted to other areas.

At the same time, the environmental sector reforms showed more progress in both countries. The EU seemingly followed the same script as in the migration case – clear goals, some partnership and providing incentives. First, the EU and in particular other international organizations have provided an immense support to build the capacities of non-state actors alongside the state institution building. Secondly, the EU promoted functional institutional goals allowing domestic actors to participate and adapt rules to local needs and interests. In this regard, transparency, access to information and resources helped non-state stakeholders to get actively involved in the process of decision-making and monitoring.

Finally, the popular revolutions played the empowerment role for non-state stakeholders immediately after the regime changes in Kyiv and Chisinau. After the 2014 Revolution in Ukraine and massive protests in Moldova in 2009, the non-state stakeholders received a short-term opportunity to engage in state affairs and monitor the new authorities more closely. Some even became part of government. Non-state actors, which had created enough capacity and necessary expertise, received a short window of opportunity to promote their visions of reforms and interests, being put in charge for strategic planning and oversight of state agencies' activities.

After 2009 in Moldova, the environmental NGOs were able to press for their rights through courts and the mechanisms under the Aarhus Convention; in 2014 in Ukraine, the non-state actors came to power to promote their agenda and control the government. As an example, international organizations maintained that protection laws and even the definition of a protected area should be created not from the top, but locally according to 'traditional' means.

In Moldova, the EU and other agencies such as the UNDP empowered Moldovan non-state stakeholders to determine the reform priorities (Samuelson 2013: 143), thus in general promoting and, at times requiring and enforcing, the participation of the local people and organisations in the implementation of projects and adopting Western knowledge selectively, while also including 'traditional' practices. In Ukraine after the Maidan Revolution, the coalition of local experts prepared strategies and monitored their implementation also in the area of the protection of the National Reserves and promoted e-governance as the main sources of transparency and accountability in the sector. In Moldova, the UNDP protected areas project aimed to create a form of governance based on partnerships between the Ministry, Moldsilva, and the non-state actors.

What all this shows is the importance of empowering a variety of non-state stakeholders, and the importance of capacity building of both state and non-state actors. While the non-state actors and public councils at the state agencies are at times even fake (as in case of State Ecological Inspection) or lack capacities to participate, the environment non-state actors have been actively developing their capacities since the 1990s, making it possible to put active pressure on the government during both Yanukovych's and Poroshenko's presidencies.

At the same time, without the active participation of sufficiently empowered non-state stakeholders, implementation of the ratified agreements and commitments remains rather weak and poorly coordinated. The donor-driven support does not always address the real needs of the country, while official agencies either lack the capacity to inform potential donors of the country's needs and priorities for investments and environmental assistance or remain disengaged (Garaba 2015).

The four cases that are looked at in this research demonstrate the complexity of institutional change, which is expressed in the observed variations in the outcomes in Ukraine and Moldova and the diversity of factors. Institutional change is a complex and long-term process, in which subsequent modification of adopted rules to adapt them to local needs and specificities.

5.2 The EU strategies of institutional change

Looking at these outcomes at the sectoral level in Ukraine and Moldova and the EU reforms, this study identifies two different strategies by which the EU attempts to re-make the rules in Ukraine and Moldova. The first one, the outcome-oriented strategy, is based on the idea of the supremacy of external knowledge and policies, which can be transferred when the necessary conditions are in place. What effect this approach has is exemplified by the EU reforms in the migration sectors of Moldova and Ukraine, which were initiated in favourable conditions for rule transfer as identified by the Europeanisation literature.

As described in Chapters 3 and 4, the EU was adamant that it wanted the reforms to be undertaken correctly, therefore creating the necessary conditions for institutional change. Through conditionality and the 'more for more' principle, the EU stimulated elites to change their rules and institutions according to the EU's vision. The assistance from the European Commission was adequate and targeted state institutions, improving their capacity to implement the EU rules and focusing on establishing strong ties between the EU and agencies and the Ukrainian government.

The EU also took charge of the monitoring of rule adoption and implementation to back reforms by strong conditionality. The monitoring was organised through checklist compliance, so that if any of the EU pre-selected rules was not implemented, the benefit would be frozen. There was a political will at the highest level. In the case of Ukraine, the ex-President Yanukovich promised to finish the visa liberalisation process by 2012, and President Poroshenko made the VLAP reforms the core of his agenda. The EU-induced reforms in the migration sector in Moldova followed the same pattern. In case of Moldova particularly, Visa Liberalisation Action Plan reforms were complemented by strong effort of the Ministry of Foreign Affairs and European Integration, which did a lot of work encouraging and facilitating the adoption of the necessary legislation.

Yet, as it was shown, institutional change in the migration sector did not correspond to EU aspirations in either country. The implementation was weak and was characterised by numerous setbacks. As discussed in Chapter 2, such findings highlight one of the main limitations of the Europeanisation and external governance literature, namely that the presence of EU mechanisms – conditionality or socialisation, adequate incentives and shared ownership does not presuppose a successful rule implementation and sustainable institutional change. Again, in the case of the Visa Liberalisation Action Plan, the EU directly linked its technocratic approach to reforms with financial support; it set clear benchmarks and goals, and laid down some joint ownership provisions and still the implementation of key reforms lagged behind.

In this regard, the trajectory and outcomes of EU-induced migration reforms point at the limitations of Europeanisation and external governance approaches. The EU Studies literature was able to explain how conditionality and/or

socialisation mechanisms led the governments into selecting and adopting a particular rule or set of rules, yet it has limited capacity to explain the trajectory of rule implementation. The literature stops short of explaining why in similarly favourable conditions only some rules were implemented; it does not explain how, whether and why the rule was modified at a later stage and to what ends, nor in the end, how, even in case of rule implementation according to the EU's original design, the implemented rule can perform the same function as intended.

This work shows that external interventions based on experience and knowledge about working of external institutions do not necessarily arrive at a similar result in the third countries. Transferred formal institutions designed by the EU do not work as efficiently in third countries as in their European point of origin. And it comes as no surprise. To follow North et al. (2009: 15), similar institutions work in different way in limited access orders than in open access orders and produce different results in different contexts.

To understand why, rational choice institutionalism and historical institutionalism together help to investigate how European rules become a source of manipulation and fall under the influence of 'old' institutions and established practices. Looking at issues of power and legitimacy of EU rules, new institutionalism shows how the interactions of individual's behaviour and their beliefs serve as constraints to the functioning of new institutions (Weingast 2002; North et al 2009: 15) leading to institutional monocropping and the survival of the old rules and practices.

On one hand, by assuming that human rationality is bounded, new institutionalism shows limits of rationalism and approaches built on rational understanding of human actions. As a consequence, ability of external forces to alter the incentives system of local agency and use it relative bargaining power to alter established status quo from outside is significantly undermined. Hence, no matter how properly designed and well-intended the external policies are, if they are built without taking into account the strength of existing legacies and cultural peculiarities of the target states, they are bound to fail.

In this situation, new institutionalism vests power in the domestic institutions, which significantly shifts understanding of the origin and foundations of change from the EU level and the EU's bargaining and persuasion powers to the domestic level and to the power of the already established institutions. As new institutionalism shows, since institutions, which originally emerge in response to social and economic forces, gradually acquire causal power which shapes outcomes and determines human behaviour (Bates et al 2014), only gradual changes in the slow moving social and economic forces and their growing mismatch with the established institutions may eventually lead to the demands for institutional change (see also Greif and Laitin 2004).

However, these demands, which come to surface at critical junctures, may not translate into a change due to path dependence, resistance of those who benefit from the status quo and uneven distribution of outcomes and limited set of choices available. Subsequently, studies show that only upon a weakening or

removal of current elites, which benefit from current distribution of power and benefits, change is possible (see, for example, Hedlund 2013: 229; Olson 1982).

Thus, if power to change is vested into domestic institutions, the underlying assumption that the external actors can ignore the questions of the domestic equilibrium and how the status quo was originally established is rather misleading as the belief in cost-benefit calculations and the EU's power to transform this domestic status quo altogether by learning and rewarding the elites is.

Based on its assumption of possessing necessary power to transform third countries, outcome-oriented policies would be largely based on distorted and incomplete information about the local systems of rules, practices and incentives and their ability to persist. As an outcome, the EU arrives to an outcome, when as Hedlund (2013: 225–226) shows, 'under established conditions of imperfect competition, imperfect information and high transaction costs', vicious circle of what seems to be bad decisions prevail.

Behaviour of elites, and why they continuously engage in shameless rent-seeking despite their long-term interest, is an informative illustration. As it is pointed out, due to path dependence domestic 'actors may be locked into mental models of the world around them that profoundly influence future decision-making' (Hedlund 2013: 225). Since obtaining, consolidating and preserving power is at the centre of politics (Gel'man 2015), it is particularly detrimental in weakly institutionalized countries, where the institutional environment and overall weak constraints on the ruler is particularly conducive for power-maximizing. The patronal character of the societies (Hale 2015), dominant informal norms and practices (Hale 2011) accommodate power-maximizing behaviour of the rulers opening the path for the power consolidating policies by the new regime (Gel'man 2014: 11) and to get control of the existing rents and undermine the rival political and economic groups. This internal power dynamic is omitted from EU Studies and is taken for granted. Weak institutions presuppose lack of political and economic rights by domestic actors and a possibility to overcome any formal constraints by informal practices (Helmke and Levitsky 2004), which are maintained by neopatrimonial (or patronal) character of the regimes (Hale 2016).

Hence, motivated by a norm of power maximization and a culture which in presence of informal rules that prompt to compete for more power, the rulers are expected to pursue the power maximizing policies, playing against each other the elites and the society when necessary to overcome the existing constraints (see, Gel'man 2015: 14–15). No wonder that even when transferred in favourable conditions for institutional change and in presence of necessary constraints, EU rules become a tool of selective implementation that usually promotes the interests of entrenched interest groups.

In this regard, new institutionalism particularly shows how the EU-centricity of the literature and the assumption of universality and superiority of its rules and institutions, upon which the EU policies are built, can misguide institutional change and our understanding of the same. The presumption of the possession of the necessary answers and knowledge and their universal transferability open

the path for institutional monocropping and the persistence of the observed rules. As a result, the focus on the adoption and implementation of the EU pre-selected formal rules is an important part of achieving institutional change, but is not sufficient on its own (Hedlund 2011: IX), and as such may simply lead to rule persistence.

These limitations and the observed persistence of rules in Moldova and in Ukraine in the migration sector, especially after the Euromaidan Revolution, and the similarities in the trajectories of institutional change under the Yanukovych and Poroshenko presidencies suggest the need to look beyond conventional explanations in the Europeanisation literature and its focus on remaking of the formal rules. To explain the diversity of outcomes, as demonstrated in the preceding chapters, this thesis began with a look at the studies on both formal and informal institutions and the process of the creation of rules. It departed from the widely shared point that institutions – both formal and informal ones, which allocate rights and responsibilities within the society – matter and are deeply embedded in a society. In this process of creation of new rules, newly emerging formal institutions should also be supported by the dominant norms, beliefs and expectations within the society, which requires that external intervention shall take into account the domestic institutional features in its reform attempts.

New institutionalism moves the central issues of power and legitimacy in the studied countries away from the EU focus – from its rules, incentives, legitimacy and resonance – to domestic rules and institutions. It helps to analyse the domestic context and state and peculiarities of political culture. Such focus reconsiders the role of ideology and dominant attitudes, which are supported by the previous autocratic legacies and norms, which continue to affect new regime experience and the society in general (Pop-Eleches & Tucker 2013). In a similar way, political socialization literature points to the crucial role of formative years for political attitudes, in particular the time of adolescence, when political attitudes and preferences are formed (Bartels & Jackman 2014).

By applying a combination of historical and rational choice institutionalism, this study moved away from the EU-centricity of the EU studies, to rather analyse the importance of domestic institutions, norms and informal rules for the studies of external policies of institutional change. Such a combination also allows to account for both formal and informal institutions and see what role culture and informal norms play in institutional change, what constraints and opportunities of action informal institutions create (Easterly et al. 2003; Helmke and Levitsky 2004). In light of the above, the futility of policies represented by the outcome-oriented strategy is explained by the lack of support of the externally transferred formal rules by informal institutions. If a reform fails, it is either that the new rule was not implemented due to the opposition from the entrenched elites, which would manipulate or subordinate the new rule to their interest, or due to lack of societal acceptance and its contradiction to widely-held beliefs and expectations. In the first instance, the elites find a way to continue their rent seeking activities; in the second instance it leads to the creation

of a malfunctioning institution. Both instances lead to the preservation of the status quo.

To avoid such outcomes, new institutionalism particularly helps to understand not only how inefficient solutions emerge, but also how to facilitate institutional change. This study paid particular attention to the theoretical discussion of how to create efficient and sustainable institutional solutions. To do that, it used new institutionalism to particularly highlight the importance of flexible rulemaking to avoid institutional monocropping and to prevent the creation of single gatekeepers through the empowerment of broader societal groups. Moreover, flexible rulemaking and broad empowerment allows accounting for both formal and informal institutions and the addressing of the issue of norms and expectations by including a variety of actors in the rule making process. As a result, at the centre of this approach – the process-oriented strategy – is the point that to make externally-induced institutional change successful and sustainable, the external intervention should aim at the creation of deliberative institutions and the redistribution of rights from the entrenched elites to a broad variety of actors. To facilitate this, non-state actors should be included in rulemaking and be empowered to efficiently promote and defend their rights. As the next section summarises, broad inclusion facilitates the embeddedness of wider groups in the new rules and their support by taking into account local diversity and preventing the entrenched elites from monopolising the process of rule creation.

5.3 Rule making

In the beginning of this work it was argued that institutional change is primarily about the creation of deliberative institutions, which in this research is exemplified by the process-oriented strategy of the EU. In the cases of migration reforms, this study showed how in the absence of any redistribution of rights, the EU policies led to institutional monocropping and contributed to the rule persistence and the maintained dominance of the domestic entrenched elites.

The core question here is why outcome-oriented policies are inferior in practice. Based on instrumental rationality, outcome-oriented strategy views institutions merely as a set of mandatory tasks to perform. Thus, institutions require knowledge and resources and external interventions assuming that actors simply lack knowledge and resources should explain the target states what purposes are lacked by the state, why it is so beneficial and provide resources to build these missing institutions up. Yet, this approach neglects the fact that these functions are missed for a reason and domestic actors avoid them on purpose. In this regard, though the actions of agency may be guided by rationalism on an individual level, in general actors follow the established practices of decision-making and interactions. Historical institutionalism, which studies the origin and evolution of institutions, helps to understand the structural constraints on

change and how the norms and forms of interaction within the society can change.

As such new institutionalism indicates that besides the problems of the detrimental character of increasing returns and high transaction costs (Pierson 1999), just addressing these problems constitute only a partial solution. Inefficient institutions dominate not because actors do not better solutions, but due to their ideologies, which are embedded in the past choices and history-based perceptions that guide their current decision-making (North 1990; Hedlund 2013). If there is a deep-rooted legacy of power-maximization by the incumbent (see, for instance, Gel'man 2015), rational understanding of its negative impact would hardly prevent any enlightened actor from following it in practice.

The focus on rule making is based on the necessity to understand and identify how domestic actors adapt and work in the institutional environment. It derives from a core assumption of new institutionalism that institutional diversity and variety of different interests, norms and expectations exists. As noted, institutions reduce uncertainty and structure the behaviour and interactions of actors (North 2005); thus institutional change shall primarily address the ability of new institutions to create a predictable environment for a wide variety of actors. Flexible and inclusive rulemaking addresses the issue of allocation of rights, norms and expectations through the use of local knowledge and embedding the latter in the newly created rules. Thus, flexible rulemaking does not only help to create new rules, it also makes them more complete having based them on better information.

Furthermore, this work discussed how increasing returns undermine reforms and make a preservation of a status quo the most accommodating option for the powerholders (Pierson 2000). Absence of competition and collective action problem makes the issue of increasing returns particularly persistent.

In this regard, new institutionalism stresses the importance of flexible rulemaking, which facilitates competition between actors and a formation of a pro-change coalition. An opportunity for domestic actors to compete and experiment for the design of new rules, generates consensus in correspondence to capabilities, preferences and beliefs. In its absence, new institutionalism shows how pre-selected rules fail to take into account the specificities of a local context and allow the problems of imperfect information, increasing returns and high transaction costs to persist. Thus, it explains why the outcome-oriented strategy, based on pre-selected rules, can only lead to a disjuncture between the formal and informal institutions, which disrupt the work of newly created institutions and mitigate the effect of external top-down interventions and their mechanisms.

Returning to the empirical cases, the examples of the EU reforms in the environmental protection sectors in Ukraine and Moldova present how the EU process-oriented strategy can facilitate institutional change through flexible rulemaking and empowerment of a wide variety of domestic actors. It particularly showed the necessity for the creation of deliberative institutions that would make the process of institutional change inclusive and allow a wide variety of

domestic actors to acquire and protect their rights and promote their interests in conformity with dominant beliefs and expectations.

One of the core aspects of this strategy is its attention to the issue of institutional diversity. If institutional change requires the support of formal rules by norms, then the external strategy should attempt to incorporate the domestic norms and local knowledge in the rulemaking process – take institutional diversity, differences in values and practices into account. Such an approach contradicts the dominant external top-down policies, which emphasise the homogeneity of rules and institutions. Unlike the EU's technocratic top-down vision of institutional change, the successful external intervention requires active adaptation and modification of the proposed solutions to meet local needs and specificities and thus is much more than short-term borrowing of external solutions by the local actors.

Therefore, on one hand, efficiency necessitates the inclusion of non-state actors, and, on the other, allowing these actors to modify the designed rules and to allow them to use their knowledge and resources and accommodate for diverse interests and complexity of the existing system of preferences. How this works in practice is observed in the case of the environmental protection sector, where the non-state actors are organised and have the necessary capacity to participate in the rulemaking, promoting institutional change at the sectoral level.

5.4 Capacity building and empowerment

The European Union policies to induce change are based on the assumptions of superiority of its knowledge and ignorance of the domestic elites, which should be educated and incentivised, and whose capacities to implement this 'superior knowledge' should be developed. The European Commission put it correctly when it stated that feeble administrations in the post-Soviet space are incapable of implementing reforms, even when they have been adopted them on paper (Hahn 2015). Yet, while not disputing this statement, the EU focus on capacity building creates another important dilemma, which can be divided into two parts.

First, as discussed above, the narrow understanding of capacity building as providing the resources to the state institutions has detrimental consequences for institutional change. Capacity building addresses the issue of creating organisational capacities of institutions coordinating members' actions and enforcing their decisions. Yet, given the fact that organisation, necessary for institution's efficiency and coordination of its members' behaviour, consist of individuals, which pursue their own goals, motivation and preferences of these actors have a strong impact on the functioning of institutions and their enforcement (North et al. 2009: 15).

Consequently, in the situation of the prevalence of narrow interests in the post-Soviet states among political and economic elites, the proposed reform

agenda, instead of leading to the enactment of changes, often further incapacitates the entrenched groups and creates single gatekeepers at the sectoral levels. In this regard, instead of tackling the crucial domestic issues such as the inexistent rule of law, deeply rooted corruption, the EU creates strong create distortions in the allocation of resources and information. It primarily builds up the capacities and resources of the entrenched elites to maintain the status quo.

Instead, process-oriented strategy based on empowerment can limit the hold on power and not only re-writes rules but also alters organisational structures and creating a basis for more controlled and representative agencies that would defend interests of third parties (society in large) (North et al 2009).

Thus, as both Ukraine and Moldova are dominated by rent-seeking elites and are characterised by direct and indirect capture of state institutions by entrenched interests, who exploit their privileged position to extract benefit from the society, top-down policies help elites to maintain their dominant position at the expense of other actors. When the EU rules based on the assumption that its relative bargaining power and ability to persuade domestic elites would utilise the entrenched groups to promote change, as in case of migration management reform, they instead help the powerholders to improve their positions and turn into single gatekeepers and adopt and implement the EU rules in a way that would not undermine their vested interests in the sector. In this regard, the EU top-down policies at times only reinforced unaccountability of government and promoted policies at the expense of the political and economic rights of other domestic non-state actors.

The second part of the capacity building dilemma concerns the issue of the inclusion of non-state stakeholders and how to make flexible rulemaking more efficient. It departs from the assumption that the state institutions are embedded in a larger set of societally-structured power relations and thus views institutional change as a process of building deliberative institutions, which relies on local knowledge and coordination, contestation and experimentation between the actors to find better institutional solutions. Yet, sometimes, even when rulemaking is flexible and inclusive, non-state stakeholders lack sufficient resources to efficiently participate in rulemaking to find those solutions. In this regard, the empowerment allows the non-state stakeholders to gain access to EU resources, knowledge and political backing and more efficiently participate in rulemaking. As a greater consequence, by empowering non-state stakeholders, the EU contributes to the transformation of the domestic opportunity structures, creating more open, accountable and pluralist institutions at the sectoral level.

Such an approach to capacity building follows historical institutionalism in its understanding of capacity building as primarily a development of the functioning of both non-state actors and state actors at a policy level in order to be able to perform necessary functions as envisioned by new rules and synchronise them with the dominant 'habits of heart and mind' and expectations. Also in line with rational choice institutionalism, such a broad understanding of capacity building facilitates the access to information and resources by non-state stakeholders and improves strategic interactions between the actors –

necessary elements of the management of uncertainty (Hall and Taylor 1996: 950–1) in times of institutional change.

Overall, presented above challenges of capacity building represent a part of a broader agency v structure dilemma. If on one hand, the outcome-oriented approach is built on the idea of building up capacities of institutions to allow the reform-minded agency to pursue reforms, the process-oriented strategy views capacity building rather from a structure perspective looking at the deep causes of malfunction and approaching capacity building as establishing the structural foundations to support progress and creating structural constraints to the elites' manipulative actions.

In a longer term perspective, broad capacity building based on financial and expert assistance contributes to creating a more level playing field allowing better promoting of interests of excluded groups and actors, their ability to self-organise and better control the state. By doing that, it takes a step further away from a limited access order undercutting the privileged positions of a few entrenched groups and their monopoly on power, resources and information.

The empowerment of pro-change actors who can promote the reforms bottom-up and the ability of actors to adapt the borrowed rules to local needs show that this may create a favourable environment for sustainable change. In its absence, the focus on shared ownership and common interests with the incumbent elites and incentive-based models at the expense of non-state actors may bring more stability to the region, but certainly not institutional change. The EU also creates the possibility to monitor the elites and rule implementation. Overall, through empowerment the synergy between the EU and pro-reform stakeholders can become an effective tool in breaking the institutional status quo and overcoming entrenched elites at the sectoral level.

In this regard, in the case studies of the environmental protection sector we can see the impact of the EU process-oriented strategy – flexible and inclusive rulemaking and empowerment – on reforms. Unlike in the migration sector under this strategy, non-state stakeholders were empowered by the EU assistance programmes and were included in monitoring and rulemaking processes. As a result, despite strong entrenched interests and widespread corruption in the sector, the environmental protection sector became one of the most dynamic reform areas in both Ukraine and Moldova. Since 2010 and especially after 2014, the trajectory of institutional change in the environmental protection sector in Ukraine improved. This shows the integral role of the non-state stakeholder in pushing the reforms forward and controlling the elites. During Yanukovich's presidency, the non-state stakeholders were able to promote the European agenda, but also performed a watchdog function and prevented the destruction of key environment monitoring and controlling functions, which was planned under the new EU-required administrative reform promoted by the Yanukovich government.

The consequences of participation of non-state stakeholders in institutional change became more noticeable after the dramatic events in Ukraine in the first months of 2014. Before the 2014 Maidan Revolution, the effect of the

empowerment of non-state actors was minimised by the passivity of the Ministry of Environment Protection, the necessity to fight the vested interests in the government and the continued corrupt practices under Minister of Ecology and Natural Resources Eduard Stavvytsky (Leshchenko 2014). Yet, despite the problems, in 2011–2013 the non-state groups were able to create the legislation that promoted their interests and defended their rights, which they made use of in 2014–2015.

Moreover, after the Maidan Revolution the combination of a pro-active ministry and empowered non-state stakeholders demanding more reforms, environmental protection became a leading reforming sector. As this case shows, the key role in inducing institutional change in the environmental protection sector under the Eastern Partnership has been played by the process-oriented policies of the EU, the more open rulemaking processes in the sector and the empowering of the non-state stakeholders to more efficiently participate in rulemaking and the subsequent monitoring of rule implementation.

In a similar vein, Moldova has made visible progress in recent years in addressing the problems despite the unresolved issues of corruption, political instability and lack of resources. The process-oriented strategy dominated; though some donors insist on adoption of their narratives as a pre-condition for funding, non-state stakeholders have an opportunity for flexibility, which is particularly important when one takes into account the gaps between the aims of groups with Western funding and the real problems of Moldova (Samuelson 2013: 88). As this case shows, the progress was partly due to the active involvement of non-state stakeholders, the possibility for them to apply their local knowledge, achieve greater transparency and participate more in decision-making.

Moldovan non-state stakeholders look abroad for environmental models but adapt them to the local knowledge, which meet the needs of reflecting local realities in the environmental agenda of the EU and other donors (Samuelson 2013: 191). Thus, while Moldovan environmentalism is embedded in a larger EU-driven development project, domestic actors were capable of fitting it into domestic context, or even resisting the dominant narrative of progress, which the EU and donors may try to impose on the local actors (Samuelson 2013: 199–200).

As a result, an important outcome of these policies of empowerment was the implementation of the Aarhus Convention in Moldova and the subsequent increased transparency within the sector since 2011, which led to active participation of non-state experts in decision-making and monitoring, including drafting laws (Garaba 2014). The striking difference in this case is that compared to 2008, when the government ignored both the court decisions and requests of the donors and protracted the implementation of the international obligations it had undertaken, in 2014 the Ministry of Environment Protection approved an environmental strategy for 2014–2023 elaborated in cooperation with non-state stakeholders, as well as the drafting of a revised environmental

protection law, which is a framework law providing for comprehensive environmental legislation in line with the EU general requirements.

Thus, returning to the EU's outcome-oriented strategy, the EU top-down policies are not simply misguided in trying to transform societies by rewriting the existing rules, the ambitious tasks are undertaken under the false assumption of shared values and interests. By using the strategies that help the entrenched elites to keep their power, by using the EU as a resource and its assistance as a source of rent to maintain institutional status quo, it contributes not only to rule persistence but also has a detrimental effect on those who see in the EU the solution to their domestic malaise, missing the opportunities for institutional change that pro-European popular revolts and revolutions against the old systems bring.

In this regard, the migration sector perfectly illustrates the lack of inclusion of non-state actors in rulemaking and lack of empowerment – hence, a lack of resources provided beyond state institutions, which led to the observed unsuccessful results in the reform blocks. The outcome-oriented strategy did not only help the entrenched elites, it also made Moldova's genuine reformers over-dependent on directive governance and assistance from the EU and other international donors. In migration sector, Moldova struggled to independently undertake reforms, having created a dependency on EU guidance, cultivating an 'inferiority complex' according to Korosteleva (2012).

At the very end, limitations of this study are to be mentioned. First, on the methodology part this study would have benefitted from a more variety of case studies, both sectors and countries, and a wider set of materials, in particular interviews. At the same time, MSDO, while providing for a better generalisation limits the in-depth understanding of the underlying process that guide reforms at the sectoral level. The focus on a specific agency and its organisation could give a more nuanced understanding of reform processes, role of agents at different levels.

Second, an inclusion of sectors with constellation of factors, including the role of oligarchs, stronger influence of Russia and weaker civil society would be beneficial to compare with the observed cases and trace the broader set of reasons behind the failures and the effect of the EU policies. Other structural constraints, including ethnic, linguistic and regional divisions, as well as tracing different dynamics at the regional level rather are an omitted dimension in this study.

A related point concerns a limited time frame of this study and lack of attention to the coherence of the Western policies towards Ukraine and the synchronisation of individual efforts of EU member-states. Though in this study the compatibility of their policies is assumed, in other sectors and in other reform direction, selected actors may have their own agendas and priorities that can conflict with each other. Time frame is also limited and in such delicate subject as institutional reforms requires a longer period of study.

Fourth, a more in-depth tracing of dominant legacies and culture at the sectoral level and a history of efforts at previous junctures and during other cycles

in the history of independent Moldova and Ukraine (both before and after Orange Revolution and after the Euromaidan) and reasons behind failures would better connect findings to new institutionalism. Yet, collecting such data would require a laborious effort in a different direction to the main objective of this study.

5.5 Conclusion

What this study shows is the positive effect on institutional outcomes of the external interventions built on the empowerment of non-state stakeholders and flexible rulemaking. The process-oriented strategy, which exemplifies such an approach, improves participation, control, transparency and accountability and subsequently the quality of political competition, facilitating the creation of deliberative institutions.

This study illustrates that there exists institutional diversity, a variety of norms in societies and multiply institutional solutions. The European Union aims to ‘win [the] hearts and minds’ of the governments and people of Moldova and Ukraine, but neglects to address the issue of different ‘habits of the heart and mind’ in the post-Soviet space. To promote genuine reforms, the external policies of institutional change should consider carefully how they affect the domestic actors and their expectations and contribute to the redistribution of rights within the society, and to increase transparency, create accountability and eventually generate trust – attributes, which are lacking due to negative institutional experience and continued control of ‘roving bandits’ in domestic institutions. In other words, undertaking social reconstruction involves not only the rewriting of the formal rules (Hedlund 2007), but also the reallocation of rights within a society.

The findings of this work have wider implications for policy and further research. First, the proposed explanation criticises the dominant approach of the European Commission, which in its ENP Review (2015) repeats the major mistakes of top-down policies to induce institutional change with its focus on more conditionality and shared ownership with domestic entrenched elites. Second, the findings of this study can be potentially generalised to explain the outcomes in other sectors and countries potentially even beyond the Eastern Partnership.

The core point of this research is to take institutional diversity and the necessity of empowerment into account when drafting external policies to induce institutional change. The EU strategies and the key domestic challenges and problems with the implementation of the EU rules that the EU faces in Moldova are similar to those of the other Eastern Partnership countries. Yet, there are a few provisions that should be addressed in the framework in order to explain the variation in countries like Belarus or Armenia, including the differences in regime type, lack of pluralism in the case of Belarus, the stronger presence of Russia and the poor condition of non-state actors, which are particularly weak in the case of Belarus.

Other sectors will also differ with regards to migration and environmental protection due the impact of Russia or presence of active stakeholders; yet, as the anti-corruption reforms in the environmental protection sector show, strong presence of the entrenched elites does not necessarily exclude a positive reform outcome. Change in other sectors in Ukraine and Moldova will depend on their level of their politicisation, whether a reform does threaten the incumbent's hold on political and economic power. Other sectors will also differ from migration and environmental protection due to the stronger impact of Russia or lack of presence of active stakeholders.

First, major economic reforms including banking and energy sectors are not possible without a removal of strong vested interests. In this regard, reforms are rather to follow the logic of the partial reform equilibrium, when the new winners block further economic reforms that would correct the very distortions on which their initial gains are based (Hellman 1998). In words of Ihor Kolomoiskii, Ukrainian oligarch, who is an owner of Ukraine's largest but highly problematic commercial bank, famously described the reforms in the Ukraine's banking sector, which closed down half of its banks, as 'cleaning out the market for us' (Champion and Krasnolutska 2016).

In a similar fashion, the banking, energy and fiscal reforms alongside the reform of state-owned enterprises remain largely problematic. The energy sector provided a major source of rents for a group of oligarchs in close entourage of top leadership – former Prime Minister Tymoshenko or ex-President Yakukovych, producing an annual deficit of US\$10 billion, which was subsidised from the budget amounted at around 10% of GDP (IMF 2015). Since the beginning of the conflict with Russia and the escape of some 'energy' oligarchs from Ukraine, the government was able to initiate some far-going reforms, which included 'unbundling' Naftogaz, eliminating energy subsidies and unifying energy prices. Yet, as the economic situation stabilised and the initial gains from this reform have been distributed, the entrenched interests in the gas sector started to gain strength.

In the oil sector, situation was different since a major benefactor from state-owned enterprise Ukrnafta, its minority shareholder Igor Kolomoiskii, sustained his political weight in post-Maidan Ukraine, while one of his business partners in the oil sector, Sergei Kurchenko, a member of Yanukovych 'family', left Ukraine. All the 'reforms' in the oil sector subsequently aimed at redistributing the rents within the sector between Kolomoiskii and the associates of President Poroshenko.

The far-going transformation of Ukraine is not possible without a reform of its judiciary and political system. Oligarchs and key officials use domestic courts and prosecutors to defend their interests and maintain the system. General Prosecutor's Office including its EU-demanded reforms, became a source of power maximization for both Yanukovych and Poroshenko regimes in Ukraine as well as for Vlad Plahotniuc in Moldova. Political parties in turn are used as sources to legitimise their hold on power. In this regard, necessary steps including party funding and electoral reforms would require not only a strong

external intervention to eliminate vested interests but a massive assault from within the system to rebuild political parties along ideological issues, not interest of their financial sponsors. Such reforms are possible, only if supportive norms within both societies that would make deep social transformation to take place are sufficiently developed within the society.

Saying that, environmental protection and migration sector benefitted from active grassroots movement and bottom-up involvement in both sectors and particularly in their anti-corruption dimension, which was prioritized by the society in large and activists at different levels. Unfortunately, it was not necessarily often supported by the EU and often counteracted by the domestic elites.

Overall, the major challenge is the merge of political and economic in hands of a small corrupt elites, which makes institutional change in all major sectors – anti-corruption, judicial, political and economic – interdependent and mutually reinforcing. Their control over institutions and resources gives them an advantage in preventing change and maintain an institutional status quo even if a broader consensus within the society has taken place. Each political regime in Ukraine maintained weakly institutionalized state ridden by corruption and rents for their political and economic gains preserving limited access order. The control over the state institutions provides domestic elites with an opportunity for fast enrichment, creation and maintenance of patronage networks and a rent-seeking oligarchy. In this regard, without judiciary reforms, anti-corruption measures will remain thwarted disregarding the amount of incentives provided to Ukraine by external actors.

Nevertheless, the anti-corruption reforms in the environmental protection sector show that strong presence of the entrenched elites does not necessarily exclude the positive reform outcome if they are well supported by significant bottom up efforts. Subsequently, empowerment and flexibility is important, but only when other structural factors are in place, necessary constraints on power maximization and favourable structural conditions – weakened vested interests and a pro-active agency.

What is more, showing that the involvement of reform-oriented stakeholders has a positive impact on the direction and pace of reforms, this study has implications for the literature on civil society. Literature on civil society primarily focuses on monitoring and watchdog functions. However, this work shows that the role of non-state actors can play a bigger role in democratizing countries where state institutions are directly or indirectly captured by special interests. While civil society is well explored in the literature, this study shows the importance of involving the non-state actors in the process of rulemaking, in particular the rule adoption stage. In this regard, a systematic study of the implications for the involvement of non-state stakeholders in the rule adoption process at the national level in the democratising countries would be beneficial for understanding the reform processes in the region.

As for future avenues for research, there is a strong necessity to further de-centre the EU Studies from the EU mechanisms and continuous attempts to map EU policies to studying of domestic institutions and socio-political orders to

better understand *why* change occurs or not, and *how* the EU interventions can support the emergence of political and economic order. To do that, the EU Studies should take a better look at other studies, in particular the literatures on international development and political economy and build upon their understanding how today's democracies and market economies transformed in open access societies.

External policies of change are based on external knowledge, context and information about their own development. Yet, as North et al. (2007: 2) show, 'the social dynamics of developed countries fundamentally differ from those of developing countries' thus attempting to transfer models of the developed world into developing futile. Aiming to bring prosperity and democracy without understanding what are its basic foundations, by technocratically transferring rules created and maintained in open access societies to limited access orders (which do function upon a different logic in a different context) will lead to a perpetual game of mouse and cat between the EU and its neighbours, in which the latter will manipulate, subdue or exhaust the meaning of the EU-promoted rules and institutions to preserve their hold on power and rents.

In essence, a broader question of the role of 'context-specific' culture and the transformation of norms in the society as a crucial pre-condition for a sustainable change and how the EU can contribute to it is a major area for future research. As studies of institutional change show, the new rules can function only if necessary supportive norms have been developed in the society (see, for example, Fukuyama 1995; Greif 2006; North et al. 2007; Putnam 1993). In this regard, how the evolution of supportive norms in the societies occurs and what role the EU can play to foster it is particularly crucial.

On a separate note, a related issue is to investigate the influence of 'uncivil' civil society including oligarchs. Since corruption is endemic, the non-state actors are not exempt from this malaise. The question is how to facilitate not just the greater participation of non-state actors, but also the creation of institutional safeguards in the non-state environment as well.

Finally, a further more refined research is needed to specify the effect of the EU strategies on 'structured' and 'unstructured' institutions, slow-moving and fast-moving institutions, and their long-term implications of contributing to systematic transformation.

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SUMMARY IN ESTONIAN

Väljastpoolt soodustatud muutus Euroopa Liidu idanaabruses: migratsiooni- ja keskkonnakaitsealased reformid Ukrainas ja Moldovas 2010-2015

Alates Euroopa naabruspoliitika (ENP) ametlikust algatusest 2004. aastal on Euroopa Liidu (EL) eesmärgiks olnud toetada stabiilsuse ja jõukuse saavutamist oma naaberriikides. Idanaabrite hulgas on EL seda teinud euroopalikel väärtustel põhinevate reeglite ülekandmise kaudu, kuid sõltuvalt konkreetsest naaberriigist on EL-i poliitika edukus olnud erinev, seda isegi nendes valdkondades, kus tingimused reeglite ülekandmiseks on olnud soodsad. Doktoritöö käsitleb EL-i rolli reformide edendamisel Ukrainas ja Moldovas alates 2009. aastast, mil kutsuti ellu idapartnerluse poliitika. Töö peamiseks eesmärgiks on selgitada, miks mõlemas riigis läbi viidud migratsiooni- ja keskkonnakaitsevaldkondade reformid oma edukuselt erinesid. Uurimuse keskne tees on, et EL saab soodustada põhjalikke ja jätkusuutlikke reforme riikides nagu Ukraina ja Moldova, kaasates erinevaid kohalikke toimijaid, kes osaleksid uute institutsioonide loomises ning nende võimekuse ülesehitamises. Doktoritöö väidab, et selle saavutamiseks tuleb reformidele läheneda protsessi-, mitte tulemusekeskselt.

Antud uurimus lähtub teesist, et selleks, et mõista ja lahendada ebaedukate ning vastukäivate reformide probleemi, tuleb esmalt välja selgitada, miks rahvusvaheliste toimijate (nagu EL, USA või Rahvusvaheline Valuutafond) sekkumine ei too tihtipeale kaasa soovitud institutsionaalset muutust. Seega püüab doktoritöö mõista, miks hoolimata arvukatest pingutustest on väljastpoolt soodustatud institutsionaalse muutuse keskseteks tunnusteks arenevates riikides (nagu Moldova või Ukraina) jätkuvalt kohalike toimijate poliitiliste ja majanduslike õiguste puudumine, vastutusvõimetu valitsus ning nõrgad ja manipuleeritavad institutsioonid. Välisriiklikud ja rahvusvahelised toimijad pakuvad kõikvõimalikke stiimuleid, esitavad sageli konkreetseid reformikriteeriumite loetelusid, millele kohalikud eliidid oma toetust avaldavad (ja töötavad omakorda välja loetelusid ja tegevuskavasid), kuid sellegipoolest on poliitiliste ja majanduslike reformide tulemuseks pelgalt illusioonid õiglastest ja vabadest valimistest, efektiivsetest riiklikest institutsioonidest, kaitstud omandiõigustest, olemasolevast ja toimivast turumajandusest ning iseseisvast kohtuvõimust.

Käesolev Moldova- ja Ukraina-suunaliste EL-i poliitikate uurimus on heaks näiteks välistoimijate sekkumisega kaasnevatest probleemidest ja võimalustest. Ukrainat ja Moldovat peetakse kõige aktiivsemateks reformijateks endise Nõukogude Liidu aladel, samuti on nad suurimad EL-i välisabi saajad. Mõlema riigi jaoks on reformid olnud nii siseriiklikuks kui rahvusvaheliseks prioriteediks. EL mängib mõlemas riigis olulist rolli nii muutuse algatamises kui reformide kavandamises ja rakendamises. Idapartnerluse riikides on EL toetanud muutusi erinevate stiimulite ja eliidi sotsialiseerimise kaudu, olulisemateks näideteks siinkohal on põhjalik ja laiaulatuslik vabakaubandusleping (DCFTA) ja viisavabaduse tegevuskava (VLAP) (Dimitrova & Dragneva 2009).

EL pakub seega tõsiseltvõetavaid stiimuleid, selgeid eesmärke, monitooringut ja abi suutlikkuse tõstmiseks. Nii Maidani revolutsioon 2014. aastal Ukrainas kui ka laiaulatuslike valitsusvastaste ja euroopameelsete meeleavalduste järel moodustunud Euroopa integratsiooni toetav siseriiklik koalitsioon 2009. aastal Moldovas näitasid, kui suur oli toetus EL-i suunale neis riikides. Selle tulemusena tekkinud ühiskondlik teadlikkus ning huvi institutsionaalse muutuse vastu andis võimaluse vastutuse jagamiseks ja avalikuks osalemiseks reeglite loomisel ja järgimisel. Hoolimata soodustavatest tingimustest andsid EL-i poliitikad aga väga erinevaid tulemusi valdkondade lõikes. Seda varieeruvust põhjendatakse EL-i kasutatud reeglite loomise ja vastutuse jagamise strateegiate erineumisega valdkondlikul tasandil.

Protsessile suunatud lähenemine aitab tegelda peamiste siseriiklike probleemidega nagu suure osa kohalike toimijate poliitiliste ja majanduslike õiguste puudumine ja eliidi ekspuuteeriv käitumine, avatud konkurentsi puudumine, vähene arutelude pidamine ja otsustusprotsessidesse kaasamine, puudulikud tingimused huvirühmade õiguste saavutamiseks ja kaitseks. EL-i ja mitteriiklike toimijate omavaheline koostöö aitab luua kontrollimehhanisme võimalolijate ekspuuteeriva käitumise piiramiseks ja läbipaistvuse ning vastutustundlikkuse suurendamiseks. Kui EL teeb valdavalt koostööd kohaliku eliidiga iseenda poolt määratud eesmärkide saavutamiseks (mis antud töö mõistes on tulemusele suunatud lähenemine), siis sellisel juhul on ka uute institutsioonidega võimalik edukalt manipuleerida *status quo* säilitamiseks.

Tulemusele ja protsessile suunatud lähenemiste mõju uuritakse töös migratsiooni- ja keskkonnakaitsevaldkondade näitel. Töö analüütilised järeldused näitavad protsessile suunatud lähenemise positiivset mõju keskkonnakaitse-ektoris, kus EL-i tegevuse tulemusena laienesid paljude kohalike toimijate õigused ja nende kaitse, saavutati valdkondlike organisatsioonide suurem läbipaistvus, avatus ja vastutustundlikkus. Olukord oli vastupidine migratsiooni-ektoris, kus EL kasutas tulemusele suunatud lähenemist, keskendudes formaalsete normide vastuvõtmisele ja riigiasutuste suutlikkuse suurendamisele, mis tekitas tugevat vastuseisu reformidele.

Doktoritöö näitab institutsionaalset mitmekesisust, normide varieeruvust ühiskondades ning erinevaid institutsionaalseid lahendusi. EL püüab võita Moldova ja Ukraina valitsuste ja inimeste “südameid ja meeli”, kuid jätab tähelepanuta “südame ja meele harjumuspärase” erisused postsotsialistlikus ruumis. Et julgustada tegelikke reforme, peaksid väljastpoolt tulevad institutsionaalset muutust propageerivad poliitikad hoolikalt jälgima seda, milline on nende mõju kohalikele toimijatele ja nende ootustele, ning aitama kaasa õiguste ümberjagamisele ühiskonnas, suurendama läbipaistvust, looma vastutust ning usaldust. Need omadused on seni siseriiklikes institutsioonides halva institutsionaalse kogemuse ning nõ röövkapitalistliku kontrolli tõttu puudunud.

Doktoritöö tulemused on olulised nii poliitikaplaneerimise kui jätkuurimuste seisukohalt. Esiteks kritiseerib töös väljapakutud selgitus Euroopa Komisjoni põhilist ehk ülevalt alla suunatud lähenemist, mis keskendub tingimuslikkusele ja vastutuse jagamisele oma võimu kindlustanud kohaliku eliidiga.

Uurimuse peamine eesmärk on rõhutada institutsionaalse mitmekesisuse ning kaasamisvajaduse olulisust väljastpoolt tulevate institutsionaalse muutuse poliitikate juures. Muutused, mis ilmnevad Ukraina ja Moldova ühiskondades, on liitnud erinevaid ühiskondlikke grupe ühtseks rindeks, mis on valmis toetama ja edendama lähenemist Euroopale. EL ei tohiks seda võtta iseenesestmõistetavana ning peaks pakkuma taoliste alt üles tekkinud liikumistele tuge oma poliitikate täiustamiseks ja tugevdamiseks.

Teiseks on doktoritöö uurimistulemusi võimalik rakendada ka muude valdkondade ning riikide institutsionaalse muutuse arengu seletamiseks. EL-i strateegiad ja peamised siseriiklikud probleemid EL-i reeglite kohaldamisega Ukrainas ja Moldovas on sarnased teiste idapartnerluse riikide omadega. Samas tuleks teatud aspektide puhul antud raamistiku kasutamisel varieeruvuse selgitamiseks sellistes riikides nagu Armeenia või Valgevene võtta arvesse erisusi nagu pluralismi puudumine Valgevenes, režiimitüüp, Venemaa tugevam kohalolek ning mitteriiklike toimijate nõrkus, mis on eriti olulised Valgevene puhul. Teised valdkonnad erinevad migratsiooni- ja keskkonnakaitsektoritest Venemaa mõju või aktiivsete huvirühmade tõttu, kuid, nagu korrupsioonivastased reformid keskkonnakaitsevaldkonnas on näidanud: võimust kinni hoidva eliidi tugevus ei välista tingimata reformi positiivset tulemust.

Kolmandaks annab töö oma panuse ka kodanikuühiskonnaalasesse teaduskirjandusse, sest näitab, et reformimeelsete huvirühmade kaasamine avaldab positiivset mõju reformide kursile ning kiirusele. Kuigi kodanikuühiskonda on kirjanduses palju käsitletud, siis käesolev töö rõhutab mitteriiklike toimijate rolli reeglite loomise protsessis, sealhulgas eriti kaasamist reeglite vastuvõtmisse. Selleks, et mõista reformiprotsesse antud regioonis, oleks edaspidi oluline süstemaatiliselt uurida mitteriiklike huvirühmade kaasamise mõju reeglite vastuvõtmise riiklikus protsessis demokratiseeruvates riikides.

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