

Oliver Reisner, Selin Türkeş-Kılıç,
Gaga Gabrichidze (eds.)

EXPERIENCING EUROPEANIZATION IN THE BLACK SEA AND SOUTH CAUCASUS:

Inter-Regionalism, Norm Diffusion,
Legal Approximation and Contestation



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ibidem

Oliver Reisner, Selin Türkeş-Kılıç, Gaga Gabrichidze (eds.)

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Inter-Regionalism, Norm Diffusion, Legal Approximation and Contestation

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Foreword

Dear reader!

The EU often seems out of step with the events in its neighborhood. It is not good at responding to ruthless power politics. It is undecided in the light of complex situations on the ground and too hesitant to adopt groundbreaking change. Still, the many little steps over the many years add up impressively and create hope that this is for once an outside player not interested in power games, but in improving the economic fate of the people.

Throughout the Eastern Partnership, there is a disconnect between what people expect from their governments and what governments actually deliver. Maneuvering between kleptocratic elites, populist leaders and grassroots projects, the EU often finds itself in challenging situations. It has learned to be quick in its reactions, to condemn and to express concern, and to try to explain its policies in coherent frameworks.

Perhaps more important than quick fixes in communication is another characteristic: the EU systematically fosters independent scholarly research in European Studies, primarily in the Jean Monnet framework, to shed light on the developments on the ground and to subject them to a multitude of critical analytical vectors. There is no unified perspective on European Studies, no propaganda directorate to announce the wisdom of political leaders. Instead, it is a machinery for producing scholarly outputs which contradict and negate, evaluate and discuss.

Having first received a Jean Monnet Support to Associations grant in 2018, the Association of European Studies for the Caucasus (AESC) is proud to work in this tradition. EU funding allowed the AESC to hold its Third Annual Convention in collaboration with the Ukrainian European Studies Association in Odesa (Ukraine) in April 2019. The general title of this event was “The Experience of Inter-Regionalism in the Black Sea and Caucasus Regions: Norm Diffusion, Legal Approximation and Contestation”. And it is exactly the idea of inter-regionalism between the Black Sea and the Caucasus regions

that inspired this collection of papers. Carefully edited and with a variety of country perspectives in mind, this volume represents the latest breakthrough in the AESC's work towards encouraging authors from the region to come forward and present their findings to an international audience.

We are grateful to ibidem Press and their partner, Columbia University Press, for making this book widely available. But we are even more happy that EU funding allowed this book to be produced in an open access format. Open access is a critical tool to make knowledge widely available. Many potential readers in the Eastern Partnership have no access to well-stocked libraries, and they practice their scholarly ambitions on a shoe-string. This is where open access comes in and makes a critical difference.

Finally, I would like to thank the editors of this volume, Selin Türkeş-Kılıç, Gaga Gabrichidze and Oliver Reisner, for their efforts in working with the authors and inspiring them to give their best. All this scholarship is a labor of love. There are no salaries paid and no overheads covered. So, while we tried our best in making this amount of knowledge available to you, dear reader, we hope that you will give us your feedback. And that whatever you find useful between these book covers will inspire you to push forward with your own research. *Per aspera ad astra!*

Thomas Kruessmann
Series Editor, AESC President

Introduction

Oliver Reisner, Ilia State University Tbilisi
Selin Türkes-Kılıç, Yeditepe University İstanbul
Gaga Gabrichidze, New Vision University Tbilisi

The recent developments in Crimea—its annexation and incorporation into the Russian Federation in spring 2014—have served as an impressive reminder that history has not come to an end in the Black Sea region after the end of the bloc confrontation. At the same time, knowledge about the Black Sea region (BSR) among the European public is as scarce as the European Union's (EU) failings towards it are great. Brussels was always very late in participating in processes and institutions that wanted to constitute the Black Sea rim as an independent region with intensive ties to the EU. Against this background of political and cultural ignorance and strategic neglect of the region, it is not surprising that events of great significance, such as the end of the Nabucco pipeline or the annexation of Crimea, seem to come "out of the blue". In addition to this security policy and international law conflict dimension, the Black Sea riparians are also connected in the present and the past through processes of migration, trade, cultural exchange and, more recently, through joint attempts to master ecological challenges.

The ancient Greeks' search for new fishing grounds and fertile wheat-growing areas in the north of their ancestral settlement area triggered two closely related phenomena: The Black Sea was only established as a space in a certain sense by its crossing and by the founding of Greek colonies on all its shores. And the encounter of the colonists with the natives and an intensive reflection on it established the antagonistic model of thought of civilized vs. barbarian, which was momentous in the history of European ideas. The established network of colonies, shipping routes and economic hinterland formed a space of exchange of goods, people and ideas that would remain influential even after the fall of ancient Greek civilization. In a sense, the Roman and Byzantine Empires, and even the Ottoman Empire on the Black Sea, were built on Greek foundations.

From a global historical perspective, the Russian Empire's access to the Black Sea—symbolically exemplified by the founding of Odessa in 1794—marked an important milestone in the decline of the Ottoman Empire. From Petersburg's perspective, Odessa appeared as a stopover on the way to Constantinople—an imperial project that was "Greek" in two respects. On the one hand, it was based on an imagined succession to Catholic Rome, then to Greek Orthodox Byzantium, and on the other hand, important actors in the project were the descendants of the ancient colonists—the so-called Pontus Greeks. It was no coincidence that they made up the majority of Odessa's first inhabitants.

In the course of the 18th century, the Ottoman Empire's dominance over the Black Sea was replaced by an internationalization of the Lower Danube and the straits of the Bosphorus. However, the Russian Empire consolidated its position not only on the northern shores of the Black Sea, but also in the west through strong positions in Romania and Bulgaria, as well as through its penetration of the Caucasus. After a brief phase of internationalization of the Black Sea in the inter-war period, the consolidation of the Soviet Union and Republican Turkey again strengthened tendencies towards a bipolar order, which then became firmly established during the Cold War: starting with Bulgaria and Romania and continuing through Soviet Ukraine and the likewise Soviet republic of Georgia, the Soviet Union dominated the west, north and east coasts, while NATO member Turkey ruled the south coast. The collapse of the Soviet Union reopened the Black Sea region to new but conflicting tendencies. On the one hand, new national states established themselves, cooperating politically, economically, ecologically, infrastructurally, etc. within the framework of several international organizations. The most important organization is the Black Sea Economic Region. On the other hand, Moscow tolerates or promotes conflicts in the Caucasus and Ukraine, which have led to frozen conflicts (Transnistria, Eastern Ukraine, Abkhazia, South Ossetia, Nagorno-Karabakh) and even to the annexation of Crimea.

Until the 18th century, the Black Sea was an internal body of water (*mare clausum*) enclosed by the Ottoman Empire, and the opening and closing of the straits was an exclusively internal Ottoman

matter. With the establishment of new states on the Black Sea coast (Russia, Bulgaria and Romania), free passage through the straits developed into an international legal issue. Russia in particular invoked the principle of freedom of the seas and demanded a right of transit for its merchant and warships. The Peace of Küçük Kaynarca (1774) and the annexation of Crimea (1783) recognized the Tsarist Empire as a Black Sea power. The Treaty of Adrianople in 1829 opened the Black Sea to free trade. The closure of the straits to all non-Ottoman warships in the Dardanelles Convention of 1840/1841 and the neutralization of the Black Sea in the Peace of Paris in 1856 as a result of the Russian defeat in the Crimean War (1853-1856) were again aimed at containing Russian expansion. In the 1936 Treaty of Montreux, the passage of foreign ships through the Bosphorus was finally regulated under international law.

The end of the *Pax Sovietica* in the Black Sea region at the beginning of the 1990s led to the resurgence of old lines of conflict. One of these conflicts was the Romanian-Ukrainian conflict over Snake Island in the Black Sea, where gas and oil are suspected to exist in the seabed. After fruitless bilateral negotiations, Romania and Ukraine appealed to the International Court of Justice in The Hague in 2004 in order to reach a peaceful solution within the framework of international law. The 2009 ruling in favor of Bucharest proved in many ways to be authoritative for future rulings in inter-state disputes relating to the determination of continental shelf and exclusive economic zone. Of even greater significance was the fact that the two parties to the dispute accepted and implemented the ruling without protest.

The latest developments in Crimea showed once again that the Black Sea holds enormous potential for conflict, especially because of its geopolitically important ports. The struggle for control over the Black Sea, which from modern times to the present has endangered not only regional but also international peace, has had multiple and diverse effects on the development of international law.

There is a dense body of knowledge on the Black Sea as a space of communication, cooperation and conflict, albeit in scattered form as specialized knowledge from various disciplines. The BSR's own

priorities and needs are still being largely ignored by insiders and outsiders alike. Despite heightened interest in the area the BSR still does not attract enough attention from those who should be thinking about how the countries of the region can solve their common problems together rather than vying amongst themselves for power and influence. Part of the blame for this can be attributed to the failure of regional actors to produce an agreed vision for the future. The emergence of the Black Sea as a region-between-regions and the conflicting agendas of powerful local and external players distort the necessary regional focus and thus blur outcomes. This process of regional cooperation is steadily progressing as stated in the European Commission's report on "Black Sea Synergy: review of a regional cooperation initiative" from January 2015.

The question of the ongoing transformations and conflicts as well as the context of development in the BSR can be answered today only in a transnational and interdisciplinary context. Current area studies consider these complex relationships and synthetic results from different disciplines such as history, anthropology, political sciences, macro-economics and sociology. This is why this volume should contribute to address a wide range of issues related to this region.

Energy Security and Regional Cooperation

Since Romania and Bulgaria joined the EU in 2007, the European Union has become a riparian state of the Black Sea, and three states of the Pontus region are members of NATO; in addition to Turkey, Romania and Bulgaria have been members since 1994. However, a coherent transatlantic policy has not emerged from this constellation after the turning point of 1989/91. Instead, a series of barely interconnected US and European initiatives and projects can be identified, some of which were abandoned again after they met with resistance. Although the northern Black Sea region emerged from Soviet dominance after the end of the Cold War, it was not able to establish itself as a *sui generis* region.

The development of the Black Sea Economic Council (BSEC), which was founded in 1992 on Turkish initiative, is characteristic of

the fractured regionalization perspective. In a nutshell, it can be said that all initiatives that run counter to Russian interests in terms of economic or security policy fail. What at the beginning of the 1990s could be interpreted as a difficult process of disintegration of the Soviet Union in the form of territories not recognized under international law, such as Transnistria on the territory of the Republic of Moldova, Nagorno-Karabakh on the territory of Azerbaijan and South Ossetia as well as Abkhazia on the territory of Georgia, now looks like a deliberate strategy by Moscow: Regional conflicts are not brought to a peaceful resolution, but are frozen with the help of Russian troops and a Russophobic population, effectively preventing both regional and European integration of the new states. The strategy of frozen conflicts reached a new dimension with Moscow's recognition of Abkhazia and South Ossetia in 2008, the annexation of Crimea in 2014 and the destabilization of eastern Ukraine.

The powerlessness of the EU against this policy of "divide and rule" also became clear in the field of energy security, namely with the failure of the Nabucco project. The plan was to build a pipeline that would carry gas overland from the Caspian region via Azerbaijan, Georgia and Turkey to Greece and Italy in order to make the gas supply of the EU countries less dependent on Russia. In contrast, Gazprom, which has close ties to the Kremlin, launched the South Stream Pipeline, a project that was only promoted until Nabucco failed in 2013. In these years, Moscow was able to play off the political and economic interests of various supplier and transit countries, such as Azerbaijan, but also Romania and Bulgaria, against each other due to the weak presence of the EU in the BSR.

The Black Sea and Environmental Protection

The name "Black" Sea, common in several languages and cultures, is derived from the black colour of the water, which is caused by chemical processes of sulfidogenic bacteria and iron ions. The hydrological conditions of the Black Sea are unique due to a special combination of oxygen and sulphide zones. At the same time, however, these make the Black Sea a vulnerable ecosystem. Due to the low circulation of oxygen and nutrients, flora and fauna can only be

found at depths of around 130 to 180 metres. One of the greatest ecological challenges of the inland sea is eutrophication, a process stimulated by large amounts of nutrients (nitrogen, phosphorus) that leads to massive algal growth. Together with overfishing and the spread of invasive species, the ecological balance has become unbalanced.

In 1992, the Black Sea littoral states established the Commission on the Protection of the Black Sea Against Pollution to implement the Convention on the Protection of the Black Sea against Pollution. With the support of the Global Environmental Facility (GEF), the Black Sea Commission implemented two action plans. Since the Danube, as the largest inflow, is one of the main sources of pollution in the Black Sea, a Memorandum of Understanding between the Danube Commission and the Black Sea Commission has existed since 2001 with the aim of combating common environmental problems. In recent years, the EU has also become increasingly involved in the Black Sea region, for example through the EU-Danube-Black Sea Task Force (DABLAS), the Black Sea Synergy Dialogue—as part of the European Neighbourhood Policy (ENP)—or the implementation of the Marine Strategy Framework Directive. Action reports record progress in the fight against environmental pollution. For example, nutrient concentrations in the water have been reduced and the general ecological status improved. Thus, compared to cooperation in the energy and security sectors, cooperation in the environmental sector has become a showcase project.

Forms and Consequences of Europeanisation in the Black Sea region

In this volume the contributors will explore to what degree ‘EU behavior’ in different policy fields can be detected or even explain domestic change beyond EU member states, candidates and associated countries around the Black Sea basin. They will assess different modes of governance on processes and outcomes of national institutional and/or policy change. When analyzing processes of domestic institutional and political change in the BSR, political scientists frequently refer to the concept of Europeanization. In this

volume we will focus on the analysis of policy frameworks as one central approach to Europeanization. Such an approach systematically analyzes the impact of different modes of EU governance on the process and outcome of national institutional and policy change. The articles will help to generate differentiated hypotheses about the potential impact of EU policies in the Black Sea region among South Eastern European member states and in non-member states with only minimal or no accession prospects.

For Radaelli (2006:59) Europeanization “consists of processes of construction, diffusion and institutionalization of formal as well as informal rules, procedures, policy paradigms, styles and ‘ways of doing things’, shared beliefs and norms that are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national & subnational) discourse, political structures and public policies.” Thus, it does not represent a synonym for European regional integration or globalization. In a maximalist perspective, it represents a process of structural change in politics and society affecting actors, institutions, ideas as well as interests related to ‘Europe’. On the other hand, a minimalist perspective would be a response to EU policies on the domestic level in member states, candidate countries or even neighboring states. However, its impact is typically irregular, dependent on context and contains top-down as well as bottom-up approaches from in- or outside with a diversity of push and pull factors. “Change occurs when political behavior at the EU level has a transformative effect on domestic political behavior.” concludes Radaelli (2012).

One of the policy fields is related to external democracy promotion: EU external democracy promotion has traditionally been based on ‘linkage’, i.e. bottom-up support for democratic forces in third countries, and ‘leverage’, i.e. the top-down inducement of political elites towards democratic reforms through political conditionality. The advent of the ENP and new forms of association have introduced a new, third model of democracy promotion which rests in functional cooperation between administrations. It argues that while ‘linkage’ has hitherto failed to produce tangible outcomes, and the success of ‘leverage’ has basically been tied to an EU membership perspective, the ‘governance’ model of democracy

promotion bears greater potential beyond the circle of candidate countries. In contrast to the two traditional models, however, the governance approach does not tackle the core institutions of the political system as such, but promotes transparency, accountability, and participation at the level of state administration. Most of its external relations—above all trade agreements and development cooperation—had been notable for their apolitical content and the principle of not interfering with the domestic systems of third countries. Therefore the ENP is providing an institutional framework to manage relations as well as cooperation with non-candidate countries that claim shared values (democracy, rule of law, human rights) as a common basis for mutual cooperation. However, in practice we see a much more demand-driven (pull), selective (focus on policy areas like energy, environment, trade, migration) approach with several constraints, mainly the transaction costs in domestic politics. While the European Commission (EC) shifted from the promotion of democratic regimes to a support of democratic governance or '*functional cooperation*' between administrations as a new model since the advent of the ENP and also new forms of association. The results are varying as we will see.

Norm diffusion has been one of the most striking dimensions of Europeanization in candidate and neighboring countries. In the enlargement policy, the golden carrot of full membership motivated the candidates to apply the EU-promoted norms in their domestic policies. Turkey, especially between 1999-2010, has been a prominent example of such rapid candidate transformation. The neighbors, on the other hand, albeit in the absence of a membership prospect, have been encouraged to harmonize their legislative and political standards in return for economic incentives. The 'more for more' principle integrated into the ENP envisaged the EU to establish a stronger partnership with the neighbors that adopt democratic norms. The EU's normative influence in the Black Sea and South Caucasus regions has been assessed within the Eastern Partnership framework.

Henceforth, the Europeanization literature in the 1990s and 2000s primarily focused on the EU's ability to shape what is normal (Manners 2002, 2006) and to transform the third parties by replacing

the local norms with the 'better' European norms (Börzel and Hüllen 2011; Börzel and Risse 2009). However, the recent drawbacks in norm compliance by the candidate and neighbor countries as well as some member states led to a growing literature that explains why some actors do not follow norms. A line of literature analyzes norm contestation due to a misfit between the international/global norm and domestic factors (Checkel 1999).

At this point, it is essential to underline that norm contestation does not necessarily mean norm violation. Neighbors and candidates engage with, change, weaken and/or strengthen norms by contesting them (Krook and True 2012; Deitelhoff and Zimmermann 2013; Wiener and Schwellnus 2004, Wiener 2014, 2020). This practice requires an analytical focus on norms' contextuality. Treated as such, norms are not simply fixed regulative structures, but also dynamic practices that can change during the diffusion process (Stimmer 2019, 271). This volume further contributes to this debate by bringing together essays that explore the application of European norms within the domestic context in the South Caucasus countries and Turkey.

As a normative power, EU law has the ability to influence the legal order of non-member states in a variety of ways. Its interactions with Eastern Partnership nations, which belong to BSR, are organized differently, depending on the other party's determination to integrate into or adopt aspects of the Union's *acquis* in its domestic legal order. The spectrum is wide, ranging from a dynamic approximation of legislation, as attained by the Association Agreements concluded with Ukraine, Georgia, and Moldova, to the less ambitious Comprehensive and Enhanced Partnership Agreement (CEPA) concluded with Armenia, and even much more limited relations with Azerbaijan and Russia.

The Association Agreements are based on a strong conditionality approach that ties a third country's performance to its progress toward EU integration. Market access conditionality provided for in these international treaties enables partner countries to integrate into the EU's internal market through the creation of Deep and Comprehensive Free Trade Areas on the condition that they properly fulfil their legislative approximation commitments. Whereas, the

latter concern many fields, such as technical barriers to trade, intellectual property rights, public procurement, trade facilitation, sanitary and phytosanitary rules, competition and energy policies. The goal is to achieve complete legislative and regulatory convergence.

In this volume we are addressing the BSR from different perspectives and disciplines. We have eleven contributions that we will shortly introduce here.

Iris Kempe is discussing the growing importance of the Baltic Sea and the Black Sea regions after the Russian—Georgian conflict in August 2008 and Russia’s annexation of the Crimea in 2014. According to Kempe, western countries and institutions have to launch a detailed analysis of the related regional conflicts. Based on this research, questions of the analysis are first and foremost domestic problems of European neighborhood countries. Following such an analysis the Western institutions should focus on strategic developments and potential shortcomings in order to establish an adequate policy approach towards the BSR.

Tiffany Williams explores how the trade-off between norms and interests in the EU impacts the EU’s normative approach to the Black Sea region. She uncovers the variance of Member State preferences towards the countries and argues that an interest-driven practical and strategic partnership Black Sea Synergy Initiative overweighs the normative approach. Williams links this evaluation to the norm contestation debate and argues that the contradictions in the EU’s Black Sea region weaken the process of norm diffusion.

Yelda Karadağ assesses the BSEC capacity as the main driver of regional integration. She analyzes the institutional structure of the BSEC in relation to the region’s geopolitical dynamics. Karadağ argues that despite limitations, BSEC is still the leading organization which has the potential to facilitate regional cooperation in trade, education, culture, tourism, transportation, and the environment. In this respect, Karadağ expects the BSEC to contribute to normalizing relations among the member states by keeping the dialogue channels open.

Evgeny Romanovsky realizes in his article that the EU has changed its role from a bystander in the affairs of the Caucasus to that of an interested party with a clearly defined stake in the region. It

remains a troubled territory with several unresolved economic, political and territorial problems. The EU is trying to expand its model of good governance, aiming at the development of democratic procedures and solving local conflicts. In the South Caucasus there are three countries that are of strategic importance for the whole of Europe. Georgia is one of the first countries in the post-Soviet space which has carried out democratic reforms and already reached a high level of assessment by the international community. Nevertheless, there are many potential conflicts that the EU is forced to face.

Ani Mkrtchyan analyzes what is necessary to build a sustainable civil society as a primary goal in Armenia, which has adopted democratic values as a result of its Velvet Revolution. However, the concept of civil society is a relatively new one for Armenia, as a result of being a post-Soviet country. She is examining the mechanisms of how the EU influences a developing civil society and its strategy in order to establish a viable avenue for democratic gains. The EU currently tries to achieve this both in direct and indirect ways within the framework of Eastern Partnership Program, which covers economic, trade, energy, travel and other sectors. Notwithstanding the differences of all six partner countries in the Eastern neighborhood the EU is providing a huge support in developing civil society in Armenia integrating the Armenian society into the European one and European values. Two years after the Armenian Velvet revolution, the approaches of the new government and how they implement the EU policies, what are the political moods in the country, and how does the new government cooperate with civil society.

Sarkhan Huseynov in his article addresses the issue of norm production and diffusion and looks at interactions of the EU, the Council of Europe and the South Caucasus, with a particular emphasis on the European penological norms. Whereas, he calls into question the role of the South Caucasus as being passive and sees indirect contributions of South Caucasus countries to the European penology.

Argun Başkan presents the evolution of the EU's energy policy in the South Caucasus and assesses the Europeanization of energy policy by mapping out the developments in South Caucasus countries. His analysis includes evaluating the impacts of the US, Russia, Turkey,

Iran, and China. He argues that without the membership prospect, Europeanization will remain limited in South Caucasus countries.

Emirhan Duran explores the Europeanization of environmental policy in Turkey. He analyzes Progress Reports and EU Network for the Implementation and Enforcement of Environmental Law reports in order to expose the problems in Turkey's compliance with the EU norms. He argues that a credible membership prospect is essential for full transposition and implementation.

Irakli Samkharadze in his article explores Georgia's legal climate framework. The analysis shows that it has been significantly influenced by the partnership with the European Union and Energy Community. The transposition of the EU climate acquis into Georgian legislation is a part of the Europeanization of the latter under the EU-Georgia Association Agreement and the Treaty Establishing Energy Community. Based on the in-depth analysis the author formulates a set of specific suggestions for further improvement of the national climate legal framework.

Nika Sergia looks at differences between Georgian and European Competition law with regard to the Due Process in competition proceedings. In particular, he discusses whether the relevant articles of the EU-Georgia Association Agreement comprise an obligation for Georgia to apply the EU procedural norms and what role the negotiation and reporting process following the entry into force of the Association Agreement can play regarding implementation of the relevant contractual commitments.

Black Sea politics and affairs can best be analyzed if the approach is regional. With this volume we would like to develop an approach that reflects the interdependencies of the states, local communities and different actors in the region and enquire on possible regional solutions for increasingly regional problems. We want to check the existing institutional framework for regional cooperation as well as relevant, often competing or contradicting policies in and for the region. The contributions will analyze a wide array of stakeholders in addressing the challenges ahead and the tasks needed to be tackled together in regional approaches. Non-state actors such as the business sector, NGOs and civil society have to play a real role in shaping solutions; universities can contribute to identify the best entry points.

No doubt, academic and political success is only possible with the parallel understanding of relevant approaches, ideas and experiences of all international actors and neighbors involved for the analysis of Black Sea security and cooperation policies responding to its long history of research. Thus we hope to contribute to a better understanding of the BSR and its contemporary challenges.

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A Wider European Challenge: The Black and Baltic Sea Disequilibrium

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Abstract

Following the Russian—Georgian conflict in August 2008 and Russia's annexation of Crimea starting in February 2014, Western countries and institutions have turned their eyes to the Baltic Sea region, expecting it to be the site of the next victim of aggression. Keeping this in mind, it is important to start the problem with a more detailed analysis of the related regional conflicts. Based on this research, questions of the analysis are first and foremost domestic problems of European neighbourhood countries. The next step of analysis is then the related offers of Western institutions: strategic developments and shortcomings.

Key words: Eastern European Policy, Georgia, Black Sea, Baltic Sea.

Introduction

In the case of the conflict between Georgia and Russia, the conflict goes back to building a Georgian state. Since the breakdown of the former Soviet Union, Georgia has been trying to develop a nation-state, but in real terms has been suffering from conflicts relating to national independence going back to the national status in the Soviet Union as part of the Caucasus region of the Soviet Union. Abkhazia during the times of the Soviet Union had the status of an autonomous district (*oblast*). The Soviet government assigns this administrative status to units for several smaller nations, which were given autonomy within the fifteen republics of the USSR. The Socialist Soviet Republic of Abkhazia was largely similar to an autonomous Soviet republic, though it retained de facto independence from Georgia, being given certain features only full union republics had, like its own

military units. That was the case of other former Socialist Soviet Republics such as for instance Azerbaijan, Russia, Tajikistan and Ukraine. The situation of an independent national entity of South Ossetia was similar, which was since 1921 the South Ossetian Autonomous Oblast (AO).

Overall, the ongoing problem of the Socialist Soviet Republics and Autonomous Oblast is part of the unresolved Soviet problems with nationalities, which became one of the biggest challenges facing Mikhail Gorbachev. He was not able to develop solutions; instead, national conflicts became part of the end of the Soviet Union in December 1991, after which Gorbachev resigned his mandate in favor of the Russian president Boris Yeltsin. Since then, regional conflict escalation as in Georgia with the two former regional entities, Abkhazia and South Ossetia, has been causing ongoing conflicts (Bächler 2019)

In the case of Georgia, the ethnic regional conflicts go back to unresolved issues of building a nation-state in the former Soviet Union and has been continuing with regional escalation since then (de Waal 2019, 190). The domestic development of Georgia as a democratic country and its external orientation are of political impact (Asmus 2010). This analysis will start with the domestic situation as background, while the impact of external orientation will be part of analysing the strategic development of international orientation of Georgia in the Black Sea region.

In a nutshell, the conflict in Eastern Ukraine and Crimea was deeper and more comprehensive. In comparison with the Russian—Georgian conflict, it is much more far-reaching having a bigger impact on the European Union. For example, it has been making collaboration in the framework of Black Sea cooperation almost impossible. The Russo-Ukrainian War is a series of military actions that started in February 2014 and continues through the present. It includes fighting in the Crimean Peninsula, the Donbas region in eastern Ukraine, and related activities in other locations.

After Euromaidan protests and the fall of Ukrainian president Viktor Yanukovich, Russian soldiers without insignias took control of strategic positions and infrastructure within the Ukrainian territory of Crimea. Russia then annexed Crimea after a referendum in which,

according to official Russian results, the Crimeans voted to join the Russian Federation. In April 2014, demonstrations by pro-Russian groups in the Donbass area of Ukraine escalated into an armed conflict between the Ukrainian government and the Russia-backed separatist forces of the self-declared Donetsk and Luhansk People's Republics (von Twickel 2018, 7). In August 2014, Russian military vehicles crossed the border in several locations of Donetsk Oblast. The incursion by the Russian military was responsible for the defeat of Ukrainian forces in early September the same year.

An instrument to stop fighting in the Donbass, called Minsk II, was agreed on 12 February 2015. It was developed at a summit in Minsk on 11 February 2015 by the leaders of Ukraine, Russia, France, and Germany. The talks that led to the deal were overseen by the Organization for Security and Co-operation in Europe (OSCE) (Kononczuk et al. 2015). As reported on 27 December 2018 by Ukrainian news agency UNIAN, not a single provision of the Minsk deal has been fully implemented.

Even if the conflict in Eastern Ukraine has a deeper and more comprehensive character than in Georgia, it has less to do with developing an independent state and more with establishing Russian influence during the times of Vladimir Putin by establishing Russian dominance of an independent and European-minded Ukraine. In this regard, the current conflict in Ukraine goes less back to unresolved legacies of the past in developing Soviet statehood—in contrast to the case regarding the relations between Georgia and Abkhazia or South Ossetia. Developing an independent statehood is one problem that can cause conflict and escalation up to violent conflict or war. In all cases, Russia has been using its legacy of influence from the Soviet Union and the perception that the breakdown of the Soviet Union was the biggest disaster of the 20th century (Pleines 2014). At the same time, that was the background of developing international cooperation with a democratic character beyond Soviet dominance. On the one hand, the Baltic Sea states have the added value of being members of the European Union and NATO, which is not the case with the Black Sea countries (Coffey 2018). Georgia and Ukraine became the worst cases, suffering from regional conflicts. Following Russia's annexation of Crimea, NATO has tuned its eyes to the Baltic Sea region, expecting it

to be the next victim of Russian aggression. With an eye on the current Black and Baltic Sea disequilibrium, analysis should consider the following points to figure out the problems in the case of early warning in a region that is both dominated by conflicts and at the same time part of Euro-Atlantic institutional cooperation, which are intended as a guarantee of peace and security.

Domestic Problems of European Neighbourhood Countries and the International Impact

The distance between the Baltic Sea and the Black Sea merely exceeds 1200 km. By comparison, the basins of rivers flowing to both seas create the largest common space in Europe. The regions themselves are home to many open and hidden conflicts. The three recognized states of the South Caucasus—Georgia, Armenia, and Azerbaijan—have such different histories and neighbourhood relations with the EU that one can hardly recognise a regional impact other than conflicts and closed borders. A very problematic case is Armenia, which has not been able to establish neighbourhood relations with Turkey and Azerbaijan at all, leading to closed borders. Overall, the trade relationship between countries in the South Caucasus depends largely on political factors. For instance, Armenia and Azerbaijan have no trade turnover due to the Nagorno-Karabakh conflict (Zambakhidze 2019). Another problem is the dominance of Russia over the countries of the region with a military, security, and economic impact (de Waal 2019, 190). Russia's priority in rebuilding a Soviet space is dominating the region. That became obvious in territories such as Abkhazia, South Ossetia and Nagorno-Karabakh. With these territories, Russia is continuing its influence using instruments such as violent conflict escalation.

The domestic developments of the countries of the South Caucasus are mutually linked with the international connection and differ among the three countries. A priority to start with is describing the domestic situation and only analysing the international impact when it is needed; it will be described in more comprehensive terms below. Since 2004 Georgia has been developing towards a democratic

and Western-oriented country. The Rose Revolution of former president Mikhail Saakashvili led to fighting corruption and developing a democratic state (Bertelsmann Transformation Index: Georgia). At the beginning, Saakashvili tried hard to develop normal relations with Russia as well, but in line with orientation towards joining NATO and the European Union (Asmus 2010) relations developed towards escalating a conflict.

Traditionally, Armenia was strongly oriented toward Russia did not devote much effort to developing democratic and western values (Bertelsmann Transformation Index 2018). Russia used the influence of Nagorno-Karabakh and economic dominance, linked to the migration of Armenians to Russia to work under better conditions. In contrast to Georgia, Armenia still used Russian as the lingua franca for economic and academic relations. That changed a lot after Armenia's Velvet Revolution in 2018. The sign of regime change was electing Nikol Pashinyan on May 8, 2018, as prime minister. Armenia's successful Velvet Revolution in 2014 was first about domestic issues, not geopolitics. The external aspect was much less about Russia or Putin but instead about developing "normal" bilateral relations, since the relationship between Moscow and Yerevan was too important for either side to question.

As opposed to the two other countries, Azerbaijan is not on a path to democratic development. Instead, it is highly dependent on the regime of the family of Ilham Aliev, who was elected for a third term in 2013, and who in 2018 extended his term in office to seven years, facing virtually no opposition. That indicates the lack of democratic development in Azerbaijan.

Table 1: International indices of democratic development in comparison 2018

Georgia	Armenia	Azerbaijan
Bertelsmann Governance Index 2018 in comparison		
6,42	5,58	4,13
Freedom in the World 2020		
Partly Free	Partly Free	Not free

Aggregate score ranking in comparison		
61	53	10
Transparency international Corruption Perception Index 2018 Ranking 2018—selected Countries of the South Caucasus international ranking 2019		
44	77	126

The indices present a comprehensive overview of the national development of the countries of the South Caucasus and their different state of affairs regarding the values of democracy and a market economy. At the same time, there is an impact of Western cooperation.

Related Offers of Western Institutions— Strategic Developments and Shortcomings

As a sign of national development and foreign orientation changing from Russia to Euro-Atlantic countries Georgia has been trying to join the European Union and NATO since the second round of post-Cold War expansion in 2007. The same was the case with Ukraine but both cases were not an easy endeavour because of national problems and related international reluctance. The EU was noticeably keen to get involved in the South Caucasus (Lobjakas 2009, 2). In parallel and perhaps more importantly, the European Union completed a momentous transformation in 2004 when it took in eight former Soviet Republics and satellites. The reasons for this lie within NATO and the European Union, as well as within the South Caucasus. There has been a focus on the Russian threat to the Alliance's eastern flank, including the impact of the unrecognized territories of South Ossetia, Abkhazia, and Nagorno-Karabakh.

Both Abkhazia and South Ossetia are widely recognized as integral parts of Georgia, and together represent 20% of Georgia's internationally recognized territory. The “Law on Occupied Territories of Georgia,” adopted in 2008, criminalizes and prosecutes entry into Abkhazia and South Ossetia from the Russian side without special permission (Law of Georgia on Occupied Territories 2008). The Georgian law also allows any economic activity only according to

the Georgian law. The internationally recognized territory is very much under Russian influence. In this way, Russia is continuing its presence in Georgia. For instance, there is a Russian Embassy in Sukhumi, Abkhazia, which is in charge of issuing visas for citizens of Abkhazia even if this is not line with Georgian national status. Diplomatic representation for citizens of this part of the South Caucasus is organized by Moscow. The same is the case for “Novorossiia” (New Russia), the Russian-occupied part of Ukraine, which is represented by Moscow as well. Overall, Russia is using all kind of instruments to maintain hard and soft security measures, from war to economic and social influence, media, and borderization. Having the impact of the former Soviet Union and today’s Russia in mind, the European neighbourhood countries have been trying to become part of Western institutions such as NATO and the European Union since 2003. The reason was simple: for the first time since the dissolution of the Soviet Union, Russia used its influence on decision-making in Western organizations. In this regard Georgia did not receive the desired status of a membership action plan (MAP) (Summit Meetings of Heads of State and Government 2008). The alliance decided not to offer Georgia a MAP due to opposition from several countries, led by Germany and France, who feared an offer would anger Russia. Instead, NATO countries assured the Georgian side in a special communiqué that they would eventually join the alliance once the requirements for membership were met. Members further pledged to review the decision in December 2008 at the meeting of NATO foreign ministers. The West was reluctant to accept Georgia as a NATO member because of Russian ties in Abkhazia and South Ossetia (Gegeshidze 2009). That has been the case prior, during and after the Russian-Georgian conflict in 2008. Russia is even increasing its regional military presence by controlling the Administrative Border Line (ABL) of the non-recognized territories and presenting Russian influence in these parts of Georgia. In September 2019, Russian president Putin signed a decree through which he allocates funds for the modernization of the armed forces of the “Republic of Abkhazia.” This means having even more impact on the Russian presence in Georgia (Dumbadze 2019a). The same has been the case with Russian control over the ABL in September 2019,

having a negative impact on the regional population as well as the population beyond the ABL.

Since the Russian-Georgian conflict, bilateral relation between the two countries continues remain tense. After the Russian Georgian conflict escalation in 2008 the OSCE and the European monitoring mission, EUMM have been actively involved in mediation (Bächler 2018). The leading format are the Geneva International Discussion being moderated by representatives of the EU, the UN and the OSCE Chairmanship. Representatives of the Russian and Georgian as well as the Abkhazian and South Ossetian sides also take part, although they are not recognized as part of the conflict. The Geneva Discussion taking place every three month in two working groups security and human issues. In addition to the more far reaching strategic format of the Geneva Discussion there is the format of Incident Prevention and Response Mechanism, IPRM taking place once every month in Ergneti at the Georgian South Ossetian border. In case of conflicts at the border the meeting can take place even more frequently. The meeting is about borderization meaning crossing the border in illegal terms.

The two foreign ministers did not have a joint meeting from 2008 until September 2019, making a breakthrough after 11 years without a bilateral meeting (Dumbadze 2019b). As a side event of the UN General Assembly meeting, Switzerland, the European Union, and the OSCE mediated a meeting between the Russian and Georgian foreign ministers in New York about developing a constructive dialogue and easing tension in the two countries' relations. The main issues of dialogue were the peaceful dispute settlement of citizens of both sides of the border between Georgia and Abkhazia or South Ossetia. Even if it is much too early to assess the impact of these meetings on regional citizens, it is notable that these talks were small-scale, the topics of discussion encased by relatively minor issues. A priority was the focal issue of reconciliation, still a somewhat trivial topic, commenced by Zalkaliani on the renewal of direct flights between the two countries in June the same year. (Russia had previously cancelled all direct flights with Georgia, following the anti-Russian protests in Tbilisi.)

Tamar Khulordava, former Chairperson of the Committee of European Integration (2016-2020) reacted to a Russian comment by

saying that “the fact that Russia does not admit to the occupation is nothing new to Georgia; we should not be surprised by this phrasing from the Russian Foreign Ministry.” She emphasized that “everything else is a matter of negotiation.” There are significant differences of interest between Russia and Georgia. According to Khulordava, the dialogue needs to enter a deeper phase of negotiation about more profound topics that support Georgia’s interests. She noted that it is not in Georgia’s interest to endure the status quo of “occupied territories, full isolation of these territories, citizens turned into refugees in their own country.” Coming to a conclusion of the Zalkaliani-Lavrov meeting is seen by the ruling team in Georgia as a starting point that the ministries of both sides can work from, perhaps to be followed by a series of meetings between the two foreign ministers, with the potential to develop both track-one and track-two diplomacy.

In the given moment, one should also consider that since 2014, for Russia, Georgia is of rather second or even third tier importance. Ukraine and problems in the Middle East are attracting all of Russia’s attention, and developments on those fronts could influence Moscow’s approach to the South Caucasus. On October 8, 2019, German President Frank-Walter Steinmeier visited a crossing point at Odzisi, a village located on the ABL to the region of Tskhinvali, South Ossetia. At the crossing point the representatives of the Georgian government informed President Steinmeier about the current situation near the occupation line. Odzisi offers a clear view of the Russian military base in the occupied village of Akhalkgori. Within the framework of his visit to Odzisi, the former President of Germany met with European Union Monitoring Mission (EUMM) representatives (Dakhundaridze 2019). Setting a priority on EUMM is a Georgian signal for mediation without Russian attendance, which would have been the case in the framework of OSCE being present in the occupied territories, because the membership of Russia in the OSCE is included.

In addition to short-term, single instances of mediation between Russia and Georgia, as for instance Frank-Walter Steinmeier’s meetings in October 2019 or the meeting between the Georgian and Russian MFA in September 2018, the European Union has been offering deep and comprehensive strategies of cooperation before

joining the Union as a member, which was desired by Georgia but refused. The European Union decided offering parts of the *acquis Communautaire*. Of high attractiveness for the local population was offering visa liberalization to Georgia, Ukraine und Moldova since March 2017, which was the result of a visa liberalization dialogue with selected countries of the Eastern Partnership. Through the related dialogue, the EU has taken gradual steps towards a long-term goal of visa-free travel on a case-by-case basis, provided that conditions for a well-managed and secure mobility are in place. Offering a very attractive part of European integration to some of the neighbouring countries is very popular among the citizens of the neighbouring countries. The deep and comprehensive free trade agreement was like providing another piece of cake of European integration. The Deep and Comprehensive Free Trade Agreements are part of each country's EU Association Agreement. They allow Georgia, Moldova and Ukraine access to the European Single Market in selected sectors and grant EU investors in those sectors the same regulatory environment in the associated country as in the EU. The agreements with Moldova and Georgia have been ratified and officially entered into force in July 2016, although parts of them were already provisionally applied. The agreement with Ukraine was provisionally applied since January 1, 2016 and formally entered into force on September 1, 2017.

These are just examples for increasing cooperation beyond the formal step of joining the Union. Within the framework, all partners have committed to demonstrate and deliver tangible benefits across the region by focusing on achieving "20 deliverables for 2020" in four key priority areas (Eastern Partnership 2017). The areas: Economic development and market opportunities; strengthening institutions and good governance; connectivity, energy efficiency, environment and climate change; mobility and people-to-people contacts. Cooperation between the European Union and the Eastern Partnership countries should take place on the "20 deliverables of cooperation."

In addition to the formal way of cooperation, other means of institutional connectivity have been established between the Baltic Sea and the Black Sea. The Organization of the Black Sea Economic Cooperation (BSEC) is a regional international organization focusing

on multilateral political and economic initiatives aimed at fostering cooperation, peace, stability and prosperity from the Black Sea to the Baltic Sea region. Member states of the BSEC are Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Greece, Moldova, Romania, Russia, and Ukraine. From a purely geographic perspective the amount of member states of BSEC is including a far-reaching perspective from the South Caucasus up through the Western Balkans. Other member states of the regional organization are less related by territorial connection with interest in international organization than by similar norms and values with a priority on Euro-Atlantic cooperation based on democracy and a market economy, in contrast to the priorities of a Eurasian Union driven by Russia and other member states.

A New European Ostpolitik as a Priority of the German EU Presidency in 2020 as a Way Towards Peace and Cooperation for the Black Sea and Baltic Sea Region

The regional situation in the South Caucasus indicates decades of frozen and escalating conflicts. The problems go back to legacies of building an ethnicity during the Soviet period. Since the breakdown of the Soviet Union in December 1991, Georgia, Armenia and Azerbaijan developed independent nation states; at the same time, Nagorno-Karabakh, South Ossetia and Abkhazia became *de facto* independent entities driven by the influence of neighbouring countries, as in the case in Nagorno Karabakh, or the influence of Russia in South Ossetia and Abkhazia. Overall, this demonstrates that Russia is keeping its influence in the South Caucasus. At the same time, important international players include the European Union, NATO, OSCE and its member states. In this regard, international institution has an influence on the region from the Black to the Baltic Sea depending on the orientations of the countries—from being a full-fledged member as the Baltic States in EU and NATO, or just being partners. Single initiatives are setting signposts for further development in the conflict region. That was the case when the OSCE, supported by Switzerland, mediated a meeting between the Russian and Georgian Foreign ministers in New York about developing a constructive dialogue and

easing tension in the relations of the two countries. Visits of high-level politicians of member states, as for instance the former German President Frank-Walter Steinmeier at the ABL to the South Caucasus, was another signal for continuing mediation. An event of particular importance is the German EU presidency to come in 2020.

Developing a stable and prosperous South Caucasus is in Europe's interest and can be supported by the EU presidency with instruments of cooperation and membership. A new European Ostpolitik was considered to becoming a priority of Germany's international relations even prior to the German EU presidency in 2020. The issue was departed among the academic community and highest-level policy makers. In reality the agenda of a new European Eastern Policy (*Europäische Ostpolitik*) lost its strategic momentum since the German trio presidency was dominated by the strategic impact of the corona Pandemic dominating the entire EU policy and, in this regards, requiring strategies for further concretization during the German trio presidency (Germany, Portugal, Slovenia) 2020-2021. The trio presidency was introduced by the Lisbon Treaty and is dedicated to strengthening cooperation among EU member states. Considering the latest changes in the region requires appropriate political changes (Deutscher Bundestag 2019). Keeping the related strategic impact in mind, it is important to develop the policy from a German towards a European agenda, which is not possible without a change of paradigm. Before presenting priorities and requirements of a new draft, it is important to give a short overview of the development of the policy and its actors. Based on this, having a look at the political framework in Europe and Germany as well matters. This will provide the preconditions for the agenda of a new European Ostpolitik, which is the overall goal of the draft for the German EU presidency in 2020. Even if the issue of a European Ostpolitik was changed by the strong impact of the international Pandemic crises due to obvious reasons problems and challenges in the South Caucasus continued having political impact. First and foremost, one should mention the Pandemic crises itself having a negative impact on social and economic live in the three countries of the South Caucasus. High level incidence rate in the region restricted a social live of meeting and greeting and being an international touristic hub. Th lack of foreign

visitors became an impact of economic development as well and as a result, Georgia and Armenia lost its social and economic impact. For sure it goes beyond the current problem of pandemic requiring strategic action.

Certainly, the South Caucasus and the three countries, with their different priorities, are part of the Ostpolitik. That also has to do with the related Russian regional influence. During the last month the region become a target of conflict escalation in Nagorno Karabakh between Armenia and Abkhazia gain which resulted in violent conflict escalation and refugees. In addition to other problems of the South Caucasus the conflict escalation in and with Nagorno Karabakh is indicating the requirement of a Neue Ostpolitik and the global, regional actors being involved.

The guideline of the new Ostpolitik since the time of Willy Brandt has been related to democratic values of dialogue and cooperation. The South Caucasus requires a particular regional adaption. Georgia is a country on the way to joining Western institution, but in doing so became a victim of negative impact of the Soviet past, which is about building an ethnic nation-state and doing so being controlled by the Russian Federation. In a most negative case this came to violent escalation of the Russian-Georgian war in August 2008 (Asmus 2010).

Starting in 1969, Willy Brandt and Egon Bahr tried to overcome the division between Eastern Europe dominated by the Kremlin, and Western Europe with an orientation towards Washington. On the German side, coming to terms with historic legacies is intricately linked with the elite of the Social Democratic Party developing rapprochement with Moscow, Warsaw, Prague and East Berlin. In formal terms, the development of a new Ostpolitik included signing the treaties with West Germany's eastern neighbors and the Four-Power Treaty with the Allies, which were completed between 1970 and 1973. This can be considered as a first step of a new Eastern policy opening reconciliation with the East and solving problems that arose from the immediate post-World War II settlement.

The realities in Europe changed, and the dividing lines were replaced by German reunification in 1989 and the Eastern enlargement of NATO in 1999/2002 and the European Union in May

2004. At the same time, Russia was considered as the Soviet Union. The conflicts in Georgia and Ukraine are the greatest challenges for an Eastern policy (Huterer 2017, 112). Members of the Warsaw Pact joined Western institutions, and in this period it looked like Moscow would come closer to Western values of democracy and a market economy. At the same time, the framework agreement between the European Union and Russia—the Partnership and Cooperation Agreement, signed in 1997—was coming to its current end, requiring either negotiating a new agreement or being extended on an annual basis if neither of the two partners decides to quit the agreement (Jacobsen and Machowski 2007, 11). Beyond the Western institutions, the European Union developed initiatives to strengthen cooperation with introducing a Partnership and Cooperation Agreement with the Russian Federation (Agreement ... 1997) and an Eastern Partnership dedicated to the six neighboring countries from Belarus to Azerbaijan, setting different priorities related to the countries involved (Eastern Partnership 2019).

During the EU presidency in 2007, it was again Germany taking initiative elaborating a new Eastern policy (Kempe 2007). It was part of the new Eastern policy to bring the institutional framework to the realities of the enlarged European Union by drafting a three-pronged approach: a new Partnership and Cooperation Agreement, a revised Eastern Partnership and a strategy for Central Asia (Ochmann 2007). Implementing the *neue Ostpolitik* in 2007 was slowed because Germany did not take the new EU member states as actors with an influence on the agenda seriously enough and because of the dominance of Russia, pretending to be a global player dominating its so-called near abroad. In practical terms only the strategy for Central Asia was implemented successfully. The reality indicated a lack of considering the real changes in the strategy accordingly. The violent escalation of the conflicts between Russia and Georgia in 2008 (Asmus 2010) and Russia occupying Eastern Ukraine and Crimea since 2014 (McFaul 2018, 393) has been indicating a new dividing line between Russia and the West. In the countries of the South Caucasus, the regional situation depends on the orientation/dependence between Russian and Western orientation. The violent escalation in the framework of Europe's neighbourhood is a challenge to developing

the Ostpolitik accordingly. The formal challenge is the upcoming German EU presidency in second half of 2020. By drafting a European Ostpolitik, German Foreign Minister Heiko Maas started at an early stage, even if further strategic development is still needed. This offers the opportunity to consider the impact of local development in Eastern Europe and its conflicts as indicated.

Considering the changes in Eastern Europe, conflicts in Georgia and Eastern Ukraine, and the related impact of Russia convinced Foreign Minister Maas to start bringing the terminus of a new European Eastern policy on the agenda at the end of 2018 (Hemicker 2018). The strategic target was security and stability in Eastern Europe. In the current situation, in contrast to the former realities of the 1970s, it is more about creating and implementing a European consensus for Eastern policy. In this regard, Russia is a particular challenge. Since the countries of East Central Europe joined the Union, the new member states are directly bordering the target countries of the *Neue Ostpolitik*. They have considerable and often negative historic experience with the former Soviet Union and are interested in developing the European and democratic spirit of the neighbouring countries. Having this intention in mind, Lithuania developed a “Marshall Plan” for bringing Ukraine closer to the European Union. According to the Lithuanian Marshall Plan for Ukraine, European key actors will provide €50 billion to the country over a decade starting in 2018 to the EU presidency of Lithuania 2027, with the investment intended for small- and medium-sized businesses. Overall, the strategic initiative is developing an accession perspective for Ukraine during the Latvian EU presidency in 2028. The idea of the EU’s financial aid to Ukraine was proposed by the former prime minister of Lithuania Andrius Kubilius last year. Together with Parliamentary Vice-Speaker Gediminas Kirkilas, he visited many key capitals in Western Europe. The plan was also brought to attention of the Lithuanian government (Baltic News Service 2017). The Lithuanian Marshall Plan is a particularly important example of how the new East of the European Union is becoming a driving force of a new European policy (Huterer 2017, 113). Considering the geographic location and historic experience, other examples might follow, or countries might join the Lithuanian Marshall Plan. The new European Eastern policy

should take these developments seriously in terms of resilience, democracy and shared European values.

The Kremlin and its key decision makers, first and foremost president Putin, are marking the dividing lines between the European Union differently from previous times, when they were dominated by an ideological division of regimes. Currently the former Eastern bloc is much less homogenous, not dominated by the Kremlin and the heads of the Central Committee, but rather marked by democratic countries with their own independent cultures and histories. At the same time, enlargement of the European Union caused a new dividing line by introducing the Schengen regime between the former Soviet countries and the new member states of the European Union. For instance, the Estonian city of Narva and the Russian city of Ivangorod are united by history and culture but became divided by the EU border (Baltic Eye 2015). The overall approach of Russia is being simultaneously a security risk and a potential partner for risk management, even if management of the partnership includes new challenges in establishing cooperation (Huterer 2017, 113). A particular challenge for a new European Ostpolitik is the limit of partnership with Russia, coming to a particular end of cooperation with the countries of Eastern Partnership such as Georgia or Ukraine (Stent 2019, 255). The Kremlin perceives these countries of the so-called “near abroad” as depending on Russian influence, and Moscow is going as far as extending influence with armed conflicts, using new hybrid warfare as much as possible.

Considering the latest developments in the region, it is important to perceive the countries of the former Soviet bloc from the perspective of independence in current cultural and historic terms. Furthermore, they should no longer be considered as appendixes of Moscow but as their own independent countries. Depending on their own national development, they have the opportunity to become members of Western institutions such as NATO and the EU (EU & MS Institutions 2018). In more realistic terms, Western institutions are advised to think beyond the terms of offering membership and have in mind all kinds of cooperation on the social and economic levels that have potential for association.

The most important difference between the previous new Eastern policy and establishing a new European Eastern Policy is an issue of national as well as of European importance. The new member states of the European Union are of particular importance considering their historic experience as victims of the Soviet past, developing resilience, and overcoming these legacies to assert European and democratic values parts of the Western family. That means creating framework conditions such as solving the Russian-Ukrainian conflict, having committed actors, and establishing a European dialogue on the issues combining government discourse with the input of the European Commission and regional think-tanks from a democratic civil society.

This deep and comprehensive discourse on setting political priorities between joint interests and common values on a wider European level would be part of developing democracy and stability, including the Eastern neighbouring countries. In the framework of reconciliation, the United States has a particular impact. Previously, Washington and institutions of the European Union as well as the member states were of importance. Today the two actors are working in different directions even if their strategic goals are still similar (Stent 2019, 255). Overall, the actors of Eastern policy have been changing. Previously, dialogue took place between players in favor of opposite values. Based on this, they were able to develop institutions and address a joint agenda with different perception on both sides. Eastern policy was able to develop an opportunity for dialogue and cooperation even if the two sides were in favor of different values. Today the difference of values does not exist any longer but the two sides attracting each other are trying to increase their zones of political and economic influence. The third one about the difference in democratic cooperation and human rights is expressing the most important imbalance making partnership and cooperation impossible (OSCE Secretariat 2009). Even if all member states agreed to the principles of the OSCE, one has to check into reality, and details as to what extent the principles can offer sustainability for a new European Eastern policy. About security one has to consider that in addition to agreeing on the principle, there are conflicts such as the violent conflict escalation between Russia and Georgia; in eastern Ukraine the

conflict with Russia is continuing. As a result, the three baskets of the OSCE in practice do not offer founding principles for a new European Ostpolitik. Russia is not interested in solving the conflicts, but in continuing its influence and escalation by mentioning frozen conflicts in areas such as Transnistria, Abkhazia, South Ossetia and Nagorno-Karabakh. In addition to different reading and implementation of the principles, the problem of an organization of far-reaching members is that decisions are made on the principle of consensus and each member state can block decisions of modernization and development. Having this in mind, a new European Ostpolitik (Eastern Policy) matters much beyond the German EU presidency can consider the areas of activities but should not share the same means of implementation by consensus of the member states but should differ between the connection of member states of European and democratic values. Developing a solution for disequilibrium from the Black and Baltic Sea from is still a wider European challenge to be solved. The upcoming troika presidency of the European Union is still an instrument doing so. The support impact of Lithuania actors during the continuing protest of the society in Belarus for a change towards European and democratic values is indicating the positive impact of regional development for Europe.

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Interests over Norms?

The European Union's Varied Black Sea region Approach

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Abstract

Contributing to the scholarly debate on norms versus interests in European Union (EU) external action, this chapter compares the EU's political strategies in its Eastern Neighbourhood with particular relevance to the Black Sea region. The EU's standard political strategy entails deep and comprehensive policy integration via norm diffusion, both internally amongst its Member States and externally via the European Neighbourhood Policy instruments. However, evolving relations between the EU and countries in its Eastern Neighbourhood have induced the EU to vary its normative strategy in order to protect its regional interests. The outcomes show fundamental differences in policy implementation, which emphasizes how certain policies were not designed to attain norm compliance. These results expose paths of inquiry from which to examine the EU's belief in its regional normative power. To achieve this, the chapter traces the patterns of influence in the interrelated contexts that converge in the Black Sea region. They inform how the non-EU countries inhibited the EU's normative strategy, while its Member States' behavior additionally contradicts its normative positions, and further challenge its regional normative impact.

Key words: Black Sea region; European Union; Eastern Partnership; Europeanization; normative power; interests.

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Introduction

As entailed in its Eastern Partnership,² the European Union (EU)'s key strategy towards its Eastern Neighbourhood has been to implement deep and comprehensive norm diffusion mechanisms that rely on incentivized conditionality to attract norm compliance. The EU's comprehensive norm diffusion approach was earlier applied to its eastern enlargement policy, which was based on its internal norm integration platform. Comprehensive and highly incentivized norm diffusion via condition-based partnership agreements seems to be the regular maneuver in the EU's political actor playbook.

The Black Sea Synergy Initiative ('the Initiative'), however, inherited domestic interests that perceive of the EU as a cooperative participant, rather than as an established normative power deserving of uncontested compliance. Consequently, the conditions of the Initiative were neither hierarchical nor as deep or comprehensive. As a result, the EU intermingles the manner in which it gauges the Initiative's success with the perceived impact of its normative mechanisms. Additionally, the countries involved in the Initiative represent multiple territorial conflicts and cultural clashes (EEAS 2016, 33; Yazgan 2017, 69-71). The Initiative, therefore, does not entail or produce sociopolitical integration, unlike the EU's internal operations or its ambition for external norm diffusion in its targeted Eastern Neighborhood (Commission 2008; Council 2009). As such, the Initiative's objectives and operations are distinctive from Eastern Partnership policies, and its success should be qualified differently. However, because of its self-imposed integration perspective, the EU must still contend with the fact that the Initiative operates under the EU's key external norm diffusion mechanism, the European Neighbourhood Policy.

Furthermore, the EU's regional normative power campaign abroad has fragmented and unraveled since first promoted. The shifts and changes in its relations with the Black Sea countries constrain the normative rollover from its other partnership agreements to the

² The Eastern Partnership partner countries are Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine, and are commonly referred to as the EU's 'Eastern Partners.' An overview of the Eastern Partnership is available at: https://eeas.europa.eu/diplomatic-network/eastern-partnership/419/eastern-partnership_en.

Initiative. The EU continues to clash with the two longstanding regional influences in the Black Sea basin, Russia and Turkey, who perceive the EU's normative power approach as antagonistic and insincere (Aydın-Düzgit 2018; De Franco et al. 2015; Delcour 2011; Delcour 2015; Romanova 2009; Romanova 2016; Üstün 2010; Yazgan 2017). Yet, despite contentious EU bilateral relations, the Initiative has managed to attain agreement on multiple technical matters without following the EU's integrationist norm diffusion model (Üstün 2010, 130-135; Yazgan 2017). This outcome contradicts the EU's normative power approach, and challenges the value of its policies' partnership by conditionality framework.

To illuminate this conclusion, the chapter explains the EU's normative platform, and how it produced the Normative Power Europe approach. It then informs how the reactions to this approach from certain countries in the Black Sea region reversed the EU's intended direction of influence. Furthermore, although some scholars have proposed that the Neighbourhood Policy exemplifies a "horizontal network governance" model (Lavenex 2008; Lavenex and Schimmelfennig 2009), this is not corroborated by the EU's power-seeking behavior, namely its persistent norms campaign and claims to execute normative power. Additionally, the model does not adequately exemplify the Initiative's "technical character" (Yazgan 2017) that does not push for governance even though certain Initiative reports evoke the EU's normative mechanisms used elsewhere in its Neighbourhood Policy (European Commission 2019). This chapter contends that if the EU were in fact a normative power, the Initiative would unequivocally corroborate that; however, it is instead a collection of technical projects, and must refer to other EU activities in the region to form connections with the EU's normative aspirations. This chapter also asserts that because the Initiative came after economically focused Black Sea cooperation was established by Turkey, the EU essentially needed to follow suit in order to participate. It additionally demonstrates how the EU's own Member States resist its normative power approach, and at times their behavior contradicts EU core norms. Given both this internal discrepancy and the EU's inability to consistently mobilize its normative power campaign abroad, the chapter's concluding thoughts

discuss the lessons offered by the economic perspective and diplomatic approach of cooperative agreements like the Initiative.

First, the next section discusses the extant theoretical examination of the EU's normative approach to Europeanization. Following the theoretical discussion is an analysis of the observed inconsistencies between the EU's normative platform and the actual partnership frameworks implemented throughout its targeted Eastern Neighbourhood. This demonstrates how domestic obstacles encountered after policy implementation expose the miscalculation in adopting the normative power approach as the archetypal strategy in the region. Moreover, the interests-driven perspective applied to the Initiative in relation to existing frameworks offers a better platform for the EU's strategic partnership in its Eastern Neighbourhood—even where strained relations exist. Although rarely in the spotlight, the Initiative's framework and approach can lend practical support for the EU's challenging regional objectives.

Deep and Comprehensive Norm Diffusion: The EU's Integrationist Europeanization

Executed at the EU-level, Europeanization is the mechanized process by which the EU attempts to transfer its core norms into the domestic sociopolitical contexts of its Member States, partner nations, and throughout the international community (Börzel and Pamuk 2012; de Franco et al. 2015; Diez 2005; Diez 2013; Haukkala 2011; Manners 2002; Schimmelfennig 2001; Schimmelfennig 2010; Schimmelfennig and Sedelmeier 2004; Sedelmeier 2011; Seybert 2012). The EU's deep, comprehensive platform for economic, political, and social transformation including integration amongst its Member States via the *Acquis Communautaire* (*Acquis*) best characterizes its brand of Europeanization.

Additionally, as Europeanization scholarship concludes, the EU executes this campaign via incentivized condition-based partnerships intended to perform as norm diffusion mechanisms that diffuse the EU's core norms into domestic policies and institutions (Börzel and Pamuk 2012; de Franco et al. 2015; Diez 2005; Diez 2013; Haukkala 2011; Manners 2002; Schimmelfennig 2001; Schimmelfennig 2010;

Schimmelfennig and Sedelmeier 2004; Sedelmeier 2011; Seybert 2012). Even where the EU conditionally provides financial and programmatic support for targeted countries to meet EU conditions, domestic-level change can only occur if the targeted domestic context is amenable to the EU's norm diffusion attempts (Bickerton 2011; Börzel and Pamuk 2012; de Franco et al. 2015; Delcour 2011; Diez and Pace 2011; Haukkala 2011; Juncos 2011; Manners 2011; Schimmelfennig 2001; Seybert 2012; Whitman 2011). In other words, norm diffusion only occurs if the targeted countries choose to accept and comply. Nevertheless, the objective to attain norm compliance with these mechanisms corroborates that the EU intended to establish a hierarchical power structure where it shapes domestic contexts, thus enabling an internal and external perception of the EU as a normative power.

The justification narratives surrounding this power-seeking behavior frame normative power as the mere promotion of universal norms that is therefore the more ethical alternative to other hegemonies' economic or military power (Manners 2002; Bickerton 2011, 29; Peterson and Barroso 2008). This perspective has been promoted as a key feature of the EU's political identity (Manners 2011, 226; Peterson and Barroso 2008; Whitman 2011, 10-11). It also became central to the EU's foreign operations in that the EU framed its key external norm diffusion campaign, the European Neighbourhood Policy, with the pretext of establishing regional stability (Delcour 2011; Delcour 2015; Simão 2013), thereby "creating a friendly neighborhood" (Stewart 2011, 65).

Although the EU's external norm diffusion campaign relied on its belief in normative power, domestic barriers to norm diffusion do occur, and failure to adapt to them will produce unfavorable results (Bickerton 2011; Burlyuk 2017; de Franco et al. 2015; Diez 2005; Diez and Pace 2011; Diez 2013; Haukkala 2011; Juncos 2011; Schimmelfennig 2001; Williams 2021). Furthermore, such domestic barriers represent the palpable limitation of normative power strategies, and contradict their value and legitimacy (Bickerton 2011; Burlyuk 2017; de Franco et al. 2015; Diez 2005; Diez and Pace 2011; Diez 2013; Haukkala 2011; Juncos 2011; Schimmelfennig 2001; Williams 2021). In spite of these issues with the normative power

concept, its earliest interpretations borne from academia were used to construct and promote the Normative Power Europe narrative (Diez 2005; Diez 2013; Haukkala 2011; Manners 2002; Peterson and Barroso 2008). The next section discusses how this evolved, and the inconsistencies and contradictions it faced relevant to the Black Sea region. This discussion illustrates how the Normative Power Europe approach is inflexible and dependent, which is particularly incompatible with the challenging bilateral relations in the Black Sea region. By comparison, the Initiative's diplomatic interactions and technical, interests-oriented framework are likely less contested due to the divergence from the EU's hierarchical, norms-driven governance model.

Conditionality and Compliance: The Formula for Normative Power Europe

In his seminal work, Manners (2002) presented academia with a conceptualization of normative power and Normative Power Europe that represents the EU's norms campaign as a force for good³ internally and abroad (Manners 2002). The EU later adopted and promoted this interpretation of its external action, lauding itself as a normative power, and insisting that this power was legitimized because the surrounding European countries hoped to join the Union (Peterson and Barroso 2008). This interpretation of Manners' conceptualization paints the EU as a norm promoter with civilian-oriented interests that aims to establish institutional isomorphism amongst its member states and partner countries. Normative Power Europe came to represent an institutional political identity that over time was operationalized as a political strategy through which the EU can promote and justify its integration, enlargement, and external action.

However, the basis for Normative Power Europe is the belief that normative power can attain norm compliance through incentivized

³ The contributions in *Normative Power Europe: Empirical and Theoretical Perspectives* (2011, edited by Richard G. Whitman) largely agree on the attempt to synonymize Normative Power Europe with 'do-gooder,' or 'force for good.' This research draws on and builds from the contributions in that volume, most notably Bickerton, Birchfield, Diez and Pace, Haukkala, Juncos, Manners, and Whitman.

conditionality; yet, it is necessarily dependent on attracting followers in order to substantiate the existence of such power. In other words, if the EU does not attract participatory and compliant followers, its influence is compromised, as is its ability to behave as an accepted, and thus legitimate, normative power (Bickerton 2011; Diez 2005; Diez and Pace 2011; Diez 2013; Haukkala 2011; Juncos 2011; Manners 2011; Williams 2021). As such, the EU therefore must attract and convince its targeted followers, especially its external partners, if it is to claim itself as a normative power. As a result, the EU is in fact in the position to adapt to suit the domestic contexts of uninterested or ambivalent targeted followers, which contradicts the notion that the EU wields normative power. Therefore, rather than a well-formed, sufficient strategy, Normative Power Europe is merely an ambition that relies on putative logic and the ability to attract (Williams 2021).

Diez (2005) indicates that the “logic of normative power” is the “spread particular norms” (Diez 2005, 625). Accordingly, in addition to norm promoters, or norm diffusers, there are also norm ‘receivers’ who must present a receptive and compliant context into which the norms will diffuse, and preferably endure. As such, in the norm diffusion process, it is critical that the selected norms and diffusion mechanisms suit the receiver, and therefore, norm diffusion depends on the receiver in this way.

Furthermore, attempting to use norm compliance as a proxy for an endorsement of normative power aims to justify and legitimize power-seeking after the fact. This putative logic that conflates norm compliance with legitimacy before such compliance is achieved likely explains why domestic obstacles to norm diffusion are a common challenge for the EU internally and externally (Bickerton 2011; De Franco et al. 2015; Sedelmeier 2011; Sedelmeier 2017; Williams 2021). Additionally, the dependence on norm compliance actually allocates power to targeted norm ‘receivers’ since they determine if a would-be normative power is legitimate and should be followed. This contradicts the power structure presented in the normative power belief, and demonstrates that the Normative Power Europe strategy cannot operate as intended in all contexts (Diez 2005; Williams 2021).

In fact, it seems obvious that countries will choose their own interests regardless of their participation in condition-based

multilateral partnerships. Nevertheless, the perceived success of the EU's integration policy and eastern enlargement, from which the European Neighbourhood Policy and Eastern Partnership were largely copied (Bickerton 2011; Delcour 2011; Delcour 2015; Haukkala 2011; Lavenex 2008; Seybert 2012; Stewart 2011), may have obscured the reality that not every domestic context will be amenable to the EU's sociopolitical norms, nor attracted to its incentivized conditionality (European Commission 2015b). Moreover, some targeted domestic contexts are not amenable to norm diffusion of any sort. As such, previously realized norm diffusion is likely attributed to the particularly amenable domestic contexts in which it occurred. The resistant contexts then substantiate that the direction of influence the EU intends to establish in its partnership policy instruments does not always corroborate the actual power structures in which the EU participates.

Network Governance and the European Neighbourhood Policy: A Theory Not in Practice

Given the core problems with the normative power concept and the Normative Power Europe approach, some scholars have theorized that the European Neighbourhood Policy instead fits the functionalist 'horizontal network governance' model (Lavenex 2008; Lavenex and Schimmelfennig 2009). The horizontal nature of this network governance model demands the "formal equality of partners" (Lavenex and Schimmelfennig 2009). The model is theorized as an "alternative to conditionality" (Lavenex 2008) that aims to explain the role of norms in the EU's persistent region-building objective observed throughout its integration, enlargement, and external action policies. Rather than fully contending with the power-seeking nature of the EU's external norm diffusion, the horizontal network governance model attempts to reduce such behavior to merely an EU-mediated functionalist cooperation between countries. However, this representation does not explain the hierarchical norm diffusion process of the European Neighbourhood Policy. The lack of reciprocity in the Neighbourhood Policy's norm diffusion mechanisms

does not corroborate a mediator role, nor does the EU present itself as such therein. Either the EU executes top-down processes to its targeted partners, or it is an equal partner in a balanced cooperative who is also required to comply with prescribed transformation.

While sociological functionalism may generally inform the *Acquis* and the European Neighbourhood Policy regarding civilian and social needs (Lavenex 2008; 2017; 2019; Lavenex and Schimmelfennig 2009), it is not certain that it represents the basis or impetus for the EU's external norm diffusion. Furthermore, the observed inability to provide those needs abroad as promised challenges the notion that EU external action is merely humanitarian, apolitical, and wholly focused on civilian needs (Lavenex 2017; 2019). Additionally, we cannot conceive of EU external action as merely targeting common functionality if it aims to achieve its objectives with power-seeking behavior, whether normative or otherwise (Barroso and Peterson 2008; Diez 2005; Diez 2013; EEAS 2016; Haukkala 2011). Contrary to claims that the EU is simply a promoter of universal norms, the EU's objectives and behavior reveal it understood that considerable power is required to accomplish norm diffusion and attain norm compliance. Therefore, the claim to be "one of the most important, if not the most important, normative powers in the world" (Peterson and Barroso 2008, 69) is not well-explained as a functionalist, non-hierarchical network (Diez 2005; Diez 2013; Haukkala 2011).

In fairness, Lavenex (2008) does conclude that, "the opening-up of policy networks to third countries does not necessarily mean the absence of hegemony. On the one hand, networks can be mobilized as alternative instruments of policy transfer, thus compensating for weaknesses of strategic conditionality" (Lavenex 2008, 952-953). However, Lavenex attributes this primarily to a lack of expertise and weaker government capacity in partner or third-countries. This is a very prevalent belief in the EU's 'force for good' narrative, and arguably the belief on which its justification for exerting power abroad was founded. Nevertheless, this still corroborates a top-down norm diffusion model lacking reciprocity.

Furthermore, despite claims that attempting to "induce" policy change in third-countries or partner countries is horizontal if there is

no EU membership prospect, such influence would not represent equal exchange (Freyburg et al. 2009). The lack of symmetrical prescription to the EU from the European Neighbourhood Policy partner countries in their partnership agreements corroborates that the policy instrument was not intended as merely a cooperative network. Rather, it aims beyond just addressing “distribution problems,” or supplying what partner countries are deemed to lack (Lavenex 2008, 945-946). The EU’s deliberate focus on prescribing its own standards and values to its Eastern Neighbourhood confirms that the Eastern Partnership was not designed as a horizontal and equal association, especially since the partner countries were meant to acclimate ‘up’ to EU standards. Therefore, the horizontal, non-hierarchical network model is not an accurate depiction of the European Neighbourhood Policy instrument that relies on unidirectional norm diffusion. It is precisely this prescriptive, asymmetrical governance structure that has communicated to stronger, more self-reliant countries in the Black Sea region, such as Turkey, Russia, and Azerbaijan, that it is neither pragmatic nor prudent to build closer ties with the EU. Furthermore, now that the EU’s relations in the region have devolved to sanctions in some instances as further described below, the ambition to actually manage governance between powers, whether horizontal or otherwise, would likely sustain existing resentment.

While the horizontal network governance model does not exemplify the EU’s behavior towards its Eastern Neighbourhood, it may perhaps represent the partnerships resulting from the EU’s relations with third-countries that it considers to be more similar as well as globally influential, e.g. Australia or Canada. Although the Initiative involves regional and global powers, and also diverges from the Eastern Partnership’s deliberate norm diffusion model, it nevertheless does not exemplify a horizontal network governance model. Instead, as the next section describes, due to the specific nature of the interrelated bilateral relations and other unique context conditions, the Initiative proves to be less about governance, and more oriented around interests. While the EU may report the outcomes of the Eastern Partnership agreements along with the Initiative’s achievements in order to convey shared success, the

Initiative indicates a framework that is interest-based rather than norms-driven, and can attribute its specific success to diplomacy. The next section first discusses the debate concerning interests versus norms that further reveals the incongruity of the normative power approach. Then the subsequent analysis shows how more economically secure countries in the Black Sea region react to that approach. These observations corroborate that the technical focus and diplomatic engagement of the Initiative represents a more practical model for EU partnerships that have otherwise deteriorated as norm diffusion mechanisms.

Economic Interests Cooperation in Place of Normative Power

The debate in Europeanization scholarship on norms versus interests aims to make sense of the EU's claim that its core norms predicate all else including its interests, collective political identity, and behavior (Barbé et al. 2009; Bickerton 2011; Diez 2005; Haukkala 2011; Mannes 2002; Schimmelfennig 2001; Schimmelfennig and Sedelmeier 2004; Sedelmeier 2011; Seybert 2012). However, since interests provide the incentive to implement policy, it is unfeasible to divorce "strategic interests" from normative behavior, and "the assumption of a normative sphere without interests is in itself nonsensical" (Diez 2005, 625). As described below, this has been corroborated in EU-Azerbaijan relations where the EU's economic interests proved more important than socio-political reforms. As such, these outcomes further refute the claim that the EU's norms necessarily determine its positions and behavior. To the contrary, the observed behavior demonstrates that the EU will subordinate its socio-political norms to its economic interests in certain contexts. Such selective norm exportation that is dictated by economic interests and externally constrained in a country that the EU aims to transform does not corroborate that the EU wields special power, normative or otherwise (Van Gils 2018a; 2018b). Additionally, the Initiative represents a technical cooperation from an economic interests perspective that does not intrinsically entail governance, contrary to both the horizontal network governance model and the normative

power approach; but that rather corresponds with the pre-existing Black Sea agreements. Given the region's political, cultural, and territorial conflicts, the Initiative likely benefits from the technical, economic focus of the pre-existing cooperations.

An emphasis on norms exportation could be perceived as antagonistic where territorial conflict and cultural clashes are present, such as throughout the broader Black Sea region. This is a particular risk if the selected norms are wielded as a source of power, legitimacy, or identity, as the EU indicates is the multifaceted role of its own core norms (European Union 2007, Preamble). Given the potential to provoke additional rows, perhaps where the Initiative is concerned, focusing on economic interests is simply the safer option for all involved. Or, perhaps the Black Sea is not the primary concern for the stronger, more influential actors in the region. Moreover, regarding the EU, the significant degree of EU action in the broader Eastern Neighbourhood clouds the ability to ascertain whether impact can be attributed to the Initiative or may be the result of the Eastern Partnership's norm diffusion mechanisms. The positive outcome for the EU is they can claim a win regardless, and they have begun to do so in their reporting of the Initiative's projects and outcomes.⁴

As mentioned, in order to maintain that its norms campaign abroad is justified and therefore legitimate, the EU must connect all its Neighbourhood Policy frameworks to its integrationist, normative platform in some way. For the Initiative, the latest review attempts to make normative connections via its "Fields of Cooperation" that aim to show how the Initiative's technical projects compliment some goal of the Eastern Partnership or other Neighbourhood Policy norm diffusion mechanisms (European Commission 2019). In other words, the reports about the Initiative's activities evoke the norm diffusion mechanisms implemented in the region instead of just reporting what the Initiative has achieved. The EU's narrative then is that the Initiative's technical projects still contribute to its external norms

⁴ Compares the latest European Commission (2019) review to the European Commission (2015) and Commission (2008) reviews of the Initiative's activities and progress, as well as to the Commission's (2007) establishing recommendation.

campaign, whether or not they are similarly managed at the EU-level or garner similar interest in Russia and Turkey.

Some would argue that this proves the Initiative can “complement” the EU’s assertive emphasis on socio-political norms (Yazgan 2017, 76). However, contentious relations amongst Black Sea region countries, as well as the deteriorating EU-Russia and EU-Turkey relations, contradict the EU’s claims that its normative power campaign in the region is positive and successful. Moreover, the EU’s inability to diffuse its socio-political norms into its authoritarian Eastern Partner Azerbaijan’s domestic context further corroborates that the EU’s influence in the Black Sea region depends on the interrelated domestic contexts and interests, rather than transforms them. Azerbaijan’s oil and gas economy proffers independence, security, and global attraction. As later described, rather than supporting the EU’s integrationist norm diffusion, Azerbaijan has resisted, and still benefits from EU Member States’ and candidate countries’ interest in its economic opportunities. The following section further informs the influence of economic interests on EU behavior, and analyzes its different approach with the Initiative, as well as different its reactions to the economically secure Russia, Turkey, and Azerbaijan.

Black Sea Synergy Initiative: Interests and Cooperation versus Norms and Governance

Although comprised of EU Member States and other familiar actors in the EU’s broader Eastern Neighbourhood, the EU’s Black Sea Synergy Initiative presents a distinct set of circumstances where non-EU countries’ interests hold greater influence. Prior to the Initiative, Turkey proved to be the unifying force for the Black Sea countries. Turkey established the Black Sea Economic Cooperation (BSEC) in the early 1990s with a view to reconnect with the region and ascertain influence (Üstün 2010; Yazgan 2017). It was a shrewd soft power move to attempt during the unstable beginning of the post-Cold War period when the fall of the Soviet Union left a power vacuum in the region (Üstün 2010; Yazgan 2017). Although Turkey’s economic

perspective did not aim for regional integration, the BSEC did provide the structure for itself and post-communist countries to adjust during transition, and to acclimate to the global economy (Üstün 2010, 135-36, Yazgan 2017, 74). Turkey's leadership in creating the still-active BSEC and bringing the Black Sea countries together after a politically and socially tumultuous period shows true diplomacy and vision—even if also motivated by influence and power. Therefore, the 'force for good' role was arguably filled; and the EU, the newcomer at the time, simply corresponded with the economically focused, diplomatic foundation in place in order to participate.

The EU inherited explicit interest in the Black Sea with the accession of the littoral countries Bulgaria and Romania to the EU in 2007. Their EU membership brought the impetus for the Initiative, a regional scheme included in the European Neighbourhood Policy framework that is managed in concert by many EU bodies. While the additional littoral Black Sea countries besides Bulgaria and Romania are Georgia, Russia, and Ukraine, other Eastern Partners are strategically involved in the Initiative, namely Armenia, Azerbaijan, and Moldova. The European Commission defines the Initiative as an "institutional forum... encouraging cooperation [for] political and economic reform" for the countries in the Black Sea region.⁵ Nevertheless, when introduced in 2007, the Initiative lacked the scale necessary to implement reforms in accordance with the EU's regional integrationist objectives (Üstün 2010, 130-135). Consequently, the Eastern Partnership was officially inaugurated in 2009 (Council 2009; see also Commission 2008b).

The Eastern Partnership is a much more multifaceted instrument that entails normative guidance for comprehensive domestic reforms towards political, economic, and social transformation. This transformation is specifically intended to acclimatize partner countries' domestic contexts to EU standards; and therefore, the Eastern Partnership agreements allocate more detailed and comprehensive attention to creating social, political, and economic links than the Initiative. However, each in their own way,

⁵ European Commission's European Migration Network Glossary definition, available at: https://ec.europa.eu/home-affairs/what-we-do/networks/europe_an_migration_network/glossary_search/black-sea-synergy_en.

Russia and Turkey have expressed that they do not believe they need reforms, and certainly not under the guidance and supervision of the EU's institutions or policies (Aydin-Düzgit 2018; Romanova 2009; Romanova 2016; Yazgan 2017).

The EU considers its relationship with Russia to be a “key strategic challenge” (EEAS 2016, 33), and its relations with Turkey have deteriorated since the Initiative's inception (Aydin-Düzgit 2018; Yazgan 2017). At the EU-level, the Russian aggression towards its Eastern Partner Ukraine with the annexation of Crimea was considered a grave “violation of international law” (EEAS 2016, 33). In response the EU imposed sanctions in March 2014, many of which were renewed through 2021 (Official Journal 2014; 2020).⁶ However, some EU Member States warned against such long-term sanctions for both economic and security reasons, where certain Members aimed to safeguard their more positive foreign policies towards Russia, and others intended to protect their beneficial economic relations as well (Marioni 2015). This created internal ‘dis-sensus’⁷ regarding a common political position towards Russia, which demonstrates how even internally, the EU is in fact constrained by domestic interests.

Furthermore, despite EU criticism of third-countries, the domestic interests and behavior of its Member States are not always beyond reproach, as is observed in EU-Turkey relations. The EU's relations with Turkey have rather consistently devolved since the eastern enlargement (Aydin-Düzgit 2018; Yazgan 2017), and each clash further deepens the rift. In 2016, Turkey and the EU reached a deal regarding the increase in refugee immigrants; however, the deaths of Turkish soldiers in Syria in February 2020 prompted Turkey to lift the controls the deal established, and open its border with Greece, enabling refugee passage into the EU.⁸ While the EU's

⁶ An exhaustive timeline is available at: <https://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/history-ukraine-crisis>.

⁷ For more on internal ‘dis-sensus’ see Auel (2015); Bickerton (2011); de Franco (2015).

⁸ Berkay Mandiraci, “Sharing the Burden: Revisiting the EU-Turkey Migration Deal,” *International Crisis Group*, March 13, 2020, <https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/turkey/sharing-burden-revisiting-eu-turkey-migration-deal>. See also “UNHCR statement on the situation at the Turkey-EU border,” March 2, 2020, <https://www.unhcr.org/news/press/2020/3/5e5d08ad4/unhcr-statement-situation-turkey-eu-border.html>.

narrative is that Turkey broke the agreement in order to strong-arm related concessions, Greece's response to the influx of immigrants is also reproachable from the perspective of international law.⁹ As Greece is an EU Member State, its human rights offenses refute the EU's normative power assertion, and with grave consequences since additional unnecessary deaths resulted from Greece's militarized reaction to the refugees' arrival. Although this unfortunate situation does not exclusively pertain to the Black Sea, it highlights the dearth of solidarity, and reveals that the EU does not have a grasp on the region—including its own Members. Turkey and Greece—and Cyprus—are still at odds as of early October 2020, this time over Turkey's allegedly unlawful drilling and research efforts in the Mediterranean, with the EU threatening Turkey with sanctions in response.¹⁰

Therefore, given the EU's persistent issues with the stronger Black Sea riparian countries, it would be incompatible to involve them in a Black Sea cooperation modeled after the EU's integration platform for normative governance. Moreover, Turkey, the recognized initiator of Black Sea cooperation after the Cold War, set the tone for an economic agenda concentrated on protecting shared interests in order to steer clear of political and cultural conflicts—otherwise, it all falls apart. Such disintegration is in fact an observed outcome of the EU's campaign to promote its socio-political norms abroad. Insisting on its own brand of regional transformation by emphasizing that it perceives human rights and democracy standards to be lacking east of the Mediterranean does not set a decorous tone for future relations. Such a heavy-handed approach for a framework meant to compliment existing regional diplomatic partnerships likely would have been a non-starter, thereby blocking EU-level participation in Black Sea

⁹ Ibid.

¹⁰ "Turkey slams EU threat of sanctions over East Med dispute: Turkish foreign ministry warns against threat of measures amid Eastern Mediterranean standoff with Greece and Cyprus," *Aljazeera News*, October 20, 2020, <https://www.aljazeera.com/news/2020/10/2/turkey-eu-threat-of-sanctions-unconstructive>. See also Menelaos Hadjicostis, "France: EU sanctions on Turkey an option over gas standoff," *Associated Press*, September 19, 2020, <https://apnews.com/article/turk-ey-europe-summits-france-greece-cd1d42351aac65537c662d27b9326350>.

agreements. This furthermore would have in turn hurt the EU's littoral Black Sea Member States, Bulgaria and Romania.

The BSEC's economic perspective and technical operations do seem to provide a successful, cooperative framework for maritime agreement, and as mentioned, the Initiative likely benefitted from this already established framework. However, this should not give unwarranted praise, as it is worth interrogating whether Turkey's previously discussed actions against Greece and Cyprus in the Mediterranean Sea differs from its behavior regarding the Black Sea because it wants to protect the regional cooperation it started. Furthermore, this difference could also indicate that Turkey prefers to remain on good terms with Russia in order to bolster their shared opposition of certain EU positions and behavior (Yazgan 2017, 75). Either way, Turkey's reactions to the EU shows that it does not see the normative power the EU claims to execute.

The inability to promote deep, comprehensive integration with the Initiative from the outset required a more balanced, non-hierarchical approach for this particular partnership framework. Although the Initiative may be called a tool for reform within the EU, its focus is on technical projects and its agreements are chiefly determined via diplomatic dialogues between ministers who are aware of the region's challenging relations (Commission 2007; Commission 2008a; European Commission 2019, 8,11,14-15; see also European Commission 2015a). Accordingly, rather than a model for governing via network, the Initiative instead corroborates interest recognition. In other words, the Initiative is necessarily relegated to a technical means to monitor and support common interests. However, this is perhaps the most prudent position for an institution like the EU to take regarding the Black Sea region considering the related territorial conflicts, cultural clashes, and political rows.

Furthermore, in addition to the reactions from Member States, candidates, and third-countries in the region, resistance from partner countries further demonstrates that the normative power approach is not a convincing strategy. The authoritarian Azerbaijan has also resisted EU norm diffusion, and continues to benefit from global interest in its oil and gas economy, including from EU Member States and candidate countries. As the next section describes, EU-Azerbaijan

relations further demonstrate how the EU depends on, rather than reforms or transforms, domestic contexts and interests.

EU-Azerbaijan Relations: Economic Attraction Undermines Normative Power

Azerbaijan's internationally attractive oil and gas economy supports economic independence. It may account for Azerbaijan's ability to consistently resist the influence of foreign powers, including the EU's democratization attempts and Russia's appeals for comprehensive economic partnership.¹¹ Rather than consider the EU's proposed Association Agreement (AA) and Deep and Comprehensive Free Trade Area agreement (DCFTA)¹², Azerbaijan instead offered its own alternative partnership model, the Strategic Modernisation Partnership (SMP) (Van Gils 2018b, 1576). The SMP was better suited to its own domestic interests as it did not feature sections concerning conditional reforms towards human rights, rule of law, and democracy norms—those least compatible with authoritarian regimes. The EU in turn did not accept the SMP, and since Azerbaijan remained against an AA/DCFTA, it presented its next alternative in 2015, the Strategic Partnership Agreement (Van Gils 2018b, 1577-78). Although it appears that the EU has negotiated for the inclusion of a section mentioning democracy norms (Van Gils 2018, 1578), the agreement is not finalized and remains in negotiations as of the production of this chapter.

Additionally, Azerbaijan's government has demonstrated that until its position against Armenia regarding the Nagorno-Karabakh is recognized, it will be very hesitant to fully support the EU.¹³ This

¹¹ For more on Azerbaijan's isolationist behavior pertaining to its economic interests see Nicolas Popescu, "The Eurasian Economic Union: The Real, the Imagined, and the Unlikely," *European Union Institute for Security Studies*, Chaillot Papers No. 132–September 2014.

¹² An Association Agreement typically includes the Deep and Comprehensive Free Trade Area Agreement, and is informally considered the ultimate expression of trust and possibilities for a developing EU partner country. It is largely understood to be the gateway agreement to becoming a candidate Member State. However, the likelihood of any Eastern Partner becoming an EU candidate in the near future is debatable.

¹³ "Ilham Aliyev attended panel discussion at Munich Security Conference," February 18, 2017, <https://en.president.az/articles/22827>. See also Rikard Jozwiak, "EU,

staunch position was made all the more relevant when war between Azerbaijan and Armenia again erupted in July 2020¹⁴. Economic issues notwithstanding, differing positions regarding this territorial conflict, or a lack thereof from the EU, may pose an enduring stalemate between Azerbaijan and the EU's attempts to reform it.

Nevertheless, Azerbaijan may not necessarily view a finalized, comprehensive EU partnership as a priority since its oil and gas economy enable beneficial bilateral relations with other countries including EU Member States. Azerbaijan comprehends the value and global appeal of its oil and gas economy, and should be expected to act on it. The opening of the Southern Gas Corridor (SGC) of the Trans Adriatic Pipeline, through which Azerbaijan supplies natural gas,¹⁵ offers it opportunities to establish many positive foreign relations without sacrificing its authoritarianism. This will likely be further affirmed with each deal made with Black Sea countries, Balkans countries, regional influences like Turkey, and even EU Member States, such as Germany who has already firmly stated its support for the SGC and Azerbaijan's oil and gas economy in general¹⁶. Alternatively, Germany could use its support to negotiate potential participation in the SGC throughout the EU if Azerbaijan complies with EU partnership conditions. However, this is not a promising likelihood

Eastern Partners Downgrade Anniversary Statement Due to Objections from Baku," *Radio Free Europe/Radio Liberty*, May 13, 2019, <https://www.rferl.org/a/eu-eastern-partners-downgrade-anniversary-statement-due-to-objections-from-baku/29938053.html>.

¹⁴ Paul Stronski, "Behind the Flare-Up Along Armenia-Azerbaijan Border", *Carnegie Endowment for International Peace*, July 22, 2020, <https://carnegieendowment.org/2020/07/22/behind-flare-up-along-armenia-azerbaijan-border-pub-82345>. See also, Andrew Kramer, "Armenia and Azerbaijan: What Sparked War and Will Peace Prevail?" *The New York Times*, January 29, 2021, <https://www.nytimes.com/article/armenian-azerbaijan-conflict.html>.

¹⁵ "Southern Gas Corridor project attracts \$750 mln syndicated loan," *Reuters*, June 30, 2018, <https://www.reuters.com/article/energy-azerbaijan-gas/southern-gas-corridor-project-attracts-750-mln-syndicated-loan-idUSL8N1TW0KA>. See also "Azerbaijan discloses date of next SGC advisory council meeting," *Azernews*, January 15, 2019, https://www.azernews.az/oil_and_gas/144010.html. For general information on the SGC and the pipeline see <https://www.tap-ag.com/the-pipeline/the-big-picture/southern-gas-corridor>.

¹⁶ Leman Mammadova, "German energy ministry talks on prospects for buying gas via Southern Gas Corridor," *Azernews*, February 11, 2019, https://www.azernews.az/oil_and_gas/145414.html.

in light of the EU's inability to finalize a partnership agreement with Azerbaijan.

Regardless of the EU's position or that of its Members, Azerbaijan's oil and gas economy grant it a special status that likely discourages serious reactions from foreign powers regarding its authoritarianism. The ability to deliver the most sought after resource on the planet is no match for norms. As such, the concept of normative power, irrespective of the executor, pales in comparison. This reality thus challenges whether norms actually lend power, or, as Schimmelfennig (2001) describes, are merely a blaming and shaming social influence frame that only functions amongst a select community of actors (Schimmelfennig 2001, 64-66).

Furthermore, EU-Azerbaijan relations also reveal how wielding normative positions as a source of power or influence can backfire. Azerbaijan's President Ilham Aliyev strategically reminds the EU of the country's membership in the Council of Europe and its positive relations with other 'western' democracies whenever the government's behavior is interrogated or rebuked at the EU-level.¹⁷ Reminding the EU of its acceptance in other European or democratic communities sends the message that the EU in fact does not have the final say on who is normatively sound, and is therefore not the normative paradigm. Azerbaijan's staunch political position shows that it is possible to simply not agree to abide by certain norms and still participate in the international community, especially if an actor has a globally valuable resource at their disposal. In comparison to Russia, as well as Turkey with whom Azerbaijan has been increasingly close during the post-Cold War period,¹⁸ Azerbaijan has not shown any particular hostility towards the EU or its Member States, nor does

¹⁷ Judy Dempsey, "How Russia and Azerbaijan Weaken Europe's Values," *Carnegie Europe: Strategic Europe*, April 8, 2013, <https://carnegieeurope.eu/strategiceurope/51434>. See also Damien McGuinness, "Azerbaijan cracks down hard on protest," *BBC News*, April 24, 2011, <https://www.bbc.com/news/world-europe-13136598>.

¹⁸ Suzan Fraser, "What lies behind Turkish support for Azerbaijan," *Associated Press*, October 2, 2020, <https://apnews.com/article/turkey-territorial-disputes-azerbaijan-ankara-armenia-9a95d9690569623adedffe8c16f3588d>. See also Vladimir Socor, "Aliyev, Erdogan Sign Inter-Governmental Agreement on Trans-Anatolia Gas Pipeline to Europe," *Eurasia Daily Monitor* 9 (122), June 27 2012, <https://jamestown.org/program/aliyev-erdogan-sign-inter-governmental-agreement-on-trans-anatolia-gas-pipeline-to-europe/>.

it seem to currently have any strong impetus to do so. Nevertheless, if the EU continues to experience contentious relations with countries that are closely associated with Azerbaijan, it could in turn affect Azerbaijan's view of the EU.

Conclusion

While the Initiative's technical nature likely explains its successes in an otherwise contentious environment, it is still just one of many Black Sea agreements. If the EU aims to maintain the Initiative, thereby also maintaining some Black Sea influence, it may need to reassess its normative posturing with Turkey and Azerbaijan. Additionally, it should give attention to the positions of its Members who prefer to employ a more diplomatic and less normative approach regarding Russia in order to maintain their strategic political and economic relations. A successful recipe for Black Sea cooperation has been to engage diplomatic interactions with the aim to achieve non-hierarchical cooperation for technical projects of economic interest, even for the EU's Initiative. The EU could apply this lesson to its other partnerships that have not functioned as norm diffusion mechanisms in their targeted domestic contexts. Although normative power may be ineffective or unconvincing in these contexts, the opportunity for positive, secure relations is still a possibility with a more realistic approach.

Arguing these points neither attempts to designate excessive censure nor unwarranted praise. Instead, the aim is to further interrogate that there is some obvious, necessary distinction between the EU's norms and interests. Such a distinction may be necessary to support the assertion that the EU is wholly driven and guided by its norms; however, this backwards necessitation is in fact a solution that needs a problem. As a result, the normative power strategy has indeed exposed paradoxes and encountered constraints both internally and externally. Moreover, a network of horizontal governance also does not corroborate the common resource management and technical project development that has succeeded in the Black Sea region, particularly since relations have devolved to the point of sanctions from the EU. Where Black Sea cooperation has succeeded, it is

attributed to a more practical formula of economic focus, technical operations, and ministerial diplomacy. This particularly contrasts the assertive, hierarchical formula for the Normative Power Europe approach that relies on incentivized conditionality and communicates dominance.

Rather than normative power, or any alternative force, institutions constructed from a firm normative platform like the EU could support the good they hope to find in their targeted regions through diplomacy. Furthermore, they could help diplomatic efforts by behaving as true humanitarian actors abroad rather than as governing authorities. Regarding the Black Sea region, the EU's external execution of power has at times been exposed as a contradiction similar to 'do as I say, not as I do'. If the EU finds regional security, prosperity, and cooperation to be vital to its integration end-goal, its contested normative position whose words do not always corroborate actions can appear insincere or duplicitous (Aydin-Düzgit 2018; Romanova 2016; Yazgan 2017), and is better left to the past. Therefore, rather than attempting external governance—horizontal or otherwise—a focus on economic cooperation is a more realistic goal. The EU can of course maintain its firm support for universal norms and international law. However, given the behavior of EU Members and the EU's inability to secure norms and standards internally or abroad, the pretext of being a normative exemplar should be reevaluated.

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Re-Considering the Role of the Black Sea Economic Cooperation Organization: Still an Active Player in the Black Sea regionalization Process?

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Abstract

The Black Sea Economic Cooperation Organization (BSEC) was established in 1992 as an important regional organization in the post-Cold War international order. Turkey has played a leading role in the establishment of the BSEC in order to contribute to peace and stability in the Black Sea region through developing stronger economic relations built upon the idea of ensuring common interests and interdependence among the countries in the Black Sea region. Accordingly, Albania, Azerbaijan, Bulgaria, Armenia, Georgia, Moldova, Romania, Russian Federation, Ukraine, Greece and Turkey signed the Bosphorus Declaration in 1992 with the intention to build regional peace, stability, welfare in the Wider Black Sea region based on economic cooperation. The Bosphorus Declaration paved the way for the BSEC member states to make the necessary legal arrangements in accordance with the institutional structure of BSEC, while emphasizing the importance of free market economy, democracy, rule of law, human rights, and developing regional cooperation based on good neighborly relations in the region. Thereafter, the BSEC member states signed the BSEC Charter and the Organization gained an international identity as a regional organization in 1999.

This chapter aims to analyze the role of the BSEC in developing regional cooperation as regards the Black Sea regionalization process by closely investigating three major periods/phases, which both the Black Sea region and the Organization have intricately experienced for almost thirty years. Considering the Black Sea regionalization process, the BSEC is still identified as the primary actor in the region in order

to develop and diversify bilateral and multilateral cooperation while deepening the economic cooperation among the countries in the region. However, persistent geopolitical problems, volatile security dynamics, and heterogenous socio-political characteristics of the BSEC member states stand out as the major obstacles that diminish the BSEC's potential as well as impeding the Black Sea regionalization process.

Key words: Black Sea region, BSEC, regional integration, Black Sea regionalization, economic cooperation, geopolitics.

Introduction

The Black Sea Economic Cooperation Organization (BSEC) was founded in 1992 and emerged as an important regional organization in the new international system after the dissolution of the Soviet Union. Turkey was committed to carrying out a leading role in the establishment of BSEC, as it realized the importance of the international and regional organizations to achieve regional prosperity and stability in the international system after World War II (Manoli 2012, Yalçınkaya 2017).

The idea of building a regional organization in the Black Sea region was first initiated by the former Ambassador Şükrü Elekdağ, whose idea gained the political support of President Turgut Özal in order to expand Turkey's sphere of influence in the region vis-à-vis the changing dynamics in the post-Cold War era (Oktay 2006, 158). Thereafter, the heads of state and government of ten regional countries, namely, Albania, Azerbaijan, Bulgaria, Armenia, Georgia, Moldova, Romania, Russian Federation, Turkey, Ukraine, and Greece gathered in İstanbul upon the invitation of Turkey and signed the Black Sea Summit Declaration and the Bosphorus Statement in 1992 (BSEC 1992).

In accordance with the Bosphorus Statement, the member states declared that they united around a common will to ensure regional peace, stability, and prosperity through economic cooperation in the Black Sea region. The Bosphorus Statement guaranteed that the member states would take necessary steps for legal regulations in the areas of the free market economy, democracy, the rule of law, human

rights under the organizational structure of the BSEC while developing regional cooperation based on good neighborly relations with the aim of ensuring peace, stability, and development in the region (Yalçınkaya 2013, 270). In other words, the main purpose of BSEC is to develop commercial, economic, scientific, and technological cooperation between the Black Sea countries by taking advantage of the geographical proximity of the member states and the complementary features of their economies (Oktay 2003, 246).

The BSEC can be argued to have been founded on a commonly shared a) understanding about economic cooperation as a means of avoiding conflict, b) view of regionalism as a means of integration to the global economy, and c) desire to prevent new divisions in Europe (Manoli 2002). In this respect, the BSEC can be identified as the first regional organization attempt in the Black Sea region that emerged following the Cold War.

Nevertheless, the Black Sea region has a very heterogeneous structure in line with its vast geographical area, and there are different political, social, and economic characteristics of the countries in the region due to the fact that historically an economic or social union has never occurred in the Black Sea region (King 2004, 7-10). The region has not been defined as a region by either external actors with a strong role in international politics or internal actors; rather, it is identified as an “intellectually constructed region,” typified by a weak regional identity (Aydın 2005a, 59). In this respect, the BSEC plays a critical role in the Black Sea regionalization process since it provides an essential institutional structure to the countries in the region which have very diverse socio-political dynamics and national interests associated with the goal of achieving economic cooperation.

This chapter will examine the role of the BSEC in enhancing regional cooperation as regards the Black Sea regionalization process within three phases, all of which correspond to the major turning points both for the region and the BSEC itself. The BSEC, as the first regional organization initiative in the region, is still considered the primary actor for the Black Sea regionalization process. Nevertheless, the region's critical issues pertinent to the persistent geopolitical problems, volatile security dynamics and heterogenous socio-political

characteristics of the BSEC member states weaken the BSEC's role while also obstructing the Black Sea regionalization process.

Defining the Borders of the Black Sea region

The Black Sea region has historically been at the crossroads of different civilizations and states, extending from Greek, Roman, Byzantine Empire, Ottoman Empire, Tsarist Russia to the Soviet Union. The region covers a large territory which has come to the fore with its ethnic, religious, linguistic, cultural, economic, and political heterogeneity. The multi-layered structure of this region brings along specific difficulties in defining the Black Sea as a region. The Black Sea region is historically depicted as a conflict-prone geographical space, where different actors (i.e., empires, states) have been in a continuous struggle either for taking control or expanding its sphere of influence in the region.

On the other hand, the Black Sea region is defined as the border/extension/periphery of civilization centers such as Europe and the Mediterranean (King 2004). There have been many identifications attached to the Black Sea region, as the backyard of the Ottoman Empire, a part of the Soviet sphere of influence, the eastern border of Europe, and an extension of the Mediterranean (Aydın 2005b). Therefore, the Black Sea region can be defined as a territory where different political, socio-economic, linguistic, religious, and cultural dynamics exist together, not always harmonious. In this respect, the BSEC emerges as a significant regionalization/region-building attempt in the post-Cold War era, despite the explicit and/or indirect difficulties that the Black Sea region bears.

Regionalism literature considers the Black Sea regionalization process mostly as a part of and/or parallel to the European integration process (King 2004, Manoli 2010, 2012, Yalçinkaya 2013, 2017, Üstün 2013). Emerson proposes a number of different types of regionalisms for the Black Sea region, addressing nine different conceptualization/typologies that cover a broad spectrum from technical regionalism to institutional regionalism, of which the BSEC provides an institutional impetus to the Black Sea regionalism process

(2008, 2-3).¹ Departing from what Emerson theoretically suggests, the BSEC has two interrelated objectives pertaining to the Black Sea regionalization process. It aims to overcome the problems of the post-Soviet countries emanating from the post-Soviet transition, which can be exemplified with the transition to a free-market economy, democratization process, and the integration of the post-Soviet countries into the post-Cold War geopolitical order. As regards the latter, the long-term plan of the BSEC is to provide a mechanism that will create the necessary momentum for the Black Sea regionalization process as a regional organization. This mechanism's driving force primarily relies on encouraging multilateral and interregional economic cooperation among the countries in the Wider Black Sea region. Parallel to the functionalist 'spill-over' effect/argument, the economic cooperation is expected to evolve into political convergence between the countries in the region, which would lead to a regional integration process as seen in the EU example.²

Departing from new regionalism, which denotes the openness of regions and the permeability of their socially constructed borders, regions often overlap at the margins, or they may even contain one another (Hajizada and Marciacq 2013, 308). While defining the borders of its geographical scope of activity, the BSEC does not limit itself to the intra-regional economic cooperation between the littoral states in the region. Instead, the BSEC attempted to reconstruct the territorial demarcation of the Black Sea region and expand its sphere of influence with the new geographical definition, namely, the Wider Black Sea region. Accordingly, this territorial reconceptualization provides the BSEC a basis for solving historically rooted problems at the intellectual and practical level. It also eliminates the possible post-

¹ Michael Emerson (2008) has developed a comprehensive typology of Black Sea regionalism, which covers technical regionalism, good neighbourliness regionalism, security regionalism, eclectic regionalism, dysfunctional regionalism, institutional regionalism, transformative regionalism, compensatory regionalism and geopolitical regionalism.

² Classic functionalist theory argued that cooperation between states in economic areas (esp. on the basis of health, agriculture, and tourism) would undermine national sovereignty. According to David Mitrany, the pioneer figure in the functionalism debate, economic and technical cooperation would "spill-over" into the political world, where nation-states would transfer their sovereignty to a higher or supranational authority that would result in a working peace system. See Mitrany (1976).

Cold War geopolitical divisions between the countries located in the East and West of the Black Sea region (Manoli 2010).

BSEC's Institutional Design

The functionality of the organizational structure of the BSEC and the representation of the member states in this structure is of great importance for the realization of all the multi-layered objectives aimed at the Black Sea regionalization process. One of the most important steps regarding the institutionalization process of the BSEC is the signing of the BSEC Charter, following the Bosphorus Declaration signed in 1992. The BSEC Charter was signed by the heads of state or government of the member states on 5 June 1998 in Yalta and entered into force as of 1 May 1999. The BSEC gained an international legal identity as a regional organization with the signing of the BSEC Charter (Aydın 2005a, 57-60).

According to the BSEC Charter, the main goals of the BSEC are a) to act in a spirit of friendship and good neighborliness and enhance mutual respect and confidence, dialogue and cooperation among the Member States; b) to further develop and diversify bilateral and multilateral cooperation on the basis of the principles and rules of international law; c) to act for improving the business environment and promoting the individual and collective initiative of the enterprises and companies directly involved in the process of economic cooperation (BSEC Charter, Article 3). In addition to defining the BSEC's primary goals and principles, the Charter also determines the priority areas of the organization in the fields of trade, finance, security, transportation, environment, energy, combatting against crime, immigration, technology, science, tourism, and education, which closely aims at promoting intra-regional development in the Black Sea primarily based on economic cooperation among the member states (BSEC Charter, Article 4).

The Charter is of importance in designing the organizational structure of the BSEC to provide a practical and solid institutional ground for the Black Sea regionalization process. According to the Charter, the most important body of the BSEC is the Summit, which includes heads of state or government of the member states. However,

the BSEC Council of Ministers of Foreign Affairs emerges as the most critical decision-making body within the institutional structure of the BSEC (BSEC Charter, Article 11). The Council takes decisions on all matters related to the activities of the BSEC, examines all matters presented by the subsidiary organs, and takes the necessary decisions, adopts and changes the procedural provisions within the organization. Mainly, it has broad powers such as establishing and assigning tasks to the subsidiary organs, determining, changing, or terminating their duties.

Additionally, the Committee of Senior Officials has a representative function regarding the Ministers of Foreign Affairs of the Member States, while following the duties of reviewing activities of the subsidiary organs, evaluating the implementation of decisions and recommendations of the Council, and elaborates recommendations and proposals to be presented to the Council; maintaining coordination and cooperation with BSEC-related bodies (BSEC Charter, Article 15).

The institutional structure of the BSEC also encompasses other representative bodies such as the Permanent International Secretariat (PERMIS), Parliamentary Assembly of BSEC (PABSEC), Presidency, Trilateral Government (Troika), the BSEC Business Council, Black Sea Trade and Development Bank (BSTDB), International Black Sea Studies Center (ICBSS), as well as Working Groups, Experts Groups, which have been determined as the committee and subsidiary bodies to be established under the authority of the Council.

The BSEC Business Council has been founded as an international non-governmental organization and consists of representatives of the BSEC Member States' business communities in line with the objectives of the BSEC Charter (Article 21). In order to foster regional economic integration, the BSEC Business Council plays an essential role in increasing the economic activities and the level of foreign investments in the Black Sea region. The main activities of the Business Council comprise supporting private and public investment projects as well as strengthening commercial ties between the countries in the region through bilateral business councils. More specifically, the BSEC Business Council has very positive effects in areas such as increasing

investments in the region, taking necessary steps to support small and medium enterprises (SMEs), and paving the ground for relevant policies to improve the intra-regional trade activities between the member states.

Likewise, the Black Sea Trade and Development Bank (BSTDB) has been founded shortly after the establishment of the BSEC, in 1998, as a joint endeavor led by Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Greece, Moldova, Romania, Russian Federation, Turkey, and Ukraine to strengthen economic investment and develop intra-regional commercial activities between the member states (Manoli 2006). Since its establishment, the BSTDB concentrates on sectors driving economic growth in member countries, especially considering the cooperation potentials in energy, transport, public utilities, manufacturing, municipal services, environmental protection, SMEs, telecommunications, and the financial sector and similar fields while its contribution reached approximately \$5 billion (BSTDB 2019b).³

The BSEC's First Decade: Early Steps Towards Regional Cooperation

Since its foundation in 1992, the BSEC aims to achieve regional cooperation instead of conflict, supporting regionalization and globalization, and preventing new conflicts that would arise in Europe (Aydin 2005, 62). Pursuing this further, economic cooperation has been identified as the Black Sea regionalization process' main engine with promoting the sectoral partnerships and regional trade between the BSEC member states to build a more prosperous and stable Black Sea region.

Having considered the first decade after the foundation of the BSEC, taking the initial steps for the institutional development of the organization, promoting economic cooperation between the member states, and overcoming the difficulties which emanated from the post-Soviet transition problems, especially with providing necessary

³ Each of the member countries has a different amount of share in the organizational structure of the Black Sea Trade and Development Bank. While Greece, the Russian Federation, and Turkey have shares of 16.5% each, Romania has 14%, Bulgaria and Ukraine 13.5%, Azerbaijan 5%, Albania 2%, Armenia and Moldova 1%. Georgia partnered with 0.5% share.

assistance to the post-Soviet countries in their transformation to the market economy, have come to fore as the main areas of collaboration between the member states. In addition, the BSEC had been perceived as an important actor to gain international recognition in the post-Cold War international order for the newly founded post-Soviet republics (Manoli 2016).

In order to strengthen the economic cooperation between the member states and to promote the Black Sea regionalization process, the BSEC member countries signed a “Declaration of Intent for the Establishment of the BSEC Free Trade Area” in 1997 during the Special Meeting of the Ministers of Foreign Affairs with the participation of the Ministers responsible for Economic Affairs, held in İstanbul. In fact, the BSEC Free Trade Area has been expected to positively impact the member countries, especially in the fields of intra-regional trade, foreign direct investment, and regional growth. Additionally, a report has been published by the PABSEC in 1997 titled “The BSEC Free Trade Area: Part of the New European Architecture” that emphasized the establishment of a BSEC Free Trade Area to cover the BSEC region while further integrating its member countries into the New European Architecture as a significant goal from the very beginning of its institutional foundation (PABSEC 1997). The report also drew attention to the importance of creating a dense web of trade interdependence between the nations of Western, Central, and Eastern Europe, as it would contribute to greater amity within the European economic space and consequently facilitates the construction of a comprehensive and inclusive set of security institutions while paving the ground for political trust between BSEC themselves and between BSEC and EU countries (PABSEC 1997).

In a similar vein, after two years of the negotiation process, the BSEC released a new agenda, “Economic Agenda for the Future: Towards a More Consolidated, Effective and Viable BSEC Partnership” adopted by the Council of Minister of Foreign Affairs in Moscow on 27 April 2001 (BSEC 2001a). The Agenda was of importance as the first document defining the areas of cooperation as well as identifying persistent economic limitations in the region as a roadmap for common action. The Agenda reiterated a comprehensive approach to defining subregional cooperation areas such as environment,

infrastructure as well as social and cultural development, democracy building, education. While underlining the areas of multilateral cooperation, the BSEC countries also acknowledged specific difficulties that weakened the regional cooperation in the Black Sea region, such as i) shortage of financial resources and failure to attract significant investments from abroad which hamper the participation of the BSEC Member States in joint programs and projects of cooperation; ii) a lack of coherent definition of aims, priorities, and long-term issues; iii) a discrepancy between the proclaimed objectives and the degree of implementation of projects adopted under the BSEC aegis; iv) low efficiency in implementing adopted resolutions and decisions, and absence of a mechanism responsible for monitoring their compliance by the appropriate national authorities; v) insufficient coordination in essential parts of the organization; vi) too much bureaucracy (BSEC 2001a, 204).

Similar notions were underlined in a report titled “Economic Integration in the BSEC Region: Current State and Future Prospects” released by the PABSEC Economic, Commercial, Technology and Environmental Relations Committee in 2002. According to the Report, the major deficiencies in regional economic integration are not only due to institutional, regulatory/legislative, and economic barriers but also due to inadequate infrastructure, persisting political risk, an underdeveloped private sector and unfavorable business practices in the region (PABSEC 2002). In line with the purpose of achieving regional integration in the Black Sea region, the BSEC stresses an urgent need to build a new sense of partnership based on trust and confidence as well as a higher level of political and economic collaboration between the member states.

As regards the objectives ten years after its foundation, the BSEC had given weight to the commitment of the BSEC states to the UN, WTO, OECD, and the EU for the liberalization of their foreign economic affairs while underlining the importance of their partnerships/engagement to create the necessary impetus for the regional integration.⁴ As an example, in cooperation with the OECD and the

⁴ While Bulgaria, Romania, and Turkey became a member of the World Trade Organization (WTO) in the mid-1990s, the post-Soviet countries, such as Armenia,

BSEC Business Council, a new initiative called the Black Sea Investment Initiative was launched by the BSEC, focusing on promoting investments in the BSEC region at the meeting of Ministers of the Member States responsible for SMEs in 2001. This endeavor, of which the BSEC Business Council has taken the leading role, mainly aimed at creating a forum for public-private dialogue between the business communities of the BSEC member states, especially SMEs on the one hand, and government authorities on the other in order to stimulate debate and promote better mutual understanding of the different standpoints. In order to pursue an effective SME policy, a more inclusive role has been attained to SME representative organizations, such as chambers of commerce and industry, chambers of crafts, employers' trade unions, and other associations in order to create a social dialogue between public and private actors (BSEC 2001b).

Another crucial issue regarding the first decade following the establishment of the BSEC is the organization's role in ensuring the international recognition of the post-Soviet countries that declared their independence following the collapse of the Soviet Union. Many post-Soviet countries in the region faced various political and economic difficulties immediately after their independence declaration. In this respect, the BSEC was seen as a gate to the Euro-Atlantic World order, of which the newly founded post-Soviet countries desired to be a part (Manoli 2012, Üstün 2013). In this regard, joining the organizational structure of BSEC had been perceived as highly crucial for strengthening the relations with the West while ensuring their international recognition as well as realizing the strategic goals in the post-Cold War geopolitical order (King 2001, 58-59).

For instance, Grigol Mgaloblishvili, who was the former Georgian Ambassador to Turkey, identified Georgia's membership in the BSEC as a part of the country's national security and strategic foreign policy objectives (Mgaloblishvili n.d.). Likewise, İsmail Cem, who was the Minister of Foreign Affairs of Turkey at the end of the 90s, drew attention to the potential of BSEC in the environment of political and

Georgia, and Moldova, joined the WTO structure in early 2000s. Russian Federation's membership to WTO has rather taken place later, in 2012.

economic uncertainty that emerged in the post-Cold War geopolitical order. İsmail Cem highlighted the importance of the economic integration to be provided by the BSEC in the Black Sea region as regards to the globalization process and stated that the strengthening of the BSEC would be useful in ensuring the stability in the Eurasian region at the BSEC Foreign Ministers Council Meeting held in Athens in 1999 (Milliyet 1999).

In 2002, the BSEC celebrated its decennial anniversary in İstanbul, where the member countries reinvigorated their commitment to the organization's founding principles. In the İstanbul Decennial Summit Declaration, the role of the BSEC in promoting democracy, market economy, and open society, as well as the importance of the BSEC Charter to realize its resources to the maximum extent, had been underlined (BSEC 2002). Despite all these attempts, limited intra-regional economic activities had been persistent between the member states, especially considering the first ten years after the BSEC's foundation. The difficulties mainly addressed were the region's structural economic problems, such as high tariffs on exports and imports, the inadequacy of existing bilateral and multiple trade relations and agreements between the countries, and the non-liberalization of the exchange rate system (PABSEC 2002). In other words, the inadequate market conditions of the post-Soviet member countries and the ongoing economic instabilities due to their transition to a liberal economic order shortly after their independence have determined the weak economic relations among the member states at the regional level considering the first period of the BSEC as the first regional organization in the Black Sea region.

The BSEC's Second Period: New Actors and New Geopolitical Dynamics in the Black Sea region

In the early 2000s, the Black Sea region started to draw more attention at the global level since extra-regional actors such as the EU, NATO, and the US directed their interests to the region's expanding strategic importance. Thereafter, the Black Sea region has become the

focal point for three regional projects in world politics: the European Neighborhood Policy (ENP) of the EU, the Near Abroad Policy (NAP) of the Russian Federation, and the Broader Middle East-North Africa Initiative (BMENA) of the US (Aydın 2012, 49).

Specifically, the EU's involvement in the region carries much significance in respect to the Black Sea regionalization process since the BSEC identifies itself as closely connected to European integration while also taking part in various European regional initiatives.⁵ Although the EU initiated important regional sectoral initiatives and programs in key areas of regional cooperation addressing the Black Sea region, following the accession of Romania and Bulgaria to the EU in 2007, the EU started to gain a new perspective towards the region since its territorial borders reached the Black Sea region (Manoli 2010, 2011).⁶ In other words, the inclusion of Romania and Bulgaria in the EU's institutional framework created a momentum for the EU to develop a more holistic approach towards the Black Sea and strengthen its strategic role in the region (Emerson 2009, 1).⁷ In light of these dynamics, the EU initiated one of the most substantial regional initiatives regarding the Black Sea region with the Black Sea Synergy in 2007, which turned into its primary regional strategy for the Black Sea region (Black Sea Synergy 2007).

The Black Sea Synergy, which includes Armenia, Azerbaijan, Bulgaria, Georgia, Greece, Romania, Moldova, the Russian Federation,

⁵ The BSEC has already developed inter-regional relations through other regional cooperation and held coordination meetings in collaboration with the Adriatic-Ionian Initiative (AII), the Danube Cooperation Process (DCP), the Southeast European Cooperative Initiative (SECI), the South East European Cooperation Process (SEECP), the Council of Baltic Sea States and the Nordic Council of Ministers, the Central European Initiative (CEI), and the Stability Pact for South-Eastern Europe (SP). See Pavluk (1999) and Konidaris (1999).

⁶ These include the INOGATE (Interstate Oil and Gas Transport to Europe) program and multilateral agreement, the TRACECA (Transport Corridor Europe-Caucasus-Asia), and the Black Sea PETrA (Pan-European Transport Area) programs on transport, and the DANBLAS (Danube-Black Sea Environmental Task Force) initiatives.

⁷ Since the Russian Federation's geopolitical role as the leading energy supplier in the region has increased, the concept of energy security and the need for diversification of energy routes became a more prominent issue in the region. As of 2018, the Russian Federation is the main EU supplier of crude oil, natural gas, and solid fossil fuels, and almost two-thirds of the extra-EU's crude oil imports came from Russian Federation (30%), Iraq (9%), and Saudi Arabia, Norway, Kazakhstan and Nigeria (7% each) (Eurostat, 2019).

Turkey, and Ukraine, aims to provide better regional cooperation and development among the countries in the Black Sea region. Accordingly, the Black Sea Synergy has been described as a flexible general framework in order to provide a regional framework for the countries in the region in order to achieve effective cooperation in the areas such as energy, trade, education, science and technology, transport, environment, maritime policies and fisheries (Black Sea Synergy 2007). While underlining the coordinated action required by the opportunities and difficulties, the EU accentuates the necessity of enhancing multilateral relations in the region with the Black Sea Synergy (Üstün 2013, 183). In other words, the Black Sea Synergy put the Black Sea region on the radar screen of the EU as a single distinct policy area, a unit of analysis and not a vague geographic space for the first time (Japaridze et al. 2010, 14).

Following the launch of the Black Sea Synergy, the relation between the BSEC and the EU has considerably become more apparent, since the Black Sea Synergy grants a vital role to the BSEC that is acknowledged as the most inclusive and institutionalized regional organization in the Black Sea region (Tsantoulis 2009, 4). The deepening relations between the two organizations became more tangible with the declaration of Benita Ferrero-Waldner who has been EU Commissioner for External Relations and European Neighbourhood Policy. She underlined the importance of building closer contacts with the BSEC as well as seeking observer status in the organization (EU Commission 2007).

In addition, a report titled “BSEC-EU Interaction: The BSEC Approach” highlighted the common grounds between the two important institutions, and the EU was granted observer status to the BSEC on 25 June 2007 at the BSEC’s 15th Anniversary Summit (BSEC 2007). The BSEC-EU relations continued to become more apparent in the following year. In 2008, the Special Meeting of the Council of the Ministers of Foreign Affairs of the BSEC Member States was held in Kyiv, where the BSEC member countries drafted a Declaration on “BSEC–EU Enhanced Relationship,” in which BSEC member countries identified the interaction between the BSEC and EU as an “integral part of overall European economic, scientific and environmental cooperation” while emphasizing the aim of the BSEC “to achieve

proper synergies by coordinating the efforts with various integration and cooperation formats, international organizations and institutions, in particular financial ones, acting in the BSEC area" (BSEC 2008).

Meanwhile, in addition to the BSEC-EU relations, the level of engagement between the countries in the Black Sea region and the EU started to become stronger since the early 2000s. While Bulgaria, Greece and Romania are EU members, Turkey has a candidate status to the EU since 2005, and the Russian Federation continues to pursue a Strategic Partnership with the EU. In addition, Georgia, Moldova, and Ukraine have further advanced their relations with the EU with the signing of Association Agreements (AAs) including Deep and Comprehensive Free Trade Agreements (DCFTAs) as well as Visa Liberalization Dialogue that was concluded with visa-free travel for these countries to the Schengen area for short visits. Despite the fact that all these countries are BSEC members, the reflection of their cooperation with the EU has a marginal impact.

In tandem with these developments, one could argue that although the level of bilateral relations between the EU and the countries in the Black Sea region tends to increase, its reflection on the Black Sea regionalization process remains limited. The strengthening relations between the BSEC and the EU offer mutual benefits for both sides at the regional level; however, the areas of cooperation between the two actors remain limited as they are generally carried out by ad-hoc Expert Working Groups rather than in coordination with the permanent institutional mechanisms and existing bodies (Manoli 2016, 202). Besides, the EU initiated a new program addressing the Black Sea region with the Eastern Partnership Program (EaP), which was declared at the Prague Eastern Partnership Summit in 2009, to bring a new dimension to its relations with the countries in the region. However, in the Joint Declaration of the Prague Eastern Partnership Summit, the EU seemed to remain reluctant to stress the role of BSEC and the potential contribution of the EU-BSEC partnership to the region. In fact, the BSEC might be perceived as a problematic regional organization due to its composition and heterogeneity with conflicting interests among its member states that remain ineffective to bring the region closer to the EU (Japaridze et al. 2010, 14). The complex dynamics between the

BSEC member states led to certain reservations from Brussels regarding the organization's goals and the political commitment of its members (Manoli, 2016, 204). Consequently, despite the EU's intention to contributing to the Black Sea regional integration process with the launch of Black Sea Synergy, it created a gravitational pull for the countries in the region with the inception of the EaP, which replaced its former initiative with the notion of deepening bilateral cooperation and more profound integration with the EU instead of promoting mechanisms to enhance regional integration.

In parallel with the growing interest of the EU and the US towards the region, the Black Sea started to be reconstructed at the intersection of different strategic interests and another great power rivalry between the Russian Federation and the global actors in the early 2000s (Aydın 2012, 54). The so-called resurrection of the post-Cold War competition for gaining strategic dominance in the region prompted the Russian Federation to reclaim its sphere of influence in the region. For instance, at the 15th Anniversary of the BSEC in 2007, Russian President Vladimir Putin expressed that Russian Federation's special interest in the Balkans and the Black Sea region takes its roots from "a number of historical, ethnic, humanitarian factors, while Russian Federation, with its growing capabilities, is returning to these regions" (Kremlin.ru 2007).

The positive developments on the level of relations between the countries in the region were hindered by the eruption of new conflicts in the region in the late 2000s. The 2008 NATO Bucharest Summit, in which Georgia and Ukraine had hoped to join the NATO Membership Action Plan with the strong support of former US President G. W. Bush, led to the rise of a new geopolitical interplay between the Russian Federation and the Western actors in the post-Cold War era (Lesser 2007, 19-20). The Russian Federation's strong objection to the two countries' eventual membership in NATO coupled with more aggressive policies of the Russian Federation which resulted in the 2008 Georgia Russia War, the 2009 Russia Ukraine gas dispute followed by the annexation of Crimea by Russian Federation in 2014.

In this respect, the role of the BSEC to prevent new security challenges (in addition to the post-Soviet frozen conflicts) in the region remains minimal due to several reasons. The institutional

structure of the BSEC does not allow any mechanism to take concrete measures for preventing security problems, as its principal and subsidiary organs are designed to enhance economic cooperation among its member states. Another difficulty stems from the fact that the BSEC member states are diverse pertinent to their (geo)political orientations. In fact, there are ongoing frozen conflicts between some of the member states, which diminish the likelihood of reaching consensus on specific issues and negatively affect the vulnerable security dynamics in the region. Finally, the BSEC member countries are also involved in different international and regional structures/organizations. For instance, Greece, Romania, and Bulgaria are members of the EU, while Armenia and the Russian Federation are members of the Eurasian Economic Union. Also, Georgia, Ukraine, Azerbaijan, and Moldova are the founding members of GUAM, in addition to their institutional ties with the EU. All these come to the fore as essential factors that weaken the potential of the BSEC to take necessary steps as regards ensuring stability and security in the region while negatively affecting the Black Sea regionalization process.

Towards the BSEC's 30th Anniversary: Deepening the Areas of Economic Cooperation

The BSEC reinvigorated its goal to enhance regional economic cooperation at its 20th anniversary in 2012. As stated in the Charter, the main purpose of the BSEC is to liberalize and develop the existing economic relations while removing the obstacles for enhancing commercial activities in the region to pave the ground for the Black Sea regionalization process. Following this aim, the BSEC announced a new strategy document in 2012, titled "BSEC Economic Agenda Towards an Enhanced BSEC Partnership" at the 20th anniversary of the Organization celebrated in İstanbul with the participation of Heads of State and Government of the countries in the region (BSEC 2012a). Following the Agenda, new targets and priority areas that would develop and deepen economic activities between the member states have been determined. The BSEC member states renewed their commitment to the BSEC and expressed their willingness to jointly

cope with the new challenges and look for opportunities arising at the global and regional level, in line with the priority areas put forward by the organization. The strategy document has examined the region's advantages, priority areas for investment, opportunities, and constraints regarding regional cooperation, while also denoting the region's weight in the European economic structure. Following this aim, the member states agreed on i) pursuing sustainable development; ii) strengthening the project-oriented dimension of the BSEC; iii) cooperating with international and regional organizations and institutions as general guidelines of action in addition to seventeen priority areas of action extending from intensifying intra-regional trade and investments to good governance and the rule of law (BSEC 2012b). These objectives included the areas of cooperation that BSEC member countries have already actively collaborated in, yet from a new perspective, taking into account the Black Sea region's geostrategic position, size, natural and human resources. In this framework, the document provided a broad framework for the role of BSEC in the short and medium-term in order to pursue a more effective and efficient regional integration.

The BSEC member states issued a joint declaration titled "Joint Declaration on Facilitating Intra-Regional Trade and Investment" at the ministerial level meeting held in Chisinau, Moldova in May 2015. According to the Declaration, the relevant ministers of the countries in the region and the relevant BSEC Working Groups announced that they would establish a new Regional Trade Facilitation Strategy for the BSEC region in accordance with the rules and standards of the World Trade Organization (WTO), and trade facilitation activities between BSEC member states would be given priority. While the member states emphasized the importance of undertaking efforts for trade facilitation and simplification of customs procedures, elimination of non-tariff barriers to trade, enhancing transparency and regional cooperation in investment policies, the added value of SMEs in the economic and social development of BSEC member states for economic growth was highlighted in the Joint Declaration (BSEC 2015).

Accordingly, at the BSEC Working Group meeting held in May 2017, the member states agreed on the "Regional Trade Facilitation

Strategy Document". The Strategy Document mainly addressed the issues that BSEC member states should not be limited to the obligations they have taken under the WTO Agreement on Trade Facilitation. On the contrary, they shall expand the scope of regional cooperation to the areas not covered by the WTO. To pursue this aim, the Strategy Document initiated new cooperation areas to be developed in the field of e-commerce among the BSEC Member States and the necessity of developing secure, transparent, cross-border e-commerce opportunities covering the region (BSEC 2017a).

As indicated previously in this chapter, economic cooperation is the fundamental principle of the regional integration process. The intra-regional trade volume of the Wider Black Sea region reached \$167.3 billion annually as of 2018, while the region has shown a stable increase in economic growth level from the 1990s until the global financial crisis in 2008 (BSEC 2018). Although the intra-regional trade volume has increased in the last ten years, it is still below 20% when compared to the level of all commercial activities of the BSEC member states (Bölükbaşı and Ertugal 2012, 7). Between 2010 and 2015, the Black Sea region has been made up of the world's weakest economies, with Latin America and the Caribbean with an annual average growth of 2.1% lagged behind the Central and Eastern Europe and Baltic countries (BSTDB 2015, 9-10).

Table 1: Summary of Key Economic Indicators for 2018, by BSEC Member Country, Source: BSTDB 2018

	Real GDP Growth	Inflation	Cur Acct Bal / GDP	Budget/ GDP	Public Debt/ GDP	FDI/ GDP
Albania	4.3%	2.0%	-6.2%	-1.6%	71.0%	7.5%
Armenia	5.3%	3.2%	-5.4%	-2.8%	52.5%	2.3%
Azerbaijan	1.4%	2.3%	12.9%	5.6%	20.7%	14.9%
Bulgaria	3.3%	2.8%	4.5%	0.5%	23.3%	3.1%
Georgia	5.2%	2.6%	-11.0%	-2.8%	45.7%	10.8%
Greece	2.1%	0.6%	-1.9%	-0.1%	188.1%	2.0%
Moldova	4.0%	3.0%	-10.5%	-0.85%	30.5%	2.1%
Romania	4.3%	4.6%	-4.5%	-3.0%	37.2%	2.9%
Russia	2.3%	2.9%	6.5%	2.7%	15.3%	0.9%
Serbia	4.4%	2.0%	-5.1%	0.4%	58.8%	5.9%
Turkey	3.1%	16.3%	-4.5%	-2.0%	32.3%	1.2%
Ukraine	2.9%	10.9%	-4.3%	-1.9%	70.5%	2.4%
BSEC Region	2.7%	6.3%	1.7%	0.7%	36.8%	1.7%

As Table 1 indicates, the GDP growth rate in the BSEC region was 2.7%, which was behind the world average and the growth rates of developing countries in 2018 (BSTDB 2018, 14-15). Similarly, member states had limited GDP growth in 2018; nevertheless, they had low inflation rates except for Turkey and Ukraine. Also, the public debt to GDP ratio remained high in almost all the member states, excluding Azerbaijan and the Russian Federation. This explains why most of the BSEC member states had a limited percentage of economic growth.

The adverse effects of the 2008 global financial crisis still play an essential role in the Black Sea region's economies which also reflects on the intra-regional trade numbers. The numbers demonstrate that more than a decade later, the member countries continue to pay attention to reducing external dependence and their potential economic vulnerabilities while considering the fact that in order to achieve stability, their economies need to ride out potential turmoil on their own, without external sources of financing (BSTDB 2018, 16). In addition to the vulnerable economic dynamics considering the post-2008 financial environment, the region's heterogenous structure

needs to be stressed as another crucial factor that hampers the potential of regional integration. After all, although their physical proximity binds the members of the BSEC together, they differ significantly in terms of territory, population, economic structure, and political orientation (Zhelev 2020).

Another challenge related to the limited intra-regional economic cooperation emanated from double taxation as an important obstacle to the region's commercial activities. In fact, while slowing down economic progress, double taxation affects both states and tax-payers in the member countries. Due to this heavy financial burden, the member states face certain difficulties in attracting foreign investment and increasing competitiveness in their national enterprises which would have direct consequences for their economies. In order to solve the problem of double taxation, a report titled "Conclusion of Preferential Trade Agreements with a View to Eliminate Double Taxation Between the BSEC Member States" was published by the Economic, Commercial, Technological and Environmental Affairs Committee within PABSEC in 2019 (PABSEC 2019).

Following a recommendation paper by PABSEC, titled "Conclusion of Preferential Trade Agreements with a view to Eliminate Double Taxation," the member states are advised to i) continue the practice of concluding new and updating the existing agreements on the avoidance of double taxation on the basis of the Model Convention of the Organization for Economic Cooperation and Development (OECD) ii) take steps to conclude both the agreements on avoidance of double taxation and the agreements on the provision of administrative assistance in tax matters; iii) extend special attention to improvement and enhancement of exchange of information on taxation regimes among the national tax administrations of the BSEC countries through the instruments already in force; iv) update the national taxation legislation and coordinate the tax collection practices so that there is no legal uncertainty for the tax-payers in the BSEC countries (PABSEC 2019).

On the other hand, the Black Sea Trade and Development Bank, established as the necessary institutional mechanism to provide financial resources for regional investment, has recently become an

effective actor in increasing intra-regional economic activities in the late 2000s. According to “Medium Term Strategy and Business Plan 2019-2022” released by the Bank, the investment portfolio of the Bank would be increased to achieve a higher rate of development and regional cooperation by the end of 2022 (BSTDB 2019a). The Strategy Report set out the principal goal of the BSTDB period as to achieve higher development and regional cooperation impact while significantly growing the size of its portfolio to €2.1 billion outstanding and €2.3–€2.4 billion signed operations by the end of 2022.

The Bank also decided to reallocate its resources from the private sector to the public sector, especially towards the potential cooperation areas that would increase infrastructure development focusing on certain fields such as utilities, energy, transportation, IT and telecommunication, capital markets, airports, ports, municipal and communal services and facilities, and environmental-related operations (such as energy efficiency, water, and solid waste treatment, climate change) (BSTDB 2019a, 8). In fact, this change in the direction of investment from the private sector to the public sector is identified as an important strategic change regarding the Bank's investment priorities since its establishment.

At the 25th Anniversary Summit of the BSEC, which was held in Istanbul in May 2017, the organization reaffirmed its commitment to the principles of the United Nations Charter, the Helsinki Final Act, the Paris Charter for a New Europe, as well as the generally recognized principles and rules of international law, while also defining a new vision for the member states to turn the Black Sea region into a zone of peace, stability, and prosperity (BSEC 2017b). The Summit had been a platform to reinvigorate the quarter-century of cooperation and called upon the member states to act together to follow the 2030 Agenda for Sustainable Development adopted by the UN General Assembly in 2015 at the regional scale (UN 2017).

Accordingly, UN, OECD, UNDP, and BSEC organized a high-level event called “Global Hub for the Governance of the Sustainable Developments Goals” to facilitate inter-governmental cooperation and the exchange of good practices for the implementation of the 17 Sustainable Development Goals of the 2030 Agenda, including an

online knowledge platform that will provide access to successful examples, during the 74th UN General Assembly in September 2019 (BSUN 2020). In order to reach the collective commitments under the 2030 Agenda for Sustainable Development, the member states gathered together under the Romanian Chairmanship in Office for a high-level conference held on “The intensification of regional cooperation for the implementation of the Sustainable Development Goals” in November 2020. During the Conference, member states elaborated the issues addressing the environment and green energy, sustainable economic development and competitiveness, as well as discussing good practices among public institutions, the academic sector, and civil society and stakeholders directly or indirectly involved in the implementation of the 2030 Agenda (BSEC 2020).

As previously stated, according to the BSEC Charter, the establishment of a free trade zone in the region stands out as one of the main objectives of the BSEC. However, although the BSEC will celebrate its 30th anniversary in 2022, the member states have not yet gone beyond the declaration of intent to take concrete steps to realize its formation. This failure is not indeed surprising, given that the countries of the region are far from stable in terms of both economic and security reasons due to the volatile geopolitical dynamics of the region.

According to the member countries' economic parameters, the Black Sea region has a very heterogeneous picture. Almost every country in the region has different economic dynamics, as they differ from each other in terms of their trade volumes, commercial activities, GDP levels, and sectoral growth numbers. In addition, the post-Soviet countries, particularly Georgia, Armenia, and Ukraine, are still struggling with the difficulties of the transition to a free market economy and have fragile economic growth dependent on limited foreign investment (Sayan 2005, 346).

The 2008 financial crisis negatively affected the economical parameters of many BSEC member states, and the purchasing power of the countries depreciated considerably in return in the long run. In addition, when the intra-trade numbers between the BSEC member countries are examined, the intra-trade volume only reached 15% in 2019, which its nominal value was \$213.2 billion in 2019, while as a

ratio to GDP, it was 6.7%, down from 6.8 recorded in 2018 (BSTDB 2019b).

Another main problem regarding the formation of the BSEC free trade zone is closely related to the organization's institutional structure. As a regional organization, the BSEC is far from having a rapid decision-making process to be able to speed up intra-regional investment conditions in the region due to its organizational structure. As the BSEC Charter defines it, the organization's main decision-making mechanism consists of the Council of Ministers of Foreign Affairs determined by the Foreign Ministers of the member states. However, the decisions taken by the Council do not have any binding force unless the executive bodies of the member states approve them. This mechanism invokes certain questions about whether the BSEC as a regional organization, whose major aim is to enable economic cooperation, should continue to have an organizational framework focusing on the private sector or state-led structure (Sabancı 2012, 42).

Conclusion

The BSEC, which will celebrate its 30th anniversary in 2022, aims to overcome the problems that emerged after the collapse of the Soviet Union, develop the existing regional cooperation between countries, and promote regional stability and prosperity in the Black Sea region. As the first regional organization initiative in the Black Sea region, the BSEC has directly been involved in the new (geo)economic and (geo)political dynamics in the post-Cold War era while still playing a leading role in the Black Sea regionalization process by creating a significant regional synergy as regards to the different areas of cooperation including trade, education, culture, tourism, energy, transport, the environment between the member states.

However, the BSEC has faced severe obstacles regarding achieving the goals specified in the Charter for taking the leading role in the Black Sea regionalization process. Some of these difficulties address institutional constraints such as the complex organizational structure, the absence of rapid decision-making and implementation mechanism, and the lack of a binding feature of the decisions adopted

within the institutional framework of the BSEC unless ratified by the relevant bodies of the member states. Also, the state-led institutional structure and functioning of the organization causes the political conflicts between the member countries to overshadow the possible economic activities; therefore, the necessary steps in the regional integration process are not easily taken.

Another problem stems from the fact that business people are not included in the decision-making mechanism of the BSEC as the essential agents for regional integration. More specifically, the lack of necessary coordination between the primary organs and business people within the organizational structure of the BSEC and the absence of a body that would involve the business people in the decision-making process come to fore as important obstacles to the Black Sea regional cooperation. In this respect, without initiating a major organizational restructuring process, the prominent actors in the private sector need to be included in the organizational structure and decision-making mechanisms in the BSEC. In doing so, the potential of economic cooperation in the region is more likely to be realized more comprehensively, and that provides significant benefits to the regional cooperation while mitigating the negative impact of the prevailing conflicts in the region.

Although the BSEC repeatedly declared to share the common vision of regional cooperation as a part of the integration process in Europe and to search for new ways to enhance cooperation and partnership with the EU since its foundation, the relations between the EU and BSEC remain limited with the cooperation efforts around ad-hoc Working Groups and sectoral partnerships instead of collaborating through permanent institutional mechanisms. In fact, the EU has become a regional player with the launch of the Black Sea Synergy and EaP, as well as the EU membership of Romania and Bulgaria in 2007, which was expected to enhance the regional cooperation potential of the BSEC countries. However, the EU's further engagement created a particular gravitational pull for the countries in the region towards the EU itself rather than contributing to the Black Sea regionalization process.

More importantly, the intensifying security problems coupled with the frozen conflicts and new territorial problems are likely to

deepen the dividing lines between the countries in the region since the end of the 2000s. Following the 2008 Georgia-Russia War, the 2009 Russia-Ukraine gas dispute followed by the annexation of Crimea by Russia in 2014, and recent Azerbaijan and Armenia War on Nagorno Karabakh in 2020, the fragile security dynamics and trust between the countries in the region have been severely damaged. Exposed to such conflict-prone regional security dynamics, the member states are reluctant to agree on any cooperation attempts related to hard security matters, all of which reveal the vulnerable and volatile security dynamics in the region.

Having considered all these dynamics in the Black Sea region, the BSEC's potential role as the main driver of the regional integration is not independent of the region's geopolitical dynamics. The different socio-economic and political conditions, as well as the security concerns of the member states weaken the likelihood of regional cooperation. In other words, the member states are less inclined to cooperate in the fields that might affect their national security and/or sovereignty, which leads to limited and/or selective cooperation patterns between the BSEC member states pertinent to the issues outside the realm of high politics as well. All these demonstrate that the conflict-prone security dynamics as well as deepening geopolitical cleavages in the region have been so dominant that they directly weaken the potential of cooperation regarding the issues that the member states perceive as a part of their national security and sovereignty.

Nevertheless, the BSEC still stands out as the most important regional organization that has the potential to create the necessary momentum for the Black Sea regional integration for almost thirty years. Despite all the limitations, the BSEC provides an important diplomatic ground on which the member states engage in strong cooperation in low politics such as trade, education, culture, tourism, transportation, and the environment. In this way, it increases the likelihood of negotiations between the conflicting sides, their desire not to cut their diplomatic relations and even start normalization process by keeping dialogue channels open between the countries. This reveals that although almost thirty years have passed since the establishment of the BSEC, it is still the leading institutional

mechanism that provides one of the most important and needed “soft power” ground for the member states both to overcome their deeply-rooted security concerns and possible conflicts as well as promoting the Black Sea regionalization process.

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Institute and Democracy Promotion in the South Caucasus: The Example of Georgia

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Abstract

The EU has changed its role from a bystander in the affairs of the Caucasus to that of an interested party with a clearly defined interest in the region. The Caucasus is still a troubled territory due to a number of unresolved economic, political and territorial problems. The EU is trying to expand its model of good governance while developing democratic procedures and solving local conflicts. In the South Caucasus there are three countries that are of strategic importance for the whole of Europe. Georgia is one of the first countries in the post-Soviet space which has carried out democratic reforms and already reached a high level of assessment by the international community. Nevertheless, there are many potential conflicts that the EU is forced to face.

Key words: Eastern Europe, Caucasus, Georgia, democracy, institute, promotion.

Introduction

Over the past decade and a half Europe has evolved from the role of a bystander to the affairs of the Caucasus to that of an interested party with clearly defined interests in the region. It is clear that the failure to build sovereignty in the Caucasus is directly related to the failure of governments to provide good governance and to the weakness of their democratic credentials (Cornell, Starr 2006). At the same time the Caucasus remains increasingly important for the global economic and energy security and specifically crucial for Europe (Cebotari et al. 2014).

Europe has three sets of inter-related interests in the Caucasus: governance, energy and security. Due to its location on major smuggling routes, the weakness of its state institutions, its economic collapse and the ungoverned or uncontrolled territories of the region, the Caucasus has been a major smuggling conduit. In addition, religious extremism is on the rise there, and this factor is particularly harmful in the Muslim areas of the Caucasus given the existing strong, well-financed and determined global Islamic radical movement with a compelling ideology.

Europe is waking up to the risks involved in its Russian energy dependence, and this makes the Caucasus increasingly important for global economic and energy security and specifically crucial for Europe. So, the EU has emerged in the South Caucasus as an agent for domestic change (Boonstra, Delcour 2015). The South Caucasus has become a full-fledged region integrated in the Soviet Union during the Soviet period; after 1991 it managed to complete the process of gradual disintegration which the EU seeks to limit and gradually redirect towards a new center. We can argue that the region is transforming from a Soviet Caucasus to a European Caucasus.

The three countries of the South Caucasus experienced a period of social instability and fundamental political reorientation after gaining independence in 1991 (Jödicke 2015). The population of the region is approximately fifteen million people. The South Caucasus connects the Caspian Sea basin with the Black Sea along the east-west axis and the Greater Middle East, Turkey and Iran, Russian Federation and the EU. In the early 2000s the Euro-Atlantic community strengthened its presence in the South Caucasus. In this shifting context the protracted conflicts took on a regional security significance.

The South Caucasus has been divided because of conflicts, blockades and trade restrictions. Armenia has been living under Azerbaijan and Turkey blockade for more than ten years. Important railway connections from Armenia through Georgia to Russia have been blocked since the early 1990s due to the government's inability to resolve political conflicts. Russia periodically applies a strict border regime in relation to the South Caucasus which also destroys the created economic chains.

The 2008 Georgia–Russia war provided a particularly strong impetus both for the EU and for Russia to involve the South Caucasus in wider regional projects.

Georgia is a specific case, while having access to the Black Sea and holding strategic importance for Russia and the EU because its territory covers one of the two routes running through the North Caucasus to the Black Sea (Cebotari et al. 2014).

Methodology

This research is based on the analysis of literature on "Europeanization," "the normative power of Europe" and "the presence of Europe in the Caucasus." In order to understand what political tactics Europe is using in relation to its neighbors, as well as how aware it is of itself in the global context of political relations, I will use the definitions of Del Sarto (2016) and Schimmelfennig (2015). The definitions they present about Europe's awareness of its role as an actor for changes in third countries are not exactly appropriate for describing the empires of the past, however, the authors often hint at this in their analysis. Speaking of Europe as an empire that, like the imperial state entities of the past, includes a complex transnational governance structure, multi-nationality and the retransmission of a single political will coming from a huge number of people, I do not agree that this practice is used by the modern institutions of power in the EU for several reasons.

Firstly, Europe is a Union, not a Federation, which, even if it gives commands to internal entities, still speaks on behalf of one political center. In Europe any political decision requires the consent of all the members of each member State. In other words, political opinion is not imposed but achieved on the basis of compromise. In addition, the movement towards closer cooperation within Europe (the "United States of Europe") does not find a clear response among people and political leaders. So, Europe is a Union of independent States with national governments that have delegated some of their powers to the center, and not vice versa (as, for example, with the Soviet Union).

The second reason why I don't think the definitions given by Del Sarto (2016) and Schimmelfennig (2015) in relation to the EU are

correct is because complex governance structures, multi-nationality and representation of a large number of people are the usual rule even in relation to any national state, let alone such authoritative structures like the EU.

In other respects, I support the authors' theses that nowadays Europe is not only an important player, but also a catalyst for internal changes in the policies of third countries and even a justification of legitimacy for governments that are supported by the EU.

This is particularly clear in the case of Georgia because the country's main geopolitical victory can be considered a recognition as an Eastern European state (Boonstra, Delcour 2015). The support of such structures as NATO and the EU strengthens the informal presence of Europe in Georgia and causes changes in domestic policy, political and economic reforms, attitude towards other segments of the population (e.g., women, minorities, etc.). Despite the positive reforms in many areas after the pro-western leader Saakashvili coming to power, Georgia still faces many challenges including conservative-minded population and the influence of its neighbors, the strongest of which is Russia.

The Russian Federation, as the successor of the Soviet Union's policy in the region, considers itself entitled to interfere in the internal affairs of Georgia and to impose its own model of conservative behavior portraying Western reforms as something atypical and unnatural for Georgia. In addition, the presence of Russian troops in Abkhazia and Southern Ossetia hinders the integration of these regions into the political body of Georgia, as well as the reform processes and closer cooperation with the EU and NATO which only recognize geographically unified States.

In conclusion, I will summarize the results of the studies and point out the difficulties that the EU still faces in the Caucasus. A good assistance in the preparation of this material was provided by the books of Cornell and Starr, as well as the works of Boonstra and Delcour (2015).

Europeanization beyond Europe: How Europe Uses Its Normative Power

The EU looks to reshape its role in the South Caucasus through reviews of its European Neighbourhood Policy (ENP) and its European Security Strategy (ESS), it will need to identify how it can build effective strategies to resolve the protracted conflicts in the absence of a membership prospect (Melvin, Oltramonti, Prelz 2015). The EU also sees the ENP as an opportunity for its new neighbors for "deeper political and economic integration in exchange for progress in reforms in different fields supporting democracy, the rule of law and a market-oriented economy" (Whitman, Wolff 2012). Neighborly relations and regional cooperation have been seen by the EU as fundamental steps in the process of Euro-Atlantic integration of the South Caucasus (Simão 2013).

The EU has an exceptional value for Georgia. It falls short of offering any prospect of membership, at the same time recognizing Georgia as an 'Eastern European country' (Boonstra, Delcour 2015). Debates about Georgia make Europe find compromise on the status of this country and its possible EU membership while demonstrating normative practices and establishing common political agenda.

After the 2003 Rose Revolution in Georgia the EU assistance strongly focused on the reforms of the Georgian justice system, which opened the way for political reforms (European External Action Service 2014). The 'Rose Revolution' in Georgia also increased the Caucasus' prominence in the European debate, just as the EU was getting ready to include several post-socialist countries in Central and Eastern Europe (Cornell, Starr 2006).

Significantly, it opened an opportunity for these countries to adopt EU rules and standards, while EU exerts its normative power by diffusing a set of principles, such as peace, liberty, democracy, the rule of law and human rights (Del Sarto 2016).

"Normative power of Europe" and the processes of "Europeanization beyond Europe" were brightly described in works of Del Sarto (2016) and Schimmelfennig (2015). This could be understood as transformation of partner countries bureaucracies while promoting new practices (Bahçecik 2013). "Unilateral policy

emulation" occurs when third countries are convinced of the superiority of the EU's rules and adopt them in order to more efficiently solve domestic problems (Schimmelfennig 2015). In the end, there are processes through efforts by external actors to "teach" or transmit policies (as well as the ideas and norms behind them) in order to persuade third states that these are "appropriate and, as a consequence, to motivate them to adopt certain policies" (Schimmelfennig 2005).

Besides the instruments and pragmatic reasons sustaining the deepening of regional interactions, region-building is also an ideational process of constructing a shared sense of belonging and identification (Neumann 1994; Adler, Crawford 2002).

The facts mentioned above indicate that the EU uses a normative approach while exporting norms and practices outside its borders.

Since the beginning of the 1990s, however, democracy, human rights and the rule of law have become "essential elements" in almost all EU agreements with third world countries as both an objective and a condition for an institutionalized relationship. The EU generally follows the model of "embedded liberal democracy" with varying emphasis on its components across regions and countries (Schimmelfennig 2015).

The instruments used by the EU to promote democracy, human rights, the rule of law, and 'good governance' look surprisingly similar across the globe, indicating that "the EU follows quite clearly a specific cultural script" (Börzel, Risse 2004). The EU also strengthened differentiation and conditionality by introducing the "more-for-more" principle, offering stronger partnerships and incentives to countries that make more progress towards democracy and good governance (Baracani 2009).

EU Policy on the South Caucasus

The Caucasus is riddled with armed conflicts—the ones between the separatist regions of South Ossetia and Abkhazia and the central authorities of Georgia, between the separatist regions of Nagorno-Karabakh and Baku, as well as between Armenia and Azerbaijan. In addition, the region does not have an institutional form. Unlike the

institutionally rich Baltic region, the Caucasus does not have a regional structure that allows the Georgian, Armenian and Azerbaijani governments to discuss issues affecting the region as a whole.

Nevertheless, the European Union pays special attention to Georgia, as two thirds of the routes connecting the Caucasus to the Black Sea pass through its territory (Cebotari et al. 2014). On 11 March 2003, the European Commission published its message called “Wider Europe—Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours” which sparked a debate on EU policies regarding its immediate environment (European Commission 2003). The South Caucasus was mentioned as a footnote in this post, “Due to its location, the South Caucasus thus also goes beyond the geographical scope of this initiative at the moment.”

A few months later, in June 2003, the three South Caucasian states, Armenia, Georgia and Azerbaijan were already identified in the strategic draft of the EU Security Strategy written by Javier Solana and approved at the summit in Thessaloniki (Iskandaryan 2016). Among the EU-15 members only France, Germany, Great Britain, Italy, the Netherlands and Greece opened embassies in all three countries of the South Caucasus. The initial participation of the EU was mainly in the provision of financial assistance. The EU was the largest financier of development projects in the region from 1991 to 2000, investing more than one billion euros in these three states (Cornell, Starr, Tsereteli 2016).

A number of factors led to an increased involvement and interest in the region. Firstly, all three states wanted to develop relationships with the EU in order to help resist the enormous influence of Russia as the successor of the USSR. In this regard, the EU gradually joined in the implementation of the first and second TACIS programs (technical assistance to the community of independent states) and then signed Partnership and Cooperation Agreements (PCA) in 1996. Without directly participating in humanitarian activities and assistance, the EU initially did not directly participate in security and conflict resolution issues, which were central to the 1990s after the outbreak of conflict in all three countries. In part, this can be explained by the fact that since the collapse of the USSR, a number of international actors and

organizations have been present in the region which greatly hindered EU participation (Lynch 2016).

Secondly, the EU's eastward geographic expansion brought the South Caucasus closer to it, especially after Romania and Bulgaria joined the Union in 2007. The 2003 Rose Revolution in Georgia that brought Mikheil Saakashvili to power became another symbolic act of the EU's interest in the Caucasus. A young and assertive atlantist, Saakashvili stressed in his inaugural address as president that Euro-Atlantic integration is a priority for Georgia's foreign policy (Adler and Crowford 2002).

Perhaps another milestone was the Russian-Georgian war of 2008. After the conflict was resolved, the EU gained a new visibility in the region, thus becoming the main security actor in Georgia with the deployment of the EU Monitoring Mission (EUMM).

Finally, the matter of energy supplies and EU energy independence is important. Azerbaijan with its huge gas resources has taken the key role in the EU's efforts to diversify the routes and sources of natural gas. The development of the Southern Gas Corridor (SGC) which will deliver gas from the Azerbaijani Shahdeniz II field to the Caspian through Turkey and Southeast Europe to Italy, is one of the elements of the EU strategy aimed at reducing dependence on Russian gas, strengthening the domestic energy market and overcoming the Kremlin's influence on the East-West gas route.

While the EU is gradually increasing its participation in the South Caucasus, creating a new bilateral and multilateral framework for cooperation, however it still does not have a clear strategic vision and consistent policy for the region (Boonstra, Melvin 2018).

Events in the Caucasus have clearly demonstrated that the same approach does not work for everyone. This has been acknowledged at the 2015 Eastern Partnership Summit in Riga with the participation of the EU which now takes a more differentiated and individual approach reflecting the realities of the region better.

Now, due to the lack of clarity regarding the future of a unified Euro-Atlantic policy in the region in connection to the election of Donald Trump, the role of the EU and its interaction with all three countries is more important than ever.

Difficulties and Unsolved Problems

Still, after the establishment of new policies, many issues remain unresolved. The West often deals with the formal, official structures, but is often unaware of the real, that is the unofficial, powerbrokers (Cornell, Starr 2006). This poses a tremendous developmental problem for the entire region, the one which slowly recedes but remains a formidable contender for forces seeking greater transparency, rule of law, and participatory government. It concerns secessionist territories which are under control of self-appointed separatist authorities with little to no accountability and virtually isolated islands where international treaties do not apply and official international presence is absent.

The weakening of regional links as a result of integrating the South Caucasus into the EU and Eurasian Economic Union political systems and markets is not confined to high politics. The introduction of two competing integration projects (both from EU and Russia) risks deepening intra-regional political fault lines through the creation of 'harder' local customs borders within the region (Melvin, Oltramonti, Prelz 2015).

Another unsolved problem is Georgia's duplicitous position in two political axes: European and Eurasian. An interesting phenomenon which was mentioned at the 2nd Congress of European Studies of the Caucasus in Georgia also reflects the division of Georgia between Russian and Western influences. It was noted that Russia is trying to impose its idea of international order through its language which was common for all citizens of the Soviet Union. The function of Russian language now is reduced to being a tool for interethnic communication between Georgians and the Armenian and Azeri ethnic minorities residing in Georgia, as well as the language of communication with many residents of other post-Soviet states (Van Der Wusten and Chanturia 2018).

Together with the increase of Russian "soft power", this may at first sight seem to create fertile ground for a gradual change of attitude in Georgia towards Russia (Kanashvili 2017). The context used by the Russian media has often become synonymous with the Georgian opposition. Although Russian propaganda efforts in Georgia

began after the fall of the Soviet Union, information warfare and distortion became an even more important tactic after the 2008 Russian-Georgian War and the 2014 invasion of Crimea. The Kremlin's current propaganda strategy in Georgia is increasingly complex-it must be, in order to contend with the country's perception as an occupier. Its strategy employs three different strategies, often used simultaneously. First, Russian propaganda in Georgia targets the groups most vulnerable to its influence, including ethnic minorities, older people, and those with low levels of media literacy and internet experience. Secondly, instead of promoting an explicitly pro-Russian narrative, Russian propaganda instead focuses on anti-Western rhetoric-more specifically, it works to inspire doubt regarding the possibility and promise of Western integration. The final method widely employed in Georgia is appeals to shared cultural and religious conservatism between the two countries (Rammer 2019).

Russia, having a strong influence on the older (Soviet) generation of Georgians, uses conservative values (such as Christianity, national identity, patriotism, family) while portraying the West as a "danger." Other classical methods of propaganda that the West is represented by are manipulation of neighbors, non-democracy, martial relativism, support for non-traditional identities (especially sexual ones), lack of sovereignty.

Polls taken in Georgia in 2017 show that the attitude towards the EU is not an important factor of public life at all (Caucasus Research Resource Centre 2018).

Bilateral framework of negotiations between the EU and third states often tends to undermine the model of multilateral regional integration that the EU seeks to promote (Christiansen, Petto, Tonra 2000; Bicchi 2010).

The analysis done by the EU Delegation in Georgia concludes such results: corporate social responsibility remains underdeveloped in Georgia. CSOs are hampered in their development because the majority of donors, including the EU, have tended to provide funding for specific projects, rather than for institutional strengthening of organizations, so-called core-funding) (European External Action Service 2013.). European states nevertheless gradually did become important donor countries to the South Caucasus in terms of

development cooperation, primarily assisting Georgia and Armenia (Cornell, Starr, Tsereteli 2006).

Governance- and Institute Promotion in Georgia

Despite the problems on the international and regional levels described above, in particular the fact that two constituent territories of Georgia (Abkhazia and South Ossetia) are under military and political influence of Russia, as well as the fact that the current Georgian government does not inspire confidence among Georgian citizens who believe that democratic reforms have slowed down (Kaffka 2020), the EU is an international organization and a legitimate force that plays an important role in the process of reforms and internal changes in Georgia.

When speaking about the "governance model", we start with the assumption that the intensifying web of association relations between the EU and third countries introduces a new form of democracy promotion through sectoral cooperation. Democratic governance goes beyond "good governance" because it includes general attributes of democracy, such as accountability, transparency and participation. It differs from the direct promotion of democracy as it does not target the general institutions and processes of the polity, such as elections, parties, or parliaments, but operates at the level of sectoral policy-making (Schimmelfennig 2015).

In this very context Georgia had been making great progress starting from 2012, when changing the relationship between society and government (European External Action Service 2013 & 2014). The Georgian National Platform (GNP) was founded under the name of Eastern Partnership Civil Society Forum (CSF) and included over 120 different members. The Platform had actively collaborated with both the Government of Georgia and the Parliament on the development and adoption of a European Integration Information and Communication Strategy 2013–2016. In December 2013 over 160 CSOs came together to sign a Memorandum of Understanding with the Georgian Parliament which foresaw greater involvement of civil society in policy processes through collaboration with the Parliament.

Also, early 2014 saw the adoption of the National Human Rights Strategy of Georgia 2014-2020. This was a landmark publication which complied with the highest international standards in its declarations (European External Action Service 2013 & 2014).

Moreover, in line with Goal 4 of the 2030 Sustainable Development Agenda (United Nations Organization 2021), the EU is committed to 'ensure inclusive and quality education for all and promote lifelong learning.' The EU supports education in Georgia through direct contributions to the state budget and by providing funding for specific projects.

Additionally, there are a number of study and mobility opportunities within the EU which are open to Georgians (mainly in the framework of the ERASMUS program). These are designed to facilitate exposure to the workings of the EU, its policies, and issues, as well as to promote intercultural understanding by supporting mobility between the countries.

In terms of technical and financial cooperation, the EU annually provides Georgia with over 100 million euros in aid (European External Action Service 2021).

Funding comes mainly from the European Neighbourhood Instrument (ENI) which supports Georgia in achieving the goals set by the CA. The EU-Georgia Association Agenda sets out a roadmap to achieve these goals.

The EU's key priorities for EU-Georgia cooperation (2017-2020) are outlined in a single support system that identifies three sectoral priority areas: public administration reform, agriculture and rural development, reform of the justice sector.

Georgia also benefits from the EU's regional and multi-country action programs funded under the ENI that include: contributing to infrastructure development; interconnection with neighbors in such areas as energy, transport and environment; supporting civil society; access to EU programs such as Erasmus +, Horizon 2020 and Creative Europe.

All this confirms the thesis that Europe as a whole is an actor of internal change in the Caucasus and an operator of reforms. The EU strengthens the rule of law and democratization, raises the level of education and brings peace to Georgia. This imposes additional

responsibility for the success and development of reforms in Georgia and other countries of the post-Soviet space, which the image of the EU as an actor of changes in a number of regions of the world largely depends on.

Conclusions

The Caucasus is still a difficult region to manage. Unresolved issues with political management, the development of freedom and non-state actors make this part of Europe very difficult for the reformation. The Caucasus is still divided by contradictions and internal conflicts, almost half of all newly formed (de facto) states in the post-Soviet space have been created in this region. Nevertheless, the EU has greatly changed its approach towards democratization of the Caucasus.

Fearing international terrorism, security of its borders and energy dependence on Russia, the EU sees the Caucasus as a region of its own interests. Russia clearly views Georgia's westward-leaning stance as a threat to its position as the regional hegemon and wants to prevent NATO from getting a foothold in the region. Anti-Western propaganda takes a few different forms. One of these tactics presents the West as a hotbed of liberal free-thinking that is antithetical to Georgia's Orthodox Christian heritage.

Georgia is the first country in the entire South Caucasus that works hard to integrate with the EU while the EU pursues its international policy related to the development of good governance, strengthening of democratic institutions and free market. Even though Georgia has achieved success, there are still a lot of unresolved problems that do not allow this country to become a full-fledged member of the EU.

The influence of Europe is still too small for Georgia. At the same time, Russia and its market play an active role in the country. Nevertheless, it seems that Europe has understood its mistakes and is now working on their correction.

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The Mechanisms of EU Influence in the Process of Developing Civil Society in Armenia

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Abstract

This paper examines the mechanisms of influence of the EU in the process of developing civil society in Armenia, its challenges and its strategy with Armenia in this regard. First a review of the history of civil society in Armenia is presented. After the Velvet Revolution in 2018, the Armenian civil society became an active agent of change. In the second half the paper discusses the mechanisms to influence civil society development in Armenia that the EU applies.

Key words: Civil society, Armenia, democracy promotion, Velvet Revolution.

Introduction

There is no common definition of civil society, just as there are no common, universally accepted definitions of the rule of law. The most common definition is that civil society is a type of union of citizens, in the existence of which there are certain conditions for the rule of law, human and civil rights and freedoms, participation in the political life of citizens (Russell 1969, 305). The formation of civil society dates back to the 12th century in England and emerged in the European developed countries such as Portugal, Spain, Italy in the 16th-17th centuries. Civil society was formed during the centuries-long struggle of citizens against the monarchy. A huge progress took place in the relations between the citizens, the civil society and the state in 1789, after the French Revolution, when the “Declaration of the Rights of Citizens” with its inalienable human rights—freedom, property rights and security were enshrined as legal norms (Carter 1998, 187).

According to Hegel, civil society, being the “middle” of society, appeared in the modern world much later than the state. Civil society unites people with the same or similar interests. Members of civil society act only within the scope of their own interests and those of other members of society do not concern them at all. However, without the interaction with other members of civil society, individuals cannot fully achieve their goals, which is why the interests of civil society members rise from private interests to the level of common interests (James 2007, 65-68). The ultimate goal of civil society is not to fight and oppose state power. On the contrary, a sustainable civil society must be able to cooperate with the state, use state resources, “help” and “direct” the state for the benefit of its members. This also means, however, that, if necessary, civil society must be able to oppose the state, to advance its interests and rights if they are violated (Russell 1969, 308). Taking into consideration that building a sustainable civil society is a primary goal for any country which has adopted democratic values, it is necessary to indicate that the topic is very actual in the case of the Republic of Armenia where the concept of civil society is a relatively new one, as a result of being a Post-Soviet country (Babajanian 2008, 1299–1319). This paper examines the mechanisms of influence of the EU in the process of developing civil society in Armenia, its challenges and its strategy with Armenia in this regard. It is noteworthy that civil society interaction and promotion has gained notable weight in the international community and in EU policies as a viable avenue for achieving democratic gains. Therefore, there is a need to examine the mechanisms of influence of the EU on the process of building a sustainable civil society in Armenia.

The Formation of Civil Society in Armenia, Its Challenges and Perspectives

The concept of “civil society” in western perception, according to which civil society is a guarantee of the democratic regime, is a relatively new phenomenon in the history of Armenia. Such perception of civil society in Armenia was accepted only at the end of the 1980s, when the collapse of the Soviet Union began. Before that

the existence of civil society in Armenia was impossible because of the strict control over every aspect of life in the Soviet republics. According to Article 6 of the Soviet Constitution, the head of the Communist Party was the only decisive force. Accordingly, all the power was concentrated around the government that controlled every aspect of life, political, social, economic, cultural, thus making the existence of active civil society impossible. However, national unity as a self-organizing and self-governing tool, had been a vital element of the Armenian nation for centuries. Always being under control of superpowers, the Armenian state had been losing sovereignty and falling under the domination of foreign countries, however, even under these circumstances, the Armenian nation has shown an alternative option, relying on the church. It plays an important role in regulating family relations and the patriarchal family as the basic unit of social organization in the communities in the pre-Soviet era as well as the Republic of Armenia (Babajanian 2008).

An example of self-organization was the Karabakh Movement. In 1988, a few years before the collapse of the Soviet Union, a democratic movement sprang up in Armenia. The Karabakh movement, which was triggered by the ethno-territorial Armenian-Azerbaijani conflict, had a considerable role in the democratization of Soviet society and it played a deconstructive role in Soviet Union as a whole. The main forms of the Karabakh Movement were peaceful protests, hunger strikes, rallies, however all of them were peaceful and involved no clashes with the police. The Karabakh Movement was the first one in the history of the Soviet Union to launch a nationwide strike, which lasted two years. The Karabakh Movement was another example of the self-organization of the Armenian nation, showing that even under the Soviet regime the nation could organize itself and express their civil disobedience which demonstrates that core elements of a civil society existed in Armenia before the collapse of the Soviet Union (Marutyan 2018).

The creation of modern civil society has been a complex process in Armenia, which began in 1991 after the collapse of the Soviet Union. It was a period of systemic transformation, which, in turn, implies the transformation of all sectors. The primary condition for the success of

such a large-scale transformation is the transformation of public consciousness. The Soviet Union was based on a value system which is entirely different from that of which some of the newly independent states like Georgia, Ukraine and Armenia tried to adopt. As a new, modern system model, these countries chose the values and institutions closer to that of the Western values. However, it should be noted that not all of the newly independent states have chosen this path, namely Kazakhstan and Belarus (Suny 1993, 192-212, 231-246).

The former Soviet Republics, particularly Armenia, existed in large regional cooperation under the Soviet rule, and at the same time, in self-isolation from the rest of the world. After the collapse of the Soviet Union, the rise of national awareness in the countries of the South Caucasus as well as in Armenia failed to quickly transform into newly independent states because of Russia's geopolitical influence in the region as well as its social and cultural ties. The Russian language has remained the main second language in which most of the countries of the former Soviet Union communicate, including Armenia. Even now, to some extent, Russian media are quite active in Armenia. Today, Russia's influence over the region has gained new forms such as military and economic assistance, direct military intervention, alliance politics. The post-Soviet period has been characterized by the conflicts and tensions in the region.

In times of globalization, the South Caucasian countries, Armenia, Georgia and Azerbaijan have chosen very different paths for their policy diversification, political and economic development. While Georgia has forged closer ties with the EU via the EU-Georgia Association Agreement in 2013, Armenia has become a member of Eurasian Economic Union and at the same time signed an Comprehensive and Enhanced Partnership Agreement (CEPA) with the EU in 2017, which entered into force on 1 March 2021. Azerbaijan, in its turn, did not join any legally binding economic integration. So, the differences in South Caucasus are marked by the choice between projects like the Eurasian Economic Union offered by Russia and the Deep and Comprehensive Free Trade Areas (DCFTAs) by the EU. Besides that, the South Caucasus has undergone quite different political processes which are also results of globalization and an emerging global society.

The earlier period of 2008 was notable for the activities of civil society as well. The March 1 uprising was noteworthy since it showed serious disobedience against the government, whose motives were political, social and public. Citizens were particularly struggling against election irregularities, but because of the lack of organizational strength and a high level of governance, citizens were not able to advance their issues and requirements. March 1 events of 2008 were the first serious civil clashes in independent Armenia. Dissatisfied with the presidential elections outcome, hundreds of Armenians started protesting, the leader of the protests was Levon Ter-Petrosyan who later on became the leader of the opposition alliance Armenian National Congress. Nikol Pashinyan, the current Prime Minister of Armenia also had its role during March 1 events. He was back then a political activist and also the editor-in-chief of Haykakan Zhamanak newspaper. According to protesters they were protesting peacefully, however on March 1 the police accused the protestors of using weapons, arm supplies and Molotov cocktails. With several buses being turned over and even rumors circulating that a child has been killed, the atmosphere got very tense. As a result of the clashes 10 people had died, 8 of them civilians. More than 200 people were injured and over 100 activists were jailed. The essence of the clashes were the presidential elections on Feb. 19. Armenia's first president, Levon Ter-Petrosyan was acting against Serzh Sargsyan, as the term limits banned the acting president Robert Kocharyan for ruling another term. As a result, the party in power, stayed in power with 52 percent of votes. It was said that the votes were bought. The Organizations for Security and Cooperation in Europe (OSCE) which sent 333 observers concluded that 16% of the count was either bad or very bad. Thus, the nine days of peaceful protests which were provoked by fraudulent elections that brought Serzh Sargsyan to power turned into violence. Even nowadays, after the Velvet Revolution of Armenia, the new government initiated an investigation on this matter. Prosecutors have built cases against several senior officials including former president Robert Kocharyan, former defense minister Seryan Ohanyan, former Secretary of National Council Armen Gevorgyan, as well as the chief of Yerevan military garrison during the violence, Yuri Khachaturov. Thus, 1 March 2008

was the first serious disobedience of the history of the independent Armenia when people self-organized and demonstrated their political moods. However, because of the lack of advanced self-organization skills and because of the repressive regime, the protesters could not fulfill their demands (Suny, 1993, 231-246).

By 2015 there were already some civil society initiatives in Armenia, however most of them failed. One of the vivid examples was the “Save Teghut” Civic Initiative. Teghut is a forest in northern Armenia which is rich in flora and fauna. In 2001 the Armenian government granted an exploitation license for a copper-molybdenum mine which would cause major environmental issues such as huge forest cuts and toxic waste. Several NGOs tried to dispute the legality of governmental approval of mine exploitation; however the initiative was a failure as it did not succeed in preventing the mine construction. Another example of civil society initiative failure was LET’S PRESERVE THE AFRIKYAN CLUB initiative in 2014. There was a building on Teryan street 11, in Yerevan, which was built by the end of the 19th century by a rich Armenian family, the Afrikyans. Later on, this became a club, where the city’s intellectuals and the elite gathered together to discuss important issues. In 2014, however the building was sold to a construction company, despite the fact that the building was recognized as a place of eminent public interest. The initiative called people interested in the destiny of the building to a peaceful rally. Transparency International tried to bring the case to the court but this led to nowhere as the appeal was dismissed and the case was dropped (Ishkanian & Manusyan 2019, 24.10.2019). Nevertheless, from 2015 we have been witnessing a huge progress in the actions of civil society in Armenia. Civil society already recorded a number of achievements, illustrated by the “Dem em” movement within which civil society tried to fight against the unjustified rise in prices for transport services or oil provided by the state. Civil society was also successful in the fight against mandatory pension component deposits. As a result of the protests, the “obligatory” deposits were changed into “elective” ones, and they were turned into obligatory only for people working in state institutions (Freedom House 2016). The essence of the issue was that any citizen born after 1973 would have to pay 5% of the income to a special personal savings fund,

controlled by the government and the Central Bank. The money would be kept, invested and made available to the individual upon retirement. The main demand of the DEM EM initiative was to remove the mandatory element of the pension reform, to consult in such cases first of all with society and hold a referendum on the issue. As a result of mass demonstrations even the most influential advocate of the new reforms, then Prime Minister Tigran Sargsyan, admitted that the law had shortcomings and called society for dialogue. The story of this initiative was a partial success as the delay of mandatory components could hardly be imagined without the DEM EM movement and the mass demonstrations. It is considered a partial success story because the mandatory element was delayed but not completely removed. However, it was obvious that there was some ongoing dialogue between the state and civil society and that the state officials had somehow compromised.

On 19 June 2015, a group of citizens which described themselves as “concerned citizens not affiliated with any political party” gathered at Liberty Square to protest. They started protesting against the electricity price raise and gave the government 3 days to change the decision. After 3 days, as the demands were not met, the group of activists marched into Baghramyan Avenue and started a rally in front of the Presidential Office. They decided to stay overnight and to sit on the street, however this provoked clashes with the police in which water cannons and batons were used. The use of force did not stop the citizens who demonstrated a high level of self-organization. Thousands of people joined the rally evenings with singing and dancing, making the rallies look like a national festival (Freedom House 2016).

It is noteworthy that in 2015 “Electric Yerevan” had its own huge impact on the development of civil society in Armenia. The result of the demonstrations that lasted for several days was that the government promised to consider the appeal of the decision-making process regarding the electricity prices. Highlighting the role of media in terms of coverage and introduction of civil society demands and goals of demonstrations, the details should also be considered regarding the local and international media coverage and coverage peculiarities. The goal of “Electric Yerevan” was to fight against the

unreasonable electricity price rise, and interpretation of the local media was most often correct. In contrast with this, the Russian media did have strong propaganda, calling the civil society actions as attempts of revolution labeling them as the “The Next Maydan” (The Maghakyan 2015). Major international organizations and international NGOs as another form of organization of global civil society have been quite active in Armenia including CARE international, Save the Children, Catholic Relief Services, United Methodist Committee etc. International NGOs make significant contributions to the Armenian economy, economic, health, and human rights. International NGOs are particularly involved in the development of infrastructure and construction in Armenia, as well as capacity building and technical support for local NGOs (Asian Development Bank 2011). Over the past decades civil society in post-Soviet countries has significantly advanced. The new information and communication technologies, geopolitics, media as well as the development of market relations and European integration made opportunities for creating a large number of social movements, NGOs, new trade relations, political parties, social groups and religious organizations. The most accepted type of relationship for the modern democratic state is the social and political partnership type of relationship between civil society and the state, meaning that an effective civil society is acting as a partner of the state helping to overcome the crisis and instabilities. With the help of the UN, OSCE, the EU and Council of Europe Armenia has been trying to form exactly this kind of civil society. At the same time, the organizations are helping to put some borders between civil society and the state, as the democratization processes in post-Soviet countries becomes a recourse of the ruling elite to interfere into the issues of civil society, while, ideally, the state should support a weak civil society and moreover, be interested in having a strong and sustainable civil society (Mghdesyan 2015). Events like 1 March 2008 in Armenia have shown that CSOs in post-soviet countries are often dissatisfied with the activities of the government and the ruling parties. The authorities, in turn, do not always adequately respond to such influences coming from civil society, being late with anti-corruption policies, or not striving to create new models of political dialogue and

social partnership that meet the expectations of civil society and the challenges of the time (Mghdesyan 2015).

Given the fact that several groups of certain interests in the Republic of Armenia, through peaceful mechanisms of civil disobedience were trying to realize their demands, and the fact that the state government was going to some compromises, we could conclude that in case of being more active and united, civil society could have contributed to the establishment of the rule of law. What happened in Armenia during the next years proved that (Convey 1998, 867).

The Armenian Velvet Revolution in 2018 was, in its turn, a perfect demonstration of the student movement for fighting the authoritarian regime. The Armenian Velvet Revolution was mainly organized by young people, most of them having western education. Those were young people who already grew up in independent Armenia, where the previous civil society disobediences led to a stronger civil society with the western values. Therefore, the Armenian Velvet Revolution in 2018, against the illegal term of the newly elected Prime Minister, Serzh Sargsyan, was very much influenced and conducted by the people with western education and value system. This demonstrates the indirect impact of globalization on Armenian civil society and human, political rights promotion in the country by international organizations as a form of organization of global civil society. At the same time there were movements of public opinion horizontally going on in Armenia and in Armenian communities all around the world. Diversified media system and the spontaneous mobilizations made the movements of public opinion possible through the horizontal use of communication networks by the Armenian communities all around the world. Armenian communities simultaneously organized actions and protests in support of Armenian Velvet Revolution in 2018 and also contributed to the international media coverage in different parts of the world (Ishkanian, Manusyan 2019, 19-24). After the resignation of Serzh Sargsyan, however, the demands of the people become broader and soon the protests were against the Republican Party of Armenia and the movement was named as Armenian Velvet Revolution. Unprecedented numbers of people took to the streets not only in

Yerevan, the capital of Armenia, but also other cities and villages. The movement became a nationwide movement, with the support of the Armenian diaspora as well. On 1 May 2018, the National Assembly of Armenia scheduled a vote for electing the new Prime Minister of Armenia, with the only candidacy of Nikol Pashinyan. The voting took place, however the Parliament failed to elect a Prime Minister as Pashinyan could not provide enough votes to take the post of the leader of the country, with 56 against and 45 for his candidacy. On 8 May 2018, the second vote was scheduled and as a result, with overall 59 votes, Pashinyan was elected as the Prime Minister of the Republic of Armenia. Thus, the Armenian Velvet Revolution marked its victory against the former regime (Katz, 2019, 1–6).

Since 2018 Armenia provides very interesting examples of “belated democratization” with a not yet clear outcome. Armenia is noticeably inferior to the Western countries in the degree of maturity of multiparty systems, or the involvement of civil society into political and social processes, however, in terms of the level of political competition and the real involvement of parties in political decision-making, Armenia, undoubtedly, is ahead of some of post-Soviet countries. The main reason for the delay in the democratization processes are the factors associated with the war for Nagorno-Karabakh, a confrontational style of domestic politics. In the parliamentary and presidential elections held in 2007–2008 in Armenia, contradictory trends were reflected: on the one hand, there was competition, on the other hand, the widespread use of administrative resources, massive protests, and their rather severe suppression by the authorities. Although the Armenian Velvet Revolution was a huge progress in the democratization processes of the country, that highlighted the role of the civil society, in the political engagement, however, even after the Velvet Revolution of 2018 in Armenia, the new Prime Minister and the new ruling elite face many difficulties on the path of anti-corruption policy, deepening democratic reforms and European integration and now, after the recent war between Armenia and Azerbaijan, progress related to democratic reforms have been delayed. However, given the facts above, it is obvious that Armenia became evidence of the revitalization of civil society and support for the type of

democratization outlined in the American and European countries' strategies (Mihir, Aleksanyan 2020, 29–47).

The Mechanisms of Influence of EU in the Processes of Developing the Civil Society in Armenia

Armenia's complementary foreign policy and balance between the EU and Russia as well as other regional powers such as the US, China and Iran let Armenia come under the influence of very different globalization processes and diversified the influences on the civil society development processes. The EU currently affects the civil society development process in Armenia both in direct and indirect ways within the framework of the Eastern Partnership Program EaP (Babajanian, 1316-1318). The EaP is a common policy initiative which has the purpose of establishing a more stable relationship between the EU, its member states as well as between Armenia, Georgia, Ukraine, Azerbaijan, Belarus and Moldova. One of the main methods for establishing an effective democracy is engaging civil society in the process of democratization. So, within the framework of the EaP there is a Civil Society Platform Initiative which is a participatory initiative and is aimed at linking the civil societies of partner countries to the EU. Within the EaP, the EU works together with its partner countries on involving citizens into the decision-making processes of the countries, on supporting youth to promote reforms and demanding accountability, helping a sustainable media-environment, engaging conflict-affected people, women, children in the social, economic and political processes as well as helping migrants and creating better mobility (European Commission 2020). As it was already mentioned in the first part of the paragraph, Armenian civil society is relatively new and lacking in practice. It is quite natural that as a result of being a post-Soviet country, where every public sector was strictly controlled by the government, there was no platform for civil society. The Armenian National Platform (NAP) of the EaP Civil Society Forum (CSF) was also an evidence of the EU's mechanism of influence in the process of strengthening civil society in Armenia. In 2015, around 10 organizations applied to ANP for membership. The key activities of the ANP included a conference organized jointly with the EU

Delegation to Armenia on perspectives for the changed EU-Armenia relations, meetings with representatives of the European External Action Service (EEAS), DG Energy and European Parliament on situation in Armenia around Electric Yerevan movement, organization of periodic seminars and discussions for ANP members dedicated to various aspects of Armenia-EU relations (European Council 2020).

There were 6 civil society projects that have been funded by the EU with a total budget of more than € 5 million from 2016-2019. These projects can be regarded as direct influence of EU on the development of civil society in Armenia. The projects were: BRIDGE for CSOs, Electoral Participation and Monitoring by Civil Society Organizations in Armenia, ENEMO International Observation Mission for the Parliamentary Elections in the Republic of Armenia, Commitment to Constructive Dialogue, Access to Information and Investigative Journalism for Better Informed Citizens as well as Summarized Efforts, Multiplied Effects. The projects were all aimed at contributing to the civil society engagement (EU4Armenia 2019). Following the Armenian Velvet Revolution in 2018, the EU stepped up its support and increased its annual allocation in grants to €65 million in 2019. Its current substantial portfolio focuses on supporting the reform agenda of the new government, private sector development, education, and development of local regions. Trainings, seminars and debates are also mechanisms of direct influence of EU on the development of civil society in Armenia. During the recent years, the EU has largely been involved in holding meetings and conferences on different issues, especially on human rights. This support for the influence on the development of civil society in Armenia can be regarded as an indirect influence. From 2014 to 2020 more than 3,100 students and academics participated in the Erasmus+ Program. Armenian students who study in different European countries obtain some new qualities and become much more open-minded and when coming back to Armenia, implement their newly gained knowledge in the Armenian society and in this way spread European values. So, education is also a great tool of indirect influence on the civil society development process in Armenia and a manifestation of the EU's impact on Armenia's civil society and interconnectedness with global

civil society (European Commission 2021). Despite the huge amounts of foreign aid, some processes did have a significant negative impact on civil society in Armenia and its interconnectedness with global civil society. In particular, a number of foreign funding for the purpose of managing the country's political institutions for a long time created “good” opportunities for robbing the money. Armenia's civil society mainly depends on the funding provided by international donors, at the same time it failed to multiply its own sources of income and to set out a long-term strategy along with a program of activities for realizing their purposes (Babajanian 2008, 1316-1318).

There were 5 other civil society projects funded by the EU which were implemented from 2018-2019. The projects also demonstrated the EU's direct influence on the development of civil society in Armenia. The projects had a total budget of 1.9 million Euro and 1.7 million Euro was the EU's contribution to the projects. The projects were to make a difference by state budget monitoring, addressing human rights issues, economic development of vulnerable groups, rural areas development, as well as creating new jobs and engaging citizens in the decision making processes (EaP CSF ANP Newsletter 2020). The first project named “A Public Glimpse into a Closed World: Increasing Awareness on the Human Rights Situation in Closed Institutions” was a two-year project implemented by Public Journalism Club (PJC) NGO and For Equal Rights (FER) NGO. This project drew much attention on the daily life of Armenians who were living in closed institutions. This means that ordinary people of Armenia could be informed how people live in pre-trial detention, serving prison sentences or in specialized closed institutions for severe physically and mentally disabled people. In the framework of this project a series of specific trainings for media professionals was held which would help them to further enable a balanced and comprehensive public debate about human rights situation in closed institutions. Also a series of TV shows and video reports on the life in closed institutions was produced to engage the public and inform ordinary citizens. The project had a total budget of EUR 278,072 with an EU contribution of EUR 264,168. The project was to be implemented in all regions of Armenia and ran until December 2019. Another project was called “Access to Information and Investigative

Journalism for Better Informed Citizens” implemented by Freedom of Information Center of Armenia (FOICA) and Maastricht-based European Journalism Center was aimed at helping the Armenian population, especially in the regions, to get more access to information about the national budget, public expenditures and their rights to hold the government accountable for inefficient budget spending. The 20 months-long project with a total budget of EUR 390,000 (EU contribution of EUR 343,200) offered trainings to civil society organizations and young journalists to teach them how to produce and share easy-to-understand information, provide efficient monitoring of the State budget and contribute to public debate about budget allocations and spending in Armenia. A sub-granting scheme in the project allowed 10 CSOs to cooperate with government bodies on public finance-related projects of choice in a bid to find more efficient and effective ways of planning and/or spending State budget resources and to create a positive impact on the economic and social well-being of the society in Armenia. Basically, this project’s purpose was to make the use of the budget more transparent and to evaluate whether it was used in a sufficient way. This project was also quite important because most of the citizens, especially in rural areas have no understanding on what the budget is spent on, and sometimes this makes the citizens think that the budget is just wasted. So being informed will set a control over all the important issues which naturally will regulate the system (Armenian National Platform Newsletter 2021).

The Project “EU4Civil Society: Energy Efficiency in Armenian Communities” was a two-year project aimed at assisting wider democratic participation to civil understanding of energy efficiency to reduce and eradicate poverty in Armenia. Through this project the National Social Housing Association Foundation (ASBA) in cooperation with its partners from the Netherlands, Germany and the Czech Republic would address the issues of energy efficiency in rural areas by increasing awareness and implementing practical measures to improve energy utilization patterns, increase the quality of life and reduce energy bills. The project would engage regional CSOs and media of five regions of Armenia (Lori, Tavush, Gegharkunik, Kotayk, Ararat) to work with urban and rural communities on their specific

energy efficiency issues. People were to learn about new energy efficiency methods and practices, how to mobilize community resources and engage in effective partnership with local municipalities and private companies to address energy efficiency issues. The project with a total budget of EUR 372,231 (EU contribution of EUR 335,000) also supported the implementation of community initiatives and created new opportunities for civic groups to mobilize resources for effective partnership with municipalities to achieve synergetic effects and ensure long-term sustainability of investments in energy efficiency and community development areas. Another project was “EU4HumanRights: Pursuing Positive Change through Empowering Civil Society”. It was a two-year project implemented by Open Society Institute Assistance Foundation—Armenia (OSIAFA) and two CSOs—the Institute of Public Policy and the Union of Informed Citizens. Capacity-building and sub-granting facilities were the Project’s key tools to empower civil society organizations with skills and knowledge needed to better monitor, record and report human rights violations related to domestic violence, the right to be free from torture, the right to fair trial, tolerance, access to quality education and access to healthcare services. The project served as a bridge between established human rights advocates in Armenia and the younger generation of activists interested in gaining more expertise in defending rights of the Armenians. The project with a total budget of EUR 460,035 (EU contribution of EUR 400,000) also helped ordinary people to learn more about human rights, criminal justice and social justice. The Project “EU4Women: Economic Empowerment through Social Enterprise” was a two-year project implemented by the Near East Foundation UK (NEF UK) and the Women’s Development Resource Center Foundation (WDRC). It provided support to 12 civil society organizations in Aragatsotn, Gegharkunik, Lori and Syunik provinces advocating for women’s rights or helping women and children at risk. The project with a total budget of EUR 446,797 (EU contribution of EUR 400,000) was to help these CSOs to launch or further develop social enterprises to fund programs of benefit for both their organization and women in their communities. Through intensive training and coaching CSOs would be trained on business operations

that can support the CSOs in their work and provide income that can sustain and expand projects for vulnerable women. At least 10 social enterprise activities were to be developed or upgraded based on prospective business models (e.g. tourism, export-oriented handicrafts, cultural industries, “green” business industries) and over 600 vulnerable women (particularly survivors of gender-based violence and women at risk of gender-based violence) would find brighter options in life through new employment, involvement in social enterprises or participation in expanded projects that meet their needs (ANP Newsletter 2021). It is noteworthy that the projects had different target groups and engaged a larger part of the Armenian society into the processes of awareness and into the decision-making process. The projects included human rights protection, especially women rights, and were to make the whole system much more transparent than it is now (Aberg & Terzyan 2018). Currently there are 5 working groups in the ANP:

- Democracy, human rights, good governance and stability,
- Economic integration and convergence with EU policies,
- Environment, climate change and energy security,
- Contacts between people,
- Social and labor Policies and Social Dialogue.

These working groups make recommendations in their areas, cooperate with relevant CFS working groups, and undertake activities related to their areas which promote reforms. As mentioned above, in 2017 the ANP Secretariat continued its efforts aimed to strengthen the EaP CFS ANP in terms of implementation of CEPA, civil society cooperation with Armenian authorities and the priorities of EaP. Noteworthy are the ANP meetings with representatives of the Armenian Government to discuss the EU-Armenia partnership priorities for 2017-2020 and dialogue with two standing committees of the National Assembly (on foreign relations and on European integration). The ANP Secretariat was mostly engaged in the activities regarding the development of the CEPA Implementation Roadmap together with local and foreign colleagues. As a result of cooperation between the ANP Secretariat and Deutsche Gesellschaft e.V., funded by the German Foreign Office and implemented by the “Forum

German-Armenian Journalist Exchange”, a project was held which aimed at developing cooperation between the journalistic communities and civil societies of the two countries. Since April of 2019, the Secretariat has been working within the “Enhancing CSF Armenian National Platform Contribution to the EU-Armenia Cooperation” project. The activities of the Secretariat and the ANP will be directed at further development of meaningful engagement of civil society in the ongoing process related to Armenia-EU relations, monitoring the reforms’ implementation and setting the directions for the ANP activities the CEPA Implementation Roadmap as well as advocacy for the European Agenda (ANP Newsletter 2021).

When analyzing the impact of global civil society on Armenia, there is a need to study the Armenian peculiarities regarding the Armenian diaspora. The modern Armenian diaspora was established as a result of the Armenian Genocide and exile of Armenians by the Ottoman Turks from 1915-1920. The Armenians fled to different countries of the world in Europe, Middle East, North and South America and over the time established diaspora communities and forms of organization such as sport teams, churches, social and cultural organizations. There is a widespread kind of division between Armenian “external” and “internal” communities. The term “internal diaspora” refers to the Armenian communities within the post-Soviet republics, while “external diaspora” usually means the Armenian communities in the Middle East, America and Europe. There are dozens of other pan-Armenian, spiritual as well as educational, sport groups and socio-political entities that are part of Armenian diaspora and which strongly advocate the Armenian interests in various countries and at the same time influence the events going on in Armenia, as being another source of income for different educational, human rights development projects in Armenia. So, the Armenian diaspora in Europe can also be regarded as another form of Armenian civil society which actively cooperates with EU institutions and with the Republic of Armenia. This was also obvious from September to November 2020, as a result of the war between Armenia and Azerbaijan, the Armenian diaspora organized a number of campaigns and demonstrations in in different major cities of Europe. The representatives of the Armenian communities in Europe also

organized demonstrations in front of EU buildings in Brussels, demanding more severe position of the EU on the conflict (Wigglesworth 2020).

In the pre-revolutionary period in Armenia, before 2018, the main challenge to the sustainable work and growing interconnectedness with global civil society was the authoritarian regime in the country. Many NGOs did not enjoy public trust and were only taken as “grant-eaters”. Corruption and non-transparency played its negative role and became a challenge for effective and further growing cooperation between different international NGOs as well as with Armenian diaspora communities and organizations. Many international organizations and diaspora funds have been misappropriated by certain officials, which endangered further and deeper cooperation. So, the lack of transparency and corruption has demolished the trust building between the international donors, global civil society networks as well as contributed to the negative impact on the Armenian public opinion of CSOs. As a result of such processes, the Armenian population started questioning the necessity of building strong ties with the NGOs (Ishkanian & Manusyan 2019, 19-24). When it comes to post-revolutionary Armenia, after 2018, it is noteworthy that Armenian democratization and Europeanization processes have resulted in the growing interconnectedness with international as well as local NGOs. However, another problem the Armenian civil society is currently facing is the lack of accountability between NGOs and the governments. The strong personal ties between the current Armenian government puts the sustainable civil society cooperation between the state and local civil society at risk. Besides, after the 2020 war over the Nagorno-Karabakh region the Armenian opposition started accusing the government of attracting and involving too many “pro-globalization” powers and international organizations into state affairs, which promoted “fake” democratization and anti-state actions. Such complaints mainly refer to Soros foundation, which is often being accused by Armenian opposition for spreading fake values, organizing and funding the Armenian revolution as well as destabilizing the country by involving “non-competent” people to high level positions in the state apparatus. In Armenia, the Soros Foundation is quite active in running programs

in the field of women's rights protection, anti-corruption campaigns, election monitoring. According to Armenian former officials, the current prime Minister, Nikol Pashinyan came to power with the help of Soros foundation and other globalization forces. This has become another reason for new civil and opposition protest especially in the post-war period in Armenia. So, the new ongoing demonstrations in Armenia also have anti-globalization motives and are aimed at cutting the interconnectedness between Armenia and some international organizations and international donors, as forms of organization of global civil society, including the Soros Foundation and other NGOs (Massis Post, 2019).

Conclusion

The creation of modern civil society in Armenia has been a complex process in the country, which began in 1991 after the collapse of the USSR. It was a period of systemic transformation, which, in its turn, implies the transformation of all sectors, the primary condition for the success of such a large-scale transformation is the transformation of the public consciousness (Maghakyan 2015). Armenia's complementary foreign policy, the balance between Russian, US, EU as well as China has diversified its international donors. However, the main donor of Armenia's civil society is the EU which influences the civil society in Armenia both in direct and indirect ways. Student exchange programs, seminars and different conferences can be regarded as the EU's indirect mechanisms of influence on the civil society in Armenia, meanwhile different civil society programs on concrete target groups can be regarded as direct mechanisms of influence (Wei 2019). Armenia's civil society was often perceived as "grant eaters" which resulted in a lack of public trust towards civil society, at the same time, lack of accountability between the state and the local as well as international donors, including the EU (Mirani 2013, 176). When analyzing the impact of the EU, there is a need to highlight the special role of the Armenian diaspora in contributing to the prosperity of the motherland as well as using its organizational resources to lobby for the homeland in different parts of the world, including different countries of the EU and the EU institutions.

Improper behavior by some high-status officials and lack of transparency resulted in a lack of trust between the international donors, such as the EU, diaspora communities and homeland, thus becoming a challenge to effective cooperation (Ishkanian 2005, 7-8). Besides, the current Armenian government which previously had strong ties with civil society organizations financed by international donors, is currently suffering from a growing lack of accountability between the state and global civil society (Massis Post 2019). Another challenge is that there are currently protests in Armenia which can be regarded as social movements against the outcome of globalization as they are aimed at cutting the role of international organizations and values promoted by them in the country. So, a large part of the public is dissatisfied with Armenia's interrelation with international donors, including the EU (Massis Post, 2019). The recent war between Armenia and Azerbaijan certainly resulted even in a stronger gap for the regional integration and cooperation, also challenging any civil society ties between the countries and making the region less attractive for international donors. The Armenian society and the current public moods express dissatisfaction and mistrust of international organizations and different civil society activities (Manusyan et al. 2020).

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European Prison Standards and the South Caucasus: A General Introduction

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Abstract

A great deal of research is focused on Europe and its interactions with other spaces through examination of the European Union's (EU) policies. Indeed, those who have created and contributed to the literature of "Europe as a normative power" put a special emphasis on the EU and its significance while overlooking normative cooperation between this organization and the Council of Europe (CoE). Building on the "two Europes" thesis and enlarging the *acquis communautaire* to include norms and standards produced by the CoE, this chapter tries to go beyond initial exclusive conceptualization of political Europe.

With a special focus on the European penological norms, the current research proposes a fresh look at the debate of norm production and diffusion while examining interactions of the EU, the CoE, and the South Caucasus.

Firstly, a descriptive analysis of government networks between Europe and the South Caucasus is conducted to reveal horizontal (voluntary) and vertical (coercive) levels of communication. This section is entirely devoted to the architecture of the state of affairs with reference to the penitentiary reforms promoted in Caucasian nations under the auspices of the EU and CoE, both as joint projects between these entities and within the Partnership for Good Governance framework.

Secondly, to go beyond simplistic interpretations of norm studies where European institutions develop values/norms later on to diffuse them onto specific territories of interest, the current paper is problematizing this question while contextualizing participation of

the South Caucasus in the making of European penological norms. To do so, a brief account of norm making/developing is given within a particular institution—the European Court of Human Rights.

In conclusion, the current paper aspires to contribute to three streams of research: (i) reconceptualize Europe as a “normative power” and make it inclusive for the CoE, (ii) discuss penitentiary systems as a vital institution of interest for Europe, and (iii) escape simplistic account of norm production and diffusion where the South Caucasus is always on the receiving end.

Key words: European penology, prison standards, penitentiary system, South Caucasus.

Introduction

Global politics has seen a sharp increase in discussions of standards, oftentimes referred as standardization process. This practice, which originated within the financial sector, specifically in the field of auditing¹ (Broome & Quirk 2015), has also attracted the attention of many spheres of human activity, both of private and public characteristic. The creation of international agorae and platforms for deliberations on the basis of which benchmarks are created and subsequently translated into many levels of governance has become the *modus vivendi* of the present-day era.

Surprisingly, the process of gathering to discuss best practices by presenting evidence is regarded as being rather *apolitical*. The widespread perception of such processes as being technocratic and almost mechanical in nature has favored the grounds for its further expansion. The public sector, which is constantly learning from its private counterparts, sees standardization not only as a way to catch up with modern and adaptive private institutions, but also as a means of fulfilling its duty to live up to democratic ideals; that is to say,

¹ Broome and Quirk (2015) refer to “audit explosion” and its globalization with reference to Power, M. 1997. *The audit society: Rituals of verification*. Oxford University Press; Espeland, W. N., & Stevens, M. L. 2008. “A sociology of quantification.” *European Journal of Sociology/Archives Europeennes de Sociologie*, 49(3), 401–436; and Power, M. 2003. “Evaluating the audit explosion.” *Law & Policy*, 25(3), 185–202.

standard-setting comes with obligations and accountability, both of which are scrutinized by interested parties.

The process of standardization is complemented by institutionalized bodies which enforce standards and/or norms by simple monitoring of governance structures and how well they are upheld. The whole ecosystem crosses the habitual national borders and is truly transnational in nature. A coordinated approach on the part of monitoring bodies is almost in a perfect *'feedback loop'*. They bring new evidence or knowledge to the table, on the basis of which the standards are further updated or totally renewed.

Deliberation, production, and enforcement of norms and standards² continues to be on the agenda of the liberal international order³ as well. Human rights norms and standards, which are the cornerstone of this global order, have constantly evolved after two world wars, especially following the atrocities of the most recent one. The idea that there is a need for a human rights order which will serve as an additional international guarantee to constitutionalist assurance on a national level, has an outgrowing support (Mutua 2016). Notwithstanding criticism from politicians of the Global South and the post-colonialists camp, the human rights order, with its derived norms and standards, seems to be enduring.

² The current paper refers to norms as 'frameworks' within which standards are devised and enforced. That being said, the language of practitioners (politicians, technocrats, representatives of Council of Europe, for instance) use phrases 'European values', 'European standards', and 'European norms' almost interchangeably.

³ The concept of 'liberal international order', particularly the word 'liberal', is highly contested and discussed in academia. Some refer to it as a concept primarily created by the Atlantic Charter—a joint declaration by Franklin D. Roosevelt and Winston Churchill—where a fusion of Westphalian modern state system and liberal democracy is proposed (see Ikenberry 2011). Others perceive it more as a combination of orders based on some areas coherently functioning as a whole (see Eilstrup-Sangiovanni, Hofmann 1–13). Yet, there is a common ground found by both sides of the aisle: (i) it is a Western 'architecture', (ii) the liberal international order is 'rule-based' (e.g. international public law), and (iii) Human Rights is a compulsory part of it.

European Organizations, European Standards, and Normative Power

Currently, with respect to many areas of the world, *‘European standards’* have come to signify good governance and sets of standards that any entity—be it an organization, a state, or an enterprise—should strive to achieve. While there is some vagueness as to what semantics of *‘European’* refers to, making it susceptible to discussions of *‘which Europe’* does this expression calls for, there is a common perception that these standards invoke positive, progressive, and forward-looking characteristics. There are number of examples of where these standards have manifested:

1. The European Union’s (EU) General Data Protection Regulation (GDPR) standards—a trade deal between the EU and Japan resulted in the identification of an inconsistency in the latter’s international policy arrangement with regard to the flow of private data⁴ into third countries (Bartl, Irion 2017);
2. European Neighbourhood Policy⁵ and its Action Plans (AP)—a strategy for the EU to bring the countries at its southern and eastern borders closer to the European good governance practices through numbers of reforms support; and

⁴ Japan—a member of the Asia-Pacific Economic Cooperation (APEC)—is a part of the organization’s Privacy Framework. The country joined APEC’s Cross-border Privacy Rules System (CBPR) where flow of private data across borders is facilitated. Yet, the EU’s GDPR standards found that CBPR falls short, should further flow of personal data into countries with weaker protection system take place. Following a number of meetings, the EU and Japan agreed that their personal data protection systems are equivalent, as well as all the data flow coming from the EU will be distinctly protected: a. Japanese definition of *‘sensitive’* data will be broadened to accommodate European standards, and b. further transfer of data from Japan to a third country will be accompanied with a higher protection (see for more details Bartl and Irion (2017) and European Commission’s MEMO/19/422 (European Commission 2019)).

⁵ To the South: Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria and Tunisia, and to the East: Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine. Some authors argue that the origin of the ENP dates back to 2002 when the UK proposed to launch a specific policy toward Russia, Belarus, Moldova and Ukraine (see Smith 2005). This policy has seen extensive changes as new members were admitted into this arrangement: the UK’s “wider Europe neighbourhood” metamorphosed into “proximity policy”, then to the “new neighbourhood policy” and eventually took a form more familiar to us “European neighbourhood policy” (Smith 2005).

3. The Group of States against Corruption (GRECO) under the Council of Europe (CoE)—Kazakhstan became the 50th member-state of GRECO (Council of Europe 2020), which upholds European standards on fighting corruption through mutual evaluation of participant states and peer pressure.

These examples lead to a strain of literature within the international relations (IR) discipline which conceptualizes Europe as a 'normative power' (see Diez 2005; Manners 2002, 2006; Sijursen 2006). Although there are some well-argued critiques⁶ of this concept, 'normative power', a term coined by Manners (2002), exemplifies how the reconceptualization of power (Barnett & Duvall 2005) brought about a 'normative' turn in the field of IR studies. However, in many cases, if not all, the operationalization of Europe as a normative power was performed through detailed examinations of the EU and its transnational activities by: (i) stressing the *acquis communautaire*,⁷ (ii) observing application of conditionality in bilateral and multilateral relations with other actors (Grabbe 2002), and (iii) observing transnational networks of organizations being co-opted by the EU through promotion of European norms (Lavenex 2014).

There is a need for a careful problematization and a novel conceptualization of Europe as a normative power. It should be stressed that Manners (2002, 2006), while devising the term and bringing empirical evidence into the discussion, was also referring to a norm originally produced by the CoE.⁸ Such an acknowledgment of the organizational and ideational entanglements between the EU and CoE calls for its further recognition. The current paper proposes a redefinition of 'Europe as normative power' and *acquis communautaire* in such a way that will incorporate the CoE⁹ in its

⁶ The critics are mainly from conventional camp of IR emphasizing state, anarchic structure of the world, and necessity of military power to sustain state's existence. For neo-realist assessment of 'normative power' see Hyde-Price 2006, 217–234.

⁷ Legislative acts, recommendations, court decisions, and important legal documents which form the body of the European Union law. Also called *EU acquis*.

⁸ The author pointed at CoE's European Convention on Human Rights and its attempt to eradicate capital punishment on a global level.

⁹ Other international organizations, such as Organization for Security and Co-operation in Europe (OSCE), functioning within the realms of the European norms and values should also be a part of future considerations. Moreover, addition of

entirety. In fact, (a.) considering the ‘two Europes’ thesis¹⁰, (b.) commonalities in ideas and complementary actions (De Schutter 2007), at least in the human rights dimension, (c.) as well as existence of a distinctive CoE *acquis* (Pratchett, Lowndes, et al. 2004), such an expansion should be characterized by unification and signified with a new umbrella title—*acquis européen*. With this in mind, a concerted effort between the EU and CoE¹¹ to sustain, develop, and enforce the human rights order of liberal internationalism¹², makes the concept *acquis européen* more appropriate and real than ever.

Knowledge Production as a Political Act

The *acquis européen* serves as a good starting point for discussing the production of European norms and standards within the domain of democratic practices, the rule of law, and human rights. If one defines ‘Europe’ as the EU and the CoE, the operationalization of its power, from which it derives its *raison d’être*, should be done through scrutinizing the *acquis européen*.

One way of understanding the normative foundations of Europe in this particular domain is to consider it through the prism of a *knowledge-power* nexus. In doing so, one can depart from previous functionalist and institutionalist interpretations of Europe (see Lavenex (2014), Pierson (1996), Schimmelfennig and Sedelmeier (2002)) which are highly reliant on *power* discussions and how they manifest in external governance. The other half of this nexus, namely *knowledge*, in the majority of cases is taken as given or simply neglected. The current paper brings this discussion back to the table by: (i) understanding what kind of *knowledge* is produced, (ii)

European non-governmental organizations into the category of actors generating and diffusing European standards might be another angle to look at.

¹⁰ Based on De Schutter (2007) article, ‘two Europes’ refers to the EU and CoE.

¹¹ This cooperation reveals itself by EU’s financial support of CoE’s projects to produce and disseminate standards across countries within and outside of the latter’s ‘jurisdiction’.

¹² The European Council, a body which defines the overall political direction of the EU, set out a new strategic agenda for 2019—2024 among which ‘EU will remain a driving force behind multilateralism and the global rules-based international order’ while supporting the UN and key multilateral organizations (“EU Strategic Agenda for 2019-2024” 2019). The same agenda directs the EU to continue support for democracy and human rights promotion in the world.

examining the nature of this *knowledge*, and (iii) demonstrating how *knowledge production* can be a political act.

When reviewing European standards in the context of human rights, a specific focus is set on penological¹³ knowledge. European governance of penological knowledge production is an interesting subject which requires scrupulous examination. There are a number of actors participating in the production of such knowledge, groups facilitating discussions of penological standards, and bodies codifying it on a legal level. However, due to division of tasks, that is to say, between the EU and the CoE, these actors predominantly inhabit the CoE space. This particular knowledge space is going to be under a special scrutiny.

Structure of the Chapter

As we are getting to know troubled waters of European penological norms, the current article attempts to situate itself within several clusters of research through which this topic has been studied. Firstly, the theoretical background is discussed with reference to the achievements of the IR field in studying norms and standards. Secondly, a focused literature review reveals the state of the art of penological knowledge studies. In doing so, the paper locates European penological governance in the world with multiple prison systems management. This section also discusses interaction of the European organizations with the South Caucasus in the matters of prison management. Thirdly, a brief account debates European prison norm/standard-making and the role of the South Caucasus in this process. Finally, the paper concludes with an observation on the European standards in penitentiary systems and importance of socio-spatial contexts in its making.

¹³ Penology is commonly regarded as a sub-discipline of criminology which studies prison management and philosophies of fair punishment for a committed crime.

Theoretical Background

For pioneers of this scientific field, it is almost uncomfortable to talk about the importance of norms in international relations.¹⁴ Decades-old IR jargon includes terms such as *anarchy*, *human nature*, *state of war*, *survival*, *national interests*, and *(historical) continuity*. The abundance of such terms is perhaps understandable due to the inception of IR as an independent discipline that is strongly tied to historical methods of knowledge discovery (e.g. Carr and Cox (2001/1939), Morgenthau and Thompson (1993/1948)). In short, the foundations of IR were initially meant to identify and explain the causes of war.

The limit of the methodological bases underlying conventional theories of IR leaves no space for norms to be incorporated into analyses of modern international relations. If norms do matter in global politics, they are rather perceived as (i) a temporary occurrence, or simply (ii) an exercise of indirect domination¹⁵ involving different type of enforcement (e.g. soft or smart power¹⁶). A positivist attitude of the orthodox camp ignoring societal (Haggard, Simmons 1987) and other dimensions of international politics fell short to stay relevant in academic circles paving its way into the 'world of practice' (e.g. think tanks, advisors to statesmen, foreign affairs experts etc.).

In contrast, a critical portion of IR based on foundations of post-positivist scholarship, broke the chains of *methodological nationalism*,¹⁷ *statism*,¹⁸ and *agent-structure problematique*,¹⁹ all of

¹⁴ Here, a distinction is made between '*international relations (IR)*' as a discipline and '*international relations*' as practical conduct of world politics.

¹⁵ Primarily coerced through international institutions. See, for instance, Mearsheimer 1994, 5–49.

¹⁶ For account on 'soft power' see Nye 1990, 153–171. The concept of 'smart power' is a contested terminology seen as a combination of both hard and soft power strategies.

¹⁷ Rejection of nation-states as the sole unitary actors in global politics. For details see Wimmer, Glick Schiller 2002, 301–334.

¹⁸ Assumption that all polities possess the same internal political structure. This concept was elaborated in education studies, particularly, globalization of education policy. For more information see Robertson, Dale. 2008.

¹⁹ This debate, also referred as 'micro and macro' levels problem, discusses whether an agent constructs a structure or the structure itself determines the actions of an agent. See a constructivist critique by Wendt, 1987, 335–370.

which are strongly rooted in IR, to become inclusive with regard to the actors of international politics, and, thus, began to consider multifaceted issues of world affairs such as global governance, globalization, identity, nationalism, religion, and so forth. The theoretical background of this paper examines and benefits from this particular group of IR theories.

IR Theories on Norms and Standards— an Ontological Perspective

International System and Regimes

The institutionalization of international behavior as an empirical evidence has been noticed by the proponents of *international regime theory*.²⁰ In his seminal work, Krasner (1982, 185) defines a regime as consisting of ‘*implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations*’. Explanations as to why regimes rise and fall are rather dependent on the perspective one chooses to adopt. For instance, state-centric interpreters of international regime theory rely on *functionalist*, *structural*, and *game-theoretic* approaches. *Functionalists* see the state as a rational actor which attempts to realize its national interests by adhering to a regime. As regimes provide ‘club goods’ instead of ‘public goods’, states see incentives in engaging cooperative ventures (Keohane 1984). *Structuralists*, on the other hand, consider regimes a by-product of the international system. Advocates of the structuralist view are well known in IR scholarship for their *hegemonic stability theory* (see Keohane, Nye 1973). Lastly, a *game-theoretic* lens offers an understanding of regime inception and international compliance in a system characterized by the absence of an authority and complete anarchy through studies of negotiation and bargain among states (depending on the *game environment*, several factors influence these interactions, including technological and economic conditions, transnational relations, and domestic politics). To conclude, this side

²⁰ For an elaborated and detailed literature review and critique see Haggard, Simmons 1987.

of the aisle in international regime theory regards norms not as an exogenous factor influencing state behavior but rather as a sort of a means of sustaining power, or simply abiding by it to survive in a chaotic international system.

The closest international regime theory has come to deliberating norms, rules, and beliefs as exogenous elements is when authors have considered these topics from a *cognitive* angle. A *cognitivist* research agenda, which argues that there is no constant 'national interest' and 'no optimal regime' (Haas 1982), sees international regimes being conditioned by ideological formulations and consensual knowledge.

With the exception of the cognitivist angle of international regime theory, the 'normative' turn in IR²¹ that occurred in the late 1980s has been described as a static approach. Recognition of norms in global politics by international regime theoreticians did not go beyond historical timeframes explaining an already stable world. This particular criticism by Finnemore and Sikkink (1998) was presented with references to successful examples of political change, such as European integration and decolonization, which international regime theory was having difficulties explaining. Although norms were acknowledged in IR, their utility was still assessed within rational logic of state's behavior buzzwords, among which are *utility maximization, economic methods, the prisoner's dilemma, and stag hunt*.

Additionally, both Finnemore and Sikkink (1998, 891) propose a conceptual definition of a *norm* as '*a standard of appropriate behavior for actors with a given identity*'. The authors draw a parallel between constructivists' (political science) *norms* and sociology's *institutions*, where the former can be defined as a '*single standard of behavior*' and the latter an '*aggregation of practices and rules*'. In doing so, they divorce norms from other adjacent meanings, categorize them, expose their socially constructed nature, and propose a '*life cycle*' that elucidates their inception, development, and internalization. To note, in numerous cases, international norms were once domestic ones: For example, campaigns focused on women's

²¹ Also referred as 'ideational' turn.

right to vote within several nations eventually spread globally, leading to women's suffrage being accepted as an international norm. The research of Finnemore and Sikkink (1998) represented an important step forward in studying norms in international politics: (i) They acknowledged the role of non-state actors (such as socio-political movements), and (ii) drew attention to interpretative and cognitive dimensions (the famous '*norms turn into norms if they are recognized as such*' thesis).

Human Agency and Knowledge Control

As IR was casting off its conventional jargon, the creators of the *epistemic communities theory* performed a successful synthesis of positivist-empirical and relativist interpretive phenomenology (Adler, Haas 1992; Haas 1992). While they stated that their research was not focused on developing a general theory of IR, the authors proposed a different perspective on questions of change in world politics. This strand of literature focuses on attempting to find a middle ground between rational explanations and reflective institutional approaches. In doing so, it explains sources of not only interests but also institutions, norms, and practices. The authors scrutinize epistemic communities in a way that it puts human agency at the intersection of systemic conditions, knowledge, and national actions (Haas 1992, 2). One might wonder how human agency appears in world politics. They argue that state officials/authorities (both on a national and international level) turn to these communities—a network of knowledge-based experts²²—in times of uncertainty to understand, frame, and respond to certain challenges. In fact, the importance and visibility of epistemic communities arise at the precise moments when control over information and knowledge turns into the power to define, interpret, and affect the course of international interactions. Although authors choose epistemic communities as a unit of analysis and discuss their role in

²² '*A network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within this domain or issue-area*' (Haas 1992). To illustrate, economists as an aggregate group constitutes a profession, yet, a specific portion within it—such as Keynesians, neo-Marxists, and proponents of Islamic economics—might be identified as an epistemic community.

international policy coordination (e.g. styles of policymaking, policy changes, policymakers' reasoning), the question of norms, and eventually the standards that arise out of them, appears when shared sets of normative beliefs translate into state interests and/or the '*creation and maintenance of social institutions that guide international behavior*' (Haas 1992, 4).

The epistemic community approach has wisely shielded itself from waves of criticism by rejecting the logic of '*grand theories*' which holds that a single theoretical design can explain all aspects of international politics. Indeed, a multiplicity of actors and an interrelated world, both on the horizontal and vertical levels,²³ leave no space for deliberation of an all-encompassing explanatory model. Although the concept of epistemic communities is useful when attempting to understand changes in international politics, it also falls short of recognizing the role of learning processes among governmental apparatuses. It is not only trans/national networks of knowledge-based specialists who come together to deliberate and produce a consensual knowledge to be subsequently translated into inter/national action but also transnational networks of authorities, government officials, and practitioners who share best practices, exchange ideas, and design common policies (Slaughter 2005)—which have been referred to as communities of practice²⁴ (Lave, Wenger, et al. 1991). In fact, these two communities go hand in hand while influencing each other during the course of interactions. To emphasize, epistemic communities are conditioned not only by government networks but also in an ongoing process of negotiating and renegotiating consensual knowledge with their members.

A more recent strand of literature initiated an innovative approach to international relations and politics of standardization processes (i.e. benchmarking), where normative values are transformed into numerical representations (Broome, Quirk 2015). This research agenda elaborates on the benchmarking processes

²³ This article uses terminology of Slaughter (2005) on global governance networks.

²⁴ To provide a distinction between these two terms, a group of anthropologists working within the domain of European legal anthropology can be identified as an *epistemic community*. Yet technocrats, legislators, and employees of European bodies practicing law in their everyday professional life will be a *community of practice*.

where certain standards are turned into tools of international surveillance that measure how well states are governed. According to the authors, global benchmarking, as a popular mode of transnational governance, involves four different types of practices: (i) statecraft, (ii) international governance, (iii) private market governance, and (iv) transnational advocacy. Across these practices, which measure the *rule of law*, *level of corruption*, *credit score*, and so forth, states find themselves in an environment where they compete with their peers to demonstrate superior performance, their performance is recorded within the historical course of time, and they are being affected by their position in certain listings. This observation by Broome and Quirk (2015) was acknowledged as '*governance at a distance*'.

A Poststructural Take on Norms and Standards in IR

While presenting major IR approaches to norms and standards and their interplay in world politics, the current paper considered various social ontologies: We looked at international system, states, and non-state actors, among which were social movements, epistemic communities, communities of practice, and global benchmarks. All of these tried to prioritize one agency over another in their inquiries. Poststructuralism takes one further, to a flat ontology. While acknowledging that in certain contexts a hierarchy of social constructions takes place, this paradigm rejects the primacy of actors in knowledge production and meaning making in the world. To clarify, while an epistemic community might construct reality based on consensual knowledge, a community of practice can exchange ideas to replicate certain knowledge in some socio-political spaces, and global benchmarks might indeed exert an indirect power as a tool for 'distance governance', poststructuralism invites one to become more critical by moving into the knowledge domain and understand *constructed reality* by investigating knowledge itself. Knowledge production is conditioned by so many variables²⁵ that isolating one

²⁵ For instance, as governance of public domain grew technical (P. M. Haas 1992) where more areas of public policy moved from politics to expertise (Brooks 1965)—that is *technocratization of bureaucracies* –, a demand for epistemic communities raised not only due to technical and scientific discoveries but was also conditioned by the physical environment within which states inhabit.

actor and deliberating on a socio-political change based on its actions is not sufficient to grasp the whole picture.

The conception of knowledge proposed by Deleuze and Guattari (1987) holds that any inception of knowledge can be a subject to many influences. While problematizing the idea of hierarchic and binary knowledge representation, in which 'True' and 'False' are the main qualifiers in the construction of certain knowledge, the authors devised the theory of *rhizomatics* where knowledge is subject to multiple entry points. When adopting such an approach, knowledge is both *contextual* and *relative*, primarily because *True* beliefs were empirically observed to be contested throughout time and to have been misperceived by different entities. Thus, the process of determining the *Truth* is more of a phenomenological quest rather than something that is determined by *a priori* concepts (Popke 2003).

Poststructuralism leads one to the '*knowledge production as a political participation and political act*' thesis. Actors, who participate in knowledge production through discursive practices, are constituting a knowledge and likewise are being constituted by it. The current research, without going in-depth of discourse studies, tries to find a common ground between discourse and knowledge production. For this purpose, a portion of the *acquis européen*, namely European penology, is studied as a knowledge space where discursive practices meet to construct it. Without going into ontological delimitations to identify the actors participating in its construction, this study considers European penological meaning making to which Europe refers as the right approach to designing a prison and punishment system and offers to the world as a golden standard that nations are encouraged to attain.

Perhaps, the period of decolonization spread around the world new states with emulated Western governance practices. Yet, disaster management, for instance, of Far Eastern nations is way more sophisticated than that of their Western colleagues due to their demanding natural environment.

Penological Knowledge Production: Global Level and European Norms and Standards Governance

Global Scale

On 25 April 2020, Saudi Arabia abolished flogging and capital punishment for juveniles as part of its ongoing commitment to reforms and modernization. The Supreme Court of the country labelled it as an attempt on the part of authorities to *'bring the kingdom into line with international human rights norms against corporal punishment'* (Middle East Eye 2020). While *state-centric* advocates of IR would rightly discuss the conditions within which Saudi Arabia was coerced to follow international norms, and proponents of *epistemic communities* would bring into this conversation the role of experts, both inside and outside of the Saudi government, in framing its reforms, thus, the country's international behavior, poststructuralist philosophy takes one to the core, namely *international human right norms*.

Currently, when the term *'international human rights norms'* is uttered, a reference is made to a body of laws, norms, and standards constituting international human rights law—a knowledge space where certain norms are (re-)negotiated through discursive practices and codified in some sort of a legal agreement. In numerous cases, the United Nations (UN) have served to facilitate and encourage such interactions. There is a plethora of legal documents on prisoners and prison conditions that regulate the rights of a detained individual on a global scale, including treaties,²⁶ guidelines, rules, standards and other international texts.²⁷ Additional and complementary legal

²⁶ The most fundamentals ones are the *International Covenant on Civil and Political Rights* and the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

²⁷ *United Nations Standard Minimum Rules for the Treatment of Prisoners* or *Standard Minimum Rules*, in short, adopted in 1957. A revision was made in 2015 and was adopted as 'Nelson Mandela Rules'; *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, also referred as the 'Beijing Rules'; *United Nations Standard Minimum Rules for Non-custodial Measures* (the 'Tokyo Rules'); *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* ('the Bangkok Rules') and so forth.

instruments vary based on the jurisdictions within which they are enforced. One of these jurisdictions, the focus of this study, is the European regional system of human rights protection.

Although, there are numerous connectivities between the EU, the CoE and other organizations within and outside European perimeter, abundant research²⁸ has suggested that the system of human rights in Europe, both due to contextual circumstances and the political reasons behind its inception, has distinct contours when compared to other knowledge systems. As is demonstrated in the following sections, several institutions working within the domain of human rights in Europe have contributed to the development of various norms and standards regulating the lives of prisoners and the conditions under which they are detained.

European Scale: Inception of the European Penology and Its Making

In 1973, the CoE, with only 15 members, decided that the UN's Standard Minimum Rules for the Treatment of Prisoners should be translated into a regional context with specifically European perspective. This decision resulted in the adoption of Resolution (73) 5, titled *European Standard Minimum Rules for the Treatment of Prisoners* (Coyle 2006). This normative introduction instigated a series of deliberations within the penological domain and led to the codifications, establishment, and involvement of separate institutions: The European Prison Rules were adopted in 1987, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) was founded through a convention in 1990, the European Court of Human Rights²⁹ (ECtHR) witnessed a sharp demand for its involvement in prison matters in 1990s and

²⁸ For historical account of human rights development in Europe see Merrills, Robertson 2001; for a study on invention and institutionalisation of European human rights system by a collaborative work of lawyers and politicians see Madsen 2007, 137–159.

²⁹ The scope and application of the European Convention on Human Rights with regards to detained person was first shaped by the European Commission on Human Rights until its abolition in 1999. The mission was relayed to the European Court of Human Rights.

2000s, the Council for Penological Co-operation (PC-CP) was set up in 1985 as an advisory body to the European Committee on Crime Problems, and so forth.

A degree of dynamism in European penology has led to the creation of an ecosystem of bodies and working groups (experts, policy makers, etc.). These institutions started to discuss custodial and non-custodial measures in the European context while shaping and interpreting concepts and limits of their application. We shall go one by one.

The involvement of the ECtHR in into prison matters began with its landmark judgment on *Golder vs. UK* (February 1975) where the Court had to explicitly state that prisoners do not enjoy less protection than their fellow citizens outside of the bars (Daems, Robert 2017). Consequently, the ECtHR started to recognize increasing levels of higher standards in European penology and had to adjust its legal interpretations of certain categories accordingly. For example, the jurisprudence of the Court states that an act which was classified as ‘*inhuman and degrading treatment*’ may now amount to ‘*torture*’ under the newly adopted higher standards³⁰ (Murdoch 2006). In general, meaning making by the Court concerning the concepts of ‘*torture*’, ‘*degrading*’, and ‘*inhuman*’ with regards to Article 3 of the ECHR has been rather vigorous. Indeed, in one case, the Court had to discuss the boundaries between institutional/personal hygiene and a degrading method of punishment (Coyle 2006): The judgement³¹ established that shaving a prisoner’s head as a matter of routine or disciplinary measure should be characterized as a degrading act within the scope of Article 3.

The higher standards of protection to which the Court was referring is partially a result of the continuous preventive work of the CPT. This Committee, having been established in 1990, has become an effective body which not only monitors how states abide by the set standards³² but also gathers further information on prison conditions

³⁰ *Selmouni vs. France*, No. 25803/94, paragraph 101.

³¹ *Yankov vs. Bulgaria*, No. 39084/97.

³² The history of establishing this particular Committee is entangled within the network of other actors. To be specific, the stimulus to create a regional body which will be monitoring prisons came from the work of the International Committee of the Red Cross (ICRC). The ICRC pioneered this idea and has been

on a member-state level³³ (Daems, Robert 2017). These reports subsequently served as valuable material for the entire European penological ecosystem, as a deliberation on trends based on patterns of information about national detention facilities cultivate new norms or, to use the term employed by the Court, higher standards. In a sense, the CPT monitors prisons in Europe, gathers information, and feeds it into the system.

Another body participating in knowledge production within the European penological ecosystem is the PC-CP. This advisory working group provides authorities with guidance for prison reforms, discusses developments and '*best practices*' in penology, and issues annual statistics in collaboration with the University of Lausanne (Switzerland) revealing problems with penitentiary institutions across political Europe (Council for Penological Co-operation 2020a). Moreover, this particular body is also responsible for drafting Committee of Ministers' (CoM) recommendations on prison matters and organizing a CoE conference of directors of prison and probation services on an annual basis. In fact, the topics of discussion during the 2020 and 2021 conferences include (i) assisting national authorities in the implementation of guidelines with respect to radicalization and violent extremism, (ii) considering whether there is a need to update those guidelines to include returning foreign fighters and right-wing extremists, (iii) addressing the issue of terrorist narratives in prisons, (iv) deliberating on the necessity for CoE standards for the management of offenders with mental health disorders, and (v) examining the application of new technologies in prisons and so on (Council for Penological Co-operation 2020b).

These institutions are just a fragment of the entire European penological network. Despite the fact that they all belong to the same judicio-political space, namely the CoE, they are in constant discursive

quite an experienced and successful institution with regards to prison monitoring. The proposal to establish a European equivalent came from the Swiss Committee against Torture and the International Commission of Jurists (Murdoch 2006).

³³ After each visit to a member state, the CPT produces a report with detailed information on observed conditions on the places of detention. This report is transmitted to the authorities of the country where the visit took place. Later on, corresponding authorities have to respond to this report. The reports can become public only by the permission of concerning state.

dialogue, in which they negotiate and renegotiate concepts, norms, and standards. Consequently, these discursive practices contribute to the European penological knowledge space, where distinctive prison norms and standards are constructed and codified. Having this in mind, we shall be looking at a small fraction of interaction between the institutions of the EU, CoE, and the authorities of the South Caucasus.

Interaction of Judicio-Political Spaces: The EU, CoE, and the South Caucasus

An analysis of norm diffusion with regards to penitentiary institutions between European and South Caucasian regions should be done while categorizing them according to their power intensity and technique: Based on Slaughter's (2005) *global government networks* hypothesis, one might categorize them on the form of *rapport*, i.e. vertical and horizontal formulae of political relationship. Essentially, the author argues that in the twenty-first century, networks of government officials exchange information (e.g. best practices, certain policies/techniques) and coordinate their activities to tackle common problems.³⁴ On the one hand, these exchanges are observed to be on a more voluntary tone where *rapport* is *horizontal*, that is to say, "links between counterpart national officials across borders" (Slaughter 2005, 13) are based on *rapprochement* and lack an imposition. On the other hand, a coercive tone, so to say, is identified in government networks "between national government officials and their supranational counterparts" (Slaughter 2005, 13) where power is more visible and exercised.

Having this typology in mind, interaction of the EU, CoE, and the South Caucasus can be divided into following categories:

1. Horizontal:
 - a. EU and CoE joint programs;
 - b. Conferences, workshops, and trainings organized by the CoE.

³⁴ In this chapter, these networks of government officials were also introduced as *communities of practice*. The latter is more of a sociological definition.

2. Vertical:

- a. EU's association agreements and conditionality;
- b. ECtHR and its judgements;
- c. CPT and its preventive mechanisms.

Each of these dimensions will be briefly revisited and penitentiary-related projects will be examined with regards to three South Caucasian nations.

Horizontal Dimension

This particular dimension can be observed in two European political spaces: the EU and the CoE. The former deliberates with a country on an equal and bilateral level, the latter is more a space where states meet to learn from each other. Although, horizontality of relations is visible to a naked eye, this dimension requires rather a meticulous study to identify a learning process. Since horizontality means voluntary actions, it is up to a state official and the institutional reality, within which s/he operate, to enact a learned norm.

As a rule of thumb, the EU employs twinning projects as a norm diffusion instrument. While being a specific mechanism used by the Union for institutional capacity building between the public administration entity of the EU member state and the partner country, twinning was notoriously adopted with not only the so-called *candidate countries* but also with the countries of the neighborhood policy. Yet, when it comes to penitentiary institutions reform, the Union has implemented this instrument in a few cases only. As per the penitentiary of the South Caucasus, twinning projects were not used at all. One can speculate that the EU did not manage to standardize prison systems and it left a huge margin to countries to accommodate their own local socio-political conditions.

However, the EU did not abandon the prison systems of the South Caucasus entirely. An interesting cooperation has occurred between the EU and CoE. As Eastern Partnership (EaP) initiative was developing within the ENP, in April 2014, both the EU and CoE agreed on cooperation activities with Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine, and Belarus. This collaboration implemented under "Programmatic Cooperation Framework" was renamed into

“Partnership for Good Governance” (PGG) in 2017. The project with its two phases (PGG I for 2015-2018 and PGG II for 2019-2021) was co-funded by the EU and CoE and implemented entirely by the CoE. Interestingly, this is the only regional program supported by the EU and implemented in the South Caucasus where penitentiary system reform is singled out. With five priority themes, prison system reform is listed under “Ensuring Justice” and aimed to move the system from punitive to rehabilitative logic. Both the local authorities and their European counterparts identified the following objectives to achieve the goal:

1. Support development of legislative framework and national policy in line with European standards to facilitate rehabilitation and better treatment of prisoners;
2. Strengthen capacity of national mechanisms for better monitoring and inspection of places of detention;
3. Encourage usage of community sanctions and measures as an alternative to imprisonment, and combat overcrowding in prisons.

There were two projects implemented under the PGG in Armenia and Georgia, both directed at healthcare in prison systems (see Table 1).

Besides the PGG framework, the EU collaborated with the CoE on three bilateral projects titled (i) “Further support to the penitentiary reform” I and II and (ii) “Human rights and healthcare in prisons and other closed institutions”, implemented in Azerbaijan and Georgia respectively.

In general, looking at the projects implemented in the region three areas are repeatedly identified and addressed: prison management, healthcare in prisons, and rehabilitation of offenders. This implies that Armenia, Azerbaijan and Georgia, countries moving from (post)-Soviet prison practices towards European norms, had difficulties to readjust to modern management systems. The instances of malpractice in prison systems and other closed institutions identified in CPT reports and ECtHR judgements were the main driving force to design and implement the abovementioned projects.

Vertical Dimension

Under this particular category and on the EU level, conditionality mechanisms come into play only in the framework of the Association Agreement between the EU and Georgia. Although the wording of the agreement signed in 2014 and entered into force in 2016 does not explicitly mention penitentiary institutions, the vague phrasing “respect for human rights and fundamental freedoms” was accommodating enough to include prisons into the list of government institutions needing a reform. To illustrate, the Annual Action Program for 2018 clearly states that penitentiary system is where “reform is needed, especially as regards working and training opportunities for prisoners” (Action Document 2018). Although the 2018 Action Program was aiming at education rights of the prisoners, these aims were changed depending on the needs identified by European and local institutions. For instance, the “EU4 Justice Penitentiary and Probation Support Project” which was instrumental in reforming the Georgian penitentiary system from 2016 to 2020 targeted (i) human resource management, (ii) organizational structure, (iii) case management and involvement of individual approach into sentence planning, needs and risk management and so forth.

As per institutions of the CoE, the ECtHR is a vivid example of coercive power where enforcement of European prison norms on the South Caucasus takes place through legal channels. Since involvement of the Court into the penitentiary matters is performed mainly through the scope of the Article 3 of the ECHR, the data clearly states that the share of these cases against all submissions made before the Court under various Articles is higher in post-Soviet/Communist countries (see Fig. 1). Nations of our concern, namely Georgia with almost 30 per cent, Azerbaijan with nearly 20 per cent, and Armenia with around 15 per cent of overall submissions of legal cases argue that prohibition of torture, inhuman and degrading treatment was violated in predominantly³⁵ penitentiary institutions. Especially,

³⁵ Although the majority of cases brought before the Court under Article 3 relates to the rights of prisoners/detainees, recent legal developments and socio-political context in several European countries (e.g. Russia) illustrate that definition of

Georgia and Azerbaijan being among the ten states with the highest share, one can argue that the Court is playing a decisive role in enforcing European prison norms onto these nations and, perhaps, establishing new norms on the example of violations taking place in Georgian and Azerbaijani detention facilities.

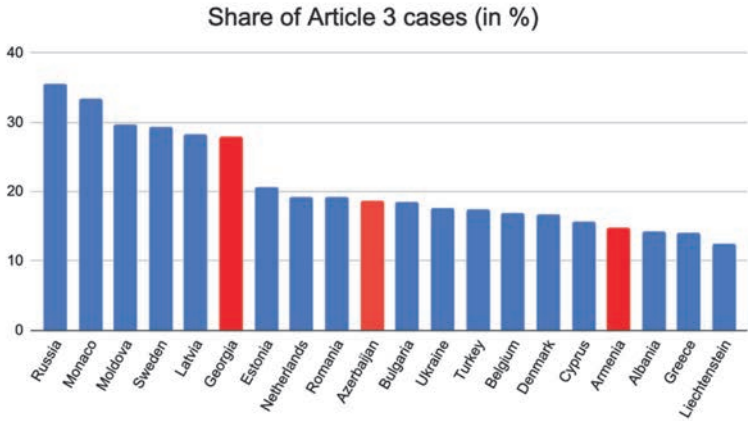


Fig. 1 **Twenty member-states of the Council of Europe with highest percentage of legal cases filed under Article 3 before the European Court of Human Rights (until September, 2020).**

The activities of the CPT can be considered another example of vertical interaction. This Committee organizes visits to places of detention and holds the right to move inside these spaces without any restrictions. The CPT visits not only prisons but also police stations, juvenile detention facilities, immigrant detention centres, psychiatric hospitals and social care homes. Having visited these particular places, the Committee produces a report and requests a response from authorities to all issues raised in this document. Nonetheless, coercive power of the CPT comes from paragraph 2 of the Article 10 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment—i.e. public denunciation. According to this document, should the corresponding

torture, inhuman and degrading treatment might be expanded to include domestic violence.

state not comply with recommendations of the Committee and improve situation in a given penitentiary institution and/or case, the CPT has the right to publicly condemn the country for inaction and poor management of detention facility/case. This in turn facilitates the work/position of civil society institutions, international organizations and separate states or groups of states who can use these instances of human rights abuses in penitentiary settings in their political agenda.

Different research strands approach these horizontal and vertical interactions—where norm diffusion takes place in various forms—predominantly from power politics perspective.³⁶ Although they are useful to understand how power is employed to enforce a norm in international politics, they also lead to a discursive practice where Europe is designing its own norms and standards to share with the rest of the world. That is to say, countries such as Armenia, Azerbaijan, Georgia stand at the receiving end of this interaction with no participation whatsoever. In fact, this discursive practice and framing constructs a political imagination where the European neighborhood is offered to accept certain norms and standards so as to *Europeanize* and stand on the side of the *civilized* world. What the majority of these research agendas forget is that the inception and making of European norms sometimes started far away from the habitual Europe we know of. To counter this discourse and narratives that it harbors, one needs to have a more critical look at the European prison norms and standards production. To do that, the South Caucasus will be used as a region where specific European prison norms have been instigated or bolstered.

South Caucasus and the Making of the European Prison Norms and Standards

Production of penitentiary standards does not appear out of thin air. If a norm is codified, and, thus, being considered a commonly accepted

³⁶ There are no specific papers discussing prison norms and power politics *per se*, yet an assumption may be inferred from assessments of the EU's ENP: for *hegemony argument* see Haukkala (2008) and his piece "The European Union as a regional normative hegemon: the case of European neighbourhood policy". *Europe-Asia Studies*, vol. 60, no. 9, 1601-1602.

standard, it means that it went through a series of considerations and deliberations. The primary reason why a certain norm/standard is codified is rather dependent on the *spatio-temporal context*. For instance, the decision of the ECtHR to label a habitual hygienic practice (widely used in the post-Soviet/Communist societies) as a degrading treatment happened due to the identification of its misuse in a Bulgarian prison. Or PC-CP's agenda for 2020 and 2021 conference on radicalization and terroristic narratives in prison settings tells us about a new population identified among prisoners—Islamic State of Iraq and the Levant's (ISIS) foreign fighters and rise of right-wing extremists in European prisons. Another example, can be PC-CP's heavy involvement into the matters of foreign prisoners and push for a recommendation by the CoM: Increasing population of foreign nationals in European prisons due to intensified internal migration in the continent as well as (ir)regular immigrants arriving in Europe pressured the CoM to accept *Recommendation (1984) 12* formally updated in 2012 with *Recommendation (2012) 12 concerning foreign prisoners*.

European prison norms are full of these examples. Each of these norms/standards require careful examination so as to identify their genealogy and rationale of their inception. Having considered the vast research agenda that might arise out of it, this research is looking at a very specific region: The South Caucasus and its participation in the making of the European prison norms. To illustrate this participation, one needs to look at the case-law of the ECtHR and how empirical evidences from Armenia, Azerbaijan, and Georgia have shaped European penology.

ECtHR: A Norm-Making Process

Participation of the CPT and PC-CP—or any other institutions active in the domain of penitentiary systems—in European prison norm-making is rather straightforward. The more interesting, however, is to observe the ECtHR in the prison matters. The case-law of the Court tells us about judgments on individual cases and specific standards which arose or were reinforced from them. Analyzing these cases might

help to see how norms are defined vis-à-vis specific socio-spatial contexts.

For instance, standardization of record-keeping while enforcing detention was greatly influenced by the judgement *Mushegh Saghatelyan vs. Armenia*.³⁷ The Court identified that the lawfulness of an arrest without proper recording of time, date, location of detention as well as the name of the detainee, the reason for his/her detention, and the person carrying this process cannot be established. This is the only case from the South Caucasus which managed to influence *standards of conditions of imprisonment*.

The greater participation and influence of the South Caucasus can be witnessed on healthcare provisions in prison settings. Especially, judgment *Mustafayev vs. Azerbaijan*³⁸ reinforced the duty of the state to protect wellbeing of individuals in custody. This provision creates a number of obligations and, thus, states are being considered liable for any injuries suffered in detention. An important and fundamental judgement such as this forces the authorities to create an infrastructure as well as provide better and adequate health services within the penitentiary systems. The Court was also clear about the “adequacy” of a health provision: In *Hummatov vs. Azerbaijan*³⁹ it was concluded that mere screening by a healthcare professional and provision of some sort of treatment cannot qualify alone for the definition of “adequate” medical assistance. Based on the findings in *Yunusova and Yunusov vs. Azerbaijan*⁴⁰, the Strasbourg Court was also clear that having a disease, even in its the most difficult form, is not enough ground to release a detainee or transfer to a public hospital. Yet, the healthcare provision must be sufficient enough to ensure a condition compatible with human dignity, free of distress, hardship and wellbeing and health of detainees are secured.

In the judgement *Jeladze vs. Georgia*,⁴¹ the Court, in fact, condemned a practice that was a Soviet legacy, i.e. strict division between prison and public health. Although the ECtHR did not

³⁷ Mushegh Saghatelyan vs. Armenia, 2018, paragraph 165.

³⁸ Mustafayev vs. Azerbaijan, 2017, paragraph 53.

³⁹ Hummatov vs. Azerbaijan, 2007, paragraph 116.

⁴⁰ Yunusova and Yunusov vs. Azerbaijan, 2016, paragraph 138.

⁴¹ Jeladze v. Georgia, 2012, paragraph 44.

explicitly mention the reasons for this division in Georgia, a three-year delay of screening for an infectious disease and the prison's healthcare detachment from overall public health infrastructure of the country gave the Court a solid basis to qualify this inaction as a negligence and a violation of Article 3. The ECtHR stressed that given the consent of detainees, they should have access to routine and free tests for transmissible diseases.

As per the disciplinary measure norms, in *Ramishvili and Kokhreidze vs. Georgia* and *Rzakhanov vs. Azerbaijan*, the Court identified conditions and limits of solitary confinement as a method of punishment. Misuse of this method forced the Court to consider the proportionality principle where the personality of the detainee, his wrongdoing, and first or recurrent breach of discipline should be taken into account. Moreover, solitary confinement cannot be used as a punishment for complaints filed by detainees. In a sense, these judgements enforced penitentiary institutions to consider certain prerequisites to apply confinement as a disciplinary measure and not violate the norm prohibiting torture, inhuman and degrading treatment. In turn, it meant that another European standard was expected to be employed—an individual approach to case management and usage of need and risk assessment techniques.

Conclusion

Europe derives its power from norms and standards rather than military equipment. Its normative basis is formed as a result of complex relationships within the boundaries of political Europe and interaction with the outside 'world'. A dynamic knowledge production on European penology is an example of how the process of norm-making is taking place on this continent. By looking at this particular example, the research before you tried to locate the source of European power beyond the use of conventional techniques of influence such as economic sanctions, conditionality in bilateral and multilateral relations, and practice of soft power, such as culture, education, and Europe-branding.

Firstly, this paper argued that there is no monolithic Europe. Previous uniform type analyzes of Europe through the prism of the EU

and its actions are not sufficient to explain the normative power of this postmodern political regional aggregate. In fact, there is no primary actor as such except for the normative foundations based on which power is exercised—the *acquis européen*. This knowledge base is constructed by numerous European institutions and, in turn, has constructed the Europe that exists today.

Secondly, countries which are vocal about the European norms and their cultural incompatibility are actively participating in European norm-making processes, both directly and indirectly. For instance, the current research elucidated how cases brought before the ECtHR allowed European penology to determine the boundaries of human treatment in a prison setting. While there is nothing to be enthusiastic about the maltreatment of inmates in the South Caucasian prisons, these cases became a valuable source by which Europe can understand how to handle prisons and ensure human rights on this diverse continent.

Thirdly, this study considered how the meaning-making process in European penology largely depends on empirical evidence coming from the ‘field’: (i) relationship of record-keeping, lawfulness of an arrest, and inhuman treatment; (ii) definition of adequate healthcare services; (iii) the boundary between the prison and public health; and (iv) misuse of a disciplinary measure. All these evidence from the ‘field’ was acquired by the European penology, where systematic and in-depth studies of them resulted in translation into European standards, norms, and best and evidence-informed practices.

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Politics of Energy-Related Europeanization in the South Caucasus

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Abstract

The EU is one of the top global energy consumers. Despite the potential of the renewable sources, oil and natural gas still dominate the field. The geopolitics of energy trade have been complex. The Middle East and former Soviet countries still remain as the leading exporters to the EU even though we witness a shale revolution in the United States. So, the EU needs to place a spacial emphasis on the energy factor in its enlargement and foreign policy planning. As a general strategy, the EU tries to promote liberalization and modernization of the energy sectors in its neighborhood. In this chapter, I examine the evolution of the interaction among the EU and South Caucasus countries in this context. Naturally, an assessment of the US, Russia, Turkey, Iran, and China impacts will also complement this framework. My research will benefit from the theoretical insights provided by the International Relations literature (especially the balance of threat and complex interdependence approaches) and the norm diffusion studies. I will conduct a qualitative content analysis of primary and secondary sources, which will be supplemented with quantitative data.

Key words: European Union, Caucasus, energy, norms, international relations.

Introduction

After the United States (US), China, and India, the EU is one of the world's largest energy consumers. Despite the surge in conventional energy resources, the focus is still on oil and natural gas. The geopolitics of the oil and natural gas trade has always been

challenging. Despite the possibly promising export capacity created by the shale gas revolution in the US, the Middle East and the Former Soviet area have still been major sources of oil and natural gas exports to the EU. So, energy security has become an important challenge for the EU's enlargement and foreign policies. In this respect, the EU has increased its efforts to liberalize and modernize energy sectors in its neighborhood area. In this chapter, I examine the evolution of the interaction among the EU and South Caucasus countries in this context. An assessment of the US, Russia, Turkey, Iran and China impacts also complements this framework. Energy policy is not merely a field of technical and economic considerations. It is largely intertwined with international political concerns. This article presents an assessment with a focus on geopolitical balance and prospects.

This chapter starts with the energy profiles of the South Caucasus countries. Then, I will provide an introduction to the EU energy policy. Next, I will examine the intertwined impacts of the European Neighbourhood Policy (ENP), Energy Union, Green Deal, International Energy Agency, EU4Energy, Energy Community, and the Energy Charter Treaty. I will also provide an assessment of the stance of the Russian Federation. Finally, I will present some concluding remarks.

Energy, Europeanization and International Relations

Social sciences literature (including International Relations) lags behind the natural sciences and economics literature to examine the energy factor in their studies. As a result, existing studies barely produce theoretical novelties and rather reflect on the gray literature. This is paradoxical considering the importance of the energy factor in the geopolitical calculations in the domestic and foreign policies of all countries, especially the great powers (Van De Graaf 2016, 3-4).

In this chapter, I will try to elaborate on the reflections of Europeanization in the interaction of energy policy and foreign policy in the case of the South Caucasus countries. I use the concept of Europeanization as a deep, structural, and continuously updated adoption of the EU's (energy) *acquis* with or without full membership

of the EU. In this sense, my use broadly overlaps with Europeanization as “EU-ization” (for discussions of EU-ization and varieties of Europeanization, see Wallace 2000; Flockhardt 2010; Mannin 2013).

I also find that rather mainstream “balance of threat” (Walt 1987) and “complex interdependence” (Keohane and Nye 2011 [1977]) approaches within the international relations literature also optionally resonate and complete such examinations of Europeanization where foreign policy variables are prevalent. Even though I will not give a full discussion of these approaches in this chapter, I would like to note that the balance of threat and complex interdependence argument highlights uneasy and sometimes contradictory nuances of cooperative and competitive behavior not only among rivals but also allies. Although these approaches (especially balance of threat) depart from mainly military considerations in the first place, for the purposes of this chapter, I find them helpful to note as optional complementary insights to make better sense of foreign policy calculations that interact with other fields like the energy policy.

As an ideal type, under complex interdependence the following assumptions are made: there are multiple channels of contact among countries; a hierarchy of issues does not exist; use of military force is irrelevant; states are not the only important actors. Complex interdependence cannot explain everything happening in the world. It is more suitable to explain the growing aspects of cooperation in otherwise somewhat competitive settings. It correlates with the post-Cold War spread of democratization and free markets (Capitalism) (Keohane 2011 [1977], xxiii-xxiv, xxvii). For the purposes of this chapter, like others in the literature (e.g., Casier 2011), I briefly note that complex interdependence makes sense, e.g., not only in the case of the EU (whose institutionalization is an obvious example of complex interdependence) but, also, e.g., relations between the EU-Russian Federation in the field of energy trade even though wider geopolitical relations do not always operate smoothly.

As another ideal type, the balance of threat is a reformulation of Kenneth Waltz’s (Waltz 1979) balance of power theory. Military and foreign policy behaviors of states are determined by whether they perceive the material power elements of their rivals and allies as

threats or not. So, perception is more important than actual material calculations. These perceptions may change over time, place, and cases. In this sense, even allies can sometimes see each other as threats at some point and, thus, opt to restrain each other. Walt gives the uneasy Soviet-Egypt partnership as one example where the Soviets restrained Egypt's behaviors (Walt 1987, x, 227). Present-day Russian-Belarussian gas disputes can perhaps be considered as another example. Again these are complementary perspectives that I would like to note. This chapter prioritizes the specific aspects of Europeanization (as EU-ization) in the nexus of the energy and foreign policy matters.

Energy Profiles of the South Caucasus

In order to make a better sense of Europeanization, it is necessary to take a look at the energy profiles of the South Caucasus countries. This section provides the state of the fossil and renewable energy-related capabilities of the countries. By rough comparison, Azerbaijan has the richest sources. Georgia comes next, and Armenia has only a minimum level of sources. Abkhazia and South Ossetia (since the 2008 South Ossetia war, the independence of Abkhazia and South Ossetia are de jure recognized by the Russian Federation and some other countries) have some hydropower and mining capacity. However, they need to rely on the Russian Federation. Tbilisi has no control over Abkhazia and South Ossetia since the disintegration of the USSR, but the EU does not recognize the independence of Abkhazia and South Ossetia. Therefore, the EU energy acquis transfer to Abkhazia and South Ossetia are indirect and minimal if ever. The same situation roughly applies to Karabakh, which is at the center of the Armenian and Azeri conflict (Azeri control over Karabakh was in the process of restoration at the time of writing, December 2020).

Energy Profile of Armenia

Armenia's electricity market has shifted from a recession in the early 1990s to relative success. Legislative and structural reforms have had positive outcomes. A relatively competitive system was created, but challenges relating to procurement, grants and management still linger. Armenia still has three pressing issues: a supply gap; reliability

of electricity supplies; and affordable tariffs. Armenia has minimal energy sources which can fulfill just 35% of national energy demand. Armenia does not have oil or gas and is instead heavily dependent on energy imports. Armenia purchases oil from Georgia, Iran, Russia, and Europe; natural gas from Russia via Georgia; and nuclear fuel from Russia. Armenia's energy efficiency is very low. The government enacted some laws to boost domestic renewable sources and efficiency (SelectUSA 2 December 2019, n. p.).

Armenia has adequate power to cover current domestic needs, but the electricity market is expected to rise. The nuclear plant in Metsamor meets up to half of the electricity demand. This plant is known to be dangerous, and Armenia is under international pressure to shut it down. However, Armenia is hesitant to close this facility and is getting an extension of service up to 2028. A new nuclear power plant is being prepared for construction. Armenia is also interested in small modular reactors. The rest of the electricity production comes from hydroelectric plants and thermal plants. Thanks to hydroelectric and other alternative technologies, the electricity grid of Armenia has considerable capacity for clean energy. The reliance on costly natural gas can be decreased if Armenia can boost renewable energy production (SelectUSA 2 December 2019, n. p.).

Geographical isolation, a small export base, and powerful monopolies in major industry sectors left Armenia susceptible to fluctuations in international commodities markets and Russia. Most infrastructure is owned and operated by Russia. Armenia is particularly dependent on Russian political and commercial support. Armenia entered the Eurasian Economic Union in January 2015 but kept an interest in stronger ties with the EU. In November 2017, Armenia concluded a comprehensive and enhanced Partnership Agreement with the EU (CIA 10 September 2020a, n. p.). These conflicting steps in Armenia's foreign / energy policy are unlikely to be short-term fluctuations. Segments of the Armenian public would well remain divided between pro-EU and pro-Russia choices in the coming years and even decades.

Energy Profile of Azerbaijan

Azerbaijan started attracting substantial foreign investments through several production-sharing agreements in the 1990s. In 1994, British Petroleum and Azerbaijan signed a contract to develop the Azeri-Chirag-Deepwater Gunashli (ACG) oilfield. The ACG sector accounts for about 75% of current petroleum output. Oil and liquids are primarily shipped from Azerbaijan through the Baku-Tbilisi-Ceyhan (BTC) pipeline, and lower quantities are exported to the Black Sea through Georgia. In Azerbaijan's Caspian sea section, foreign oil firms continue to pursue new oil reserves. Azerbaijan has gradually increased its share in the new production sharing agreements up to 50 percent (SelectUSA 2 December 2019, n. p.).

Azerbaijan has also been a new significant producer of natural gas. The bp-operated Shah Deniz field is the largest established offshore gas reservoir. The Southern Gas Corridor (SGC) is a \$40 billion initiative that will carry gas from Shah Deniz via Georgia and Turkey to Europe. The SGC has four components, phase 2 production of the Shah Deniz gas pipeline (SD2; the extension of the South Caucasus pipeline (SCPX; the Trans-Anatolian (TANAP) pipeline; and Trans-Adriatic Pipeline (TAP). SD2, SCPX and TANAP are operational. The completion of TAP is expected at the end of 2020. More than 90% of Azerbaijan's overall exports are about oil and gas. Hydrocarbons are shipped to Turkey, Georgia, Europe, and other countries. In addition, Azerbaijan intends to produce 20% of electricity from renewable sources in the future (SelectUSA 2 December 2019, n. p.).

Azerbaijan's energy exports are vital for its economy. Most of the domestic energy consumption comes from natural gas. The rest comes from oil. Littoral countries of the Caspian sea reached a delimitation agreement in 2018 after a long period of disagreements. This would facilitate further offshore drilling and development in previously disputed waters. The realization of a new Turkmenistan-Azerbaijan-Europe pipeline would further underline Azerbaijan's importance (US EIA non-dated a, n. p.). Azerbaijan's economic growth was a result of increasing energy before the fall in world petroleum prices since 2014. Major pipelines are the Baku-Tbilisi-Ceyhan pipeline, the Baku-Novorossiysk pipeline, and the Baku-Supsa pipeline. Another Stream of revenue will be opened by the planned construction of the Southern

Gas Corridor (SGC) between Azerbaijan and Europe (CIA 10 September 2020b, n. p.).

Azerbaijan made minimal advances in economic reforms. Corruption and systemic inefficiencies still impede sustainable growth in energy and non-energy sectors. The government has made some attempts to lower corruption. More foreign investment is needed. Plus, the Nagorno-Karabakh dispute with Armenia is another problem for the overall economic outlook. Although there is substantial trading with Russia and other former Soviet republics, Azerbaijan trades with Turkey and Europe. Plus, it seeks energy and non-energy markets in the US, Gulf countries, and elsewhere. Baku airport and Alat port are both being improved for strategic transport and logistics purposes. Azerbaijan has the potential to improve export routes and diversify the economy. However, this largely depends on world oil prices in the long term (CIA 10 September 2020b, n. p.). Despite its current energy profits and relatively small population, Azerbaijan is a wealthy country, at least until now. Therefore, Azerbaijan would require to take precautionary measures to avoid resource curse in the future.

Energy Profile of Georgia

Though Georgia is not a major energy producer, Georgia is a transit country between Central Asia, Azerbaijan and Europe, thanks to its strategic location. Georgia is on the main Caspian sea-Europe export route. Since 2006, the BTC pipeline is essential in this respect. The South Caucasus Pipeline (SCP) also operates alongside the BTC. Georgia earns revenues from the pipeline transport charges. Georgia's primary energy sources are imported natural gas and oil. Georgia also produces some hydropower and uses biomass. Since the Georgian economy depends on energy imports, it is extremely susceptible to international energy prices. The power grid in Georgia formerly was part of a South Caucasus interconnected network. Georgia endured a massive energy shortage after the dissolution of the Soviet Union. The country plans to improve hydropower capacity to improve electricity production. These ventures are partially financed by international sources such as the European Bank for Reconstruction and Development (EBRD). (US. EIA non-dated b, n. p.).

Through renovating hydroelectric power plants and gradually focusing on natural gas imports from Azerbaijan instead of Russia, Georgia has resolved the severe energy shortfalls and supply disruptions. Georgia also plans to improve East-West trade via its Black Sea ports (CIA 10 September 2020c, n. p.). Georgia's domestic oil and natural gas sources have been negligible. The Trans-Adriatic natural gas pipeline (TAP) has been selected by bp for the export route of the Shah Deniz II oil field in the Caspian basin in July 2013. The TAP is planned to deliver gas to Europe. TAP is the largest foreign investment in Georgia (SelectUSA 19 July 2020, n. p.). By a rough comparison, Georgia's natural resources rank between more prosperous Azerbaijan and poorer Armenia. The country is practically unlikely to discover new fossil sources. Georgia's major option seems to focus on energy efficiency, renewables, and reforms in the long run.

EU Energy Policy

After the mid-2000s, energy has become of growing prominence in the EU in the light of geopolitical problems. The energy was securitized and began to be accepted as a matter of high politics. Today, Europe's energy diplomacy has not achieved an advanced level yet. EU foreign and defense cooperation is largely partial because member states do not wish to pass rights and powers to the EU and are therefore divided over international issues. So, the schism among member states persists in the field of EU external energy relations. In the long term, nevertheless, the EU aims to broaden its efforts towards energy diplomacy. The EU member states were not able to synchronize their stance on pipelines such as Nord Stream and South Stream, which were backed by Russia. Nord Stream led to unrest between pro-Nord-Stream Germany on the one hand and the Baltic states, Sweden and Poland on the other. After the 2006 Russian-Ukrainian gas crisis, anti-Nord Stream criticisms escalated because the pipeline might make the EU more reliant upon Russia. The plan was both criticized by Italy and France. The contest between Nabucco and Russia's South Stream in Southern Europe resulted in a further division in the EU. However, member states can reach a deal on the commitment to external energy for the EU. For example, working in the context of the European Council, the EU member states agreed to

allow the Commission to explore the legal mechanism for the trans-Caspian pipeline between Turkmenistan and the EU. This is the first step in its field (Bocse 2018, 7-10).

EU energy policy has achieved a certain level of progress. However, this does not mean it is irrevocable. It may face strong alternatives (like Russian initiatives against Nabucco) and retreat. The EU energy strategy is not a finalized endeavor yet, whether in terms of legal frameworks or implementation. The EU's energy market is not perfectly integrated. The EU institutions do not have good, reliable planning and execution tools for a powerful, institutionally structured energy policy. The external energy strategy is not fully Europeanized. For the most part, external energy relations remain in the realm of national policies of the member states in the form of intergovernmentalism. Concrete effects of Europeanization are indeed apparent, particularly within the internal aspects of energy policy even today. However, this is not the case with the external aspects. So, member states' energy strategies are Europeanized to different degrees. There are hardly any special, long-term targets in the EU strategy. Differing priorities and desires shared by the member states in terms of their favored energy preferences or climate-related measures render it impossible to reach a consistent consensus on the nature of the EU energy policy. Central and Eastern European countries are rather keen to formulate a supranational, solidarity-based external policy. Older member countries like Germany, Denmark, and the Netherlands are pushing to connect the environmental and climate policy priorities to energy policy objectives. The public is not directly engaged in the energy policy debate (Dyduch 2015, 213-215).

A recent review by the International Energy Agency (IEA) notes that the EU has a diverse energy profile:

"by international comparison, the EU energy mix has a diverse portfolio of fossil fuels, nuclear and renewables. The EU is witnessing a continuous shift towards more renewable energy, although fossil fuels still account for 72% of the EU's energy mix, compared with 80% on a global scale. In 2017, oil accounted for 33% of TPES [total primary energy supply], natural gas for 25%, and coal for 14%; low-carbon sources include nuclear (13%), bioenergy, and waste (10%), and other renewables (5%). With the small production of fossil

fuels, the EU is dependent on imports, especially for oil and gas (figure 2.2)" (IEA 2020a, 26).

The review also notes that: "[...] the Covid-19 health crisis and lockdowns during March and April 2020 led to a major decline in energy demand (5% in the first quarter of 2020) in the EU. For the year 2020, the EU energy demand is expected to be 10% below the 2019 levels, almost double the decline experienced during the 2008-09 financial crisis." (IEA 2020a, 31).

So, EU energy policy (especially external energy security planning) reflects the supranationalism-intergovernmentalism dialectic, which originates from the first days of the EU. Energy policy is not only a highly technical field. It closely interacts with economic and foreign policy decisions. Therefore, EU energy policy may continue to live with disagreements. Some policy sub-fields would show smooth advances (e.g., climate change measures), whereas others (especially export deals) lag behind. For example, Maltby notes that binding regulations and the Commission's competence regarding external energy security are not comprehensive, whereas the Commission has achieved more impact regarding environmental protection, competition, and the internal market legislation in favor of supranationalism. As a case of mixed results, the Commission has also obtained some limited representational power to negotiate the natural gas supplies from the Caspian region. However, incomplete implementation of the internal market legislation and, e.g., the EU-wide tensions about Russia-backed North Stream and South Stream projects also showed the still existing intergovernmental motives in the EU energy security planning (Maltby 2013, 440-442). Vogler also points out that the common nuclear policy has always been ambivalent in the EU. The future of nuclear energy is another source of disputes and different country-wise planning across the EU. Energy-wise, Europeanization was more visible in the rather limited fields like internal market, competition, environment, public procurement, research, and Trans-European Networks. Final decisions over energy sources and taxation were generally seen as strategic competencies that member states were hesitant to share their sovereign powers (Vogler 2013, 138).

European Neighbourhood Policy and the Eastern Partnership

The ENP is a framework regulating EU relations with its 16 its Eastern and Southern neighbors (European Union non-dated c, n. p.). ENP countries are Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Syria, Palestine, Tunisia, Ukraine. The EU's EaP is an off-shoot of the ENP. It covers Armenia, Azerbaijan, Belarus, Georgia, Moldavia, and Ukraine to promote sustainable political and economic reforms in these countries. Energy is one of the fields covered in this framework. From the EU's perspective, cooperation leads to better energy security in the EU-ENP region. The goal is to ensure safe and reliable electricity at competitive rates. The EU is increasingly intertwined with its neighbors' energy systems and relies on external energy sources.

Consequently, the reliability and safety of the EU energy supply depend on the protection and security of energy resources and the distribution of the ENP area. Additionally, the EU is collaborating with neighbors on the safety of nuclear power plants and the encouragement of renewable energy. As an example, the EU is demanding Armenia to shut Metsamor nuclear power plant down (European Union 19 October 2016, n. p; European Union 21 December 2016, n. p.).

Energy Union and the Green Deal

According to a succinct introduction to the EU,

"The European Green Deal [December 2019]¹ is the ambitious EU climate policy that aims for Europe to become the first climate-neutral continent by 2050. [...] The Energy Union [February 2015] is the main policy instrument to deliver this transformation, [...]. [...] The goal of the Energy Union is to give EU consumers [...] secure, sustainable, competitive and affordable energy. [...] The Energy Union strategy is made up of five closely interrelated and mutually reinforcing dimensions [...], [1] energy security, solidarity and trust, diversifying Europe's sources of energy and [...] more efficient use of energy [...]. [2] a fully-integrated internal energy market, [...] without any technical or regulatory barriers. [...]. [3] energy efficiency [...], to reduce pollution and preserve domestic energy sources. This will reduce the EU's need for energy

¹ The brackets were added by this author.

imports. [4] decarbonizing the economy, pushing for a global deal for climate change and encouraging private investment [...]. [5] research, innovation and competitiveness, [...].” (Eurostat, n. p.).

Creating functioning domestic and global markets has been a long-standing objective of energy policy. The EU rather relies on regulatory impact instead of conventional hard power practices to achieve this. However, the regulatory impact goes beyond simply creating markets. EU regulations in connection with the single market framework are used for influence. The EU steadily considers displaying its economic capabilities to accomplish foreign policy goals regarding energy security. This is backed by the view that regional or, indeed, global trade legislation for energy trade does not fully exist. For example, this perspective was the rationale behind the 2015 “Energy Union” initiative. The recommendations, therefore, indicate that the use of the EU’s external impact would be modified qualitatively. In this state, the EU’s version of a regulatory state fits with an energy policy agenda focused on energy being regarded as a private good with public aspects but not necessarily as a strategic domain per se (Andersen et al. 2017, 3-4).

The EU has practiced regulatory authority to develop and sustain markets. There will be debates and cooperation in the design and application of the Energy Union in the future. Regardless of its outcomes and design, the so-called Energy Union initiative means that already evaluated or consolidated regulatory practices will be used. Whereas this step is largely consistent with the overall liberal paradigm of the EU, some details are reminiscent of mercantilist statecraft (Andersen et al., 2017, 7). The Energy Union initiative’s mentality still follows the self-sufficiency strategy of Europe, with the tacit goal of even accepting expensive price rates. In order to stabilize and strengthen relations with the Middle East, North Africa, and Russia, a plan for cheaper energy must surely be a reasonable tool to some extent.

Nevertheless, the EU should recognize both energy policy and foreign policy in accordance with economic policy. Even if the EU is far from geopolitically confronting the United States, China, or Russia in the near future, the stability of the EU’s neighboring countries is still of vital significance. Business and finance, particularly oil trading, are

essentially valuable instruments. As a result, the EU would lesser emphasize energy self-sufficiency to achieve the wider benefit of displaying a stabilizing impact externally, which would still help to achieve reduced costs and improved competitiveness in economic affairs (Noreng 2017, 80). By the way, even the name "Energy Union" is somewhat misleading. It does not really present a kind of "Union." It is basically a policy initiative with an ambitious name.

EU and Armenia

Signed in 2018, EU-Armenia Comprehensive and Enhanced Partnership Agreement (CEPA) is the latest step in the EU-Armenian relations. CEPA seeks closer cooperation in energy, transport, environmental sectors, among other things. The EU is Armenia's largest trading partner and also the largest donor (EUNeighbours non-dated a, n. p.; European Union non-dated a, n. p.). The EU started providing more loans and grants to Armenia after the 2018 Velvet Revolution (European Union non-dated e, n. p.).

EU and Azerbaijan

The EU-Azerbaijan relations are based on the 1999 Azerbaijan Partnership and Cooperation Agreement. The PCA aims at the incremental convergence of Azerbaijan with the EU *acquis* and international trade regulations. Azerbaijan plays the lead role in taking Caspian energy exports to the EU. In 2018, Azerbaijan and the EU accepted joint partnership goals in line with the Eastern Partnership (European Union non-dated f, n. p.). The EU is Azerbaijan's main trading partner and the country's largest investor in energy and non-energy sectors (EUNeighbours non-dated b, n. p.; European Union non-dated b, n. p.). It was the US which promoted the BTC to create an oil export route between Central Asia, Caucasus, and Europe. The plan was to keep Russia and Iran out of the route. By comparison, the Southern Corridor is rather endorsed by the EU to diversify further its natural gas import routes (German 2017, 192).

EU and Georgia

The EU is collaborating with Georgia within the EaP under the ENP. The EU-Georgia relations are based on the Association Agreement,

which involves a Deep and Comprehensive Free Trade Area (DCFTA). The DCFTA came into force in 2016. It aims to achieve political cooperation and economic integration (European Union non-dated g, n. p.). The EU is the major trade partner of Georgia (European Union non-dated h). The current EU-Georgia agreement framework involves energy-related cooperation and approximation, among other fields. In addition, the EU encourages democratic and economic transition in the country (EU Neighbours non-dated d, n. p.). Actual compliance enforcement is an important feature of the EU's impact on the Georgian domestic energy market rather than merely a transposition of regulations (Samkharadze 2019, 6).

So, the Southern Caucasus is presented as a key gateway to the wider Caspian region in the energy security narrative of the EU and other Western actors. Caspian sources are explicitly targeted to broaden energy supply and minimize its reliance on Russia. Here, the South Caucasus appears as a vital linkage between the Caspian region and the EU. The EU has a longstanding interest in strengthening the Southern Caucasus' energy security because this can serve to stabilize its neighborhood. The EU has offered technological and financial aid since the 1990s to promote energy reform measures and infrastructural connectivity. Energy security with both its bilateral and regional components is a focus area of the EU EaP under the ENP framework. The EU enjoys the best perceptions in Georgia (Alieva and Shapovalova 2015, 5, 23). In that sense, the ENP may continue to maintain better relations with Georgia and Azerbaijan in some ranking order.

On the other hand, the ENP meets more challenges in Armenia due to this country's stronger ties with Russia. Furthermore, the ENP may be largely reformed in itself, or it may be replaced with another wider framework depending on the changing geopolitical perceptions of the EU in the future. It took a long time for the EU to directly contact the South Caucasus since the end of the Cold War. So, further rapprochement with the region may last longer (if ever) than generally assumed. The speed of Europeanization is much slower compared to Eastern Europe and even the Balkans.

International Energy Agency

The IEA was created as an institutional response of the Western countries to the 1973-1974 oil crises. It basically seeks to mitigate the effects of supply disruptions in the global oil trade. Today, the IEA is a forum that deals with questions ranging from resource availability to finance, climate change, information transparency, energy efficiency, sustainability, research and development, and technology collaboration. In addition, the IEA has a collective framework for emergency response. It has been triggered three times since the formation of the IEA, the first Gulf War in January 1991, hurricanes in the Gulf of Mexico in 2005, and the 2011 Libyan crisis (IEA non-dated g, n. p.). An IEA candidate country must be an OECD member state.

Moreover, a range of specifications (i.e., maintenance of emergency oil reserves; a strict demand restraint program; energy emergency legislation; a collection of up-to-date data from oil companies) must be met regularly (IEA non-dated h, n. p.). The IEA is more of an observatory forum than an international organization with sanctioning powers. Therefore, compliance with the IEA norms practically depends on the willingness of the member states. Having said that, the IEA and the EU norms widely overlap. So, compliance with the IEA practically enforces Europeanization to a considerable extent.

EU4energy of the International Energy Agency

EU4energy is a relatively new initiative. As stated by the EU:

“the regional EU4Energy program aims to improve the quality of energy data and statistics, shape regional policy-making discussions, strengthen legislative and regulatory frameworks and improve access to information in the partner countries. The implementing partners are, the international energy agency, the Energy Charter Secretariat, the Energy Community Secretariat.” (European Union non-dated d, n. p.).

The EU4Energy project encompasses EU support in Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine to boost energy supply, electricity efficiency, technical assistance, renewable use, and data availability. This is achieved by funding oil-market improvement initiatives and programs and reducing national electricity reliance

and consumption. In the longer term, this increases the efficiency, accountability, and availability of energy sources, reducing both citizens and the private sector's energy scarcity and costs (EU4Energy non-dated c, n. p.). EU4Energy runs between 2016 and 2021. EU4Energy draws on the performance of the INOGATE program. It is a joint initiative of the EU, Energy Community Secretariat, and the Energy Charter Secretariat (IEA non-dated a, n. p.; IEA non-dated d, n. p.).

EU4energy and Armenia

Armenia heavily relies on Russia for oil and natural gas imports. Armenia sells electricity to Iran in exchange for natural gas in a barter deal. Armenia also conducts electricity trade with Georgia at minimal levels. Armenia has no energy trade with Azerbaijan and Turkey due to the Karabagh conflict. Triggered by a power shortage crisis in the 1990s, Armenia has transformed its energy sector. The energy sector was partially privatized, and new tariffs were introduced. These changes considerably improved the energy access of Armenia. Armenia seeks to develop renewables, efficiency and replace the Metsamor nuclear plant, which meets almost 1/3 of the electricity demand. The EU-Armenian Association Agreement and the Deep and Comprehensive Free Trade Area (DCFTA) talks were concluded in 2013. However, the process was halted later as Armenia joined the Russia-led customs union. Armenia joined the Russia-led Eurasian Economic Union (EAEU) in 2015. Yet, it also became an observer to the Energy Community in 2011 and a member of the Eastern Partnership in 2009 (IEA non-dated b, n. p.).

EU4energy and Azerbaijan

The renewable energy production potential of Azerbaijan is high. However, this potential is far from being realized due to a lack of investments. Azerbaijan also commits to reduce its greenhouse gas (GHG) emissions and other provisions of the Paris Agreement. The energy market in Azerbaijan remains largely state-owned in large contrast to the rest of the economy. Only a few hydroelectric power stations are operated by the private sector (IEA non-dated c, n. p.).

EU4energy and Georgia

Georgia signed the 2016 EU Partnership Agreement and 2017 Energy Community Treaty. The International Energy Agency (IEA) appreciates Georgia's energy reforms in general. It shows Georgia as a "star reformer" (IEA non-dated f, n. p.). Georgia also signed the Energy Charter Treaty (ECT) in 1995 and joined the World Trade Organization (WTO) in 2000 (IEA non-dated e, n. p.). However, the IEA also urges further attempts for the introduction of secondary legislation to speed up enforcement of the EU energy acquis. Georgia suffered electricity blackouts in the 1990s. Currently, Georgia is in the process of unbundling the electricity sectors in line with the EU acquis. Georgia's convergence with the EU energy acquis also involves climate change and energy efficiency issues. The IEA also warns about monopolization and lack of transparency in the natural gas sector. For example, the IEA points at Georgia's non-transparent deals with Gazprom and Azerbaijan's SOCAR. The IEA also recommends that Georgia maintain the required levels of oil and natural gas emergency stocks. Plus, the coal mining sector poses serious risks for workers and the environment. The IEA states that Georgia should seek further harmonization with the EU acquis over these examples (IEA non-dated f, n. p.).

In overall terms, the IEA seems to have a positive view of Georgia as a review notes,

"since the 2015 review, Georgia has made solid progress in both improving the security of its energy supply and transitioning to a more sustainable energy system. The energy sector has been instrumental in establishing the overall liberal economic policy that has earned Georgia a reputation for being a "star reformer." Since Georgia acceded to the Energy Community in 2017, its government has undertaken ambitious reforms to implement the EU acquis for electricity and gas markets, security of supply, renewable energy, energy efficiency, and statistics" (IEA 2020b, 3).

Energy Community

The Energy Community is a multinational body that puts the EU and its neighbors together to establish an efficient pan-European energy market. The Energy Community was established by the 2005 Energy Community Treaty. The Energy Community aims to promote EU

energy acquis in South-Eastern Europe and the Black Sea region (Energy Community non-dated, n. p.).

Energy Community and Armenia

Armenia became an observer to the Energy Community Treaty in 2011. According to the Energy Community's assessments, Armenia's energy sector and the overall system suffer from domestic and regional instabilities. Armenia does not have noteworthy oil and natural gas resources. Renewables are not fully exploited. There are losses in the generation and transmission of electricity. The natural gas sector is heavily monopolized. Yet, Armenia shows some progress in energy efficiency. Armenia joined the Eurasian Economic Union in 2015. This creates a mismatch with Europeanization (Energy Community 31 July 2017, 1).

Energy Community and Azerbaijan

Azerbaijan is holding talks with the Energy Community with a focus on developing its cooperation with Georgia which is already an enthusiastic member of the Energy Community (Energy Community 29 May 2018).

Energy Community and Georgia

The energy community appreciates a certain level of success in Georgia's energy sector reforms, considering this process as a direct reflection of the wider Europeanization process. Nonetheless, the Energy Community sees Georgia still in need of comprehensive reforms (especially energy efficiency and anti-monopoly measures) to better comply with the EU acquis (Energy Community 2017, 7-9.). Hofmann et al. argue that some non-EU countries (e.g., Switzerland and Norway) can influence the EU's energy acquis if they have better access to the EU's institutions and practices. So, Europeanization is not a one-way relationship. They call such countries "shapers." By contrast, members of the Energy Community (including Georgia) do not have such influence, and they are called "followers" (Hofmann et al. 2019, 161). So, Europeanization can be somewhat more symmetrical or asymmetrical depending on the capabilities of the non-EU partner countries.

Energy Charter Treaty

The 1994 Energy Charter Treaty was based on the 1991 Energy Charter. It aims to facilitate energy trade and cooperation based on the multilateral rule of law. This is expected to serve as reducing business risks. Its core focus area was Eurasia, especially the EU and the former USSR countries (Energy Charter Secretariat non-dated f, n. p.). Secure oil and natural gas transit across Eurasia is a priority for the organization. Russia is a key gap in the Energy Charter system. Despite being an early signatory, it never ratified the treaty. Finally, Russia ended its signatory status in 2018. Today, the Energy Charter covers not only Eurasia but also the Mediterranean, Middle East, and North African markets (Energy Charter Secretariat non-dated c, n. p.). The Energy Charter is important for energy security planning in the South Caucasus. In contrast to the Energy Community Treaty and the ENP, it does not directly seek to spread the EU energy acquis in the region. It has a broader focus on promoting cooperative actions. Its engagement does not reach a level of introducing an integrated energy market in the region (Terterov 2017, 240). However, the energy Energy Charter Treaty has a wider international appeal. It covers countries outside the EU neighborhood.

Armenia signed the European Energy Charter in 1991 and its successor international Energy Charter in 2015 (Energy Charter Secretariat non-dated a, n. p.). The Energy Charter Secretariat considers Armenia's membership as a signal of Armenia's willingness to commit to transparency and non-discrimination towards foreign investors (Energy Charter Secretariat 22 January 2015, 5). Azerbaijan signed the European Energy Charter in 1991 and the International Energy Charter in 2018 (Energy Charter Secretariat non-dated b, n. p.). Likewise, Georgia also endorsed the European Energy Charter in 1991 and the International Energy Charter in 2018 (Energy Charter Secretariat non-dated d, n. p.).

Energy and Wider Political Objectives of the EU

The EU's stability choice only exceeds its democracy-promoting choice if destabilization is related to grave risks that may spill over instantly in the EU. There is a major gap between how the EU interacts

with the regions in its east and the south. The most important security risks are unchecked migration, terrorism, radicalization, energy security, and organized crime. The Mediterranean is more closely prone to these risks than the post-Soviet region. Uncontrolled migration and transnational terrorism are the most urgent ones. However, the notion of conditionality in the EU's neighborhood policies seeks a consistent match between democracy and the rule of law on the one hand and stability, commercial interests, and energy security on the other hand. Yet, according to some analyzes, the EU has never regularly advocated democracy as a requirement in Armenia and Azerbaijan. While the EU condemned the Azerbaijani government for breaching fundamental values of democracy and the rule of law, it has indeed improved its energy and economic ties with Azerbaijan. The EU followed a similar attitude towards Armenia. EU's criticisms were not backed by sanctions. Since 2003, the EU and the US have accepted the results of all elections (Börzel and Lebanidze 2017, 18, 20, 23). Democracy promotion never comes before energy trade cooperation. Regime type does not matter when it comes to consolidating energy trade.

The EU does not consider itself able to impose conditionality on Azerbaijan for democratic reforms in this country. The EU lacks this kind of power. The EU cannot fully present any substantial encouragement to lead Azerbaijan towards an uneasy political reform process. This stems from the fact that Azerbaijan is not given the prospects of being an EU member. Even though there may be some pro-European style democracy social segments in Azerbaijan, the country is dominated by another political mentality which has little incentive to take the risky and burdensome steps to further embrace democracy at the level of the EU. Plus, the EU does not introduce democratization as a conditionality of establishing trade ties with Azerbaijan or any post-Soviet country. This situation is also comparable to the cases in Belarus to a varying extent. From a critical point of view, current systems in these countries rely rather on creating effective authoritarian institutions. Profits from broad energy supplies enable Azerbaijan to create networks that limit the country's democratic practices. In this sense, the EU seems to have prioritized other objectives over democracy. In the case of Azerbaijan,

this was advancing energy trade. For Armenia, the priority was keeping the Karabagh conflict frozen and encouraging dialogue with Turkey. Even if the EU prioritized democracy, there seems to be a lack of substantial backing of this objective (Börzel and Lebanidze 2017, 25-29.).

All post-Soviet countries, including the South Caucasus countries, have all more or less accepted cooperating with other Western/global institutions like the World Bank, International Monetary Fund, and the WTO. To some extent, they established a dialogue with NATO. However, full integration with the EU was never on the table as the EU itself never presented that kind of encouragement. The EU largely build its relations on rather technical and commercial aspects. For example, neither EU nor the US never substantially backed civil society initiatives in the former-Soviet countries. This was especially the case with Azerbaijan (Aliyeva 2012, 445-449). This situation could only change if such countries were given a real chance for EU membership. Yet, this is very unlikely to happen.

Russia Factor

Russia's relations with the EU have been hindered by competition and internal factors. Russia gradually began to see the EU and the US as rivals in the post-Soviet countries (Aliyeva 2012, 445). The European Union was never the major foreign policy destination in the post-Soviet zone, directly contrasting its position in Central and Eastern Europe. The Eastern Partnership countries are still connected to Russia through complicated and diverse interdependencies. An attempt to explain the extent of the EU's impact in Eastern Europe and the South Caucasus should consider the Russian factor. The performance of the ENP depends on the EU's relations with Russia (Delcour 2018a, 14-15). If Eastern European countries had not joined the EU and NATO, their post-Soviet state of affairs with Russia would not be much different from the relations of the South Caucasus countries with Russia today.

The Nabucco (started in 2002) gas pipeline was one of the key projects funded by the EU. It was planned to link the EU to Georgia,

Azerbaijan, Turkmenistan, Kazakhstan. It was also envisioned to be expanded into the Middle East at a later stage. The European route covered Bulgaria, Romania, Hungary, and Austria. Nabucco was incorporated into the trans-European energy network (TEN-E) in 2012. In 2013, Azerbaijan's Shah Deniz natural gas field operators opted for a Trans-Adriatic destination over the original East European route plan. This change arose partially because of Russia's commercial influence. Facing the Russian challenge, some European governments and companies preferred to work with Russia. This all indicated that the EU could be far from diversifying its energy import sources. As a result, TAP appeared as a collaborative operation of the Norwegian Statoil and Swiss EGL group. TAP was also planned for the delivery of gas from Azerbaijan to Europe, but its destination countries in Europe were different. Instead of ending in Eastern Europe, TAP was designed to cross Greece, Albania, the Adriatic Sea, and end in Italy. According to the critical perspective of Dyduch, the abandonment of Nabucco for TAP was, thus, a failure of Europeanization in energy policy (Dyduch 2015, 210-211). Yet, this also shows that a homogeneous understanding of Europeanization does not always operate. Given that anti-Nabucco EU members do not generally reject the notion of Europeanization, they may have legitimized such a policy decision as a reflection of a nuanced Europeanization as they see fit rather than undermining Europeanization as a whole.

The case of the Nabucco gas pipeline reveals the EU energy diplomacy's difficulties. The project was eventually scrapped in 2013 despite the diplomatic, legal, and financial steps introduced by the EU to promote the Nabucco pipeline. In addition to the existing policy differences inside the EU, some member states even supported the Russia-led South Stream project as a competitor to the Nabucco project. Nabucco initially advocated a separate pipeline from the Turkish pipeline infrastructure with a legal system to guarantee non-discrimination and security of supply. Turkey was, nonetheless, hesitant to adopt the suggested transit system, which was similar to the EU's energy acquis. The Turkish state-owned corporation BOTAŞ would therefore sacrifice ownership of transmission pipelines or the option of obtaining a percentage of transiting gas at a subsidized price for Turkish consumers. Azerbaijan and Turkey signed an agreement

on the Trans-Anatolian Pipeline (TANAP) in December 2011. This made the original Nabucco's first phase redundant. SOCAR's (Azeri state-owned company) plans to buy DESFA (a Greek state-owned company), and Azerbaijan's general strategy of avoiding direct competition with Russia over Central and Eastern Europe was probably behind this policy direction (Herranz-Surrallés 2017, 254). So, Nabucco was effectively buried down as a mix of EU and non-EU related causes.

Generally speaking, Russia is commonly seen as a challenger to an EU-friendly way of energy security in the Southern Caucasus. Georgia considers Russia as the key problem. Azerbaijan tends to perceive the same way, more or less. This is a strong base for partnership between Azerbaijan and Georgia to secure energy flow. This interdependence is enhanced by the energy transport system connected to certain regional pipelines and the Baku-Tbilisi-Kars railway. Armenia's views are often more ambiguous. Armenia both relies on Russian energy imports and also worries about this dependence on Russia. Segments of Armenian public opinion also see reliance on Russia as more of a problem (Alieva and Shapovalova 2015, 22). Energy export profits help Azerbaijan conduct its affairs with the EU on a selective basis with minimally binding provisions. By comparison, Georgia embraces Westernization far more than its neighbors (Buzogány 2019, 5). In a rough ranking of Europeanization, Georgia comes first. Azerbaijan and, later, Armenia follow Georgia. This ranking does not seem likely to change in the short term.

The Eastern Partnership's substantial capacity also sparked a growing fight for power in the common EU-Russia neighborhood. The Eastern Partnership represented a major policy change in the post-Soviet area in contrast to the ENP, which mainly demanded political commitments from the partner countries. Under the Eastern Partnership, the EU offered Association Agreements, Deep and Comprehensive Free-Trade Areas (DCFTAs), removal of Schengen visa restrictions, and broader cooperation, especially in the energy trade. This expanded proposal focused on the increasing importance of the EU *acquis*, particularly in trade links. Partner countries are required to harmonize their laws almost completely with the EU *acquis*.

Consequently, the Eastern Partnership had far more capabilities than the ENP to pull the partner countries towards the EU acquis. Russia perceived the Eastern Partnership as an attempt to exclude Russia from the common neighborhood area even though the EU rejected such claims. In Russian views, the EU became increasingly associated with NATO. Russia's reply to the Eastern Partnership was promoting the Eurasian Customs Union in the former Soviet space. Russia's integration offer was more comprehensive than the Eastern Partnership. So, it was practically incompatible with the Eastern Partnership (Delcour 2018a, 23). The South Caucasus is important not only for the EU but also for NATO (Chochia and Popjanovski 2016, 199). Russia's views about the ENP largely depend on the wider political and military affairs not only with the EU but also the US. The ENP is not seen as a mere civilian initiative of the EU even though it involves nothing directly about military affairs.

The Russian threat has driven the post-Soviet states to the EU to make them more susceptible to the political conditionality of the EU and the growing EU influence in general. A clear exception is Armenia, where Russia blocked stronger relations between the government and the EU, as was seen when Armenia did not sign the Association Agreement with the EU. Instead, Russia persuaded Armenia to become a member of the Eurasian Customs Union (Börzel and Lebanidze 2017, 30). The Caspian states (including Azerbaijan) ask for help from Russia over their domestic affairs. However, they tend to behave internationally in economic issues. In this context, the impact of globalization is restricted to trade. Energy exports allow these governments to maintain their political control. The fear of disrupting the internal political balance restricts relations with the EU (Aliyeva 2012, 451-452).

As Delcour argues, neither Azerbaijan nor Armenia or Georgia (and by the way, even the East European countries) give full support to Russia or the West. On the contrary, they search for good relations with both of them. The examples of Armenia (and Moldova) can better demonstrate that. While Armenia is a member of the Russia-led Eurasian Economic Union as of 2015, it also signed an enhanced cooperation agreement with the EU by late 2017 (Delcour 2018b, 119). After all, the countries of the South Caucasus are small powers

who try to survive in the competition of the great powers (e.g., firstly the US and Russia but also other members of the United Nations Security Council). Plus, Germany, Iran, and Turkey are important actors influential in the South Caucasus. Given that there is no strong and swift indication of the EU and NATO to embrace them as full members, it is not surprising to see fluctuations in their foreign policy actions over time.

On the one hand, the South Caucasus countries do not exclude a general willingness in regional energy cooperation. Yet, the main hurdles are deep-rooted distrust and geopolitical tensions. This condition is only compounded by the multiple desires and policies of foreign actors, particularly Russia and the EU. Russia needs to retain its power and leading position both in the South Caucasus and the EU markets. The EU supports interdependence through regional integration, free markets, and good governance, easier access to Caspian hydrocarbons. The EU's prime goal is the reduction of its dependency on Russia. Geopolitical disagreements are expressed in energy cooperation trends. Armenia tends towards Russia, whereas Georgia and Azerbaijan are somewhat more Western-oriented. So, actors' preferences connected with independence or dependence are stronger than interdependence in one way or another (Alieva and Shapovalova 2015, 23). The South Caucasus countries experienced a brief period of building a unified federal country (i.e., Transcaucasian Federation) in the interregnum between the end of the Russian Empire and the consolidation of the Soviet power. However, this legacy is little reminded in contemporary discourses.

Somewhat paradoxically, South Caucasus gas capacity may not fully constitute a challenge to Russia. Particularly, Azerbaijan's natural gas exports amounts to Europe are far less than Russia's share in the European market. Rather, increased demand in Turkey and the Western Balkans is presumably consuming Azerbaijan's gas exports. Plus, Russia finds it necessary to provide relatively cheap gas prices to its citizens, Armenia, Abkhazia, and South Ossetia. The real motivation behind its energy trade presence in the South Caucasus is its aim to maintain its overall geopolitical position in the region (Alieva and Shapovalova 2015, 22-23). Cases of Russian military engagements in the crises of South Ossetia and Ukraine point that the

Southern corridor project is not fully secure against future risks. Some Western countries may be actually still neglecting the possibility that Russia is ready to use military force in the former Soviet era whenever it sees necessary (Roberts 2017, 214). Even though Russia or any other party is not very likely to attack international pipelines (at least as their primary targets in a possibly short war) in a possible scenario, military considerations are part of the otherwise fully civilian-looking energy trade affairs. Wider geopolitical concerns cannot be excluded from planning and analysis as regional energy trade flows and infrastructures are not merely technical engineering projects.

Conclusion

In this chapter, I tried to present an assessment of the energy profile of the South Caucasus in terms of Europeanization. Influences of the US, Russia, Turkey, Iran, and China were also presented. Overall, the EU policy displays elements of both intergovernmentalism and supranationalism. There are also intra-EU challenges. Some members (e.g., Germany) are pragmatic enough to work with Russia (e.g., North Stream) whenever they see profitable, whereas some Central and Eastern members (e.g., Poland) try to minimize the Russian influence in European energy markets. Russia still maintains a high influence in the South Caucasus and increasingly views Europeanization in hostile terms. Policies of the US and Turkey overlap with the specific objectives of Europeanization to varying extents. Iran is practically an ally of Russia. China does not introduce any policy frameworks directly. Its concerns are rather about accessing European markets. This South Caucasus is one of the dots on the map.

Armenia is a country that has limited natural resources. It is heavily dependent on energy imports from Russia and Iran. It is the only country in the South Caucasus that has a nuclear power plant (Metsamor). But being outdated, Metsamor is more of a risk than of an asset. Despite deep geopolitical engagement with Russia, segments of Armenia show some attention to wider Europeanization, but this is not reflected in actual energy policy decisions. Unlike any other country or sub-region in the South Caucasus, Azerbaijan has rich natural gas and oil sources. It is self-sufficient and exports energy. Yet,

it shows a minimal willingness for both the political Europeanization and Europeanization in energy policy. Georgia has considerable hydropower capacity, but it is barely an energy exporter or a self-sufficient country. It shows the highest performance in terms of Europeanization in energy politics. Abkhazia and South Ossetia are not recognized by the EU. So, they have little, if ever, direct engagement in this sort of Europeanization. Both countries have some hydropower and mining assets, but they are not self-sufficient or exporters. As the South Caucasus countries are not given any prospects for joining the EU (and its geopolitical cousin NATO), the extent of Europeanization is unlikely to reach maximum levels. Only Georgia may appear as a surprising exception, but such a scenario is again very unlikely due to the multidimensional (military, economic, political, energy-related) Russian influence in the region.

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Turkey's Compliance with European Union Environmental Policy

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Abstract

Since environmental problems do not recognize state boundaries, the only way to efficiently deal with these problems is regional and/or international cooperation. The UN Stockholm Environment conference held in 1972 was an important turning point in terms of acknowledgment of environmental problems as an international issue requiring collective action. Following the UN, the European Commission prepared its First Environmental Action Program in 1973. This program was the first official policy paper for the environment in the history of the EU. Environmental regulations of the EU gained policy status in 1993 Maastricht Treaty. Since then further environmental integration as well as expanding the EU's environmental policy have been on the Commission's agenda. Accordingly, in addition to member states, candidate states are also held responsible for complying with EU environment policy. One of the 35 chapters that candidate countries have to transpose into their domestic law is Environment and Climate Change. As of 2021, Turkey is one of the candidate countries that is subject to EU's diffusion of environment policy.

This paper aims to explore Turkey's compliance with EU environmental policy by highlighting the factors that facilitate or problematize this process. Adopting Schimmelfennig's and Sedelmeier's External Incentives Model as a theoretical model, the progress reports on Turkey prepared by the European Commission, reports of the EU Network for the Implementation and Enforcement of Environmental Law will be analyzed. The analysis will be further supported by an examination of discourses of Turkish authorities and institutions.

Key words: Environmental policy, Turkey, European Union, External Incentives Model, EU Environmental Policy, Progress Reports.

Introduction

This paper is about Turkey's compliance with EU environmental policy and the problems encountered during the implementation of these policies. The aim is to explore the important factors that influence transposition and implementation of EU's environmental *acquis* by Turkey. Schimmelfennig and Sedelmeier's External Incentives Model is used as a theoretical explanation and progress reports on Turkey and reports of the EU Network for the Implementation and Enforcement of Environmental Law are analyzed. In this respect, the paper provides an account on the EU's perspective on Turkey's compliance with the EU environmental policy. The main reason for examining the process from the perspective of the EU is the EU's ability to monitor and reward Turkey's compliance with the environmental policy within the accession framework. Then the analysis moves on to consider Turkey's approach, and for this purpose the statements of the related institutions of the Republic of Turkey are put under scrutiny. The main argument of this paper is that the credibility of the membership possibility of Turkey is the main driving force for Turkey's compliance with EU environmental policy.

At the beginning of European integration, the founding treaty did not even include the word environment; yet, the EU has made its environmental policy one of its most essential components of integration over time. The transformation of the environment into politics commenced with the First Environmental Action Program in 1972, gained a legal base with the Single European Act in 1987, and achieved policy status with the 1993 Maastricht agreement. The primary purpose of the EU environmental policy is to protect the environment by fully implementing the concept of sustainable development, environmental protection, and climate change adaptation requirements and to ensure the adoption of these requirements by all sectors. The basic principles of EU environmental

policy are precaution, prevention pollution at source, the polluter pays, complementarity, and subsidiarity.

In the 1970s, the issue of the environment began to gain importance in Turkey as well. In 1974, the word "environment" was added to the government program for the first time in the history of the Turkish Republic. According to First Ecevit Government Coalition Protocol, in terms of environmental health, necessary measures would be taken to prevent the effects of air and water pollution that threaten citizens' health and worsen the natural conditions (Neziroğlu and Yılmaz 2015, 580). In 1983, the first significant legal arrangement for the environment in Turkey was made. Moreover, in 1988, the Greens party, the first environmentalist party of Turkey, was established. The most crucial turning point in Turkey's environmental policy development was marked by the start of the membership negotiations with the EU in 2005. Since then, Turkey has increased the quality of environmental standards and environmental investments. This is because all candidate states have to transpose and implement the *acquis communautaire* of EU and Chapter 27 of *acquis* is on Environment and Climate Change.

In the first part of the study, the External Incentives Model will be discussed. Alternative models of compliance will be introduced, and the rationale behind choosing the External Incentives Model will be clarified. In the second part of the study, the development of EU environmental policy will be explained in detail. In this section, the historical development of EU environmental policy is divided into three separate periods. In each period, the EU environmental action programs and the innovations and changes brought by the EU treaties of the period will be put forward. In the next part of the study, Turkey's harmonization process with the EU environmental *acquis* will be evaluated. In this section, Turkey's Progress Reports of the EU are used as the primary source. Each chapter that is a part of the environmental *acquis* has been examined separately. Also, in this section, the conditions that Turkey must fulfil for full compliance with the EU environmental *acquis* are summarized. Further, the details of an exceptional condition that will not be completed with the harmonization of the environmental *acquis* are explained.

Theoretical Framework

Europeanization is an important concept which measures the alignment of member states' policies with the EU. However, for candidate countries, Europeanization means harmonization with EU rules and policies and their implementation by transferring them to domestic politics (Soyaltın and Balkır 2018, 66).

In Europeanization, the EU uses two different strategies to oblige or convince states to comply with EU norms and standards. The first one is conditionality based on rationalist institutionalism. To explain, conditionality is the strategy used by international institutions to encourage national governments to comply with their rules, norms and policies. The EU conditionality does not produce clear and definitive results because it forces target states to implement these rules and policies, not limiting itself to formal transposition. This obligation makes the EU conditionally vague and unmeasurable. There are two different kinds of conditionality in the EU. The first one is democratic conditionality which means the adoption of liberal democratic norms mentioned in the Copenhagen Criteria. The second one is transposition and implementation of the *acquis communautaire*. According to EU conditionality, target states are rewarded with trade agreements, association agreements and full membership according to their compliance level. Also, conditionality contains punishments mechanisms for countries that do not make progress on adopting and implementing EU norms and standards (Soyaltın and Balkır 2018, 73, 76).

The second strategy is socialization based on sociological institutionalism and the logic of appropriateness. Socialization means spreading certain values and norms through interaction among sides. Solid interaction among EU, states and non-governmental organizations is crucial for the social learning process. The main aim of socialization is convincing society and state of the legitimacy and appropriateness of EU norms and values. So, in this process, target states and societies comply with EU rules to do the right thing, not to get EU rewards (Soyaltın and Balkır 2018, 78).

Frank Schimmelfennig and Ulrich Sedelmeier developed three models based on a logic of consequences and logic of appropriateness

in order to explain why Central and Eastern European countries comply with EU rules and standards. The first one is the External Incentive Model approach based on the logic of consequences. According to this approach, actors make their policies to maximize their interests. This approach is a response to the conditionality strategy. The basic assumption in the external incentives model is that the EU encourages candidate countries to adopt the EU *acquis communautaire* through awards. Having said that, the EU candidate countries adopt EU *acquis communautaire* only if the benefits of the EU rewards exceed the adoption costs (Schimmelfennig and Sedelmeier 2005, 12).

The results of the cost-benefit analysis of candidate countries depend on certain conditions. The first one is the determinacy of conditions. Within this model, EU rules must be associated with rewards. Through this association, countries understand what they are entitled to do for accomplishing the goal of EU membership or other EU rewards. In Schimmelfennig and Sedelmeier's framework, if the rules are determined as paths to reach EU awards, the cost of adoption will be low (Schimmelfennig and Sedelmeier 2004, 672). The second one is the size and speed of awards. The EU's awards cover a wide range of financial assistance ranging from trade agreements to membership, which is the most significant reward. The membership perspective is more effective than other awards.

In addition to the size of awards, the speed of rewards is essential as well. Candidate countries must meet the benchmarks in advance to receive the membership award. In other words, the EU firstly has to be convinced by candidate countries through transposing and implementing the *acquis communautaire*. Indeed, this process is long and challenging. Uncertainty about when candidates will reach the EU membership award can reduce their faith and reduce the support for the necessary reforms (Schimmelfennig and Sedelmeier 2004, 673).

The credibility of conditionality is another condition. The credibility of conditionality refers to the fact that the EU will punish the candidate states if they do not comply with conditions. In contrast, if they comply with conditions properly, the EU will reward them (Soyaltın and Balkır 2018, 81).

The last condition is the number of veto players. With the external incentives model, the EU attempts to alter the status quo in countries. In addition to governmental preferences, the preferences of veto players are crucial for changing the status quo. A high number of veto players will make this process more difficult. The affinity of the veto players with the status quo and their attitude towards the EU perspective affect the cost of this change and especially for candidate countries' cost of adoption (Schimmelfennig and Sedelmeier 2004, 675).

The latter Social Learning Model is based on a logic of appropriateness. This approach is a result of the socialization strategy of the EU. According to this model, candidate countries focus on the legitimacy and appropriateness of EU norms and standards instead of the advantages and rewards of complying (Soyaltın and Balkır 2018, 82). In this model, embracement of European identity and its values are critical for non-EU member states in order to comply with EU norms and rules. So non-EU member states have to be persuaded on the appropriateness of EU norms and standards.

According to Schimmelfennig and Sedelmeier, legitimacy of rules, the identity of states and resonance are essential factors for the social learning model. In legitimacy of rules, proper transposition and implementation of EU rules and norms by member states are an important indicator for non-EU member states. Proper transposition and implementation of rules increase the quality and legitimacy of rules. It also increases the persuasive power of the EU for acceptance of these rules by non-EU member states. The second factor is identity (Schimmelfennig and Sedelmeier 2004, 675,676). If non-EU member states identify themselves with European identity, transposition and implementation of EU rules and standards will be easier (Soyaltın and Balkır 2018, 83). The last factor is the resonance which means ties between EU rules and domestic rules. To explain, if EU rules and norms are not in conflict with existing domestic rules, harmonization of EU law and domestic law will increase (Schimmelfennig and Sedelmeier 2004, 676).

The third and last model is the Lesson Drawing Model. In this model, states accept EU rules and norms for solving their political problems. Like in other models, there are several conditions. The first

one is dissatisfaction with the status quo. Non-EU member states comply with EU norms and standards to solve political problems related to the status quo. In this condition, public opinion on the status quo is an important determinant. The second condition is the existence of EU-centered epistemic communities. Epistemic communities offer policy alternatives to decision-makers and convince the public with seminars on the appropriateness of these alternatives. Relations between decision-makers and EU-centered epistemic communities increase compliance rate with EU norms and standards. The last condition is rule transferability. The fact that the rules to be adopted have had positive political consequences in other countries is an important indicator for policymakers. At the same time, the administrative and financial burden that compliance with the rules will create on the country and the resistance of the veto players to this burden is the last factor that will determine the success of the harmonization process (Soyaltın and Balkır 2018, 84–85).

Among these three models, the External Incentive Model is the most appropriate model to explain Turkey's adaptation process to the EU environmental policy. To explain, the environmental negotiations between Turkey and the EU started in 2009. According to the Turkey progress reports prepared by the EU, Turkey has made limited progress in this area and should step up its efforts in terms of transposition and implementation. According to Turkey, strengthening the possibility of EU membership and even the realization of EU membership are essential for implementing and transposing many environmental rules and laws. Turkey has made full membership a precondition for harmonization with EU environmental policy. Also, Turkey's external incentive-based attitude towards EU environmental policy can be observed in other international environmental agreements. For example, Turkey does not ratify the 2016 Paris Climate Agreement. In this Agreement, Turkey is classified as a developed country which means it is not receiving financial aid. Also, Turkey does not want to be assigned with the same responsibilities as other developed countries. So, it demands extra incentives to ratify the 2016 Paris Agreement.

Historical Evolution of Environmental Policy of the European Union

The historical evolution of the EU environmental policy will be examined within three periods. Environmental Action Programs and founding treaties of the EU will be primary sources of this part. The first period starts with the 1957 Rome Treaty (Treaty Establishing the European Economic Community) and ends in 1972. The second period starts with the October 1972 Paris European Council and ends with the Single European Act of 1987. The last period starts in 1987 and continues to the present day.

First Period (1957-1972)

According to Article 3 of the Rome Treaty, the main aim of the European Economic Community (EEC) was to establish a common market with common customs tariffs and a common commercial policy. The four freedom—free movement of people, goods, services, and capital—would be the basis of the common market (European Economic Community 1961). Therefore, at the beginning of European Integration, environmental policy was not a part of the cooperation. Until 1972, there had been no official document in European integration about the development of environmental policy, yet it does not mean there was no regulation of environmental issues between 1957 and 1972. Even though there was no legal basis and official policy document, the EEC made certain decisions about the environment by interpreting other articles of the Rome Treaty. Article 2 and Article 36 of this Treaty were the primary interpretation sources for developing environmental regulation within EEC. Article 2 emphasized increasing the living standards, and Article 36 highlighted that there would be restrictions and prohibitions on trade to protect public health, the protection of human or animal life or health, and the preservation of plant life (European Economic Community 1961). In addition to these articles, Articles 100 and 235 were used as the primary legal basis for environmental protection decisions and legislation. According to Article 100, the Council could decide unanimously on the harmonization of member states' legislative and administrative provisions, which have a direct effect

on the establishment of a common market (European Economic Community 1961). So, the EEC made an environmental decision with the claim of preventing the establishment of a common market (Knill and Liefferink 2013, 16). Moreover, according to Article 235, the Council can take a unanimous decision upon the proposal of the European Commission and after receiving consultation of European Parliament—if it is necessary for completing one of the aims of the Community, though the Treaty did not include such an authority (European Economic Community 1961)

Second Period (1972–1987)

First Environmental Action Program (1973–1976)

In October 1972, the Paris European Council was one of the critical turning points for European Environmental Policy. This Council called European institutions to prepare an action plan for the environment. On 17 April 1973, the first Environmental Action Program (EPA) was prepared by the European Commission and approved by the Council on 22 November 1973. (Hildebrand 2005, 24). There were several trigger points for establishing the first EPA. The most important one was the 1972 UN Conference on the Human Environment, held in April in Stockholm. The principles of the First EAP were parallel with the result report of the UN Conference on the Human Environment (Güneş 2011, 28). This Program's main goals were to improve people's living and working standards and protect people's surroundings. The EC determined 11 principles to achieve these objectives. These were preventing pollution at source, consideration of environmental impacts in all planning and decision-making processes, polluter pay, promoting international cooperation, the principle of subsidiarity, protecting ecological balance during the exploitation of natural resources, improving scientific and technological knowledge, coordination and harmonization of national environmental policies, that state activities should not harm the environment of other states, organizing educational programs to increase environmental awareness and protecting the interest of developing countries while implementing environmental policy (Council of the European Communities 1973). In addition to these

principles, there were policies about protecting rivers, the management of hazardous waste, water pollution, radioactive waste, and audit of production centers (Güneş 2011, 25).

Second Environmental Action Program

The second EAP was approved on 9 December 1976 and entered into force on 17 May 1977. This Program was a continuation and expansion of the first Program. Both of them were based on the same principles. The rational usage of natural resources gained special attention with this new Program (Hildebrand 2005, 25). Reduction of pollution, especially sea pollution, air pollution, and water pollution, were the main focal points (Güneş 2011, 32). For the first time, the concept of environmental impact assessment (EIA) was mentioned as a procedure for enhancing preventive action against pollution and environmental degradation by evaluating the impact of the project on the environment. There is a particular chapter entitled as "environmental impact assessment" under Title IV, "General Action to Protect and Improve the Environment" (Council of the European Communities 1977).

Third Environmental Action Program

This Program gave special attention to the integration of environmental policies into other policy areas, EIA procedure, noise pollution, marine and freshwater pollution, atmospheric pollution, combating transfer of pollution, cooperation with developing countries, encouraging the development of clean technology, waste management, management and audit of dangerous chemical and substances and protection of Mediterranean (Council of the European Communities 1983; Güneş 2011, 31). Moreover, this Program highlighted that environmental policy could not be separated from other EEC policies, and it is as significant as others. It is an integral part of other EEC policies. (Council of the European Communities 1983; Hildebrand 2005, 26; Güneş 2011, 31).

Third Era (1987–)

Single European Act

With the Single European Act (SEA), which is the first significant revision of the Rome Treaty (TEC), environmental policy legally became part of EEC policies. Chapter VII was titled as the environment. Article 130r 130s and 130t are the principal articles of Chapter VII. Article 130r regulated the principles and aims of the EEC about environmental policy. Essentially, these principles had been part of the European Environmental Policy since the First EPA. However, until the SEA, they did not have legal bases. In general, Article 130r underlines the importance of protecting and preserving the quality of the environment, protecting human health, and rational usage of natural resources. Also, Article 130r determines the main principles of environmental policy, such as taking action before pollution, fighting against environmental damage in its source, polluter pay principle, and the principle of integration (Knill and Liefferink 2013, 21; European Economic Community 1987). Article 130s regulated the decision-making process of European Environmental Policy. According to this article, the consultation decision-making method is the main method in the environmental policy area. To explain, the Council of European Communities decided unanimously on the proposal of the European Commission after the opinion of the European Parliament and Economic and Social Committee (European Economic Community 1987). However, Article 100a enabled the use of a new decision-making method (Article 149 TEC) for the regulations for establishing the internal market until 31 December 1992 (Knill and Liefferink 2013, 23; European Economic Community 1987). In this cooperation method, after the proposal of the European Commission, the Council of European Communities decided with a qualified majority after cooperating with the European Parliament and consulting the Economic and Social Committee. With this procedure, the European Parliament gained the right to a conditional veto which could be overridden by the Council through unanimity. Article 130t was the last article of Chapter VII—Environment. According to this article, member states can enact stricter measures on the environmental protection area, but these

regulations must be in accordance with the Treaty (European Economic Community 1987).

Fourth Environmental Action Program

The fourth EPA was accepted on 19 October 1987, right after the ratification of the SEA and with the aim of achieving its objectives. It also follows the objectives and principles of the prior Programs. As mentioned above, most of the principles and aims have been part of European environmental policy since the establishment of the first EAP (Güneş 2011, 32). There were notable highlights for atmospheric pollution, protection of fresh and seawater, control of usage of chemicals, prevention of noise, and nuclear safety. After the Chernobyl accident, nuclear safety became an important topic in this EAP (Council of the European Communities 1987).

Maastricht Treaty

The most crucial innovation of the Maastricht treaty for the environment title was a change in the decision-making process. In the SEA, the consultation decision-making method was determined as the main method for environmental policy issues except for one related to the creation of a common market. However, following the Maastricht treaty, the cooperation method would be the principal decision-making method for environmental issues (Treaty on European Union 1992, 59). With this method, the European Parliament gained the right to a conditional veto which could be overridden by the Council through unanimity (Treaty on European Union 1992, 78). This method had already been used for the environmental issues related to the creation of a common market. Thus, the Maastricht treaty increased the power of the European Parliament in the area of the environment, and the European Parliament could negotiate the terms of environmental policies with the Council. However, the Council was still more powerful than the European Parliament. Moreover, with the Maastricht Treaty, the co-decision procedure¹ was introduced, and it was also used to accept

¹ With this method, the power of the European Parliament and Council are equalized. In this method, proposals of the European Commission should be

EAPs (Treaty on European Union 1992). With the Maastricht treaty, the necessity of integration of environmental protection measures with other community policies was added into Article 130r (TEU 1992, 58). Other significant changes were made in Articles 2 and 3. According to Article 2, sustainable and non-inflationary growth respecting the environment became the task of the Community while promoting harmonious and balanced development of economic activities (TEU 1992, 11). In addition, with the changes in Article 3, the environment was added as one of the activities of the Community (TEU 1992, 12). Also, the Seventh Recital of the TEU mentioned reinforcing environmental protection while promoting the economic and social development of people (Treaty on European Union 1992, 4). Another critical development in this era was the establishment of the European Environment Agency on October 30, 1993.

Fifth Environmental Action Program (1993–2000)

This Program placed a particular focus on sustainable development (European Community 1993, 11). It highlighted the pressures on the environment by energy, transportation, industry, agricultural, and tourism sectors. Like in other EAPs, it gave importance to the integration of environmental protection rules on other policy areas of the Community (Güneş 2011, 33; European Community 1993, 15). Also, it specified seven environmental themes and targets. These were climate change, acidification and air quality, protection of nature and biodiversity, management of water resources, the urban environment, coastal zones, and waste management (Güneş 2011, 33; European Community 1993, 14)

Amsterdam Treaty

With this Treaty, the concept of sustainable development was also added to the TEU (European Union Treaty of Amsterdam 1997, 7). "A high level of protection and improvement quality of the environment" was added into Article 2 TEC as one of the tasks of Community (European Union Treaty of Amsterdam 1997, 24). The most crucial

approved by both two institutions. If one of them rejects the proposal, the legislation will die (Treaty on European Union 1992, 76).

change of the Amsterdam treaty on the environmental policy was about the decision-making process. The Amsterdam Treaty equalized the power of the European Parliament with the power of the Council on environmental policy decisions. The co-decision procedure became the main decision-making method for environmental policy. The Amsterdam Treaty also renumbered the articles of the TEU and the TEC. Articles in the environmental title 130r, 130s, 130t were renumbered as 174,175,176.

Sixth Environmental Action Program (2002-2012)

This EAP determined four priority areas: climate change, nature and biodiversity, environment and health and quality of life, natural resources, and wastes(European Communities 2002). There were articles for candidate countries to increase their environmental protection level and harmonise their environmental policies with those of the European Community (European Communities 2002).

Lisbon Treaty 2009

With the Lisbon Treaty, the EU and EC were merged under the name of the European Union, and it acquired a legal personality. The name of the Treaty establishing the European Community changed into the Treaty on the Functioning of the European Union (TFEU). Also, with the Lisbon Treaty, articles in the environmental title were renumbered as 191,192 and 193. Thanks to the Lisbon Treaty, combating climate change became one of the objectives of the Union's environmental policy (European Union 2007)

Seventh Environmental Action Program

This EAP aims to help the EU achieve the environmental and climate change targets of the European Strategy 2020. It has nine priority objectives, namely; the protection and improvement of natural and ecological life, transition to a green and low carbon economy, protection of human health by reducing environmental-related risks, better implementation of EU environmental legislation, increasing awareness of environmental risks, and investments in research and innovation, increasing investments in climate and environmental studies, improving the integration of environmental and climate

change policies into other policies, sustainable cities, increasing the EU's role in international cooperation on environmental and climate change issues and promoting the EU's "Living well, within the limits of our Planet" motto. (Kivilcim 2014, 2–3)

European Green Deal

The European Green Deal was accepted on 11 December 2019. It is a growth strategy for transforming the Union's economy into a sustainable one. The main aims of this deal are decoupling economic growth while decreasing resource use, protecting all people and creatures, and reaching zero greenhouse gas emissions in 2050 (European Commission n.d.)

European Union Environmental Policy and Turkey

On 21 December 2009, the EU and Turkey opened the Environmental and Climate Change chapter negotiations. The Environmental and Climate Change chapter comprises horizontal legislation, air quality, water quality, waste management, nature protection, industrial pollution and risk management, chemicals, civil protection, and climate change. Moreover, international agreements that the EU signed are parts of the environmental and climate change chapter. Six closing benchmarks were determined in the EU Common Position. These are the application of the additional protocol to the Republic of Cyprus, transposing the EU's horizontal legislation, including international agreements, transposing water quality legislation, industrial pollution control, and risk management legislations, increasing administrative capacity to provide a regular implementation of EU Environmental *acquis* and continuation of alignment of Turkey with other parts of the *acquis* including nature protection and waste management (Republic of Turkey Ministry of Foreign Affairs Directorate of EU Affairs 2020)

Before assessing the alignment of Turkey with the EU environmental *acquis*, the benchmark, which is about the Republic of Cyprus, should be explained. This explanation is also necessary to support the argument of this paper, according to which the credibility of the membership for Turkey is the main driving point for Turkey's

compliance with EU environmental policy because relations between the Republic of Cyprus and Turkey are a most concrete obstacle to the possibility of membership for Turkey.

Relations between Turkey and the EU have a history that is over 60 years old. Turkey-EU relations started with Turkey's application for an Association Agreement in 1959 and entered a different era with Turkey's application for membership in 1987. Candidate Status of Turkey was given in the 1999 Helsinki European Council and in 2005 accession negotiations between Turkey and the EU began. After the 2004 Eastern enlargement of the EU, Turkey had signed an additional protocol that extends customs union to new EU members, including the Republic of Cyprus. Nevertheless, Turkey declared that this additional protocol did not suggest the recognition of the Republic of Cyprus. In the aftermath of this declaration, Turkey decided to extend the custom unions to new EU members except for the Republic of Cyprus (Bakanlar Kurulu 2006). Due to this move, relations between Turkey and the EU have begun to worsen. On 11 December 2006, the General Affairs Council decided to suspend the opening of 8 chapters. Likewise, no chapter will be provisionally closed until Turkey implements the additional protocol to the Republic of Cyprus (Council of the European Union 2006). The Brussels European Council approved this decision on 14-15 December. In addition to the suspension of eight chapter², the Republic of Cyprus declared that it would veto the opening of six chapter³ unilaterally until Turkey normalizes its relations with Cyprus.

Horizontal Legislation

In 2001, the Environmental Commission of the Grand National Assembly of Turkey approved a new framework law for the environment. This law would change the 1983 Environment Law

² Chapter 1 Free Movement Of Goods, Chapter 3 Right Of Establishment And Freedom To Provide Services, Chapter 9 Financial Services, Chapter 11 Agriculture And Rural Development, Chapter 13 Fisheries, Chapter 14 Transport Policy, Chapter 29 Customs Union, Chapter 30 External Relations.

³ Chapter 2 Freedom Of Movement For Workers, Chapter 15 Energy, Chapter 23 Judiciary And Fundamental Rights, Chapter 24 Justice, Freedom And Security, Chapter 26 Education And Culture, Chapter 31 Foreign, Security, And Defence Policy.

(Commission of the European Communities 2001, 79). This attempt was crucial indeed as it provided the necessary legal arrangements for the transposition of the EU environmental *acquis*. This law was enacted in 2006 and it provided transposition of some aspects of the Public Participation Directive (Commission of the European Communities 2006, 64).

The 2002 Regular Progress Report for Turkey was the first report that indicated improvement in environmental issues. The first vital improvement to align horizontal legislation with Turkish legislation took place in January 2002 when the new procurement law was enacted. With this law-making, holding EIAs before tenders became mandatory. Moreover, with the new law for the establishment of industrial zones and organized industrial areas, making EIA before the establishment of these areas turned into an obligation. With the new EIA regulation, most of the elements of the EU EIA Directive were transposed into the domestic law of Turkey (Commission of the European Communities 2002, 111). In 2004 new regulation related to EIA was accepted, and it improved the alignment level with the EU's EIA Directive. In addition to this, a new law and regulation about access to environmental information were enacted. Likewise, TGNA ratified the United Nations Convention on Climate Change (Commission of the European Communities 2004, 133). In 2007, many of the elements of the EIA directive were transposed into domestic law. Additionally, a circular about imports of materials that damage the ozone layer was enacted in line with the Montreal Protocol. In addition, in accordance with the Marpol protocol and the *acquis communautaire*, an implementing law on response and compensation in case of emergency marine pollution was adopted (Commisison of the European Communities 2007, 68). In 2009, TGNA ratified the Kyoto Protocol (Commission of the European Communities 2009, 80). The non-ratification of the Kyoto Protocol was one of the significant criticisms towards Turkey in previous progress reports. In 2010, with extending the scope of the EIA Directive, there was an improvement in the transposition of the EIA Directive to domestic law (European Commission 2010, 89). In 2017, the Strategic Environmental Assessment (SEA) regulation was accepted. According to the Turkey 2018 report, harmonization of the

SEA Directive was completed by providing a transition period to several sectors between 2020 and 2023 (European Commission 2018, 91).

In addition to these positive improvements, a certain backsliding in implementation and transposition of horizontal legislation exist, especially regarding the EIA Directive. According to the Turkey 2019 report, there are some concerns about the implementation of the EIA directive (European Commission 2019, 93). In April 2011, new exceptions were added to Turkey's EIA regulation, and these were considered as worrisome by the European Commission (European Commission 2011, 99). Moreover, Turkey made new changes in its EIA regulation in April 2013. These changes caused divergence between Turkey's Environmental Law and the EU *acquis*. According to these changes, infrastructure projects like nuclear power plants in Sinop and Mersin, hydroelectric plants, the 3rd Bridge, and the new airport in Istanbul were placed outside the scope of EIAs (European Commission 2013, 70). Although in July 2014, the Turkish Constitutional Court annulled these changes, in November 2014 the requirements of EIA were changed, and some exceptions have been introduced indirectly (Diken 2015). Lastly, with a law published in September 2016, licensing and other restrictions for investment projects of strategic importance were lifted (European Commission 2016, 87).

Even though Turkey transposed most of the elements of the EIA Directive, the elements of public participation and procedures of transboundary consultations are not compatible with the EU *acquis*. The EU demands from Turkey to become part of the Aarhus and Espoo Conventions. The Aarhus Convention is about Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. The Espoo Convention regulates procedures of transboundary EIAs.

Waste Management

According to Eurostat data, Turkey became the main destination point for EU waste. In 2019, Turkey imported 11.9 million tons from the EU (Eurostat 2020). Hence, it would be fair to claim that the issue of waste

management and recovery is crucial for protecting the environment in Turkey.

According to the 2000 Turkey Progress Report, the waste management issue in Turkey was one of the most incompatible areas with the EU *acquis*. Problems with the implementation of legislation can indeed be observed (Commission of the European Communities 2000, 60). In 2003, Turkey introduced a new law that approves the changes of the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal (Commission of the European Communities 2003, 106). Turkey enacted a new law to reduce the pollution in the Mediterranean Sea originating from the transboundary movements and disposal of hazardous waste. Also, legislation related to packaging waste, management of collection facilities in ports and shelters, control of construction waste, waste oils and batteries, and accumulators was changed in 2004 (Commission of the European Communities 2004, 133). In 2005 Turkey made amendments to a regulation related to waste batteries and accumulators. In addition, several regulations were enacted, such as controlling medical waste, implementing the regulation on solid waste, and implementing regulations related to vegetable waste oils and hazardous waste. Moreover, solid pollution control implementation regulation related to sewage wastes entered into force (European Commission 2005, 119). According to the 2006 Turkey Progress Report, Turkey's alignment level on waste management in terms of transposition of framework directive and other directives is indeed enhanced. The Hazardous Waste Directive was transposed into domestic law in 2006 (Commission of the European Communities 2006, 64). In 2007, a regulation about waste tyres and circular about waste import control was enacted. Also, there was an amendment on the implementing regulation of packaging (Commisison of the European Communities 2007, 69). Implementing legislation related to polychlorinated biphenyls and waste oils was accepted in 2008. Likewise, the use of hazardous material in electrical devices was restricted. However, this restriction was criticized by EU companies. Companies claimed that these restrictions established technical trade barriers. In addition, regulation on restoration and

management of extractive industrial areas was accepted (Commission of the European Communities 2008, 77).

According to the 2010 Turkey Progress Report, Turkey made good progress in the waste management area. The waste management plan for the years between 2009 and 2013 was accepted. Certain legislation was amended and accepted in 2010. Legislations on hazardous waste management, taking waste from ships and waste management was amended in accordance with the EU *acquis*. In addition, new legislation on end-of-life vehicles was enacted. Lastly, regulations on the reclamation of degraded lands because of mining activities were enacted (European Commission 2010, 89). According to the 2011 Turkey Progress Report, with the aforementioned amendments and transpositions, Turkey's waste management legislation completed its harmonization with the EU Waste Management Framework Directive. Moreover, legislation on mining and import standardization of battery and accumulators was enacted in 2011 (European Commission 2011, 99). In November 2014, the Higher Planning Council adopted a national recovery strategy and action plan (European Commission 2014, 69). In 2015, a Waste management regulation and Mining waste regulation were adopted to implement the Waste Framework Directive and Mining Wastes Directive (European Commission 2015, 77). In 2017, the Convention for the Safe and Environmentally Sound Recycling of Ships was ratified by Turkey, whereas Turkey has not aligned with EU Ship Recycling Regulation yet (European Commission 2018, 91). According to the 2019 Turkey Progress Report, Turkey embraced a strategy that promotes zero waste management, effective use of natural resources, and recycling. In line with this strategy, Turkey strengthens its sorting, recycling, and medical waste treatment capacity. In January 2019, legislation that bans free distribution of plastic bags was enacted (European Commission 2019, 93).

To sum up, the Waste Management legal framework of Turkey is predominantly harmonized with the EU. However, further improvement is needed for full harmonization. For example, the number of waste landfill facilities, 15 in 2003, reached 87 in 2017. Nevertheless, the standards of these facilities have not reached the EU level yet (T.C. Çevre ve Şehircilik Bakanlığı n.d.). Furthermore, Turkey

prepared local and regional waste management plans in accordance with the Waste Framework Directive, while there are problems with the implementation of these plans (European Commission 2019, 93). Thus, the main problem in the field of waste management in Turkey is the implementation of transposed legislations.

Water Quality

Within the framework of water quality, Turkey adopted a regulation to protect waters against nitrates in 2004 (Commission of the European Communities 2004, 133). In 2005, implementation of the regulation on the water for human consumption was enacted. In addition, rules for good agricultural practices were accepted (European Commission 2005, 119). In 2006, legislation concerning urban wastewater management and bathwater quality was transposed (Commission of the European Communities 2006, 65). Likewise, in 2010, Turkey amended legislation on water pollution control to regulate permit standards. According to the Water Framework Directive, all member states had to prepare their basin management plans (Kimençe, Çavuş and Çankaya 2017). The EU also demanded from Turkey to prepare the basin management plans. Turkey has 25 river basins, and in 2010, it prepared 11 basin protection action plans, which will be transformed into basin management plans. A high steering committee for water quality management was established in 2010 to sustain coordination among institutions.

Moreover, Turkey and Greece signed a declaration to increase cooperation on the Meriç river basin. This is an essential step for Turkey to make transboundary negotiations with neighboring states regarding water issues (European Commission 2010, 90). An integrated sea pollution monitoring system was established in 2011. Furthermore, with the amendments to legislation related to groundwater, a measurement system for groundwater consumption was established. Moreover, Turkey established a monitoring program for groundwater and freshwaters to implement the Nitrates directive (European Commission 2011, 99). In 2012, the Turkish Water Institute was founded to enhance scientific knowledge on water management issues (European Commission 2012, 82). Legislations

related to River basin management and surface water management were adopted in 2013 (European Commission 2013, 70). Also, 14 river basin protection action plans were prepared. Moreover, the Ministry of Forestry and Water Affairs introduced the duties and responsibilities of the river basin committee to solve coordination problems in water affairs. Indeed, the fundamental responsibility of these committees is to ensure the implementation of the action plan in basins (Kimençe, Çavuş and Çankaya 2017). In 2014, the national basin management strategy was accepted. Furthermore, regulation on the monitoring of surface waters and groundwaters was adopted (European Commission 2014). According to the 2015 progress report, new municipality laws would benefit the implementation of urban Wastewater Directive. However, the institutional transformation also caused coordination and financial problems (European Commission 2015, 77). In 2016, sensitive areas had been determined to protect them against urban wastewater discharges (European Commission 2016, 87). In 2019, five river basin management plan entered into force (T.C. Tarım ve Orman Bakanlığı Su Yönetimi Genel Müdürlüğü 2019). According to the 2019 Turkey report, the wastewater treatment capacity of Turkey had been increased (European Commission 2019, 94).

With the aforementioned reforms, the alignment level with water quality areas advanced. Nevertheless, Turkey still needs to improve its alignment level on water quality standards, nitrate pollution, and flood management plans. In addition to these, transboundary negotiations with neighboring states in terms of water issues are still in the early stage. Moreover, directives related to Marine Strategy, quality control, and bathing water are not harmonized.

Air Quality

In the air quality area, new legislation related to non-road vehicles was adopted in 2003 (Commission of the European Communities 2003, 100). In 2004, Turkey enacted regulations related to the quality of petrol and diesel fuel and legislations about CO₂ emissions of new passenger cars and consumer information on fuel economy. Furthermore, regulations related to preventing emissions of engines

using diesel and liquid petroleum gas were amended (Commission of the European Communities 2004, 133). According to the 2005 Turkey Progress Report, the transposition level of EU legislation related to air pollution from vehicles is advanced. Moreover, Turkey fully adopted the Consumer Information Directive and almost adopted the Quality of the Petrol and Diesel Fuels Directive. In 2005, industrial air pollution and air pollution from house heating were enacted (European Commission 2005, 119). The rules about control of fuel export were accepted in 2007. In 2009, Turkey adopted legislations in order to transpose air quality framework legislation and its related directives. Adding up to these, there was progress on legislation about ozone-depleting substances (Commission of the European Communities 2009, 81). However, the 2010 Turkey Progress Report highlighted that administrative capacity has to be increased for the full implementation of air quality framework legislation. In 2010, Turkey transposed legislation related to the sulphur content of liquid fuels, and waste incineration regulation was adopted. Moreover, Turkey became a party on the Stockholm Convention on Persistent Organic Pollutants (European Commission 2010, 89). Having said that, in 2011, regulation related to decreasing emission level of passenger and light commercial vehicles which conform to Euro 6 was adopted (European Commission 2011, 99). The air emission coordination committee was established in December 2012 (Republic of Turkey Ministry For EU Affairs 2013, 202). In 2018, the national strategy for air quality was adopted, and seven out of eight regional monitoring networks were established in accordance with this strategy. Turkey has 222 air quality monitoring station (T.C. Çevre ve Şehircilik Bakanlığı n.d.). Turkey also adopted legislation related to the transposition of the Volatile Organic Compounds (VOC) solvents Emission Directive in 2018. Moreover, local clean air action plans for 64 provinces have been prepared (European Commission 2019, 93). According to the EU Network for the Implementation and Enforcement of Environmental Law (IMPEL) Review Initiative, Turkey's goal was to comply with EU air quality standards in 2019 (European Union Network for the implementation and enforcement of the Environmental Law 2016). However, further alignment with

Ambient Air Quality Directive and national emission ceilings are necessary steps to comply.

Noise Pollution

In terms of noise pollution, the alignment level of Turkey is very advanced. In 2003 Turkey adopted legislation about noise emission from household materials and outdoor materials (Commission of the European Communities 2003, 100). In 2005, implementing regulations related to the assessment and management of environmental noise was enacted (European Commission 2005, 120). According to the 2019 Turkey Report, the preparation level of noise maps and local noise action plans is advanced (European Commission 2019, 94).

Nature Protection

On 22 December 1996, the Convention on International Trade in Endangered Species of Wild and Flora (CITES) entered into force in Turkey. In 2002, Turkey adopted the implementation regulation of CITES. Likewise, the species lists of CITES entered into force. Moreover, regulation related to the protection of wetlands was adopted to improve the alignment with the Birds and Habitats Directive (Commission of the European Communities 2002, 79). Turkey signed the European Landscape Convention in 2000, and the Convention entered into force in 2003 (Commission of the European Communities 2003, 111). In 2005, National Park in Eastern Anatolia and three wetlands were established. Regulations related to wildlife conservation and hunting were accepted. In addition, a communique on the permit of international trade of bulbous wild plants was adopted (Commission of the European Communities 2006, 133). In 2007, three nature parks, one national park, and twenty-four wildlife rehabilitation areas were identified as protected areas. Turkey accommodated the EU *acquis* related to the establishment and management of zoos (Commisison of the European Communities 2007, 65). In 2012, Turkey accepted the regulation on procedures and principles to define, register, and approve the protected areas (European Commission 2012, 82). National Biodiversity Coordination Council of Turkey was established in 2019 (Tarım ve Orman Bakanlığı

2019). Lastly, Turkey prepared a list of species and habitats of Turkey in accordance with the Habitats and Birds Directive (European Commission 2019, 94).

In several issues, Turkey has to improve its alignment with the nature protection legislation of the EU. To exemplify, Turkey has not adopted a framework legislative of nature protection and national biodiversity strategy and action plan (European Commission 2019, 94). Even though Turkey ratified the RAMSAR Convention on Wetlands of International Importance in 1994, according to the 2011 Turkey Progress Report, the protection status of wetlands was weakened by amendments on regulation related to the protection of wetlands (European Commission 2011, 100). Likewise, the privatization of degraded forest areas was criticized by the EU due to the concerns about decreasing the forest habitats (European Commission 2012, 82). Moreover, new legislations that are not compatible with EU *acquis* and permit investments on wetlands, forests, and natural site areas were adopted (European Commission 2016, 87-88). These legislations have to be regulated in light of the EU *acquis*. Turkey has not come up with a sufficient institutional framework for identifying and managing Potential Natura 2000 protection areas. Nature Protection legislation has to be implemented on investments, especially hydropower and mining (European Commission 2019, 94)

Industrial Pollution and Risk Management

It is clear that the alignment of Turkey with the EU's industrial pollution and risk management legislation is at an early stage. In December 2001, Turkey adopted soil pollution regulation to enhance alignment with industrial pollution legislation of the EU (Commission of the European Communities 2002, 111). Turkey complied with the Large Combustion Plants Directive and Waste Incineration Directive, and some elements of the Seveso II Directive in 2008 (Commission of the European Communities 2008, 77). Regulations related to large combustion plants and controls of major-accidents hazards were endorsed. In addition, Turkey amended legislation on industrial air pollution control to regulate permit procedures (European

Commission 2010, 90). In 2012, amendments related to the international agreement on remediation of oil pollution were ratified, and a by-law on control of industrial pollution was amended (European Commission 2012, 82). Turkey adopted implementing the law to prevent and mitigate the effects of large industrial accidents to increase the implementation of Seveso II Directives (European Commission 2014, 70). The 2015 Turkey Progress Report highlighted that the mine accidents of Soma and Ermenek revealed problems about inspections, permits, and risk management (European Commission 2015, 77). Additionally, a by-law on eco-label was adopted in 2018. According to the 2019 Turkey Report, the alignment level of Turkey to the Seveso II Directive was advanced, whereas it was low on Seveso III Directives and Industrial Emission Directives. Moreover, Turkey needs to comply with directives related to eco-management and audit schemes and the Paints Directive (European Commission 2019, 94).

Chemicals

The level of Turkey's alignment with EU Chemicals Legislation can be considered as advanced. Turkey amended the regulation on the Control of Dangerous Chemical Substances and Products in April 2001. Turkey attempted to align definitions, risk phrases and combinations, safety phrases and combinations, danger symbols and their standard wording with *acquis* by this amendment (Commission of the European Communities 2001, 79). Furthermore, amendments to the Regulation on Dangerous Chemicals were made in March 2002 which partially transposed the *acquis* related to a genetically modified organism and chemicals (Commission of the European Communities 2002, 111). In 2004, Turkey adopted a decree on the prohibition of marketing and the use of pesticides and similar products. Moreover, regulation related to inspection, establishment, and management laboratories that make tests on experimental animals for scientific and other purposes was adopted (Commission of the European Communities 2004, 133). A circular about control of import Chemicals was issued (Commisison of the European Communities 2007). In 2009, Turkey ratified the Stockholm Convention on persistent organic pollutants and a by-law on persistent organic pollutants was adopted

to improve the implementation of the Stockholm Convention in 2018 (Commission of the European Communities 2009, 81, European Commission 2018, 92). Furthermore, Turkey adopted several by-laws related to the inventory and control of chemicals; compilation and distribution of safety data-sheets relating to dangerous substances and preparations; restriction of production, placing on the market and use of certain dangerous substances and preparations; and classification, packaging, and labelling of dangerous substances and preparations (Commission of the European Communities 2009, 81). Legislation about products made by biocidal was accepted in 2010 (European Commission 2010, 90). Likewise, in 2011, Turkey adopted a by-law on the welfare and protection of animals used for experimental and other scientific purposes to align with the Directive on the protection of animals used for scientific (European Commission 2011, 100). Turkey enacted a by-law on the classification, labelling, and packaging of substances and mixtures in 2014 (European Commission 2014, 70). Having said that, Turkey also adopted a by-law to implement the Registration, Evaluation, Authorisation, and Restriction of Chemicals (REACH) Regulation of the EU in 2017 (European Commission 2018, 92). In 2017, Turkey ratified the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. However, implementing regulation about the Rotterdam Convention has not been adopted (European Commission 2019, 94).

Climate Change

The alignment level of Turkey with the EU Climate change legislation is deficient. The reason behind this poor alignment is that Turkey has not ratified the 2016 Paris Agreement yet. When the 1992 UN Framework Convention on Climate Change was signed, Turkey was considered as a developed country due to its OECD membership. As a result, it became part of both Addendum I and Addendum II of this Convention. Countries in Addendum II are expected to provide financing, technology transfer, and capacity-building opportunities to the developing countries in need, especially the least developed countries and states under the threat of global warming. In 2001,

Turkey was removed from Addendum II. However, UNFCCC still considers Turkey as a developed country with special conditions. Due to the aforementioned fact, Turkey cannot benefit from the aids of the Paris Agreement, like the Green Climate Fund. Consequently, Turkey declared that it signed the Paris Agreement as a developing country. Until this issue is resolved, Turkey will not sign the Paris Agreement (Şahin 2017, 115, 121)

In 2010, Turkey began to implement legislation that transposes the *acquis* related to informing consumers about fuel economy and CO₂ emissions. Moreover, the climate change department and high-level coordination committee for climate change were established by the Ministry of Environment and Forestry. In May 2010, the National Climate Change Strategy was adopted (European Commission 2010, 90). To implement this strategy, a high-level coordination committee for climate change adopted a climate change action plan in May 2011 (European Commission 2011, 100). The Renewable Energy Law and the energy efficiency strategy increased energy efficiency and investments in renewable energy (European Commission 2013, 70). By-laws on exhaust gas emission control and quality of gasoline and diesel were enacted to comply with the Fuel Quality Directive (European Commission 2014, 70). In 2017, a by-law on ozone-depleting substances was adopted (Resmi Gazete 2017). In addition, Turkey adopted a by-law on fluorinated greenhouse gases in 2018 (T.C. Çevre ve Şehircilik Bakanlığı 2018). Even though Turkey submitted its nationally determined contribution to the 2015 Paris Agreement, Turkey does not have official greenhouse gas emission targets without ratification. What is more, not having official greenhouse gas emissions targets prevents the development of carbon market mechanisms in Turkey (European Commission 2014, 70). Turkey needs to adopt a national strategy consistent with the EU 2030 Climate and Energy framework. Indeed, the current national climate change strategy and national climate change action plan are insufficient to integrate climate change policies into other sectors. Additionally, Turkey needs to comply with Emission Trade Directive and legislation on greenhouse gas monitoring mechanisms. Moreover, the alignment plan on the Carbon Capture and Storage Directive has to be prepared. Turkey needs to put more effort into implementing

the Fuel Quality Directive, alignment of EU regulation on emission standards for new cars (European Commission 2019, 94)

Civil Protection

In 2009, the Directorate-General for Civil Protection was shut down, and the Disaster and Emergency Management Presidency established under the office of Prime Ministry in 2018 became an agency of the Ministry of Interior (Disaster and Emergency Management Presidency n.d.). In 2013, Turkey decreased its level of participation in the Instrument for Pre-accession Assistance (IPA) on civil protection areas with candidate and potential candidate countries. Alongside these, a new law-related transformation of areas under the threat of disasters was adopted. This law aimed at increasing living standards in cities through urban transformation and establishing safe and healthy areas under the threat of disasters (European Commission 2013, 70). In December 2013, a regulation on disaster and emergency response was enacted (European Commission 2014, 70). In 2017, Turkey prepared its Disaster Management Document and Action Plan to increase action capacity against disaster risks (AFAD n.d.). Even though Turkey became part of the EU Civil Protection mechanism in 2016, it still does not connect to the common emergency communication and information system (European Commission 2019, 94).

Administrative Capacity

In 2002, Turkey reinforced the administrative capacity of the Ministry of Environment and identified the duties of its departments. By doing so, it increased the number of provincial environment directorates from 30 to 81. With a new regulation on environmental inspection, the duties and responsibilities of related institutions were re-identified (Commission of the European Communities 2002, 111). In May 2003, the Ministry of Environment and Ministry of Forestry merged under the name of the Ministry of Environment and Forestry. Moreover, addendum regulation to environmental inspection regulation was adopted to enhance the quality of environmental inspectors (Commission of the European Communities 2003, 107). As mentioned

in the horizontal legislation part, a new environmental law was adopted in 2006. This law identified the duties and responsibilities of the Ministry of Environment and Forestry. Having said that, this law also increased the effectiveness of the polluter pay principle with new and high punishments and compensations. Moreover, it provided the recruitments of new experts. A new environmental fund was established to finance environmental projects. In addition, this law eased public access to environmental information (Commission of the European Communities 2006, 65, Commisison of the European Communities 2007, 65). In 2008, a new department was established with the responsibility of implementing environmental projects under the framework of IPA. Adding up to these, the General Directorate of State Hydraulic works became the agency of the Ministry of Environment and Forestry (Commission of the European Communities 2008, 78). Regulation related to principles and procedures of environmental inspection and environmental management units and inspection firms was adopted in 2009 (Commission of the European Communities 2009, 82). The regulation about environmental permits and licenses was adopted to enhance environmental inspection (European Commission 2010, 91). Furthermore, in 2011 the Ministry of Environment and Forestry was separated into two new ministries, which are the Ministry of Forest and Water Affairs and the Ministry of Environment and Urbanization. In addition, instead of the Authority for the Special Protected Areas and regional Natural Heritage Boards, the directorate-general for the preservation of natural heritage was established under the Ministry of Environment and Urbanization (European Commission 2011, 101). Likewise, the Department of Climate Change, as within the Ministry of Environment and Urbanization, was established (European Commission 2014, 71)

Indeed, for the full implementation of the EU environmental *acquis*, strong administrative capacity is necessary. Turkey needs to increase coordination and cooperation among the institutions that deal with environmental protection and climate change.

Conclusion

In this study, an assessment of Turkey's alignment with the EU environmental *acquis* has been made. In 2009, Turkey and the EU opened negotiations on Chapter 27, Environment and Climate Change. This chapter includes horizontal legislation, air quality, water quality, waste management, chemicals, nature production, industrial pollution, and risk management, noise pollution, climate change, and civil protection. Turkey's alignment level with nature protection, noise pollution, chemicals, and water quality areas is advanced. However, there are severe problems with the alignment of climate change and horizontal legislation, especially the EIA Directive. Moreover, all progress reports of Turkey highlighted the necessity of improving Turkey's administrative capacity to implement the environmental *acquis*.

This study claims that the membership possibility of Turkey is the main driving force for Turkey's compliance with EU environmental policy. Findings from the assessments of alignment with the environmental *acquis* support the claim of this study. To explain, according to the external incentives model, there are several determinants for candidate states to comply with EU *acquis communautaire*. The first one is the size and speed of rewards. According to the model, membership possibility is the most significant incentive for candidate countries. In the case of the environmental chapter, this situation can also be detected. To explain, the transposition of EU's environmental horizontal legislation, including international agreements, is one of the closing benchmarks of the Environmental and Climate Change Chapter. Turkey is not a part of the Aarhus, Helsinki, and Espoo Convention. According to the Ministry of Foreign affairs of Turkey, Turkey will become part of these conventions after accomplishing the goal of full membership of the EU. Furthermore, full compliance with the directives related to these conventions can be possible in two years before Turkey's EU membership (T.C. Dışişleri Bakanlığı n.d.). Moreover, Turkey does not fully align with the Water Framework Directive, the base of water quality legislation, and one of the closing benchmarks. According to the Ministry of Foreign Affairs of Turkey, Turkey will fully align with

the Water Framework Directive following the full membership of the EU (T.C. Dışişleri Bakanlığı n.d.). These examples prove the importance of membership possibility for full transposition and implementation of environmental *acquis*. Hence, Turkey makes the credibility of membership as a benchmark for the completion of the environmental *acquis* alignment. In the case of speed of membership rewards, the longest membership negotiations in the history of the EU are with Turkey. Croatia, which started membership negotiations at the same time with Turkey, became an EU member in 2013. Another determinant is the determinacy and credibility of conditions. In the EU accession process, the determinacy of the condition is always vague. To explain, at the end of the accession process, the final decision belongs to the European Council, which is one of the intergovernmental bodies of the EU. Even if one candidate state fully complies with the EU *acquis communautaire*, political relationships with member states are still important. So, complete alignment does not guarantee full membership if there are political disputes. This situation can be observed in Turkey's negotiations on the environmental chapter. According to one of the benchmarks for closing the environmental chapter, even though Turkey fully aligns with the EU environmental *acquis*, the chapter will not be closed until Turkey applies the additional protocol to the Republic of Cyprus. Also, this benchmark decreases the credibility of other conditions and consequently the membership possibility for Turkey. So, the completion of technical conditions which are directly related to the environmental chapter is meaningless until solving the political issue related to the Republic of Cyprus.

To sum up, Turkey's position in complying with EU's environmental *acquis* can be explained through the external incentives model. Turkey tries to maximize its profit and interest during transposing and implementing the environmental *acquis*. According to the Ministry of Foreign Affairs of Turkey, the main interest and expectation of Turkey is full membership. So, membership possibility to EU is the main driving force for Turkey to comply with EU environmental policy.

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Advancing National Climate Law: Is there Room for Mainstreaming EU Climate Action in Georgia?

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Abstract

In the age of climate change, it is no longer a fresh word that climate law is gathering enormous momentum in science and practice. Embarking on the United Nations Framework Convention on Climate Change (UNFCCC) regime, climate law is further developed through the negotiation of other treaties and the decisions under these treaties universally. Georgia is in no way an exception, promoting the global climate change regime in its legal system reinforced by the partnership with the EU. Yet, climate law has received belated attention in the academic literature. Therefore, the underlying objective of the present paper is to address this deficit and to assess the potential of mainstreaming EU climate action in Georgia by unfolding the country's ongoing climate commitments stemming from bilateral and multilateral agreements. To achieve this goal, the contribution foremost introduces some general considerations on climate law and studies the legal nature of the Association Agreement and Energy Community Treaty. On the basis of provided assumptions, the paper further concentrates on the transposition of the EU climate *acquis* into Georgian national legislation in the light of legal harmonization. It finally develops a number of targeted recommendations for Georgian lawmakers and policy advisors. Thus, the paper does not only focus on one of the highlights of today's legal harmonization business in Georgia, but it also contributes to the refinement of the field of climate law that is lagging behind.

Key words: Climate change, climate law, EU climate *acquis*, Association Agreement, Energy Community Treaty, Georgia

Introduction

The challenging nature of climate change has long been considered as one of the biggest global threats to be responded adequately worldwide. Georgia too, distinguished with its biodiversity and rich fresh water resources, encounters serious risks by climate change adverse impact.¹ Climate mitigation and adaptation, therefore, become key priorities of the country putting special emphasis on integrating measures against climate hazards into Georgia's core strategic planning.² In order to improve the climate preparedness, the country is now endeavoring on adjusting ill-regulated national laws and policies aiming at increasing climate resilience and adaptative capacities as well as reducing greenhouse gas (GHG) emissions and the vulnerability of highly exposed communities (Samkharadze, Pkhakadze, Gomiashvili 2021, 97).

By the same token, it has on several occasions been acknowledged that Georgia envisages to modernise its obsolete or rather inconsistent national climate legislation in close cooperation with the EU. This process was accelerated in the aftermath of the landmark United Nations Framework Convention on Climate Change (UNFCCC) Paris Agreement (PA),³ approved by the Government of Georgia on 21 February 2017 in order to develop more ambitious climate targets complemented with the fairness principles and robust monitoring and reporting.⁴ The implementation of the PA and the review of international climate commitments will largely be dependent on the alignments of already assumed obligations in national legislation and the legal harmonization to the EU climate action—i.e., convergence of domestic laws and policy goals.

¹ Ministry of Environment and Natural Resources of Georgia, 2015. Third National Communication of Georgia to the UN Framework Convention on Climate Change (UNFCCC), Tbilisi, 13.

² № 2328 Ordinance of the Government of Georgia on approval of the National Strategy of the Sustainable Development Goals, 12 November 2019. Dernbach, Seema 2008, 24.

³ UNFCCC, 'What is the Paris Agreement?' <<https://unfccc.int/process-and-meetings/the-paris-agreement/what-is-the-paris-agreement>> accessed 09 April 2020.

⁴ No. 96 Resolution of the Government of Georgia on the Approval and the Entry into force of Paris Agreement, 17.02.2017.

The approximation to EU climate action poses substantial challenges to Georgia's domestic climate legislation. It is not, however, pursued in a silo mode, but supported by the EU itself as an 'exporter' of climate rules and regulations. The EU does not only impose the set of legal obligations on Georgia, but it eases the heavy legal burden via the mechanics of bilateral and multilateral agreements, such as Association Agreement⁵ ('AA') and Treaty Establishing Energy Community.⁶ ('EnCT' or 'Treaty'). In other words, it is also called Europeanization of Georgia's climate legal framework, when a top-down process translates change from the European level to the national one and stimulates the local agenda.

This being said, the present paper aims to shed light on the harmonization of the Georgian climate legislation under the footprint of the European standards and assess whether there is a room for integrating EU climate action into Georgia's legal system. In so doing, the first part will shed light on climate change as it is currently presented within academia, while the second part will review the legal nature of the climate obligations assumed by the country respectively from the AA and EnCT. Upon vetting the legal commitments, the third part will verify the corresponding national clauses against the identified EU provisions. Where applicable, the available draft laws will also be scrutinized in this paper in order to gauge the full impact of Association Agreement and Energy Community Treaty on national legislation.

The paper's methodology primarily focuses on desk review, legal research and comparative analysis to conduct gap analysis, *acquis* implementation comparison and benchmarking. As per the specific findings of the paper, part four will conclude by unfolding the existing legal gaps in domestic legislation followed by a number of recommendations for legal scholars, law and policy makers for further development of Georgian climate law.

⁵ The Association Agreement (AA) between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, entering in force on 1 July 2016.

⁶ International organization established between the EU and a number of third countries to extend the EU internal energy market to Southeast Europe and beyond. Georgia acceded to the Treaty on 1 July 2017.

Unlocking Climate Law: What's in a Name?

Climate Change Science Embedded in Legal Discourse

While it is increasingly obvious that climate change is going to dominate the decades-long agendas of the developed and developing world, climate law is still considered as a relatively fresh and rapidly evolving subject of law. It is still believed in academia that the law of climate change arises on the edges of the intersection of several other areas, such as environmental law, energy law, public international law, business law, administrative law, human rights law, consumer protection law etc (Dernbach, Seema 2008, 24). What is more is that apart from covering legal aspects governing global warming and GHG stabilization, climate law, to date, rather encompasses the broader social-economic governance and, *inter alia*, regulates the issues related to sustainable development and energy transition.⁷ Given this logic, climate change law is a multifaceted crosscutting area of law that has been initially designed to address the 'problem' alarming from climate science.⁸ This is exactly the locus, where the discussion on regulating the issues governing adverse impact of climate change starts off and it is ultimately paving the way towards the emergence of climate law.

Climate change threatens to have enormous impact on our lives and ecosystems. Global temperatures are increasing in large part because of human caused greenhouse gas emissions, and the warming is affecting both natural systems and human wellbeing (Dernbach, Seema 2008, 31). There is a clear evidence that this warming itself is caused by the increase in the atmospheric concentrations of GHGs, in particular carbon dioxide (CO₂) (Mayer 2018, 5). The Intergovernmental Panel on Climate Change (IPCC) established in

⁷ It could also include many other topics, such as energy environment mobility and transport; regional policy and the low-carbon economy; sustainable finance industrial policy; trade and sustainable development; international cooperation and development research and innovation on climate change; sustainable development goals.

⁸ There are alternative opinions as well. E.g. Hulme (2009) believes that climate change is not a 'problem' waiting for a 'solution,' but it is an environmental, cultural and political phenomenon which is reshaping the way we think about ourselves, our societies and humanity's place on Earth (142-177).

1988 by the World Meteorological Organization (WMO) has declared the warming of the earth ‘unequivocal’ in one of its landmark Assessment Reports of 2007.⁹ The same ethos can be found in the so called ‘*Stern Review*’ released in 2006 stating that climate change has an enormous impact on the world economy.¹⁰ In more recent investigations, it has also been acknowledged that climate change is driving the entire planet to a dangerous point including the greatest threat to human health in history.¹¹ The recent IPCC report and the subsequently published 4th National Climate Assessment,¹² Lancet’s ‘Countdown on Health and Climate Change,’ the 2017 ‘Climate Science Special Report,’ and the 2016 Obama Administration report titled ‘The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment’—all prove climate change might be life-depriving, which requires utmost and immediate attention from the global community.

The Scope of Climate Change Law

What is the role of law and is the emerging field of climate law mature enough to alleviate the aforementioned risks? The law does indeed play a vital part in providing a forum for mediation between the many different interests and actors involved in the field of climate change policy (Peel 2008, 927). Laws and policies can foster processes through which societies address climate change and the preparedness to it (Mayer 2018, 10). As *Bonyhady* and *Christoff* (2007) note, this novel legal field is not confined simply to international treaties, and new regional and national legislation are aimed directly at mitigating global warming (2-3).

⁹ ‘Warming is unequivocal, based on evidence of global surface temperatures, changes in precipitation patterns, and observations of ocean and arctic temperatures.’ See, IPCC. 2007. IPCC Fourth Assessment Report, <http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr_spm.pdf>. accessed 09 April 2020.

¹⁰ Stern, N. 2006. Cabinet Office and Her Majesty’s Treasury, United Kingdom, *The Economics of Climate Change: The Stern Review*.

¹¹ Intergovernmental Panel on Climate Change, 2007. Working Group I Report: The Physical Science Basis of Climate Change, <<http://ipcc-wg.lucar.edu/wg1/wg1-report.html>> accessed 12 April 2020.

¹² Fifth Assessment Report <[https://www.c2es.org/content/ipcc-fifth-assessment-report/#:~:text=The%20Fifth%20Assessment%20Report%20\(AR5,was%20published%20in%20November%202014.>](https://www.c2es.org/content/ipcc-fifth-assessment-report/#:~:text=The%20Fifth%20Assessment%20Report%20(AR5,was%20published%20in%20November%202014.>)> accessed 22 April 2021.

The last couple of years have seen the consolidation of a body of legal rules and principles organized around the central problems of mitigating and adapting to climate change (Peel 2008, 924). While the first scientific article discussing possible global warming as a result of carbon dioxide emissions was published in 1896,¹³ the global climate change regime originates from the UNFCCC adopted on 9 May 1992. UNFCCC, as a guardian of climate law, creates an international structure to address climate change, including provisions for reporting of climate change, scientific and technological research, and annual meetings of the conference of the parties (Dernbach, Seema 2008, 9). UNFCCC additionally sets out key guiding principles for international climate change regulation and establishes the institutional machinery necessary for the ongoing operation and adaptation of the climate change regime.

The absence of more than soft targets and timetables with many loopholes in the UNFCCC quickly led to negotiations for a more stringent international agreement, eventually resulting in the conclusion of the Kyoto Protocol in 1997 (Mayer 2018, 25). The Kyoto Protocol operationalizes the UNFCCC by committing industrialized countries to limit and reduce GHG emissions in accordance with agreed individual targets. If Kyoto is primarily a stricter agreement on mitigation, the ambitious PA adopted in 2015 puts adaptation and mitigation formally on an equal footing, marking the new era of climate law.

For the first time, the PA conveys all nations into a common cause to undertake ambitious efforts to combat climate change and to adapt to its effects.¹⁴ If industrialized states originally agreed to adopt policies and measures that would demonstrate that they 'are taking the lead' in addressing climate change,¹⁵ the PA does not differentiate between developed and developing countries anymore (i.e., no

¹³ Arrhenius, S. 1896. 'On the Influence of Carbonic Acid in the Air upon the Temperature of the Ground' 5th ser 41 London, Edinburgh, and Dublin Philosophical Magazine and Journal of Science 237. See also Revelle, R., and Suess, H.E, 1957. 'Carbon Dioxide Exchange between Atmosphere and Ocean and the Question of an Increase of Atmospheric CO₂ During the Past Decades' 9 *Tellus* 18. Revelle was a leading figure in the field of climate change science.

¹⁴ UNFCCC, 'What is the Paris Agreement?' <<https://unfccc.int/process-and-meetings/the-paris-agreement/what-is-the-paris-agreement>> accessed 09 April 2020.

¹⁵ UNFCCC, Article 4. 2 (a).

general dichotomy between the states). Paris has acknowledged that climate change is one of the rarest sectors with no national or international boundaries to be planned globally (so-called ‘collective action problem’) but mitigated locally and Georgia is no way the exception.

Mapping Out Climate Field in Georgia

Despite Georgia’s low level of greenhouse gas emissions per capita, the country considers itself as a responsible member of the international community committed to combat climate change. That is why Georgia, as non-Annex I party to UNFCCC, submitted its first international legally binding climate commitment – Nationally Determined Contribution (NDC) to curb carbon emissions ahead of the breakthrough PA. In its NDC, Georgia has pledged to reduce the GHG emissions unconditionally by 15% (with additional 10% of conditionality) compared to the business as usual (BAU) scenario by 2030.¹⁶ It is now of paramount importance to mention that in April 2021 the Georgian Government approved the updated targets of NDC as well as the Climate Strategy 2030 and the Strategy Action Plan 2021-2031.¹⁷ According to the new trend, Georgia is committed to an unconditional limiting target of 35% below 1990 level of its domestic total greenhouse gas emissions by 2030. Georgia is additionally committing to a target of 50-57% of its total greenhouse gas emissions in case of international support. Prior to that Georgia has ratified the UNFCCC in 1994 with its subsequent Kyoto Protocol on 28 May 1999.¹⁸

Nevertheless, translating political pledges into national legal action is a challenge for Georgia. The country is not advanced in its climate-specific legal framework and it does not operate a comprehensive, dedicated legislation on climate change. There is no single climate legal act in place and several sectoral laws and regulatory measures dealing with climate-related matters are

¹⁶ See Georgia’s INDC submitted on 25 September 2015, <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Georgia%20First/INDC_of_Georgia.pdf> accessed 13 April 2020.

¹⁷ Ministry of Environmental Protection and Agriculture of Georgia <<https://mepa.gov.ge/Ge/News/Details/20309/>> accessed on 25 April 2021.

¹⁸ The decree of the Parliament of Georgia on UNFCCC Kyoto Protocol, 28/05/1999.

scattered in the primary and secondary legislation. Given this, the harmonization of the domestic climate legal framework and nationalization of the international commitments is of high relevance.

This process is now luckily influenced by the partnership between Georgia and the EU, as the latter supports the country to approximate its climate and energy law to European standards (Samkharadze 2019a, 1-6) in the light of the EU's external governance (Vooren, Wessel 2014, 447). It has been legalized in 2014 by the signature of the Association Agreement endorsed by Georgia's membership to the Energy Community ('EnC') later on.

The AA and EnCT are launching key legal pathways that are shaping the climate change commitments at the local level. Pursuant to these instruments, Georgia is in a unique situation, accepting the EU's climate *acquis communautaire*¹⁹ ('*acquis*') that transcends the national borders and is encapsulated in the Georgian regime. Accordingly, the country largely benefits from harmonizing the obsolete or rather uneven climate legislation under the footprint of EU standards. The specifics of the legal harmonization and the concrete impact of EU key climate legislation on Georgia are explored further in the next chapter.

EU Climate Acquis:

The Commitments Stemming from the Bilateral and Multilateral Treaties

The EU legal tools on climate change coupled with ambitious net-zero emissions endeavor are already well underway. The latest development with that regard has recently been traced back to April 2021 when Europe clinched deal on wide-ranging 'Climate Law' to speed emissions cuts and to become the first climate-neutral continent in the world by 2050.²⁰ Climate law, as a legally binding

¹⁹ 'The Community *acquis*' refers to the body of common rights and obligations which bind all the Member States together within the EU. It is constantly evolving and comprises not only EU primary, secondary binding and non-binding legislation but also the CJEU case law. More succinctly, it is a legal jargon to refer to the EU's supranational legal and regulatory regime.

²⁰ European Commission, <<https://www.consilium.europa.eu/en/press/press-rel-eases/2021/04/21/european-climate-law-council-and-parliament-reach-provisional-agreement/>> accessed on 30 April 2021.

obligation of the member states, is supposed to be the cornerstone of the EU's Green Deal.²¹ While this is still in the making and difficult to say to what extent it could cover the 'third counties,' there is already a bilateral and multilateral treaties framework with direct applicability to Georgia.

Legal Nature of the Commitments

Upon entering in force on 1 July 2016, the bilateral Association Agreement (AA) became automatically a legal act incorporated into the Georgian legal system.²² According to Article 7 of the Law of Georgia of Normative Acts²³ and Article 6 of the Law of Georgia on International Agreements,²⁴ the AA, as an international agreement, enjoys supremacy over the domestic law as long as it does not contradict the Georgian Constitution, Constitutional Law and the Constitutional Agreement of Georgia. Therefore, the AA provisions covering two EU Regulations in the field of climate has got a strong legally binding status on Georgia.

Additionally, the AA stresses the necessity of cooperation on climate change issues in the following spheres: mitigation and adaptation to climate change, carbon trade, integration into industrial policy on climate change issues and development of clean technologies.²⁵ While Article 310 of the AA refers to the Low Emission Development Strategy (LEDS), Nationally Appropriate Mitigation Actions (NAMA) and National Adaptation Programs of Action (NAPA), Article 312 mandates the country 'to carry out approximation of its legislation to the EU acts and international instruments referred to in Annex XXVII.' The commitment to tackle climate change is also

²¹ European Green Deal—an ambitious package of measures ranging from ambitiously cutting greenhouse gas emissions, to investing in cutting-edge research and innovation, to preserving Europe's natural environment. For more information <https://ec.europa.eu/clima/policies/eu-climate-action_en> accessed 12 April 2020.

²² For additional clarification, deadline becomes legally effective from the entry into the force of the AA (2016) and not from the date of signature (2014, i.e., provisional entry of the AA). See, <https://ec.europa.eu/commission/presscorner/etail/en/IP_16_2369> accessed 30 March 2020.

²³ Article 7 (3) of the Law of Georgia on Normative Acts, 22/10/2009.

²⁴ Article 6 (2) of the Law of Georgia on International Treaties of Georgia, 16/10/1997.

²⁵ Article 310 of the AA.

underscored in the preamble of the AA.²⁶ Some more general considerations to climate change can be found in the Chapter 4 of Title VI ('other cooperation policies') of the AA, which specifically refers to climate action (Samkharadze, Pkhakadze, Gomiashvili 2021, 100).

On top of that, on 1 July 2017, Georgia acceded to the Treaty Establishing the Energy Community with a multilateral nature regulated by the Protocol Concerning the Accession of Georgia to the Treaty Establishing the Energy Community (Samkharadze 2019b). Like the AA, in its legal nature, the Protocol is an international treaty binding on Georgia, which enjoys the supremacy *vis-à-vis* conflicting national laws. Nevertheless, the accession protocol does not specify any climate-specific EU law.

According to Article 10 of the Treaty, Georgia 'shall implement the *Acquis Communautaire* on energy in compliance with the timetable for the implementation of those measures set out in Annex I.'²⁷ Neither Annex I nor the more specific Accession Protocol include climate relevant *acquis* that are compulsory for Georgia. Instead, the legislation related to climate change comes into existence in a form of the EnC Recommendations, which are considered as a 'soft law' instrument (Konoplyanik 2017, 129). According to Article 76 of the Treaty, a recommendation has no binding force for Contracting Parties.²⁸ However, since the Recommendations are made by the Ministerial Council, as the highest decision-making body of the Energy Community, Georgia still 'shall use their best endeavors to carry out recommendations' by virtue of its accession to the Energy Community.²⁹ Therefore, EnC recommendations should be highly respected and reflected accordingly within the domestic regulatory system.

The Specifics of the Climate Acquis

As seen in the previous parts, four pieces of legislation are of particular importance for Georgia to take into account when

²⁶ According to the international law, the preamble of an international agreement is not necessarily legally-binding, but it very well reflects the essence and general nature of the agreement.

²⁷ Article 10 of ENCT.

²⁸ Article 76 of ENCT.

²⁹ Ibid.

harmonizing its climate legislative framework. The implementation progress in the domestic legislation should also be checked against them. Two of these acts are enshrined in the Annex XXVII of the AA and another two are derived from EnC recommendations adopted by the Ministerial Council of the EnC.

The AA obligatory legislation covers the Regulation (EC) No 842/2006 on certain fluorinated greenhouse gases³⁰ (F-gases Regulation) which needs to be transposed into the Georgian legal system within five years after entry into force of the AA. It will directly contribute to combat climate change, as F-gases are controlled under the Kyoto Protocol and thus are subject to the UNFCCC. Regulation (EC) No 1005/2009 on substances that deplete the ozone layer³¹ (ODS Regulation) will also directly contribute to combat climate change, since, in addition to depleting the ozone layer, most ozone depleting substances controlled by the Montreal Protocol are also powerful greenhouse gases.

Moreover, the AA defines the specific provisions under F-gases and ODS regulations that need to be incorporated within the stipulated timeframes. Therefore, Georgia is obliged to implement only certain provisions of the Regulation, as explicitly listed in the Annex XVII of the AA instead of incorporating the Regulations in its entirety. This may, *inter alia*, include the compliance check to a) develop the legally binding instruments: drafting and adopting persistent national legislation and by-laws as well as amending the existing ones accordingly; b) review licensing conditions and enforcement measures; c) establish training and certification requirements (Article 5, F-gases Regulation) and a ban of the production of controlled substances (Article 4, ODS Regulation); d) design the competent authorities, reporting systems and other non-legally binding tools, such as specific programs contributing to the implementation process.³²

³⁰ Regulation (EC) No 842/2006 of the European Parliament and of the Council of 17 May 2006 on certain fluorinated greenhouse gases.

³¹ Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer.

³² Annex XVII of the AA.

As for the EnC obligations, it is recommended that Georgia incorporates two pieces of Community legislation in its legal corpus. The Recommendation on preparing for the development of integrated national energy and climate plans by the Contracting Parties of the Energy Community (EnC Recommendation on NECP) is encouraging the country to design integrated climate and energy strategy for the implementation of the common targets. Recommendation on preparing for the implementation of Regulation (EU) 525/2013 on a mechanism for monitoring and reporting greenhouse gas emissions³³ (EnC Recommendation on GHG monitoring and reporting) is facilitating the country to develop universal GHG monitoring and reporting system on the basis of the EU experience. The General Policy Guidelines on the 2030 targets for the Contracting Parties of the Energy Community³⁴ should also be mentioned in this context. However, they do not provide specific legal obligatory framework to Georgia and can be left out of the detailed scrutiny of this contribution.

National Climate Legislative Framework: Gaps and Barriers

The Overview of National Legislation Relevant to Climate Change

As argued in the previous chapter, the legally binding AA provisions that are to be adopted in Georgia are stemming from the regulations, as legal acts of the European Union. Although a regulation represents the secondary source of EU legislation, it is directly applicable and immediately enforceable law in all EU Member States as opposed to a directive, which needs to be transposed into national law. This proposition, however, does not apply to Georgia as an EU associate country. Georgia is a non-EU member state and the EU regulations do not apply automatically in its domestic legal system. Therefore, in order to approximate the national legislation to the negotiated provisions of the EU regulations enshrined in the AA, the formal

³³ Not covered by legally binding AA and Accession Protocol.

³⁴ General Policy Guidelines on the 2030 Targets for the Contracting Parties of the Energy Community, Annex 17/16th MC/23-11-2018.

adoption of EU standards in the form of updating the existing legislation or adopting new ones (primary or secondary by-laws) is necessary. The regulations can be implemented by means of a variety of national legislative procedures depending on specific subject matter.

Some legal foundations for the implementation of the Regulations can, in principle, be found within the existing climate legislation in Georgia. However, they tend to be somewhat faulty and inadequate which jeopardizes the legal harmonization process. As there is no single climate legal act in place, several sectoral laws and regulatory measures dealing with identified F-gas and ODS as well as NECP and GHG monitoring and reporting provisions should be found in different primary and secondary legislation. It is arguable whether there is sufficient regulatory space created in Georgia to accommodate the provisions that fully implement EU acts in the domestic legal system.

It is the 1996 Law of Georgia on Environmental Protection³⁵ to be invoked in the first place as a key primary national act providing the foundation for the establishment of a national environmental legislation including the general reference to climate change (Article 51)³⁶ and protection of the ozone layer (Article 52).³⁷ The second significant primary domestic legal act to be scrutinized in this light is the 1999 Law of Georgia on Ambient Air Protection.³⁸ Its chapter XV (Global and Regional Management of Ambient Air) contains the ODS-relevant provisions (Article 54), containing five paragraphs, which have been amended in 2007, 2010, 2011, and 2013. Further to this, the Environmental Assessment Code has been adopted on 1 June 2017, whereas the vulnerability of the activities to climate change and monitoring greenhouse gas emissions (Article 10) are mentioned accordingly.³⁹

Apart from these key primary acts, several other secondary laws are in place in the country which support transposition of the afore-

³⁵ № 519-1 Law of Georgia on Environmental Protection, 10/12/1996.

³⁶ Article 51 of the Law of Georgia on the Environmental Protection.

³⁷ Article 52 of the Law of Georgia on the Environmental Protection.

³⁸ № 2116 Law of Georgia on Ambient Air Protection, 22/06/1999.

³⁹ Article 10 (3) of the Law of Georgia: Environmental Assessment Code, 1/06/2017.

reviewed EU climate *acquis* nationally. These acts vary to a large degree including the resolution of the Parliament of Georgia⁴⁰ and the Governmental decrees.⁴¹ It should also be mentioned that national policy documents and sectoral strategies play a crucial role currently in forming the national climate regulatory framework. The National Strategy on Sustainable Development Goals,⁴² the Social-Economic Development Strategy of Georgia 2020,⁴³ the National Environment Action Program (2017-2021),⁴⁴ as well as Climate Action Plan and National Renewable Energy Action Plan & National Energy Efficiency Action Plan⁴⁵ should also be cited in this context.

The Level of Concordance of the Climate Acquis Stemming from the Association Agreement

In relation to the EU F-gas regulation it should be mentioned that the primary objective of the regulation is to reduce the emissions of the fluorinated gases covered by the Kyoto Protocol.⁴⁶ However, what needs to be emphasized is that these gases (HFCs, PFCs and SF₆⁴⁷) are not produced in Georgia. They are imported for domestic consumption and, therefore, emissions are generated mostly from their use. Although as non-Annex I party to UNFCCC, Georgia does have binding emission reduction commitment under KP, controlling F-gases could contribute to overall measures reducing GHG emissions. Given this, aligning the domestic legislation to the EU F-gas Regulation

⁴⁰ E.g. № 828 The Resolution of the Parliament of Georgia 'On Harmonization of Georgian Legislation with the EU Law,' 2/09/1997.

⁴¹ № 302 Decree of the government of Georgia on national requirements for a mandatory certification system and training for refrigeration and air conditioning technicians (22/06/2017).

⁴² № 2328 Ordinance of the Government of Georgia on approval of the National Strategy of the Sustainable Development Goals, 12 November 2019.

⁴³ № 400 Ordinance of the Government of Georgia on approval of Socio-Economic Development Strategy of Georgia—'Georgia 2020' and Associated Activities, 17 June 2014.

⁴⁴ The full document available at <<http://extwprlegs1.fao.org/docs/pdf/geo180258.pdf>> accessed 12 December 2019.

⁴⁵ See the 2nd BUR available at: <https://www4.unfccc.int/sites/SubmissionsStaging/NationalReports/Documents/03268145_Georgia-BUR2-1-2019.06.13_BUR2_2019_Eng.pdf> accessed 12 January 2020.

⁴⁶ Article 1, EU F-gas Regulation.

⁴⁷ See the detailed list of the gases in the respective Annex of the EU F-gas Regulation.

does not only come in conformity with the AA implementation, but it also contributes to the UNFCCC process.

There are certain national provisions in Georgia that correspond to the AA, but their general nature does not set out any specific measures related to the climate protecting F-gas framework. It must also be emphasized that a good number of specific amendments have already been applied in the domestic legal system, which ensure partial implementation of the F-gas Regulation requirements. In this context, an amendment to the Ambient Air Protection Law registered on 10 April 2019 adopted on 22 May 2020 should be mentioned.⁴⁸ It does not only contain some of the specific provisions itself to implement the EU F-gas regulation, but it also points to the technical regulation that needs to be prepared and adopted in due course. The latter will detail a legal pathway towards the full implementation of the F-gas regulation. It also needs to be added that Article 67¹ of the amended law mandates the Government of Georgia to adopt such a technical regulation by September 2021.

With regards to the ODS system, it is widely recognized that continued emissions of ozone depleting substances cause significant damage to the ozone layer. Against this proposition, the objective of the ODS Regulation is to fulfil the obligations of the Montreal Protocol on substances that deplete the ozone layer, to which Georgia is a party to. It thus lays down the rules on the production, import, export, placing on the market, use, recovery, recycling, reclamation and destruction of substances that deplete the ozone layer, on the reporting of information related to those substances and on the import, export, placing on the market and use of products and equipment containing or relying on those substances.⁴⁹

As for the EU ODS Regulation implementation progress, the scrutiny of national legislation indicates that the starting point of the ODS Regulation transposition in Georgian national legislation was in a better position in comparison with F-gas Regulation. Namely, the competent authority (i.e., Ministry of Environmental Protection and Agriculture) has for quite some time been already designated by

⁴⁸ № 07-2/332/9 Amendment to the Law of Georgia on Ambient Air Protection.

⁴⁹ Article 1, EU ODS Regulation.

virtue of Article 13 of Law of Environmental Protection⁵⁰ and Article 54 Law of Ambient Air Protection.⁵¹ The ban of the production of controlled substances (Art. 4 ODS Regulation) has also been in place before the signature of the AA according to Article 52 (1) of Law of Environmental Protection and Article 54 (1) of another.

The main gaps are associated with the controlled substances for exempted uses as feedstock and for essential laboratory and analytical uses as well as inspecting leakages (Article 23 ODS Regulation) unless the draft law (under preparation, but not published yet) amending the Ambient Air Law is not adopted in due course.⁵² Last but not least, no responding national provisions have been found with regard to obligations to recover, recycle, reclaim and destruct used controlled substances (Art. 22 of ODS Regulation) in existing legislation nor in the draft laws that have been disclosed to a wider public.

The Level of Concordance of the Climate Acquis Stemming from the Energy Community Treaty

National Energy and Climate Plans (NECPs) are the new framework under which EU Member States must plan and report, in an integrated manner, their climate and energy objectives, targets, policies and measures to the European Commission.⁵³ It lies in the core of the EU's proposed climate law, which has been touched upon in the previous chapter. Despite the fact that NECPs are originating in the EU Member States context, they have a spillover effect on the countries partnering with the EU. EnC Recommendation on NECP is a prime example of that highly encouraging Georgia to design and submit its Plan by October 2020.⁵⁴

⁵⁰ Article 13, Law of Georgia on Ambient Air Protection.

⁵¹ Article 54 (4), Law of Georgia on Ambient Air Protection.

⁵² The draft law is being prepared jointly by MEPA and ongoing UNDP HCFC Phase-Out project, but not publicized yet.

⁵³ See National Energy and Climate Plans (NECPs), Climate Action Network Europe, <<http://www.caneurope.org/national-energy-and-climate-plans-necps>> accessed 14 April 2020.

⁵⁴ See Policy Guidelines on the development of National Energy and Climate Plans under Recommendation 2018/01/MC-EnC, June 2018.

According to Article 1 of the EnC Recommendation on NECP, ‘the Contracting Parties should prepare the analytical, institutional and regulatory preconditions for the development and adoption of integrated national energy and climate plans for the period from 2021 to 2030.’⁵⁵ NECPs should be addressing the five dimensions of the Energy Union⁵⁶ and should ensure coherence with PA as well as other possible long-term energy and climate targets for 2030.

What is more relevant, the landmark energy sector reform laws have recently been adopted in Georgia, mandated by the Third Energy Package,⁵⁷ substituting the existing energy market framework. Namely, the Law of Georgia on Energy and Water Supply was enacted on 20 December 2019⁵⁸ and the Law of Georgia on Encouraging the Production and Use of Energy from Renewable Sources was also passed on 20 December 2019.⁵⁹ Both Laws are expected to create the framework not only for modernizing the energy market accommodating the European Union energy law key principles (Samkharadze 2019a, 241-257), but also for establishing the legal grounds for a long term energy strategy and planning. How does NECP fit under the framework law and does this latter explicitly refer to it?

Article 7 of the recently adopted framework energy law⁶⁰ specifically indicates that the ‘State Energy Policy may encompass the integrated national energy and climate plan of Georgia addressing dimensions of the energy security and solidarity, energy markets, decarbonisation, innovation and competitiveness in the energy sector, and moderation of energy demand.’ This can very well be considered a strong legal declaratory foundation paving the way towards actual

⁵⁵ Article 1 of the 2018/1/MC-EnC on preparing for the development of integrated national energy and climate plans by the Contracting Parties of the Energy Community.

⁵⁶ 1. Energy security, solidarity and trust; 2. A fully integrated energy market; 3. Energy efficiency; 4. Climate action—decarbonizing economy; 5. Research, innovation and competitiveness. For detailed analysis, see EU Commission Communication ‘A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy.’

⁵⁷ For more information, see <<https://ec.europa.eu/energy/en/topics/markets-and-consumers/market-legislation/third-energy-package>> accessed 14 January 2020.

⁵⁸ № 5646 Law of Georgia on Energy and Water Supply, 20.12.2019.

⁵⁹ № 5652 Law of Georgia on Encouraging the Production and Use of Energy from Renewable Sources, 20.12.2019.

⁶⁰ Article 7 (3) of the Law of Georgia on Energy and Water Supply, 20.12.2019.

preparation of the NECP, also containing certain references to the regional cooperation. On top of that, the recently passed Renewable Energy law should additionally be mentioned, as it establishes the conditions on the approval of the National Renewable Energy Action Plan.⁶¹

At the time of writing, however, the implementation of Georgia's National Energy and Climate Plan is in its very infancy. As enshrined in the latest Annual Implementation Report 2020, 'draft chapters of the NECP have been submitted to the Secretariat in August 2020.⁶² The same document assesses the overall implementation status with 45%, as the analytical part of the plan, in particular on the policy scenarios, is still ongoing.⁶³

As for the EnC Recommendation on GHG monitoring and reporting, Georgia is inclined to prepare the legal and institutional preconditions for the implementation of the core elements of Regulation No 525/2013⁶⁴ of the EU. The legal analysis shows that the Regulation is not transposed into national legislation, but two general provisions have been found in primary national legislation in line with the requirements of the Regulation. Article 51 of Law of Environmental Protection establishes the basic obligations of the entities in the field of climate change,⁶⁵ such as reducing greenhouses gases in the atmosphere, but there is no reporting obligation *per se*.

This Article creates only the general legal foundations for GHG monitoring and reporting and it does not specify the mechanisms for providing data to the collecting entities. It rather makes a reference to a legal framework for the protection of the climate from global changes within the jurisdiction of Georgia. Article 1 of the Law of Official Statistics can also be mentioned in this context with regards to the country's compliance with the UN Fundamental Principles of

⁶¹ Article 4 of the Law of Georgia on Encouraging the Production and Use of Energy from Renewable Sources, 20/12/2019.

⁶² Energy Community Secretariat Annual Implementation Report, Georgia (climate). November 2020.

⁶³ Ibid.

⁶⁴ Regulation (EU) No 525/2013 of The European Parliament and of The Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC.

⁶⁵ Article 51, Law of Georgian on Environmental Protection.

Official Statistics and the European Statistics Code of Practice. Nevertheless, it should be claimed that the ‘core elements’⁶⁶ of the EU 525/2013 Regulation remain ill-regulated in the national legal system. There is no sophisticated national monitoring and reporting legal set-up in place and the major gaps are associated with failure of the legislative framework and institutional structures to monitor and report the GHG in a systematic manner.

What complicates the process is that the main source of obtaining necessary information is LEPL Environmental Information and Education Centre (EIEC) and National Statistics Office of Georgia,⁶⁷ but there is no legal obligation for data providers to transfer any information to EIEC and GeoStat. The information is collected at a random manner with no sustainable reporting system and documents are prepared on an *ad hoc* basis.⁶⁸ The collecting entities receive information from a wide variety of organizations, such as local governmental authorities (incl. municipalities), subordinated departments, private sector, CSOs and international donors. These entities are often reluctant to provide sensitive data that can cause misconception of the final results.

The Future Outlook: Some Considerations and Recommendations

Wrapping Up

In 1997, the Parliament of Georgia adopted the № 828 resolution on Harmonization of Georgian Legislation with the EU Law.⁶⁹ This has marked the early stage of Georgia’s domestic legislation harmonization under the footprint of the EU standards. Since then, much work has taken place before the signature of the AA. Within the framework of the AA, Georgia has amended quite a substantial

⁶⁶ E.g. Low-carbon development strategies (Art. 4); National Inventory systems (Art. 5-14); Biennial reports and national communications (Art. 18).

⁶⁷ Based on the Memorandum of Understanding with the Ministry of Environmental Protection and Agriculture of Georgia signed in 2014.

⁶⁸ For more detailed analysis, see Background Paper on a Legal Setup for MRV in Georgia prepared under GIZ ‘Information Matters’ Project (PN: 2012.9020.4-003).

⁶⁹ Adopted on 2 September 1997.

number of legislative norms and adopted new legal acts. In the period of the first three years, for example, 9 new laws have been enacted, up to 70 laws have been amended and some 24 by-laws laws have been issued (Gabrichidze 2018, 53).

Legal approximation to the European standards set out in the EU regulations cannot be the subject of identical transportation, but provisions should be harmonized and adapted to the national circumstances. Transposition of a specific provision is a separate legislative activity and should not be identified as a mere translation of an EU-adopted norm. This applies to the EU climate *acquis* as per analyzed above, which must also be exported creatively to enhance their productivity and general capacity within the national legal system. Descended from the Constitution of Georgia⁷⁰ followed by the Law of Georgia on Normative acts⁷¹ a solid legal basis is created for effective harmonization of Georgian laws in several fields of action including climate change.

The detailed assessment of the transposition of the specific climate *acquis* provisions above illustrates that the harmonization tendency in overall terms can be deemed positively. This especially applies to the obligatory provisions of the AA (F-gas and ODS), which seem to be on track. Nevertheless, there are a number of provisions that are left blank or insufficiently regulated by the national regulations. The legal research also shows that overall implementation of the EnC Recommendations in question should be evaluated as partial and slow in comparison with the climate *acquis* negotiated under the AA. This delay in implementing the EnC legal pieces can either be associated with Georgia's belated accession to the EnCT (roughly two years after the signature of the AA) or the soft-law, advisory nature of EnC Recommendations. A key task of implementing EU climate *acquis* provisions and enforcing the national provisions lies under the responsibility of the competent authority and line ministries. There are cases when full compatibility of the domestic

⁷⁰ Article 78 of the Constitution of Georgia addresses Georgia's integration to European and Euro-Atlantic structures.

⁷¹ Article 17 (1) c. (a) of the Law on Normative acts of Georgia stresses on the obligation of the legal drafters to provide the information on compliance of the draft law with 'EU law.'

legislation with the provisions of EU regulation is not possible or may require adjustment to national circumstances.

Key Takeaways

As per some specific recommendations of this contribution, firstly, the implementation of the № 07-2/332/9 amendment to the Law on Ambient Air Protection should be persisted. It foremostly defines (Art. 1) the term ‘fluorinated greenhouse gases,’ which is the first formal appearance of F-gas definition in the legislation. Apart from this, the law designates the competent authority (Ministry of Environmental Protection and Agriculture of Georgia) being responsible for the implementation of controlling the F-gases and attributing the overall functions ranging from preparing the certain amendments to the law to enforcing the regulation. Most importantly, the amendment requires the adoption of the technical regulation on F-gases.

Secondly, the ODS amendment package finalization and adoption should be proceeding shortly. There are ongoing negotiations on the latest ODS-related amendment package including the amendments to the primary Ambient Air Protection Law of Georgia and subsequent changes into the supplementary by-laws and other acts, such as the administrative offences code of Georgia⁷² and Law of Georgia on Licenses and Permits.⁷³ The EU ODS Regulation implementation process should not be done separately. It is essential to pair the AA ODS implementation with international measures of protection of the ozone layer based on the 1985 Vienna Convention for the Protection of the Ozone Layer⁷⁴ and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer.⁷⁵

Thirdly, National Energy and Climate Plan elaboration should be enhanced in Georgia. Although the substantial legal reference on NECP has now been incorporated into domestic legislation,⁷⁶ the development of the National Energy and Climate Plan development in Georgia is yet to accelerate and should be launched without the

⁷² № 161 Administrative Offences Code of Georgia, 15/12/1984.

⁷³ № 1775 Law of Georgia on Licenses and Permits, 24/06/2005.

⁷⁴ Ratified by the Parliament of Georgia in 1996.

⁷⁵ Ratified by the Parliament of Georgia in 2006.

⁷⁶ Article 7 (3), Law of Georgia on Energy and Water Supply.

slightest delay. The said legal basis, nevertheless, puts Georgia into an advanced stage in comparison with other Contracting Parties.⁷⁷ Georgia should intensify the preparation of the NECP for the period of 2021-2030 in line with EnC secretariat supporting on clarifying analytical, institutional and regulatory preconditions.

In the absence of overarching domestic legislation, effective implementation of UNFCCC requires Georgia's loyalty towards international obligations supplemented by Kyoto protocol (no binding target for Georgia) and PA (i.e., binding NDC component). Thus, in the fourth place, one single climate legal document adoption should be envisaged in a limited period of time. This would not only guarantee the effective implementation of the EU climate *acquis* as well as the Kyoto and Paris accords in the country, but it would also facilitate streamlining multiple climate planning processes, i.e., ensuring synergies between different workstreams and mitigating the risk of discrepancy.

Concluding Remarks

The birth of a new legal discipline is often a matter of interest only to a limited number of professionals or sub-specialists in targeted field. The ramifications of the emergence of climate change law, however, promise to be more far-reaching (Peel 2008, 923). This is exactly what the first chapter of the paper argued offering some considerations to present climate law as an autonomous domain of law with a voluminous potential to grow. It is inevitable that the coming years will see increased attention to a wide range of climate issues which will require urgent translation of the processes into legal language. As a cross-cutting matter, also claimed in the beginning of the paper, the development of climate law will draw upon the expertise of not only lawyers but also other professionals understanding the legal, scientific and other trends in climate change.

Against this backdrop, it is almost certain that the development of climate law at a global scale has an obvious impact on the Georgian climate legislative framework. The subsequent chapters of the paper

⁷⁷ E.g. Montenegro is currently focusing on amending its Energy Law to provide a legal basis for further work on the NECP.

argued that currently Georgian climate law development is largely dependent on the cooperation with the EU and Energy Community and there is ample room for the country to mainstream EU climate action at a national level. The analysis of the AA F-gas and ODS regulations as well as the EnC recommendations on NECP and GHG monitoring and reporting illustrated how the legal transposition of the EU climate *acquis* could take an effect. Although no comprehensive single legal document on climate is found in the country, the conglomeration of the norms disseminated in the Georgian regulatory framework guarantees some degree of legal harmonization. The paper also argued that state of the art is yet to be modified and fine-tuned for which the targeted recommendations have been provided in the previous chapter.

Lastly, there is no doubt that the EU will proceed with expanding its legal space, and the growing prominence of EU climate policy will have its unavoidable impact on Georgian climate law-making. Mere legal transposition in an available national legislation should never be considered as a dead end. Smooth implementation of the rules is required upon the set-up of the legal and institutional framework. Therefore, technical assistance and capacity building activities should be undertaken in the country supporting the enforcement of the novel climate legislation. Sector-specific information and awareness raising campaigns including guidance materials on new and additional legal requirements should also be encouraged, which will eventually result in Georgia's low carbon development and the ability to foster climate resilience.

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Due Process in Georgian Competition Law— Good Will of the Agency or the Right of the Undertaking?

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Abstract

Focussing on the Association Agreement (AA) between Georgia and the EU and especially the DCFTA Agreement, this chapter provides practical examples of significant differences between enforcement processes under Georgian and European Competition law, especially in procedural aspects. In particular, this chapter aims to clarify whether, in the context of the DCFTA, Georgia does have an obligation to apply EU procedural standards while handling competition law cases. Consequently, does the non-application of these standards invalidate the decision?

By discussing this problem based on the Poti Sea Port case and using a theoretical legal analysis, this chapter will show that despite legal approximation towards the EU being a primary goal for associated states, EU legislation is still not “ready to wear” for them. However, while the AA appears to be the major platform for desired transfusion and transposition of the EU standards, it is being argued in this chapter that this international agreement, despite being a superior normative act above the Georgian competition legislation, cannot be used as a legal means for the direct application of EU procedural rules in competition proceedings. The way out of the dead-end goes through the Parliament of Georgia where the initiated amendments to the law on competition appear to offer reasonable legislative solutions to the discussed problem.

Key words: Competition, due process, undertaking, DCFTA, DG Competition, GCA.

Introduction

One of the most significant decisions for Georgian competition law and policy made by the Georgian Competition Agency (GCA) back in 2017 was appealed to the court by the party on a procedural basis and is still pending at the first instance court in Tbilisi. The company alleges that the GCA has violated its right to be heard and right of legal defense during the administrative procedure. Specifically, as it turns out, the Agency sent the draft decision to the party four working days before the final hearing of the proceedings. Although the Agency names these four working days as nine calendar days, it cannot change its substance. However, the legal irony is that there would be no formal problem if the Agency had not shared the document before the final hearing, as it has no such obligation under the Georgian competition law in force.

In the context of the Association Agreement (AA) between Georgia and the European Union and especially the DCFTA, this dispute becomes even more interesting, as this issue is an example of an essential difference between Georgian and European competition law. Specifically, the Commission sends out the Statement of Objection to the parties and gives them a reasonable response period. This deadline should be at least four weeks, although, on average, it takes two months. Contrary to the aforementioned, the GCA is merely obliged to share the draft at a final hearing (but it is not prevented from sending it previously to the parties).

It should also be mentioned that according to the mentioned DCFTA, Georgia shall maintain an authority responsible and appropriately equipped for the effective enforcement of competition law. Bearing in mind that association implies legal approximation, the words “appropriately equipped” should presumably be defined in line with the European standard which was developed earlier and is well interpreted in the DG Competition’s Antitrust Manual of Procedures.

Considering the abovementioned, we get into the situation where the Georgian competition regime does not ensure specific procedural rights guaranteed by the TFEU and secondary European legislation. However, formally, in such cases, the “restriction” of this right cannot serve as a legal basis to annul the decision. On the other

hand, the reference to “appropriate equipment” gives Georgia some obligations and gives a general frame for the interpretation of Georgian law.

The primary purpose of this chapter is to analyze the described problem.¹ In particular, based on the Agency’s decisions, ongoing or closed court disputes, and comparative legal analysis of the legislation, there are several questions to be cleared: A. Does Georgia have an obligation to apply EU procedural standards in the competition law cases and, consequently, does the non-application of these standards invalidate the decision? B. If not, is the Georgian competition law in line with the AA’s text in this regard? C. Considering the answer to the first two questions, what could be the optimal legal solution in this circumstance?

In the final analysis, the question is who owes whom?—the GCA to the undertakings for not applying the EU standard, or the undertaking to the GCA because of demanding more rights than granted by the applicable law.

PSPC Case—A Procedural Narrative

On 21 April 2017, the GCA issued the decision on Poti Sea Port Corporation case.² The investigation regarding the alleged abuse of a dominant position lasted strictly for ten months, starting from 21 June 2016. The last fact mentioned may seem to be pointless information until we hint at Articles 25.1 and 25.2 of the Law on Competition of Georgia which restrict the maximum time for an investigation to 10 months. This can already raise some questions about the reasons why the investigation process was finished exactly on the last legally possible day. Maybe there was some more time needed to assess the issue, but the Agency preferred to have at least a formally valid decision instead of failing to issue any? If so, would that serve as a basis for annulling the decision at the court? Before answering these questions, we should provide the procedural story of the discussed case below.

¹ The facts and legal analysis presented in this article correspond to the state as of 1 September 2020.

² *Order №04/91 21.04.2017* of the Chairmen of the Competition Agency of Georgia.

In late spring of 2016, the 14 terminal companies operating in Poti (Black Sea shore) submitted a complaint to the GCA regarding the alleged abuse of dominant position by the JSC “Poti Sea Port,” which is an operating company of Poti port (Member of APM Terminals group). The complainants protested the new tariff scheme for stevedoring services. Namely, according to the introduced tariff scheme, the Port was combining the tariffs for unloading a container from the ship, transporting it to the terminal (container yard), and storing it in the terminal for two days. The mentioned terminal (CY) was owned by the Port and located in 3 km from the Port territory, connected with a public road specially built for connecting the Port and Terminal. Since the Poti Port was historically not designed for container cargo, there is not enough space to organize a sea terminal in the Port territory, so the Port is operating the container cargo through off-docks—up to twenty terminals located distantly (in the 10 km radius) of the Port. The terminals, contracted by shipping lines, were subcontracting transport companies and receiving cargo directly in the port territory (on behalf of the respective shipping line). Technically, the Port's new rule would restrict third-party trucks from entering the Port territory and change the container delivery address to the CY terminal instead of Port territory. The GCA had to clarify whether changing the delivery address would cause the tying of three services—stevedoring service, transportation, and terminal (storage) services (Kobadze 2018, 176-182)³.

Despite the interesting material content of the case, the procedural side is of even greater importance. In this regard, it is better to present below the complete scheme of actions of the Agency, which is also described in detail in the decision of the Agency, namely:

- 26 May 2016—Poti Port notifies the parties/terminals that a new scheme will be launched from July 1, 2016.
- 8 June 2016— the terminals contacted the Agency.
- 9 June—the complaint was sent to the defendant.
- 21 June—The investigation has been launched.

³ For the detailed analysis of case facts in English see: Nino Kobadze, Black Sea Port in Georgia Scrutinized by the Georgian Competition Authority Relying upon EU Case Law as Plans for Expansion Rejected, *Journal of European Competition Law & Practice*, Volume 9, Issue 3, March 2018, Pages 176–182.

- 23 June—the agency referred to the court to suspend the action.
- 24 June—the court (Case №1406958-16) suspended the new scheme by the ruling, pending a final decision. According to Georgian legislation, this decision can be appealed independently. The party exercised this right; however, according to the decision of the Tbilisi Court of Appeals of January 6, 2017, the appeal was rejected.

Over the following months, the GCA studied the issue and investigated a variety of relevant information, including through consultation with public agencies and requesting relevant information. At the same time, third parties, namely the shipping lines, were involved in the proceedings. During August, the Agency received explanations from these economic agents during the relevant meetings.

Interestingly, in August 2016, the defendant's party requested from the GCA minutes of meetings and corresponding explanations received from the complainants at the relevant hearings, but the Agency refused to provide them with this information until the Agency would have completed meetings with other relevant economic agents or state bodies.

Finally, the first meeting between the representatives of the Agency and the respondent company within the framework of the case took place on 3 November 2016. After that, by letters dated November 4 and November 10, the Agency sent to the party the materials received after the commencement of the investigation, including the explanatory notes of the complainant and third parties, and asked the party to present its position on the facts considered in the materials and on the positions of the parties. The company submitted this position to the Agency at the end of December 2016 (Poti Sea Port Corporation Case 2017, 3-41).

The factual circumstances described above are of particular importance given that one of the party's main complaints is that it was not allowed to participate in the European standard proceedings.

EU Competition Proceedings— Benchmark for Due Process

It would also be appropriate to briefly review the European legislation, in particular the due process, which in turn stems from the fundamental principle of the EU Charter of Fundamental Rights stating that every person enjoys a right to good administration which includes rights to be heard and to access his or her file.

One of the important similarities between Georgian and EU competition law lies in the institutional powers of the executive body. Namely, it is clear that in both cases, we are dealing with an integrated agency model. Although there is a collegial body in the form of a commission in the case of the EU, and in Georgia, the agency is headed by one person—the Chairman. The integrated model implies that in both cases (in the EU and Georgia) the competition authority has the function of investigation and decision-making and imposing the fine, which makes it a quasi-prosecutive and a quasi-judiciary body. Naturally, this model has many critics among scholars,⁴ but below, we will not focus on its evaluation and limit ourselves to analyzing whether the Georgian competition law system aligns with the EU model, simply considering the latter as acceptable one.

The Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU describes in detail the roadmap of the proceedings at the DG Comp (European Commission 2011, n.p.) (European Commission 2019, n.p.). The document shows that the case can be developed in several scenarios. It can be rejected, closed with commitments, or produced in a classic scenario and end with an ordinary decision. Since the current Georgian legislation does not provide for the completion of the case with commitments, for comparison, we will consider only the ordinary decision.

Normally, the European Commission starts a case *ex officio*, which includes leniency applications or based on a complaint, although this does not mean the initiation of an investigation, but the beginning of the Initial Assessment phase (Martyniszyn 2019, 48-70).

⁴ For instance, see Forrester 2009, 817-843.

At this point, the case may be transferred to another competent authority, such as ECN members, or considered pointless to pursue the case. In other cases, DG Comp opens the proceedings, after which a state of play meeting is held. It is important to note that DG Comp may use investigative instruments even in the initial assessment phase. Consequently, the initiation of an investigation in European proceedings is already an important decision, backed up by relevant, already obtained evidence. This is important for the dawn raid's effectiveness, especially in leniency cases, as the company must not have prior information about the possible investigative action. Here we have a significant difference with the current Georgian legislation, as, according to Georgian law, the court must notify the party of such an investigative action in advance.⁵

After implementing the important legal actions already mentioned above, a real investigation begins which also includes another state of play meeting at a sufficiently advanced stage of proceedings.

In the investigation phase, the case may be closed (followed by a separate path of actions prescribed by the guideline) or continued further with the statement of objection sent to the party (SO). Actually, this is the stage where the party is fully involved in the case, and it raises the right to obtain access to the file. Naturally, the party has the right to reply to the SO and the oral hearing is also based on this. After this, either the case is closed, or the Prohibition Decision will be issued.

Interestingly, in European proceedings, a party has access not only to the case files but also to the complaint (in the case of an investigation initiated on the basis of a complaint) only after the preliminary investigation has been completed, meaning—after the opening of proceedings. In this case, the party has the opportunity to respond only to the non-confidential version of the complaint.

An important circumstance is also the duration of the investigation, which for the data of 2004-2015 on the cases of abuse of a dominant position averages 61 months—5 years and one month (Dethmers and Blondeel 2017, 158-164).

⁵ See: Order of the Chairman of Competition Agency of Georgia, № 30/09-5/2014, On approval of the rule and procedures of investigation, Art. 20.

The turning point for the thorough realization of a party's rights is releasing the SO. At this time, the party has access to all documents relied on by DG Comp. It is important to note that in many cases, this document will be developed by DG Comp 2-3 years after the first investigative action. For example, in the Gazprom case, DG Comp released the SO⁶ in 2 years and seven months after the opening of proceedings (nearly three years and six months after using the first investigative instrument)⁷. This is an important issue to underline since the procedural meaning of the final summary session in the Georgian proceedings may be compared to the phase of issuing the SO in the DG Comp case handling process.

EU Legislation—Ready-To-Wear for Associated Members?

In 2002, in Brussels, one of the most important speeches for the further development of Eastern Europe was delivered by the President of the European Commission—Romano Prodi. In his speech, he mentioned, “If we are to keep pace with this changing world and shoulder our growing global responsibilities, we, as the Union, have to take the necessary measures. If we want to satisfy the rising expectations and hopes of countries abroad and the peoples of Europe, we have to become a real global player” (Prodi 2002). The expectations and hopes of the European people (in the broadest possible sense of the word) were and are primarily linked to the full membership of the European family, which came true in 2003 for 10 European countries to join the EU. Important instruments of the EU neighborhood policy are in effect for other eastern European states. One of these important instruments for European integration is the Eastern Partnership. The Eastern Partnership (EaP) is a joint initiative involving the EU, its Member States, and six Eastern European Partners: Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova, and Ukraine. The last three countries were even able to upgrade their status to the Associated Membership.

⁶ See: European Commission—Fact Sheet, MEMO/15/4829, April 22, 2015.

⁷ See: European Commission—MEMO/11/641, September 27, 2011.

In this light, the European standard of human rights, legal framework, state organization, government and policy, cultural and socio-economical values have been the beacon for these countries' development. Regardless of the challenges on this road, the European values remain the determinants of their political orientation officially (Parliament of Georgia 1997).

The problem here may be the temptation of the policymakers to copy the readymade regulations to their countries. As shown by empirical research, there is often a big divergence between the outcomes of implementing the same policy in the developed Western European countries and Eastern European countries. Among other things, this is clearly visible in the example of the competition policy, which is an important element of the framework of harmonization of the legal and economic policy with Europe. As demonstrated by a recent study, which analyzed the 2006-2018 data of five Eastern European countries, the macroeconomic impact of the competition policy is different for the group of the selected countries and developed European countries. In particular, if the increase in the effectiveness of the implementation of the competition policy exerts an influence on inflation in the group of selected countries, its impact is statistically insignificant on the increase of the GDP, whereas the outcome is different for the countries with a developed economy (Sergia 2020). This may have a number of reasons. Specifically, on the one hand, in the post-Soviet countries, economic instruments, such as the regulatory framework of competition and its enforcement, are a product of transplantation rather than an outcome of gradual development, while, on the other hand, the initial and final soils of transplantation are different, causing an aberration from the normal functions of this instrument and its normal use.

Accordingly, the harmonization of the legal space of Eastern European countries, including the competition policy, with its West-European counterpart and the implementation of the corresponding norms, should not imply the mere transfer/copying of legal provisions. The process of harmonization is a totality of much more difficult and complex measures, which implies the transfer of the relevant regulations to Georgia (in this case) in such a form that will

ensure the achievement of the socio-economic effect that was achieved in the European states with the best experience.

A case in point of the impossibility and ineffectiveness of direct copying of norms is the state aid regulation. Naturally, it is technically possible to make a direct transfer of the European regulations on state aid to the Georgian legal space, for example, although what will create problems here is the difference between the economic content and goal of the regulation. In particular, the concept of state aid is an important lever in the context of the internal market of the EU. The control of state aid is supposed to contribute to preventing concrete states from pursuing a protectionist economic policy and putting the companies under their jurisdiction in a privileged position, which, in its turn, may affect the trade between the member states. As for the neighboring countries of Europe, we face a completely different reality here. These countries, including the associated members of the EU, do not represent a part of the EU internal market. Accordingly, the state aid granted by such countries may only have an indirect effect on the EU market, which will be limited to the volumes (quotas) provided for by the free trade framework between the EU and the associated member concerned. It is also important that the control of state aid in the EU is the Commission's competence. As a supranational entity, the EU exercises control to ensure that its members do not restrict free trade and competition on the internal market. Meanwhile, the executive bodies regulating state aid are the competition agencies of the associated member countries concerned. These countries are not subject to the direct jurisdiction of the EU. In its turn, the jurisdiction of the competition agencies extends to the markets of the concrete countries. Therefore, the competition agencies of the associated member countries have to answer the question of whether or not the issuance of the state aid has restricted competition on the markets of their respective countries. Accordingly, in this case, the only function of regulation of state aid that remains in place is the prevention of unequal treatment of undertakings operating on the concrete relevant market. At the same time, for preventing such restrictions, the majority of Eastern and Central European countries (for example, the Czech Republic, Lithuania, Ukraine, Georgia, Armenia) have special regulations which can be

united under a common name—"Prohibition of Restriction of Competition by State Bodies." These regulations deal with decisions of state bodies that may prioritize a specific undertaking or, in general, interfere with free competition on the market. Naturally, direct copying of European regulation of state aid is inconceivable in this reality. It is all the more impossible to ensure the direct application of European norms, even by means of any type of international agreement, for example, the DCFTA.

The same principle applies in relation to the main general issue posed above (PSPC Case). Specifically, in connection with the direct application of EU procedural rules in the competition proceedings to the Georgian cases. This is impeded by several factors:

a. The Institutional Framework

The institutional framework is the main impediment to the direct use of European procedural norms. In particular, in order to use the procedural mechanisms applied by the European Commission and, accordingly, the DG COMP, it is necessary to have a competition agency with the same powers in Georgia. For instance, it is possible to discuss the role of direct evidence in cartel cases. Naturally, it is practically impossible to prove a cartel agreement with indirect evidence, such as economic analysis. At the same time, this issue is important in the context of ease level for the competition agency to prove the existence of a cartel agreement with indirect evidence, but rather, such possibility is directly related to a party's right to enjoy the presumption of innocence, if there is no direct evidence of a violation of the law. In particular, a party should not be obliged to prove their innocence if an administrative body equipped with quasi-prosecutorial powers cannot confirm their guilt directly and beyond doubt. In other words, the right of the competition agency to confirm the existence of a cartel agreement with indirect evidence or a totality of such evidence restricts a company's right to put the burden of proof on the authority which applies the law.

On the other hand, there is no less firm logic in the opposite arguments—does the law give the competition agency such powers that will enable it to obtain direct evidence proving the existence of a cartel agreement? And if not, does this mean that the legislator has

also allowed the possibility of confirming the existence of such an agreement with indirect evidence, or the type of evidence that can be obtained by the competition agency? If we consider the foregoing on the example of Georgia, as noted above, the competition agency can merely conduct an unexpected inspection with the consent of the court and, at the same time, after giving a warning to the party. In practice, this, naturally, does not make sense, as the company can always destroy relevant evidence. Therefore, the competition agency is faced with a dilemma between imposing a sanction on the undertaking with a decision based on only indirect evidence, by which it will restrict the party's rights in terms of the burden of proof, and upholding this right of the party, waiting for the opportunity of obtaining direct evidence, and leaving the framework prohibiting cartel agreements practically ineffective. In this regard, one should note the standard established by the Supreme Court of Georgia, which in one case ruled that "in order to confirm the anti-competition agreement, it is important to prove the fact of communication between undertakings" and, as for indirect evidence, the court only left a hypothetical, theoretical possibility to confirm the offense with such type of evidence. It is a fact that the court's decision is based on fundamental principles of law and, at the same time, is caused by the obligation of the administrative body to study the circumstances of the case thoroughly and comprehensively. However, it is clear that, by doing so, the Court brought under question the prevention of cartel agreements and effective implementation of the competition policy in terms of the deterrence effect of the prohibition decision. Due to the foregoing, without changing the existing institutional framework, which encompasses but is not limited to the expansion of the powers of the competition agency, the competition policy faces a dilemma between restricting the procedural rights of parties and decreasing the effectiveness of the implementation of the competition policy.

b. Legislative Framework

The issue of the existing legislative framework is, of course, somewhat related to the institutional framework as well, since the institutional framework is also based on legal acts. However, in this part of the paper, the concept of the legislative framework refers to those

provisions that are not directly related to the powers of the Agency and its institutional arrangement. In this way, we can assume the right of a party to become aware of the official position of the competition authority on the subject matter of the case and important circumstances prior to a reasonable time before the investigation is completed. This is especially important for relatively complex cases, which may require a rather deep economic analysis taking relatively more time. An important problem in this context is the tight deadline for the investigation of the case, which is defined by law. According to the Law of Georgia on Competition, the general term set for the investigation of a case is only three (!) months, and it can be extended up to a maximum of 10 months. If we add to this the deadline for admissibility of the complaint (in the case of an investigation initiated on the basis of a complaint), which is one month (may be extended by additional two weeks), the total time the authority has to work on the case does not exceed one year. This can easily lead the agency to failing to issue the decision in due date; on the other hand, if a party is given access to all kinds of information and files in the case while working on the evidence, the effectiveness of the investigative actions can not be guaranteed.

Accordingly, if we directly transfer one of the fundamental principles of European due process and guarantee access to the file, leaving the legislative framework unchanged, the agency will face the dilemma again—fail to complete the investigation within the specified time or reduce the effectiveness of the investigation process.

In the light of the foregoing, the individual due process principles cannot be used as a ready-to-wear clothing for the Georgian competition enforcement body; it needs to be tailored considering the specific institutional and legislative framework. If Georgia (and other associated members) is going to transplant these principles as they are, they should be planted out together with the whole normative soil at the place of origin.

DCFTA—Transfusion of the EU Standard

Precisely for the transplantation mentioned above, the EU-Georgia AA creates a general framework, including its central pillar, the DCFTA. A

colossal document with more than 1000 pages of text provides the legal basis for legal approximation of Georgian legislation to hundreds of European normative acts. An important issue here is that in contrast to the "soft" provisions of the EU-Georgia PCA and ENP Action Plan, approximation clauses provided for in the EU-Georgia AA are of binding nature. They can be divided into three main categories, such as the general approximation clauses, sector-specific approximation clauses, and approximation-supportive clauses which are not sector-specific and can be categorized as general provisions on approximation under DCFTA (Gabrichidze 2018).

Bearing in mind that the European standard for due process in competition proceedings is set as a benchmark for the Georgian reality on the one hand and there is no tool for the direct applicability of European normative acts in the Georgian procedural law on the other, the AA (more specifically the DCFTA) remains a vessel for transfusion of these standards into the Georgian legal praxis.

When signing the AA, Georgia took very limited commitments in competition policy and practically no specific requirement to approximate with the EU's competition rules and systems. According to the official website of the DCFTA, Georgia took only the following obligations:

- *"Maintaining and implementing anti-competitive and mergers regulations;*
- *Maintaining the entity responsible for legislation enforcement;*
- *Ensuring transparency of subsidies, specifically: every two years, Georgia shall provide the EU with a detailed report regarding the subsidy granted by the Government or a public institution for the production of goods. The report is deemed fully presented if all relevant information is placed on a publically accessible internet webpage. Reports detailing separately issued subsidies for service deliveries must be provided to the EU as per request."*⁸

Nevertheless, the full text of chapter 10 and specifically Article 204 of the Agreement mentions several important terms, such as

⁸ Summary of Chapter 10 provided on the official website of the DCFTA, <http://www.dcfra.gov.ge/en/agreement> (01.06.2020).

“effective enforcement,” “respecting the principles of procedural fairness,” “rights of defence of the enterprises concerned,” “appropriately equipped”—which give an outline for the implementation and approximation of the Georgian competition policy to that of the EU.

Considering the generalized character of the commitments (if any) taken by the party, they needed to be concretized afterward in the framework of the bilateral cooperation between the EU and Georgia. The platform for this cooperation (not limited to the issue of the competition policy) was established in the form of the EU-Georgia Association Committee in Trade Configuration (ACTC). The Association Committee meeting is held annually in December and discusses the implementation of the different chapters of the DCFTA. The examples for concretization of the mentioned commitments are reflected in the action plans and implementation reports issued on each meeting of ACTC.

Close cooperation and a detailed breakdown of the actions to be carried out are important for the management of the implementation process, indeed. But on the other hand, the content of these action plans is also to be underlined in order to put the intensity of the transfusion process in the spotlight. Most of the planned actions for each year in the competition part of the DCFTA consist of capacity building activities for the Agency staff and raising awareness of the public. E.g., the activities related to competition put in the actions plan for 2017⁹ are limited to “Competition policy advocacy, organising informative meetings and seminars for public and private sector representatives.” The importance of competition advocacy is not in question indeed for countries like Georgia, but there is still no mention of the need for updates or approximation of the procedural or material legislation. The same applies to the 2016 action plan, limiting the roadmap to “conduct trainings for public and private sector representatives on different competition-related issues” and “organizing trainings and study tours for the staff of the Competition

⁹ National Action Plan for the Implementation of the Association Agreement between Georgia, of the one part and the European Union and the European Atomic Energy Community and their Member States, of the other part and the Association Agenda between Georgia and the European Union, 2017, p.18-19.

Agency on different competition-related issues and their participation in international conferences¹⁰.”

Notable change can be observed in the three-year action plan for 2018-2020. Although the planned activities are limited again to competition policy advocacy, holding seminars and informative meetings for public and private sector representatives and organizing trainings and study tours for competition agency staff on different issues of competition policy which aim to raise awareness and build the capacity of GCA staff, the definition of the corresponding article/paragraph of the DCFTA has been changed. The word “reform” which was put in this text for the first time, is carrying an important function here since it stresses that the parties agree on the need for legislative reform in order to achieve the goals set in Chapter 10 of DCFTA. The tangible results of this simple change in wording were then reflected in the draft law on the amendments to the Georgian Competition Law, which will be discussed below.

As it is clear, the approximation clauses and the commitments taken by Georgia may have a broad interpretation, and their implementation merely depends on the annual negotiation and reporting process following the AA’s entry into force. That means the legally binding character of the treaty is quite weak due to the generalized character of the norm text, and the individual impact of political decisions and of the persons in charge, representing both parties, may be high.

Being mindful of the circumstances discussed above, the DCFTA allows the planned and consistent transfusion of European standards, including in the field of competition, but does not force the party (Georgia) to intensify the process. To put it differently, having taken no specified obligations, Georgia can always debate the level of passion for the approximation it is going to express in the year following each Association Committee meeting. On the other hand, the EU has got effective targeted tools for catalyzing the process, such as

¹⁰ National Action Plan for the Implementation of the Association Agreement between Georgia, of the one part and the European Union and the European Atomic Energy Community and their Member States, of the other part and the Association Agenda between Georgia and the European Union, 2016, p. 19.

tying the implementation of various projects and programs of cooperation to the level and quality of legal approximation.

More concretization can be inferred from the minutes of the meetings of the Association Committee. For instance, in the joint report on the Fifth EU-Georgia Association Committee in Trade Configuration held on 17-18 December 2018 in Brussels, the EU Commission "recognized the efforts already made to align the system to the principles and rules applied by the EU and that Georgia is willing to go beyond the competition provisions provided in the DCFTA and step up its enforcement efforts. To create an effective competition culture in Georgia, the European Commission highlighted the importance of relevant enforcement mechanisms for all agencies responsible for the implementation of competition law" (ACTC - EU-Georgia Association Committee in Trade Configuration 2018). It is clear that the EU underlines the importance of expanding the range and deepening the substance of the commitments taken by Georgia by the agreement. Having said that, it is questionable why it was impossible to determine the desired level of approximation in the treaty itself.

Following the 2018 Report, the results of the annual meetings can be perceived in a joint report on the Sixth EU-Georgia Association Committee in Trade configuration held in December 2019 in Tbilisi. In the sole year after mentioning 'reforms' in the action plan and actualizing the importance of "more than agreed" goals, the Commission had to recognize "the efforts made to align the system to the principles and rules applied by the EU and welcomed the draft amendments introduced in the Competition Law" (ACTC - EU-Georgia Association Committee in Trade Configuration 2019). This detail indicates that 1. The literal content of DCFTA approximation clauses is not the limit for the integration 2. There are more flexible and effective tools for the approximation than the general body text of the DCFTA.

To summarize the foregoing, the DCFTA as a legal act may perhaps not be a sufficiently effective tool for transfusion of the European legislation, including the norms for realization of the due process principle. However, it creates the political framework and gives the general outline, indeed, to mark the way to the effective

approximation and integration on the legal and socio-economical level. This means the DCFTA is not a result as such, but more a process which is oriented towards tangible results in the future.

Devoir or Good Will—State of Play

Having provided the whole context of the regulatory framework and the exemplary reflection of it in practice (see the PSPC case above), it is conceivable to provide the pure legal analysis of the procedural matters on the PSPC case and, therefore, analyze the state of play in this regard, considering the central question set in this paper which relates to the legal basis for ensuring due process in the Georgian competition proceedings.

The main legislative acts governing this process in the Georgian law are the Law on competition and the General Administrative Code of Georgia. Pursuant to subparagraph Article 18.1 of the Law of Georgia on Competition, “with relation to undertakings the Agency shall be authorized to conduct an investigation on the basis of a submitted application and/or complaint, or on its own initiative.” And based on paragraph 13 of Article 25 of the same Law, the rule and procedure of investigation of the case are approved by Order #30/09-5 of 2014 of the Chairman of the Competition Agency. The latter document is a key guiding legal source for the Agency in the investigation process.

The most important lever for conducting the investigation process and obtaining relevant evidence is the right to request information which the Agency has under Article 18 of the Law. The Agency has the right to request information from the relevant undertakings as well as from relevant third parties.

As for the rights of the parties during an investigation, they are scattered in the law, in the by-law regulating the investigation process, and the General Administrative Code. The Law of Georgia on Competition provides a rather narrow assessment of the procedural rights of the parties. Article 23 of the Law deals only generally with the exercise of the right of defense by the respondent undertaking and indicates that it has the right to submit to the Agency its own views and observations on the complaint. The law does not say anything

about cases where an investigation is conducted not on the basis of a complaint or an application, but *ex officio*.

The rule and procedure of investigation (approved by order of the Chairman of the Agency) devotes its Article 3 to defining the rights and obligations of the persons involved in the case, outlined only in three subparagraphs, one of which describes the obligation to provide the Agency with information important for the case, and two paragraphs contain the guarantee of the rights—1. Persons participating in the investigation of a case have the right to have a representative during the investigation. 2. The applicant and the parties have the right to get acquainted with the case materials following the procedure established by Article 99 of the General Administrative Code of Georgia.

Accordingly, the persons involved in the case have the right to get acquainted with the materials of the administrative proceedings, except for the materials that are directly related to the internal documents used for the preparation of the decision, as well as to request copies of these documents. Interestingly, Article 99 of the General Administrative Code places the interest of access to documents and the interest of protection of secrecy on different parts of the scales, asking the court to assess which of them prevails. One of the important rights of the relevant undertaking, i.e., the person involved in the case, is the right to get acquainted with the explanations of the other parties obtained by the Agency. Moreover, the Agency is obliged to provide the content of the explanation to the relevant undertaking within five days; however, the Rule of Investigation indicates that this is only possible "if the provision of information does not interfere with the interests of the investigation." This is quite a broad discretion granted to the Agency. At the same time, it is difficult to determine whether getting acquainted with this or that explanation by the party will interfere with the course of the investigation, especially in the period before making a decision. As for the post-decision period, the Agency will fully submit case materials, including explanatory protocols, to the relevant undertakings.

Article 22 of the Rule and Procedure of Investigation regulates the final hearing. It will be appointed by the Agency after investigating the circumstances of the case and gathering evidence. The final

hearing involves informing the parties about the results of the investigation and hearing their opinion, after which some changes may be made to the draft decision. The minutes of the final hearing are also attached to the rest of the case materials and the draft decision, which will be submitted to the Chairman of the Agency for approval. The chairperson signs the decision and approves it by appropriate order, or returns it to the investigative team for further consideration. Notwithstanding that the legislation provides for the possibility of continuing the investigation after the final session, the total time available for the Agency to investigate is limited. Consequently, in complex cases, where even ten months may not be enough for a full-fledged investigation, this possibility has perhaps no practical value.

In view of all the above, the obligation to forward the full version of the case file and share its position with the party arises for the Competition Agency at the very end of the investigation—at the final hearing. With this in mind, in the case mentioned earlier, the Agency had the full legal right to submit the draft decision to the party (PSPC) four working days (or even less) in advance.

The most disappointing thing, in this case, is that although the DCFTA, as an international treaty, is positioned higher than the Law of Georgia on Competition (and moreover, by-law issued by the Chairmen of the GCA), the European procedural framework cannot be applied directly for the reasons we have discussed above, and the DCFTA records regarding procedural fairness are very general. In the case of a systematic analysis of the law, it can be easily concluded that if the DCFTA is a superior norm, the legislation under it should be considered as concertizing the superior, and the determination of the conflict between these norms is beyond the competence of the executive body which is applying them, acting within the specialized procedural framework.

In view of all the above, it can be concluded that in the current situation, the application of due process principles and the full realization of the relevant procedural rights of the party will depend more on the good will of the Agency than on its obligations established by law.

Auspicious Outlook—Amendments to the Georgian Competition Legislation

Although the overall picture of the legislative and institutional framework appears not to be the best imaginable one, there is still light at the end of the tunnel. The Georgian Parliament is in the process of passing amendments to the Georgian Law on Competition (Parliament of Georgia 2019). Entering into force supposedly in January 2021, the new volume of the legislation will bring crucial changes and significant extension of the executive power of the GCA and it will further approximate the Law of Georgia on Competition to best EU practice. The legislative proposals include new functions and enforcement tools of the Agency and mainly cover changes in several directions:

- Change of Institutional Arrangement of the Agency—Establishment of the collegial body—Board, Selection of board members by parliament, by submission of Prime Minister;
- Improvement of concentration of control mechanisms: increase of time regarding the study of concentration notification, transition into 2 phase system, imposing structural or behavioral remedies during merger control, introducing of sanctions in the case of gun-jumping;
- Law on competition will also be enforced in regulated sectors of the economy, with some exceptions derived from the specification of sectoral regulators;
- The Agency will have the right to request information from the undertakings on every stage of an investigation, merger, and market monitoring;
- The enforcement tools of the Agency will become more effective. The Agency will have the right to carry out an unannounced on-site inspection on the basis of the court decision, to impose fines for infringing rules related to unfair competition; to make a commitment decision, etc.

The crucial point is the scale of the changes—the Parliament has registered the amendments as a pack of planned changes into several legal acts, including the administrative legislation of Georgia, which

will create the appropriate legal context for the changes in the competition regulation. For instance, as we have already discussed above, the Agency cannot carry out unannounced inspections on the premises of an undertaking, since by the law, the party should be notified about it when the court is deciding about the issue. The amended administrative legislation will lift such obligation of the court in competition cases.

One of the important novelties for the Georgian legal framework will be the extension of the maximal duration of the investigation. After the adoption of the law, the Agency will have six months for the initial phase and additionally one year (18 months in total) for the investigation. Incidentally, it does not mean merely easing the job of the competition authority but giving room for a better standard of ensuring the rights of the parties involved in the proceedings. More specifically, the law introduces the obligation of the Agency to send the draft decision (a.k.a. SO) to the party at least 25 working days before the final hearing, as it is stated in the updated draft Article 25 of the Law.

Considering the foregoing, the amendments to the Georgian Law on Competition lead us to expect significant improvements and even more intense approximation to the EU competition framework.

Conclusion

Due process in competition proceedings, revealed in the fundamental principles such as the right to be heard, access to the file, right to legal defence, is guaranteed by the Georgian legislation on the general level—the incorporation of these principles in the Georgian legal order goes back to EU regulative framework. Furthermore, unquestionably, the Georgian legal system (at least in the field of competition law) is oriented towards EU standard for procedures as the benchmark for the effective realization of discussed rights of the party on the one hand, and for conducting the efficient investigative processes on the other.

The main legal instrument for the transposition of these principles is the DCFTA between Georgia and the EU. However, the generalized character of the approximation clauses in chapter 10 of

the Agreement cannot create a sufficiently conceivable outline for the transposition process in general, as well as for the specific roadmap to the effective implementation of these principles. Moreover, the DCFTA, despite being a superior normative act above the Georgian competition legislation, cannot be used as a legal means for the direct application of the EU procedural rules in competition proceedings.

The practical realization of the abovementioned goals is affected since they are presented as standalone principles in the special legal framework lacking adaptation to these principles. The specific procedural rules for the investigation and case handling at the Georgian Competition Authority restrict the practical enforceability of several elements of due process, causing it by restrictions in terms of time for investigation procedure or by the insufficiently effective institutional framework. This challenge can be clearly identified when going through the procedural record of one of the most important decisions (considering the subject matter) made by the Georgian Competition Authority, described in detail above.

In the light of the foregoing, it is apparent that the competition authority has no obligation but the right and political motivation to ensure the availability of the discussed elements of the due process for the parties to the proceedings. In such a state of affairs, the realization of the undertaking's fundamental rights depends solely on the goodwill of the authority in charge.

At odds with the statements given above about the insufficient effectiveness of the DCFTA, as of the legal document in regards to the competition policy, there can be found effective mechanisms of international legal and political cooperation, for instance, the EU-Georgia Association Committee annual meetings. This instrument was used very effectively to provide concretization of the commitments taken by Georgia, as by the party to the association agreement and realization of general principles guaranteed in chapter 10 of the DCFTA. This process led Georgia to the adoption of the new competition framework, which should guarantee the effective implementation of the discussed principles starting from 2021. Time will tell.

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