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**Limits and Opportunities of the EU Conditionality Policy in the area of Anti-Corruption:
the Case of Visa Liberalization in Ukraine**

MA thesis

Supervisor: Kristina Muhhina, PhD

Tartu 2020

I have written this Master's thesis independently. All viewpoints of other authors, literary sources and data from elsewhere used for writing this paper have been referenced.

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Limits and Opportunities of the EU Conditionality Policy in the area of Anti-Corruption: the Case of Visa Liberalization in Ukraine

Abstract

The thesis explores the limits as well as the opportunities the EU conditionality policy has beyond the legal borders of the Union. To attain the research objective, the research zeroes in on Visa Liberalization Action Plan in Ukraine and sets out to apply three theoretical assumptions identified in the scholarship on conditionality critique: (1) rule adoption versus rule application, (2) domestic costs as well as (3) EU's own strategy. By constructing the conceptual framework around these three dimensions the thesis aims at eliciting the limits in the case of Ukraine, but not limited to identifying other limits. The ways how to improve the conditionality policy constitutes the second objective of the research. In terms of data collection, the research has conducted five interviews with experts in the field of EU conditionality and anti-corruption. In order to ensure the validity, the thesis used the "triangulation method". Therefore, document-analysis was used to complement the main finding of the research.

With regard to results, the research has identified that low rule application within the first dimension has multiple reasons: insufficient operationalization of conditions, non-holistic approach, and the EU's own tolerance to unfulfilled conditions as well as only formal compliance by elites that does not presuppose effective application of the rule. With regard to the second theoretical expectation, the research has revealed that local resilience is a serious factor that limits the conditionality policy. "Vested interests" was found as a pivotal factor in this respect. Lastly, EU's strategy is not sustainable and since there is no clear vision on how the EU should proceed after the conditionality is completed, the EU loses leverage over structural anti-corruption reforms, which raises the questions of effectiveness and sustainability of such policy more generally. With regard to opportunities, the EU should follow the improvements of both operational as well as strategic levels. Therefore, better precision of condition is needed, better decision-making, concrete and realistic benefits from the EU, more complementarity within conditions as well as more bottom-up approach should be enacted.

Key words: EU external governance, Anti-corruption Reforms, EU's transformative power, limits of conditionality, political conditionality, EU enlargement.

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List of Abbreviations

AA - Association Agreement

ARMA - Agency for Recovery and Management of Assets

CEEC - Central Eastern European Countries

DCFTA - Deep and Comprehensive Free Trade Area

EaP - Eastern Partnership

ENP - European Neighborhood Policy

EU- European Union

HACC- High Anti-Corruption Court

IMF - International Monetary Fund

NABU – National Anti-Corruption Bureau

NACP -National Agency for Corruption Prevention

OECD - Organisation for Economic Co-operation and Development

SAPO - Specialized Anti-Corruption Prosecution Office

TCA – Thematic Content Analysis

VLAP – Visa Liberalization Action Plan

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Introduction

A significant amount of literature posits that the European Union (EU) possesses a transformative force when it comes to advancing good governance, initially among Central and Eastern Europe and subsequently around its broader neighborhood. In the EU conditionality developed from the minor policy to the key political leverage of the EU enlargement governance and a successful political tool of foreign policy (Steunenberg et al, p.2, 2018). Political conditionality grants the EU a role, where the EU can shape not only the policies but also develop and promote the building of the institutional structures in the member states (Waggoner&Bowler, 2014, p.2). The extension of EU rule beyond its legal borders sheds a new light on the EU's international role (Lavenex, 2004, p.4). On the other hand, a number of scholars (Schimmelfennig&Sedelmeier (2005); Tulmets, et.al (2018); Bolkvadze (2016); Magen (2006)) believe that the EU's transformative power outside the EU should be revisited, as there is a number of reasons for skepticism of its real institutional capacity in transforming the public administrations and being a long-term solution to challenges the European Neighborhood Policy (ENP) countries face, particularly in the recent decade, against the backdrop of challenges the union faces internally and ENP policy context that does not lead to accession. Furthermore, it is argued the EU conditionality policy can be encompassing, yet its effectiveness in achieving a rule transfer in some policy areas might be limited. The mere presence of conditionality does not imply the effective rule transfer (Schimmelfennig&Sedelmeier, 2004, p.670)

In light of this, the research aims to contribute to broader discussion on how the EU's transformative power can be limited as well as improved. Specifically, the research will zero in on conditionality policy in the European Neighborhood Policy and set out to look at the policy from a critical perspective, thus intending to understand the limitations this policy tool entails. In order to attain this objective, the thesis will focus on the EU-Ukraine relations, where the EU conditionality was used to induce a change in the area of anticorruption within Visa Liberalization Action Plan (VLAP) program that Ukraine accomplished in 2017. Hence, the first purpose of the work will be to contribute to narrowing the existing conceptual gap in the area of conditionality critique with my own input. To attain the desired aim, the research will be guided by two research questions that the thesis will set out to answer throughout the research:

RQ I: What are the limits of conditionality in the EU's anti-corruption reform promotion strategy in Ukraine within VLAP?

RQII: How to improve the EU's anti-corruption reform promotion in Ukraine?

For the purposes of the thesis and due to its structural limitations, the research will focus on conditionality within European Neighborhood Policy, which would be much relevant for the research given the focus of the analysis, which is the anti-corruption conditionality of the EU in Ukraine. With regard to research methods, to answer the research questions, five in-depth interviews with experts in the Rule of Law area and Anti-Corruption were conducted. The respondents were two experts from the EU Delegation to Ukraine, one interview with expert from Transparency international Ukraine, an interview with Support Group for Ukraine by the European Commission expert on Rule of Law as well as an interview with the legal expert from Anti-Corruption Action Center Ukraine. In order to complement the findings as well as enhance the validity, the research analyzed Organization for Economic Co-operation and Development (OECD) latest reports (2015-2019), European Commission reports on the progress with AA (Association Agreement) as well as relevant academic reflections in the field of conditionality and anti-corruption reforms in Ukraine. Thematic Content Analysis (TCA) method (Andersen, 2007; Mortensen, 2020) was employed in order to reveal the main patterns, trends. The interview has analyzed twenty pages of written data in total, where 84 coded segments were found and grouped accordingly into 12 thematic groups.

In the first chapter, the thesis will seek to understand the broader picture of the EU conditionality policy in the Central and Eastern European countries (CEEC) as well as ENP. Specifically, the research will conceptualize the external dimension of the EU governance as well as its application by the EU. Then the thesis will explore how the EU tries to address the challenges of corruption and will zero in on critique, where the main limits with regard to the application of conditionality in the ENP will be analyzed. In the second chapter, I will discuss the nature of corruption in Ukraine, provide an overview of different conditionality programs in the country as well as zero in on VLAP as the main case of the research. The third chapter will explain the research problem and present the conceptual framework of the research. Next, the research methods and data collection technique will be described. In the fifth chapter, I will report the

analysis. In the remaining part of the work, all the findings will be summed up and academic contribution delineated

Chapter I: Literature Review

1. Conditionality as a tool in EU's external governance

The first chapter of the thesis will overview the broader role of the EU conditionality and its application in the ENP. Before the research proceeds with the EU conditionality, as one of the tools of EU's strategy to deliver better governance to its neighbors, it is vital to understand a broader scope of EU's external actions and logic in terms of aid and support to third countries, namely its neighboring states. Accordingly, the thesis will seek to refer to existing scholarship in the field and gain a theoretical understanding what constitutes the EU's external governance in general as well as in ENP in particular. Then, the research will look at the EU's conditionality role in the ENP itself as well as focus on the critique of this policy.

1.1. Unpacking External Governance

As an alternative to enlargement, when the ENP has been launched, a lot of academics in the EU were puzzled while trying to define policies the EU was promoting in the neighboring states. Such actorness was sometimes called "external governance" or "the governance beyond EU borders" (Theuns, 2016, p.288). Some scholars were arguing about the "fuzziness" of the EU borders (Christiansen et al, 2011).

Lavenex&Schimmelfenning (2009), regard the EU external governance as an overarching phenomenon that extends its borders varying across regions, countries as well as policy fields and areas. It can appear unexpectedly, in case the mutual interdependence is strong, where the adaptation of the EU rules goes in hand with the interests of the third countries or international organizations. Thus, the phenomenon of external governance is believed to have a broad meaning and it can be a part of a foreign policy initiative, such as ENP, or the European Economic Area (Lavenex&Schimmelfenning 2009, p.792). On the other hand, the external governance can also go further and emerge in the external relations between the EU and African states, the Caribbean as well as Pacific states or North America. The phenomenon can also exist as "a function of the perspective qualities of the EU acquis" that would be focused on one concrete

area of public policy (ibid). Furthermore, the notion of external governance is said to be an attempt to explain the fundamental aspects of EU's international role as well as shed a new light on the analysis of the EU's integration with the third countries that remain beyond the union membership (Lavenex&Schimmelfenning, 2009, p.3).

Lavenex (2004) argues that the EU's idea of moving its governance beyond its borders lies in the identity of the union that sees itself as a "security community". The author believes, that the change in the territorial scope of the EU governance as well as the selection of certain policies that develop the external dimension are conditioned by two circumstances: institutional roles and capacities as well as perceptions of interdependence. While the latter explains the EU's decision to engage in external action and make the states carry out the internal policy goals, the former serves as the basis for the EU's responsibility to aid the countries with problem-solving capacity in a certain domain (Lavenex, 2004, p.3). The external governance of the EU is said to take place when "the institutional/legal boundary is moved beyond the circle of member states" (ibid, p.5).

Speaking from a normative perspective, the EU's external governance sees the EU rather effective international actor that exports its "soft power assets" through the expansion of its governance (Wright, 2011, p.9). While analyzing different dimensions of external governance one should distinguish between external and internal dimensions. The main difference lies in the distinction, according to which the latter dimension is focused on creating the rules and structures along with their implementation in the national political systems. The external side of governance is preoccupied with exporting the EU rules as well as their adoption by third countries (Schimmelfenning&Sedelmeister, 2004, p.661)

1.1.2 Conditionality as EU's strategy of good governance promotion

The European enlargement is said to be one of the most successful instances of soft power projection (Wright, 2011, p.9). With its model of governance, democracy as well as market economy the EU has been a very attractive destination for many states for decades. With the concrete conditions and rules to become a member of the union, the EU has been actively looking to transfer its norms and values beyond its borders. In this context, the conditionality policy has been used as a 'reward' for the countries that comply with the conditions and withdraw the rewards when conditions are ignored (Andguladze, 2018).

As a political strategy, conditionality has become very popular and for decades been used by such international actors as the International Monetary Fund (IMF), World Bank in order to support a number of countries in their process of political transformation. Unlike IMF and WB conditionality, which is sometimes seen by scholars as controversial and not attaining its purpose, the EU enlargement process is very often viewed as an effective conditionality instrument (Sippel&Neuhoff, 2009, p.3).

One can find a number of different conceptualizations of the EU conditionality. In regards to a definition of the phenomenon, the conditionality instrument has been defined by many actors in a similar way. What is clear in this regard and agreed upon is that when a third country wants to have any relationship with the EU and receive benefits, agreements, associations, be it some trade agreement or even full membership, the state will deal with certain conditions that the EU will set up for the state to be adopted and implemented (Waggoner&Bowler, 2014, p.3).

Tracing the conditionality notion one could refer to Smith et al (1997) who define political conditionality as “linking by a state or international organization, of perceived benefits to another state to the fulfillment of conditions relating to the protection of human rights and the advancement of democratic principles” (Smith et al, 1997, p.6). Abguladze (2018) argues that conditionality results are dependent upon successful fulfillment of conditions and might touch on different areas such as trade concessions, political contacts, membership in the organization, financial aid or cooperation agreements. These all should be followed by advancing further the democratic principles by protecting human rights.

Drawing on somewhat broader definition of conditionality, Schimmelfennig (2005) analyzing different modes of EU governance defines the EU conditionality as “the bargaining strategy of reinforcement by reward” where the EU grants the state significant incentives for the government of a given country in the exchange for complying with the conditions agreed bilaterally (Sedelmeier&Schimmelfennig, 2005, p.11). The application of conditionality has been also seen as “stated intention of exerting pressure on recipient governments to implement political reforms broadly along the lines of democratization and greater respect for civil and political rights” (Crawford, 1997, p.71)

Smith et al (1997) argue that the Union has embarked on using conditionality as a means of furthering stability and peace in the third countries after the Second World War. After moving its conditionality policy to the CEEC, the EU sought to use its leverage in trades and cooperation agreements to foster reforms in respective regions. The benefits were given to the states that attained better results in their reform process. The support was provided in the exchange of strong commitment to the reform agenda. On the other hand, if a state did not respect human rights, the EU would suspend the agreement (Smith et al, 1997, p.8-9).

In terms of the EU influence on the third countries, we can distinguish between two leverages/sides of EU conditionality: passive and active, that a number of scholars have referred to in their works (Szarek-Mason, p.152, 2010; Smith et al, p.4, 1997; Grabbe, 1999) While the former is based on the attraction of the EU membership and promising the state certain rewards, provided certain conditions are met, the latter draws on deliberate conditionality which is carried out in the pre-accession process. Unlike positive, negative conditionality draws on reduction, suspension and termination mechanisms when the state does not meet the desired conditions or violates the agreed terms.

The EU conditionality was advanced further after 1993 meeting in Copenhagen where the EU has acknowledged the aspirations of CEE countries to become the member states and allowed them to join the union after meeting concrete conditions (Grabbe, 1999, p.4). Schimmelfenning& Sedelmeister (2005) argue that political conditionality is the core strategy that the EU pursues in order to promote the fundamentals of human rights, liberal democracy as well as rule of law (Schimmelfennin&Sedelmeister 2005, p.29) In this respect, Shimmelfenning (2008) asserts that membership conditionality is the cornerstone of the EU political integration capacity (Shimmelfenning, 2008, p.918).

The EU's external capacity is said to deal with the EU's ability to prepare third non-member states for accession. When it comes to political integration, it covers both democracy and governance effectiveness dimensions, which are the fundamental areas the EU focuses on and demands from the countries that seek EU membership or close integration. Thus, by promoting both the EU seeks to foster peace, prosperity, and stability in the neighboring to the EU states. In order to achieve the desired objectives, the EU has developed a special "toolbox" that is driven by rewards and support in exchange for reforms policy (Börzel&Schimmelfennig, 2017, p.280).

With regard to governance dimension, the application of conditionality in the area of corruption was the core element of the EU's policy towards CEECs in assisting the states in building stronger institutions that would help during the accession stage. (Papakostas, 2012, p.219) This is a good instance that demonstrates how the EU Conditionality policy could foster the institutional building in the CEECs states. In fact, during the accession period, a big number of crucial laws passed that substantially contributed to creating an anti-corruption legal framework. (ibid, p.224)

The EU political conditionality was particularly prevalent in its expansion to the Center and East three decades ago, where the EU received a unique chance to transform the area. It is said, that the willingness of Central and Eastern European states to join the EU that was combined with "high volume of intrusiveness" that gave the EU the opportunity to influence the reformation and creation of domestic institutions and a broader range of public policies in these regions (Sedelmeier&Schimmelfenning, 2004, p.2)

External Governance is said to occur when "parts of the *acquis communautaire* are extended to non-member states" (Lavenex, 2004, p.5). The basis of EU external action external dimension is usually the *acquis communautaire*, that are being transferred to the third countries and international organizations in an attempt to constitutionalize the EU values as well as advance further domestic competition, environment, immigration and immigration policies (Lavenex,&Schimmelfenning, 2009,p.2)

1.1. 3. Conditionality and the ENP

Borzel et al (2010) claimed that the ENP could be understood "as an attempt of the EU to give fresh impetus into the relations with its neighbours and their reform agendas" (Borzel et al, 2010, p.133). Dealing with complex political regimes in the neighborhood, that are largely dominated by hybrid and authoritarian regimes, the EU sought to use conditionality and its ability to export its rules to transform the ENP neighbors into stable, more democratic as well as well-governed states (Bolkvadze, 2016, p.409).

As an answer to the existing issues, after several decades of the EU enlargement, which was seen as an effective method and led to democratization and better governance, the ENP proposed in 2003 sought to solve the "enlargement fatigue issue" expressed earlier by some member states and on the other hand encourage its neighbors to conduct the political transformations by giving

a good ‘carrots’ in the form of opening its market as well as “wealth transfer” to the states that committed themselves to conducting reforms, yet without a membership perspective (Theuns, 2016, p.288).

The authors researching on ENP as well as its EaP (Eastern Partnership) dimension in their analysis state that the EU had to revisit its own strategy regarding the effectiveness as well as feasibility of its own policy first after the Arab Spring in 2011 changing its policy to “more for more” strategy prioritizing positive conditionality (Balfour, 2012). Within three years, after the outbreak Russian aggression of EU-Ukraine tensions that was caused by Ukrainian former president Viktor Yanukovich’s unwillingness to sign the AA (Association Agreement) and entailed the deterioration of Russia-EU relations, the EaP members had to function in very volatile and difficult environment, while being exposed to “conditional assertiveness” from the EU and Russia (Tulmets, et.al, 2018, p.466)

Speaking of conditionality instrument used by the EU towards ENP member, Momin (2018) argues that after the launch of the ENP, the EU continued to use its conditionality policy, the elements of which were aimed at shaping the economic priorities as well as the tailoring its action plan for its neighbor. Thus, the conditionality was meant to ensure that the members of the ENP have sufficient motivation to implement economic reforms.

With regard to Eastern dimension of ENP, the bilateral partnership here is built upon two parallel areas: multilateral and bilateral. While the former gives the members the platform for dialogue and exchange via flagships initiatives, the latter fosters to make the relations between the EU and every eastern partner closer. The overall Eastern Partnership program aims at involving not only governments but civil society as well as other parties (European Commission, 2014, p.1) The main aim of the six countries framework initiative , that should be viewed not as a goal, but rather as a tool to democratization, stability, as well as general well-being, thus making the EaP states more stable and prosperous (Kerikm &Chochia.2016, p.6). Tulmets (2018) claims that conditionality is a “cornerstone” of EU external relations, particularly in the case of its application in EaP as well as broader neighborhood. The conditionality approach towards these states is reflected in a number of different political documents, such as Action Plans, legal documents such as Association Agreements as well as specified in EU’s assistance regulations such as ENPI (European Neighborhood Instrument) (Tulmets, et.al, 2018, p.452) From the

perspective of reforms, the Eastern Neighbors were seriously falling behind the accession states, thus the promotion of good governance as well as continued fight against corruption have become critical. The phenomenon of conditionality in the EaP is not limited by trade and commerce, but rather encompass broader areas such as health, environment, competition. DCFTA (Deep and Comprehensive Free Trade Agreement) is considered to be the “highest institutional expression” among EaP states (Tulmets, et.al, 2018, p.460).

1.2. The role of the EU conditionality in anti-corruption

Before proceeding with relationship between EU conditionality and corruption, let us first conceptualize this phenomenon. I will draw on the definition of corruption that the European Commission uses in its “Anti-Corruption Report¹” (2014). When it comes to definition of corruption, the short version of the broad definition of the phenomenon would be “the abuse of power for private gains” (European Commission, 2014, p.3). The broader definition of corruption according to European Commission includes multiple facets and is viewed as a phenomenon that embraces social, political, economic dimensions of our life and cannot be tackled with standard and the same approach in different states. More broadly, the strategy of fighting against corruption should focus on improving the performance of public administration with increasing its efficiency by better transparency and accountability (European Commission, 2014, p.3). The problematics with corruption is found in its power to undermine the economy, democracy and most importantly the rule of law. It cannot be addressed with a simple remedy due to its complexity: “At its root are deep systemic problems that create space for various forms of rent-seeking” (Lough&Dubrovskiy, 2018, p.5)

The European Commission in its report points out to the ability of corruption to undermine good governance, competition on the market, as well as honest management of taxpayer’s money. In its extreme manifestation, corruption leads to a public distrust in democratic institutions and any state processes as a whole (European Commission, 2014).

¹ The Anti-Corruption Report (2014) from the commission to the Council and the European Parliament “EU Anti-Corruption Report” can be accessed here: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf

In regards to the usage of anti-corruption mechanisms, that the EU Member States have in place, the EU Commission shares disappointment that is explained by the inability of the members to enforce rules vigorously and the institutions sometimes lack the sufficient capacity to fully implement the rules: “declared intentions are still too distant from concrete results, and genuine political will to eradicate corruption often appears to be missing” (European Commission, 2014, p.2). The EU considers anticorruption measures as fundamental elements of its conditionality and that donor community should move towards finding more effective instrument in regards to measuring public financial management (World Bank, 2005, p.227).

The communication from the Commission to the Council and the Parliament points out that corruption erodes sound decision making, undermines competition and the internal market as well as damage EU’s financial interests. All this makes the EU interested in creating sound and coherent strategy on corruption internally in the EU as well as beyond its borders (Waggoner&Bowler, 2014, p.5).

Unsurprisingly, many scholars, analyzing impact of corruption of governance, argue that corruption may question the legitimacy or the European project, if the EU does not address the issue seriously and gains the reputation of organization that tolerates corruption. In the best-case scenario, it would give a lot of room for euro-sceptics to maneuver. In the worst case, the EU credibility among ordinary people may be undermined (Waggoner&Bowler, 2014, p.5)

Before proceeding to ENP and anti-corruption measures there, let us reflect how the EU addressed corruption with regard to CEECs accession. Papakostas (2012) argue that the EU, apart from using regular practices that pertain to the prevention of bribery among public officials, asked the candidate states to institutionalize a number of conventions, improve the effectiveness and independence of the judiciary, the effective functionality of their public administrations as well as secure the provision of EU funding.(Papakostas, 2012, p.224) Aside from these measures, the EU demanded effective reform market reforms: increased market openness, improvement of business climate, enhancing the effectiveness of Rule of Law, strengthening civil society (ibid, p.225)

With regard to ENP, in order to address corruption the EU seeks to engage with the states through the aid that could be given through: 1) ENP or EaP Instrument 2) technical assistance,

that is aimed at capacity building as well as institutional development initiatives 3) the enhancement of civil society 4) rewards though conditionality program 5) regional cooperation as well as political dialogue (Martini, 2012) The EU Commission claims that one of the ways to reduce corruption in the ENP is by conducting a large-scale privatization, reform of state-owned companies and similar areas where the corruption is prevalent as well enhance the civil society (EU Commission, 2015, p.6)

The EU views fight against corruption in the ENP as one of the critical challenges that has to be addressed to attain progress towards the rule of law and democracy (Martini, 2012). According to the EU Commission reports on the ENP progress, fight against corruption is addressed in every action plan on good governance promotion tailored to the individual member needs of the ENP. In general, one can see that the fight against corruption becomes relevant issue in external relations of the EU when the European funds are being transferred (Wichmann, 2007, p.88.).

When it comes to good governance and democracy promotion, the EU strategy of fighting corruption, as multifaceted phenomenon that affects every part of the society, is addressed through a deep and comprehensive understanding of fighting this issue that stresses the capacity building, aimed at enhancing state institutions and civil society, as well as improving the regulatory framework. Furthermore, the EU insists on establishing stronger connections between EU's security and corruption when the union embarks on running the anti-corruption programs that include guards patrolling close to the EU border (Wichmann, 2007, p.94). Transparency International states that the EU's anti-corruption strategy with any country, independently from membership in the EU, targets institutional and legislative reforms such as establishing anti-corruption agencies, or adopting the anti-bribery legislation (TI, 2020)

Council of Europe's efforts to fight corruption in the Eastern Neighborhood included a range of activities aimed at enhancing capacities to fight corruption as well as its prevention within a broader reform framework targeted on enhancing good governance and fighting economic crime in accordance with international standards. Specifically, the activities included legislative assessment, legal expertise, support of legislative reforms, training programs and conferences, regional and national peer-reviews (ENP, 2011, p.7). On the other hand, the strategy presupposes technical assistance through cross-regional and cross-country cooperation to ensure the

sustainability of the reforms and capacity strengthening in the Eastern region in the context of fight against corruption and good governance advancement (ibid).

In order to understand the opportunities the conditionality can create for the state, one needs to bear in mind the aims the EU conditionality envisages. In this context we should distinguish between the enlargement conditionality policy applied in the case of CEECs, where the biggest effect of conditionality was membership, versus the ENP conditionality, where the EU “offers neighbors a privileged relationship, building on a mutual commitment to common values” yet does not provide a membership perspective as well as the same financial incentives (ENP, 2020).

If we narrow down the focus to the Eastern Dimension of the ENP, here the EU sets further objectives. The main goal of the EaP is to “accelerate political association and deepen economic integration” between the EU and its eastern neighbors (ibid). The policy’s objective lies in furthering good governance by promoting structural reforms, strengthening energy security, inspiring people-to-people contacts, as well as providing funding for crucial reforms (ibid). Presumably, provided all the conditions are met, one can see the deepest effect of EU conditionality as fulfillment of those requirements.

The report of FES (Friedrich Elbert Stiftung) argues that if the three packages of framework implemented this will seriously change the relations between the EU and EaP. First the political AAs signed between three states (Ukraine, Georgia and Moldova), secondly the visa liberalization package and the membership in the Energy Community to include these countries into the EU gas and electricity markets. Aside from these three components, the DCFTA (Deep and Comprehensive Free Trade Area), if implemented, it will “lead to an enormous approximation to the EU *acquis communautaire* by partner countries” (Friedrich Ebert Stiftung, 2015, p.12)

1.3. Critique of conditionality

When we trace 30 years back in history and start analyzing the functionality of conditionality performance applied on countries from the developing world, where conditionality as well as donor’s aid possessed an important stake in shaping the states’ political agenda, conditionality is said to become a contested issue after 1980s year and the effectiveness of the former should be

reviewed (World Bank, 2005, p.4). World Bank reports in its broad analysis of conditionality induced aid among the developing countries state that the donors' approach towards aid should bear in mind that the difficulties, the developing countries face, are complex in its nature and cannot be solved with a single solution (ibid) Aside from actor's inner strategy and painful domestic context, the donor's aid is very often seen as "not fitting" the local context of the country where the aid is targeted. While it is argued, that an increased conditionality cannot compensate for an ineffective governments' implementation of the reforms (World Bank, p.22, 2005), Evans (2004), criticizing donors' induced policies of exporting western institutions to the developing worlds, comes to a conclusion, that "institutional mono-cropping" of Western identical institutions did not justify its effectiveness, and we did not see an accelerating growth in developing world (Evan, p.6, 2004). The evidence of the poor reforms implementation can be seen in Argentina, Georgia, Rwanda, Niger etc, where the states had very promising beginning, but at the end this success proved to be unsustainable. It is due to the fact, that international donors very often neglect the domestic context of those states, and their reforms, as Andrews states "look like square pegs in round holes" (Andrews, 2013, p.2-3,). Evans (2004) argued that one of major critiques of conditionality-driven aid is found in its inability to be a long-term sustainable solution to the complex problems of developing countries while trying to induce „Anglo-American institutions as the one best way“ (Evans, 2004, p.15). Although looking promising and bright, reform agenda that does not take into account the local context, as the analysis of different authors show, will not be sustainable and yield much results in the long-run(ibid).

The author's findings suggest that the World Bank aid program helped to improve the public sector reform fewer than 40 percent of eighty countries where aid reforms were conducted. Many developing countries have a high rate of the reform adoption, but experience low level of reforms implementation (Andrews, 2013, p.9).

Narrowing down our focus to the ENP, the subject of conditionality in this context is believed to often lack a serious and systematic analysis. It can encompass different elements, but its effect in certain areas and states might be questionable. (Schimmelfennig&Sedelmeier, 2005, p.2) The institutional developments in the countries in particular issues areas might not be the direct effect of conditionality. Thus, the term sometimes has been applied and used very broadly without

clear-cut and profound understanding of the phenomenon as well as analysis of its real efficiency, particularly towards Central and Eastern European states (ibid). As opposed to conditionality policy in the enlargement period, the ability to remain a transformative power of the EU in its Eastern Neighborhood has been questioned by a number of scholars in their research on conditionality and the ability of the EU to remain its ability to influence the state with regard to ENP countries (Tulmets, et.al, 2018, p.455; Bolkvadze, 2016, p.411; Busogany, 2013, p.609)

Schimmelfennig (2007) while analyzing the EU democracy promotion in the ENP also comes to a conclusion that the EU political conditionality towards the neighboring states was used inconsistently and unsuccessfully on the whole (Schimmelfennig, 2007, p.3). Criticizing the ENP policy Magen (2006) argues that the drivers of the ENP policy with its ambitions agenda did not take into account the limits of the incentives of the program as well as the existing challenges concerning political, economic and cultural dimension in the members of the program (Magen, 2006).

With regard to concrete challenges, while inducing conditionality tool, Andrews (2013) in his book argues that many conditionality reforms fail because they do not fit many developing countries' local context. Analyzing different states and foreign aid programs, the author finds that many reforms look very promising from the first sight and send strong signals to international community, when the laws get adopted, but the success of such reforms has very often limited result and thus states stagnate or roll back on reforms. Bolkvadze (2016) supports such skepticism and argues that the effectiveness of ENP policy is "doomed to failure" arguing about the issues of poor compliance and eventually trying to understand the conditions under which the EU conditionality can indeed induce Europeanization in this area (Bolkvadze, 2016, p.410).

In the context of effectiveness and institutional mismatch, Schimmelfennig&Sedelmeier (2004) claim that, although being overarching and comprehensive, conditionality might not be effective in transferring the rules in certain countries or specific policy areas. Hence, one should delineate conditionality as a political tool from its real impact of domestic politics (Schimmelfennig, Sedelmeier, 2004, p.662). Analyzing the ENP, as part of EU external governance policy, the some scholars claim there are certain countries in the region adopt the EU rule in a selective

manner or “cherry-pick” the rules, thus prioritizing some sectors while de-emphasizing others (Bolkvadze, 2016, p.411). This compliance is referred as “patchy”, “differential” and has recently become the outcome of EU’s rule promotion in the Eastern neighborhood (ibid)

Another dimension that the literature on conditionality critique refers to is the issue of adoption costs which is represented by elite’s resilience and low political will among many states. The costs of adopting the EU rules are said to be higher the “more politically salient” the issue is, or “the degree to which a policy attracts the interest of policy actors or public” (Lindstrom, 2015, p.36). When it comes to the incumbent’s government to adopt the EU conditionality, very often many issues arise. It is stated, that even when the rewards are solid and credible, the incumbent would still ignore or selectively comply with conditionality. Thus, the adoption costs might significantly limit the power and effectiveness of the EU conditionality (Schimmelfenning&Sedelmeier, 2004, p.663). Consequently, the effectiveness and quality of EU conditionality depend on the preferences of the incumbents as well as players who have “veto”, the type of players who indirectly possess a significant stake in politics. Therefore, the more veto players are on the field, the more complex the adoption will become (ibid) Magen (2006) supports this argument and refers to asserts that high domestic adaptation costs can significantly question the compliance with the EU rules (Magen 2006, p.418).

Speaking of compliance, it is stated that that the EU conditionality’s effectiveness will rise the lower the domestic costs for the incumbent government. In this context the domestic veto players can potentially postpone or delay the compliance with the EU legislation “or prolong controversial political changes required by the EU”. (Lindstrom 2015, p.36) The EU External Incentives Model admits that the adoption costs affect the effectiveness of conditionality (Wikelin, 2013) The costs are assumed to be quite costly; otherwise the changes would happen without conditionality leverage (Schimmelfenning&Sedelmeier, 2004).

Another critique of conditionality’s ability to induce a lasting change pertains to the low incentives the EaP dimension of the broader ENP has. In the context of low incentives, very often conditionality is limited by the EU’s strategy of giving the countries a clear perspective of a membership. Schimmelfennig&Sedelmeier (2004) express the ability of the EU conditionality to have an impact on the changes in the long run:

“In the absence of a membership perspective, political conditionality and efforts at socialization are devoid of the predominant incentives that have motivated the CEECs and that are also present in the case of the Balkan countries, albeit at greater temporal distance (p.675).

With regard to EU measures in anti-corruption area, some scholars criticize the EU’s ability to control the already established anti-corruption institutions in the CEECs, where a number of state backslid on fighting corruption, which is explained by the lack of provision and mechanisms from the EU side in order to secure the already implemented strategies after accession (Papakostas, 2012).

Pfister&Moroff (2010) in their analysis argue the EU’s strategy to address corruption among its Eastern Neighbors is problematic, since the EU pursues “one-size-fits-all” approach towards all six countries of Eastern Partnership. This strategy according to scholars cannot achieve the desired success since the former ignores the country’s specific needs:

“Because higher corruption levels go hand in hand with (semi-)authoritarian rule as well as insufficient market reform, we conclude that an approach which more strongly focuses enhancing pluralism and the accountability of the political regime(s) would require increasing the overall effectiveness of the EU’s anti-corruption” (Pfister&Moroff, 2010, p.123)

More broadly, the scholars’ analysis of anticorruption measures critique pertains to the lack of “EU’s own operationalization of corruption” that entails setting clear benchmarks for successful implementation of reforms: “anti-corruption and governance-related reform goals of the Action Plan have been rather vaguely defined” (ibid, p. 69). Criticism towards fight against corruption in the EaP is also expressed by Börzel et al (2010) who claim that the absence of such high rewards as membership perspective could make it complicated for the EU to induce institutional reform in Eastern neighborhood since the states’ political and economic systems are overshadowed by high corruption and hence poor governance. The mere offer of deeper economic relations in certain areas might be not enough to change the situation (Börzel et al, 2010, p.143)

Thus, the external incentives alone do not always facilitate effective rule transfer, with a number of other factors, that eventually change the intended outcomes (Bolkvadze, 2016, p.410). Lavenex and Schimmelfenning (2011) while researching on the EU democracy promotion in the EU neighborhood also conclude that the effectiveness of the EU conditionality will not be the same as it was during the CEE accession.

Chapter II: The EU anti-corruption strategy in Ukraine

This chapter will give an overview of the EU conditionality programs in general as well as zero in on the main case of the research VLAP. Before proceeding with the overview, however, it is important to understand the institutional context on which the conditionality was being applied. Therefore, first of all let us refer to respective literature and theorize the nature of corruption in Ukraine and how the latter manifests itself.

2.1. The nature of corruption in Ukraine

The **Table 1** briefly demonstrates the assessed by Transparency International Corruption Perception Index Ukraine ranking, where Ukraine, although embarked on transformations, remains one of the most corrupt countries in Europe and as can be seen below, has not significantly improved its standing over the last four years. As of 2020, Ukraine is ranked 126th out of 180 countries and has improved its ranking only by three points since 2015.

Table 1. Corruption Perception Ranking

# Country	2019	2018	2017	2016	2015
126: Ukraine	30	32	30	29	27

Source: Transparency International

The roots to Ukrainian corruption problem can be traced back to its Soviet past, and the rise of communist elites, who, with the state's independence, were willing to “reinvent themselves as

nationalist leaders” but failed to attain this. In Ukraine, unlike other post-Soviet states, the situation was deteriorated by desperate struggle for dominance between communists’ rivals as well as oligarchy communists that states helped to create (Acemogly&Robinson, 2019). Due to the former failures of transitioning to market democracy and not transparent privatization reform, the Ukrainian transition subsequently led to an establishment of strong system of players between parliament, president, government and big business. The most important state institutions became the target of non-state players. As a result, at the end of 1990s the Ukrainian presidency established itself as “institutional basis for the formation of a neo-patrimonial regime built on regional clan networks” (Dimitrova&Dragneva, 2013, p.664)

Institutionally, Ukraine fits the state with a limited access order type of state institutions, where the corrupt practices are considered to be the norm and constitute the root of the system that enable a group of powerful individuals live and share together the privileges and rents (Lough&Dubrovskiy, 2018, p.4) As a result, the state struggles transitioning from ‘limited access order’, to an ‘open access order’ that embraces the interests of “based on self-organizing networks and impersonal social relationships order” (ibid). Talking of Ukraine’s inability to transition to a truly democratic state, Kuzio (2015) states, that corruption “has poisoned all branches and institutions of state government and local self-government” as well as led to a low level of trust towards all Ukrainian politicians (Kuzio,2015,p.335). The corrupt practices still continue to “bedevil Ukraine’s state institutions” (Lough &Dubrovskiy, 2018, p.5) and remains the crucial factor for its very low performance that affects a number of areas stretching from economy to diplomacy. It has to be noted, that as such corruption is not the cause, rather a symptom of deep systematic problems that fuels and advances them (ibid). Kuzio (2015) defines six factors according to which, corruption in the state remains such an endemic and difficult phenomenon: 1) inherited post-Soviet political culture 2) lack of political will of the elite and distrust of civil society 3) state’s institutions and legislation 4) organized crime and political parties 5) offshore tax and informal economy 6) blackmail state (Kuzio, 2015, p.329)

According to another popular institutional framework established by Acemoglu&Robinson, the broader institutional context of Ukrainian corruption can be understood by referring to their category of ‘extractive institutions’ , with Ukraine being an ideal fit, where social arrangements

deprive lots of people of their political voice while giving it to a narrow and privileged clan (Acemoglu&Robinso,2019).

The OECD (2015) report on “Anti-Corruption reforms” reveals that main areas where corruption is pervasive are public procurement, energy sector, agriculture, business permits and licenses. Thus, corruption is seen as the main obstacle of economic development of the state that hinders foreign investment and business activity since independence. (OECD, 2015, p.12) Polunin (2019) also describes the corruption issue as deep and systematic and sees the issue not as simple ‘illegal practices’ but rather as ‘rules’ by which the state has operated since its independence. Therefore, the whole system in the country can be described as ‘state capture’, (Polunin, 2019, p.118). Wilson (2016) in his analysis of oligarchy in Ukraine claimed that super rich oligarchs are the key obstacles for reform in the state and the main source for corruption. Their power comes foremost from the wealth they managed to accumulate over the years and before the Revolution of Dignity in 2013, their overall assets were equal to 45 percent of the country’s GDP (Wilson, 2016, p.3).

When it comes to a difference between political and economic elites, the former can be viewed as the one attempting to control all the political resources, including policy making, and public administration, whereas the latter seeks to have a control over economic block of the state, including media resources and financial assets(Puglisi,2003, p.101).

2.2. Overview of EU conditionality programs

Having understood the institutional context of Ukraine, let us now overview the EU conditionality programs that in general as well as zero in on the main case of our research.

The EU has provided Ukraine with aid since 2014 in a number of key areas. The aid was aimed at stabilizing its macro financial situation. In its annual reports, the European Commission views corruption as one of the chief challenges that undermines good governance as well as makes the state institutions dysfunctional. In terms of EU’s aid in the area of anti-corruption in Ukraine, it is important to understand that a lot of the initiatives the EU launched in Ukraine overlap with one another. For instance, the launch of one of the key anti-corruption institutions NABU (National-Anti Corruption Bureau) was conditional within VLAP (Visa Liberalization Action Plan) MFA (Macro-Financial Assistance) as well as State-Building contract. Moreover, the anti-

corruption court, the independent audit of NABU and giving the institution a legal opportunity to independent wire-tapping and effective system for checking e-declarations were the requirements of all three programs (Reanimation Package of Reforms, 2017). The section below will expand more on each program's specificities and their conditionality requirements in anti-corruption area. Due to structural limitations of master thesis, however, I will focus on the VLAP program as well as conditionalities it has. In order to understand the broader picture, the research will briefly overview other EU-driven initiatives to understand the full context of the EU efforts in reducing and limiting corrupt practices in Ukraine.

2.2.1. Macro Financial Assistance to Ukraine

The MFA is a type of a financial support given by the EU to a third country and can be only available provided the state has a program with IMF. The support can be granted to the countries that are geographically, economically, and politically close to the EU that includes the ENP states as well as third countries in certain cases. The program of support is built upon mutual understanding where Ukraine is committed to reform the state in such areas as transparency, governance, public finance management as well as energy sector, business environment and financial sector. The anti-corruption conditionality is an essential part of the signed agreement. According to the European Commission, since 2014, the European Union has directed 3.4 billion of euros through three consecutive aid programs that have a low interest rate in order to support Ukraine. The number is officially the highest the EU has ever provided to the non-EU country. As the program has several stages, 1.6 billion was received between 2014 and 2015 under the first two MFA operations. Ukraine benefited from another tranche of 1.8 billion euros in April 2015 (MFA, 2018).

According to Ministry of Foreign Affairs of Ukraine, the country had to fulfil six conditions implementing structural reforms on the conditionality basis in order to receive 1st financial tranche as well as 12 other conditions to receive the second tranche. The structural reforms were conducted in the following areas: good governance, state-owned enterprises, social policy, fight against corruption, management of public finances (MFA, 2018)

Let us view what concrete conditions in the area of anti-corruption are out there in memorandum bilaterally signed between the EU and Ukraine in 2015. In the memorandum bilaterally signed the

section “Governance and Transparency” presents a set of conditions that Ukraine had to fulfil in order to receive a financial assistance:

1) *“Establish a National Anti-Corruption Bureau, a specialized Anti-Corruption Prosecution Office and a National Agency for the Prevention of Corruption” (Memorandum of Understanding, 2015, p.6).*

2) *“Set up an electronic asset disclosure system for public officials, including a verification mechanism, while starting to verify assets and possible conflicts of interest on the basis of the paper-based asset declarations submitted by officials in 2015” (ibid, p.8).*

3) *“Designate an institution to act as Asset Recovery Office; and (ii) adopt operational guidelines, including a framework for inter-agency cooperation, for the implementation of extended and civil confiscation provisions” (ibid, p.8).*

2.2.2. State-building contract

Andrew Rasbash, the head of the co-operation section of the EU Delegation to Ukraine argued that the support of the EU to Ukraine within State building contract support is unprecedented during the difficult time for the state and will contribute to real transition of the country to better governance by delivering real changes and reforms (EU in Ukraine, 2014).

The state-building contract is said to be “modality for delivering budgetary support specifically designed to help countries in situations of fragility or engaged in transition processes towards sustainable development and democratic governance” (European Commission, 2014). The key purpose of the program is to support the short-term needs of the program prioritizing stabilization, anti-corruption efforts, management of the public finances, and support to electoral and constitutional legislation (ibid) The support was given against the backdrop of Ukraine adopting the new legislation that was aimed at creating Anti-corruption Bureau as well as the reforming of Public Prosecutor Office with the budget of the program is 355 million euros (ibid).

Indeed, the representatives from the EU delegation argue that it was corruption during the previous administrations that did not allow the state to pursue the EU integration agenda and made the EU assistance to Ukraine ineffective that is why fight against corruption should be of utmost importance (EU in Ukraine, 2014)

Within 350 million of funds allocated to the needs of a program, the first was 250 million that was followed by 100 million of additional funding provided Ukraine meets the conditions and continues its commitment to conducting reforms in the area of anti-corruption, civil service, justice, public management as well as legislative and electoral legislation (EU in Ukraine, 2014). According to the sector manager of the EU Delegation to Ukraine, the state-building contract funding aims at “institutional and procedural state-building” (ibid). Thus one of the conditions that Ukraine had to fulfill was “*to establish an anti-corruption bureau that would investigate cases of high-level corruption*” and “*more attention to elaborating the strategies and necessary legislative framework to create public administration reform.*” (ibid)

Other conditions include setting up a verification of asset declarations of public officials, to ensure transparency of constitutional reform, improve its electoral legislation, improve the access to public information, reform of civil service and administrative procedure as well as public procurement (ibid).

2.2.3 EU anti-corruption initiative

The program defines corruption in Ukraine as “endemic and is an impediment for its democratic and economic development” (EUACI, 2017). European Union Anti-Corruption Initiative (EUACI) is a program that is co-founded and implemented by Denmark and aims to consolidate the support directed at assisting Ukraine’s anti-corruption efforts. The policy’s objective is an overall enhancement of anticorruption policies on Ukraine with the ultimate goal of reducing corruption. This EUACI is the most ambitious support of the EU Commission in the area of anticorruption. The total budget of the program is 15.84 million and will take three years to be fully implemented. The key aim of the program is to enhance the capacity of newly created anti-corruption institutions as well as strengthen the external oversight over the anticorruption reform by the Verhovna Rada, media and civil society (ibid).

The program has three main components it draws on: first component enhances the support, operation and investigation of the newly created anticorruption institutions that deal with corruption prevention; deals with assets recovery as a result of illicit enrichment, money laundering. The second component focuses on improving the legislation that as well as enhancing parliamentary oversight over the implementation of anticorruption measures.

Ultimately, this component's objective is to strengthen the national capacity and make the involvement of external players stronger. Aside from that, Verhovna Rada will have created an International Anti-corruption Advisory Board with recognized experts in the area of prevention and enforcement. The last component's aim is to reduce corruption on the local and national level as well help the civil society activists have their voices heard. One of the main tasks of this component is to assist the medium-sized cities in limiting the corruption risks as well as enhancing accountability and eventually spread the success stories all over the state (EUACI, 2020)

2.3. Overview of VLAP

Visa policies are said to be the cornerstone of the EU relations with the EaP members when it comes to bringing about institutional reforms on liberty, security, and justice. (Fernandes&Sagrera, 2014) Furthermore, the elimination of Schengen visas is considered the biggest reward the European Commission can provide for the EaP states in the short-term and therefore constitutes a strong EU leverage over triggering reforms in the ENP (Decours&Fernandes, 2016, p.8) The designation of VLAPs milestones for the EaP states have been inspired by the agenda that was developed by roadmaps for Russia as well as Western Balkans. (ibid, p.4)

The visa-free regime initiative is part of the Eastern Partnership program along with Association Agreements, Deep and Comprehensive Free Trade Agreements, that are aimed at bringing the members of the EaP closer to the Union by promoting good governance, democracy, energy security, encouraging people to people contacts. (Ministry of Foreign Affairs of Ukraine, 2019) The European Commission has followed a technical approach towards visa liberalization policy that are defined by the state's fulfillment of benchmarks along justice, security and liberty dimensions (Fernandes&Sagrera, 2014)

The VLAPs for the EaP have two phases: adoption phase, where the states have to gradually approximate their legal frameworks in line with the EU standards, which is followed by the rule application, when the already approximated legislation is enforced properly. At every stage of the process, the evaluation missions which consist of the experts from the EU member states, officials from the European Commission as well as External Action Service assess the

fulfillment of the benchmarks in all four areas defined in the VLAP (Decours&Fernandes, 2016, p.4)

When it comes to Ukraine, the dialogue regarding visa liberalization Action Plan was launched by the European Commission on 29 October in 2008. In October, 2010, the Council invited the Commission in order to set out the concrete criteria for the Action Plan that Ukraine had to carry out. The action plan was enforced on November 10, 2010 (European Commission, 2010). The European Commission has issued six reports (2011 – 2015) with the final report published in May 2015. (European Commission) Aside from this, in order to monitor the progress attained, the Commission has released two reports on Visa Suspension Mechanism, where it keeps track of the progress on reforms made by Ukraine and other states that have obtained visa liberalization (European Commission, 2019)

The methodology of VLAP² contains **four blocks** and **two phases**. The four blocks are the following groups of issues relevant to the visa dialogue: i) document security, including biometrics; (ii) irregular migration, including readmission; (iii) public order and security; and (iv) external relations and fundamental rights. Speaking of two phases, certain benchmarks are taken into account: the benchmarks that deal with policy planning and legislation, as well as more specific benchmarks that are concerned with enforcement of the measures. The research, however, will concentrate on the **third block** (2.3 public order and security), as according to this block, Ukraine had to undertake the necessary efforts that would help the state to reduce corruption by fulfilling a number of different criteria including the launch of new anti-corruption institutions”. The subsection **(2.3.1)** is namely called ***“Preventing and fighting organized crime, terrorism and corruption”***. What is important condition here are these particular aspects:

- *“Adoption of legislation on preventing and fighting corruption and establishment of a single and independent anti-corruption agency; strengthening coordination and information exchange between authorities responsible for the fight against corruption” (Visa Free Europe, 2012, p.8).*

² VLAP Methodology for Ukraine can be accessed here : https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/eastern-partnership/visa-liberalisation-moldova-ukraine-and-georgia_en

- *“Implementation of legislation on preventing and fighting corruption, ensuring the efficient functioning of the independent anti-corruption agency; development of ethical codes and training on anti-corruption, especially targeting public officials involved in law enforcement and the judiciary;”(ibid)*

It is also important to consider Block 1 (Document security, including biometrics). Here, one aspect concerning corruption is important:

- *“Establishment of training programs and adoption of ethical codes on anticorruption targeting the officials of any public authority that deals with international passports, as well as domestic passports and other breeder documents” (ibid, p.4).*

Chapter III: Conceptual Framework

3.1 Research Problem and Research Questions

In the course of the literature review the thesis has elicited that the EU conditionality policy proved to be a powerful tool in changing the states' institutional structures two decades ago, during the CEECs accession. Zeroing in on ENP, we have seen that the EU's ability to remain its transformative ability beyond its legal borders has been challenged by a number of scholars. The thesis has not arrived at any clear evidence of the EU's institutional capacity to address the challenges of Rule of Law and Anti-Corruption in the ENP, which is why it is worth assuming that this conceptual gap does exist and needs to be addressed.

The previous chapter reflected that the EU's institutional support to public administrations in the ENP reform has its limits and was not properly explored beyond the borders of the EU. Therefore, enlightening the concrete limits in the area of fight against corruption will be the main focus of the research. In order to attain the research objective, the research will focus on VLAP as the main case and seek to answer two research questions that will guide the research:

RQ I: What are the limits of conditionality in the EU's anti-corruption reform promotion strategy in Ukraine within VLAP?

RQII: How to improve the EU's anti-corruption reform promotion in Ukraine?

While the first research question concerns the limits of the policy in Ukraine within VLAP, the second seeks to find the solutions to how this policy in one concrete case can be improved. In order to trace the limitations, the work will construct the conceptual framework based on limitations elicited by the authors in a broader ENP. The work is not solely limited to understanding the limits; rather the research intends to engage in a broader discussion on how the conditionality policy within one specific case can be improved. Therefore, aside from the existing limits, the research will analyze the potential opportunities conditionality can have for improving its effectiveness. As mentioned in the critique in the first chapter, the conditionality approach, although being somewhat successful in Eastern Europe overall, needs revision, given today's reality, political transformations in the East and volatile context both in Ukraine as well as in the EU. Unlike almost two decades ago, where conditionality proved to be an important mechanism by bringing CEE countries to the European family, today many policymakers and scholars (as seen in the first chapter) question the effectiveness of conditionality within the ENP program.

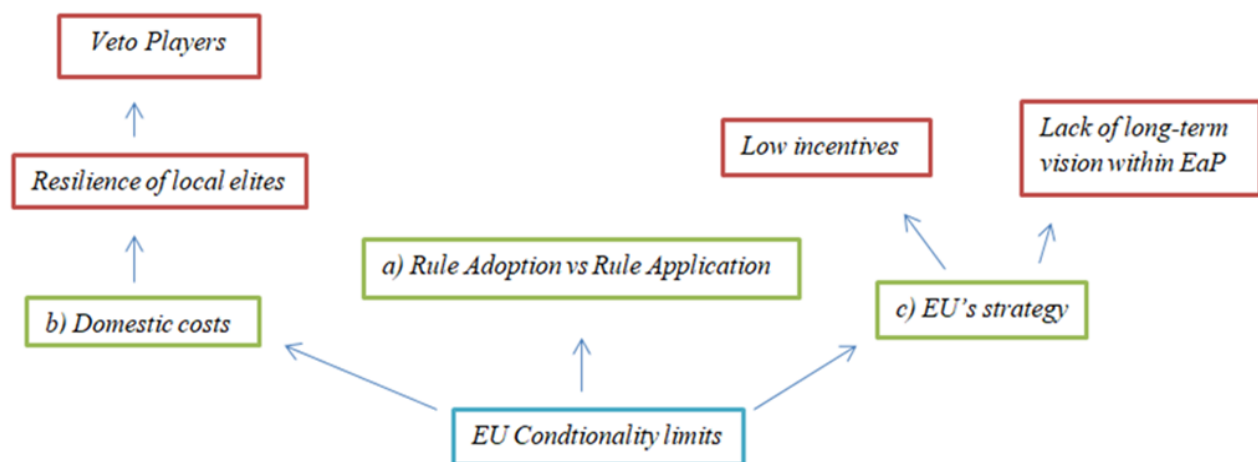
Narrowing down the focus to Ukraine, as the main case, the EU, although using similar conditionality logic, has far lower rewards or “carrots” at a stake, which translates into no clear benefits and prospects after conditionality is completed. According to TI, the standing of Ukraine, since the conditionality was applied in the area of anti-corruption, has not much improved since 2014, a year considered to be pivotal in embarking on the reform process, maneuvering between 32-30 points³ and remaining one of the most corrupt states in Europe (TI, 2019). On the other hand, the conditionality reforms are assumed to be under threat due to political instability and veto players, local resilience that seek to question the newly-established anti-corruption institutions to remain the status-quo situation where they feel healthy and fearless to maneuver (Wilson, 2016).

3.2. Theoretical Assumptions

³The Transparency International score for Ukraine is based on 9 sources : World Economic Forum Executive Opinion Survey; IMD World Competitiveness Center World Competitiveness Yearbook Executive, Opinion Survey; The PRS Group International Country Risk Guide; Economist Intelligence Unit Country Risk Ratings; Freedom House Nations in Transit; Bertelsmann Stiftung Transformation Index; World Justice Project Rule of Law Index Expert Survey; Varieties of Democracy where is the lowest and 100 the highest score.

In the previous chapter, we have seen that external governance has its limitations. As the thesis sets out to look at the limitations of the EU Conditionality in the anti-corruption area, the work will analyze three concrete dimensions pertaining to the limits of EU anti-corruption conditionality. Based on the previous existing scholarship discussed in the first chapter, the research will be guided by three theoretical expectations: first, it is the distinction between rule adoption versus rule application; the second limitation lies in understanding the role of the domestic costs factor for the country that translates into complexity caused by internal veto players who aim at remaining the status-quo and blocking/postponing the rule application. The EU's internal strategy effectiveness with regard to inducing a lasting change constitutes the third limitation dimension. The latter is also referred to in the literature on conditionality critique as “the ability of the EU to remain its transformative power”, given the low rewards of EaP provides as well as its unclear vision for the future. These three theoretical expectations form the basis of the thesis conceptual framework that the empirical data collection will be guided by. The purpose of the research is not limited to exploring the limits; rather the second objective of the work lies in understanding the opportunities the conditionality can enable. Accordingly, the research will intent to understand how the already existing institutional framework can be improved. **Figure 1** visualizes the three theoretical assumptions of the research, where the EU Conditionality is assumed to be limited by **a) rule adoption vs rule application**, with Ukraine falling behind on the latter; **b) domestic costs**, which is explained by the local resilience and the

Figure 1. Conceptual Framework (Theoretical Assumptions)

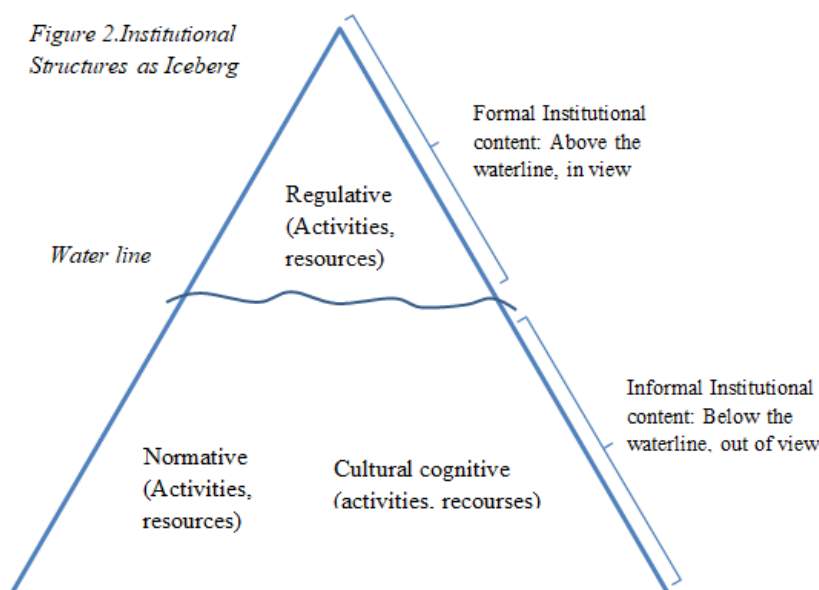


Source: Created by the author

existence of veto players as well as the **c) EU's strategy** which lacks clear vision and destination as well as offers low incentives, which are insufficient to bring about a change by forcing the local elites to implement the necessary reforms. The work will remain open to any additional limitations to be discovered in the course of empirical study. The conceptual framework elements will be expanded further below in the section.

3.2.1. Rule adoption vs rule implementation

According to the first theoretical assumption, the research will be looking at two interlinked processes: rule adoption vs rule implementation. First and foremost, let us explore what constitutes “rules” and “institutions” according to “new institutionalism” and “Europeanization” literature and enlighten how scholars conceptualized these two phenomena. With regard to political institutions, Andrews (2013) refers to institutions, also called “the rules of the game”



Source: Andrews (2013)

(North, 1991), as “laws”, that influence our behavior, “norms” that define our choices and “cultural-cognitive devices”, that influence the thinking of a group (Andrews, 2013) The author argues that the problem with reforms in many countries is due to the fact that the actual normative mechanisms and cultural-cognitive devices in the country are not seen by the outsiders and the prescribed

recipe to improve the situation is based on the visible “laws in place” or what the author refers to as “iceberg tip”(Andrews, 2013) (*see Figure 2*). The “rules” are defined by the author as “regulative mechanisms” that very often include such elements as “laws and shaming practices that are often established, monitored and enforced by third parties” (ibid). In the literature on “Europeanization” one can find the definition of rules as a concept that has a wide meaning, and one should distinguish between ‘formal’ and ‘informal’ rules. The rules encompass the

regulations in concrete policy areas covering political, administrative as well as judicial process, and rules that are needed for the “setup and competences of state and sub-state organizations” (Schimmelfennig&Sedelmeier 2005, p.6) When it comes to adoption of EU conditionality, Lavenex&Schimmelfennig (2010) tend to argue that even the best adoption of the rule will not guarantee its implementation and the sustainability of the reform in the long run. While analyzing rule adoption vs rule implementation dimensions, the scholars state that the rule adoption is built upon rule selection, whereas the rule application is built upon rule adoption (Lavenex&Schimmelfennig, 2010, p.11)

The literature on Europeanization defines rule adoption as “a process in which state adopts rules” (Schimmelfennig&Sedelmeier, 2005, p.7). In regards to rule adoption or the “rule transfer” from the EU to non-member states; the scholars often focus on “institutionalization” at the domestic level. Hence, the rule adoption in this context would mean the “transposition of EU legislation into domestic law” as well as “restructuring of domestic institutions according to EU rules” or “change of domestic political practices according to EU standards” (Schimmelfennig&Sedelmeister 2004, p.662.) Rule adoption can be also assessed by the “ratification of agreements with the EU or the adoption of laws and other documents that incorporate EU joint rules” (Lavenex&Schimmelfennig, 2010, p.11)

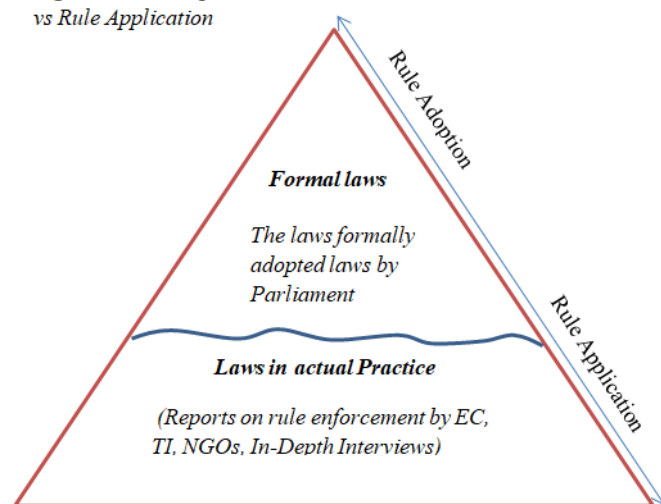
It is argued, that the determinacy of EU’s conditionality and the rule, implying the clarity and formality of a rule, from where this was derived can increase the likelihood of adoption. Thus, the more clear and formal the rule the likelier it will be adopted by the state. (Schimmelfennig&Sedelmeister 2004, p.664) Lavenex&Schimmelfennig (2009) explain rule adoption as ratification of international agreements or other legal documents between third countries and the EU that “incorporate EU and joint rules” (Lavenex&Schimmelfennig, 2009, p.801).

The rules application according to Andrews (2013) is based on his definition of institutions and can be viewed as the real practice or norms that are below the “iceberg tip” and constitutes the “foundations” that should be taken into account by a third actor who intends to induce a change and ensure its functionality (Andrews, 2013). In the “Europeanization” literature Lavenex&Schimmelfennig (2009) define the application of the rules as “joint rules that not only

incorporated into legislation but also acted upon in political and administrative practice”. The scholars regard rule application as “the deepest effect of EU conditionality” (ibid).

In regards to measuring the first element of this dimension, rule adoption, it is necessary to look at the formally adopted laws by the Ukrainian Parliament, so the adoption of the law will be automatically counted as ‘strong adoption’. In order to measure the rule application, which is more a complex dimension to measure, given that some of the institutions need time as well as lack of clear frameworks that measure rule application, the research, in this case, will refer to the reports of the European Commission, OECD as well as locally based offices of Transparency

Figure 3. Rule Adoption vs Rule Application



Source: Self-Created based on Andrews (2013) Iceberg

International Ukraine, Anti-Corruption Action Center that monitor the enforcement of the rules and regularly reflect on this in their respective reports. Moreover, the enforcement of rules can be observed in the course of in-depth interviews with experts who deal with the rule of law and justice area and monitor the enforcement of the adopted rules. For conceptual purposes let us refer to Andrews (2013) iceberg once again and visualize preliminary strategy of

measuring these two dimensions (**Figure 3**). Andrew’s original iceberg will not be applied in the course of data collection; instead, it will be used to visualize the difference between observable dimension, which represents rule adoption and above the water (iceberg tip) versus rule application, which is much more difficult to observe.

3.2.2. Domestic costs

The second theoretical expectation posits that the conditionality effectiveness is limited by the resistance of interest groups. The expectation is based on the previous scholarship that elicited that compliance with conditionality can be limited by certain political interests who seek to remain a status quo situation because they will find the compliance with the EU rules too costly for their own power and will opt for blocking or undermining the institutions.

The local elite's resilience is manifested by veto players. The scholars distinguish between several sources of adoption costs. In the first case, the adoption costs may "take the form of forgoing alternative rewards offered by adopting rules other than EU rules" (Schimmelfenning, Sedelmeier, 2004, p.668). On the other hand, the costs or benefits from the adoption effect might benefit public or private actors. Thus, the costs of adoption might turn to be negative for certain or all domestic players and therefore the problem with poor or no compliance will arise due to their unwillingness to lose leverage. Wakelin (2013) defines adoption costs as "both financial and the impact that adoption has upon a government, such as an effect on the likelihood of re-election". On the other hand, if the other actors whose decision is necessary for a change of a status quo decide that the cost of conditionality is too high for them, the likelihood of rule adoption will decrease with a number of veto players. Thus the lower the costs of adoption, the likelier the compliance with conditionality will take place.

Let us define the key element of this dimension. The "veto-players element" constitutes the core of local resilience. The former is defined by Warntjen (2010) as domestic actors whose agreement is necessary for the adoption of key policies. The veto players are strong players and have veto power that gives them an opportunity to withstand any change and remain the status quo situation (Warntjen, 2010, p.1). Dimitrova&Dragneve (2013) in their work distinguish between institutional players (*e.g presidency and parliament*) as well as partisan that includes political majorities and parties. Importantly, there are some important veto players in specific areas that do not have any legal capacity, but are still critical for an agreement (Dimitrova&Dragneve, 2013, p.663) The adoption costs issue according to Dimitrova&Dragneva (2013) is particularly vulnerable and sensitive to post-communist systems of governance, where the informal veto players "so-called early winners of economic reform" possess a serious stake in the governance system of a state. These informal players, according to the researchers, also referred to as "post-communist entrepreneurs" managed to set up strong networks, while capturing the state and 'penetrating its institutional structures' (ibid). In this context, the business interests of these players play a role in parliament and government that can target the EU's promoted reforms by vetoing and blocking a change (ibid).

Zeroing in on oligarchs, their role, as informal veto-players is characterized by their political power whose strategy is aimed at accumulating wealth (Puglisi, 2003, p.99). Importantly, the

clan's ability to access the state power gives them an opportunity to secure their economic interests and enrich their power (Dimitrova&Dragneve, 2013, p.665) Having established the role of oligarchs as important veto players Puglisi (2003) defines oligarchy as “rule of a few self-interested elites” as well as “entrepreneurs who use their wealth to exert political influence” (Puglisi 2003, p.106). The oligarchs can be also understood as “small and cohesive groups of strategic actors who control administrative and economic resources” and therefore exercise substantial and regular influence on the country (ibid, p.101)

In order to obtain data pertaining to this conceptual dimension of local resilience, which is represented by strong veto players, I will rely on the interview data with experts, because they were a part of decision-making processes and can assess the extent of the role of veto players in anticorruption reforms. I will carry out a thematic content analysis of the in-depth interviews with experts, where I expect to identify the keywords and common patterns that would point to the existence of the veto players (*e.g. oligarchs, veto-players, vested interests, etc.*). Also, I expect the reports also referring to this factor as important with regard to understanding why certain policies in the anti-corruption area do not work.

3.2.3. EU's strategy

The third theoretical expectation presupposes that the conditionality strategy is limited by the strategy of the EU within EaP that has low incentives. As previously theorized in the research, it is expected that the lack of membership perspective translates into low incentives for the state and, as a result, being unsustainable to deliver tangible results in a longer run. The low incentives or ‘insufficient carrot’ in the ENP was understood by scholars as lack of membership perspective, and thus unclear prospects behind adoption and implementation of rules. Since the EaP program does not provide this “carrot”, it is difficult to expect a sustainable and lasting institutional change. Sasse (2008) in this regard posits, that the ENP should be thought of not in terms of weak incentives, but rather ambiguously defined on the side of incentives and adoption costs (Sasse, 2008, p.303)

As noted above, the high rewards translate into a membership perspective that is considered to be the most powerful incentive/highest reward the EU can offer, which was previously theorized in the work. As I have mentioned in my work already, within EaP VLAP, AAs and DCFTA

constitute the legal framework that the relations between the EU and EaP states are based upon. In this case, the low rewards are defined by lack of membership perspective for the state, which for instance the Western Balkan states have, or CEECs states had. As an example of transformative power of accession prospects Boltag&Romanyshyn (2011) state in their research that with the case of Romania and Bulgaria, as well as some countries in the Western Balkans, the offered membership perspective brought about very powerful commitment in these states to override the domestic costs (Boltag&Romanyshyn, 2011, p.14) Therefore, the low rewards in the case of Ukraine are defined by a number of scholars as the absence of membership perspective for any EaP country, which Ukraine is a part of (Lavenex (2004); Magen (2006); Schimmelfennig&Sedelmeier (2004)) Sasse (2008) refers to the example of Slovakia and Romania, where a membership perspective “galvanized opposition forces and contributed to the fall of the Meciar and Iliescu regime, respectively” (Sasse, 2008, p.303) The question is not whether the veto players will find the adoption costs too high, but rather if the opposition, reformers and civil society at large will see it as sufficient to mobilize against veto players (ibid).

The rewards are considered to be a central pillar of the EU external incentive model upon which conditionality compliance depends on. The purpose of accession is considered to be the most powerful incentive to make the states induce a change. In the research of Magen (2006) finds out that “deployment and effectiveness of EU conditionality in the pre-accession process strongly indicate that a credible membership perspective has been a necessary condition for effective impact on domestic change” (Magen 2006, p.411)

Unlike the Accession Partnerships, the ENP Action Plans are not unilateral acts decided by the Council but are jointly agreed with the partner governments (Bolkvadze, 2016, p.416) It is said, that the lack of membership perspective for the EU Neighborhood states, unlike CEE countries a few decades ago, will seriously limit the external governance and conditionality capacity, that acted “as leverage for unpopular adaptations” (Lavenex, 2011,p.694) When the membership incentives get stronger, the political change in the target change becomes more real (Borzel&Schimmelfenning, 2017, p.279).

The third theoretical expectation will be observed via in-depth interviews with the EU Delegation to Ukraine as well as EU Commission representatives where the respective questions

about EU strategy in Ukraine will be raised. I also expect the academic reflections on the EU transformative power in the EaP states will be also analyzed.

Chapter VI: Methodology and Research Design

4.1. Research Questions

The main objective of the work is twofold: on the one hand, the research aims to elicit the existing limits based on the conceptual framework within anti-corruption reforms conducted in Ukraine; on the other hand, thesis sets out to understand the potential opportunities how this strategy can be improved. To attain this purpose, the work will be guided by two research questions that will be answered in the course of data analysis:

RQ I: What are the limits of conditionality in the EU's anti-corruption reform promotion strategy in Ukraine within VLAP?

RQII: How to improve the EU's anti-corruption reform promotion in Ukraine?

4.2. Research Design

The research methodology is rather a comprehensive strategy and the choice of the right research method is based upon the peculiarities and features of the research problem (Jamshed, 2014, p.87). The core basis of qualitative research lies in idea that it tries to understand and examine the way individuals view their own life experience providing their own understanding (Cropley, 2019, p.5). In order to answer the two research questions, the research opts for a single case-study design, as it is the most suitable method within the study in order to understand the phenomenon. The case-study type of research design will give the researcher an opportunity to conduct an in-depth analysis of the phenomenon of the research. This method is used in order to narrow down a broad field of research to the more concrete research topic and should be used when the researcher intends to conduct an in-depth study of a particular phenomenon (Shuttleworth, 2020) Moreover, case studies make a serious contribution with regard to 'theory building'(Aidanregan, 2007).

4.3. Case Selection

The focus of the research will be put on the VLAP program which has substantially contributed to enhancing the relations between the EU and Ukraine. The work has chosen to investigate the limits of reforms in the anti-corruption area within VLAP as a unit of analysis. Some scholars define the VLAP program as the most powerful incentive that helps EaP states to conduct reforms in a number of areas as well as gives the EU powerful leverage over the country once the state commits itself to fulfilling the reforms (Delcour&Fernanders, 2016, p.7)

Ukraine is defined as a priority country for the EU, and the EU seeks to support Ukraine on its path of reforms, that the state has embarked on in 2014 with strong conditionality. It is said, that Ukraine saw the EU mostly as a geopolitical player and juxtaposition to Russia. Indeed, the aspiration of Ukraine to distant itself from Russia brought about the government to officially declare the European choice as well as the EU membership as the chief objectives of country's foreign policy (Woczuk, 2016, p.57)

While selecting the case, the researcher was guided by certain criteria that were taken into account while choosing among several conditionality programs in Ukraine. The program is a strong fit for research due to a number of reasons. First, VLAP is a completed project that translates into visa liberalization for Ukraine and has significantly contributed to the ongoing transformations in the state's history over the last 5 (since 2014) years. Therefore, the EU is assumed to have a big stake in the country's development.

Second, the VLAP is the first ambitious and completed conditionality program that Ukraine has ever embarked on with the EU that opened up many institutional challenges as well as opportunities for the country that require deeper understanding. Lastly, due to the above-mentioned, VLAP is a strong fit for applying the three theoretical expectations pertaining to limits and opportunities of conditionality.

4.4. Time Frame of the research

With regard to a time frame of the research, the analysis will take its beginning from 2014, until the 2019 year where the changes pertaining to anti-corruption measures took place, with a series of reforms implemented. The choice of this time frame can be explained by the period when a number of new anti-corruption institutions were launched, a number of new laws adopted and new rules enforced. Never before in Ukrainian history had the government embarked on such

ambitious path of reforms, and was so close, on the other hand, pressured and monitored by civil society and international donors. Endemic corruption on the highest level was also the reason the Revolution of Dignity in 2014 took place (Kozyrev, 2014). Within the next years, the state has adopted a serious framework of laws that helped to establish a number of new anticorruption institutions. The transparency and disclosure of public data became open: e-procurement, assets e-declaration has been opened to the public. The state has put forward the formation of institutional, legislative and policy foundations to combat and prevent corruption as well as launch the transparency initiatives. (OECD, 2015 p.7) Although making some progress, the enforcement of anticorruption measures that launched after 2014 lack a sufficient implementation (Transparency International, 2018) Transparency International dataset over the last five years reveals that the progress Ukraine made in the area of anti-corruption is limited (TI, 2019). Given a number of events in anti-corruption that happened within this time period, it would be relevant to focus on this particular time-frame, which is also feasible to carry out given the structural limitation of the research.

4.5. Data Collection

As noted above, the research will use the qualitative method of data collection. The thesis will focus on two key sources of data collection: in-depth interviews and document analysis. As a means of “triangulation”, a concept that implies a combination of methodologies in order to study a particular phenomenon, the research will employ these two methods in order to collect empirical data for disentangling the puzzle of a research (Bowen, 2009, p.3). It is said, that it is vital for a qualitative researcher to use at least two sources of evidence “to seek convergence and corroboration” (ibid, 2009) via employment of different research methods and data sources. The logic behind this lies in increasing the credibility of research by corroborating the data collected from different sources as well as reducing the potential bias that might arise in a single case-study. On this matter, Patton (1990) asserts that via “triangulation” the research can defend his research from an external accusation pointing to “an artifact of a single method or single source” bias (Patton, 1990, p.1197).

4.6. Interview as a method

Generally, the choice of the interview as a method can be explained by the fact, that interviews enable scholars to collect the required information and on its basis generate comprehensive, detailed descriptions, discuss different processes, phenomena, capture varying perspectives, identify micro-foundations of macro-patterns as well as eventually frame hypotheses (Kapiszewski et al, 2015, p.191-194) Furthermore, the interview is a suitable method for the research as, one of the main advantages of this method is that it enables to uncover and explore the informal behavior of a subject that is critically important to political outcomes (ibid). This informal behavior can be usually neglected in a discussion with more people where the respondents would be less eager to express their genuine stance towards an issue, thus employing in-depth interview the scholar expects to increase the value of data by getting more precise and genuine answers (ibid). Croplley (2019) regards in-depth interview as “interviewer’s attempt to get below the surface and identify the underlying emotions and feelings experienced by respondents, or recognize the rationalizations and defences they use when dealing with the issues being discussed” (Croplley, 2019,p.100).

Among different types of interview, the research employed semi-structured in-depth interview method, where the respondent answered prepared in advance set of open-ended questions with duration of an interview 45-60 minutes each. According to this type of interview, I have elaborated an interview guide⁴ that helped to guide the discussion with follow-up questions. The interview guide was adapted in accordance with the level of one’s expertise and organization the interviewee represents. The interview covered different dimensions pertaining to limits of conditionality that were theorized in the conceptual framework chapter: 1) General critique of EU conditionality within VLAP 2) Critique within Rule Adoption versus Rule Application 3) Role of political elites and interests groups (veto-players) 4) EU’s strategy within EaP that lacks sustainability 5) Opportunities for improvement of the conditionality policy. The logic behind selecting the experts was guided by their involvement in the construction as well as monitoring the conditionality within VLAP. Thus, five interviews with experts who were attached to construction of conditionality within VLAP were conducted, namely: the EU Delegation to

⁴ The interview guide is attached in the Appendix

Ukraine (two representatives), where one expert was from the political section of the delegation and the other was from operational section. Both experts deal with rule of law and anti-corruption issues and are involved in monitoring the situation on the ground. One expert has been stationed in Ukraine for around 5 years while the other since 2018. My other respondent was a member of the Support Group for Ukraine by the European Commission team, which was created in 2014, with the need to assist Ukraine in the reforms. The interviewed expert deals with questions and reforms related to the reforms in judiciary. The fourth respondent was head of International Relations at Transparency International Ukraine. The fifth respondent was a legal expert from Anti-Corruption Action Center in Ukraine. In line with ethical norms, all the interviewees were sent a voluntary consent form⁵ for their agreement to participate in the interview and have the interview digitally recorded. **Table 2** presents the interview set-up and reports the date as well as duration of each interview. The interviews were conducted in English (4) and Ukrainian language (1).

Table 2. Interview Set-Up

<i>Interviewees</i>	<i>Dates</i>	<i>Method of Recording</i>	<i>Duration of Interview</i>	<i>Language</i>	<i>Transcript Available</i>
<i>(A) The EU Delegation to Ukraine (1)</i>	<i>14.04.2020</i>	<i>Skype</i>	<i>80 minutes</i>	<i>English</i>	<i>Yes</i>
<i>(B) Transparency International Ukraine</i>	<i>16.04.2020</i>	<i>Skype</i>	<i>48 minutes</i>	<i>Ukrainian</i>	<i>Yes</i>
<i>(C) European Commission Support Group for Ukraine</i>	<i>20.04.2020</i>	<i>WebEx</i>	<i>45 minutes</i>	<i>English</i>	<i>Yes</i>
<i>(D) Anti-Corruption Action Center</i>	<i>23.04.2020</i>	<i>Skype</i>	<i>45 minutes</i>	<i>English</i>	<i>Yes</i>
<i>(E) The EU Delegation to Ukraine (2)</i>	<i>30.04.2020</i>	<i>Zoom</i>	<i>47 minutes</i>	<i>English</i>	<i>Yes</i>

⁵ The consent form is attached in the Appendix

All names of the participants will not be mentioned in the research in order to protect participants' confidentiality. Due to safety reasons caused by Covid-19 all the interviews were digitally conducted (Skype (3), Zoom (1), and WebEx (1)). The research will follow the data saturation approach.

In the context of choosing the interview as a method, it is said that interview, in comparison to other methods of data collection, can serve as a means to “identify causal mechanisms that are not evident in other forms of data” (Mosley, 2013, p.5). Interviews is an efficient method that helps to explore the “construction and negotiation of meanings in a natural setting” (Alshenqeeti, 2014, p.1-2). Aside from the fact that this method of data collection builds a comprehensive snapshot and helps to analyze the words with a more precision, it also gives the interviewees the chance to be flexible and speak with their voice, while expressing their own thoughts and views regarding certain phenomena. Given the interactive form of interview, I will be able to ask more precise questions as well as delve into the emerging topics (ibid). In this regard, Mosley (2013) argues that the interview allows the scholar collect much deeper set of responses, meaning that the interviewer can ask questions allowing an open-ended and follow-up questions, thus trying to understand better the issue in focus. The follow-up question is particularly important in case the interviewee holds questionable or contradictory opinion concerning some sensitive problem, or when the issue in focus is over-arching and has different facets and cannot be answered in a short sentence (Mosley, 2013, p.6).

4.7. Documents Analysis

Documents analysis is regarded as a systematic procedure for assessing and reviewing certain documents - printed and electronic materials. Similarity to other qualitative methods, this method requires that data is examined and interpreted in order to develop as well as reveal the meaning, understanding of the empirical knowledge (Bowen, 2009, p.2)

Documents analysis are said to be particularly applicable when one intends to use a qualitative case study as a research design, implying the author is going to undertake a serious research describing a particular phenomenon, event, or a program regardless of type of a document, it can help to discover the insights, expand an understanding of concepts, important for a research problem (ibid, p.4) With regard to the concrete documents, the research analyzed different EU

reports that deal with monitoring Ukrainian progress on implementing the conditional programs (e.g VLAP reports (three years 2014-2017), Association Agreement progress report (5 years), Visa Suspension Mechanism reports (two reports 2018, 2019), EaP and ENP reports) as well as other reports on anti-corruption from the Ukrainian side (government reports), Transparency International (reports over the last five years) and other international organizations and NGOs that deal with monitoring the situation with corruption.

4.8. Snowball Sampling Method

In order to collect the data, the research used snowball sampling method. Although primarily used in Sociology, snowball sampling technique is a very helpful tool to use in Political Science. In the study of elites, where the important and influential political players are not always those whose identities are publicly known and visible, this method can be particularly effective to find new sources for collecting the valuable data (Tansey, 2007, p.770). The thesis will use the snowball sampling method because the participants for a study are difficult to find. This method allows the researcher to use the referrals from the existing and known subjects in order to find a new sample for a research. The method helps researcher to enrich the samples clusters and have an access to new participants (Noy, p.5, 2018). Snowball sampling includes identification, based on concrete justification of a number of people to be interviewed who will further point to other respondents who will make the object of the research. The value of this method is that it will reduce for the researcher the costs for searching the right interviewees (Dragan&Maniu, 2013, p.4).

On the other hand, the method has its limitations. One disadvantage of this method is that the initial respondents might be inclined to nominate the subjects that are familiar to them and it is quite likely that the potential interviewees share the same characteristics and traits as the initial subjects (Explorable, 2009) Moreover, this method does not choose the units randomly from the population, therefore it is impossible to define the sampling error as well as make any statistical inferences (Laerd Dissertation, 2012)

4.9. Thematic Content Analysis

In order to analyze the interviews certain guidelines were be applied. For analyzing the interviews data, the research used the Thematic Content Analysis (TCA). TCA helps the

researcher to identify the common themes in the transcripts of interview (Anderson, 2007, p.1). This qualitative method helps the researcher to group the text from the transcript into common groups in order to identify the common patterns in the voices of the participants in the interview. As the research seeks to understand the limits and opportunities of conditionality, it would be relevant to use this method to delineate multiple limits as well as different solutions. According to this method, every group will have a name (theme) and will be filled in with actual words of participants (ibid). The words of the participants will be assigned codes that I will later group into themes and subthemes.

TCA is a method that helps the researcher to identify, analyze and report the patterns of the data, which will be carried out in the next chapter. Moreover, one of the advantages of TCA is that it is a flexible method which can be used both for explorative studies, where the researcher does not have a clear idea of what he is searching for as well as for deductive studies, where the researcher knows already what he looks for in the analysis (Mortensen, 2020).

4.9.1 Reliability and Validity

The research acknowledges the limits of the research methods that can affect the validity of data. First, the single type of a case study research design does not presuppose the generalizability of data. Validity in qualitative research means “appropriateness” of the tools, processes, methods of analyzing data (Leung, 2015). Thus, the right methodology will enhance the validity of findings. In order to address the validity question and robustness of data, the research used the “triangulation” method and complemented the findings from the interviews’ with relevant reports for answering the research questions.

On the other hand, the research acknowledges that the research methodology has been affected by covid-19. Specifically, the thesis aimed at conducting two more interviews with the Support Group for Ukraine by the EU Commission as well as one interview with the former representative from the Ukrainian government, but the participants never responded to the requests. Some experts had to shift their duties and working priorities in the wake of covid-19 (*the case of EU experts according to the EU Delegation to Ukraine*) Furthermore, the interviews were planned to be conducted in person, but then had to be changed to digital form. Two out of five interviews underwent technical difficulties caused by the potential overload of software; in

this case the researcher had to request the respondents to repeat their answers and ensure the correctness of the data.

Nevertheless, given the rigor of methodology sequence, ability to interview five experts who were directly exposed to reforms in the area of anti-corruption within the timeframe of research, as well as open access to necessary reports, allowed the research to reach the point of data saturation and therefore establish the main trends pertaining to limits and opportunities of EU conditionality within VLAP.

Chapter V: Data Analysis (Analysis of New Institutional Set-Up within VLAP)

In the previous chapters, this research has theorized the limits of the EU Conditionality programs more generally as well as zeroed in on three concrete dimensions of analysis that the work sets out to identify in the case of VLAP by applying three theoretical expectations. This chapter will report the results of the data analysis that the research has arrived at. Before embarking on the data analysis results, however, it is relevant to overview the full institutional set-up that was established in Ukraine in the frames of VLAP Conditionality. As mentioned earlier in the work, conditions for the VLAP in many areas overlap with other EU Conditionality programs, such as MFA, State-Building contract as well as International Monetary Fund (IMF). In a number of areas the EU coordinates its actions with the USA, IMF as well as civil society, which is why it is difficult to prescribe all the merits solely to the EU (from the interview, 16.04.2020).

5.1. EU Conditionality within VLAP: New Institutional Set-Up

This section will expand further on different institutions that Ukraine has established within VLAP Conditionality. When it comes to the EU conditionality within VLAP, it should be borne in mind that the conditions were not constructed solely by the EU; rather it was a joint effort of Ukrainian NGOs, civil society, G7 members, IMF. Thus, conditionality was seriously negotiated in order to meet the Ukrainian realities (from the interview, 22.04.2020). The Anti-Corruption Strategy⁶ for 2014-2017 as well as the legislation that concerned the anti-corruption institutions was written with a significant contribution of civil society (Emerson et al, 2017, p.13)

⁶ On the principles of state anti-corruption policy in Ukraine (Anti-corruption strategy) for 2014-2017 <https://zakon3.rada.gov.ua/laws/show/1699-18>

One of the EU experts on rule of law claimed that originally it was not necessary to establish the High Anti-Corruption Court (HACC), but it became the requirement when it became obvious that the ordinary Ukrainian courts were dysfunctional, and therefore unable to work with NABU, as the cases were stuck in courts (from the interview, 20.04.2020) Konstanyan (2017) argued that the corrupt courts were obviously delaying the hearings for those who have been charged with crimes of corruption.

Due to civil activists, efforts of certain members of the parliament, as well as support from international partners, Ukraine adopted a number of new anti-corruption acts that entailed establishing a number of significant anti-corruption institutions that aimed at rebooting the system. As a result, new investigative bodies were set up and enabled people to have new control leverage via new institutional opportunities: open data access, e-declarations, open registries (US Aid, 2016). The newly created institutions were similar to those in the EU, with some of them even being missing in certain EU countries (from the interview, 14.04.2020)

To analyze the conditionality within VLAP let us refer to the EU reports as well as to Ukrainian laws adopted to see what type of institutions were set up. Let us build our analysis of new anti-corruption infrastructure referring to the Anti-Corruption Action Center that reports on the rule adoption as well as its enforcement. The center is an independent center, which is funded by the USA, the EU as well as private donors and carries out activities⁷ aimed at reducing space for corrupt practices. The center breaks down the VLAP Conditionality to concrete dimensions the anti-corruption institution represents. The new anti-corruption infrastructure can be structured according to the functions they perform and areas they are responsible for: Corruption Prevention, Corruption Investigation and Prosecution, Recovery of Assets, and Public Access to Information. Following the EU Conditionality, the Ukrainian parliament adopted a number of legislative packages that led to establishing new institutions.

a) Corruption Prevention

⁷ The center writes anti-corruption laws and advocates them in the parliament, reports on corruption as well as helps its partners to become more effective

NACP (*National Agency for Corruption Prevention*) – is defined as state institutional body that aims to prevent corruption, promotes integrity and zero tolerance for corruption in the state and society as well as the development of a corruption free business environment. The institution was established in accordance with the Law⁸ of Ukraine “On Prevention of Corruption”, adopted on October 14, 2014, by the resolution of the Cabinet of Ministers of Ukraine of March 18, 2015. The main function of the National Agency is to prevent the commitment of corrupt actions. This is done through the identification and elimination of factors that make it possible to commit corruption offenses, control over the compliance of anti-corruption rules by political parties, officials and politicians, work with the perpetrators of corruption, etc. (NACP, 2020)

E-declaration Registration – the system that aims to ease the access, filing and verification of the property declarations for public officials (NACP, 2020). The system helps to prevent corruption and most importantly, allow ordinary citizen to access and inspect the assets of public officials.(UNDP, 2018).

E-declaration verification – is special software that will be used by NACP to automatically verify uploaded electronic declarations. This procedure will significantly reduce the time needed to review e-declarations, spot any inconsistencies or false information and trigger the manual verification an investigation by newly created anti-graft agencies (particularly once the verification software is linked with other state registers (UNDP, 2018).

Political Parties Finances – the new law presupposes the implementation of annual state funding for parties that received 3% of the vote, (5% from 2019); such funds will be distributed among the parties in proportion to their level of support in the elections; compulsory filing and subsequent release by parties of detailed property, income, expense and financial statements; inclusion in the party financial statements of the financial statements of party organizations with legal personality; full disclosure of financial reports on the receipt and use of election funds; annual independent audit of party financing; exercising state control over the financing of the policy by the National Agency for the Prevention of Corruption (NAPC, 2020)

⁸ The law on Corruption Prevention from October 14, 2014 <https://zakon.rada.gov.ua/laws/show/1700-18>

b) Corruption investigation and prosecution

NABU (National Anti-Corruption Bureau) is a new anti-corruption law enforcement body, that in line with the law “On the National Anti-Corruption Bureau of Ukraine”⁹ from 14 October 2014, was established with the purpose for eradicating corruption in the government and enabling the formation and development of efficient state. The broader objectives of the institution include “preventing, exposing, stopping, investigating and solving corruption-related offences committed by high officials, and averting new ones” (NABU, 2020). The law “On the National Anti-Corruption Bureau of Ukraine” was adopted on the 14 October 2014 by Verchovna Rada (NABU, 2020).

SAPO (Special Anti-corruption Prosecutor’s Office) the functioning of the office and legal activities are defined in the Law of Ukraine “On the Prosecutor’s Office”¹⁰ To increase the elimination of the influence of the “the old staff” on the NABU detectives in the Prosecutor’s Office, a special unit was created within the Prosecutor General’s Office of Ukraine. (NABU, 2020) The office, which is linked to the NABU operation, will carry out the guidance and oversight of the investigation that are being implemented by NABU, supervise the laws during the investigations, represent the interests of citizens and state in the court related to corruption in line with the law (US Aid, 2016)

High Anti-Corruption Court (HACC) – is an institution whose task is to administer justice in accordance with the principles and procedures of justice established by law¹¹ in order to protect individuals, society and the state from corruption and related crimes and judicial control over the pre-trial investigation of these crimes (HACC, 2020)

c) Asset recovery

⁹ The law on National Anti-Corruption Bureau from 2014 can be further accessed here <https://zakon.rada.gov.ua/laws/show/1698-18>

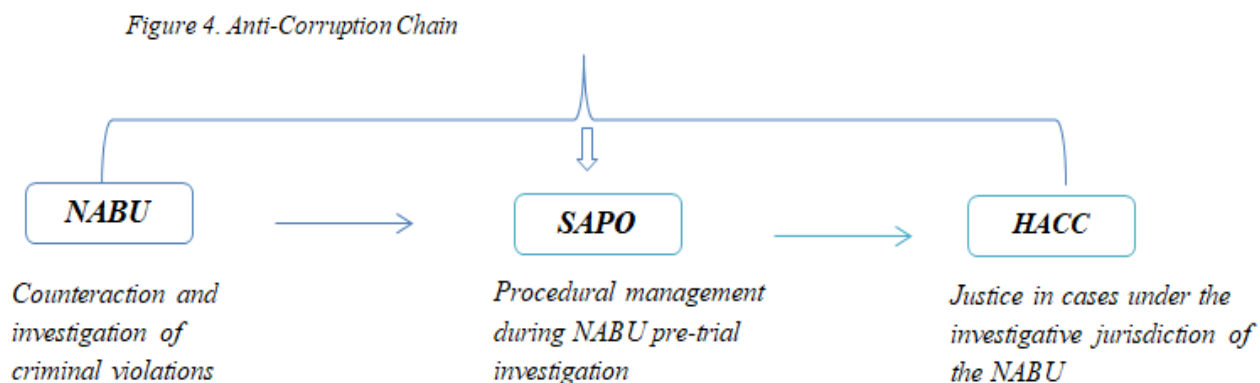
¹⁰ The law on Special Anti-Corruption Prosecutor’s Office <https://zakon.rada.gov.ua/laws/show/v0149900-16>

¹¹ The law on High Anti-Corruption Court <https://zakon.rada.gov.ua/laws/show/2447-19>

ARMA (Assets Recovery and Management Agency) - is a specialized governmental body which has an authority to carry out state policy in the sphere of tracing and finding assets “that are subject to seizure as well as management of seized assets in criminal proceedings.” In line with the law¹² from 2016 (ARMA, 2020)

Assets Seizure and Confiscation – is defines as a legal process according to which Ukraine will carry out an investigation with the help of international cooperation and the relevant international bodies in order to obtain the require information related to funding and tracing of assets. The Agency has the legal right to requests, process and exchange the information on legal entities as well as individuals in accordance with the Ukrainian legislation and international treaties. (World Bank, 2017)

Among these institutions **Anti-corruption Chain** is the key in investigating and bringing the corrupt official to justice. The **Figure 4** demonstrates the sequence of bringing an individual who was involved in acts of corruption to justice. As can be see, the NABU is the start of a chain,



Source: Transparency International (2020)

which starts an investigation, then the case is transferred to SAPO, which, in its turn, delivers the case to High Anti-Corruption Court that should finalize the whole procedure by final verdict.

¹² The law on National Agency of Ukraine for Detection, Investigation and Management of Assets Obtained from Corruption and Other Crimes <https://zakon.rada.gov.ua/laws/show/772-19>

5.2. Limitations of EU Conditionality

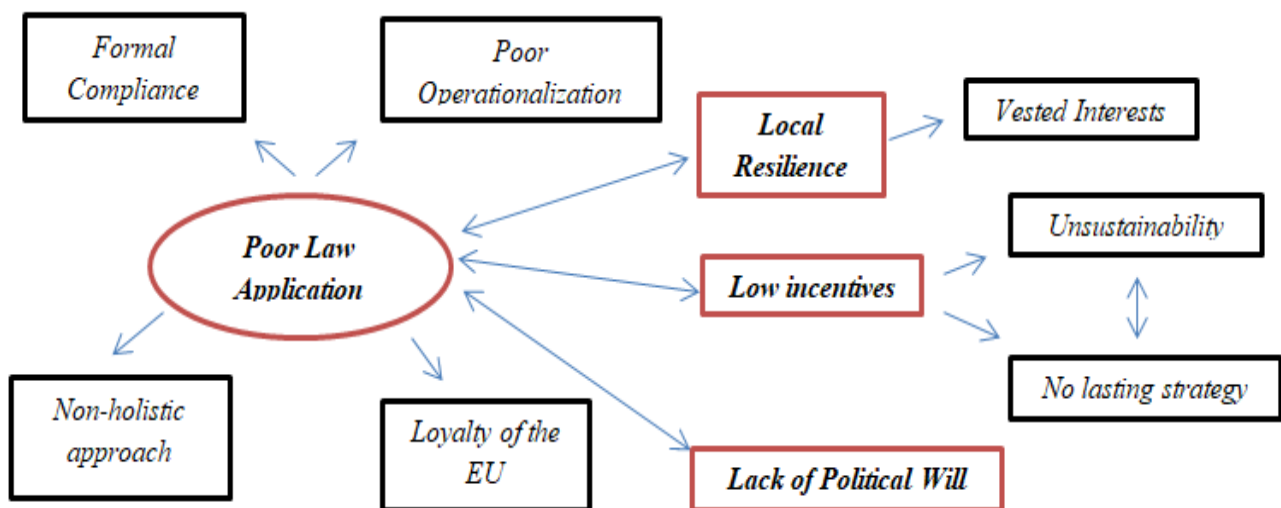
In this section, the work will report the analyzed data based on three theoretical expectations assumed earlier in the research and subsequently applied in the course of in-depth interviews. To attain this purpose, the research was guided by six main questions that the experts were asked in the course of in-depth interviews (*see the interview guide in Appendix*)

As noted previously, in order to answer the two research questions, the research will employ TCA in order to identify the common themes and patterns across all the five expert interviews which will be complemented by the findings in the reports as well as academic reflections within the time frame of the research. The section below will report the results of the TCA (*see Appendix*) and seek to answer the first research question:

RQ I: What are the limits of EU conditionality in the EU's anti-corruption reform promotion strategy in Ukraine within VLAP?

First and foremost, let us schematically visualize the identified themes that were established in the course of analysis of the interviews via TCA and pertain to answering the first RQ. As a result of TCA, the research has identified four main themes as well as seven sub-themes. The **Figure 5** presents the main established patterns, where the rectangles in the red color are the main identified themes, while the subthemes are indicated by the black rectangles. Within the

Figure 5.TCA (Main Themes)



first identified theme (low rule application) the further subthemes were identified: Poor operationalization of conditions, the EU's own loyalty to unfulfilled conditions, lack of holistic approach to conditionality as well as only formal compliance with conditions by elites which is not supported by proper enforcement. The second identified subtheme is local resilience where "vested interests" was an identified subtheme. With regard to third dimension, the low incentive is the main theme, which is broken down to two sub-themes: the strategy of the EU conditionality within VLAP is unsustainable which is connected to the fact, that the EU does not have a lasting strategy towards Ukraine. The three main themes are connected by arrows with "poor low application" theme, since the finding of the research point that these three main themes limit the proper enforcements of the rule. Let us now expand more on the results of the analysis. In order to trace the law adoption let us refer to the laws adopted by the Parliament within 2014-2017 years in line with National Anti-Corruption Strategy.

a) Rule Adoption vs Rule Implementation

The law adoption was earlier defined by Shimmelffening (2009) as "institutionalization at the domestic level". The **Table 3** below provides the comparison of the adoption versus application

Table 3. Rule Adoption vs Rule Application

<i>Name of the institution</i>	<i>Institutionalization at the domestic level</i>			<i>Rule Implementation</i>		
	<i>Strong</i>	<i>Medium</i>	<i>Not Adopted</i>	<i>Strong</i>	<i>Serious risks</i>	<i>Not implemented</i>
<i>NABU Establishment</i>	<i>Strong</i>				<i>Serious risks</i>	
<i>NABU External Audit</i>	<i>Strong</i>					<i>Not implemented</i>
<i>NABU Wiretapping Powers</i>	<i>Strong</i>				<i>Serious risks</i>	
<i>NABU Access to Information</i>	<i>Strong</i>			<i>Strong</i>		
<i>SAPO Establishment</i>	<i>Strong</i>			<i>Strong</i>		
<i>SAPO head selection</i>	<i>Strong</i>				<i>Serious risks</i>	
<i>Anti-corruption court establishment</i>	<i>Strong</i>			<i>Strong</i>		
<i>Anti-corruption court judges selection</i>	<i>Strong</i>			<i>Strong</i>		
<i>E-data public access</i>	<i>Strong</i>			<i>Strong</i>		
<i>NACP establishment</i>	<i>Strong</i>				<i>Serious risks</i>	
<i>E-declaration registry</i>	<i>Strong</i>				<i>Serious risks</i>	
<i>E-declaration verification</i>	<i>Strong</i>					<i>Not implemented</i>
<i>Conflict of interests verification</i>	<i>Strong</i>					<i>Not implemented</i>
<i>Political Parties Finances</i>	<i>Strong</i>			<i>Strong</i>		
<i>Assets Seizure and Confiscation</i>	<i>Strong</i>			<i>Strong</i>		
<i>ARMA Establishment</i>	<i>Strong</i>				<i>Serious risks</i>	

Source: Anti-Corruption Action Center

of the laws within VLAP according to the Anti-Corruption Action Center¹³. As can be seen in the table, there are a number of laws, although being adopted in the parliament, not fully enforced, under threat or even rolled back/not implemented. The latter is the case of the external audit of NABU, automatic verification of e-declaration as well as conflict of interests' verification. With regard to rule adoption vs rule application distinction, Ukraine is not a unique case, as the EU expert posited: *"There is a serious gap between the "laws in the books" and "the law in practice" and in this regard Ukraine is not a unique case"* (from the interview, 20.04.2020)

Tracing the application of laws, the European Commission in its Association Agreement Report (2019) highlights that, although the system of verification of electronic assets has been established, its proper functioning remains the matter of concern and thus further measures are needed to be taken in order to set up a fully operational system of verification as well as process the backlog in asset declarations (European Commission, 2018, p.12) The technical opportunity to automatically verify declarations does not exist for the moment and therefore measure for its implementation should be taken (Transparency International, 2019) Moreover, the external audit of NABU which is expected to be conducted annually, has not yet been enforced (European Commission, 2019, p.10)

Let us report the results and see how it can account for the limits of proper enforcement of the laws and shed more light on the table. As noted above, the TCA reveals four sub-themes that were established in the course of data analysis and should be viewed under the umbrella of the first theoretical expectation dimension. According to the experts the following factors can account for low rule application within the first dimension:

1) Formal Compliance with the EU conditions.

According to experts' observation, poor application of the laws within VLAP can be explained by willingness of the Ukrainian authorities to adopt the laws only formally in order to meet the

¹³ According to organization's website, the methodology of measuring rule application lies in covering a number of reports (OECD, TI, EU, IMF) that the organization assesses and then comes to certain conclusion with regard to enforcement of a specific rule.

EU's conditions formal adoption. This is particularly well illustrated by the following assertion by a research participant:

“It can be clearly seen with the case of NABU, where the government established it to fulfil the conditionality and then it tries to roll back on its independence, its functions. Once Visa Free Regime is there, they think it is not necessary to fulfil the agreement anymore. It is just about double games of our politicians, our elites who want to achieve their own results.” (From the interview, 22.04.2020)

The low compliance with the rules is due to the corrupt officials, who, on the one hand, do not want to lose their power, but on the other hand, are being constantly pressured by public and the EU to fulfil the requirements. Thus, in order to play on both sides they pretend to act by formally complying with conditions. This was well presented by the argument of the expert:

“Their power is based on these corrupt connections and agreements. Therefore, they understand that on the one hand there is a demand from the public, and international donors, and on the other side their own self-preservation and survival. That is why they try to pretend that they have fulfilled the requirement of the EU, but on the other hand to preserve the system and enrich themselves” (From the interview, 22.04.2020).

2) Poor Operationalization of Conditions

Another factor that accounts for low rule application pertains to operationalization and construction of VLAP Conditionality. Two experts referred to technicalities of conditionality as the biggest problem and therefore inability to measure their fulfillment as a result. Talking about the problems with measurement, the EU experts asserts:

“If we take the conditions for VLAP, the biggest problem is that these conditions are not measurable and precise enough and it makes it very difficult to ascertain as to whether they have been fulfilled or not” (from the interview, 14.04)

Another expert argues that the way the conditionality was constructed does not encompass effective rule application, which is hard to measure, and therefore the EU views the formal adoption of the rule by the parliament as enforced condition, which by definition cannot entail effective measurement of rule implementation:

“The indicators are largely focused on the adoption, because it is very difficult to measure application. The conditions that were in the VLAP were focusing on setting up the institutions, sometimes on legislation for instance, but it is difficult for them to ensure application” (from the interview, 30.04)

On the other hand, the operationalization did not presuppose clear benchmarks in order for the Commission to ascertain if the condition was successfully fulfilled:

“The selections of conditions are very poor, no benchmark of implementation, how to quantify the level of implementation that is good enough. Your conditions have to be very carefully chosen not to lead yourself into this trap of technicalities” (from the interview, 14.04)

3) The EU's loyalty

The third identified factor relates to the fact, that sometimes the EU can be loyal to unfulfilled conditions and count the condition as “implemented”, although it was either only adopted formally. This is the case of bilateral commitment towards certain laws or general political agreement:

“When the condition is not yet fulfilled but there is a general political will to grant Visa Free to Ukraine, even if not all the conditions were fulfilled it will be difficult to enforce them because there is already a political consensus” (from the interview, 30.04)

When it comes to concrete elements of VLAP, it is argued that sometimes the EU counts some conditions as “implemented”, although in reality the condition was not enforced. The assertion from the interview illustrates this:

“Partly, the EU can be loyal with regard to implementing the rules. For instance, in the case of e-declarations verifications, there should have been installed an automatic verifications, but there is still not a full access to public registries provided, and hence the declaration cannot function without human's aid. In that case, the EU still regarded this condition as implemented” (from the interview, 16.04.2020)

At the end, if the EU tried to follow more rigorous strategy and require the full enforcement of the anti-corruption conditions, the VLAP would have had to be postponed until the court decisions or sentences to corrupt officials were in place, but these were not politically wanted by the EU, therefore the EU would rather grant the visa free, rather than postpone its decision and wait for full enforcement of the rule:

“the EU said that it is enough just to start setting up the anti-corruption institutions and to operationalize them, but we did not want to wait for the actual court decisions, because that would have dragged us away from the process for a lot longer” (from the interview, 20.04)

4) Non-holistic approach

Lack of holistic approach factor relates to VLAP conditionality as being not comprehensive and holistic enough program, when it comes to addressing fundamental reforms in the area of Rule of Law and Anti-Corruption, and hence the rule application cannot be supported by effective enforcement.

One of the experts refers to inability of conditionality to be comprehensive tool to address the problems in anti-corruption area and therefore asserted that:

“By applying conditionality you cannot target all the weak spots at the same time, you should be selective, meaning that you need to focus on certain aspects of anti-corruption policy. The biggest weakness of EU conditionality is that it targets certain concrete elements, while not applying conditionality on some others, sometimes even more important elements” (from the interview, 14.04.2020)

Another interviewee agrees that it is difficult to apply conditionality in order to bring about change in the Rule of Law area: *“it is not possible within conditionality to focus very largely and comprehensively on rule of law reforms” (from the interview, 23.04.2020)*

It is also argued that the EU had too many conditions that are difficult to measure and the conditions sometimes were too technical which hinders the ability of conditionality to remain its holistic power, which can be proved by a quote from the interview:

“You cannot have too many conditions; so you have to choose what is technically and politically viable and then the conditions are only as strong as the will on both sides, but this time also on the side of the EU to attach the importance of them in a way that you have consequences if the conditions are not fulfilled.” (from the interview, 30.04.2020)

Aside from decreasing number of conditions, it is a crucial factor that for conditions not to be too technical for both sides in order for the EU to be able to trace their effective application:

“This is a very important nuance that you need to be capable yourself to analyze the fulfilment of conditions and not set too technical conditions where you yourself could be outplayed by the authorities or you could get completely confused where you would not be able to make a judgement”(from the interview, 14.04.2020)

To sum up, the original assumption was that Ukraine will not meet any serious challenges with rule adoption, yet the rule application part was expected to be limited, however no specific reasons were envisaged as for this dimension. The results, however, point that the EU itself can play a role in limiting the enforcement of its own conditions and such identified sub-limits, as the way the conditions were written and the fact that the EU sometimes might not be strict enough to unfulfilled conditions can limit the proper enforcement of the rule. Moreover, another identified factor was that the Ukrainian authorities sometimes followed only formal adoption of conditions, which the EU counted as implemented, due to its own measurement framework, which gives the local authorities a chance to be flexible enough on the adoption-application continuum. Apart from this factor, the analysis shows that conditionality was not holistic enough to encompass enforcement of conditions in all key areas equally.

Domestic Costs

The weak state institutions that have been in place since independence created a healthy field for powerful domestic elites that include oligarchs as well as their political elites that successfully managed to hinder the implementation of crucial reforms in the country (Kostanyan, 2017, p.2) Marusov (2016) argues that enabling the new anti-corruption institutions sentencing the corrupt officials faces serious pressure from the old business and political elites (Marusos, 2016, p.10)

Although initially the theoretical expectation assumed that there would be “concrete veto players” within local resilience, namely oligarchs whose decision would be necessary to change the status quo, as assumed and theorized in the Conceptual Framework Chapter. Most of the experts, however, tried to avoid naming concrete subjects who were trying to block the reforms, as one of the interviewees mentioned *“we do not have hard evidence against all of them”* (from the interview, 20.04) Nevertheless, such identified key words and phrases as *“oligarchs”*, *“oligarchic groups”*, *“remain a status quo situation”*, *“vested interests”*, *“business interests”* point to the informal role of certain players in being part of an agenda set-up in Ukraine.

The TCA has identified a sub-theme “vested interests”, that was mentioned by several experts. As assumed earlier, all the interviewees referred to local resilience as being a serious barrier to conducting reforms and sustain anti-corruption infrastructure. One of the experts argues that *“their resilience translates into negativity they try to share among general public”* (from the interview, 23.04.2020) and the fact that obviously the elites want to remain the status quo of the system not conducting the reforms *“the Kleptocracy which we have is the blood of the system, this is the way the system works”* (ibid).

Another interviewee also refers to the powerful business interests who are trying to remain the status quo and the space that the powerful interests created for their healthy maneuvering:

“They have managed to create a space with low competition, largely by exploiting corrupted law enforcement agencies, including tax service, customs service. In Ukraine there are powerful business interests who are trying to remain the status quo” (from the interview, 14.04)

With regard to concrete instances how different business groups seek to undermine the anti-corruption infrastructure, a number of interviewees argued about the direct attacks on NABU, being one of the most crucial institutions:

“We can see that when the head of NABU starts the case which goes against someone’s interests, then we can see the new law emerges in the parliament that allows sacking the head of NABU” (from the interview, 16.04)

Another interview refers to members of the parliament who represent these interests:

“In the parliament they represent these interests. Presidential office consists of interests. Sometimes the parties with opposing views cooperate to achieve their goal. Recent developments with the dismissal of the head of NABU are a clear example of this (refers to the latest attempt to dismiss the head of NABU)” (from the interview, 30.04)

There are continuous attempts to attack NABU, in particular through failure to provide the adequate detective capacity, the threat of removal the NABU Director from office through a mechanism controlled by certain political forces, and a number of draft laws to limit NABU’s investigative capacity (Emerson et al, 2017, p.8) Aside from attacks on NABU, the local elites were trying to undermine the asset declaration law implementation:

“we have law that was there since 2014, we have an institution that was build up in the course of 2014-2015 and then we saw that due to personalities there and different vested interests actually the process of implementing the law of prevention of corruption was sabotaged and undermined” (from the interview, 23.04)

To support this argument the expert refers to oligarchs, as strong players who try to prevent the institutions building in the country and have effective anti-corruption institutions:

“Namely the oligarchs are clear candidates (for veto players). There have been simply all those in the regions who still “have skeletons in their closets”, and that are sometimes are very well-connected and have an interest to keep the status quo as they are not interested in getting a change (from the interview, 23.04.2020)

Vested Interests

The identified sub-theme within local resilience theme of domestic costs dimension is “vested interests” that the interviewees referred to while answering a question about local resilience role in limiting the conditionality. According to one of the experts, many vested interests are focused around anti-corruption chain NABU-SAPO-HAC, the interviewee refers to them as “*spoilers who try to sabotage*” and thus the application of the laws falls behind “*implementation is not where we would like it to be*” (from the interview, 30.04.2020)

Another expert argued directly to the existence of vested interests around this chain: *“We will always see surprises and attacks on some elements and let us not forget that anti-corruption court is a very young institution and very vulnerable. There is a plenty of room for vested interests”* the respondent also referred to the persistence of vested interests to undermine the chain *“If one of part of the chain does not break, then you move to another part of it and try to break it”* (from the interview, 20.04.2020)

To conclude this subsection, the TCA analysis has not identified specific veto-players which thesis initially assumed according to this dimension, namely the oligarchs. However, a couple of respondents referred to “oligarchic interests”, “business interests” , “spoilers”, “powerful interests”, “those in the regions”, some experts asserted that oligarchs are clear candidates for being a veto-players, but on the other hand nobody has hard evidence against them. What is clear, however, is that the local resilience is a strong factor that limits the EU efforts to induce reforms in rule of law areas, because this is painful for the local players and they are ready to fight in order to remain a status quo in the country. Thus, attacks on NABU should not be a surprise, which clearly demonstrates their fear to lose influence.

b) EU’s strategy

The third dimension of analysis is EU strategy. Three respondents referred to this factor as one of the limits of the EU conditionality. Some of the interviewees said directly that the availability of EU membership perspective would help the EU to remain leverage over Ukraine in a longer run thus making its strategy more sustainable as well as prevent fatigue from reforms. To support the argument about membership perspective as a strong incentive, two experts referred to their previous Western Balkans experience where this perspective was available. During the analysis the subtheme “Unsustainability of Conditionality” was identified.

First, two experts referred to their previous working experience in Western Balkans, where the membership perspective exists:

“Having a clear membership perspective is a very powerful stimulus for the society. It is a factor that contributes to societal and political cohesion, coherence, unification of interests. It is a very important factor to induce a societal change and can galvanize and

speed up the changes in the society and change the value system.”(From the interview, 14.04.2020)

The interviewee referred to the transformative power of accession perspective as “*major vehicle of bringing about reforms*”, that the membership perspective can bring about and as an example referred to the reforms in the Rule of Law area in Albania:

“They have tried to change their country’s constitution in order to have a large-scale reform of their judiciary and conduct a large scale vetting of all their prosecutors and judges led by the internationals. That was something that was triggered by the desire to get on track on the path of EU accession, with the membership perspective, that Ukraine does not have at the moment” (from the interview, 20.04.2020)

Importantly, aside from making the EU’s vision somewhat vague, the membership perspective is a good orientation, which is particularly important for Ukraine now, with its heterogeneous population: *“It a factor in a sense of it gives an orientation, it locks the change in a bit more.”(From the interview, 30.04.2020)*

This lack of clear vision also translates into lack of strong leverage over Ukraine that the EU could use to keep the reform high on the agenda: *“There is now no good instrument at a hand to influence Ukraine. There should be a new Eastern Partnership review, but again I see that it is still developing (from the interview, 14.04).*

Lack of Sustainability

As indicated above, the lack of clear vision of the EU with regard to Ukraine makes the EU strategy unsustainable as the EU loses leverage over Ukraine once VLAP is completed, which is why it limits the conditionality policy in a way. This was well illustrated by one of the experts:

“One obvious limit is that one pillar of conditionality which has been VLAP, which has proven to be effective in the past and has been concluded with visa free regime been granted to Ukraine, and therefore it is no longer operational and can impose conditions” (from the interview, 20.04.2020)

Another interviewee expresses the similar viewpoint concerning conditionality's ability to remain a sustainable tool and refers to the limited time-frame of conditionality policy:

“It cannot be applied for a very long time, because our financing, our assistance, our preferential treatment of a given country is bound in time, we can follow the conditions implemented for certain time, things can change and then you cannot really sustain those conditions sufficiently” (from the interview, 14.04.2020)

My third respondent refers also to the EU's limited capacity to influence Ukraine after the VLAP, as the most ambitious program, was completed:

The VLAP is the single biggest carrot the EU had to offer to Ukraine. This is what people could feel, something concrete, not abstract. Once this carrot was given away, we lost a bit of our conditionality leverage” (from the interview, 30.04.2020)

This point was also illustrated by another EU expert:

“There is now no good instrument at a hand to influence Ukraine. There should be a new EaP review, but again I see that it is still developing. The EU is now trying to find the leverage how it can help Ukraine to further fight corruption” (from the interview, 23.04).

To sum up, what the research expected to find in the interviews was fully confirmed by the experts. The conditionality policy is unsustainable with multiple factors that might explain this: the lack of clear strategy for the country, the loss of leverage over reforms, which leads to the results being somewhat unsustainable in the future. As presented in the section, the experts asserted that the EU now somewhat lost its leverage to influence Ukraine with the program fully completed and no prospects for future programs envisaged where the EU could be engaged more into reforms in the rule of law area. What differs the VLAP from other EU programs is that this is the program, that public can feel and potentially protest once the carrot of visa free is lifted, in comparison to other program, like MFA, which only provides finances and which ordinary people cannot feel to the same extend.

c) Other limits

Lack of Political Will

As the research was open to other limits, in the course of interview analysis all the experts referred to “low political will” from the side of Ukraine in order to enforce reforms. Some of the speakers mentioned that the EU also lacked strong political will to induce reforms and ensure systematic implementation. It is, however more the Ukrainian side that lacked the political will to ensure the application of laws. The OECD report of the implementation of the Anti-Corruption strategy reveals that lack of political will as one of the key problems that accounts for a delay for incomplete implementation of the reforms (OECD, 2019, p.9). As the data analysis shows all interviewees explicitly mentioned that this factor seriously limited the effectiveness of the rule application.

The reforms are stalling and this is the case of low political will. If the political will was in place, the reforms would have progressed much faster (from the interview, 30.04) When conditionality is not sufficiently supported by political will, this will not produce any sufficient result (from the interview, 20.04) While explaining why the elites face difficulties conducting reforms, the expert mentioned their own self-enrichment and the rents they have accumulated over a long period of time: *“They do not have an interest to cut the branch on which they seat” (from the interview, 14.04)*

One of the experts argues that the elites’ lack of willingness towards reforms translates into only formal compliance with conditions:

“That is why they try to pretend that they have fulfilled the requirement of the EU, but on the other hand to preserve the system and enrich themselves. This is the reason for this resistance, this lack of political will” (from the interview, 30.04).

5.3. Opportunities of EU conditionality

In this section, based on the limits of EU Conditionality findings, let us report on the results pertaining to different solutions how to improve the EU Conditionality policy. This section will therefore answer the second research question:

RQ II: How to improve the EU’s anti-corruption reform promotion in Ukraine?

In the course of data analysis, the interviewees, although having similar views on the existing limits of the VLAP Conditionality, expressed somewhat different opinions how the strategy can

be further improved. All the experts agreed that the institutions need time in order to start operating in its full capacity; on the other hand, the continued efforts to refrain the vested interests from setting an agenda as well as having a stronger political will inside the government are needed to secure the functionality of the anti-corruption institutions. As the interviewed respondents were the experts on Rule of Law from the side of the EU as well as other organizations, they had different solutions how to improve the EU strategy further in the field. The recommendations could be split into two parts, where the first refers to improvement within operational level, while the second is concerned with a broader strategical framework.

Operational Level:

a) Better Precision

Based on the limits of conditionality, where the problems with comprehensiveness as well as operationalization were identified, the further solution would therefore include better precision of conditions. Specifically, the effectiveness of the EU conditionality was difficult to measure, because the fulfillment of the conditions was hard to trace; therefore better precision potentially minimize this problem. In this respect, one of the respondents rightly pointed: *“Your conditions have to be very carefully chosen. This is a very important nuance that you need to be capable yourself to analyze the fulfilment of conditions”* (From the interview, 14.04.2020)

Another aspect is that there were too many conditions which made it is sometimes difficult to ensure an effective enforcing, therefore the number of conditions has to be decreased and have a clear focus that would allow tracing its fulfilment more efficiently (from the interview, 20.04)

b) More Complementarity

As it was pointed out earlier in the analysis, the EU, along with other donors, sought to set somewhat similar conditions, thus overlapping, which was good enough at the beginning to stimulate the reforms¹⁴, yet might not yield comprehensive results in the future. Therefore conditionality can be improved by seeking more complementarity rather than setting similar

¹⁴ According to EU expert, the EU Conditionality is useful give certain impetus anticorruption reforms, to keep it high on the political agenda as well as sustain some of the reforms in the short term.

conditions, unless it is justified. Following more complementarity approach would help the EU to induce more comprehensive change in more areas:

“One thing that we have tried to do better in the recent times, is to seek more complementarity with other international donors like IMF, and possibly the WB, so that we do not duplicate the conditions, unless there is a specific justification (20.04.2020)”

Strategic level:

a) Better decision-making

Given the Ukrainian political context, that might change very quickly, some of the interviewees referred to the need of the EU to be more flexible in decision making in the volatile Ukrainian context *“I think the EU could become more flexible with its decision-making and adapting it faster to the new reality.” (From the interview, 16.04)*

The other experts sees the need to develop more strategic thinking, as according to him there is no strategic structural division of conditionality but more ad-hoc thinking, which might explain the conditionality duplication that is why the EU could be more strategic with its thinking and planning, which would include more complementarity rather than duplication of conditions (from the interview, 30.04)

b) Concrete benefits

Three interviewees mentioned the lack of the vision from the side of the EU towards Ukraine that translates into unclear strategy between the EU and Ukraine. One of the interviewees referred to “concrete benefits” that the EU could provide to Ukraine that would prevent the fatigue from reforms and provide a clear direction for the country:

According to the interviewee, it is important to have certain concrete and realistic benefits which are unlocked, when the state moves along the reform path. The availability of such benefits would allow the states to see some progress on the path: “it would give some direction for population to follow”. It can be access to EU market, the access to EU treaties, the EU arrangements that are only open for member states or candidate states, to have a gradual integration into the union if there is no membership perspective (from the interview, 30.04).

This aspect it also important as it would make the EU efforts more sustainable, showed a clear direction for the country to follow as well as prevented fatigue from reforms, as pointed by one of the experts.

c) Bottom-Up Approach

The interviewees mentioned decentralization reform in Ukraine, namely that adopting laws to facilitate decentralization is not enough, the administrative capacity of the regional, district and local communities has yet to be built. Konstatyan (2017) states that simply shifting more power and more money from the national to the local level, the risk of corruption is also transferred – an unfortunate reality that has not been adequately tackled. As a result, some businesses are now facing difficulties not only at the hands of national but also some local and regional authorities (Konstatyan, 2017, p.3) The international donors and EU as leading actor should give more credit to the local actors because the real reformers might be the ones in power, meaning the members of the parliament or ministers but rather those at the lower levels (Tregub, 2018, p.18)

Referring back to conditionality being somewhat uncomprehensive, one of the ways how to improve its effectiveness according to the EU expert is by applying more bottom-up approach in order to reduce the tolerance for corruption on the local, petty level. The interviewee argues that if corruption not tackled sufficiently on the local level, then it is inevitable to have it on a higher level (from the interview, 30.04.2020)

Moreover, it is also crucial to work with mid-level managers, with simple bureaucrats, by changing their motivations, behavior:

“empowering them, helping them in doing their jobs as well as defending them from the outer pressure, from their leadership, linking them up with independent NGOs, with media, so that they feel secure from their bosses” (from the interview, 14.04.2020)

d) Institutions need more time

Another important factor that should be taken into account when trying to understand the opportunities of conditionality is that the institutions need time in order to deliver tangible results. All the experts referred to this factor while trying to explain why certain institutions do not work in the way the civil society expects.

Some of the experts argued that criminal justice system is one of the most difficult reforms and time is needed in order to undergo all the procedures in such complex area as rule of law: “*rule of law is rather long term, you do not get results from one day to another*” (from the interview, 20.04)

All the interviewees expressed that new institutions will take time to yield more results that the population could see and feel. One of suggestions with regard to improvements of conditionality would be for the EU to set a bit longer time frame that would not be limited by several months, but rather have a bit more strategic long-term framework (from the interview, 30.04.2020)

Chapter 6: Summary of Main findings

This chapter will summarize the findings of the analysis and seek to connect the results with broader context of conditionality critique. Based on the overview of conditionality critique scholarship, the research has zeroed in the focus to concrete dimensions and arrived at three theoretical expectations that were applied in the course of the data collection and its analysis.

As the empirical evidence demonstrates, the three theoretical expectations have been confirmed and expanded further. In this context, multiple limits of the conditionality ineffectiveness were elicited. Specifically, with regard to the first dimension, the main findings have broken down the low rule application dimension into four sub-dimensions that can account for the challenges while enforcing the rules in practice. Thus, aside from general evidence pertaining to poor rule application limit, the research elicited problems with the operationalization of conditionality, the lack of holistic approach, the formality of rule adoption as well as EU’s own loyalty and tolerance towards unfulfilled conditions. Therefore, based on the evidence collected for this study, we can infer that these four factors account for the first limit of conditionality.

The domestic costs limit, defined earlier as local resilience as well as the existence of veto players, has been to certain extent confirmed. Although the research has not arrived at concrete veto-players, the findings have elicited the domestic resilience, which is manifested by oligarchic groups, as part of vested interests who seek to block the reforms, attack NABU, and postpone a number of crucial reforms. The research acknowledges that studying this dimension through in-depth interviews has its limitations. For instance, some experts were not willing to go into details pointing to influence of concrete players, but rather only named that the local resilience exists

and refer to the instances how it manifests itself. Probably the further researchers could still try to engage with interviews, but not with the experts who represent the official organizations and might not be willing to express their opinion, but rather with independent journalists or political scientists who would be much more flexible in going into details of veto-players.

The findings of the third assumed theoretical expectation point to the lack of sustainable strategy from the EU side, low benefits, and no prospects for accession, which is why the EU loses leverage over structural reforms in the area of rule of law.

On top of the three assumed limits, lack political will was revealed as a serious factor that hinders the progress with reforms. One of the interviewees posited that the EU does not have a political will to be engaged in a systematic and long-term institutional change in Ukraine (from the interview, 23.04.2020). Most of the interviewees and reports, however, point to Ukraine, as having low political will among its elites to induce a lasting change in its own country. On the basis of this, we can infer that this factor is also crucial in order to understand the limits in the case of Ukraine. Therefore, answering the first research question, aside from three assumed factors, lack of political will can limit the conditionality policy very substantially.

Answering the second research question, it has to be noted that the experts had different views, given their professional tenures as well as specificities of understanding the situation on the ground. As the analysis shows, we can infer that on the operational level in order to be more effective in the future, conditionality should be more precise, less technical and have less conditions (be more focused) in order to be more effective.

On the strategic level, in order for the EU to maintain the leverage over Ukraine, the EU should rethink its strategy of treating the country by providing more concrete and realistic benefits, be more flexible towards taking decisions, develop more bottom-up approach to address corruption more locally in the country as well as use more complementarity approach, when it is possible and justified which would enable targeting more areas for multiple actors.

Furthermore, as pointed out by experts, an institutional change is rather long-term when it comes to delivering real results. Rule of Law area is one of the most problematic and complex areas where the change is not obvious at the beginning and is even more difficult when coupled with lack of political will, the resilience of certain political and economic players, de-incentivized

reformers that have no clear vision what they will achieve at the end, as well as weak EU's leverage.

6.1 Future Research Agenda

In the course of analysis, the thesis has raised new questions that are left to be addressed in further studies. On a broader level, given the relative novelty of the Eastern Partnership program, further understanding of how the EU engages with members of the program in the area of public administration is needed. Specifically, further studies could apply the similar theoretical expectations framework in the case of the other two other EaP states Moldova and Georgia, where one can encounter similar to Ukraine conditions on the ground. It would be relevant to explore these states since they have also received visa-free regime, voiced their aspirations to become part of the EU as well as started structural reforms in the Rule of Law area based on the Association Agreements all three countries signed. On the other hand, further research could set out to understand the conditions under which the EU conditionality delivers more tangible results and when it does not yield the results.

Apart from this, future research could compare different approaches to conditionality policy in the area of public administration support by multiple international actors like World Bank, IMF, US Aid and the EU and seek to understand whether their conditionality policy can be limited similarly to the EU. As shown in the research analysis, the international actors present in Ukraine tend to seek convergence when it comes to inducing structural reforms, hence the further studies could explore the extent to which this convergence is possible and when this policy, rather than divergence, is justified.

Due to the structural limits of the research, the thesis could not analyze more than three theoretical expectations. However, the research has arrived at other factors that pertain to limits of EU conditionality, namely poor operationalization of conditions, EU's own tolerance to unfulfilled conditions, lack of integrity within conditions, lack of political will. All these require further study in the field.

Speaking of limitations, due to the single case type of research design, the research acknowledges that findings cannot be generalizable. Although the work has contributed to theory building, the inferences are yet to be tested including more cases to be involved. With regard to

theoretical limitations, the research has not arrived at any progressive framework that would allow measuring the rule application, which is the core of research. By observing the rule enforcement limits via in-depth interviews, the personal bias is inevitable, which decreases the validity of inferences. The reports of the European Commission, OECD, TI have contributed to the research, yet not to the extent to make the findings conclusive.

The limits of the research are also due to covid-19 outbreak, which has limited the opportunities of the researcher to involve more experts, which was planned initially, engage in an in-person discussion, instead of using digital means and thus enhance better validity of inferences.

Conclusion

The thesis aimed at eliciting the limits the EU Conditionality policy has beyond the legal borders of the union. The secondary objective was to understand how the conditionality policy can be improved. In order to attain these two objectives, the thesis has focused on the case of VLAP in Ukraine and constructed a conceptual framework that encompassed three dimensions that the thesis applied during data collection.

With regard to thesis structure, Chapter I has introduced the main phenomena in the area, namely what external governance is, how it relates to the ENP, how the EU sought to address fight against corruption as well as concluded with the critique of conditionality policy. Chapter II has provided an overview of the relations between the EU and Ukraine in general as well as zeroed in on the main case of the research. Chapter III explained the research problem of a study and built the conceptual framework, where three theoretical assumptions were outlined. Chapter IV introduced a broad explanation of the research methods and the way the researcher applied them during the data collection process. Chapter V reported the results of data analysis and compared the assumed results with the findings. Chapter VI has connected the inferences of the entire study with a broader conditionality critique context, delineated the limits of research as well as pointed to further research avenues to be addressed by scholars.

With regard to the first research questions “*What are the limits of conditionality in the EU’s anti-corruption reform promotion strategy in Ukraine within VLAP?*” the research has confirmed the theoretical expectations, expanded further on its elements as well as its local

specificities and manifestations. Aside from this, “low political will” should be taken into account in order to understand the limits of EU conditionality policy can have in Ukraine.

The findings for the second research question: *“How to improve the EU’s anti-corruption reform promotion in Ukraine?”* suggest that the improvements should encompass both operation level, where the EU should make the conditions more precise and focused for such complex area as a fight against corruption, as well as the strategic level and provide the concrete benefits which would act as a stimulus for reforms and prevent the fatigue. Also, the conditionality could be more complementary and better coordinated with other donors, when it is justified. Better and more strategic decision-making should be enacted along with more bottom-up approach that encompasses the work with low and medium level officials as well as reforms targeting the corruption fight more locally in the regions. Aside from the limits and opportunities, based on the results, the thesis acknowledges that the institutional change and effect is rather long term, than short term. It is especially crucial in such fundamental area as rule of law. Therefore, the thesis has not arrived at any conclusive findings. Moreover, it should be argued that the rule application area is a serious phenomenon and further study how to measure this dimension should be undertaken. Based on research findings, even such intra-states organizations as the EU might not possess sufficient tools to address this dimension comprehensively.

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Appendices

I.

CONSENT FORM

INFORMED AND VOLUNTARY CONSENT

I have been told about the purpose and topic of the interview, and how my responses will be used.

I have been able to ask questions about the interview, and they have been answered.

I understand that any attributed quotes from the interview will only be used for published academic work. If I have agreed to conduct the interview anonymously, I understand that quotes will be attributed to ‘a party source familiar with the situation’.

I understand that I am not required to answer any of the questions, and I can withdraw from the interview at any time.

I agree to participate in this interview and to it being digitally recorded

Name:

Date:

Signature:

II.

The interviews conducted: 14.04 – 30.04

Interview Questions (Experts)

RQI

- 1) To your opinion what are the main limits of the EU conditionality in the context of newly established anti-corruption institutions within VLAP program?
- 2) Could you please give your opinion where Ukraine stands on rule-adoption vs rule implementation of anti-corruption measures? What can account for low application of rules?
- 3) How would you assess the adoption costs for Ukraine? Do you see veto-players/local elite's resilience attempt to undermine the newly created anti-corruption infrastructure?
- 4) How do you see the absence of membership perspective for Ukraine and lack of clear and sustainable vision in EU-Ukraine relations within EaP can limit the effectiveness of the EU efforts? Would the membership perspective change the situation?

RQII

- 5) How the EU measures success in the case of Ukraine?
- 6) How do you think the EU could improve its existing conditionality strategy in Ukraine (*and potentially in the EaP*)? What are the lessons drawn?

<i>Name of a code</i>	<i>Subtheme</i>	<i>Description</i>	<i>Significant Statement Examples</i>	<i>Number of coded segments</i>
(Limits) 1.Low rule Application	<i>Formal Compliance by elites</i>	The elites choose to only formally comply with adoption and then not fully enforce the conditions	<p>“Our political elites are eager to implement the laws just to meet the criteria the EU sets and then to roll back whatever achieved. (D)</p> <p>“We see this with NABU, the government established it to fulfil the conditionality and then it tries to roll back on its independence, its functions”(D)</p> <p>“Once VL is there, they think it is not necessary to fulfil the agreement anymore. It is just about double games of our politicians, our elites who want to achieve their own results”. (D)</p> <p>“That is why they try to pretend that they have fulfilled the requirement of the EU, but on the other hand they try to preserve the system and enrich themselves.”(D)</p>	4
	<i>Poor Operationalization</i>	The EU conditionality is difficult to operationalize, according to experts and therefore hard to measure its enforcement	<p>“The biggest problem is that these conditions are not measurable and precise enough and it is very difficult to ascertain as to whether they have been fulfilled or not” (A)</p> <p>“The selection of conditions is very poor, no benchmark of implementation, how to quantify the level of implementation that is good enough” (A)</p> <p>“The indicators are largely focused on the adoption, because it is very difficult to measure application” (E)</p>	3
	<i>EU Loyalty</i>	Sometimes the EU can be loyal to unfulfilled conditions and count the adopted conditions as implemented which limits the rule application	<p>“When the condition is not yet fulfilled but there is a general political will to grant VF to Ukraine even if not all the conditions were fulfilled it will be difficult to enforce them because there is already a political consensus”(E)</p>	2

			<p>“Partly, the EU can be loyal with regard to implementing the rules. For instance, in the case of e-declarations verifications, there should have been installed an automatic verifications, but there is still not a full access to public registries provided, and hence the declaration cannot function without human’s aid. In that case, the EU still regarded this condition as implemented” (B)</p>	
	<i>Non-holistic approach</i>	<p>The conditionality sometimes lacks integrity which translates into it being not comprehensive and holistic, it does not cover all important areas which raises the question of efficiency</p>	<p>“Conditionality cannot fix everything; this is its main limitation. The fact is that it cannot be holistic and comprehensive enough” (A)</p> <p>“you cannot target all the weak spots at the same time, you should be selective, meaning that you need to focus on certain aspects of anti-corruption policy”(A)</p> <p>“it is not possible within conditionality to focus very largely and comprehensively on rule of law reforms” (C)</p> <p>“You cannot have too many conditions; so you have to choose what is technically and politically viable”(E)</p> <p>“This is a very important nuance that you need to be capable yourself to analyze the fulfilment of conditions and not set too technical conditions where you yourself could be outplayed by the authorities” (A)</p>	5
2.Local Elites Resilience		<p>The presence of local resilience is a serious factor that undermines the reform efforts, where local elites, and different groups do everything they can to secure their power.</p>	<p>“Their resilience translates into negativity they try to share among general public.” (D)</p> <p>“Due to the resistance of the elites, they are not interested in a change, but rather remaining the status quo”(D)</p> <p>“the Kleptocracy which we have is the blood of the system, this is the way the system works” (D)</p> <p>“Every attempt to fight the political system will lead to the change of a status quo of the power distribution; this is the main reason of their resistance, because they do not want to lose their power” (D)</p> <p>“All of them would do their best to ensure that law enforcement institutions, state institutions are ready to compromise, to negotiate, something which is beyond the legal framework. They are eager to remain selectivity and preserve their economic positions”(D)</p> <p>“For instance we can see that when the head of NABU starts the case which goes against someone’s interests, then law emerges in the parliament that allows sacking the head of NABU”. (B)</p>	8

			<p>“In short, when the cases might harm certain interests, then we see some initiatives in the parliament to prevent it” (B)</p> <p>“There are have been simply all those in the regions who still “have skeletons in their closets”, and that are sometimes are very well-connected and have an interest to keep the status quo as they are not interested in getting a change” (D)</p>	
	<i>Vested Interests</i>	<p>The vested interests is manifested by different groups and different interests: business interests, oligarchic interests, etc. They are all united by the same purpose, which lies in undermining the critical reforms. The new anti-corruption chain is of a particular interest to them and constitutes the main threat, which they try to remove.</p>	<p>“A lot of vested interests are represented in the parliament; one clear example was a constitutional challenge on a law on illicit enrichment”. (C)</p> <p>“We have seen some compromat on the head of SAPO, that the vested interest” (C)</p> <p>“We will always see surprises and attacks on some elements and let us not forget that anti-corruption court is a very young institution and very vulnerable. There is a plenty of room for vested interests” (C)</p> <p>“In this link NABU-SAPO-HAC, you have a lot of spoilers, those who try to sabotage. implementation is not where we would like it to be” (C)</p> <p>“You know that in Ukraine the vested interests are linked to political elites, particularly the parliament, where you have various oligarchic groups and interests groups represented” (E)</p> <p>“You have local interests groups represented more regionally. If you for instance take a look at mayor of Odessa, or things like this. So you have many players, and while they may have diverging business interests, many of them agree on the danger of powerful anti-corruption infrastructure”. (E)</p> <p>"So the driving force behind this blockage is mainly driven by their business interests. Second, the system here works as a system where the institutions are in the arms of those in power and they want to control it” (E)</p> <p>“In Ukraine there are powerful business interests who are trying to remain the status quo” (A)</p> <p>“There are certain political groups. And I would argue that every political groups is interested in having effective anti-corruption institutions against their opponents, but not against themselves” (B)</p>	<p>12</p> <p>92</p>

			<p>“For example asset declaration, we have law that was there since 2014, we have an institution that was build up in the course of 2014-2015 and then we saw that due to personalities there and different vested interests actually the process of implementing the law of prevention of corruption was sabotaged and undermined (D)</p> <p>“Yes, there are definitely a lot of interests to undermine the institutions. We do not have hard evidence against all of them, namely the oligarchs are clear candidates” (D)</p> <p>“Parties in Ukraine are largely the interest groups, no real parties which are organized around ideology or party program. But rather people who represent different interests. In the parliament they represent these interests. Local elites, mayors. Presidential office consists of interests. Sometimes the parties with opposing views cooperate to achieve their goal. Recent developments with the dismissal of the head of NABU is a clear example of this (E)</p>	
3.Lack of political will		Ukraine does not have a sufficient will to conduct the reforms in the area of conditionality. This should support the conditionality policy.	<p>“They do not have an interest to cut the branch on which they seat” (A)</p> <p>“You can lead the horse to the water, but you cannot make it drink it” (C)</p> <p>“When conditionality is not supported sufficiently by political will, this will not be a sufficient and sustainable plan. I think whose two main points are”. (C)</p> <p>“If there was a political will we would have moved with the reforms much faster”.(C)</p> <p>“We had the will to receive the visa liberalization, but we did not have a will to transform the country in certain aspects” (D)</p>	6
4.Membership perspective as a driver		To have a clear benefit from conditionality is a pivotal factor. Based on the previous EU experience, the membership perspective could become this driving force that would lock the change in.	<p>“Having a clear membership perspective is a very powerful stimulus for the society” (A)</p> <p>“It is a factor that contributes to societal and political cohesion, coherence, unification of interests” (A)</p> <p>“It is a very important factor to induce a societal change and can galvanize and speed up the changes in the society and the change the value system” (A)</p>	7

			<p>“That was something that was triggered by the desire to get on track on the path of EU accession, with the membership perspective, that Ukraine does not have at the moment”(C)</p> <p>The EU has had certain things to offer and still has MFA to offer. Of course, the carrot would be bigger if we were talking about the accession perspective (C)</p> <p>Of course, if there was a realistic membership perspective then it could change the situation. The membership perspective could prevent a fatigue. (E)</p> <p>It a factor in a sense of it gives an orientation, It locks the change in a bit more. It has to be realistic. If it is unrealistic, then you do not have a concrete date. (E)</p>	
	<i>Lack of lasting strategy towards Ukraine</i>	<p>Lack of clear benefits translates into no clear destination this policy will bring the state, which raises the issue of long-term sustainability</p>	<p>With regard to the EU limitations, I would also say that there a lack of political will from the EU as well. They do not have a comprehensive strategy with regard to Ukraine, with EaP in general. (D)</p> <p>There should be a new EaP review, but again I see that it is still developing. The EU is now trying to find the leverage how it can help Ukraine to further fight corruption (D)</p>	2
5.Conditionalit y in not sustainable		<p>Conditionality is unsustainable which means that the EU can lose the leverage once conditionality program has been completed in a longer run.</p>	<p>“We can follow the conditions implemented for certain time, things can change and then you cannot really sustain those conditions sufficiently” (A)</p> <p>“The second limitation of conditionality is that it is not sustainable enough; it is unclear whether this will bring sustainable results” (D)</p> <p>“Conditionality is a bargain challenge and no one knows if it will be successful in the long run. If this strategy fails, it will be much harder for the EU to use its instruments with other countries, to approach other states with the same conditionality” (D)</p> <p>“There are no lessons learned from VL, there is no summary what is done and what should be done better” (D)</p> <p>“Using VLAP as anti-corruption conditionality for such large-scale transformations in anti-corruption in general in Ukraine is not really sustainable” (D)</p>	7

			<p>“One obvious limit is that one pillar of conditionality which has been VLAP, which has proven to be effective in the past has been concluded with visa free regime been granted to Ukraine and therefore it is no longer operational and can impose conditions” (C)</p> <p>“The VLAP is the single biggest carrot the EU had to offer. This is what people could feel, something concrete, not abstract. Once this carrot was given away, we lost a bit of conditionality” (E)</p>	
6.Institutions need time		<p>The institutional change and its effect is rather long term and needs time to deliver tangible improvements. It is especially crucial in such fundamental area as rule of law.</p>	<p>“When it comes to political institutions, then for these new institutions to produce a tangible result we would need some time.”(C)</p> <p>Now the New Anti-corruption court was launched in September, but so far it is hard to say anything about its real effectiveness, but we would not claim that the court is politically dependent (B)</p> <p>The criminal justice system does not work instantly; we cannot establish the court and have verdicts tomorrow. It needs time to undergo all the legal procedures. (C)</p> <p>One reason in the area of rule of law is rather long term, you do not get results from one day to another and it is something that should be borne in mind.</p> <p>“Once you adopt a new rule, once you adopt a reform, implementation takes time.” (C)</p>	4
(Opportunities) 7.Better Precision		<p>The conditions should have clear benchmarks and should be precise and measurable, be limited and focused on one concrete sub-dimension.</p>	<p>“Your conditions have to be very carefully chosen not to lead yourself into this trap of technicalities. It is very delicate process of defining conditions” (A)</p> <p>“If you set up certain anti-corruption condition you have to be sure that you can verify this condition yourself because trusting the authority might not be sufficient. Because the authorities by definition have certain conflicts of interests to tell to the donor they complied with the condition” (A)</p> <p>“This is a very important nuance that you need to be capable yourself to analyze the fulfilment of conditions and not set too technical conditions where you yourself could be outplayed by the authorities or you could get completely confused where you would not be able to make a judgement.” (A)</p> <p>“So that element focused limited set of conditions multi-international coordination. I guess this is something that has to be improved” (C)</p>	4

			<p>“I think the EU could also improve its decision making, taking into account Ukrainian weak state institutions as well as volatile political context.” (B)</p> <p>“The EU is very beurocratic and I think it is its advantage and disadvantage, I think that at the same time the EU could become more flexible with its decision-making and adapting it faster to the new reality”(B)</p>	
11.Concrete Benefits		At the strategic level the EU could provide the concrete benefits which would act as a stimulus for reforms and prevent the fatigue.	<p>“It is important to have certain concrete benefits which are unlocked, when you move along the reform path. It could allow the states to see some progress on the path. It would give some direction for population to follow. It can be access to EU market, the access to EU treaties, the EU arrangements that are only open for members’ states or candidate states, to have a gradual integration into the union if there is no membership perspective”. (B)</p>	1
12.Bottom-Up Approach		The approach encompasses the work with low and medium level officials as well as reforms targeting the corruption fight more locally in the regions.	<p>“We EU could look a bit more on the local level outside of the capital, it is difficult to find the civil society partners but it is important to have this bottom-up approach to reduce the acceptability of corruption on the more pretty level. If people are less tolerant towards paying bribes to doctors and officers they will be less tolerant to corruption on the higher level”. (E)</p> <p>“Working with bureaucracy, mid-level managers, simple bureaucrats, changing their motivations, empowering them, helping them to do a good job. And defending them from the outer pressure, from their leadership”.(A)</p>	2

